

## Income Tax

### Relief amount for single parents

Childcare costs can only be deducted by the parent who has borne them. This also applies if the child is cared for by both parents in a parity alternating model. This was the decision of the Financial Court of Thuringia. The relief amount for single parents cannot be divided between several entitled persons. If the beneficiaries do not determine the relief amount among themselves, it is due to the person to whom the child benefit is paid.

The sole allocation of the relief amount for single parents to only one parent and the inadmissibility of a division do not violate the principle of equality even in the case of the alternating model (in the case of approximately equal household inclusion of the child in both households).

### Special expenses deduction for childcare costs constitutional

The deduction of special expenses for childcare costs is constitutional. In particular, there is no constitutional objection to the fact that, in the case of both married and unmarried or permanently separated parents, only the parent who has borne the expenses and to whose household the child belongs is entitled to the deduction.



This was the decision of the Thuringia Tax Court.

At issue was whether the requirement that the child must be a member of the household within the meaning of the Income Tax Act (Section 10 (1) no. 5 EStG) is constitutional.

### Claiming e-charging stations as a tax-reducing measure

Landlords who equip their property with one or more charging stations can claim tax relief for the costs incurred. Under tax law, retrofitted e-charging stations are regarded as separate assets.

Landlords can write off the costs of retrofitting the charging station over the normal useful life. There is some leeway in this regard. For “intelligent wall charging stations” (so-called wall boxes or wall connectors), the tax authorities apply a normal useful life of six to ten years. Over this period, landlords can fully depreciate the acquisition and installation costs, as well as any

necessary approval from the network operator. But it is not only landlords who benefit. Taxpayers who retrofit a charging infrastructure on or in their private property can also claim tax relief for the costs incurred. A tax reduction for craftsmen’s services amounting to 20 percent of the total sum, up to a maximum of EUR 1,200 per year, can be claimed for the installation costs (excluding labour costs) and a flat-rate travel allowance charged by the electrical contractor.

#### Note

As WELT states in an article on 13 August 2022, Tesla Motors’ customers cannot rely on being billed for the exact amount of electricity, as the charging stations violate German calibration law. It is noteworthy that the legislator is showing itself to be accommodating. The operation in violation of the law is “not hindered and not sanctioned.”

### Subsequent assertion of the right to opt for a special expenses deduction under Section 10a of the German Income Tax Act (EStG)

The German Federal Fiscal Court ruled that the taxpayer has the right to choose whether to claim the special expense deduction for an additional retirement provision (Section 10a EStG). This option does not necessarily have to be exercised by submitting the “Anlage AV” (Annex AV) to the income tax return but can also be claimed informally.

### Losses from so-called Unlimited Turbo Bull Certificates fully deductible

The Federal Fiscal Court ruled that the loss from the falling price of knock-out products in the form of Unlimited Turbo Bull certificates is fully deductible for tax purposes and is not subject to the offsetting and deduction ban for forward transactions. Losses from forward transactions are generally subject to a ban on offsetting and deduction, i.e. they can only be offset against profits from such transactions to a very limited extent, but they do not otherwise reduce the basis of assessment for corporate income tax or income tax. From the legislator’s point of view, it is justified to provide for such restrictions for particularly risky transactions.

The plaintiff, a limited liability company, had acquired Unlimited Turbo Bull certificates issued by a bank. As so-called knock-out certificates, they were characterized by the possibility to participate disproportionately in the performance of the underlying asset with a relatively low capital investment. However, if the underlying reached or broke through a certain price threshold, the certifi-

cates became almost worthless. Due to a drop in the respective index level, the value of the certificates acquired by the plaintiff fell, as a result of which the plaintiff realized a considerable loss. The tax office took the view that the losses on the certificates were subject to the ban on compensation and deduction.

However, the Federal Fiscal Court ruled in favour of the plaintiff. Knock-out products in the form of certificates are ordinary debt securities which, in the case in question, were transferred concurrently against payment; the postponement of the settlement date, which is typical for a forward transaction, was not present.

## VAT

### **Input tax deduction for an office in a building not otherwise used for business purposes**

The Federal Fiscal Court has ruled on the input tax deduction for an office in a building that is not otherwise used for business purposes, whether the designation of a room in a construction drawing with the word “work” is sufficient evidence for the allocation decision to the business and whether the allocation decision must be communicated to the responsible tax office by the statutory submission deadline for the relevant tax return.

In the case of buildings, the designation of a room as a work room in the building application documents could at least speak in favour of an allocation to the company if this is supported by further objective indications. This is the case, for example, if the entrepreneur needs an office room for his scaffolding business, he has not used an external office in the past but a room in his apartment for his business, and he intends to keep it that way in the new building he is constructing.

The documentation of the allocation does not require any notification to the tax authorities within the prescribed period. If, within the documentation period, there were objectively recognizable indications for an allocation, these could be communicated to the tax authorities even after the expiry of the period.

### **Mixed-use photovoltaic system is fully allocated to the company by concluding a feed-in contract**

The Federal Fiscal Court (Bundesfinanzhof) had to decide on the assignment of a photovoltaic system to business assets with regard to the input tax deduction from the construction of a photovoltaic system.

The fact that in the course of the year in which a photovoltaic system was acquired, a contract was concluded with the right to resell the entire electricity generated by the system plus VAT, was an indication that the taxpayer

had fully allocated the photovoltaic system to the company. The documentation of the allocation does not require any notification to the tax authorities within the prescribed period. If, within the documentation deadline, there are objectively recognizable indications for an allocation, these can be communicated to the tax authority even after the deadline has expired.

## *Inheritance/gift tax*

### **Inheritance tax exemption for a family home despite move-out**

An heir does not lose the inheritance tax exemption for a family home if he or she is unable or unreasonable to use the family home for health reasons. This was the decision of the Federal Fiscal Court.

The Federal Fiscal Court overturned the first-instance ruling and referred the case back to the fiscal court. In principle, tax exemption requires the heir to use the inherited family home himself for ten years, unless he is prevented from doing so for “compelling reasons”. The term “compelling” covers not only the case of impossibility, but also the unreasonableness of self-use of the family home. Pure considerations of expediency, such as the inefficiency of a renovation, were not sufficient. The situation is different if the heir requires such considerable support for continued use of the family home for health reasons that it is no longer possible to speak of independent household management. The tax court must therefore examine the extent of the plaintiff's health impairments with her cooperation.

### **Gifts on leaving a partnership in the case of insufficient compensation**

Many partnership agreements of partnerships and corporations contain provisions on the compulsory withdrawal of shareholders. Particularly in the case of family companies, the entry of a non-family heir or legatee in the event of the death of a shareholder is often excluded. This heir/legatee then usually receives a settlement. In order that the capital base of the company or the liquidity is not reduced excessively, the compensation to be paid by the company in these cases is often linked to the book value of the capital account or another standard which keeps the compensation below the actual value of the share.

In these cases, Section 7 (7) of the German Inheritance Tax Act (ErbStG) is applied, which simulates a gift for the remaining shareholders. The value of the gift then consists of the difference between the tax value of the company share in accordance with § 12 ErbStG and the compensation paid. The tax value is the fair market value

pursuant to § 11 (2) and (3) BewG. Initially, this provision provides for a valuation on the basis of sales to third parties. However, this is unlikely to occur in the case of these companies, since third parties are to be excluded. Therefore, the simplified capitalized earnings method according to §§ 199 to 203 BewG is used to determine the value. According to this method, the average annual income - derived from the past 3 years - is multiplied by a factor of 13.75. The gift value determined in this way is distributed to the remaining shareholders in proportion to their shareholdings. The resulting amount after deduction of the pro rata compensation is fictitiously assumed by law to be a gift. The subjective awareness of the gratuitousness is irrelevant.

In this case, there is a gift after a death with regard to the settlement and further gifts to the remaining shareholders pursuant to § 7 (7) Inheritance Tax Act (ErbStG). These partners are liable to pay gift tax on their increase in assets; the tax class and tax allowances depend on the relationship between them and the heir/legatee. The latter is also liable for the gift tax. The beneficiaries are obliged to report the acquisition in accordance with Section 30 (2) of the German Inheritance Tax Act (ErbStG) and, after being requested to do so by the tax office, are also obliged to submit a gift tax declaration. In contrast, neither the settlement nor the increase in the value of the shares can benefit from the preferential treatment for business assets under Sections 13a, 13b ErbStG. The transfer of the business assets is missing for both gifts.

## Miscellaneous

### Costs for the rent of smoke alarms

According to the Federal Court of Justice, the costs for renting smoke alarms are not other operating costs in the sense of the Operating Costs Ordinance, but - since they are to be equated with the costs for purchasing smoke alarms - are expenses that cannot be apportioned under operating cost law.

#### Note

In the future, this must be taken into account in the service charge statements. On the positive side, it should be noted that the fees for the inspection and functional analysis of the installed smoke alarms can still be apportioned, as the ruling does not affect this.

### Amendments to the Law on the Verification of Employment

On 1 August 2022, amendments to the Verification Act, which obliges employers to record essential terms and

conditions of the employment contract in writing, to sign the record and to hand it over to the employee, as well as other laws, including the Temporary Employment Act and the Part-Time Work and Fixed-Term Employment Act, came into force. Section 2 of the NachwG supplements existing obligations to provide evidence, for example with regard to the end date of an agreed fixed-term contract, the place of work, notice of termination and the composition of remuneration, and introduces new obligations to provide information with regard to the probationary period, the extent of the entitlement to further training, overtime, on-call work and the identity of the pension provider in the case of a company pension scheme. In accordance with Section 4 of the NachwG, a breach of the obligation to provide evidence can be punished as an administrative offense with a fine of up to EUR 2,000.

#### Note

The proof must be provided in (paper) writing. Electronic form is excluded. Even if the employer records the essential terms and conditions of employment with an electronic signature instead of in writing, the employer is still liable to a fine according to the wording of the Verification Act.

### Artists' social security contribution to be 5.0 percent in 2023

The Federal Ministry of Labour and Social Affairs has initiated the departmental and association participation process for the 2023 Artists Social Security Contribution Ordinance. Under the new ordinance, the rate of social security contributions for artists will be raised to 5.0 percent in 2023. The artist' social security levy rate has remained unchanged at 4.2 percent since 2018 - even during the difficult phase of the Corona pandemic.

### Key points for an inflation compensation law

On August 10, 2022, German Finance Minister Christian Lindner presented the key points for an inflation compensation law. This is intended to compensate for inflation-related additional tax burdens by adjusting the tax burden in line with inflation.

#### Planned adjustments

**Higher basic tax-free allowance:** An increase of EUR 285 to EUR 10,632 is planned for January 1, 2023. A further increase of 300 euros to EUR 10,932 is proposed for 2024.

**Compensating for cold progression:** The so-called tariff caps will be shifted to the right in line with expected inflation. This means that the top tax rate is to take effect in 2023 at EUR 61,972 euros instead of the previous EUR 58,597, and in 2024 it is to start at EUR 63,515.

**Support for families:** the child allowance is to be gradually increased by a total of EUR 264 for each parent from 2022 to 2024, until it reaches EUR 2,994 on Jan. 1, 2024.

**Increase in the maximum amount of support payments:** The maximum amount for support payments in 2022 will be increased from EUR 9,984 euros to EUR 10,347. This will allow more costs incurred, for example, for vocational training or maintenance for a dependent person to be claimed against tax. Future adjustments will be automated.

#### Payment of the energy price lump sum in September

In September, employed persons subject to income tax receive a one-time energy price lump sum of EUR 300. The payment is made via the employer's payroll. In the case of self-employed persons, this will be realized via the adjustment of the advance income tax payment for the third quarter of 2022. Employees whose employment relationship only existed earlier or later in the year can claim the flat-rate energy allowance as part of their income tax returns for 2022. This also applies if the salary is or was paid out with a lump-sum tax.

The German Federal Ministry of Finance updated its FAQs on the flat-rate energy tax (Energiepreispauschale - EPP) on 20 July 2022. The BMF answers the most important questions regarding the payment of the energy price lump sum to employees on the basis of 27 individual points under point VI. of the FAQ list.

#### Gas surcharge from onwards October is fixed

Due to the curtailment of Russian supplies, importers must procure replacements at high prices and at short notice. The purpose of this levy is to support these companies so that the heat and energy supply is secured in the coming cold period. From October onwards, a temporary gas security surcharge will be levied, which will be 2.4 cents at the beginning of the surcharge period (from 1 October 2022 to 01 April 2024). In order to at least partially curb energy costs, the temporary levy is to be flanked by further, targeted relief for citizens and an extension of aid programs for the industry.

The EU Commission has ruled out the exemption from value added tax for the planned gas levy that the German government wanted. Now the German government itself wants to reduce the VAT on gas from 19% to 7% as long as the gas surcharge is levied.



**Dates Taxes/Social Security**

**September/October 2022**

Tax type	Due Date	
Wage tax, church tax, solidarity surcharge	12.09.2022 <sup>1</sup>	10.10.2022 <sup>2</sup>
Income tax, church tax, solidarity surcharge	12.09.2022	not applicable
Corporation tax, solidarity surcharge	12.09.2022	not applicable
Value added tax	12.09.2022 <sup>3</sup>	10.10.2022 <sup>4</sup>
End of grace period of above tax types when paid by:	Bank transfer <sup>4</sup>	15.09.2022
	Check <sup>5</sup>	12.09.2022
Social security <sup>7</sup>	28.09.2022	27.10.2022
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, for quarterly payers for the previous 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, in the case of quarterly payers without 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 payment surcharges will be assessed for late payments of up to three days. 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 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. 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 26.09.2022/25.10.2022, in each case at midnight). 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.

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