newsletter 01/24

Growth Opportunities Act

On 17 November 2023, the German Bundestag passed the Growth Opportunities Act. On 24 November 2023, the Bundesrat criticised the fact that its proposed amendments were only adopted in certain areas at best. It therefore convened the Mediation Committee, which must now deal with the content of the law. The Mediation Committee will not meet until 2024.

As part of the amended **Secondary Credit Market Promotion Act,** which was approved by the Federal Council on 15 December 2023, parts of the Growth Opportunities Act are now also being implemented, including the adjustments to the **MoPeG** that are important in practice, the cancellation of the **taxation of the December 2022 aid** and the change to the **lump-sum pension allowance for employees**.

* **Modernisation of partnership law (MoPeG)**

The Act on the Modernisation of Partnership Law (MoPeG) comes into force on 1 January 2024. The most important change: from then on, a **civil law partnership** (GbR) will be recognised as **having legal capacity.**

* **No taxation of the "December 2022 aid"**

The regulation on the taxation of **December emergency aid** (costs for natural gas) will be **cancelled** without replacement for **2023**.

* **Pension lump sum for employees**

In future, reductions in social care insurance contributions for children will be taken into account accordingly in the income tax deduction procedure. This is expected to generate 250 million in additional revenue per year.

Growth Opportunities Act - Planned changes 2024

Settlement of a small amount pension

The **settlement of a small-amount pension** should also be possible during **the payout phase** if the previous pension reaches or falls below the value of a small-amount pension due to the implementation of pension equalisation. This regulation is to apply from the day after the promulgation of the Growth Opportunities Act.

Gifts

Gift expenses to business partners may not exceed EUR 35 per year if they are to be recognised as **business expenses** for tax purposes. This amount is to be raised to **EUR 50** from 1 January 2024.

Increase in the exemption limit for private sales transactions

Profits from **private sales transactions** are to remain tax-free if the total profit realised in the calendar year is **less than EUR 600** (EUR 1,200 for jointly assessed taxpayers). The amount is to be increased to **EUR 1,000** and EUR 2,000 respectively from 2024.

Note

The amounts mentioned are **exemption limits**. If they are exceeded by even one cent, the entire amount is taxable.

Mandatory use of the e-bill

From 2025, it will be mandatory to issue an **electronic invoice** (**e-invoice**). This serves as preparation for the future obligation to report transactions in the B2B sector (business to business) to a standardised national electronic administrative system (reporting system). Only an invoice that is issued, transmitted and received in a structured electronic format and enables its electronic processing is considered an electronic invoice. It must comply with the requirements of Directive 2014/55/EU. Invoices that are transmitted in another electronic format or on paper are to be summarised under the new term "other invoice."

Small value invoices (§ 33 UStDV) are excluded from the regulation.

Note

The necessary changes in invoicing and accounts receivable and accounts payable should be made early (2024). A transitional regulation is planned for 2025 to the effect that paper invoices or other electronic formats are still possible with the consent of the recipient. However, the necessary conversion work and training should not be underestimated.

Special regulation for the private use of electric vehicles

Currently, according to the 1% rule, only a **quarter of the assessment basis (gross list price)** is to be recognised for the **private use of** a **company vehicle** that has no CO_2 emissions **(purely electric vehicles including fuel cell vehicles)** and only a **quarter of the acquisition costs** or comparable expenses according to the logbook rule. However, this currently only applies if the gross list price of the vehicle **does not exceed EUR 60,000**.

In order to stimulate demand and promote sustainable mobility despite the rise in prices, the maximum amount is to be increased by EUR 20,000 to **EUR 70,000** (draft: EUR 80,000) from 1 January 2024. This applies accordingly to the transfer of a company car to employees.

Exemption limit for income from letting and leasing

The **tax-free limit** of **EUR 1,000 for income from letting and leasing** is intended to reduce bureaucracy from 2024. If the expenses exceed the income that is directly economically related to them, the income can be treated as taxable on application in the income tax return.

VAT for small businesses

Small businesses (Section 19 (1) UStG) will **no** longer have to submit **an advance VAT return** from 2024. They will also be exempt from the obligation to submit VAT returns for the **calendar year.** However, the tax office can request declarations. The regulation is to apply for the first time to the 2023 tax period.

Entrepreneurs should be exempt from the **obligation** to submit the **advance return and pay the advance payment** if the tax for the previous calendar year did not exceed **EUR 2,000 for the previous calendar year**. Currently, the amount is still EUR 1,000.

Actual taxation

The option of calculating **tax on the basis of the consideration received** (actual taxation) instead of the agreed **consideration** is to be increased by EUR 200,000 from the current EUR 600,000 to **EUR 800,000** from 2024.

Increased thresholds for EÜR

Entrepreneurs who fall below the thresholds of Section 241a HGB (exemption from the obligation to keep accounts and draw up an inventory) may, but do not have to, draw up a balance sheet, but can calculate their profit in a simplified manner using an income and expenditure account (EÜR or 4/3 account). The current thresholds are still **EUR 600,000 (total) turnover** and **EUR 60,000 profit**. From the 2024 financial year, the threshold for turnover is to increase by EUR 200,000 to **EUR 800,000** and the threshold for **profit** by EUR 20,000 to **EUR 80,000**.

Agricultural and forestry sales

The **average tax rate** and the **input tax flat rate for farmers and foresters** are to fall from 9 % to **8.4 %**.

Note

In the case of planned investments with a considerable input tax deduction in the coming year, consideration should be given to waiving average rate taxation.

Further planned changes in 2024

New income limit for parental allowance

The federal government is planning a new income limit for parental allowance. The **Budget Financing Act** approved by the Bundestag on 15 December 2023 will lower the income limit up to which parental allowance can be claimed. In future, people who are jointly entitled to parental allowance will **no longer receive parental allowance if their income exceeds EUR 175,000.** For single parents, the income limit will be reduced to **EUR 150,000.** With a few exceptions, it will no longer be possible for both parents to receive basic parental allowance at the same time after the child's 12th month of life.

Other legislative changes 2024

Income tax rates

In order to prevent an increase in taxes due to inflation (cold progression), the basic income tax rates were adjusted at the end of 2022. This should also benefit the self-employed and entrepreneurs.

* The **income tax rate** for 2023 and 2024 has been adjusted and the effects of cold progression will be offset in the course of the income tax rate.
* The **basic allowance** (tax-free minimum subsistence level) will rise to EUR 10,908 in 2023 and by a further EUR 696 to **EUR 11,604** from 2024. Taxation will only begin from then on.
* The **child allowance** (including the allowance for care, education and training needs) rose to EUR 8,952 from 2023 and by a further EUR 360 to **EUR 9,312** from 2024.
* The so-called **top tax rate** is to be levied from an annual income of **EUR 66,761 in** 2024.
* The **wealth tax rate** (applies from just under EUR 278,000) of 45% was not adjusted.
* The **exemption limit for the solidarity surcharge for tax purposes** is **EUR 18,130** or **EUR 36,260** in the case of joint assessment.
*

New contribution assessment limits for 2024

On 1 January 2024, the contribution assessment thresholds for statutory health and pension insurance will increase as follows:

Calculated variable	West	East
Contribution assessment ceiling for general pension insurance	EUR 7,550 per month	EUR 7,450 per month
Contribution assessment ceiling in the miners' pension insurance scheme	EUR 9,300 per month	EUR 9,200 per month
Compulsory GKV insurance limit	EUR 69,300 per year (EUR 5,775 per month)	
Contribution assessment ceiling GKV	EUR 62,100 per year (EUR 5,175 per month)	
Contribution assessment ceiling for unemployment insurance	EUR 7,550 per month	EUR 7,450 per month
Provisional average remuneration for 2023 in pension insurance	EUR 45,358	
Social security reference value	EUR 3,535 per month	EUR 3,465 per month

Higher employee savings allowance

The **Future Financing Act** doubles the income limits for the employee savings allowance to **EUR 40,000** for single people and **EUR 80,000** for married couples.

The law also makes it easier for employees to participate in their employer's equity: the **tax-free allowance will** increase from the current EUR 1,440 to **EUR 2,000.** The law will largely come into force on the day after it is published in the Federal Law Gazette, with some provisions coming into force on 1 January 2024.

Extension of the period for the adjustment of tax prepayments

The **period for adjusting advance payments for income tax, corporation tax and trade tax can be** extended upon request:

* for the **2023 assessment period** by **three months** (income primarily from agriculture and forestry: also extended by three months) and
* for the **2024 assessment period** by **two months** (income primarily from agriculture and forestry: also extended by two months).

Commuter allowance

In 2024, the CO2 price is set to rise from EUR 30/ton to EUR 45/ton. The **distance allowance** has therefore been increased to relieve the burden on **long-distance commuters.**

* In 2021 by EUR 0.05 to EUR 0.35 for distances of 21 kilometres or more, and
* from **01.01.2022 to 31.12.2026** by a further EUR 0.03 to **EUR 0.38** per kilometre travelled.

For the **first 20 kilometres,** the “normal” flat rate of EUR 0.30 applies.

The respective temporary increases in the commuting allowance also apply accordingly to family journeys home in the context of dual household management.

Commuters whose taxable income is within the basic tax-free allowance can opt for a mobility allowance of 14% of this increased allowance instead of the increased commuting allowance of 38 cents from the 21st kilometre - which would not “pay off” for them, as a higher deduction of business expenses would not lead to any corresponding tax relief. 14% corresponds to the initial tax rate in the income tax rate.

Photovoltaic systems (PVA)

Since 1 January 2023, income and private use, i.e. withdrawals, from the operation of **PV systems** with an installed gross nominal output (according to the market master data register) of 30 kW (peak) on **single-family homes** and **buildings that are not used for residential purposes** (e.g. commercial properties) have been tax-exempt. The tax exemption also applies to **apartment blocks** and **mixed-use buildings with residential and commercial units with predominantly residential use** up to a gross nominal output of 15 kW (peak) per residential and commercial unit, max. 100 kW (peak) per taxable person or co-entrepreneur.

The exemption is independent of the use of the electricity generated. In return, losses from PVA may no longer be claimed from 2023.

The supply and installation of PVA and electricity storage systems have been subject to a **tax rate of 0%** since 1 January 2023. Prerequisite: The installation takes place on and near private homes, flats and public or other buildings that are used for activities that serve the common good. The requirements are deemed to be met if the installed gross nominal output of the PVA does not exceed or will not exceed 30 kW.

Note

The changes to income tax already apply to the 2022 tax year!

Due to the introduction of the **zero tax rate,** VAT will no longer be shown on invoices from 1 January 2023. As no VAT has been paid, entrepreneurs cannot claim input tax from the tax office. On the other hand, no one has to waive the small business regulation (Section 19 UStG).

Free or reduced-price meals for employees Employees from January 2024

Meals that are provided **free of charge** on working days or provided to employees **at a reduced price are to be valued** for income tax purposes at the pro rata **official non-cash benefit value. From 1 January 2024,** this also applies to meals that are provided to the employee by the employer or by a third party at the employer's instigation during a **work-related external activity** or as part of a **double household management if** the price of the meal does not exceed **EUR 60.** The **non-cash benefit values** from the 2024 calendar year are

- for **lunch or dinner EUR 4.13,**
- for a **breakfast EUR 2,17.**

In the case of **full board** (breakfast, lunch and dinner), the meals are to be recognised at a value of **EUR 10.43.**

The non-cash benefit value for **free or reduced-price accommodation** for employees is **EUR 278** (= EUR 9.27 per calendar day).

New regulations for mini- and midi-jobs

From 1 January 2024, the **statutory minimum wage will rise** to **EUR 12.41** gross per hour according to the proposals of the Minimum Wage Commission. The **monthly earnings limit** for **mini-jobs is** currently still EUR 520 per month. This mini-job limit is now dynamic. It is based on the minimum wage. If this rises, the mini-job limit also increases. With the increase in the minimum wage to EUR 12.41, the mini-job limit will rise by EUR 18 to **EUR 538** per month. The **annual earnings limit** will increase accordingly to **EUR 6,456.** The **maximum working hours** for mini-jobs will not change from 1 January 2024.

If the **mini-job limit** is increased from EUR 520 to EUR **538** in January 2024, the **lower earnings limit** for employment in the **transitional area will** also change. From 1 January 2024, a **midi-job will** therefore begin with average monthly earnings of **EUR 538.01.** The **upper midi-job limit will** not change and will **remain at a maximum of EUR 2,000.**

Building Energy Act

The Building Energy Act (GEG) comes into force in 2024. From January, heating systems with 65% renewable energy must be installed in most new buildings. Transitional periods and various technological options apply to all other buildings. There are also extensive subsidies.

Working time recording

According to a draft law from the Federal Ministry of Labour, companies must ensure that their employees' working hours are accurately recorded. It stipulates that the daily working hours of employees in Germany must be recorded electronically. Collective bargaining parties can agree exceptions and small businesses with fewer than ten employees are exempt. The law should be passed by the end of 2023. However, this has not yet happened.

Transparency register

From 1 January 2024, **all beneficial owners of companies** must be entered in the transparency register. register. Civil law partnerships (GbR) have not yet had to register. However, from 2024, GbRs that are entered in the new company register will also be subject to a notification obligation.

VAT in the catering industry

The **reduced tax rate** of 7% on restaurant meals in the **catering** sector until the end of the year will not be extended. The tax rate will return to 19% from 1 January 2024.

The reduced rates of the beer tax volume scale, which are also only temporary, will be **made permanent in order to** preserve the brewery structure, which is characterised by medium-sized companies. **Beer wort** will also be exempt from beer tax.

For income taxpayers

Payments of EUR 50,000 or EUR 1.3 million to authorised signatories of a GmbH described as "tips" are not tax-free

A company holding an interest in a GmbH paid the two authorised signatories of the GmbH amounts of EUR 50,000 and around EUR 1.3 million respectively and described the payments as "tips." The authorised signatories claimed in their income tax returns that the payments were tax-free as tips. The amounts had been granted to them voluntarily by a third party in connection with the sale of shareholdings and without a legal claim in addition to the salary paid by the GmbH as the employer. The Cologne Tax Court shared the opinion of the tax office, which treated the amounts as taxable wages. The payments are not tax-free tips due to their amount alone, but also in view of the overall circumstances. Even though the legislator had abolished the tax-free limit of EUR 1,224 in 2002, which was still included at the time, it did not intend to impose any further limits on the amount of tips. The payments totalling EUR 50,000 or around EUR 1.3 million clearly exceeded the scope of the general understanding of the term "tip."

Covid-19 bridging aid for members of the liberal professions as operating income

The Covid-19 bridging assistance paid to members of the liberal professions (in this case: "NRW Bridging Assistance Plus") constitutes business income, even if it was paid as a lump sum for living expenses. This was decided by the Düsseldorf Tax Court.

The funds were not granted because the plaintiff was in need of assistance. The plaintiff himself did not claim a need for assistance for the year in dispute and, in the opinion of the court, is not in need of assistance within the meaning of the Income Tax Act.

Intention to generate income may not be applicable if the duration of a planned refurbishment is unforseeable

If the taxpayer is only hesitant in preparing the property without there being reasons for this that can be recognised for tax purposes, it may be justified, taking into account the passage of time, to conclude that there is no intention to let the property or to regard doubts about the intention to let the property as definitive. In any case, this is not objectionable if the alleged intended letting is not realised over a period of more than ten years. This was decided by the Düsseldorf tax court.

In the case in dispute, the plaintiff did not intend to realise income from the property due to the long vacancy (period of 16 years) and the unmanageable renovation of the property in the years in dispute.

Procedural law

Tax office may analyse account statements for tax audit

The German Fiscal Code (AO) allows personal data to be analysed. This means that the tax office may process personal data for all measures in tax procedural law. The Federal Finance Court ruled that the authorisation standard of the Fiscal Code complies with the GDPR and fundamental rights.

In the case in dispute, a taxpayer who wanted to prevent the tax office from processing his bank statements (from his business account) for an external audit had filed a lawsuit. He had initially not responded to the order to hand them over. However, the tax office ultimately received the documents from the plaintiff's bank. The taxpayer was of the opinion that the tax office had no right to continue storing or analysing his personal data.

The Federal Fiscal Court took a different view. The GDPR does restrict the processing of personal data. However, based on Section 29b AO, the tax office may process this data for all measures relating to tax procedural law. The Federal Fiscal Court emphasised the term "all" separately in the text. The authorisation standard from tax law is compliant with the GDPR and fundamental rights.

Actions before the tax courts against objection decisions

If a taxpayer disagrees with a decision made by the tax office regarding their objection, they can appeal to one of the tax courts in the respective federal state in which the tax office is located. However, the courts can generally only be appealed against the decisions of the tax office if an appeal to the tax office has previously been unsuccessful. There are two exceptions to this: If the tax office agrees to the direct appeal or if the tax office has not decided on the appeal within a reasonable period of time (generally six months). The information on legal remedies in the objection decision also indicates the competent tax court.

As with an objection, the deadline for filing an action is one month after notification of the objection decision. In principle, you do not need a lawyer or other representative of the tax advisory professions to bring an action; however, due to the formalities to be observed in this procedure and the difficult area of law, representation by an expert is strongly recommended.

The tax court does not have jurisdiction for all types of tax. For example, not for municipal taxes such as dog tax, amusement tax, second home tax and, in some areas, not for trade tax and property tax. The administrative courts are the right authority for these cases. Tax offences, such as tax evasion, are also not decided by the tax court, but by a local or regional court or higher regional court.

Once the statement of claim has been submitted and the tax office has generally responded, as well as any further written statements on the legal case, a public hearing is held before the court. This may be omitted if both parties agree. The court decides in the composition of three professional judges and two honorary lay judges (also known as lay assessors). All judges have the same right to vote on the decision. At the request of the plaintiff, the court may exclude the public in order to protect tax confidentiality. The court can hear witnesses, request evidence and documents, appoint experts if necessary and also summon other persons to the proceedings. The latter is done if, for example, a partner in a partnership files a lawsuit but other partners would also be affected by a decision.

Miscellaneous

Saxon regulations on property tax lawful legal - doubts about legality in Rhineland-Palatinate

The provisions of the new Property Tax Act and the special regulations in Saxony regarding the determination of property tax values as of 1 January 2022 and the determination of the property tax assessment amount as of 1 January 2025 are lawful and do not raise any constitutional concerns. The Rhineland-Palatinate Fiscal Court ruled to the contrary and authorised an appeal to the Federal Fiscal Court.

Note

On 23 November 2023, the Rhineland-Palatinate Fiscal Court ruled in two proceedings that the enforcement of the challenged property tax assessment notices must be suspended due to serious doubts about their legality. It also authorised an appeal to the Federal Fiscal Court.

An appeal should be lodged against the property tax assessment notices for constitutional reasons.

Dates Taxes/Social Security

January/February 2024

Tax type		Due date	
Income tax, church tax, solidarity surcharge		10.01.2024[1]	12.02.2024[2]
Value added tax		10.01.2024[3]	12.02.2024[4]
Value added tax special advance payment		not applicable	12.02.2024
End of the grace period for the above types of tax in the event of payment by:	Bank transfer[5]	15.01.2024	15.02.2024
	Cheque[6]	10.01.2024	10.02.2024
Trade tax		not applicable	15.02.2024
Property tax		not applicable	15.02.2024
End of the grace period for the above types of tax in the event of payment by:	Bank transfer[5]	not applicable	19.02.2024
	Cheque[6]	not applicable	15.02.2024
Social security[7]		29.01.2024	27.02.2024
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge payable on it must be paid to the relevant tax office at the same time as the profit distribution to the shareholder.	

1 For the past month, for quarterly payers for the past calendar quarter, for annual payers for the past calendar year.
2 For the past month.
3 For the past month, for the penultimate month in the case of a permanent extension, and for the past calendar quarter in the case of quarterly payers without a permanent extension.
4 For the past month, for the penultimate month in the case of a permanent extension, and for the past calendar quarter in the case of quarterly payers with a permanent extension.
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 is the deadline. No late payment surcharges will be levied if payment is up to three days late. A transfer must be made in good time so that the value date on the tax office's account is on the due date.
6 When paying by cheque, please note that payment is only deemed to have been made three days after receipt of the cheque by the tax office. A direct debit authorisation should be issued instead.
7 Social security contributions are due on the third-last bank working day of the current month. To avoid late payment penalties, it is advisable to use the direct debit procedure. All health insurance funds have a standardised deadline for submitting contribution statements. These must be received by the respective collection agency no later than two working days before the due date (i.e. on 25/01/2024/23/02/2024, 0.00 a.m. in each case). Regional peculiarities regarding due dates may need to be taken into account. If payroll accounting is carried out by external contractors, the wage and salary data should be sent to the contractor around ten days before the due date. This applies in particular if the due date falls on a Monday or on a day after public holidays.

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