Transparency register

Abolition of the notification fiction

With effect from 01 August 2021, the notification fiction has been abolished and the transparency register has become a full register. As a result, previously dispensable notifications are now required. As a relief, the legislator has standardized transition periods for associations that were exempt from a notification requirement until 31 July 2021.

Accordingly, the notification must be made:

* By stock corporations, SEs and partnerships limited by shares by 31.03.2022 at the latest,
* By limited liability companies, cooperatives, European cooperatives or partnerships by 30.06.2022 at the latest and
* By all other notifying parties by 31.12.2022 at the latest.

Attention: In accordance with the ancillary provisions for Corona aid granted, the actual ownership of the applicants must be recorded in the transparency register by entering the beneficial owners. This obligation must be fulfilled no later than the submission of the final statement of account.

If the obligation to enter the beneficial owners in the transparency register has not been fulfilled, the bridging assistance must be repaid in full.

Income tax

Shorter depreciation period for technical equipment for PC and Co.

Like all other depreciable assets, computer hardware and software are to be depreciated over their useful life. However, the German Federal Ministry of Finance (BMF) published a letter in 2021 according to which a one-year useful life can be used as a basis for hardware and software. The BMF has now updated its letter from 2021. Although it maintains the basic approach of a one-year useful life, it also states that the depreciation based on this is neither a special form of depreciation nor a new depreciation method and that it is also not an immediate depreciation as in the case of low-value assets. Furthermore, the BMF clarifies, among other things, that the taxpayer may also deviate from the assumption of a one-year useful life.

From the BMF's indication that this is not an immediate write-off, it follows that the software and hardware is not a low-value asset and may not be accounted for as such if the software and hardware exceeds the amount limit of 800 euros for low-value assets. Even if a useful life of one year is generally assumed, the following applies

* depreciation begins at the time of acquisition or manufacture or upon completion of the software and hardware,
* the assets must be included in the inventory of fixed assets,
* the taxpayer can also deviate from this assumption and
* the application of other depreciation methods is possible.

The BMF does not object if the depreciation is made in full on the basis of a one-year useful life in the year of acquisition or manufacture. The regulation also applies to so-called surplus income (e.g. rental income or income from employment).

Making the commuter allowance valid for carpools as well

Anyone who takes part in a carpool on the way to work can take advantage of tax benefits with the help of the commuter allowance. This applies regardless of whether you drive the vehicle yourself. However, it makes sense to take turns driving within carpools, because passengers are only allowed to deduct a maximum of 4,500 euros in travel costs from their taxes each year. Drivers who use their own car, on the other hand, can deduct the commuter allowance without restriction.

The tax office only accepts the shortest route from the driver's home to work as the basis for calculating the kilometers. A detour is only recognized if it is more convenient and saves time. Spouses and partners can also deduct their travel expenses individually with the commuter allowance if they travel to work together.

Reduced tax rate for combined overtime payments

In the case in question, the plaintiff had worked a considerable amount of overtime over a period of three years. It was not until the fourth year that the plaintiff was paid for the overtime in one lump sum. The tax office subjected the overtime compensation to the normal income tax rate.

The Federal Fiscal Court followed the plaintiff's request and applied the reduced tax rate to the additional payment amount. It clarified that the reduced tax rate applies not only to back payments of fixed salary components, but also to back payments of variable salary components - in this case in the form of overtime pay. Here, as there, the only decisive factor is whether

the back pay has been paid for a period of more than twelve months across all assessment periods.

Income tax increases progressively with rising income. If remuneration for a period of several years is not paid on an ongoing basis but in a lump sum, the progression effect leads to a tax burden that is not intended by the legislator. In order to mitigate the progressive effect of the income tax rate in the case of a cumulative inflow of back wages, the law provides for the taxation of these back wages at a reduced rate. However, this is subject to the condition that the additional payment relates to remuneration for an activity that extends over at least two assessment periods and covers a period of more than twelve months.

Capital gain from the sale of a self-occupied "garden house" is not subject to income tax

If real estate is sold within ten years of acquisition, the capital gain realized is subject to taxation. This does not apply to real estate that was used exclusively for the owner's own residential purposes in the period between acquisition and sale. Such privileged use also exists if the taxpayer permanently occupies a fully developed "garden house" in violation of building law. This was decided by the Federal Fiscal Court.

In the case in dispute, the plaintiff sold land within the ten-year period, which is located in an allotment area and on which there is a "garden house" occupied by himself. Like the tax court, the defendant tax office subjected the profit arising from the sale to income tax. The BFH disagreed with this ruling.

Relief amount for single parents in the year of separation in the case of individual assessment

The plaintiff is the father of two children who were not yet of age in the year in dispute. The children's mother moved out of the joint household during the year in dispute. The father then lived alone in the household with the two children. In his income tax return, the plaintiff applied for the pro rata deduction of the relief amount for single parents and the increase amount for another child pro rata for the separation year. He was assessed individually for income tax. However, the tax office did not grant the relief amount for single parents.

The relief amount for single parents can also be granted pro rata temporis in the separation year if the spouses are not assessed jointly for income tax. In addition, the respective spouse must not live in a household with another adult. This was the decision of the Federal Fiscal Court.

Renovation costs as anticipated income-related expenses

Renovation costs incurred after the tenant has actually moved out can generally be deducted as (anticipated) income-related expenses if they are incurred with a view to a subsequent rental intended by the taxpayer. This was the decision of the Hamburg Fiscal Court.

If the intention to rent out the property does not continue to exist at the time of the renovation or if it is not sufficiently proven by the taxpayer and he uses the property in the future for his own residential purposes, a deduction as subsequent income-related expenses is generally out of the question. In an overall assessment, there is regularly no causal connection to the terminated rental. The causal contributory cause due to wear and tear of the rental property by the former tenant is completely overridden by the fact that the renovation expenditure primarily serves to be able to use the rental property oneself in the future.

Expenses for a flight attendant's home office

The case in question concerned a flight attendant who claimed expenses of 1,250 euros for a home office. The workroom was necessary for the preparatory and follow-up activities in connection with her job, as she had no other workplace available for these activities. It was undisputed that no other workplace was available to her for the work performed there. The tax court was of the opinion that, in view of the very small proportion of these activities in relation to the plaintiff's total working time, it was not necessary to maintain the workroom, since these activities could also have been carried out elsewhere (e.g. at the kitchen table).

The Federal Fiscal Court did not follow this view. The law regulates under which conditions and to what extent expenses for a home office are deductible. The law typifies the necessity of the professional or business use of the study for cases where no other workplace is available or the study forms the center of the entire activity, without making the concept of necessity a prerequisite to be reviewed for the deduction. Whether the taxpayer could easily have done the work for which no other workplace is available at another place in the home (e.g. at the kitchen table, in the dining room) is therefore irrelevant in the opinion of the court.

VAT

Sales tax for “renting” virtual land in an online game?

In contrast to the in-game “rental” of virtual land in an online game, the exchange of a game currency as a contractual right into a legal tender (in the case of dispute via an exchange managed by the game operator) constitutes a taxable service. This was the decision of the Federal Fiscal Court.

What was in dispute was whether “rental revenues” of a German resident from the rental of virtual land in the context of an online game are subject to VAT in Germany. The starting point for these rentals was the participation of an Internet retailer of goods of all kinds in a computer game "Program A" of a game operator based in the USA. This operator provided the players with a virtual world on the computer in which the players could interact socially with their “avatars”. Among other things, players can also sell or rent out items from the world simulation. The right to participate in this game world is granted by so-called C-Dollars, which must be purchased at the beginning of the game against payment in U.S. dollars or Bitcoins. The plaintiff in these proceedings had acquired land in the virtual program with the C-dollars and rented it out to other players against payment of C-dollars. The C-dollars accumulated through this and other activities could be sold to other players via an exchange maintained by the game operator and then paid out to the player. The tax office and the tax court involved were of the opinion that the rental was a taxable transaction that could not be exempted from tax because no actual property was rented out.

On the value added tax liability of sports clubs

Sports clubs cannot invoke a general tax exemption derived from the VAT system directive in the face of a VAT liability arising from national law. This was decided by the Federal Fiscal Court contrary to its previous case law.

The decision only directly affects services that sports clubs provide in return for separate remuneration.

Note

It therefore remains the case that if, in accordance with 1.4. (Re § 1 UStG), an association collects genuine membership fees for the fulfillment of its statutory community purposes serving the overall interests of all members, which are intended to enable it to fulfill these tasks, there is no exchange of services with the individual member.

However, it is of fundamental importance for sales taxation in the sports sector.

Note

Section 4 no. 22 letter b UStG must be observed. If it is a sports club without non-profit status, tax exemption is to be denied. If a sports club is a non-profit organization, it is exempt from tax.

Therefore, in the case of such services, it must always be checked from now on whether they are non-profit-making in accordance with §§ 51 ff. Tax Code is available or not.

Trade tax

When and why is trade tax apportioned?

The trade tax to be paid by the commercial enterprises is due to the cities and municipalities. Each municipality can determine the tax rate for this tax itself. This tax rate (= assessment rate) on the trade tax assessment amount determined by the tax office is 200% (minimum) up to 580% at present. The actual lowest rate for cities with a population of 80,000 or more is 250 % (Leverkusen) and the maximum rate is charged in Mülheim a. d. Ruhr (DATEV tables and information 2021). The average of the assessment rates is around 450 %.

The Trade Tax Act contains the following rules for this:

* If the company has its only permanent establishment in the municipality, this municipality receives the tax.
* If, on the other hand, the company has several permanent establishments, the trade tax assessment amount is divided among the different locations (in legal language: split). The same is done for a permanent establishment that extends over the territory of several municipalities.
* The scale for this apportionment is the wages paid in the respective municipality to the employees working there.

A permanent establishment is any fixed facility that serves the business (§ 12 AO). However, this also includes construction sites or assembly work which last longer than six months in a municipality.

The wages per permanent establishment are still to be corrected for the decomposition as follows:

* Amounts exceeding 50,000 euros per year and profit royalties do not count as wages.
* Remuneration to apprentices of any kind also does not count as wages
* The activities of the collaborating entrepreneurs (or co-entrepreneurs) are to be assessed at 25,000 euros per year and, if necessary, divided among the various business locations according to the periods of activity.

This apportionment is to be made on the basis of the information provided by the company in a declaration by the tax office of the place of management. If the apportionment results in a small contribution of up to 10 euros for a municipality, this municipality is not taken into account in the apportionment; this share is added to the municipality of the place of management. After the tax office of the management has carried out the apportionment, the company receives a notice, and the respective municipalities are informed about their share in the measurement amount. Only on this basis can the municipality then determine the business tax.

Real estate transfer tax

Exemption from real estate transfer tax in the case of a spin-off for the purpose of new incorporation

Real estate transfer tax is not levied if real estate is transferred from a sole proprietor to the newly founded GmbH, which belongs to him as sole shareholder, within the scope of a spin-off for the purpose of reestablishment. This was the decision of the Saxon fiscal court.

Pursuant to Section 6a of the German Real Estate Transfer Tax Act (GrEStG), tax is not levied on a taxable legal transaction based on a conversion, contribution or other acquisition transaction on the basis of a partnership agreement. § Section 6a sentence 1 GrEStG only applies if the legal transaction referred to therein exclusively involves a controlling company and one or more companies dependent on this controlling company or several companies dependent on a controlling company.

Tax Dates/Social Security

June/July 2022

Tax type		Due Date	
Wage tax, church tax, solidarity surcharge		10.06.2022[1]	11.07.2022[2]
Income tax, church tax, solidarity surcharge		10.06.2022	not applicable
Corporate income tax, solidarity surcharge		10.06.2022	not applicable
Value added tax		10.06.2022[3]	11.07.2022[4]
End of grace period of above tax types when paid by:	Bank transfer[5]	13.06.2022	14.07.2022
	Check[6]	10.06.2022	11.07.2022
Social security[7]		28.06.2022	27.07.2022
Capital gains, 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.

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

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

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

5 Advance VAT returns and wage 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 for the value to be deposited in the IRS account on the due date.

6 If payment is made by check, it should be noted that payment is not considered to be made until three days after the check is received by the IRS. 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 24.06.2022/25.07.2022, in each case at midnight). 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 transmitted 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.

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