

Monthly information

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solvetax

solutions for your tax

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Welcome back to the world of German taxes and finance,

The Federal Fiscal Court ruled that loss set-off restrictions for forward transactions and capital income are unconstitutional. The regulation represents a double unequal treatment of taxpayers, which is incompatible with the principle of equality under the German Basic Law.

The Lower Saxony Tax Court ruled contrary to the tax authorities' opinion, according to which expenses for an employee's farewell event are to be treated as wages if they exceed the exemption limit of EUR 110 per participant.

The Federal Fiscal Court recently clarified whether the flat tax rate of 25% may be applied to events that are social but are not open to all company employees.

The Federal Minister of Finance had announced it, but the Second Annual Tax Act 2024 came as a surprise. It intends to address the many challenges that cannot yet be overcome with the measures in the Annual Tax Act 2024.

Do you have any questions about the articles in this issue of Monthly Information or other topics? Please contact us.

We will be happy to advise you.

Your SolveTax team

For income taxpayers

Loss offsetting restrictions for forward transactions and capital income unconstitutional

According to the Income Tax Act, losses from forward transactions may only be offset up to a limit of EUR 20,000 per year (Section 20 (6) sentence 5 EStG). In addition, losses from capital income (e.g. from shares) may only be offset against gains from capital income. Offsetting against other income is therefore not permitted. In the opinion of the Federal Fiscal Court, however, this is not justified and puts particularly active investors at a disadvantage. This constitutes unequal treatment and asymmetrical taxation, which violates the objective net principle and therefore makes these loss-offsetting restrictions for forward transactions and capital income unconstitutional (case no. VIII B 113/23).

The Federal Fiscal Court already ruled on the constitutionality of the loss set-off restriction for share disposal losses in its decision dated 17.11.2020 (case no. VIII R 11/18). The Federal Fiscal Court also deemed this provision to be unconstitutional due to its violation of Article 3 of the German Basic Law and referred the issue to the Federal Constitutional Court (Federal Constitutional Court, pending under case no. 2 BvL 3/21).

"Washing service" costs are not household-related services

In the dispute case, the plaintiffs earned income from employment and lived in a detached house with two studies, one on the first floor and one on the upper floor. The claimant used his employer-provided office during the workweek and used a home office on non-working days. They also used an external laundry service and claimed these as household-related services, along with the costs of staff for a private birthday party. The claimant attended a seminar to learn about legal proceedings and claimed these costs as income-related expenses.

The Münster Fiscal Court ruled that home office expenses are not deductible if a business office is available, even if the home office is used on non-working days. Seminar costs do not qualify as training costs but are partly deductible as legal costs related to employment income. The court also ruled that external laundry services and staff costs for a party room outside the home are not household-related services (case no. 12 K 1090/21 E).

Expenses for a celebration on the occasion of an employee farewell can be in the predominant business interest of the employer

In this dispute, the Lower Saxony Fiscal Court ruled that the plaintiff - a financial institution - was wrongly held liable for income tax on the expenses for an event to mark the farewell of its previous CEO. The event took place on the plaintiff's premises and was organized and financed by the plaintiff, which also introduced the new CEO. The external wage tax auditor did not recognize the event as a company event and attributed the costs to the previous CEO as wages, as not all employees were invited and the expenses exceeded the exemption limit of EUR 110 per participant. However, the court found that the event was a celebration of the plaintiff, as the guest list was predominantly drawn up based on business considerations and the plaintiff acted as host. Only a small number of private guests of the previous CEO had attended. In the opinion of the court, the reception was in the predominant business interest of the plaintiff, since in addition to the farewell of the previous CEO, the introduction of his successor also took place.

Taking all the circumstances into account, the reception is a company event and only the expenses incurred by the previous CEO and his family members are to be regarded as wages (Ref. 8 K 66/22).

Note

The administrative opinion, according to which the expenses for farewell parties for employees are to be treated as wages in total if they exceed the exemption limit of EUR 110, while in the case of birthday parties only the costs incurred by the employee and his guests are considered wages, was rejected by the court as inappropriate.

Flat-rate taxation of events that are not open to all employees

The Federal Fiscal Court (Bundesfinanzhof, BFH) has clarified (case no. VI R 5/22) whether the flat-rate tax rate of 25% may be applied to events that are social in nature but not open to all company employees (in this case: Christmas parties for board members and managers). The lower court had rejected this. The BFH does not consider it necessary for the event to be open to all employees in order for the 25% flat-rate taxation to apply. If, for example, only executives are invited to a company party, this event can still be taxed at a flat rate of 25%. The permissible flat-rate taxation results in exemption from social security contributions. For the BFH, it is sufficient that an event takes place at company level and has a social character in order to be able to claim the flat-rate taxation. The requirement that "participation in the company event is open to all members of the company or part of the company" only applies in conjunction with the granting of the allowance of EUR 110.

Note

Beyond the ruling case (executives), the question arises as to whether other types of events with a restricted group of participants (e.g. incentive events, reward meals) are also affected, which can be assumed. Due to the potential broad impact of the BFH ruling, it remains to be seen how the tax authorities and possibly also the umbrella organizations of the social security system will react to the BFH's decision.

According to a recent decision by the Federal Social Court, expenses of more than EUR 110 per employee for a company anniversary celebration are subject to social security contributions as a non-cash benefit if they are not taxed as a lump sum with the pay slip, but only considerably later (Federal Social Court, judgment of 23.04.2024 - B 12 BA 3/22 R).

For wage tax payers

Tax-privileged benefits to employees: contributions to group accident insurance

Company group accident insurance, which covers several employees jointly for both occupational and private accidents, can be a useful supplement to statutory accident insurance. Employer contributions to such group accident insurance qualify as taxable wages if the employee can assert the insurance claim directly against the insurance company and the insurer pays the insurance benefit to the employee as the insured person.

In this case, the employer could levy the contributions for group accident insurance at a flat rate of 20% until December 31, 2023 if the portion of the total premium (excluding insurance tax) attributable to the insured person does not exceed EUR 100 per calendar year. The permissible flat-rate taxation by the employer leads to exemption from social security contributions. If the maximum amount of EUR 100 applicable until December 31, 2023 was exceeded, the entire premium had to be subject to individual wage tax deduction and social security contributions; this was previously a tax exemption limit.

The Growth Opportunities Act abolished the tax threshold of EUR 100 from January 1, 2024, meaning that a higher contribution to group accident insurance can also be taxed by the employer as a lump sum for 2024.

Note

A few years ago, the Federal Fiscal Court established principles for distinguishing between cash and non-cash remuneration. Insurance coverage provided by the employer is considered remuneration in kind if the employee can only demand insurance coverage, not cash. For accident insurance, if the employer takes out the insurance and the benefits are due exclusively to the employer, there is no pecuniary advantage for the employee from the contributions. When an insured event occurs, the employee receives benefits, which are considered wages. The amount of these wages is determined by the employer's contributions, not the payout amount. For group accident insurance, the employee's contribution share may need to be estimated.

For corporate taxpayers

Hidden profit distribution: Erroneous contribution and causation by the corporate relationship

A transfer of assets from a corporation to a shareholder caused by the corporate relationship requires an **intention to make a contribution**. This may not be the case due to an error on the part of the shareholder-managing director. According to a decision by the Federal Fiscal Court, the decisive factor in this respect is whether the specific shareholder-managing director was subject to a corresponding error, but not whether a managing director acting properly and conscientiously would also have made the error (case reference I R 9/20).

In the case in dispute, a GmbH sued whose share capital was to be provided by the sole shareholder-managing director through the contribution of a 100% shareholding in another GmbH, among other things. A capital increase was carried out at the GmbH to be contributed, which ultimately benefited the shareholder-managing director. The defendant tax office considered this to be a hidden profit distribution (vGA) by the plaintiff to its shareholder-managing director. The plaintiff claimed that the contribution to the shareholder-managing director had been made in error due to an oversight in the notarization of the capital increase. The lower court, the tax court, dismissed the claim because a prudent and conscientious manager would not have made the error described by the plaintiff.

Note

The Federal Fiscal Court has now clarified that the question of whether the intention to make a gift required for the assumption of a vGA exists depends solely on the person of the specific shareholder-managing director.

Legislation

Second Annual Tax Act 2024 - Draft bill

During the cabinet consultation on the draft of the Annual Tax Act 2024 on June 5, 2024, it was stated that the various challenges that cannot yet be overcome with the measures contained in the Annual Tax Act 2024 were recognized. According to the Federal Ministry of Finance. These include projects around promoting children and families as well as further developments in charitable law. The **Second Annual Tax Act 2024** (JStG 2024 II) is intended to address this. In addition to the necessary income tax relief, other individual measures are to be addressed that are not or only partially linked to one another.

The draft bill of the JStG 2024 II essentially contains the following changes:

- **Introduction of reporting obligations for national tax arrangements**

Note: The reporting obligations for national tax arrangements were originally included in the Growth Opportunities Act, but were removed in the mediation committee. It can therefore be assumed that there will be resistance to the regulations from associations, chambers and opposition parties.

- **Transfer of tax classes III/V to the factor method** as of 01.01.2030

- **Increase in the basic tax-free allowance integrated into the income tax rate** by EUR 300 to EUR 12,084 in 2025 and an increase of EUR 252 to EUR 12,336 from 2026

- **Increase in the tax-free child allowance** for the 2025 assessment period by EUR 60 to EUR 6,672 and from the 2026 assessment period by EUR 156 to EUR 6,828

- **Adjustment of the other benchmark values of the income tax rate** for the assessment periods 2025 and from 2026 (with the exception of the benchmark value of the so-called wealth tax)

- **Increase in exemption limits for the solidarity surcharge** (not the discussed abolition of the solidarity surcharge) from assessment year 2025

- **Increase in child benefit** from 250 euros to 255 euros per month from January 2025

- **Digitization of death notifications**

- **Tax exemption for the Generation Capital Foundation**

- **Changes to the non-profit regulations:** e.g. adjustment of tax-deductible

activities, elimination of reserves and capital formation. Entry into force 01.01.2025

Nothing is currently (19.07.2024) known about the next steps in the legislative process. However, the JStG 2024 II is expected to be submitted to the Federal Cabinet as soon as possible.

Changes to parental allowance

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has explained the new regulations for parental allowance for births from April 1, 2024 in a question-and-answer catalog. The most important change is the **amended income threshold** above which parents are no longer entitled to parental allowance. For births **from 01.04.2024**, the taxable income - for couples and single parents alike - has been reduced to 200,000 euros.

For **births from 01.04.2025**, the limit will be adjusted downwards again to 175,000 euros.

Note

The question is whether this is the right approach for a well-considered family policy. What is certain is that it will reduce the number of parents who are entitled to parental allowance.

For **births up to and including March 31, 2024**, the previous income limits of 300,000 euros for couples and 250,000 euros for single parents will continue to apply.

New regulations for small businesses

From the 2024 tax period, small businesses are officially exempt from submitting annual VAT returns. This is one of the tax relief measures introduced with the **Growth Opportunities Act** in 2024.

With the currently known draft of the **2024 Annual Tax Act**, the small business regulation is to be extended from **2025**. In particular, the turnover limits of EUR 22,000 (previous year) and EUR 50,000 (current calendar year) are to be raised to EUR 25,000 and EUR 100,000.

The e-bill is coming

In order to drive forward the digital transformation in Germany, the so-called Growth Opportunities Act introduced mandatory e-invoicing in the domestic B2B sector with effect from 01.01.2025. e-invoicing was introduced in the domestic B2B sector.

The changeover to e-invoicing is not just about exchanging paper invoices electronically in future. Rather, the entire process from issuing the invoice to payment and archiving the invoice as well as the reconciliation between the tax authorities responsible for VAT payment and input tax deduction is to be redesigned.

This innovation does not affect consumers.

Note

With the applications on the DATEV e-invoicing platform, you can take your digital invoicing processes to the next level and make the exchange of invoice data with your business partners even more convenient in future. Of particular interest: e-invoice support package.

<https://www.datev.de/web/de/aktuelles/e-rechnung-mit-datev/>

Law on working time recording: timing unclear

The German government is not yet able to provide a timetable for when the law on recording working hours for all employees will come into force. Since the ruling of the Federal Labor Court on the obligation to record working hours, companies and employees in Germany have been waiting for a corresponding law.

Average rate for farmers falls to 7.8 percent

From 2025, the average rate for farmers will be 7.8 percent. This is the result of a briefing by the Federal Government to the Bundestag (20/11920). Previously, the rate was 9.0 percent.

Artists' social insurance remains at 5 percent in 2025



The Federal Ministry of Labor and Social Affairs has initiated the departmental and association participation process for the Artists' Social Security Contribution Ordinance 2025 (KSA-VO 2025). In 2025, the rate of the artists' social security contribution will remain unchanged at 5.0%.

Imprint

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Tax/social security dates

August/September 2024

Tax type		Maturity	
Income tax, church tax, solidarity surcharge		12.08.2024 ¹	10.09.2024 ¹
Income tax, church tax, solidarity surcharge		Not applicable	10.09.2024
Corporation tax, solidarity surcharge		Not applicable	10.09.2024
Value added tax		12.08.2024 ²	10.09.2024 ³
End of the grace period for the above types of tax in the event of payment by:	Bank transfer ⁴	15.08.2024 ⁶	13.09.2024
	Check ⁵	12.08.2024	10.09.2024
Trade tax		15.08.2024 ⁶	Not applicable
Property tax		15.08.2024 ⁶	Not applicable
End of the grace period for the above types of tax in the event of payment by:	Bank transfer ⁴	19.08.2024	Not applicable
	Check ⁵	15.08.2024	Not applicable
Social insurance ⁷		28.08.2024	26.09.2024
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.

² 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.

³ For the previous month, for the month before last in the case of a permanent extension.

⁴ 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.

⁵ If payment is made by check, please note that 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.

⁶ 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.

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 26.08.2024/24.09.2024, 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.