Coronavirus Tax Aids

Federal Council approves further Covid tax aids

On 10 June 2022, the Bundesrat approved numerous tax measures to deal with the Covid crisis, which the Bundestag had passed on 19 May, taking into account the recommendations of the Finance Committee. The Fourth Coronavirus Tax Relief Act will now be forwarded via the federal government to the Federal President for signature and then promulgated in the Federal Law Gazette. The extension of the tax exemption for subsidies for short-time working until the end of June 2022, the extension of the home office lump sum until December 31, 2022, the extension of the declining balance depreciation for movable assets by one year, the extended loss carryback from 2022 and 2023 with a permanent two-year carryback period, the extension of the reinvestment periods under Section 6b of the German Income Tax Act (EStG) by one year and the extension of the investment periods for tax-deductible investment amounts under Section 7g of the German Income Tax Act (EStG) by one year can then come into force.

Covid bonus of up to 4,500 euros

A special moment is the approval of the recommendations of the Finance Committee for Covid-related tax-free special employer benefits of up to 4,500 euros. It is now no longer important that the bonus be paid on the basis of federal or state regulations: Voluntary benefits paid by the employer are now also tax-exempt up to the maximum limit.

The law expands the group of beneficiaries: In the future, tax exemption will also apply to payments to employees in outpatient surgery facilities, certain preventive care and rehabilitation facilities, dialysis facilities, doctors' and dentists' offices, and rescue services.

Longer deadline for tax returns

As in previous years, the law provides for longer filing deadlines in order to ease the burden on both tax advisors and citizens.

Discounting requirement for liabilities

The discounting requirement for liabilities (Section 6 (1) No. 3 EStG) no longer applies for fiscal years ending after 31 December 2022. Upon request, the amendment to the law can be applied retroactively. However, the discounting of provisions at 5.5% remains unchanged.

Income Tax

Expenses for a study

Expenses for a workroom can only be deducted as income-related expenses only to the extent that the taxpayer bears them himself (so-called third-party expenses are not deductible). In a decree dated 22 February 2022, the Bremen Fiscal Senate outlined the administrative interpretation of various constellations in the case of spouses or partners in non-marital partnerships.

Essentially, it is stated that in the case of real estate in co-ownership (spouses, non-marital partnerships), a distinction is to be made between a) property-related expenses (e.g. depreciation, debt interest, etc.) and b) use-related expenses (e.g. cleaning costs, etc.).

Expenses relating to a) are only deductible on a pro-rata basis in accordance with the co-ownership ratio.

Expenses related to b) are fully deductible if borne by the taxpayer. This also applies if the payment of use-oriented expenses is made from a joint account of the spouses or the partners.

On the deduction of income-related expenses in the event of termination of tenancies due to own need

If two small apartments in a rented multi-family house are combined into one large apartment and at the same time are brought into a modern or proper condition by measures such as new flooring, painting of ceilings and walls, replacement of rusty radiators and renewal of the water faucets, these are not production costs but immediately deductible maintenance expenses. According to the Saxony-Anhalt Fiscal Court, expenses for the maintenance of a rented apartment are income-related expenses if the rental is caused by the occupation or by the generation of taxable income, i.e. if they are related to this in an economic context that is to be recognized under tax law. Whether such a connection exists must be determined by way of an appraisal of all the circumstances of the specific individual case. This also applies if the rental relationship is terminated due to the tenant's own needs and the apartment is subsequently rented to close relatives.

Wage Tax

Calculation of the basic wage for on-call duty for the limit of tax-free supplements

The Lower Saxony Fiscal Court has commented on the calculation of the assessment basis for determining the limit of tax-free supplements for Sunday, holiday or night work (SFN supplements).

If on-call duty is to be performed at the workplace, the entire duration of the on-call duty performed is to be assessed as work actually performed, even if the on-call time is not fully assessed as working time on the basis of rules agreed between the contracting parties.

In this case, the basic wage is calculated on the basis of the regular, contractually agreed hourly wage and not on the basis of the lower hourly wage resulting from the conversion of the regular hourly wage to the on-call time actually remunerated as working time.

The supplement for the time of on-call duty is not to be calculated on the basis of the pro rata remuneration of 25% paid for on-call duty, but on the basis of the full individual table wage converted to one hour, since the employees make their labor available to the employer at the workplace during the on-call time and the employer can call it up there if necessary. If the employee makes his labor available at the workplace for call-up, this provision is actually work performed, irrespective of the arrangements made between the contracting parties for the remuneration of these times.

Flat tax rate not applicable to company events not open to all company employees

The flat tax rate of 25% for company events (Sec. 40 (2) Sentence 1 No. 2 EStG) does not apply to events that are not open to all company employees (in this case: Christmas party for members of the Board of Management or executives). This was the decision of the Tax Court of Cologne.

The plaintiff paid taxable wages to the participants in the Board of Management Christmas party and the Christmas party for the Group's senior management in the amount of the expenses it incurred. According to the German Income Tax Act, income from employment includes benefits paid by the employer to its employees and their companions on the occasion of events of a social nature at company level (company events). The Christmas party for the Board of Management and the Christmas party for the Group management are such events. An allowance is not to be deducted from the benefits because the Board of Management Christmas Party and the Christmas Party for the Corporate Management Group were not open to all members of the company or part of the company, but only to members of the Board of Management or executives. The participating employees earned wages for the portion of the plaintiff's expenses attributable to them.

However, the wages were not paid on the occasion of a company event within the meaning of the Income Tax Act. According to the established case law of the Federal Fiscal Court, this only applies if the event is open to all employees. In the case in question, however, only members of the Board of Management and executives were allowed to attend the event.

Inheritance tax

Costs for mausoleum - inheritance tax can be reduced

After his deceased brother had been buried in a conventional grave, the heir had commissioned an elaborate mausoleum as a second burial place and claimed the costs for this in his inheritance tax return. The tax office and the tax court rejected the deduction.

According to the Federal Fiscal Court, only the costs for a grave monument erected first are deductible for inheritance tax purposes. However, there may also be cases in which, for various reasons, the deceased is initially buried only provisionally in a first grave and then permanently in a second grave. Costs for the second grave memorial are then deductible to a reasonable amount. What is reasonable is determined in each individual case according to how the testator lived and how much he left behind. In addition, the customs and religious guidelines for a dignified burial in the deceased's circles should be taken into account. In practice, the heir should collect evidence in this regard at an early stage and submit it to the tax office. If the costs exceed reasonableness in an individual case, they should be reduced accordingly and only the reasonable costs should be taken into account.

Trade tax

On the addition of accrued interest on a loan in kind

If a company receives a loan in kind by way of fixed-interest bonds which it sells after receipt and later reacquires for the purpose of return, neither the accrued interest to be paid to the seller upon reacquisition nor the accrued interest accrued in the period between the transfer of the bonds and their return to the lender are to be added as consideration for debts. An implied waiver of Section 101 of the German Civil Code (BGB) - the lender is entitled to the interest on the bonds surrendered - does not constitute additional remuneration for the granting of a loan against securities. So the Federal Fiscal Court.

The amounts spent by the plaintiff on the acquisition of the returned bonds for the accrued interest were not to be added because they did not lead to operating expenses; they were also not "remuneration" for debts. If a taxpayer - such as the plaintiff in this case - acquires securities in order to fulfill its obligation to return bonds received as loans in kind, it must compensate the seller for the accrued interest since the last interest payment date. However, the amounts paid to the seller for

accrued interest as a result of the (re)acquisition of the bonds did not reduce the plaintiff's profit. This is because the plaintiff received an equivalent interest receivable in return - together with the acquired bond - which had to be capitalized as other assets; the transaction therefore had no effect on income.

The addition of expenses for sponsoring for trade tax purposes

Expenses for the provision of advertising space (in the case in question, including perimeter boards and jerseys) and for the provision of a club logo for advertising purposes are subject to trade tax additions. This was the decision of the Lower Saxony Tax Court.

The sponsoring agreement to be assessed in this case can be separated according to the performance obligations and contains essential elements of a rental agreement, insofar as the GmbH provides the plaintiff with areas (boards, press conference back wall, hall floor) and jerseys as well as other items of clothing at least temporarily, so that the plaintiff can present its company logo there for advertising purposes. With regard to these services, there is no advertising service in the foreground which the GmbH would provide to the plaintiff. The GmbH itself does not provide any advertising services to the plaintiff, even with the undisputed services. Accordingly, the sponsoring agreement cannot be classified as a uniform advertising contract.

The fees for the use of the club logo for advertising purposes of the plaintiff are also subject to the addition. Contrary to the plaintiff's view, no advertising service of the GmbH is in the foreground in this context either. Although the plaintiff uses the club logo in the context of its advertising measures, the object of the exchange of services with the GmbH is solely the granting of the right of use.

Value added tax

On the input tax deduction for a roof repair carried out in connection with the installation of a photovoltaic system

Anyone who generates income from a solar system on the roof must pay sales tax to the tax office. Accordingly, the owner of the system can also claim input tax from the costs of acquisition, operation and maintenance and offset them against the sales tax. However, the input tax deduction does not apply to all expenses associated with the system.

The Nuremberg Fiscal Court ruled that a roof repair is not related to the operation of a photovoltaic system and therefore no input tax offset can take place.

An entrepreneur had a photovoltaic system installed on his private residence. The roof was damaged in the process. The entrepreneur had the damage repaired by a roofer and carpenter. He included the sales tax shown in the invoices of the craftsmen as an input tax deduction in his advance sales tax returns for the photovoltaic system. The tax office assumed that the plaintiff was not entitled to deduct the input tax from the invoices of the roofer and the carpenter because he used less than 10% of their services for his business.

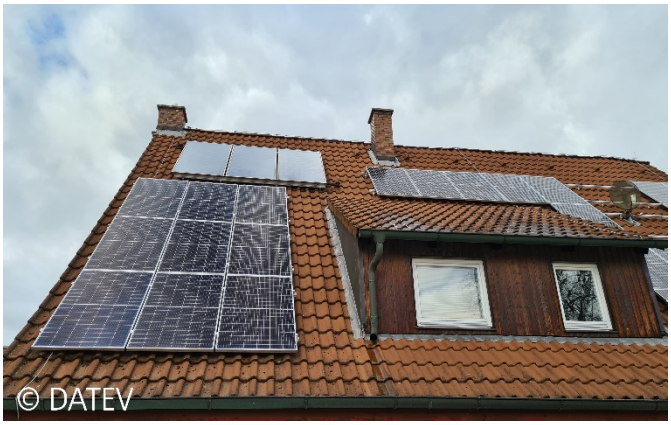
The court ruled in favor of the tax office. Since the entrepreneur used more than 90% of the building for private purposes, only 10% could be attributed to business use. The input tax from the invoices could then not be deducted in full by the entrepreneur.

Note

The Münster Fiscal Court has ruled that energy supplies made in connection with tax-exempt residential tax-exempt apartment rentals are independent services that are subject to VAT.

Supply of electricity to tenants

The Lower Saxony Fiscal Court considers the supply of electricity generated by a photovoltaic system on the rented house with battery storage to the tenants to be taxable if there is an independent agreement on this that is not linked to the rental contract, the electricity consumption is billed individually by meters and the tenants have the option of obtaining the electricity elsewhere.



Procedural law

Liability for lump-sum wage tax

The failure to pay wage tax to be withheld and declared at the statutory due dates regularly constitutes at least a grossly negligent breach of the duties of the managing

director of a GmbH. This also applies in the case of retrospective lump-sum deduction of wage tax. This was the decision of the Federal Fiscal Court. The lump-sum wage tax is not a company tax of its own kind, but rather a wage tax that has arisen as a result of the employee's actual performance and has merely been taken over by the employer.

The liable managing director must substantiate and, if necessary, prove which steps he had taken to pay the tax on the due date and that, and for what reasons, it was pointless to pursue this further due to the attitude of the provisional insolvency administrator. In the crisis of the company, the managing director is subject to increased obligations. Therefore, a managing director cannot exonerate himself solely by claiming that he had assumed that the provisional insolvency administrator would refuse his consent to the repayment of duties. As a rule, the managing director can at least be expected to make a correspondingly documented inquiry to the provisional insolvency administrator. Only in rare exceptional cases can this be dispensed with, namely if there are concrete and clear objective indications that such an inquiry is pointless. A hypothetical causal process cannot be taken into account.

Dates taxes/social security

July/August 2022

Tax Type		Due Date	
Wage tax, church tax, solidarity surcharge		11.07.2022[1]	10.08.2022[2]
Value-added tax		11.07.2022[3]	10.08.2022[4]
End of grace period of above tax types when paid by:	Bank transfer[5]	14.07.2022	15.08.2022
	Check[6]	11.07.2022	10.08.2022
Trade tax		not applicable	15.08.2022[8]
Property tax		not applicable	15.08.2022[8]
End of grace period of above tax types when paid by:	Bank transfer[5]	not applicable	18.08.2022
	Check[6]	not applicable	15.08.2022
Social security[7]		27.07.2022	29.08.2022
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge thereon must be paid to the responsible tax office at the same time as a profit distribution is made to the shareholder.	

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

2 For the past month.

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

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

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 shall be the deadline. No late fees will be charged if payment is up to three days late. A remittance must be made early enough so that the value date on the tax office's account is the same as the due date.

6 If payment is made by check, it should be noted that payment is not considered to have been made until three days after the check has been received by the tax office. A direct debit authorization should be issued instead.

7 Social security contributions are uniformly due on the third last bank working day of the current month. In order to avoid late payment surcharges, it is advisable to use the direct debit procedure. All health insurance funds have a uniform deadline for the submission of contribution statements. These must be received by the respective collection agency no later than two working days before the due date (i.e. on 25.07.2022/25.08.2022, in each case at 0:00). Regional peculiarities with regard to the due dates may have to be taken into account. If payroll accounting is performed by external agents, the payroll data should be sent to the agent approximately 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 states and regions where 15 Aug. 2022 is a public holiday (Assumption Day), the tax is due on 16 Aug. 2022.

Your contacts:

Mathias Niehaus
CPA / Certified Tax Advisor
+49 211 99 33 99 20
m.niehaus@nhsgroup.de

Dominik von den Berg
Certified Tax Advisor
+49 211 99 33 99 08
d.vondenBerg@nhsgroup.de

NHS GmbH Wirtschaftsprüfungsgesellschaft
Am Wehrhahn 100 · 40211 Düsseldorf
nhsgroup.de