

Monthly information

July 2024

solvetax

solutions for your tax

SolveTax tax consultancy
StB Dipl.-Bw.(FH) Sascha Schneider
Specialist consultant for international tax law

Schwindstrasse 2
63739 Aschaffenburg

Phone: +49 151 28960404

E-mail: mail@solvetax.de

Welcome back to the monthly world of taxes and finance,

The Federal Fiscal Court had to deal with the tax implications of agreements concluded on the granting of pension commitments to managing directors of a GmbH and, with its decision, clarified the substance of two key areas in this area of law.

Hidden profit distributions continue to keep the tax courts busy. The Düsseldorf tax court recently ruled that if an indirect shareholder of a GmbH grants a right of first refusal for a property located abroad in return for payment, in the use of which the GmbH has no operational interest, the payment constitutes a hidden profit distribution.

Questions repeatedly arise about profits and losses from photovoltaic systems that must be dealt with by tax courts. The Baden-Württemberg Fiscal Court recently had to decide on the tax recognition of losses from operating a photovoltaic system on one's own home.

The Annual Tax Act 2024 has been a long time coming. The draft bill has been passed, containing many legal changes across tax law.

Do you have any questions about the articles in this issue of Monthly Information or other topics? Please do not hesitate to contact us.

We will be happy to advise you.

For income taxpayers

Tax implications of agreements on the granting of pension commitments to managing directors of a GmbH

The Federal Fiscal Court had to deal with the tax implications of agreements concluded on the granting of pension commitments to managing directors of a GmbH. This decision clarified the substance of two key areas in this area of law. Firstly, the Federal Fiscal Court determined that the term "pension commitment" or "pension obligation" is associated with several different payments made by a company to the person(s) entitled to a pension. The legal consequence of the refusal to create a provision therefore does not occur according to the principle of "all or nothing", as implied by the term "if" in the law, but there are also partial recognitions of the promised benefits, as can be derived from the term "to the extent" in the legal text. Partial benefits include the current pension payment in the promised amount, a possible disability pension and also the widow's/widower's pension following the statutory requirements.

The respective individual benefits must therefore first be checked for compliance with the requirements and, if necessary, provisions for individual pension benefits must be denied, but are permissible for other partial benefits. If, for example, there is no clear regulation on the reduction in earning capacity for a disability pension, no provision can be made for this, but the obligation from the retirement pension remains. However, even if individual elements of "a prospective benefit" cannot be clearly and unambiguously determined, the remaining benefit may still be eligible for accrual. For example, in the case in question, the Federal Fiscal Court considered the regulation on an early start of the retirement pension before the generally agreed start of the pension at the age of 65 to be unclear. Therefore, the calculation of the provision could only be based on the completion of this age and a pension payment for earlier periods was not a business expense but a hidden profit distribution. Consequently, a recalculation had to be made for the provisions in the previous years and the case was referred to the tax court.

Hidden profit distribution in connection with the granting of a pre-emptive right to a property

The plaintiff was the sole shareholder of J. GmbH, which in turn was the sole shareholder of Q. GmbH. The plaintiff was also the owner of a property in Spain. In 2013, he granted Q. GmbH a pre-emptive right to the property in Spain, which in return undertook to assume the plaintiff's liabilities. Later, Q. GmbH exercised the right of first refusal and leased the property to the plaintiff. The tax office considered this to be a preferential transfer of use, which it qualified as a hidden profit distribution.

If in return for the granting of a pre-emptive right to a property owned by the indirect sole shareholder of a GmbH, private land charges are assumed by the shareholder, a hidden profit distribution in the amount of the assumed liabilities must be added to the shareholder according to the ruling of the Düsseldorf Tax Court if the GmbH has no operational interest in the use of this property and no other advantages arise for it from the pre-emptive right.

Tax issues relating to the provision of bicycles and e-bikes with accessories to employees

For the period from 01.01.2019 to 31.12.2030, benefits granted by the employer for the provision of a company (electric) bicycle to the employee in addition to the wages already owed will be tax-free. The tax exemption results in an exemption from social security contributions. E-bikes, which are technically motor vehicles (because the electric motor also supports speeds above 25 km/h), cannot be provided tax-free. The tax exemption only applies to benefits granted in addition to the wages already owed (on top). In practice, however, the majority of so-called job or company bikes are provided to employees as part of salary conversion/leasing models. With the usual leasing models, the employer usually leases the company bike and leaves it to the employee as part of a usage agreement employing salary conversion. In this case, there is a monthly taxable non-cash benefit amounting to **1% of the recommended retail price** (gross retail price) of the company bike provided, **rounded down to the nearest 100 euros**.



As part of leasing models, it is often possible to lease **typical bicycle accessories**, and the tax authorities have received numerous appeals on this issue. In order to ensure a uniform interpretation of the law, the tax authorities have commented on the tax treatment of bicycle accessories. According to this, typical bicycle accessories include all dependent fittings. The tax authorities only classify accessories that are permanently attached to the frame of the bicycle or other bicycle parts, such as bicycle stands, luggage racks, mudguards, bells, rear-view mirrors, locks, navigation devices, other attached carriers or model-specific brackets, as tax-privileged accessories.

The tax authorities also give examples of accessories that are not tax-privileged for bicycles. These include rider equipment (e.g. helmet, gloves, clothing, etc.), devices that can be inserted into model-specific holders (e.g. smartphone, mobile navigation device) or other items (e.g. bicycle trailer, handlebar, frame or saddle bags or bicycle basket). These bicycle accessories, which are not tax-privileged, must be valued separately by the employer and regularly constitute taxable wages for the employee.

Donations for flood relief are tax-deductible.

In parts of southern Germany, many people have suffered damage as a result of the severe storms and subsequent flooding. Aid organizations are on the spot wherever there is a need. Anyone who would like to help them with a donation can benefit from tax relief.

For donations to a charitable organization of up to 300 euros, the tax office only needs simple proof - for example, a bank statement or a screenshot of the transfer. The proof should include the name and account number of the donor and the recipient. Anyone wishing to donate more than 300 euros usually needs a donation receipt issued by the

receiving organization as proof. In the event of a disaster, the tax authorities can relax this rule and accept a simple receipt even for larger donations. The prerequisite is that the money is paid into a special account set up specifically for the disaster in question. Only donations of up to 20 percent of your own annual income are tax-deductible.

A receipt does not have to be sent directly. However, it should be to hand in case the tax office asks for it.

Note

Reputable organizations can be recognized, for example, by the donation seal of the German Central Institute for Social Issues (DZI).

The tax offices in **Baden-Württemberg** want to make use of all tax measures available to them in order to accommodate citizens and companies affected by the floods. Specific relief measures include, for example, adjusted tax prepayments or the deferral of income tax, corporation tax or VAT amounts due. In justified cases, it is also possible to defer enforcement without having to pay late payment penalties. All those affected can contact the relevant tax office directly.

Note

Emergency aid is also being offered in other federal states affected by flooding, such as Bavaria and Rhineland-Palatinate.

Profit participation right distributions as income from employment or income from capital assets

A profit participation right gives creditors a share in company profits, whereby the creditor does not have ownership rights. In the opinion of the Hessian Tax Court, distributions from profit participation rights in the employer offered only to executives are in any case wages if the possible interest on the profit participation capital exceeds the normal market return.

In this case, the distributions do not qualify as income from capital assets because the employee acquired the profit participation rights from his own assets, bears an effective risk of loss and is entitled to the distributions for the entire financial year even in the event of sick leave or parental leave.

Intention to make a profit when operating a photovoltaic system on your own home

The assessment of whether a PV system is operated to make a profit must be based on a forecast period of 20 years. If the amount of electricity generated is not verified by the small system operator, it can be estimated for reasons of simplification, considering an average number of full load hours of 1,000 kWh/kWp. Regarding self-consumed electricity, this results in a withdrawal to be recognized as operating income at the partial value. The partial value of the self-consumed electricity corresponds to the costs incurred for its generation (acquisition costs of the PV system and operating costs, spread over the electricity production expected in 20 years) and cannot be used in the total profit forecast at the flat rate of EUR 0.20/kWh accepted by the tax authorities in certain cases for reasons of simplification. No residual value of the PV system after the end of the 20-year useful life is to be taken into account as income in the total profit forecast.

When operating a PV system, prima facie evidence initially suggests that it is operated to make a profit. However, this prima facie evidence is already shaken by the fact that, according to a total profit forecast, no profit can be made within 20 years. If the taxpayer has accepted the losses from the PV system in view of the fact that the self-generated electricity is financially significantly cheaper than the electricity purchased from an electricity provider, it must be assumed that there are personal reasons for operating the PV system that lie outside the income sphere relevant under tax law and speak against the intention to generate income. In the case in dispute before the Baden-Württemberg tax court, the tax authorities correctly did not recognize the claimed losses from commercial operations due to the plaintiff's lack of intention to generate income.

Gain from the sale of shares previously acquired as part of a management participation program as wages

A surplus from the sale of shares previously acquired as part of a management participation program can, taking into account all circumstances of the individual case, be caused by the employment relationship - and not by a separate and independent special legal relationship - and thus be a benefit from the employer.

According to the Cologne Fiscal Court, this is the case if the shares were acquired at a discount and special circumstances from the employment relationship influenced the saleability and performance of the shares. In the dispute case, this was affirmed: there was an entitlement to a distribution in the form of repurchases after the shares had vested and the amount of the resale value of the shares was dependent on the continuation of the employment relationship.

For VAT payers

Shift of the tax liability - requirements for the person receiving the service

The Federal Fiscal Court had to decide whether a reverse charge to the recipient of the service requires that the recipient of the service has been issued a valid VAT identification number and has communicated this to the supplier or whether proof of the recipient's entrepreneurial status can also be provided by means other than the recipient's VAT identification number.

The question here was what requirements an entrepreneur based in the rest of the Community who provides other services to entrepreneurs and non-entrepreneurs in Germany must meet in order to be able to assume that his entrepreneurial service recipients are liable for VAT.

The use of a valid VAT identification number by the recipient is not relevant for the transfer of the tax liability. The shift of the tax liability from the supplier to the recipient works in favor of the supplier and leads to a burden of assessment on the supplier. A

decision based on the burden of assessment can only be made in fiscal court proceedings if the facts of the case cannot be clarified.

Labor law

Receipt of notice of termination: Registered mail only with proof of delivery

According to the Baden-Württemberg Higher Labor Court, proof of receipt of a notice of termination in court requires proof of delivery from the post office. Proof of posting and mailing status alone are not sufficient.

Miscellaneous

Drone flights over a residential property to collect contributions are unlawful

The Bavarian Administrative Court ruled that the planned drone flight of a residential property to determine the floor area is unlawful.

The city of Neumarkt-Sankt Veit originally planned a drone survey of various residential properties for October 2023 in order to determine the floor area of the existing buildings there. The data obtained in this way was to be used to calculate the so-called production charge, which is levied for the connection of properties to the municipal wastewater disposal system. After the applicant, who owns a residential property in the city area, was informed about the planned drone flight, he turned to the Munich Administrative Court, which granted his urgent application. The city appealed against this decision with the Bavarian Administrative Court.

Legislation

EU Council adopts law on artificial intelligence (AI)

On May 21, 2024, the Council of the EU adopted the so-called Artificial Intelligence Act. The legislation follows a "risk-based" approach, which means that the higher the risk of harm to society, the stricter the rules.

The new law aims to promote the development and introduction of safe and trustworthy AI systems throughout the EU single market by both private and public actors. At the same time, it aims to ensure respect for the fundamental rights of EU citizens and promote investment and innovation in the field of artificial intelligence in Europe. The AI Act only applies to areas of EU law and provides for exemptions, for example, for systems used exclusively for military and defense purposes and for research purposes.

Rules on European digital identity in force: digital wallet coming in 2026

The regulations on the introduction of a European digital identity came into force on 20.05.2024. They are intended to pave the way for all EU citizens to be able to use the European digital wallet from 2026. This will consist of a mobile app that will be issued in each member state. It will enable EU citizens and residents to identify themselves online in complete security and access public and private online services across Europe.

Annual Tax Act 2024 passed by the Federal Cabinet

On 5 June 2024, the Federal Cabinet adopted the draft Annual Tax Act (JStG 2024). It provides for significant measures, e.g. to drive forward the reduction of bureaucracy or accelerate digitalization and amends a large number of laws across tax law with around 130 individual measures. As recent legislative procedures have shown that postponements often occur, it is **not** yet possible to make a **definitive statement on the further timetable**.

Property tax: assessment rate recommendations calculated for Hesse's municipalities

The new property tax will apply from 2025. One of the aims is to achieve revenue neutrality for local authorities. The recommendations of the state of Hesse on the assessment rates have now been presented. A municipality should collect roughly the same amount of property tax in 2025 under the new law as it did in 2024 under the old law. The key factor here is the assessment rate. The state has made recommendations on which assessment rates can be used to achieve revenue neutrality. The state's recommendations are not binding for the municipalities. According to the mathematically calculated recommendation, 344 municipalities could reduce their assessment rate for property tax B, 72 could increase it and 5 could adopt the previous rate again to ensure revenue neutrality.

Announcement of tax assessments on Saturdays averted

The Postal Law Modernization Act passed by the Bundestag on 13.06.2024 modernized postal law and, among other things, extended the delivery time requirements for the delivery of letters by postal service providers. To adapt the presumption rules for the notification of administrative acts to the extended delivery time requirements, the three days previously provided for will be changed to four days. This means that tax assessments and other administrative acts are deemed to have been announced on the fourth day after they are posted, instead of the previous three days; in the case of electronic retrieval of assessment data, four days after the data has been made available.

The extended deadline requirements also lead to adjustments in the **calculation of the deadline**. In its statement, the Deutscher Steuerberaterverband e.V. (DStV - German Association of Tax Consultants) appealed to the legislator to ensure that the deadline does not end at the weekend. As a result, the Bundestag's Economic Affairs Committee made improvements and **prevented tax assessments from being announced on Saturdays**. The law must now pass the Bundesrat.

Imprint

© 2024 The contents have been prepared with the utmost care, do not claim to be complete and are no substitute for examination and advice in individual cases.

Tax/social security dates

July/August 2024

| Tax type | | Maturity | |
|--|----------------------------|--|-------------------------|
| Income tax, church tax, solidarity surcharge | | 10.07.2024 ¹ | 12.08.2024 ² |
| Value added tax | | 10.07.2024 ³ | 12.08.2024 ⁴ |
| End of the grace period for the above types of tax in the event of payment by: | Bank transfer ⁵ | 15.07.2024 | 15.08.2024 ⁸ |
| | Check ⁶ | 10.07.2024 | 12.08.2024 |
| Trade tax | | not applicable | 15.08.2024 ⁸ |
| Property tax | | Not applicable | 15.08.2024 ⁸ |
| End of the grace period for the above types of tax in the event of payment by: | Bank transfer ⁵ | Not applicable | 19.08.2024 |
| | Check ⁶ | Not applicable | 15.08.2024 |
| Social insurance ⁷ | | 29.07.2024 | 28.08.2024 |
| Capital gains tax, solidarity surcharge | | The capital gains tax and the solidarity surcharge payable on it must be paid to the relevant tax office at the same time as the profit distribution to the shareholder. | |

¹ For the past month, for quarterly payers for the past calendar quarter.

² For the past month.

³ For the past month, for the month before last in the case of a permanent extension, and for the past calendar quarter in the case of quarterly payers without a permanent extension.

⁴ For the past month, for the penultimate month in the case of a permanent extension, and for the past calendar quarter in the case of quarterly payers with a permanent extension.

⁵ Advance VAT returns and income tax returns must generally be submitted (electronically) by the 10th of the month following the filing period. If the 10th falls on a Saturday, Sunday or public holiday, the next working day is the deadline. No late payment surcharges will be levied if payment is up to three days late. A bank transfer must be made in good time so that the value date on the tax office's account is on the due date.

⁶ When paying by check, please note that the payment is not deemed to have been made until three days after receipt of the check by the tax office. A direct debit authorization should be issued instead.

⁷ Social security contributions are due on the third-last bank working day of the current month. The direct debit procedure is recommended to avoid late payment penalties. All health insurance funds have a standard deadline for submitting contribution statements. These must be received by the respective collection agency no later than two working days before the due date (i.e. on 25.07.2024/26.08.2024, 0 a.m. in each case). Regional peculiarities regarding due dates may need to be taken into account. If payroll accounting is carried out by external contractors, the wage and salary data should be sent to the contractor around ten days before the due date. This applies in particular if the due date falls on a Monday or on a day after a public holiday.

⁸ In the federal states and regions in which 15.08.2024 is a public holiday (Assumption Day), the tax is due on 16.08.2024.