

(Tax) changes 2022/2023

Homeowners must submit their **property tax returns** by the end of January 2023. The original deadline was the end of October.

For so-called '**midi-jobs**' (earnings so far: EUR 520.01 to EUR 1,600.00), the earnings limit will increase in 2023. In the future, employees will be allowed to earn up to EUR 2,000 per month. Up to this limit, employees will have to pay lower social security contributions.

From 2023 onwards, employers will be obliged to participate in the reporting procedure for the **electronic certificate of incapacity for work (eAU)**. Sick employees with statutory health insurance will no longer have to submit a paper certificate of incapacity for work to their employer but will in practice receive a printout for their records.

From January, landlords will in many cases have to contribute to their tenants' **climate levy** for heating. The so-called CO2 price will be divided between tenant and landlord according to a 10-point tier model. The less climate-friendly the house, the more the landlord will have to pay. Until now, tenants have had to pay the levy, which is intended to help reduce climate-damaging carbon dioxide emissions.

The **basic tax-free allowance** - i.e., the tax-free subsistence minimum - increases by EUR 561 to EUR 10,908 (Inflation Compensation Act). The **top tax rate** of 42%, which currently applies to taxable incomes of EUR 58,597 and above, will be due from EUR 62,810 in 2023.

Child benefits will rise to a uniform EUR 250 per month and child as of January 1, 2023. The **child allowance** for each parent is to be increased retroactively in **2022** from EUR 2,730 to EUR 2,810 (= + EUR 80), in **2023** from EUR 2,810 to EUR 3,012 (= + EUR 202) and in **2024** from EUR 3,012 to EUR 3,192 (+ EUR 180). The **maximum maintenance amount** for 2022 was increased retroactively from EUR 9,984 to EUR 10,347. As the maximum maintenance amount is equal to the basic tax-free amount, it will increase accordingly in 2023 and 2024.

Health insurance contributions - currently averaging 15.9% - are expected to rise by 0.3 points to an average of 16.2% in the new year 2023.

In the statutory pension insurance system, the **supplementary income options** for early retirement pensions and pensions for reduced earning capacity will be fundamentally reformed as of 1 January 2023. Early retirees will then be able to earn as much additional income as they wish without having their pensions reduced. In the

area of reduced earning capacity pensions, the possibilities for additional earnings will be significantly expanded.

In the **Artists' Social Insurance Act**, newcomers to the profession will have the option of being exempted from compulsory insurance in the statutory health and long-term care insurance system when they take up self-employed artistic or journalistic work for the first time. In addition, artists will in future be able to earn additional income on a permanent basis from non-artistic activities.

Annual Tax Act 2022

The **Annual Tax Act 2022** responds to current requirements, implements EU requirements and the results of case law, regulates technical issues, and corrects editorial errors. With more than 100 individual regulations across tax law, it amends many laws.

Adjustment of lump sums and allowances

The regulations for a **home office** are simplified. Expenses for this are deductible - insofar as the center of activity lies in the home office - even if another workplace is available for the business or professional activity. To simplify matters, a flat-rate deduction of EUR 1,260 per year is also to be allowed in these cases. This is intended to ensure that taxpayers are not placed in a worse position than those who only deduct the home office flat rate. By continuing and improving the **home-office allowance**, taxpayers will be able to permanently claim an amount of six euros for each calendar day on which they work exclusively at home - from 2023, a maximum of EUR 1,260 instead of the previous EUR 600. This means that 210 home-office days will benefit in the future. The rule also applies if no home office is available. The **employee lump sum** for income-related expenses will increase from EUR 1,200 to EUR 1,230 as of 1 January 2023. The **relief amount for single parents** will be increased from EUR 4,008 to EUR 4,260. The **saver's allowance** for interest and capital income will be increased from EUR 801 to EUR 1,000. The **education allowance** will increase from EUR 924 to EUR 1,200.

Depreciation in residential construction

For completions from 01.01.2023, the straight-line depreciation for residential buildings will be increased from 2% to 3%. Better depreciation options have also been decided for **rental housing**: The special depreciation will be continued but will be linked to climate-friendly construction.

According to the law, 5% of the construction costs can be deducted from taxes for four years, if the construction costs do not exceed EUR 4,800 per square meter and the very high standard of the energy-efficient house 40 is met.

Photovoltaic Systems tax-free

Income from small solar power systems will be tax-free retroactively from the beginning of 2022. As of 2023, the purchase and installation of photovoltaic systems with an output of up to 30 kilowatts and electricity storage units will no longer be subject to the 19% sales tax (and thus also the input tax deduction!).

Taxation of energy relief

As a result of the high energy prices, gas and heat customers receive emergency government aid. In December 2022, the federal government will take over the installment payments. As a contribution to social balance, this benefit is to be taxed. It will be taxed in the year of final settlement - i.e., in the tax year 2023 following the year of consumption. Only those paying the solidarity surcharge will be taxed; an exemption limit ensures this. This exemption limit is followed by an "introductory phase" of taxation, during which it accrues. This avoids a so-called "fallback effect", i.e., immediate full taxation if the exemption limit is only slightly exceeded.

Retirement provision

The full deduction of special expenses for pension expenses is to be implemented from 2023. Previously, 96% was planned for 2023 and 98% for 2024. The change is intended to avoid double taxation.

Real estate inheritance to become more expensive

The transfer of real estate assets - for example through gifts and inheritances - will become more expensive: Changes to the Valuation Act may mean that the taxable value of a property will have to be set higher from the beginning of 2023. The goal is a valuation that is closer to the market value. This could result in higher inheritance, gift and real estate transfer taxes.

Tax ID: Direct payment path

For the first time, the Annual Tax Act creates a direct disbursement path for the possibility of government assistance using the tax identification number. This is intended to facilitate the disbursement of certain future federal benefits, such as emergency aid or climate change funds.

Excess profits tax for entrepreneurs

Companies in the oil, gas, coal and refinery industries are to pay an energy crisis contribution limited to the fiscal years 2022 and 2023. This implements an EU requirement. Profits that exceed the average profit by 20% compared with previous years will be taxed at 33%. The revenue, estimated at between one and three billion euros, is to help finance the electricity price brake for consumers.

Energy price brake

Price cap for electricity, gas and heat

Following on from the Bundestag, the Bundesrat has now also given its final green light for legislation to relieve households and companies of the sharp rise in energy costs.

For citizens and small and medium-sized enterprises, the **gas price brake** will apply from March 2023 and will also cover the months of January and February retroactively. This means that a quota of 80% of their natural gas consumption will be capped at 12 cents per kWh, i.e., there will be a discount compared to the market price. For heat, the capped price is 9.5 cents per kWh. For the remaining consumption, the normal market price must be paid. In March, these consumers will also receive a one-time retroactive relief amount for the months of January and February. To bridge the period until the gas price brake is introduced, the federal government will also take over the December discount for private households and small and medium-sized enterprises.

The **electricity price brake** caps the electricity price for households and small businesses with an annual consumption of up to 30,000 kWh at 40 cents per kWh. This applies to a quota amounting to 80% of historical consumption, i.e., as a rule the previous year's consumption. For medium-sized and large companies with annual consumption of more than 30,000 kWh, the price cap is 13 cents per kWh - plus network charges, taxes, levies, and surcharges. This applies to a contingent of 70% of their historical consumption. Above the respective discounted quota, the usual electricity prices apply. Saving energy therefore continues to pay off.

For households that heat with **pellets, heating oil or liquid gas**, a hardship scheme will be set up. The federal government is making a maximum of EUR 1.8 billion available for this purpose in the Economic Stabilization Fund. The federal states can use the funds for grants to cover heating costs. The federal government and the states will conclude an administrative agreement to this end.

Income tax

Point in time when a negative capital account ceases to exist

The Münster Tax Court has commented on the point in time at which a negative capital account ceases to exist.

The capital account ceases to exist - with the consequence of the occurrence of the consequences attached to it - at the time at which it is determined that a settlement of the negative capital account with future profit shares is no longer possible, at the latest at the time of the sale or termination of the business. Whether and to what extent a settlement of the negative capital account is no longer possible must be determined with a probability bordering on certainty, e.g., on the basis of a cessation of operations in the absence of hidden reserves in the company's assets or rejection of the opening of insolvency proceedings for lack of assets. The circumstances on the balance sheet date are decisive, taking into account circumstances up to the time of preparation of the balance sheet. The tax office bears the burden of determination.

Double budgeting: No consideration of a parking space rented separately from the apartment

The expenses for a parking space rented separately from the apartment do not belong to the expenses for the use of the "accommodation" - the amount of which is only deductible to a limited extent with a maximum of EUR 1,000 per month. This was the decision of the Mecklenburg-Western Pomerania Tax Court.

The situation would be different if the apartment and parking space always formed an inseparable unit, or possibly also if in individual cases the apartment and parking space could only be rented together and were rented together. The former does not generally apply, since in many cases (especially in large cities) an apartment can be rented or purchased without a parking space; and the latter does not apply in the case in question.

Wage tax

Non-cash remuneration values 2023

If meals are provided to employees free of charge or at a reduced price on a working day, this benefit from the employer must be evaluated for wage tax purposes. The "Thirteenth Ordinance on the Amendment of the Social Security Remuneration Ordinance" sets the non-monetary remuneration values for 2023. The consumer price index for the period from June 2021 to June 2022

was used to determine the values, which therefore only partially reflect the high increase in inflation.

The values at a glance:

The monthly **non-monetary remuneration value for meals provided at a reduced price or free of charge** is EUR 288 as of 1 January 2023, meaning that EUR 2.00 per calendar day is to be applied for breakfast and EUR 3.80 per calendar day for lunch or dinner. The total value for meals per calendar day is therefore EUR 9.60.

As of 1 January 2023, **the non-monetary remuneration value for free or reduced-price accommodation** for employees is EUR 265. This results in a calendar-day value as of 1 January 2023 of EUR 8.83. The value of the accommodation can also be assessed at the local rental price if the table value would be unreasonable in the individual case.

The 2023 non-cash remuneration values are already applicable from the first payroll month of 2023, as the amended SvEV comes into force on 1 January 2023. The above-mentioned non-monetary remuneration values are subject to both **tax and social security contributions**.

VAT

Entrepreneurial status in the case of scheduled buying and selling within the scope of an Internet trade

The Federal Fiscal Court ruled that a seller who sells goods at several hundred auctions per year via "eBay" is engaged in a sustainable and thus, for VAT purposes, an entrepreneurial taxable activity. The record-keeping obligations are not part of the material requirements for differential marginal taxation. Therefore, a violation of the record-keeping obligations does not generally lead to a refusal of the margin taxation.

In the case in question, the plaintiff acquired items at household liquidations and sold them over a period of five years on the Internet auction platform "eBay" in approx. 3,000 auctions, generating income of around EUR 380,000.

Reduced VAT rate in gastronomy and 9.5% input tax flat rate for farmers as of 1 January 2023

The Bundesrat decided on 7 October 2022 that until the end of 2023 the reduced VAT rate of 7 % on restaurant and catering services (with the exception of the sale of beverages) until the end of 2023. In addition, the average rate and the flat-rate input tax for farmers were adjusted to 9% from 1 January 2023.

Trade tax

Effects of double taxation of income with trade tax and income tax

Income from a business is subject to both trade tax and income tax or, in the case of corporations, corporate income tax. To avoid overburdening individuals with both taxes, the trade tax is credited against the income tax of individuals in a standardized manner, while there is no credit for corporations.

The credit is calculated as a lump sum of the credit amount, which is 4 times the assessed trade tax. In effect, the trade tax is credited up to an assessment rate of 400%. In the case of higher assessment rates, as is the case in all municipalities with more than 80,000 inhabitants, the credit is therefore not fully effective. If the assessment rate is lower, a limitation to the amount of trade tax actually paid counteracts a fictitious credit. However, there is also a maximum amount of reduction for income tax. Since many individuals have more than one type of income contributing to their taxable income, only the proportion of income tax attributable to business income is reduced. The following example shows the effect of the limitations:

- * Income from business operations = EUR 120,000
- * Other income = EUR 80,000
- * Deduction for special expenses etc. = EUR 10,000
- * Income tax on EUR 190,000 taxable income = EUR 70,663
- * Of which pro rata on commercial income = EUR 42,398
- * Trade tax for natural persons at a collection rate of 520 % = EUR 17,381
- * Of which creditable: $\text{EUR } 3.342 \times 4 = \text{EUR } 13,368$
- * Remaining income tax = EUR 57,295

A considerable part of the income will therefore continue to be subject to trade tax and income tax. In the case of partnerships, the trade tax assessment amount is divided among the partners in proportion to the proportionate distribution of profits under commercial law. As a result, advance profit shares, remuneration for activities, interest on shareholder loans and rents for special business assets are not considered in the apportionment. As a result, shareholders who receive these remunerations are not relieved from trade tax. This can only be done by way of a civil law agreement. Further trade tax credit potential is lost if corporations are involved in the partnership, because these companies do not receive any credit.

Procedural law

Prerequisites for the transition to external auditing in the case of a cash inspection

If the requested documents are not handed over to the auditor during a cash inspection, this is a reason to order the transition to an external audit. This was the decision of the Hamburg Fiscal Court. The auditor does not forfeit the possibility of a transition if he does not order it immediately, but first gives the taxpayer the chance to subsequently submit the documents.



Dates taxes/social security

January/February 2023

Tax type		Maturity	
Wage tax, church tax, solidarity surcharge		10.01.2023 ¹	10.02.2023 ²
Value added tax		10.01.2023 ³	10.02.2023 ⁴
Value added tax special advance payment		Not applicable	10.02.2023
End of grace period of above tax types when paid by:	Bank transfer ⁵	13.01.2023	13.02.2023
	Check ⁶	10.01.2023	10.02.2023
Trade tax		Not applicable	15.02.2023
Property tax		Not applicable	15.02.2023
End of grace period of above tax types when paid by:	Bank transfer ⁵	Not applicable	20.02.2023
	Check ⁶	Not applicable	15.02.2023
Social insurance ⁷		27.01.2023	24.02.2023
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, 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 permanent extension, for the past calendar quarter in the case of quarterly payers without 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 is 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. The direct debit procedure is recommended to avoid late payment penalties. 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 25.01.2023/22.02.2023, in each case at midnight). Regional peculiarities regarding the due dates may have to be considered. If payroll accounting is performed by external agents, the wage and salary 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.

Your contact persons:

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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