Income Tax

Even in the case of additional payments to the employer: Family trips home cannot be deduced as an income related expense

The Federal Fiscal Court (Bundesfinanzhof) has commented on whether actual expenses incurred by the employee for journeys home within the scope of double household management, which were incurred through the use of the employer's fuel card for private purposes with payment of a kilometre-dependent flat rate per kilometre driven, can be taken into account as income-related expenses in the case of the (partially) paid provision of a vehicle by the employer within the scope of a so-called kilometre leasing model or whether in this case, the flat-rate commuting allowance in the amount of EUR 0.30 per kilometre can be applied.

If the employee used a vehicle provided by his employer for off-duty use for family trips home within the scope of double household management, a deduction of income-related expenses was ruled out even if the employee had to pay a usage fee for this or had to bear individual vehicle costs. Expenses for family journeys home with a vehicle provided to the taxpayer within the scope of a type of income were not taken into account. In return, the legislator waived the recognition of a pecuniary advantage in the form of a supplement for a weekly family journey home amounting to 0.002% of the list price for the 1% rule.

Costs for project controlling as immediately deductible financing costs

In the first instance, the Berlin-Brandenburg Fiscal Court ruled that the costs for qualified construction supervision in the context of the new construction of a building are not to be qualified as production costs, but as immediately deductible financing costs, if the financing bank requires this service when granting the loan.

The IX Senate of the Federal Fiscal Court confirmed the ruling of the Fiscal Court. Accordingly, the term "debt interest" is not to be understood in a narrow sense under civil law but is to be interpreted broadly. The purpose of expenses to obtain or secure a loan is the decisive criterion for interpretation. Accordingly, expenses for a profitability calculation, for example, are deductible as debt interest in the broader sense, insofar as this serves financing purposes and not the assessment of the profitability of the production process.

Another interesting decision by the Federal Fiscal Court

In its decision of 29 March 2022, the Federal Fiscal Court sets out the following guiding principles on the intention to realise income in the case of letting and leasing (§ 21 EStG):

1. The intention to realise income in the form of the intention to make a surplus is the subjective factual characteristic in § 21 EStG that is specific to the type of income and the area.
2. In the case of a long-term rental activity related to residential property, the existence of an intention to realise income is to be assumed on a typical basis. In contrast, in the case of real estate that is not used for residential purposes (so-called commercial real estate), the standardisation of the intention to generate income does not apply; here, it must be examined in the individual case whether the taxpayer intends to generate a surplus of income over income-related expenses for the expected duration of use.

Note

Whether the landlord actually achieves a total surplus is irrelevant. Consequently, a total profit forecast, which is often requested, is invalid.

Motives of a landlord that result in losses do not play a role. According to the Federal Fiscal Court, "subjective elements are not part of the income-generating intention, which is specific to the type of income and the area."

No tax reduction for craftsmen's services if the taxpayer's shareholder clearing account is debited

The Federal Fiscal Court ruled that the tax reduction for craftsmen's services can only be claimed, even after the revision of the corresponding provision, if the invoice amount is credited to an account of the service provider at a credit institution. The crediting of the invoice amount by way of offsetting by debiting the taxpayer's shareholder clearing account with the GmbH providing the service does not satisfy the legal requirements for the payment transaction.

VAT

No input tax deduction by a corporation from services for the private interests of its managing director and his wife

In the case in dispute, the applicant was a limited liability company. The wife of the managing director of the limited liability company was marginally employed by the limited liability company. The wife is the owner of the property with a semi-detached house, which she had partially rented to the GmbH in the year in dispute 2015, namely "the study in the north of the first floor" and the two parking spaces in the garage. No turnover tax was charged for the rent. In 2015, extensive renovation work was carried out on the building. A ventilation system, roller shutters and skylights were installed. In addition, the building was equipped with extensive building services (electrical installations including a photovoltaic system). The GmbH acted as the client. It also paid the invoices. The GmbH did not invoice the owner (wife) or the managing director. Since 2016, the building has been used by the managing director and his wife for residential purposes.

The GmbH argued to the tax office that it was a prototype house that was used privately by the managing director's wife, but that it was primarily used for demonstration purposes to potential customers. The tax office denied the input tax deduction from the invoices for installations in the managing director's wife's building (ventilation, roller shutters, electrical installation, installation of a network, installation of modules) and other input tax amounts (e.g. for support stockings, massages, drinks, food, opera tickets). The GmbH applied unsuccessfully to the tax office to suspend the VAT payments resulting from the input tax reduction. The Baden-Württemberg Fiscal Court also did not grant the GmbH interim legal protection.

Electricity storage is not an essential component of a photovoltaic system

A civil law partnership (GbR) consisting of spouses had been operating a rooftop solar system since 2013. In 2016, the partnership planned a further photovoltaic system with battery storage system on the north side of the roof. This complete system was to be financed with a programme that was discontinued before the contracts were concluded in 2016. At the suggestion of the financing banks, the photovoltaic system was purchased and installed first, and the purchase of the storage system was postponed until 2017 in order to receive the subsidies. After delays in delivery, the storage system was put into operation in early summer 2017. The battery storage system is used to store the electricity generated by the solar system, which is used exclusively for the private supply of the GbR. The defendant tax office denied the input tax deduction for the storage system. The electricity storage units had been acquired subsequently, were used for private electricity supply and could therefore not be allocated to the enterprise. An exception could only be considered if the photovoltaic system and the electricity storage system were purchased at the same time.

The Baden-Württemberg Fiscal Court dismissed the action brought against this. In the court's opinion, the GbR was not entitled to an input tax deduction from the invoices for the battery storage system because this was not intended for the purposes of the taxed turnover of the plaintiff, but exclusively served the private interests of its shareholders. The electricity stored in the batteries was used exclusively for the private consumption of the partners. Furthermore, the input tax deduction was not based on the use of the photovoltaic system, as the battery storage system had not become part of the photovoltaic system. The electricity storage system did not belong to the essential components for the operation of a photovoltaic system, since an electricity storage system did not serve the production of solar electricity.

Inheritance/Gift Tax

The extended limited tax liability in the context of inheritance/gift tax

The limited tax liability within the scope of inheritance/gift tax applies in cases where the transferred assets are located in Germany, but both the testator/gift giver and the heirs/gift recipients are domiciled outside Germany. In these cases, only the assets defined in § 121 BewG are to be taken into account for tax purposes. These include agricultural and forestry assets, real property, business assets of a permanent establishment in Germany, shares in a corporation in Germany if the shareholder - alone or together with other related persons - has a share of at least 10% in the company. This also includes individual rights entered in domestic registers and movable assets leased to domestic commercial enterprises. Receivables secured by mortgages and silent participations also fall under domestic assets.

These taxable assets are extended in cases where a previously unlimited taxpayer moves to a low-tax country. For this regulation, the Foreign Tax Act is applicable, which generally combats the move to low-tax countries. The law defines low-tax countries abstractly according to two different criteria. The first standard compares whether, for a single person with a taxable income of

EUR 77,000, the income tax abroad is less than 2/3 of the German tax. The second standard is to be applied if the foreign state grants the migrant preferential taxation.

The consequences of the classification in the extended tax liability consist in particular in the fact that a number of claims and rights are subject to inheritance/ gift tax in addition the assets pursuant to § 121 BewG. These include capital payments to domestic debtors, savings deposits and bank balances at domestic banks, shares, investment fund shares, shares in domestic cooperatives, insurance claims on domestic insurance companies and inventions as well as copyrights which are exploited domestically.

In principle, the extended limited tax liability is thus directed against persons who are assumed to have only given up their residence in Germany in order to exchange the comparatively high tax burden for favourable taxation in a low-tax country.

Saving taxes with a usufructuary right for a securities account

If you have a lot to bequeath, you can pass on assets to the next generation at an early stage. In this way, tax allowances for inheritance and gifts can be exploited to the fullest. For example, if you own a custody account, you can give it away during your lifetime subject to usufruct. The donor transfers the securities account to the beneficiary, who then becomes the new owner. The income generated by the deposit is then skimmed off and goes to the donor, i.e. the usufructuary. At the same time, the usufructuary retains the decision-making power over the investments and possible withdrawals.

The advantage is that the usufruct reduces the share of assets subject to taxation. In addition to the so-called personal allowances for inheritance and gifts, the tax office also takes into account the so-called capital value of the usufruct. This is the value that the usufruct has for the usufructuary, i.e. in this case the sum of the expected deposit income. It depends on the age of the donor and the assumed annual return of the deposit. The younger the donor at the beginning of the usufruct and the higher the average performance of the deposit, the higher the capital value and the lower the taxable residual amount.

However, if the usufructuary dies a short time after the start of the usufruct, the tax-free amount may be forfeited by the capital value. When exactly this is the case is regulated by § 14 BewG and depends on the age of the usufructuary. The older the donor, the sooner the usufruct is used up - usually after ten years.

The tax office must be informed of which securities account has been transferred to whom and by whom. Due to its complexity, a tax advisor or lawyer should be consulted when drawing up a deed of gift.

Procedural Law

Unannounced inspection of a flat by an official of the tax investigation unlawful

An unannounced inspection of a taxpayer's home by a tax investigator as a so-called "flank protection examiner" to verify the taxpayer's information on a home office is unlawful if the taxpayer cooperates in the clarification of the facts. This was decided by the Federal Fiscal Court.

Miscellaneous

Extension of the deadline for filing the property tax return until 31 January 2023

On 13 October 2022, the finance ministers of the federal states agreed with the Federal Ministry of Finance on a one-time extension of the deadline for submitting the property tax return. Instead of 31 October 2022, the deadline will now be **31 January 2023**.

Third relief package - inflation compensation bonus: up to EUR 3,000 tax-free

Employers are to be given the opportunity to grant their employees an amount of up to EUR 3,000 tax- and contribution-free. This is provided for by the so-called "inflation compensation bonus," which the Federal Government has launched according to a statement of 28 September 2022. The benefit period is limited to 31 December 2024.

The inflation compensation bonus is part of the third relief package announced on 3 September 2022. The basis for this is the formulation aid for an amendment of the coalition factions, which is to be introduced into the parliamentary procedure of the "Act on the Temporary Reduction of the Value Added Tax Rate on Gas Deliveries via the Natural Gas Grid."

The cornerstones of the regulation are, among others:

* The benefit period is limited in time - from the day after the promulgation of the law until 31 January 2024. The generous period gives employers flexibility.
* During this period, employers can make payments of up to EUR 3,000 free of tax and social security contributions.
* Payments can also be made in several instalments.

* The inflation compensation bonus must be paid in addition to the wages owed anyway. Every employer can use the tax and contribution exemption for such additional payments.

In addition, the Unemployment Benefit II/Social Benefit Ordinance will be amended to the effect that the inflation compensation bonus will not be counted as income in the case of income-related social benefits.

Federal Cabinet decides on social insurance calculation figures for 2023

On 12 October 2022, the Cabinet adopted the Ordinance on Social Insurance Calculation Parameters 2023.

The **reference value**, which is important for many values in social insurance (among other things, for determining the minimum contribution assessment bases for voluntary members in statutory health insurance and for calculating the contributions of self-employed persons subject to compulsory insurance in statutory pension insurance), **will increase to EUR 3,395/month** (2022: EUR 3,290/month). The reference value (East) **increases to EUR 3,290/month** (2022: EUR 3,150/month).

The **contribution assessment ceiling in the general pension insurance** (West) increases to **EUR 7,300/month** (2022: EUR 7,050/month) and the contribution assessment ceiling (East) **rises to EUR 7,100/month** (2022: EUR 6,750/month).

The nationally uniform **compulsory insurance limit for statutory health insurance** (annual income limit) will **rise to EUR 66,600** (2022: EUR 64,350). The **income threshold for statutory health insurance**, which is also uniform throughout Germany, will rise to **EUR 59,850 per year** (2022: EUR 58,050) or EUR 4,987.50 per month (2022: EUR 4,837.50) in 2023.

VAT in the catering industry continues to be reduced - implementation of EU requirements in beer tax law

The reduced VAT rate of 7% on restaurant and catering services will remain in force until the end of 2023. Drinks will continue to be exempt. The support measure for the catering industry introduced in the COVID-19 pandemic was initially supposed to expire at the end of 2022.

On 7 October 2022, the Bundesrat (Federal Council) approved numerous changes to the so-called excise duties. The Bundestag (National Parliament) had passed them on 22 September 2022 in order to relieve the burden on gastronomy and medium-sized breweries and to stabilise the energy supply. After being signed by the Federal President, the regulation will come into force as planned.

The beer tax scale rates, which are also only temporarily reduced, will be permanently abolished. The aim is to strengthen the unique variety of beers and the art of brewing, as well as the brewing structure of small and medium-sized enterprises. In addition, the law exempts beer wort – which is used for the production of goods subject to alcohol tax - from the beer tax.

Dates Taxes/Social security — November/December 2022

Tax type		Due date	
Wage tax, church tax, solidarity surcharge		10.11.2022[1]	12.12.2022[1]
Income tax, church tax, solidarity surcharge		not applicable	12.12.2022
Corporation tax, solidarity surcharge		not applicable	12.12.2022
Value added tax		10.11.2022[2]	12.12.2022[3]
End of the grace period of the above tax types in case of payment by:	Bank transfer[4]	14.11.2022	15.12.2022
	Check[5]	10.11.2022	12.12.2022
Trade tax		15.11.2022	not applicable
Property tax		15.11.2022	not applicable
End of the grace period of the above tax types in case of payment by:	Bank transfer[4]	18.11.2022	not applicable
	Check[5]	15.11.2022	not applicable
Social security[6]		28.11.2022	28.12.2022
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, in the case of a permanent extension for the month before last, for 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 surcharge will be levied for late payments of up to three days. A transfer must be made in good time so that the value date on the tax office's account is the same as the due date.

5 If payment is made by cheque, it should be noted that payment is not deemed to have been made until three days after the cheque 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. In order to avoid late payment surcharges, 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. 24.11.2022/23.12.2022, 0 o'clock each day). Regional peculiarities with regard to 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 in particular if the due date falls on a Monday or on a day after a public holiday.

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