Income tax

Allocation of acquisition costs in the case of bondstripping for federal bonds held as private assets

On the day of purchase, the purchaser of a German federal bond instructed the custodian bank to separate the interest coupons from the bond shell (so-called **bond stripping**). A few days later, he sold the interest coupons and realized a profit. Still a few days later, he sold the ordinary right to the GmbH, in which he held 50% of the shares. In his income tax return, he declared the proceeds from the sale of the interest coupons as a domestic gain from the sale of investments. He declared a capital loss from the sale of the bond shell. In doing so, he deducted the entire acquisition costs of the Federal bond from the sale price. The defendant tax office divided the acquisition costs between the bond shell (ordinary right) and the interest coupons.

The Baden-Württemberg Tax Court ruled in favor of the tax office. Both the isolated sale of the interest coupons and the sale of the bond shell would have led to income from **capital assets.** Since the flat tax rate of 25%, which generally applies to income from capital assets, does not apply if capital income is paid by a corporation to a shareholder who holds at least 10% of the company, only the gain from the sale of the interest coupons is subject to the flat tax rate, but not the gain or loss from the sale of the bond shell to the GmbH. The latter is subject to the general tax rate, as the plaintiff held 50% of the shares in the GmbH in the year in dispute.

Tax reduction for expenses for household-related services by tenants

The plaintiffs lived in a rented condominium. The landlord **invoiced them** for stairwell cleaning, snow removal services, garden maintenance and for the inspection of smoke alarms. For this, they applied for **tax relief for household-related serv**ices and craftsman's services. The tax office and the fiscal court rejected this. The Federal Fiscal Court, however, ruled in favor of the taxpayers. The fact that tenants do not regularly conclude the contracts with the respective service providers, e.g. the cleaning company and the craftsman's business, **does not** prevent the tax reduction from being granted.

For the tax reduction to be granted, it is sufficient that the household-related services and craftsman services have **benefited the tenant**. To the extent that the law also requires that the taxpayer has received an invoice for the expenses and that the payment has been made to the account of the provider of the service, a statement of ancillary living expenses or a certificate that corresponds to the model recognized by the tax authorities is also sufficient as **proof**. However, both must show the type, content and time of the service as well as the service provider and service recipient together with the remuneration owed including the reference to the non-cash payment. Only if there is any doubt as to the correctness of these documents, the tax office or, in the case of legal action, the tax court may demand that the taxpayer submit the original or a copy of the invoices. In this case, the tenant must obtain the invoices from the landlord.

Note

This case law applies accordingly to **expenses** incurred by **condominium owners** if the assignment for household-related services and craftsman's services was made by the condominium **owners' association** - regularly represented by its administrator.

Employed by a Swiss company but residing in Germany – the taxation of an inland waterway navigator's wage

If an inland waterway navigator who is only resident in Germany is employed on the Rhine by a Swiss employer, Germany has the right to tax the salary, according to the Baden-Württemberg Fiscal Court, insofar as the inland waterway skipper worked in Germany and other third countries outside Switzerland. In Germany, the salary is only tax-exempt for the working days on which the inland navigation operator actually performed his work in Switzerland. An **exclusive taxation right of Switzerland** as a company state cannot be derived from the double taxation agreement with Germany.

The fact that the Swiss tax administration interprets the regulation differently and therefore taxes the plaintiff's entire salary in Switzerland is irrelevant in this respect. The resulting double taxation can only be eliminated, if necessary, within the framework of a mutual agreement procedure.

Note

This is also generally applicable to other employees.

Higher pension due to "maternity pension" -. Adjustment of the tax-free pension component

The increase in an already current statutory old-age pension due to a supplement in personal pension earning points for child-raising periods **("maternity pension"**) leads to an adjustment of the previous tax-free part of the pension (pension allowance). Regular pension adjustments made in the meantime are not considered. This was the decision of the Federal Fiscal Court.

Moving to new apartment due to separate workroom for spouses - moving expenses as income-related expenses

Moving expenses may be incurred for **professional reasons** if the move leads to a substantial easing of working conditions. Such a facilitation can also be assumed (especially during the COVID-19 pandemic) if a move is made in order to set up a workroom for each spouse in the new apartment so that they can once again pursue their respective activities undisturbed while working from home. This is how the tax court ruled.

The plaintiffs had searched for and selected a new apartment with exactly two additional workrooms. In view of the plaintiffs' different working methods, the establishment of two workrooms is necessary for the (undisturbed) performance of their respective activities. Moreover, the apartment does not differ from the previous apartment to such an extent that there was reason to assume that an increase in living comfort was the reason for the move.

Is a single investment a tax deferral model?

If a taxpayer generates **negative income** from capital assets by participating in a company by way of a so-called **individual investment**, the **use of a model structure for the purpose of achieving losses** based on a prefabricated concept requires that the taxpayer behaves like a passive capital investor in the development of the business idea, the drafting of the contract and the implementation of the contract. A **tax deferral model** is to be accepted if tax advantages in the form of negative income are to be achieved because of a model-like design. This is the case if the taxpayer is offered the possibility of offsetting losses against other income, at least in the initial phase of the investment, on the basis of a prefabricated concept. It is irrelevant on which regulations the negative income is based. This is what the Federal Fiscal Court said in a recent decision.

Note

Losses incurred in connection with a tax transaction may not be offset against other income, but only against future profits from the same source of income.

Online poker game: winnings may be subject to income tax

In 2007, a mathematics student had started playing online poker in the variant "Texas Hold'em/Fixed Limit." Starting with initially small and winnings, he gradually increased his stakes. His winnings also increased considerably over time. In the year in dispute, 2009, he already achieved a profit of over EUR 80,000 euros from the online poker game, which continued to rise in the following years. In the period from July to December 2009 alone, his registered total playing time amounted to 673 hours. The Tax Court assessed the facts of the case to the effect that the plaintiff had been engaged in commercial activities from October 2009 onwards and that, as a result, the profit of a good EUR 60,000 generated in the months from October to December 2009 was subject to income tax.

The Federal Fiscal Court confirmed this and ruled that winnings from online poker games can also be subject to income tax as income from business operations. In doing so, it followed up on earlier decisions on poker games in the form of face-to-face tournaments and in casinos. According to these decisions, poker is not purely a game of chance for income tax purposes but is also characterized by elements of skill. This also applies to online poker, even if no personal contact with the players is possible there. However, regardless of the form of the poker game, not every poker player is subject to income tax. For recreational and hobby players, it is still a private activity in which profits (and also losses) have no tax effect. However, if the scope

of a private hobby activity is exceeded and the player is no longer concerned with the satisfaction of his gaming needs, but with the generation of income, his actions are to be regarded as commercial. The decisive factor is the structural comparability with a commercial or professional gambler, e.g., the planned nature of the activity, the exploitation of a market or the amount of money and time invested.

Inheritance/gift tax

Granting of a residential right during one's lifetime - gift on death

If the owner of an apartment grants the donee an apartment right (right of joint use) free of charge and a personal apartment right for the time after his death, and if both are entered in the land register during his lifetime, this is a gift on death with regard to the apartment right. This was the decision of the Hamburg Fiscal Court.

The **special** feature of a gift on death is the contractual agreement that the intended movement of assets is to occur (finally) only with or after the death of the donor. This agreement contains a **time limit** and at the same time a **condition**: The donation is postponed until the death of the donor, but also occurs with this (only temporally uncertain) event only if he is still alive at that time. A gift under the condition of survival is also a gift if the legal consequences of the transaction of fulfillment occur with the death of the donor without further legal acts. This was the case here.

Gift tax for compensation agreed in prenuptial agreement for waiver of civil law divorce consequences?

The consideration received by a spouse for waiving equalization of gains, equalization of maintenance, post-marital maintenance and claims arising from the division of household effects in a notarized marriage contract constitutes a gift. The waiver is a consideration that cannot be assessed in money. The taxation of the donation does not interfere with the protection of the marriage. This was the decision of the Fiscal Court of Hamburg. An appeal against the decision has been lodged with the Federal Fiscal Court.

Corporate tax

Concept of "hidden profit distribution (vGA)" in tax law

A **hidden profit distribution (vGA)** is understood to be a reduction in assets or a prevented increase in assets of a corporation that is caused by the corporate relationship, affects the amount of the difference within the meaning of § 4 (1) sentence 1 EStG (profit or loss) and is not based on a profit distribution resolution in accordance with the provisions of company law.
Accordingly, the vGA has its source at a corporation in which the recipient of the vGA - or a person closely related to them - holds an interest. Very often, a shareholder has further business relations with their investee company in addition to their pure shareholder position. This can be the position as employed managing director, the leasing of real estate to the company, the sale of products for further processing at the company or the granting of loans.

In all these cases, in order to **avoid a vGA**, it is first of all essential that contracts are concluded in these business relationships as between strangers, in which case corresponding agreements are also recognized for tax purposes. In particular, if the shareholder has a dominant position due to the size of his shareholding, the company may not grant him any advantages that a prudent and conscientious businessman would not have granted to a person not involved in the company.

In the first step, the tax office then examines the existence of a corresponding contract under civil law, and then the appropriateness of the compensation paid by the corporation. If one of these requirements is violated, a vGA exists. In the absence of a management contract, for example, this would be the full amount of the remuneration, and in the case of inappropriate remuneration, the inappropriate portion. Under commercial law, the remuneration is nevertheless to be recognized in the full amount agreed. It is ultimately owed by the company but is then added back to the profit outside the balance sheet as part of the determination of income for tax purposes. This allocation then also automatically applies to trade tax.

The necessity of a valid agreement under civil law requires a clear and unambiguous contract concluded prior to performance, which must then also be implemented accordingly. For example, a shareholder-managing director cannot be effectively granted a bonus, even if this were customary and appropriate. In the absence of an agreement, this is also not an appropriate remuneration, e.g. for a property provided or a loan granted, a deductible operating expense of the company, but a vGA.

The addition of the vGA to the company's income means that it is taxable for the shareholder as income from capital assets in accordance with Section 20 (1) No. 1 of the German Income Tax Act (EStG) when it is paid to them. This means that 25% capital gains tax must be withheld and paid from the payment at the time it is received. With this deduction, the shareholder's income tax is settled if they do not apply for a "favorable tax assessment." However, this application is not possible in the case of a vGA if the shareholder has an interest of 10% or more in the company. In the case of a shareholding of 25% or more or 1% and simultaneous professional activity for the company, the vGA is subject to the normal rate of taxation without a settlement effect.

For VAT-payers

Cooking event as a company Christmas party: Input tax deduction for a company event

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If an entrepreneur purchases services for so-called company events (here: Christmas party), they are only entitled to an input tax deduction if these do **not exclusively** serve the private needs of the company employees but are caused by the special circumstances of his business activity. The deduction of input tax for so-called attention (**exemption limit** of **EUR 110** per employee and calendar year) is based on the overall economic activity of the entrepreneur. The costs of the external framework of a company event are to be included in the calculation of the EUR 110 exemption limit in any case if it is a unified service.

According to the Federal Fiscal Court, if the sole purpose of a company event is to improve the working atmosphere by organizing leisure time together, the services purchased for the company outing are exclusively related to the private needs of the staff and thus constitute a withdrawal that does not entitle to an input tax deduction. The Christmas party in question was not limited to the consumption of food and beverages in a festive setting, but took place in the context of a "cooking event" in which the participants prepared the joint evening meal themselves under the guidance of professional chefs. Such "team-building events" are generally known to be able and intended to improve the performance and willingness of the employees in the respective department and between the different departments. The participants work on a common goal, get to know each other better and develop a feeling of closeness that can lead to an improvement in the working atmosphere.

Social insurance

Obligation of a one-person UG to pay social security contributions

If a one-person entrepreneurial company (UG) undertakes to contractually agree with another company to perform activities which, by their nature, require integration into the work organization of the other company and the issuance of instructions to the person issuing the instructions, express contractual agreements between the shareholder-manager of the UG performing the activity himself and the other company are not required for the establishment of a dependent employment relationship.

Comparable to the legal institution of the fictitious employment relationship pursuant to Section 10 (1) sentence 1 AÜG in the case of an ineffective employee leasing, the legal assessment as employment is rather determined on the basis of the agreements between the UG and the other company as well as the practical implementation of this contract.

Note

A status determination procedure is the only way to achieve legal certainty.

Dates Taxes/Social Insurance September/October 2023

Tax type		Due date	
Wage tax, church tax, solidarity surcharge		11 September 2023[1]	10 October 2023[2]
Income tax, church tax, solidarity surcharge		11 September 2023	Not applicable
Corporation tax, solidarity surcharge		11 September 2023	Not applicable
Value added tax		11 September 2023[3]	10 October 2023[4]
End of the grace period for the above tax types when paid by:	Transfer	14 September 2023	13 October 2023
	Check [5]	11 September 2023	10 October 2023
Social security[7]		27 September 2023	26. October[8]/27 October 2023
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge thereon are payable must be paid to the relevant tax office at the same time as the profit distribution to the shareholder. to the responsible tax office at the same time as the distribution of profits to the shareholder.	

1 For the past month.

2 For the past month, for quarterly payers for the previous 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 month before last, 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 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, the direct debit procedure is recommended. 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 25.09.2023/24.10.8/25.10.2023, in each case at midnight). Regional peculiarities with regard to the due dates may have to be taken into account. If payroll accounting is carried out by external agents, the wage and salary 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 Applies to federal states in which Reformation Day is a public holiday.

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