

## For income tax payers

### Second home tax are costs of accommodation for double housekeeping - Not additionally deductible as income-related expenses if the maximum amount is exhausted

The plaintiff had rented a second home at her place of work in Munich. She claimed the second home tax of EUR 896 and EUR 1,157 paid for this in the years in dispute, along with other costs for the flat totalling more than EUR 12,000 each as expenses for her double housekeeping. The tax office only recognised the expenses at the maximum deductible amount of EUR 12,000 per year in each case.

The Federal Fiscal Court ruled that this was lawful. The necessary additional expenses to be taken into account as income-related expenses in the case of double housekeeping include the necessary costs for the use of accommodation at the place of employment. From the 2004 assessment period, these can only be deducted up to a maximum amount of EUR 1,000 per month. The second home tax is to be assessed as accommodation costs in this sense. This represents an additional financial burden directly linked to the actual rental costs for the second home for the occupation and the regular use of the second home associated with this.

#### Note:

However, if the maximum amount has already been utilised, these expenses may not be additionally deducted as income-related expenses.

### Deduction of school fees as a special expense

Many parents pay a lot for their children's education, as far as they can afford it. The state also makes this easier by allowing school fees for public schools to be partially deductible as a **special expense**. The law provides for this concession for attendance at independent schools or schools that are predominantly privately financed. The schools to be taken into account here are all institutions that lead to or prepare students for a **state-recognised school-leaving certificate, vocational school-leaving certificate**. The best known of these in Germany are Waldorf schools and Montessori schools, but they also include adult education centres and other further education institutions that offer courses in preparation for the acquisition of all school-leaving qualifications if the lessons are intended to teach the subject matter of the relevant examination regulations.

Comparable schools in other EU/EEA countries are also included. This is why the famous public schools in Switzerland or the UK are not among the favoured institutions. However, German schools abroad are an exception if they teach according to a curriculum recognised by the German state. Tutoring facilities, music schools, sports clubs or holiday courses are not covered by this provision, nor are universities, universities of applied sciences and corresponding EU/EEA institutions. Proof of foreign schools must be provided by the taxpayer (including any translation into German).

**Only the amounts for schooling count** as eligible costs. Accommodation costs as well as catering and childcare expenses are not school fees. Special costs that would have to be paid separately when attending public schools (school books, class trips or additional music lessons) are also not covered by school fees. The maximum annual deduction is EUR **5,000** per child and per calendar year - regardless of the period of school attendance per year - for both parents together. In the case of individual assessments, the division can be chosen, otherwise it is 50% each. The deduction amount is calculated as **30%** of the costs incurred.

#### Note:

In order to be able to claim school fees as a special expense, the child must be entitled to child benefit or the child allowance.

## For VAT payers

### Input tax deduction from heating system for VAT-exempt letting of flats

A landlady let a house with two flats for residential purposes. The rent for one flat consisted of the basic rent, the "cold" operating costs and the heating operating costs. In September 2016, the plaintiff installed a new boiler and heating system for the rented flats to replace the previous system.

Individual meters were installed for each apartment to record the heat quantities and the tenants were given the opportunity to regulate the heating and water temperatures individually. From October 2016, the plaintiff submitted advance VAT returns in which she waived the small business regulation, declared taxable sales at 19% from the energy supplies to the tenants and claimed input tax from the invoice for the installation of the heating system and the gas supplies, which resulted in refunds. The tax office, on the other hand, set the VAT

prepayments for October to December 2016 at EUR 0.00 each because the energy supplies to the tenants were dependent ancillary services to the tax-free flat rental. The appeal was successful before the Münster Tax Court.

However, the Federal Fiscal Court did not share the view of the tax court. The input tax deduction is excluded as the purchase and installation of the heating system were directly and immediately related to the tax-free letting. If the landlord of residential property also owes the supply of heat and hot water for contractual use, the landlord's costs for a new heating system are in any case directly and immediately related to the tax-free letting if they are not operating costs that the tenant has to bear separately. This applies to the case in dispute, as the costs for the purchase and installation of the heating system were not to be borne by the tenant separately as operating costs in addition to the rent in accordance with Section 556 BGB.



### Revocation of the waiver of tax exemption after spin-off

The Federal Fiscal Court had to decide whether revocation declarations by suppliers can be regarded as a cancellation of the waiver of tax exemption (in this case taxation of sales of investment gold). With regard to the input tax deduction from revoked credit notes, it appeared questionable whether the objections of suppliers to credit notes due to a previous spin-off in accordance with the German Reorganisation Act (Umwandlungsgesetz) had no tax effect for the plaintiff, but only for the acquiring company.

Once a spin-off has been entered in the commercial register, any objection to a credit note based on a contract covered by the spin-off must be declared to the acquiring legal entity.

If an entrepreneur waives the tax exemption of a transaction by invoicing the recipient for the transaction with VAT shown separately, he can only cancel the waiver by issuing a corrected invoice without VAT to the receiving legal entity as the recipient of the service. In the case in dispute, the tax court wrongly considered the objections to the credit notes to be valid. The preliminary ruling must therefore be cancelled.

### For inheritance taxpayers

#### Legacy debt with “Jastrow clause” in the Berlin will

If spouses appoint each other as sole heirs in a “Berlin will” and grant an aged legacy to those children who do not claim their compulsory portion upon the death of the first to die (so-called Jastrow clause), the surviving spouse, as the heir of the first to die, cannot deduct the legacy liability as a liability of the estate, as the legacy is not yet due. The entitled child must pay tax on the acquisition of the aged legacy on the death of the longer-living spouse. If the child has also become the final heir after the longer-living spouse due to the provisions of the Berlin will, it can deduct the bequest liability that has then fallen due as an estate liability when determining the taxable acquisition from the surviving spouse according to a judgement of the Federal Fiscal Court.

### For corporate tax payers

#### Expenses incurred by a GmbH for the private interests of its shareholder-managing director as a hidden profit distribution

If a corporation also finances expenses affecting the private interests of its shareholder-managing director, the company relationship is generally sufficient to constitute a hidden profit distribution if, in the case of comparable expenses incurred by another entrepreneur, Section 12 no. 1 sentence 2 EStG (non-deductible expenses) in conjunction with Section 4 para. 5 sentence 1 no. 4 EStG (non-deductible business expenses - similar purposes) applies. Due to the private consumer nature of a TV subscription with a mixed programme schedule, the Berlin-Brandenburg tax court is of the opinion that, when examining a hidden profit distribution, the company relationship can only be ruled out if - for example, due to the nature of the specific TV subscription - an (almost) exclusive business reason for the expenses can be established.

The Berlin-Brandenburg Fiscal Court is also convinced that the motivation of the shareholder-managing director to drive a classic car as a company car, which is significantly less comfortable and has a much more limited transport function than modern vehicles, was to a considerable extent due to his private interest in a horsepower-orientated leisure activity and in representing his proximity to the automotive and transport industry by driving such a vehicle. Expenses for leasing instalments and maintenance could therefore not be deducted as business expenses.

**Note:**

The Federal Fiscal Court has already clarified that expenses for classic cars can also fall under these "similar purposes." In particular, if they are rarely moved because they have a similar proximity to private living as the other expenses and items listed in Section 4 para. 5 sentence 1 no. 4 EStG.

**Unexplained capital gains of a shareholder-managing director - is there a hidden profit distribution?**

The failure to clarify the origin of unexplained capital gains identified for the shareholder-managing director can generally only be attributed to him personally and lead to corresponding conclusions for him. This was decided by the Baden-Württemberg tax court.

A shareholder clearing account is nothing more than a loan from the company to the shareholder, which is managed in a similar way to a current account at a bank. However, it cannot generally be concluded from high cash repayments to the shareholder clearing account that the corporation has generated additional operating income in the amount of the repayments.

The tax office bears the burden of proof (objective burden of proof) for the existence of a hidden profit distribution.

*Procedural law*

**Recognition of an advance VAT payment declared at the beginning of the operating expense**

If a taxpayer without a permanent deadline extension, who calculates their profit by means of a revenue surplus account, does not file an advance VAT return for the November advance return period of year 01 until 10 January of year 02 and the payment amount is collected by direct debit on 16 January of year 02, the payment is made in year 02 and can be deducted as a business expense in that year. This was the decision of the Cologne tax court.

**VAT to be refunded in the case of reversal of so-called property developer cases - interest calculation in the case of amended tax assessments**

If a tax assessment is amended, the corresponding interest assessment must also be amended, whereby the difference between the tax now assessed and the tax previously assessed, less any tax deductions to be offset, is decisive for the calculation of interest. This was decided by the Cologne Fiscal Court.

If the amendment of an initial tax assessment results in an additional tax due to the first-time recording of taxable bases, which the taxpayer immediately repays and this new assessment is changed in favour of the taxpayer because taxable bases that were already included in the original assessment are omitted, interest is to be based on the last payment on the original assessment.

A liquidity disadvantage for the taxpayer always arises if he makes payments that later prove to be unjustified; this is determined by whether the assessment in question proves to be incorrect.

*Labour law*

**Employment contracts to be possible by e-mail**

In the future, it will be possible to conclude employment contracts in text form instead of in writing. This was agreed by the German government on 21 March 2024. It will soon be possible to conclude employment contracts digitally, for example by email. A handwritten signature on paper, as required by Section 126 of the German Civil Code (BGB), will no longer be necessary.

The amendment is to be subsequently integrated into the 13 March 2024 for the Fourth Bureaucracy Relief Act (BEG IV). The government draft for BEG IV, which has now been amended to include digital employment contracts, will now be forwarded to the Bundesrat for comment and, following a counterstatement by the Federal Government, will be forwarded to the German Bundestag (Federal Council) for discussion.

**Only one "mini job" in addition to a main job subject to social insurance contributions can be insured on a flat-rate basis**

If an employee is marginally employed in addition to their main employment subject to social security contributions, any further mini job they take up is fully subject to social security contributions. According to a judgement by the State Social Court of North Rhine-Westphalia, the employer is responsible for the correct social security registration of their employees.

*Miscellaneous*

**Lower Saxony property tax law unconstitutional?**

A lawsuit is pending before the Lower Saxony Fiscal Court concerning the constitutionality of the Lower Saxony Property Tax Act. Lower Saxony made use of the opening clause granted by the legislator and decided in favour of the so-called **area-location model** in the Lower Saxony property tax law. The basis for the valuation of the properties is the area of the land and the building multiplied

by an equivalence number (specific numerical value per square metre of land and building area) and a location factor (premium or discount for the location of the property) for the respective property.

### Results of the external wage tax audit and wage tax inspection 2023

According to the statistical records of the supreme tax authorities of the federal states, the external wage tax audits in the 2023 calendar year led to an additional result of EUR 733.9 million. Of the total of 2,597,318 employers, 67,318 employers were conclusively audited. These are private employers as well as public administrations and companies. An average of 1,842 auditors were deployed in the 2023 calendar year. In addition to this 32 payroll tax auditors from the Federal Central Tax Office took part in audits by the state tax authorities as part of the audit cooperation programme, 144 of which were completed in 2023.

## Legislation

### VAT to remain as it is in this legislative period

The German government is not planning to reform VAT rates in the current legislative period. It writes this in its answer to a minor enquiry by the CDU/CSU parliamentary group. It refers to the coalition agreement of the federal government. This does not provide for any corresponding reforms.

### Promotion of training and further education to be further strengthened

The Act to Strengthen the Promotion of Initial and Further Training has been in force since summer 2023. Further extensive improvements came into force on 1 April 2024, including elements of the training guarantee and the qualification allowance.

The **training guarantee** includes various counselling and support services for young people - from career guidance and advice to help with starting and successfully completing vocational training. In addition to a subsidised vocational orientation internship for school leavers, a new mobility grant will also be available for trainees in future. In addition, a legal entitlement to funding for non-company vocational training is to be introduced from 1 August 2024 if young people live in a region with too few training places and are unable to find a training place despite their own efforts.

The new **training allowance** is intended to support companies that are particularly affected by structural change. The training allowance is based on the short-time working allowance and is paid as compensation in the amount of 60 or 67% of the net salary paid during the period of further training.

The funding system for **further training** for employees is to be simplified with fixed funding rates and fewer funding categories. In addition, funding will in future be open to all employers and employees and will no longer depend on whether a company is affected by structural change or whether the occupations in question are bottleneck occupations.



**Tax/social security dates**

**May/June 2024**

Tax type	Deadline	
Income tax, church tax, solidarity surcharge	10.05.2024 <sup>1</sup>	10.06.2024 <sup>1</sup>
Income tax, church tax, solidarity surcharge	not applicable	10.06.2024
Corporation tax, solidarity surcharge	not applicable	10.06.2024
Value added tax	10.05.2024 <sup>2</sup>	10.06.2024 <sup>3</sup>
End of grace period for the above tax types in the event of payment by	Bank transfer <sup>4</sup>	13.05.2024
	Check <sup>5</sup>	10.05.2024
Trade tax	15.05.2024	Not applicable
Property tax	15.05.2024	Not applicable
End of grace period for the above tax types in the event of payment by	Bank transfer <sup>4</sup>	21.05.2024
	Check <sup>5</sup>	10.05.2024
Social security <sup>6</sup>	28.05. <sup>7</sup> /29.05.2024	29.06.2024
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, in the case of a permanent extension for the month before last.
- 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 transfer must be made in good time so that the value date on the tax office's account is on the due date.
- 5 When paying by check, please note that payment is only deemed to have been made three days after receipt of the cheque by the tax office. A direct debit authorisation should be issued instead.
- 6 Social security contributions are due on the third-last bank working day of the current month. To avoid late payment penalties, it is advisable to use the direct debit procedure. All health insurance funds have a standardised 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 25.05.7/27.05.2024/24.06.2024, 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 public holidays.
- 7 Applies to federal states in which Corpus Christi is a public holiday.

Your contact persons:

**Mathias Niehaus**  
 Certified Public Accountant, Tax Consultant  
 +49 171 5276024  
[m.niehaus@nhsgroup.de](mailto:m.niehaus@nhsgroup.de)

**Dominik von den Berg**  
 Tax Consultant  
 +49 151 211 148 42  
[d.vondenBerg@nhsgroup.de](mailto:d.vondenBerg@nhsgroup.de)

NHS GmbH Auditing company  
 Am Wehrhahn 100 - 40211 Düsseldorf  
[nhsgroup.de](http://nhsgroup.de)

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