

Legislation

Platform Tax Transparency Act

On 1 January 2023, the Platform Tax Transparency Act has come into force. The law requires private sales to be reported to the tax office unless certain conditions are met.

All online marketplaces such as Amazon, eBay and others that offer digital services, as well as eBay Classifieds, Facebook Marketplace, and Airbnb, are required to report private sales.

Private users who make more than 30 sales per calendar year on a platform or earn more than EUR 2,000 with their sales on online marketplaces must automatically be reported to the tax office.

All commercial users, i.e. retailers who sell goods on such platforms, must be reported to the Federal Central Tax Office by the platform operators with all their sales.

By 31 January 2024, the platform operators concerned must provide the Federal Central Tax Office with data on all sales in the calendar year, the names of the sellers, the tax identification number, the postal address, the bank details, and all relevant transactions.

Note

The reporting obligation applies per platform.

Everyone who trades via such platforms must be aware that the reporting obligations allow for an even more precise comparison with the declared turnover figures by the tax authorities.

The Platform Tax Transparency Act does not only affect sales of goods, but also the sale of digital services (e.g. overnight stays via Airbnb, sale of admission tickets via online platforms).

An exception to the obligation to register is the sale of objects by private persons that are not objects of daily use (e.g. jewellery). Items of daily use (e.g. electrical appliances, cars, etc.) do not fall under this exception.

The Platform Tax Transparency Act is designed to be transnational and applies between all EU member states. It is implemented through the electronic exchange of data between tax authorities.

Note

You belong to this group of sellers if you make more than 30 sales on an online marketplace. Then you should be able to credibly prove to the tax office why the sales have taken place to avoid possible tax arrears.

Income tax

Energy price lump-sum for students is not subject to taxation

Students and trainees receive - upon application - a one-time energy price lump-sum in the amount of EUR 200. The prerequisite for payment of the

lump sum is that on 1 December 2022, the entitled persons are enrolled at a higher education institution or at a vocational school in Germany.

After the Bundesrat greenlighted the bill on 16 December 2022, the law came into force on 21 December 2022 (*Studierenden-Energiepreispauschalengesetz - EPPSG*).

This energy price lump-sum will not be subject to taxation and will not be considered for income-related benefits and social security contributions.

The following are entitled to the one-off energy price lump-sum in the amount of EUR 200:

- * Students
- * Pupils in vocational school classes whose attendance requires vocational training leading to a vocational qualification,
- * Pupils in vocational school classes and technical school classes which provide a vocational qualification in a training course lasting at least two years, as well as
- * Pupils in comparable courses of education

Since the data required for direct payment (e.g. bank details) are not available, the energy price lump-sum must be applied for by the students or pupils.

The Federal Government and the federal states want to jointly develop a digital application platform that can be used to apply for payment.



Further relief for students

The Federal Government has initiated a **BAföG reform** that will come into force on 1 August 2022. This means that students and pupils can already benefit from considerable improvements in benefits this winter semester. Furthermore, due to rising energy prices, the Federal Government has decided on a **heating cost subsidy**. With this first heating cost subsidy, BAföG-subsidised students who live outside their parents' home, as well as *Aufstiegs-BAföG*-subsidiised students who receive a maintenance allowance, will receive a one-time lump sum of EUR 230. This is currently paid out. Payment of the **second heating cost subsidy** of EUR 345, which has also been approved by the Federal Council, is scheduled for the end of January, beginning of February 2023. In September, employed persons liable to income tax received a **one-off energy price lump-sum of EUR 300** which was paid out together with their wages. Those who work alongside their studies (e.g. in a mini-job or as a student trainee) and live in Germany also received this lump-sum.

Home office and study as of 1 January 2023

Since 1 January 2023, working from home has become more attractive for tax purposes. The revised Annual Tax Act 2022, which was passed by the Federal Council on 16 December 2022, once again provides for some improvements to working from home and the home office lump-sum.

As a result of the Annual Tax Act 2022, various new regulations regarding the home office and the home office flat rate are to be observed as of 1 January 2023, which may have an influence on the deduction of income-related expenses to be claimed in the 2023 tax return or on the amount of the income tax allowance to be claimed for 2023.

Home office lump-sum

The legislator has increased the home office lump-sum to six euros per day from 1 January 2023 onwards and introduced it permanently. Since the start of 2023, the lump-sum can be claimed for up to 210 days per year instead of the previous 120 days. Employees can then deduct a maximum of EUR 1,260 per year instead of the previous EUR 600. This maximum amount can be used by employees who work from home for 210 days a year - regardless of whether it is for one or various professional activities. The home office lump-sum also applies if there is no separate home office or study available.

However: The tax office does not grant the home office lump-sum in addition, but offsets this lump-sum against the employee lump-sum. The employee lump-sum of EUR 1,000 will increase to EUR 1,230 as of 1 January 2023.

Home office room as of 1 January 2023

If the entire professional activity of a person is centered around a home office, the expenses can be deducted in full as business expenses or income-related expenses. This also applies if another workplace is available for the business or professional activity. To make things easier, taxpayers can also claim a lump sum of EUR 1,260 instead of the actual expenses (so-called annual lump sum). This means that employees no longer have to prove the actual costs or collect receipts.

If the conditions for deducting expenses for a home office are not met for the entire year, the amount of EUR 1,260 is reduced by one twelfth (=EUR 105/month).

Home office in case of health-related restrictions

In the case in question, a married couple with joint tax assessment brought an action before the Berlin-Brandenburg Fiscal Court. The wife argued that the workplace had not been "available" to her on all days because she could work from her home office at least one working day a week due to her health restrictions. Otherwise, her state of health would worsen. In the view of the defendant tax office, the plaintiff's workplace was objectively available to her. She did not use it every working day solely for subjective reasons.



The Berlin-Brandenburg Fiscal Court did not agree. It ruled that the decisive factor was whether the taxpayer could reasonably be expected to use the workplace provided by the employer on each working day. However, since the plaintiff was required by her doctor to work from home on individual days in order to maintain her ability to work in the long term, she could not be denied the deduction of income-related expenses. However, the deduction was limited to EUR 1,250, as the home office did not constitute the centre of the plaintiff's entire business and professional activities.

Note

According to the Income Tax Act, a taxpayer cannot deduct expenses for a home office as income-related expenses. An exception applies if there is not another workplace available for the business or professional activity.

Additional profit from the correction of an unlawful deduction of operating expenses to be attributed in the determination of profit

An additional profit resulting from the correction of non-business-related operating expenses and included in the current total business profit is to be allocated in deviation from the general profit distribution key when determining profits by means of the income statement if the underlying expenses exclusively benefited a co-entrepreneur. This was the decision of the Federal Fiscal Court.

For the attribution of such an additional profit to this co-entrepreneur, it was irrelevant whether the co-entrepreneurship was entitled to a claim for compensation due to the unlawful expenditure of the company funds, which was irrecoverable or worthless in the profit determination period of the expenditure.

Cost capping for leasing vehicles and EÜR

According to the Federal Fiscal Court, a special leasing payment for a company car made at the time the contract was concluded is to be allocated to the individual years of the leasing period on an accrual basis for the purposes of cost recovery even if the taxpayer determines its profit by means of a revenue surplus account.

Note

With this decision, the Federal Fiscal Court has followed the line taken by the tax authorities and has rejected an arrangement that used to be popular with income statement accountants.

Formation of a provision for obligations from a loyalty card program

The Federal Fiscal Court (Bundesfinanzhof) had to decide whether the obligation of a retailer, based on a bonus point system, to grant customers discounts on future purchases, which are calculated according to a percentage of the sales made in the past, is already economically caused with the issuance of the corresponding vouchers or only by future purchases of the respective customer and whether the prohibition of capitalization of § 5 para. 2a EStG applies in this respect.

If a trading company undertakes vis-à-vis the customers participating in its customer card program to grant them bonus points or vouchers within the scope of a purchase of goods, depending on the amount of the purchase price of the goods, which the cardholder can use as a means of payment for a further purchase of goods within the validity period, a provision for contingent liabilities is to be created for the bonus points or vouchers not yet redeemed on the balance sheet date if it is probable that the liability will arise and that the company will be called upon.

A corresponding offsetting obligation does not constitute an obligation (§ 5 para. 2a EStG).

Inheritance tax

Inheritance tax suspension in the event of unclear circumstances

To start the limitation period for inheritance tax, the heir must have gained knowledge of his uncontested inheritance acquisition with such reliability and certainty that he is able and can therefore also be expected to fulfil his duty of notification (§ 30 ErbStG). This was the decision of the Saxon Fiscal Court.

In the case in dispute, the start of the assessment period was not triggered for other reasons. The notification of the inheritance by other persons than the heir, for example a bank, did not start the assessment period.

In the case of completely unclear circumstances, knowledge could, in individual cases, only be available when the certificate of inheritance was issued. If a guardian of the estate is appointed, it is at the discretion of the tax office to issue the inheritance tax notice to him.

Real estate transfer tax

Assessment basis for real estate transfer tax in the case of acquisition of real estate from a municipality subject to development obligation

When acquiring an undeveloped plot of land from a municipality that is obliged to develop it, the real estate transfer tax is usually only payable on the price of the undeveloped plot of land. This also applies if the purchaser contractually undertakes to pay a certain amount to the municipality for future development. This was decided by the Federal Fiscal Court.

In the case in question, the plaintiff acquired a co-ownership share in an undeveloped and undeveloped plot of land from the municipality, which was obliged to pay for the development. In the purchase contract, the fees for the land and for the future development were each listed separately. The defendant tax office assessed real estate

transfer tax and used the total price including the development costs as the basis of assessment.

The Federal Fiscal Court ruled that such a contract must normally be divided into a private-law contract on the acquisition of the undeveloped property and a public-law contract on the redemption of the development contribution. Such a redemption agreement was only permissible under public law as an agreement under private law it would be null and void. However, the contract was to be interpreted in such a way that it remained effective as far as possible. In the opinion of the judges, the sale of a plot of land that is still to be developed by the municipality that is obliged to develop it should not be confused with the sale by a private developer.

Procedural law

Responsibility of a “nominal” managing director for the fulfilment of the GmbH’s tax obligations

The responsibility of a managing director for the fulfilment of the GmbH's tax obligations results solely from the nominal appointment as managing director. This is also the case if the managing director only acts as a front man, according to the Münster Fiscal Court.

Pursuant to § 69 sentence 1 AO, the persons referred to in §§ 34 and 35 AO are liable insofar as claims arising from the tax debt relationship are not determined or not fulfilled in time because of intentional or grossly negligent violation of the duties imposed on them. Potential liable debtors include, among others, the legal representatives of legal persons. The legal representative of a GmbH is its managing director. Pursuant to § 34 (1) sentence 1 AO, the legal representatives of legal persons and the managing directors of unincorporated associations of persons must fulfil their tax obligations.

As the (only) nominal managing director and later liquidator of the GmbH, the plaintiff was its legal representative from the foundation of the company in 2007 until 2017. The extent to which the plaintiff had fulfilled this task was factually irrelevant, as was the fact that her husband had actually managed the business of the GmbH. As the spouses were concerned with the appointment of the plaintiff as managing director, there was also no sham transaction. The fact that the plaintiff did not actually manage the business of the GmbH, but only acted as a front woman, did not change the objective breach of duty.



Dates Taxes/Social Security

February/March 2023

Tax type		Due date	
Wage tax, church tax, solidarity surcharge		10.02.2023 ¹	10.03.2023 ¹
Income tax, church tax, Solidarity surcharge		Not applicable	10.03.2023
Corporation tax, solidarity surcharge		Not applicable	10.03.2023
Value added tax		10.02.2023 ²	10.03.2023 ³
Value added tax special advance payment		10.02.2023	Not applicable
End of the grace period for the above tax types upon payment by:	Bank transfer ⁴	13.02.2023	13.03.2023
	Check ⁵	10.02.2023	10.03.2023
Trade tax		15.02.2023	Not applicable
Property tax		15.02.2023	Not applicable
End of the grace period for the above tax types upon payment by:	Bank transfer ⁴	20.02.2023	Not applicable
	Check ⁵	15.02.2023	Not applicable
Social insurance ⁶		24.02.2023	29.03.2023
Capital gains tax, solidarity surcharge		The capital gains tax and the solidarity surcharge thereon 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, in the case of a permanent extension for the penultimate month, in the case of quarterly payers with a permanent extension for the past calendar quarter.
- 3 For the past month, in the case of a permanent extension for the penultimate month.
- 4 As a rule, advance VAT returns and wage tax returns must 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 due date. No late payment surcharges will be levied for late payments of up to three days. A transfer must be made early enough so that the value date on the tax office's account is the same as the due date.
- 5 If payment is made by check, it should be noted that payment is not deemed to have been made until three days after the check has been received by the tax office. A direct debit mandate should be issued instead.
- 6 Social security contributions are uniformly due on the third last bank working day of the current month. To avoid surcharges for late payment, direct debiting 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. 22.02.2023/27.03.2023, 0 o'clock each day). Regional peculiarities regarding the due dates must be observed, if applicable. If payroll accounting is carried out by external agents, the wage and salary data should be transmitted to the agent about ten days before the due date. This applies if the due date falls on a Monday or on a day after a public holiday.

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