

## *Income tax*

### **Double household maintenance: financial participation in the cost of living**

The Federal Fiscal Court (Bundesfinanzhof) commented on how the factual criteria of “financial participation in the costs of living” of the new statutory regulation are to be interpreted, in particular in what way and in what amount the taxpayer must participate in the costs of living at the main residence.

Living expenses are the costs of the household and other living expenses in the main residence. The financial contribution to the costs of living may not be recognizably insufficient. Whether this is the case requires an assessment of the circumstances of the individual case. The law does not provide for a specific amount limit, nor is an ongoing contribution required.

The actual household and other living expenses incurred in the year to the extent mentioned above serve as a benchmark for a financial contribution that is not recognizably insufficient. The taxpayer has to present and, if necessary, prove these. This is possible and reasonable with regard to housing costs, including operating costs for the apartment, as well as for household costs regularly incurred in fixed amounts (e.g. electricity, television, telephone), but also for extraordinary household costs (e.g. maintenance or renovation expenses or larger purchases). On the other hand, costs that are regularly incurred in fluctuating amounts (such as, in particular, for food and other household needs) can generally be estimated with recourse to empirical statistical values.

### **Claiming the costs of professional garden maintenance as a tax reduction**

Taxpayers who hire a professional helper to care for their garden can claim the costs of household-related services against tax. The prerequisite is that the helper has submitted a proper invoice and the amount has been transferred. It is irrelevant whether the property where the greening work is done is a permanent home, a second home, a weekend home or a vacation home.

It does not matter whether one is a tenant or owner/landlord. Often the costs for hand or household-related services are included in the ancillary costs. Tenants can only claim these if their share - for gardeners, repairs, house cleaning or the janitor - is shown separately in the service charge statement.

Household-related services include common gardening tasks such as mowing the lawn, hedge trimming, or pest control. Craftsman services include, for example, the construction of a terrace or the laying of turf. In the case of household-related services, 20% of the costs can be deducted, up to a maximum of EUR 4,000, while a maximum of EUR 1,200 can be deducted for craftsmen’s services.

### **Letting of vacation homes - With own-useful trust no incomes from trade-operation**

It was a matter of dispute between the parties whether the plaintiff was generating commercial income from the rental of three vacation homes or whether it was generating income from renting and leasing. When renting out a vacation home, a commercial enterprise can only be assumed if the landlord provides specific, significant special services that are not customary for renting out rooms or if the landlord provides special services that are not customary for renting out rooms.

The landlord may only be deemed to be engaged in a commercial enterprise if they provide certain special services that are not customary in the rental of rooms or if a certain entrepreneurial organization - comparable to a commercial accommodation business - is required due to a particularly frequent change of tenants. The special circumstances of the individual case are decisive in each case. The interposition of a commercial intermediary does not necessarily mean that the landlord is also engaged in a commercial activity. Rather, the decisive factor is the extent to which, in the person of the landlord, the letting of a holiday apartment is comparable to a commercial accommodation business with regard to the type of property let and the type of letting.

According to the Federal Fiscal Court, the required comparability with a commercial lodging establishment (hotel) exists above all if the apartment is equipped like hotel or boarding house rooms, is advertised for short-term rental to changing tenants, is offered in a hotel-like manner, i.e. is held ready for rental at any time even without advance notice, and is also in a condition that permits immediate rental; this also applies if there are no bookings. In this respect, it is not decisive whether the apartment is located in a holiday apartment complex or outside such a complex. This is because the provision of rooms for the immediate, even short-term letting to guests requires material and personnel precautions which are not associated with the letting of apartments.

## Wage tax

### Tax exemption for part-time activities

On 28 October 2022, the Federal Council approved the Wage Tax Guidelines 2023. They were fundamentally revised in the new version. Amended and updated wage tax guidelines (LStR 2023) have been in force since 1 January 2023.

Among other things, the LStR 2023 have been amended with regard to income from part-time activities as an exercise instructor/trainer (etc.): This income is tax-exempt up to the amount of EUR 3,000 per year. In addition, part-time voluntary activities for a non-profit corporation are tax-exempt up to the amount of EUR 840. The LStR 2023 contain a clear definition of when such a “secondary occupation” exists. According to this, an activity with a regular weekly working time of a maximum of 14 hours (so-called 14-hour limit) is considered to be a secondary occupation.

## For persons liable to inheritance tax

### Successor heir can also claim the lump sum for inheritance costs

The Federal Fiscal Court had to decide to what extent the lump sum (the so-called inheritance costs lump sum) is to be granted in the case of a subsequent inheritance, if only subsequent inheritance assets are acquired, but the acquirer has also incurred costs of the previous inheritance and whether the claiming of the lump sum is opposed by the actually incurred proven costs.

In addition to the previous heir, the subsequent heir can also claim the lump sum. Contrary to the previous case law of the Federal Fiscal Court, the deduction of the lump sum does not require proof that the costs actually that costs have actually been incurred, at least on the merits.

Under the Inheritance Tax Act, a total amount of EUR 10,300 is deducted without proof. The amount is to be granted only once for each case of inheritance, namely only once for several co-heirs. However, for inheritance tax purposes, the succession of a pre-heir and a post-heir does not constitute an inheritance with multiple heirs. Rather, the two events are to be treated as two separate cases of inheritance. It is in line with this system to apply the lump sum twice when determining the enrichment.

## Procedural law

### When is an objection possible in taxation proceedings and what are the consequences?

Every recipient of a tax assessment notice is familiar with the information on legal remedies at the end of the notice, which refers to the possibility of raising objections against this assessment. In tax law, this is referred to as an objection. The objection must be directed against findings in the notice that lead to a tax that is too high in the opinion of the person concerned. The objection must be made in writing or by e-mail to the tax office that sent the notice. No further special formalities need to be observed. However, it must be received by the tax office within one month of notification. This period begins on the third day after the tax office posts the notice. In the case of public holidays at the beginning or end of the period, the deadline is extended accordingly. The submitter can also file an objection against a submitted advance return for sales tax or an income tax return within one month.

The objection does not have to be substantiated, but this is highly recommended because otherwise it is very easy for the tax office to reject the objection. Only objections that have been established in the respective tax assessment can be effectively raised with the objection. For example, in an income tax assessment no objection can be raised against the amount of the profit share from a shareholder's participation in a partnership; this must be made against the assessment notice of the partnership. Also, a very recent example: Against a land tax assessment no objections can be raised any more against the determined land value or the land tax assessment amount. In this case, an objection must be made against the notice on the property tax equivalent amounts for the main assessment as of 1 January 2022 and the notice on the property tax assessment amount for the main assessment as of 1 January 2025. An appeal against assessed losses from previous years can also only be lodged against this assessment notice, not against the income tax assessment notice in the year in which the loss is assessed. The due date of the assessed tax is not cancelled by the objection. This is only possible with an additional application for suspension of execution. For this, however, there must be “serious doubts about the legality of the tax assessment.”

If the tax office recognizes the objections in the objection, it changes the corresponding tax assessment. Otherwise, the tax office must issue a decision rejecting the objection. It is then possible to take legal action against this before the tax court. A direct action - i.e., without a

preceding appeal procedure (objection) - at the tax court is only effective if the tax office agrees (so-called jump action). The objection procedure is free of charge at the tax office. However, it is always important to bear in mind the costs of the consultant engaged, which are not reimbursed by the tax authorities even if the objection is successful. The lawsuit, on the other hand, is subject to costs. However, any court costs incurred will be reimbursed if the action is successful. In this case, the costs of the consultant can also be reimbursed.

**By contesting a wage tax liability notice, no incidental contestation of a wage tax filing is made**

By contesting a wage tax liability notice, the wage tax returns or a notice on the lifting of the reservation of review of the wage tax returns for the filing periods in which the liability facts were realized are not contested at the same time (incidentally). This was the decision of the Federal Fiscal Court.

*Miscellaneous*

**Announcements on gainful activity - tax exemption for operators of certain small photovoltaic systems**

The Annual Tax Act 2022 of 16 December 2022 introduced an income-tax exemption for certain small photovoltaic systems and a zero VAT rate to be applied from 1 January 2023 for the supply and installation of certain photovoltaic systems.

Even in cases where the revenues and withdrawals from the operation of photovoltaic systems are tax-exempt and the turnover tax on sales from the operation of photovoltaic systems is not levied on the basis of the small business regulation, operators (natural persons and legal entities as well as associations of persons) of photovoltaic systems are fundamentally obliged to notify the opening of a commercial business or a permanent establishment and to submit a questionnaire for tax registration.

For reasons of bureaucracy reduction and administrative economy, it is not objected if operators of photovoltaic systems, who:

- \* are traders, when opening a business that is limited to the operation of favored photovoltaic systems, and
- \* are entrepreneurs from the VAT point of view, whose business is limited exclusively to the operation of a photovoltaic system and, if applicable, tax-exempt renting and leasing, and who apply the small business regulation,

waive the tax notification of the commencement of business activity and the submission of the tax registration questionnaire to the competent tax office. The above provision shall apply with immediate effect in all cases where the relevant gainful activity was commenced as of 1 January 2023.

Should it become necessary due to the further circumstances of the individual case, the locally responsible tax offices may in such cases separately request the submission of a questionnaire for tax registration.



**Repayment of COVID-19 emergency aid: Deadline extended**

The emergency aid was granted in the first months of the pandemic as an equitable benefit for small businesses and freelancers who found themselves in an existential emergency due to the COVID-19 crisis and was intended to compensate for the liabilities arising from the business-related material and financial expenses in the three months following the application.

It was granted on the basis of a forecast made when the application was submitted. On the basis of the approval notice, the emergency aid recipient is obliged to check whether this forecast regarding the liquidity bottleneck expected when the application was submitted has actually occurred, or whether the emergency aid must be repaid - if necessary, also on a pro rata basis.

From 28 November 2022, letters were sent to the recipients of the emergency aid, both by post and by e-mail, as a reminder of the obligation to verify the emergency aid received.

This obligation had to be fulfilled by 30 June 2023.

**Deadline extended!**

By decision of the Bavarian State Government in the Council of Ministers meeting of 13 June 2023, the deadline for the current voluntary verification procedure was extended to **31 December 2023**.

In North Rhine-Westphalia, the Higher Administrative Court had already ruled that the current repayment procedures were illegal. For this reason, the deadline for repayment in North Rhine-Westphalia was postponed to **30 November 2023**.

## Legislation

### MOPeG creates company register for GbR on 1 January 2024

Up until the 1 January, the law for the modernization of the person company right (MOPeG) will have created a company register for legally capable societies of civil right (GbR) in accordance with § 705 exp. 2 BGB new version (n. F.). This affects GbRs that are intended to participate in legal transactions themselves. This is not the case with purely internal companies.

Although the MOPeG does not stipulate that legally capable GbRs must be entered in the register of companies, such entry is intended to be a prerequisite for the performance of legal transactions which in turn require entry in another register. This results in a de facto compulsory entry for some GbRs. The registered GbR has the legal form designation eGbR.

Independently of the BGB company register, it must be checked whether the company is obligated to register in the transparency register.

### Care Support and Relief Act comes into force in July

On 16 June 2023, the Bundesrat approved the Nursing Care Support and Relief Act (PUEG) passed by the Bundestag on 26 May 2023. The law was now promulgated in the Federal Law Gazette and then entered into force on 1 July 2023.

Among other things, the statutory long-term care insurance system will be reformed in two steps:

The contribution rate will be increased by 0.35% as of 1 July 2023. In future, the number of children must be taken into account when determining the contribution rate.

The childless supplement will be raised to 0.6 contribution rate points. At the same time, the burden on contributors from the second to the fifth child will be reduced - with a deduction of 0.25 contribution rate points for each child up to the age of 25.

On 1 January 2024, the care allowance and the benefits in kind for outpatient care will each be increased by 5%. On 1 January 2025 and 1 January 2028, the cash benefits and benefits in kind will then be automatically increased in line with price trends.

Entitlement to the so-called care support allowance will be extended. This refers to the wage replacement benefit paid when people are unable to work due to caring for a close relative. This support will be paid for up to ten working days per calendar year for each person in need of care.



	CI contribution for employees without children or parental status	CI contribution for employees with children or parental status	
valid from 1 July 2023	Total contribution: 4.0% Employer contribution: 1.7% Employee contribution: 1.7% CS surcharge: 0.6%	Total contribution: 3.4% Employer contribution: 1.7% Employee contribution: 1.7%	↓ -0.6% first child: no care insurance surcharge -0.25% deduction from the 2nd to the 5th child (max. 1.0%)
valid until 30 June 2023	Total contribution: 3.4% Employer contribution: 1.525% Employee contribution: 1.525% CS surcharge: 0.35%	Total contribution: 3.05% Employer contribution: 1.525% Employee contribution: 1.525%	



**Dates Taxes/Social Security**

**July/August 2023**

Tax type		Due date	
Wage tax,, church tax, solidarity surcharge		10 July 2023 <sup>1</sup>	10 August 2023 <sup>2</sup>
VAT		10 July 2023 <sup>3</sup>	10 August 2023 <sup>4</sup>
End of grace period of above tax types when paid by:	Transfer <sup>5</sup>	13 July 2023	14 August 2023
	Check <sup>6</sup>	10 July 2023	10 August 2023
Trade tax		not applicable	15 August 2023 <sup>8</sup>
Property tax		not applicable	15 August 2023 <sup>8</sup>
End of grace period of above tax types when paid by:	Transfer <sup>5</sup>	not applicable	18 August 2023
	Check <sup>6</sup>	not applicable	15 August 2023
Social insurance <sup>7</sup>		27 July 2023	29 August 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. to the responsible tax office at the same time as the distribution of profits 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 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, 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 25.07.2023/25.08.2023, in each case at 0:00). 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 In the states and regions where 15.08.2023 is a public holiday (Assumption Day), the tax is due on 16.08.2023.

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