

Income tax

Cryptocurrencies: Capital gains are taxable

The plaintiff had acquired, exchanged and resold various cryptocurrencies. Specifically, these were transactions with Bitcoins, Ethereum and Monero, which the taxpayer carried out privately. He generated a total profit of 3.4 million euros from these transactions. A dispute arose with the tax office as to whether the profit from the sale and exchange of cryptocurrencies was subject to income tax. The action brought by the taxpayer before the fiscal court was unsuccessful.

The Federal Fiscal Court affirmed the tax liability of the capital gains from Bitcoin, Ethereum and Monero. Cryptocurrencies are economic goods that are subject to taxation as private sales transactions if they are acquired and sold within one year. Virtual currencies (currency tokens, payment tokens) represent a “different economic good.” From an economic point of view, virtual currencies are to be regarded as means of payment. They would be traded on trading platforms and exchanges, would have a market value and could be used for payment transactions to be settled directly between participants. If the tokens are acquired and sold or exchanged within one year, the resulting gains or losses are subject to taxation.

Note

With its ruling, the Federal Fiscal Court confirms the view of the tax authorities.

The results of a representative survey by the digital association Bitkom show that around one-third of respondents (32%) can imagine buying cryptocurrencies in the future. At the same time 3% have already bought them in the past, 6% are planning to do so and 23% definitely do not want to rule it out. Thus, this topic is of great relevance.

Deduction of extraordinary burdens from the total amount of income

In income tax law, there is the concept of “extraordinary burden,” for which §§ 33, 33a and 33b EStG contain rules for deduction from income. There are three different areas of deduction that can be considered in this context:

1. extraordinary burdens arising from the maintenance/professional training of a legally dependent person (usually children or parents)

2. lump sums for costs incurred by disabled persons and surviving dependents (§ 33b EStG)
3. major expenses necessarily incurred by the taxpayer or jointly assessed partner (Section 33 (1) to (3) EStG).

The prerequisites and the amount of the deductions for the groups 1 and 2 result from fixed lump sums and proof prerequisites, therefore the 3rd group shall be considered more closely. Here costs are meant, which can arise with each taxpayer. The largest share is probably taken by illness-related expenses, insofar as they are not borne by the health insurance funds or, in the case of civil servants, by the state employer’s allowance. Another group of expenses are replacements necessitated by natural events, e.g. fire, floods, etc., for necessary material items, among others. These items can be clothing, household goods and furnishings of a normal apartment.

The replacement purchases must be necessary and reasonable in terms of the amount and can be considered for the taxpayer, his/her partner(s) and children living in the household. For this, however, the taxpayer must credibly demonstrate that he/she did not cause the damage and that there are no claims for compensation. If the usual insurance options were not taken advantage of, there is no taxable burden. However, the costs of a funeral within reasonable limits for close relatives who have left no assets also fall under the 3rd group.

All burdens of this 3rd group are to be added up per calendar year. The “reasonable personal burden” is deducted from this sum. This depends on the amount of income and the number of children and is between 1% and 7% of the total amount of income, i.e. before deduction of special expenses and other allowances. Over the years, tax case law has dealt with a number of costs and assessed them in terms of deduction. The following cases are examples:

- * behinderungsbedingte Mehrkosten für den Umbau oder die Errichtung eines Wohnhauses/einer Wohnung sind abzugsfähig.
- * Disability-related additional costs for the conversion or construction of a house/apartment: deductible, this can also include furniture purchases required by a disability or the purchase of disability-friendly tableware.
- * Stair lift: Costs may be deductible if the medical necessity is confirmed by the competent medical officer.

- * Dowry for the daughter: Costs incurred by the parents for this purpose on the occasion of the marriage are generally not (or no longer) to be regarded as compulsory.
- * Dietary catering: No extraordinary burden!
- * Spa therapy expenses: Deductible if demonstrably necessary to cure or alleviate an illness and the costs are not reimbursed by a health insurance company.
- * Extortion money: No extraordinary burden if the reason for extortion was created without coercion. However, deduction may be given in case of coerciveness.
- * Lump-sum settlement of maintenance claims: Deduction is generally ruled out, because it is not necessarily originated.

Employee benefits from the use of a company cell phone tax-free

The German Federal Fiscal Court (Bundesfinanzhof) had to decide whether it can always be assumed that there has been an abuse of legal rights if the employee sells his cell phone to his employer for a purchase price of EUR 1.00 and the employer subsequently makes the cell phone available to the employee again for private use under a contract and assumes the resulting costs for the private cell phone contract.

Fictitious transactions and sham transactions are irrelevant for taxation purposes. Declarations of intent requiring receipt that are made only as a sham with the consent of the recipient of the declaration are void under the German Civil Code. A sham transaction exists if the parties to the contract agree on the sham character of the legal transaction and the agreed agreement is not to have any validity according to the unanimous will of the contracting parties. Consequently, there is no sham transaction if the legal result sought by the parties to the contract precisely presupposes the validity of the legal transaction. This was also the case in the dispute.

Partition of real property: taxation of a garden plot as a private sale transaction

The sale of a garden plot is not exempt from taxation as a private sale transaction if the property continues to be used for residential purposes. This was the decision of the Lower Saxony Tax Court.

The plaintiffs had realized a private sale transaction by reselling the part of the property they had previously acquired within ten years of acquisition. This sale transaction is not exempt from taxation because it is used for the plaintiffs' own residential purposes.

In the case of a building used for the owner's own residential purposes, the case law does include the "associated land" in the preferential treatment, since the sale of an asset used for the owner's own residential purposes also includes the proportionate land. However, the Federal Fiscal Court draws the line under consideration of the normative purpose of the exemption. Thus, in a case in which the taxpayer sells the neighboring property previously used as a garden while remaining resident on the other property, the purpose of the tax concession, namely not to make a move more difficult, in particular as a result of a change of job, is not fulfilled and the sale is taxable. In this respect, there is no uniform connection between the use and function of the dwelling and the land in accordance with the provisions of the Income Tax Act.

Note

In this context, a recent ruling by the Münster Fiscal Court should be noted. In this ruling, the court states that a mixed-use property is to be regarded as an independent asset for tax purposes, even if it forms a unit with the land and the building under civil law

Taxation of a doctoral scholarship

Benefits from a doctoral scholarship may be subject to income tax. According to a decision of the Federal Fiscal Court, this is the case at any rate if the scholarship holder has to provide an economic consideration and no tax exemption provision applies.

VAT

Value added tax in the case of free supply of heat from a biogas plant

The Federal Fiscal Court had to clarify whether the assessment basis for the supply of heat from a biogas plant is to be determined according to the market value method or whether the cost price is to be apportioned in the ratio of the quantities of electrical and thermal energy produced in the uniform measurement unit kWh (so-called energy apportionment method).

If prime costs are incurred for deliveries against payment as well as for free transfers of value, these are to be allocated according to actual or, if applicable, fictitious sales (market values). The proper estimation to be made is generally the responsibility of the entrepreneur, who must decide which estimation method he chooses, whereby the tax authorities and thus also the tax court can verify whether the estimation is proper.

Car leasing to spouses: input tax deduction and private use in the case of the so-called preliminary model

The German Federal Fiscal Court ruled that a spouse who is economically independent can claim input tax from the purchase of a passenger car that he leases to his spouse who works as a freelancer.

The input tax deduction of the lessor of a passenger car is not contrary to the system and therefore not abusive. In the case of a rental between spouses, this applies in any case to the rental of passenger cars that are not used for immediate family needs. A contractually regulated full rental to the other spouse does not preclude taxation of the private use of the rented car by the lessor spouse. However, if the leasing spouse uses the car himself or herself, he or she must subject a gratuitous transfer of value to VAT.

Reduced sales tax in restaurants should remain

The consumption of food in restaurants is to be taxed at the reduced rate of 7% on a permanent basis. This is the aim of the draft bill to amend the Value Added Tax Act introduced by the CDU/CSU parliamentary group on 2 March 2023. The reduction of the VAT rate for restaurant and catering services, with the exception of the sale of beverages, from 19% to the reduced rate of 7% was introduced on 1 2020 against the background of the COVID-19 pandemic and extended several times, most recently until the end of 2023.

Final BMF letter on zero tax rate for photovoltaic systems

As of 1 January 2023, the supply and installation of certain PV systems is subject to a new zero tax rate. The Federal Ministry of Finance (BMF) published the final letter on the zero-tax rate for sales in connection with certain photovoltaic systems on 27 February 2023.

Since the introduction of the zero-tax rate by the Annual Tax Act 2022, questions have arisen in practice. For example, with regard to the taxation of ancillary services. The letter now specifies, among other things, typical ancillary services that share the fate of their main service, specifically the supply of the PV system.

Compared to the draft version, some useful examples have been added: For example, the registration in the market master data register, the provision of software for controlling and monitoring the system, the connection of a two-directional meter, the provision of scaffolding, the supply of mounting materials or, under certain circumstances, the replacement of the meter cabinet.

The draft of the BMF letter already provided for simplifying assumptions when examining individual facts, e.g. with regard to the specific solar modules and storage units that may be subject to the zero tax rate. These were revised and supplemented again in the final BMF letter.

While the draft still simplistically assumed that solar modules with a power of “500 watts and more” are used for grid-connected or stationary stand-alone systems, the BMF has lowered this value to “300 watts and more” in the final version. Furthermore, the BMF has defined further simplifications of proof for PV systems with an output of no more than 600 watts.

The planned restriction on the removal of old systems from business assets was criticized - including by the German Association of Tax Consultants (Deutscher Steuerberaterverband). Although the final letter also adheres in principle to the 90% limit, the requirement is somewhat mitigated. In cases where part of the electricity generated is stored in a battery, for example, it must be assumed that the operator uses more than 90% of the electricity generated by the plant for non-business purposes. This would then allow the withdrawal (at zero tax rate).

Miscellaneous

Students can apply for the energy price flat rate

Since 15 March 2023 students as well as specialized pupils can request the energy price lump sum. According to the federal government, the EUR 200 one-time payment can be applied for via a specially developed online platform (www.einmalzahlungen200.de). The access data sent by the educational institution and a BundID account are required for this.



Germany is risking its attractiveness as a tax location

The current Mannheim Tax Index of ZEW Mannheim shows that Germany has lost further ground in international tax competition. This is particularly evident from the reduction in the French corporate tax rate in recent years: The corporate tax burden in Germany is now the highest in direct comparison with major competitors. The effective average tax burden on a profitable investment project in Germany will be 28.8% in 2022, exceeding the EU average by 10 percentage points.

Energy-efficient construction and refurbishment

The supply of energy to buildings accounts for around 30% of CO2 emissions. This means that there is relatively large energy-saving potential in buildings. Not least because of the workshop report “Renewing prosperity in a climate-neutral way” by the German Federal Ministry of Economics and Climate Protection, the replacement of gas and oil heating systems is being pushed forward. From 2024, at least 65% of newly installed heating systems are to be powered by renewable energies. In view of these climate policy goals, it is even more important to keep track of possible tax reductions and their conditions, as well as federal subsidies for efficient buildings.

In order to achieve the climate targets with the Climate Protection Program 2030, the federal government has decided to further develop the existing subsidies for new buildings. To this end, the Federal Ministry of Housing, Urban Development and Construction issued the Guideline for Federal Funding for Efficient Buildings - Climate-Friendly New Construction. The aim of the subsidy is to reduce environmental impacts and raise sustainability standards in the creation of new housing and non-residential buildings.

Civil law

Rental collateral invested in shares - tenant has claim to surrender of shares

When concluding a rental agreement for an apartment in Cologne in 1960, the contracting parties agreed that the tenant would pay a rental security in the amount of DM 800, which in turn was to be invested in shares and was indeed invested. After the tenant's death, her daughter, as sole heir, terminated the lease in 2018 and demanded the surrender of the shares. The landlady did not consider such a claim to exist. She was only prepared to pay out the security deposit in the amount of EUR 409,03. The heiress finally filed a lawsuit.

The Cologne Local Court ruled in favor of the heiress. She is entitled to the return of the shares. She does not have to be satisfied with the repayment of the security deposit originally provided. Income from the rental security - irrespective of the form of investment - is due to the tenant (§ 551 paragraph 3 sentence 3 BGB). In the case of an investment in shares, the income includes not only the dividends but also any price gains. Agreements deviating from this are ineffective. The fact that, as a result of changed circumstances, the capital procurement at that time is no longer so favorable for the landlord from today's perspective is its own risk.



Dates Taxes/Social Security

April/May 2023

Tax type		Due date	
Wage tax, church tax, solidarity surcharge		11.04.2023 ¹	10.05.2023 ²
VAT		11.04.2023 ³	10.05.2023 ⁴
End of grace period of above tax types when paid by:	Bank transfer ⁵	14.04.2023	15.05.2023
	Cheque ⁶	11.04.2023	10.05.2023
Trade tax		not applicable	15.05.2023
Property tax		not applicable	15.05.2023
End of the grace period for the above tax types upon payment by:	Bank transfer ⁵	not applicable	19.05.2023
	Cheque ⁶	not applicable	15.05.2023
Social insurance ⁷		26.04.2023	26.05.2023
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge on it 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, for quarterly payers for the past calendar quarter.
- 2 For the past month.
- 3 For the past month, for the month before last in the case of a permanent extension, for the past calendar quarter in the case of quarterly payers without a permanent extension.
- 4 For the past month, in the case of a permanent extension for the penultimate month, for quarterly payers with a permanent extension for the past calendar quarter.
- 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 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 cheque, it should be noted that payment is not considered to be made until three days after the cheque 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 April 2023/24 May 2023, 0:00 hours in each case). Regional peculiarities regarding the due dates may have to be considered. 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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