For income taxpayers

Assignment of the first place of work of an employed site manager

A site manager worked for a public limited company. Among other things, the AG had a fixed company facility at a location (AG branch) which was only referred to as the "place of employment" in the plaintiff's employment contract. He had a company car - also for private use - at his disposal, the use of which was taken into account by the employer in the payroll statements as a non-cash benefit in accordance with the 0.03% rule. The construction manager argued that he did not have a primary place of work at his employer's headquarters. Explicit agreements on an assignment to the fixed place of business had not been made. Instead, he carried out an external activity in the form of a so-called alternating assignment. The tax office was of the opinion that the employer had assigned the construction manager a first place of work.

The Federal Fiscal Court ruled in favor of the site manager. The naming of a place of employment in an employment contract does not in itself determine a permanent assignment to a fixed business establishment of the employer. Therefore, the construction manager's salary is rightly to be reduced by the amounts resulting from the application of the 0.03 % rule and the claimed additional meal expenses are to be recognized as income-related expenses. The commuting allowance should not be applied.

A tacit assignment of an employed site manager to a fixed business facility of the employer does not result solely from the fact that the site manager only has to visit the specific business facility occasionally to carry out his professional activities (e.g. meetings), but otherwise performs his work predominantly outside the fixed facility. The same applies if the employer has applied the 0.03 % rule in the payroll statements for the private use of the company car provided to the employee, according to the Federal Fiscal Court.

Deductible accommodation costs for double housekeeping abroad

The Federal Fiscal Court had to decide whether expenses for an official residence in the particular circumstances of the dispute (compulsory occupation of an official residence abroad provided by the employer together with the associated deduction of the official residence allowance from the remuneration) are necessary additional expenses irrespective of their size.

In the case of double housekeeping abroad, it must be examined on a case-by-case basis which accommodation costs are necessary. Contrary to the administrative opinion (letter from the Federal Ministry of Finance dated 25 November 2020), the Federal Fiscal Court ruled that there is no flat-rate limit for a second home abroad (average rent for 60 sqm).

In the case of an official residence assigned under civil service law, the accommodation costs at the foreign place of employment are always deductible in the actual amount as income-related expenses in the context of double housekeeping.

No flat-rate taxation for benefits in kind provided by a credit institution to its private customers for general customer care purposes

A credit institution invited various wealthy private clients managed by its Management Board to two events (a boat trip with wine tasting and a golf tournament). No specific products were advertised at these events. Nor did the invitations contain any reference to a specific investment or possible advisory meetings. All of the private customers invited had at least one savings and/or current account with the bank. Some of these private customers had also invested in different securities through the bank. Around 20 % of the private customers had transferred capital to the bank for a fixed interest rate and a fixed term. A small proportion of the private customers invited had also received a loan. The bank subjected the event costs to flat-rate tax in accordance with Section 37b EStG and reported them in the income tax returns.

However, the Federal Fiscal Court is of the opinion that benefits in kind from a credit institution to its private customers, which serve to **maintain the business relationship**, do not lead to lump-sum taxation in accordance with Section 37b (1) EStG. The benefits in kind in dispute - unlike the usual investment income within the meaning of Section 20 EStG - were not calculated according to the individual capital investment, but as a lump sum and were therefore granted irrespective of the capital investment.

Taxation of the energy price flat rate questionable

From September 2022, the energy price lump sum of EUR 300 was paid out as compensation for the high energy costs. Employed persons, pensioners and the self-employed benefited from the one-off payment. However, this lump sum is subject to income tax or the tax office assumes that it is taxable.

However, as there are also opinions to the contrary, a lawsuit is pending before the Münster Fiscal Court and the Mecklenburg-Western Pomerania Fiscal Court regarding the legality of the taxation of the energy price lump sum. It therefore remains to be seen whether the Federal Fiscal Court or the Federal Constitutional Court will soon scrutinize the tax liability of this lump sum.

An appeal can be lodged against the 2022 income tax assessment in order to preserve a possible tax exemption. However, there is no legal right to suspend the proceedings.

Note

Employees can see whether they have received the energy allowance from their employer for example by the entry "capital letter E" in the wage tax statement for 2022.

Sale of a garden plot is taxable as a private sale transaction

The taxpayers acquired a plot of land with an old farm building. They lived in the building themselves. The building was surrounded by a plot of land measuring almost 4,000 square meters. The taxpayers used this as a garden. They later divided the property into two sections. They continued to live in the house on one part of the property and sold the other - undeveloped - part of the property. The taxpayers claimed an exemption from income tax on the capital gain due to use for their own residential purposes.

Determining the tax identification number of employees for the electronic transmission of wage tax certificates

From the 2023 assessment period, a **tax identification number will be** required for the electronic transmission of wage tax certificates. A current letter from the Federal Ministry of Finance regulates the procedure in cases where the employer does not have the employee's tax identification number.

If the employer has submitted an income tax statement for the employee for 2022 and the employer assures that the employment relationship has continued after the end of 2022 and the employee has failed to provide his or her identification number despite being requested to do so, the competent tax office will provide the employee's identification number upon informal written request from the employer.

Irrespective of this, the employer can generally request the allocation or notification of the employee's tax identification number from the relevant tax office if the employee has authorized them to do so.

If the employee culpably fails to provide the employer with the tax identification number and the employer is nevertheless unable to obtain it from the tax office, the employer must regularly calculate the wage tax according to tax class VI.

Only in cases where the employee is not responsible for the lack of notification of the tax identification number, or the employer is unable to retrieve the tax identification number due to technical faults can the employer use the expected tax class as a basis for calculating income tax for a maximum of three calendar months.

What is the progression proviso all about?

The Income Tax Act contains the term "*Progressionsvorbehalt*." This term covers two groups for which the progression proviso is applied**.**

1. Domestic wage and income replacement benefit in accordance with (§ 32b para. 1 sentence 1 no. 1 EstG.)
2. Foreign income:

- foreign income with temporary unlimited tax liability (Section 32b (1) sentence 1 no. 2 EStG).
- tax-free foreign income on the basis of a double taxation agreement - DTA (Section 32b (1) sentence 1 no. 3 EStG).
- tax-free foreign income based on other intergovernmental agreements (Section 32b (1) sentence 1 no. 4 EStG).
- Income of cross-border commuters, spouses of EU/EEA foreigners and certain employees with limited tax liability (Section 32b (1) sentence 1 no. 5 EStG)

The principle of individual ability to pay applies in tax law. This principle is complied with in that tax-exempt components are only taken into account in the progression.

The exempt income components are therefore only taken into account in the tax rate or tariff.

The following example shows the effects:

Taxable income of a taxpayer	EUR 30,000
less tax-free income included therein	EUR - 10,000
Remaining taxable	**EUR 20,000**
Tax rate according to the basic table (9.8%)	EUR 1,960
Tax rate for EUR 30,000 (15.7%)	(EUR 4,710)
Tax due to application of the progression rate to taxable income of EUR 20,000	EUR 3,140
Additional tax due to application of the progression rate	EUR 1,180

Accordingly, if the progression proviso is applied to the income, the tax rate can increase significantly.

If there is negative income that is subject to the progression proviso, this reduces the tax rate as a result. Losses can therefore lead to a tax rate of zero. This **does not apply to** negative income where there is a ban on loss compensation.

For VAT payers

Leasing of land with operating facilities

The European Court of Justice sees VAT liability in the case of VAT-exempt letting of properties of operating equipment rented with it under the German VAT Act as incompatible with the VAT System Directive (VAT Directive). Rather, the relevant article of the VAT Directive is to be interpreted as meaning that the operating equipment is also rented out VAT-exempt if the rental of the operating equipment is an ancillary service to the main service of the VAT-exempt property rental.

The Federal Fiscal Court followed this view and thus changed its previous case law. If the letting or leasing of permanently installed operating equipment is an ancillary service to a VAT-exempt letting or leasing of a building as the main service, the co-letting of the operating equipment is also VAT-exempt.

Note

The change in the BFH's legal opinion has resulted in a need for action. If the co-letting of operating equipment is now VAT-exempt, input tax can no longer be deducted on input services relating to the operating equipment!

It remains to be seen how the tax authorities and legislators will react to this.

Inspection fees = taxable service?

Following a decision by the European Court of Justice (Apcoa Parking), the Federal Ministry of Finance added a new paragraph 16b to section 1.3 of the VAT Application Decree in a letter dated 15 December 2023.

Accordingly, inspection fees charged by an entrepreneur entrusted with the operation of private parking spaces from the users of the parking spaces for non-compliance with the general terms and conditions of use of these parking spaces are remuneration for a taxable service provided by the service provider. However, for payments received by 15 December 2023, the tax authorities do not object if they are regarded as genuine compensation for damages.

May the tax office revoke the authorization to tax according to received payments pursuant to § 20 UStG after an external audit had determined that the entrepreneur had issued invoices with VAT statements that had not been paid by invoice recipients for years?

According to a recent ruling by the Federal Fiscal Court, this “tax break,” which is contrary to the system, is based on the previous understanding of the German VAT Act.

There is therefore no legal basis for revoking the approval of actual taxation. An abusive arrangement by the taxable persons involved in the exchange of services is also not assumed. According to the Federal Fiscal Court, there may be an incorrect implementation of the application of the VAT System Directive (Art. 167 of the VAT Directive) by the Member State Germany.

Procedural law

A tax audit is also permitted after the death of the business owner

The lawsuit was brought by two sons who had each become co-heirs after their deceased father. The father ran a construction company until his death. The business was not continued by the sons. Nevertheless, the tax office ordered a tax audit for several previous years. The sons were of the opinion that a tax audit could only take place as long as the owner himself was able to provide information on the business activities and the business still existed.

A tax audit may be carried out for past tax periods even if the business owner has died and the business is not continued by the heirs. The tax obligations are transferred to the heirs upon the death of the business owner. This also includes tolerating the tax audit. This was decided by the Hessian Tax Court.

Management of a PC cash register without a fixed allocation criterion - estimation lawful

If individual records are subsequently reorganized by the program after the end-of-day total receipt (Z-receipt) has been created, so that the allocation criterion (data record number) once assigned chronologically is deleted, there is a right to make an estimate on the basis of improper cash management. This was decided by the Lower Saxony Tax Court.

Civil law

Car leasing contract concluded without obligation to purchase - consumer has no right of withdrawal

A consumer who concludes a leasing contract for a motor vehicle without an obligation to purchase has no right of withdrawal. On the other hand, a consumer who has concluded a credit agreement with a view to purchasing a vehicle without having been properly informed of his rights and obligations may declare his withdrawal at any time as long as the information provided is not complete and accurate, provided that the withdrawal takes place before the contract has been fully performed.

This was the decision of the European Court of Justice, which clarified the rights of consumers in the area of vehicle leasing and loans.

In the case of a leasing contract for a motor vehicle without an obligation to purchase, Union law does not give rise to a right of withdrawal for the consumer. On the other hand, in the case of the conclusion of a credit agreement with a view to the purchase of a vehicle, the consumer may exercise his right of withdrawal at any time without committing an abuse of rights as long as he has not received complete and accurate information about his rights and obligations and the contract has not yet been fully performed, i.e. as a rule until the last repayment installment is due.

Several consumers had claimed before the Ravensburg Regional Court that they had effectively revoked leasing or loan agreements with banks of car manufacturers (BMW Bank, Volkswagen Bank and Audi Bank). These contracts concerned the leasing of a vehicle without a purchase obligation or the financing of a used car. The Regional Court then referred the matter to the ECJ.

Dates for taxes/social security

March/April 2024

Tax type		Maturity	
Income tax, church tax, solidarity surcharge		11 March 2024[1]	10 April 2024[2]
Income tax, church tax, solidarity surcharge		11 March 2024	Not applicable
Corporation tax, solidarity surcharge		11 March 2024	Not applicable
Value added tax		11 March 2024[3]	10 April 2024[4]
End of the grace period for the above types of tax in the event of payment by:	Bank transfer[5]	14 March 2024	15 April 2024
	Check[6]	11 March 2024	10 April 2024
Social insurance[7]		26 March 2024	26 April 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 quarterly payers for the past calendar quarter.

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

4 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 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 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 only deemed to have been made 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 22 March 2024/24 April 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.

Your contact persons:

Mathias Niehaus
Certified Public Accountant, Tax Consultant
+49 171 5276024
m.niehaus@nhsgroup.de

Dominik von den Berg
Tax consultant
+49 151 211 148 42
d.vondenBerg@nhsgroup.de

NHS GmbH Auditing company
Am Wehrhahn 100 - 40211 Düsseldorf
nhsgroup.com