Income Tax

In the case of revenue surplus accounting, sales tax is recognized as operating income

The plaintiff objected to the recognition of sales tax as operating income, the non-inclusion of travel expenses as income-related expenses for income tax purposes as well as the assessment of late payment surcharges. In the year in dispute, 2018, the plaintiff was self-employed. He determined his profit by means of a revenue surplus calculation (*Einnahmenüberschussrechnung*).

The Fiscal Court of Hamburg ruled that in the determination of profits by means of the income statement pursuant to Section 4 (3) EStG, VAT amounts received and spent are not transitory items within the meaning of Section 4 (3) sentence 2 EStG, but are operating income and operating expenses to be included in the determination of profits.

The assessment of the late payment surcharge was also lawful. The deadline for submitting the tax returns had ended on 31 July 2019. However, the declaration was not received until 1 September 2020. A retroactive extension is not possible. The defendant had not received any letters dated 3 February 2021. In addition, the required documents were only sent after a penalty payment had been imposed.

Are excess withdrawals already considered in revenue surplus calculation?

The Bundesfinanzhof (Federal Fiscal Court) has commented on the question of whether excess withdrawals are already present in the case of revenue surplus accounting, if the withdrawals in the financial year exceed the profit and the deposits.

Even in the case of taxpayers with a profit calculation in accordance with Section 4 (3) EStG, it must be determined across all periods within the scope of the analogous application of Section 4 (4a) sentences 2 and 3 EStG whether excess withdrawals exist in the profit calculation period under consideration. Excess withdrawals could also exist in profit determination periods in which the withdrawals were lower than the sum of the profit and the deposits of the profit determination period.

In the case of revenue surplus calculations, excess withdrawals are not to be limited to the amount of a lower negative capital account, which is determined at the end of the respective profit determination period in accordance with simplified accounting principles.

Inheritance Tax

Inheritance tax liability can be avoided through tax allowances

Spouses and registered partners can inherit up to 500,000 euros tax-free. Children can inherit up to 400,000 euros from each parent tax-free. Grandchildren can inherit up to 200,000 euros tax-free from their grandparents and up to 20,000 euros from siblings, nieces, nephews and life partners.

In addition to the personal allowances, children and stepchildren as well as spouses or partners of the deceased are in many cases entitled to a special pension allowance. This amounts to 256,000 euros for spouses or partners of a decedent. Children of the testator can claim a pension allowance of between 10,300 euros and 52,000 euros, depending on their age. For children and stepchildren up to the age of five, the special pension allowance is 52,000 euros; between five and ten, 41,000 euros; between ten and 15, 30,700 euros; between 15 and 20, 20,500 euros; and between 20 and the age of 27, 10,300 euros.

In addition to the tax allowances and the special pension allowances, further allowances are granted under certain conditions to reduce the inheritance tax burden. For household goods including linen and clothing, an heir or heiress in tax class I receives an allowance of 41,000 euros. For items that do not count as household goods, such as certain jewelry or works of art, there is an additional allowance of 12,000 euros. Heirs in tax classes II or III receive an allowance of 12,000 euros for household goods and objects in total.

A care allowance of up to 20,000 euros is granted if a child (heir) has cared for or supported the parent (testator) free of charge or for insufficient remuneration until the latter's death.

Significance of the extended unlimited inheritance/gift tax liability

The legislator speaks to an extended unlimited inheritance/gift tax liability when German citizens transfer their residence from Germany to a foreign country or, as “globetrotters”, do not establish another residence and less than five years have passed since then (even ten years in the case of a move to the USA!). This also applies if the person also has another nationality. The extended unlimited tax liability also applies to a person who has received a gift or inheritance. Thus, this type of tax liability leads to taxation for the persons concerned in the same way as for German residents.

In addition to the German tax on an inheritance/gift, there will generally also be a tax in the country of residence of the testator/gift-giver or the acquirer. Insofar as a double taxation agreement for the reduction of inheritance/gift tax does not apply to the acquirer – this only applies to Denmark, France, Greece, Switzerland and the USA – only the tax due on the foreign assets can be credited on a pro rata basis in accordance with Section 21 (1) of the Inheritance Tax Act. However, this credit only relates to the foreign assets as defined in § 121 BewG.

The extended unlimited tax liability can be avoided if the donor/decedent gives up the German nationality before the taxable event (gift or inheritance). This, however, naturally has effects beyond the tax case.

Labour Law

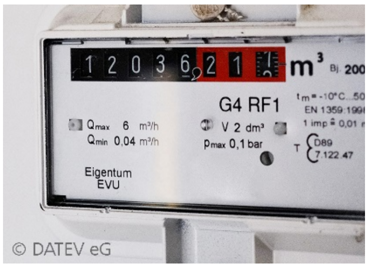
Verifiably below-average performance over a longer period of time can justify dismissal

The case in question involved the termination of a picker in the order processing of a wholesale warehouse in the area of food logistics. The employer's company agreement stipulated a basic performance for pickers which corresponded to the normal performance and was remunerated with the basic wage. Since a change to the dry goods department, the employee did not achieve the basic performance of 100% in any month. After two warnings, the employer gave him notice of termination. The employer explained the employee's below-average performance to the court by presenting records from the merchandise management system. These documented the employee's order processing performance in comparison with the performance of around 150 other pickers.

The Cologne Regional Labor Court considered the dismissal to be effective. The employer was able to prove by means of the records that the plaintiff had underperformed the average performance of comparable employees by significantly more than one third over a longer period of time. It was up to the employee to dispute the figures and their validity in detail or to explain why he nevertheless exhausted his personal capabilities with his clearly below-average performance. However, the court was not convinced by the employee's general statement that he had been systematically disadvantaged.

Law Changes & Reforms in October 2022

Law on temporary reduction of the VAT rate on gas supplies through the natural gas network



In order to alleviate the burden on citizens caused by the increase in gas prices, the bill provides for a reduction in the VAT rate on the supply of gas via the natural gas network to 7% from 01.10.2022 to 31.03.2024. This measure is part of the third relief package. The German government expects taxable companies to pass this reduction on to citizens on a 1:1 basis.

Mini-, midi-job and minimum wage in October 2022

From 01 October 2022, new rules for the so-called "mini-jobs" and "midi-jobs" will come into force. In addition, the minimum wage will increase.

<u>Mini-job</u>

On 1 October 2022, the upper earnings limit for mini-jobs will rise from 450 euros to 520 euros. From then on, a new dynamic low-income limit will apply.

As before, the jobs are generally tax- and social security-free for employees.

Exception: There is an obligation to pay pension insurance (without exemption, 3.6% of the salary goes to the pension insurance - thus a low pension entitlement is acquired and an entitlement to state allowances for the Riester pension scheme. In the case of a full 520 euro job, 18.72 euros are paid). However, it is possible to be exempted from the pension insurance obligation.

For marginal employment, however, it is harmless if the marginal earnings limit is only exceeded "occasionally and unpredictably." This means that the limit may be exceeded for a maximum of two months per year. In addition, the earnings in the calendar month in which the limit is exceeded may not exceed twice the marginal earnings limit (1,040 euros).

<u>Midi-job</u>

The new law also increases the earnings limit in the transitional area. For the earnings limit, the minimum wage is multiplied by 130, divided by three and rounded up to full amounts (§ 8 SGB IV, "Act to Increase the Protection Provided by the Statutory Minimum Wage and to Amendments in the Area of Low-Wage Employment"). In the future, a midi-job will exist if an employee regularly earns more than 520 euros per month and a maximum of 1,600 euros.

Until 31 December 2023, all employees who are in an employment relationship with a wage of up to 520 euros per month at the time of the change will remain liable for health, long-term care and unemployment insurance under the old midi-job conditions.

<u>Minimum wage</u>

The statutory minimum wage increases by 14.8% from 10.45 euros to 12 euros! (Almost) all employees are entitled to this – including mini-jobbers and jobbing pensioners. There are some exceptions, however, such as trainees.

Short-time work allowance: Easier access extended

The cabinet has extended easier access to a short-time work allowance. The current simplified access to the short-time work allowance will be extended by three months. It will now apply beyond 30 September until the end of 2022, the cabinet decided on 14 September 2022.

Other legislation

Annual Tax Act 2022

On 14 September 2022, the federal cabinet approved a draft Annual Tax Act 2022, a formulation aid for a bill to temporarily reduce the sales tax rate on gas deliveries via the natural gas network and a bill on changes to the Energy and Electricity Tax Act peak balancing.

Inflation Compensation Act: cushioning additional tax burdens, supporting families

On 14 September 2022, the federal cabinet passed a bill for an inflation compensation law to compensate for inflation-related additional burdens through a fair income tax rate and to adjust other tax regulations.

In particular, the bill includes the following measures:

- The updating of the income tax rate for the years 2023 and 2024 by compensating for the effects of cold progression in the course of the income tax rate and the increase in the basic tax-free amount in accordance with the anticipated results of the 14th Subsistence Minimum Report and the 5th Tax Progression Report. Similarly, the maximum alimony amount, which is based on the amount of the basic tax-free allowance, will be raised.
- The increase of the child allowance for the years 2023 and 2024 in accordance with the probable result of the 14th Subsistence Minimum Report, as well as the increase of the child allowance for the first, second and third child to a uniform 237 euros per month as of January 1, 2023.
- The subsequent increase in the child allowance and the maximum child support amount for the year 2022.

Third relief package

With the third relief package, numerous measures were presented on 4 September 2022 to alleviate the effects of the Ukraine crisis and energy shortages. Together with the two previous relief packages, numerous measures are now at least under discussion.

Dates Taxes/Social Security

October/November 2022

Tax type		Deadlline	
Wage tax, church tax, solidarity surcharge		10.10.2022[1]	10.11.2022[2]
Value added tax		10.10.2022[3]	10.11.2022[4]
End of the grace period of the above tax types in case of payment by:	Bank transfer[5]	13.10.2022	14.11.2022
	Check[6]	10.10.2022	10.11.2022
Trade tax		not applicable	15.11.2022
Property tax		not applicable	15.11.2022
End of the grace period of the above tax types in case of payment by:	Bank transfer[5]	not applicable	18.11.2022
	Check[6]	not applicable	15.11.2022
Social security[7]		27.10.2022	28.11.2022
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, for quarterly payers for the previous calendar quarter.

2 For the past month.

3 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.

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 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 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 25.10.2022/24.11.2022, in each case at midnight). Regional peculiarities with regard to the due dates may have to be taken into account. If payroll accounting is performed by external agents, the payroll 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 contacts:

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