

Legislation

Brief overview of the Building Energy Act

On 8 September 2023, the Bundestag passed the amendment to the **Gebäudeenergiegesetz** (Building Energy Act). It is to come into force on 1 January 2024.

Accordingly, the renewable heating obligation will only apply to the installation of **new heating systems** from 1 January 2024.

Existing heating systems can continue to be operated. **Broken heaters** can be repaired. If a natural gas or oil heating system is irreparably defective (heating disaster), there are transitional solutions and transition periods of several years. **In cases of hardship**, owners can be exempted from the obligation to heat with renewable energies (e.g. in the case of economic overload or if the conversion is unreasonable due to special personal circumstances).

There is a time gradation between new and existing buildings.

The renewable heating obligation will apply to most new buildings from 1 January 2024. The date on which the building application is submitted is decisive. For existing buildings and new buildings erected in gaps in the building



There are longer **transition periods** for existing buildings and new buildings that are erected in gaps between buildings, in order to enable better coordination of investment decisions with local heat planning.

Local heat planning is to be initiated in the municipalities. They must determine by 30 June

2028 at the latest (major cities 30 June 2026) where heating networks or climate-neutral gas networks will be expanded in the coming years. This process is to be promoted by a law on heat planning with uniform federal requirements.

The transition periods for existing buildings and new buildings erected in vacant lots are to be dovetailed

with municipal heating planning. In large cities (more than 100,000 inhabitants), the installation of heating systems with 65% renewable energy is therefore to become mandatory after **30 June 2026** at the latest; in smaller cities (less than 100,000 inhabitants), this is to apply after **30 June 2028** at the latest. This means that from 1 July 2026 or 1 July 2028, new gas or oil heating systems will only be permitted if they are powered by 65% renewable energy. This is achieved, for example, by combining them with a heat pump (so-called hybrid heating) or proportionally with bio-methane. Once a decision has been made in a municipality on the basis of a heating plan on the designation as a heating grid

If, on the basis of a heat plan, a decision has already been made in a municipality on the designation of a heating network area (new construction or expansion) or as a hydrogen network expansion area before mid-2026 or mid-2028, the installation of heating systems with at least 65% renewable energies is to become mandatory at that time.

The switch to a climate-friendly heat supply is to be facilitated by **subsidies**. The subsidies are to be more socially oriented: Lower- and middle-income groups (up to EUR 40,000 taxable household income per year) will receive an income-related bonus of 30%. This is in addition to the basic subsidy of 30%, which is available to all. A climate speed bonus of 20% is also available for replacing an old fossil-fuel heating system before 2028. The maximum possible subsidy is 70% of the investment costs.

Tenants are to be protected from **rent increases**. On the one hand, landlords are to invest in new heating and modernize new heating systems. In the future, they will be allowed to apportion up to 10% of the modernization costs. On the other hand, they must deduct a state subsidy from this sum, and the modernization allocation is capped at 50 cents per month and square meter.

Note

The so-called heating law still has to pass the Bundesrat.

Draft of the “Growth Opportunities Act” adopted

On 30 August 2023, the German Cabinet approved the

draft of the “**Act to Strengthen Growth Opportunities, Investment and Innovation as well as Tax Simplification and Tax Fairness**” (*Wachstumschancengesetz*). The law is intended to boost the economy, or more precisely:

- * provide impetus for more growth, investment and innovation,
- * contribute to tax simplification,
- * help to uncover and eliminate undesirable tax arrangements.

Measures with retroactive effect from 2023:

The percentage used to determine the **pension allowance** will decrease more slowly: annually by 0.4% from 2023, instead of 0.8% previously. The maximum amount is also to decrease by EUR 30 a year from 2023 (instead of EUR 60) and the supplement to the pension allowance by EUR 9 a year (instead of EUR 18).

The so-called “**December assistance**” paid to consumers in 2022 as relief for high gas and district heating costs is not to be taxed after all. The regulations on this are to be completely deleted.

Due to the deferred **taxation of pension income**, the proportion of taxable pensions is rising steadily. At the same time, the proportion of pension insurance contributions that can be deducted from taxes as special expenses is also increasing. From 2023, the increase in the taxable portion is to be reduced to half a percentage point per year for each new pension year. In this way, pensions will not be taxed at 100% until the 2058 retirement year.

With the adjustment to the **old-age relief amount**, the applicable percentage will no longer be reduced in annual steps of 0.8 percentage points from 2023, but only in annual steps of 0.4 percentage points. The maximum amount will fall by EUR 19 per year from 2023 instead of the current EUR 38.

The planned changes are intended to exempt **small businesses** from having to submit an annual sales tax return from 2023. However, this will not affect cases covered by § 18 (4a) of the German Turnover Tax Act (UStG), such as traders who purchase goods within the EU. The obligation to submit the declaration is also to remain in place if the tax office demands the declaration.

Measures valid as of 2024:

For business trips or in the case of a double house-

hold, **additional expenses for meals** can be taken into account as income-related expenses for tax purposes. These flat rates are to be increased:

- * from EUR 28 to EUR 30 for business trips lasting several days, and
- * from EUR 14 to EUR 15 for days of arrival or departure, and
- * from EUR 14 to EUR 15 for days with more than 8 hours’ absence from the home or first place of work.

A new exemption limit is to be introduced for **income from renting and leasing**. Anyone with income of less than EUR 1,000 per year will no longer have to pay tax on it. However, if the expenses associated with the rental business exceed the income, it will be possible to apply for taxation as income from renting and leasing. In this way, landlords will be able to take their losses into account.

Note

Further proof of the misunderstood goal of reducing bureaucracy. Annex V must be prepared in any case, to be able to know whether the exemption limit applies or not.

Losses can be offset against profits from the two previous years using the so-called loss **carryback pursuant** to § 10d of the German Income Tax Act (EStG). This reduces the tax burden for the previous years. This loss carryback is to be extended to 3 years. The recently temporarily increased limit of 10 million euros is to apply permanently. For the period 2024 to 2027, the loss carryforward will be limited to 80% of the total amount of income for the loss carryforward year.

Costs for certain acquisitions can be fully deducted from tax immediately if they do not exceed EUR 800 (net) (**low-value assets**). From 2024, the amount is to be raised to EUR 1,000 (net).

A temporary reintroduction of **declining-balance depreciation for movable fixed assets** acquired or manufactured from 1 October 2023 and before 1 January 2025 of up to 25%, up to a maximum of 2.5 times straight-line depreciation, is planned.

Furthermore, the increase in the **amount limits for compound items** to EUR 5,000 for assets that are acquired, manufactured or incorporated into business assets after 31 December 2023 is intended to help the economy. The time period for the reversal of these

collective items will be shortened to 3 years.

Degressive depreciation is to be introduced for **residential buildings** built or purchased between 1 October 2023 and 30 September 2029. In the year of completion, 6% of the costs are to be depreciated proportionately. It should be possible to switch to straight-line depreciation at any time.

Companies that generate a profit of no more than EUR 200,000 a year are allowed to write off their investment costs in addition to scheduled annual depreciation, also via **special depreciation** in accordance with § 7g of the German Income Tax Act (EStG). From 2024, the maximum depreciation rate is to be increased to 50%.

In future, entrepreneurs whose tax for the previous year did not exceed EUR 2,000 will no longer have to submit quarterly **advance VAT** returns. Previously, the limit was EUR 1,000.

In the case of **gifts to business partners**, entrepreneurs will be able to spend higher amounts in the future and thus benefit from a tax perspective: If the costs are below the exemption limit of EUR 50 net per year, they can be deducted as business expenses. Previously, this limit was EUR 35 per year.

Up to now, companies with sales of up to EUR 600,000 have been able to apply for sales tax to be calculated on the basis of the revenue received (**actual taxation**) rather than on the basis of the agreed revenue (**debit taxation**). From 2024, this turnover limit is to be raised to EUR 800,000.

Companies that invest in **climate protection** are to receive an additional 15% of the investment as a bonus until 2027, regardless of their profits. On application, investments that contribute to a reduction in energy consumption and thus improve environmental and climate protection are to be taken into account. The eligible investments must be included in an energy or environmental management system or in an energy audit and thus certified as particularly energy-efficient by an energy consultant. The assessment basis is to be a maximum of 200 million euros in the funding period and the investment premium 15% = a maximum of 30 million euros. The subsidy is to be limited to investments that exceed the base amount of EUR 5,000 in acquisition or production costs.

A tax allowance of EUR 110 per event currently applies to **company events**. From 1 January 2024, this will

increase to EUR 150.

In order to increase the attractiveness of the **option for corporate taxation** in accordance with Section 1a of the German Corporation Tax Act (KStG), all partnerships are now to be given the opportunity to opt for corporate taxation (previously only trading partnerships and partnership companies).

A statutory regulation will be introduced for the mandatory use of **electronic invoices in the B2B sector**.

Note

The Growth Opportunities Act is scheduled for passage in the Bundestag on 10 Nov. 2023, and approval in the Bundesrat on 15 Dec. 2023.

New version of the Working Hours Act

In September 2022, the German Federal Labor Court affirmed a general **working time recording obligation for employers** and ruled that employers must immediately document the entire working time of all employees (exception: executive employees) in real time, regardless of the place of work. Already in 2019, the European Court of Justice ruled that employers have a general obligation to record working time.

The German Federal Ministry of Labor and Social Affairs is planning comprehensive changes to the Working Time Act/ArbZG in order to introduce a general obligation to record working time. According to § 16 (2) Sentence 1 ArbZG-E, employers are to be obliged to record the beginning, end and duration of the daily working time of employees on the day on which the work is performed *electronically* (in contrast to the recording obligations under the Minimum Wage Act). The rules are to apply regardless of the place of work, i.e. **also for remote or mobile work**. According to the draft bill, employees are allowed to record the time themselves. However, the employer will always remain responsible for correct time recording. **A fine of EUR 30,000** has been set. The draft bill does not contain any more specific requirements for electronic recording but allows other forms of electronic recording in addition to the time recording devices commonly used in practice. Exemptions from the statutory obligation to document working time are only to be possible on the basis of collective agreements. There are also exemptions for smaller companies and transitional periods.

Irrespective of this, **trust-based working time** is still

to be possible according to the draft bill. The obligation to record working time remains in force even if trust-based working time has been agreed.

The recording obligations are to apply immediately upon entry into force of the Amendment Act. However, transitional periods of between two and five years apply to the electronic recording of working time, depending on the number of employees in the company.

Note

The draft bill is currently going through the legislative process and is expected to be passed by the end of 2023.

Income tax

Repayment of loans through subsidized capital

If spouses are co-owners of an owner-occupied property and only the husband is the borrower of the loans taken out when the property was acquired, only the husband as borrower is entitled to withdraw capital subsidized for the repayment of these loans, but not the wife. This was the decision of the Berlin-Brandenburg Tax Court.

This also applies if the wife has assumed joint liability by providing a directly enforceable guarantee in respect of the loans and taking out a land charge to secure the loans on her property.

The fact that the wife was not initially a joint and several debtor cannot be remedied by the subsequent assumption of liability, which is no longer closely related in time to the taking out of the loan, or by the inclusion of the wife in the loan agreements. In the case in dispute, the plaintiff is not entitled to a favorable withdrawal from her retirement provision contract.

Parking space costs deductible in the context of double household management for work purposes

Parking space costs in the context of a professionally induced double household management also belong to the other (fully deductible) additional expenses after the legal revision of § 9 (1) No. 5 EStG. This was the decision of the Lower Saxony Finance Court.

The unchanged reference value is “only” those (accommodation) costs that are usually included in the calculation of the average apartment rent and are thus also covered by the lump sum of

EUR 1,000, which is intended to replace the time-consuming calculation of the average rent. In addition to the (basic) rent, these are the monthly amounts to be spent on water, sewerage, street cleaning, garbage collection, house cleaning and lighting, chimney cleaning, janitor, public charges, building insurance and cable connection.

The Income Tax Act does not contain an exemplary or even conclusive list of the accommodation costs covered by the “settlement effect”, nor does it contain a limitation of the (total) costs of the second home to a maximum of EUR 1,000 beyond the scope of the eligible accommodation costs.

Vacation homes owned and rented out by the partners of a GbR (civil law association) are not necessary special business assets

If several persons meet the criteria for generating income in a company, an independent profit assessment notice must be issued for each company even if there are other companies between the same persons. This was the ruling of the Schleswig-Holstein Tax Court.

In the case in question, the vacation apartments owned and rented out by the partners themselves do not form part of the special business assets of the partnership under civil law (GbR). The income generated from the rental of the vacation homes, as well as the income generated from the sale of the properties, is not to be allocated to the commercial income of the GbR.

Tax liability including share losses exceeds annual subsistence level - Income taxes are to be waived

The levying of income taxes may be objectively inequitable if the tax assessed exceeds the annual tax-free minimum subsistence level when including share losses that have actually been paid out but cannot be taken into account for tax purposes due to equalization restrictions. This was the decision of the Cologne Tax Court.

The plaintiff suffered losses from option writer transactions. Due to the restriction on loss compensation under the German Income Tax Act as amended in the year in dispute, around EUR 390,000 were not offset against positive income from other types of income. This resulted in a correspondingly higher total amount of income. Taking into account the basic tax allowance of EUR 7,235 applicable for 2002, the plaintiff requested a reduction in her total tax burden.

The court ruled in favor of the plaintiff. According to the so-called subjective net principle, the state must leave as much of a taxpayer's acquired income tax-free as is required to cover necessary living expenses (subsistence minimum). The subsistence level is constitutionally the lower limit for access by the income tax. With regard to the exemption of the subsistence minimum, no overall consideration over several years is to be made. Rather, the amount of money actually and unavoidably required for subsistence is to be exempted from taxation in each assessment year.

For VAT-payers

Input tax refund in the absence of registration of a VAT identification number in the application possible

According to the Cologne Fiscal Court, the lack of entry of a VAT identification number or tax number of the performing company in the annex to the application for input tax refund does not preclude the eligibility for refund in this case.

In the case in dispute, the defendant had all the information in the submitted invoices that enabled it to verify the correctness of the asserted input tax refund claim. Against the background of the principle of neutrality of VAT, the formal deficiencies complained of by the defendant, taking into account the case law of the European Court of Justice, do not prevent the taxpayer's claim for an input tax refund in this case.

For inheritance/gift tax payers

Comparative value method for inheritance and gift tax

The tax offices primarily use the “**comparative value procedure**” to determine the real estate values relevant for inheritance and gift tax. This procedure is based on comparative prices or comparative factors from the appraisal committees.

An appeal is pending before the Federal Fiscal Court. The judges want to comment on the question of whether the comparative prices determined by the appraisal committees and communicated to the tax offices are binding for the parties involved in the tax relationship in accordance with the Valuation Act and are regularly not subject to judicial review.

A decision by the Federal Fiscal Court on this question is in the general interest for reasons of legal certainty, legal uniformity and legal development.

Note

Affected taxpayers can appeal against assessment notices in which real property values have been determined by means of comparative prices or comparative factors with reference to the pending proceedings before the Federal Fiscal Court.

Miscellaneous

International financial reconciliation as of 30 September 2023

On 30 September 2023, the **exchange of information between the tax authorities** between 119 states will begin. Via the Federal Central Tax Office (BZSt), the locally competent tax office will then receive account data from member states of the European Union and from third countries that have joined the data exchange agreement by way of automated data exchange. The list of countries is contained in the letter of the Federal Ministry of Finance dated 23 February 2023 (Ref. IV B 6 - S-1315 / 19 / 10030 :051).

If there is an obligation to declare the income resulting from the financial accounts, in particular income from capital assets, but this has not been done, this may result in reckless tax evasion or tax avoidance. However, the penalty-exempt effect of the voluntary disclosure is null and void if the tax offense was discovered. This can be assumed to be the case after the foreign tax authority has notified the BZSt.

Conversely, foreign tax authorities also receive information about financial accounts in Germany via the BZSt. Since the global income principle or the penalty-free voluntary declaration is not unknown in other jurisdictions, taxpayers abroad should check (or have checked) their declarations abroad.

The motives for having a financial account abroad can vary. For example, there are known cases from the pre-BREXIT period of former students who set up an account in the United Kingdom. At the time, British banks generously granted student loans if a bank account existed in the UK. Due to a change in the legal requirements of banking supervision, these accounts have probably been almost completely closed in the meantime.

However, interest income may not have been declared. In this case, a subsequent declaration should be checked.

Accounts in connection with foreign real estate are

also not uncommon.

Severe weather in Bavaria in August 2023: assistance for affected private households, businesses and municipalities

According to the Bavarian state government, private individuals and companies can receive tax relief, and it has also been decided to launch a state financial aid campaign. According to this, private households in particular, which are threatened by an existential emergency due to the storm in August 2023 in Bavaria, can be granted financial aid in individual cases. Affected municipalities can receive support by way of municipal fiscal equalization.

Within the framework of tax relief, private individuals and companies can in individual cases and in accordance with the relevant regulations :

- * have their taxes deferred,
- * have enforcement measures deferred,
- * advance tax payments can be reduced, and
- * special depreciation allowances are also possible, among other things.

The contact for those affected is the relevant tax office.

Commission paid to intermediary in Hong Kong - business expense deduction possible

The Münster Fiscal Court had to decide whether the deduction of operating expenses for a brokerage provision claimed by the plaintiff in the year in dispute 2016 is to be denied under the Foreign Tax Act or under the German Fiscal Code.

The designation of the recipient (here: by specifying a Hong Kong-based company and its sole shareholder; submission of an annual return; confirmation of receipt of the amount paid in cash; foreign transfers to the company) is also proper within the meaning of the German Fiscal Code, if it is ensured that the real recipient of a payment (here: in connection with the processing of the purchase of two machines in China with the involvement of a Hong Kong-based intermediary) is not taxable in Germany with a probability bordering on certainty.

For the application of the tax code, it is irrelevant whether the calculation parameters for a provision are explained conclusively and are comprehensible in detail for the tax office. An income tax burden of 16.5% is not a merely insignificant taxation according to the Foreign Tax Act. In the case in dispute, the tax office wrongly refused to deduct an operating expense. As a corporation with unlimited tax liability, the plaintiff does not have any non-operating sphere in accordance with the Corporation Tax Act.



Dates Taxes/Social Insurance

October/November 2023

Due date		Tax type	
Wage tax, church tax, solidarity surcharge		10 October 2023 ¹	10 November 2023 ²
Value added tax		10 October 2023 ³	10 November 2023 ⁴
End of the grace period for the above tax types when paid by	Transfer ⁵	13 October 2023	13 November 2023
	Check ⁶	10 October 2023	10 November 2023
Trade tax		Not applicable	15 November 2023
Property tax		Not applicable	15 November 2023
End of the grace period for the above tax types when paid by	Transfer ⁵	Not applicable	20 November 2023
	Check ⁶	Not applicable	15 November 2023
Social security ⁷		26 ⁸ /27. October.2023	28 November 2023
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.
- 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.

Your contact person:

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

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