Income tax

COVID-19 aid received is not subject reduced income taxation as extraordinary income

A sole proprietor ran a commercial enterprise comprising a restaurant and a hotel. In 2020, he was granted emergency aid of EUR 15,000, bridging aid I of EUR 6,806 and "November/December aid" of EUR 42,448 due to the pandemic-related restrictions. The defendant tax office subjected the COVID-19 aid received to the standard income tax. The sole entrepreneur argued, inter alia, that the COVID-19 subsidies should be taxed at a reduced rate. They were compensation for lost or foregone income or for the non-execution of an activity due to the pandemic-related closure of the business.

The Münster Fiscal Court dismissed the complaint, as in its opinion it was not relevant whether the subsidies constituted compensation for lost or foregone income or compensation for the abandonment or non-exercise of an activity. This was not extraordinary income. In the year in dispute, the plaintiff only recognized COVID-19 aid as profit-increasing, which also related to this calendar year. The COVID-19 aid was not intended to extend to other assessment periods, nor was it received in an assessment period other than the one for which it was paid, and in this assessment period it coincided with the plaintiff's other regular income from his business.

Note

The decision is valid. The appeal was not admitted, as the principles regarding the element of aggregation have been clarified by case law.

Two-thirds of pension benefits subject to income tax in 2022

In 2022, 22 million people in Germany received benefits of around EUR 363 billion from statutory, private or occupational pensions. As reported by the Federal Statistical Office, around two thirds (66.4 %) of pension benefits were taxable income. Since 2015, the average taxation rate has risen by 11 percentage points. The reason for the increase is the new regulation of the taxation of retirement income in the Retirement Income Act of 2005. The core element of the new regulations is the transition from upstream to downstream taxation of statutory pensions by 2040 Accordingly, the expenses for old-age provision are gradually exempted from tax in the savings phase and only the benefits in the payout phase are taxed. The proportion of pension income that is taxable depends on the year in which the pension begins: the later the pension begins, the higher the taxed proportion of pension income. In addition, the taxable portion also increases due to pension increases, as these are fully taxable.

For many pensioners, the taxable portion of their pensions is below the basic allowance after relevant deductions. Then many pensions remain tax-free if there is no other income. In the case of almost 84 % of taxed pension recipients. This also includes surviving spouses and children - have other income in addition to their pensions, such as pension payments, income from work or rental income. In the case of married couples with joint taxation, this can also be income of the partner, which is added together for taxation purposes.

Determination of depreciation on the basis of value appraisals with calculation of the remaining useful life of a rental property according to the Real Estate Value Ordinance

The Münster Fiscal Court has ruled that it is up to the taxpayer to demonstrate and, if necessary, prove a **shorter actual useful life for real estate** in individual cases. The assessment of the circumstances presented by the plaintiffs in this respect is then incumbent on the tax court as the instance of fact in the legal action.

Against this background, for example, the submission of an expert opinion on the building substance, in particular the determination of the condition of real estate with the help of the so-called ERAB method (method for determining the wear and tear of building materials), is not a prerequisite on the part of the taxpayer for the recognition of a shortened actual useful life. If the taxpayer or an expert commissioned by the taxpayer chooses a different verification method for understandable reasons, this can be the basis for the estimation of a shortened actual useful life required in individual cases, provided that conclusions can be drawn from the chosen method about the determinants to be determined. As only the highest possible probability of a shorter actual useful life can be demanded in the context of the estimate, a narrowing of the expert opinion methodology or a specification of a specific determination procedure would overstretch the requirements for the burden of proof.

The procedure of determining the real value of buildings can also be applied. Even if the applicable model for deriving the remaining economic useful life for residential buildings, taking into account modernizations, is not primarily aimed at determining the actual useful life, such a model can be suitable for forming a reliable conviction about the basis of valuation to be applied in the individual case. There is no justification for deviating from the (building law) principle of equivalence of valuation methods for tax law reasons.

Ship participation: Deductibility of the loss of silent participations when determining profits according to the tonnage method

It appeared questionable before the Federal Fiscal Court whether limited partners of a shipping company who are also involved as silent partners and who determine their profit according to tonnage can deduct the (partial) loss of their silent contribution as a special operating expense in the context of the liquidation of the company, or whether it is a component of the discontinuation profit compensated with the tonnage profit.

Employer's inducement in the case of free canteen meals for temporary workers

According to the Lower Saxony Fiscal Court (Niedersächsisches Finanzgericht), there is no employer's inducement if a temporary worker is provided with a canteen meal free of charge by the hirer as part of a communal catering scheme and the hirer does not settle the accounts with the hirer for the provision of meals.

The employer is liable for the wage tax which he has to withhold and pay from the wages for the account of the employee with each wage payment. Liability exists, among other things, if wages were treated as tax-exempt without the prerequisites for tax exemption actually being fulfilled. Here, the plaintiff was not obliged to withhold wage tax for the allowances for additional catering expenses paid to its employees for offshore assignments and to pay it to the defendant. The allowances for additional subsistence expenses paid by the plaintiff to its employees are tax-exempt. The allowances which employees outside the public service receive from their employer for the reimbursement of travel expenses, removal expenses or additional expenses in the case of double housekeeping are tax-exempt insofar as they do not exceed the expenses deductible as income-related expenses. Travel expenses also include additional subsistence expenses.

Expenses for "meals on wheels" are not extraordinary burdens

The Münster Fiscal Court commented on the treatment of expenses for "meals on wheels" as exceptional extraordinary burdens.

It may be true that the plaintiff and his wife, who had died in the meantime, were dependent on the deliveries of lunches in question due to their illness. In general, however, expenses are not extraordinary and unavoidable if they are not incurred directly for the purpose of healing, but occasionally as follow-up costs of an illness. The basic consideration of such indirect costs of an illness would lead to an unjustifiable tax consideration of costs of living, which would not be compatible with the sense and purpose of the income tax law. A strict standard must be applied when assessing whether living costs can be taken into account for tax purposes by way of exception.

For one thing, the use of meal delivery services is now widespread throughout the population. Against this background alone, these costs are also to be allocated to general living and are not deductible. On the other hand, the preparation of meals as a daily activity is covered by the lump sum for disabled persons.

For persons liable to inheritance tax

After the death of the testator, extensive renovation of the family home for own residential purposes?

The parties are in dispute about the granting of tax relief for the semi-detached house which the deceased had occupied himself until his death. The plaintiff is the sole heir of his father, who died in 2013. The estate included the semi-detached house, which was occupied by the father alone until his death. The plaintiff and his family have lived in the directly adjacent semi-detached house since 1981. After the death of the deceased, the plaintiff connected the semi-detached houses structurally and cadastre-wise to form one unit. After completion of the extensive refurbishment and renovation work, which was partly carried out by the plaintiff himself, he has been using the semi-detached houses connected in this way as one flat since August 2016.

According to the Münster Fiscal Court, the tax exemption pursuant to Section 13 (1) no. 4c of the Inheritance Tax Act can also include the acquisition of a dwelling located on a developed property if it is spatially adjacent to the dwelling already used by the acquirer and if, after the acquisition, both dwellings are combined to form a single dwelling used by the acquirer. With regard to the

limitation of living space, according to the wording of the standard, which is solely based on the size of the acquired family home, it is only important that the size of the acquired flat does not exceed 200 square metres. According to the Münster Fiscal Court, the tax exemption under Section 13 (1) no. 4c of the Inheritance Tax Act can also cover the acquisition of a flat located on a developed plot of land if it is spatially adjacent to the flat already used by the acquirer and both flats are combined into a single owner-occupied flat after the acquisition. With regard to the limitation of living space, according to the wording of the standard, which is solely based on the size of the acquired family home, it is only important that the size of the acquired flat does not exceed 200 square metres. The total living area of the flat created as a result of the connection is not decisive.

A flat is intended for owner-occupation for own residential purposes if the purchaser intends to use the flat himself for his own residential purposes and actually implements this intention. The acquirer must designate the dwelling "immediately," i.e. without culpable hesitation, for his own use for his own residential purposes. It is incumbent on the acquirer to promote the renovation work and the rectification of any defects in such a way that there are no delays which are to be regarded as unreasonable in accordance with the general view of the market. However, a disproportionate effort to speed up the process is not required. Rather, it is sufficient if the acquirer takes all reasonable measures The purchaser shall not be held responsible for a delay in moving in due to renovation work if he commissions the work without delay but the craftsmen commissioned cannot carry it out in time for reasons for which the purchaser is not responsible A further indication for the immediate designation for owner-occupation is the prompt vacating or clearing out of the acquired flat. The court was convinced that the plaintiff in the case in question had immediately designated the acquired semi-detached house for his own use for his own residential purposes.

For persons liable to trade tax

Trade tax addition of services within the scope of a sponsoring agreement

The plaintiff, which operated a wholesale business, was the main sponsor of a sports club. In the year in dispute 2015, it spent an amount and, in return, was allowed to use the logo of the sports club for advertising purposes on the basis of the sponsorship agreements for the 2014/2015 and 2015/2016 seasons. In addition, it was granted advertising on jerseys and other clothing as well as perimeter advertising. From the 2015/2016 season onwards, the plaintiff had a floor advertising space at its disposal. The design and production costs incurred for the advertising measures were borne by the plaintiff. The defendant tax office allocated the estimated expenses for perimeter advertising (including advertising on LED presentation screens and advertising spaces on the ground) and jersey advertising to the addition provision of section 8 no. 1 letter d GewStG (rent for movable assets) and expenses for visual material (transfer of the club logo for advertising purposes) to the addition provision of section 8 no. 1 letter f GewStG (temporary transfer of rights).

The Federal Fiscal Court denied the trade tax addition. The sponsoring contracts in dispute are contracts of their own kind ("sui generis") with inseparable performance obligations. The Federal Fiscal Court did not **recognize** any separable essential elements of a rental, lease or rights transfer agreement, but rather a "uniform and indivisible whole."

Wage tax

Regulation on non-taxable activities adjusted

The Federal Council had approved the Wage Tax Guidelines 2023 on 28 October 2022. fundamentally revised in the new version. Since 1 January 2023, amended and updated wage tax guidelines (LStR 2023) have been in force. The regulation on favours that are exempt from wage tax is subject to a significant restriction. R 19.6 Paragraph 1 sentence 2 LStR 2023 restricts this from 2023 to employees and their relatives living in the same household. This means that favours up to a value of EUR 60 are only tax-free if they are granted for the benefit of the employee himself or a relative living in the same household as the employee. For example, wedding gifts from the employer to a child who is not living in the employee's household are not tax-exempt.

Note

Attentions are gifts from the employer that correspond in their nature and value to gifts that are usually exchanged in social intercourse and do not lead to any significant enrichment of the employee. This includes occasional gifts in kind (e.g. flowers, luxury food, a book/recording etc.) up to a value of EUR 60. Cash benefits are always part of wages - even if their value is low.

Uniform employment relationship in the case of Employment in two companies flat-rate wage tax not possible

The prerequisites for the assumption of marginal employment are to be assessed exclusively according to

social insurance law standards. This is in line with the intention of the legislator, who expressly refrained from establishing an independent taxable wage limit for lump-sum payments. The tax lump sum regulation is thus linked to the social insurance law regulation, which, according to the legislator's idea, was intended to avoid discrepancies between the treatment of wages from a marginal employment relationship under contribution law and tax law.

According to the Berlin-Brandenburg Fiscal Court, it is not possible to work for the same employer in a marginal job that is not subject to compulsory insurance as well as in a marginal job that is not subject to insurance (due to lack of aggregation). Rather, the wage payments must be added together if they come from the same employer, even if the employment relationships are structured differently.

Miscellaneous

Emigration taxation

Many people are considering leaving the Federal Republic of Germany according to the statements of the chairperson of the German Council of Economic Experts. As a result of the amendments to the ATAD Implementation Act, taxpayers who are willing to emigrate have to observe since 1 January 2022, the abolition of the deferral regulation in the case of a move to an EU or EEA state was introduced as the most serious tightening. As a result, there is now a risk of taxation of "dry income," i.e. possibly excessive tax payments without an inflow of liquid assets.

Alternative solution: The exit taxation can be waived retrospectively if unlimited tax liability is re-established within a certain period of time (seven years).

The Münster Fiscal Court (Finanzgericht Münster) has been a spoilsport in this regard, as it ruled on 31 October 2019 that the sole return is not sufficient. In addition, it must be made credible that the intention to return to Germany already existed at the time of departure. Furthermore, the emigration taxation does not cease to apply if this (emigration) fails or is interrupted. The exit taxation only ceases to apply retrospectively if the termination of the unlimited tax liability is based on an absence that is only temporary and was intended from the outset.

A catastrophic decision for the affected taxpayers!

The turnaround/rescue in favour of the taxpayers came with a revision decision by the Federal Fiscal Court. The Federal Fiscal Court considers the characteristic of "only temporary absence" leading to the abolition of the emigration taxation - irrespective of an intention to return - to be fulfilled if the taxpayer becomes subject to unlimited tax liability again within the legally determined time frame of currently seven years after the departure.

Dates Taxes / Social Insurance — August/September 2023

Tax type		Due date	
Wage tax, church tax, solidarity surcharge		10 August 2023[1]	11 September 2023[1]
Income tax, church tax, solidarity surcharge		not applicable	11 September 2023
Corporation tax, solidarity surcharge		not applicable	11 September 2023
Value added tax		10 August 2023[2]	11 September 2023[3]
End of the grace period for the above tax types when paid by:	Transfer	14 August2023	14 September 2023
	Check [5]	10 August 2023	11 September 2023
Trade tax		15 August 2023[6]	not applicable
Property tax		15 August 2023[6]	not applicable
End of the grace period for the above tax types when paid by:	Transfer	18 August 2023	not applicable
	Check	15 August 2023	not applicable
Social security[7]		29 August 2023	27 September 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.

2 For the past month, for quarterly payers for the past 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 penultimate month, 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 for the value to be deposited in the IRS account on the due date.

6 If payment is made by check, it should be noted that payment is not considered to be made until three days after the check is received by the IRS. A direct debit authorization should be issued instead.

7 Social security contributions are uniformly due on the third last banking day of the current month. In order to avoid late payment penalties, 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 26 June 2023/ 25 July 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 performed by external agents, the payroll 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.

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