

## Income tax

### Double budgeting - participation in the costs of living with a foreign connection

The financial contribution to the costs of living required for double housekeeping does not have to be imputed in cases with a foreign connection just because the employee is married. This is the ruling of the Lower Saxony Fiscal Court. The tax authorities are entitled to determine the financial contribution to the cost of living in each individual case.

The costs of living include all expenses for the organisation of private life that are related to the household, essentially rent and house costs, consumption and other ancillary costs, expenses for the purchase and repair of household appliances and objects, costs for food and telecommunication costs. On the other hand, costs for holidays, cars, leisure activities, health care, clothing, etc., are not included in the cost of living.

The financial contribution to the costs of living must not be recognisably insufficient, which is why it must be above a *de minimis* limit of 10% of the total household-related living costs.

### No income-related connection in the case of land charges

If land charges are created on the property of a taxpayer to secure loans taken out by a partnership whose shares are held by relatives of the taxpayer, the creation of the land charge is not based on an income-related incidental connection even if the property is transferred to the partnership for use in return for payment. This was the decision of the Lower Saxony Fiscal Court.

If the real estate and the shares in the partnership are later acquired by another taxpayer, the income-related connection for the creation of the land charge does not change into a business-related income-related connection despite the fact that the business is split up.

Payments to redeem land charges created in this way were neither deductible as business expenses nor did they constitute subsequent acquisition costs for the acquisition of the partnership shares.

### Tax consequences of granting interest-free loans

Interest-free loans are significant for tax purposes. The interest-free nature of loans and the resulting tax consequences are particularly evident in two key areas: Firstly, as an incentive payment from an employer to employees and secondly, when loans are granted between relatives to help with planned investments or as a gift.

The non-interest-bearing nature of a loan granted by the employer constitutes wages in the amount of the benefit. However, the tax authorities only tax interest benefits if, at the end of a payroll period (usually at the end of the month), the loan amount exceeds EUR 2,600. The pecuniary advantage then results from the difference between the interest rate customary in the market and the specific interest amount agreed upon. This market interest rate must be derived from loans with the same term and other usual conditions (e.g. with regard to collateral). From the advantage calculated in this way, a deduction of 4% can be made. Since 2022, the exemption limit for benefits in kind of EUR 50 per month can also be claimed for the remaining interest advantage. However, this only applies if it has not already been taken into account for other benefits in kind. In the case of employees of credit institutions, the interest advantage exempt from wage tax remains up to EUR 1,080 p. a.

If an interest advantage is granted between relatives or other close persons, it is subject to gift tax insofar as the applicable tax-free amount is exceeded. According to a ruling of the Federal Fiscal Court, the non-interest-bearing (life-long) deferral of a claim for equalisation of gains is also taxable like a loan with the benefit of use. The entire benefit for the term according to the mortality table is taxable in one sum at the time of assertion of the claim. Before doing so, however, it must always be examined whether the agreement actually contains all the essential elements of a loan and, in particular, whether repayment is to be made. If this is not the case, there is a gift of the compensation claim at the time it becomes due, i.e. immediately after the amount has been determined.

### Voluntary payment of an advance VAT payment of the previous year before it is due is a business expense

The Federal Fiscal Court (Bundesfinanzhof) is of the opinion that the advance payment of turnover tax for the advance return period of December of the previous year, which is made within the relevant ten-day period but is only due thereafter due to an extension of the standing period, is only to be taken into account as a business expense in the year of the outflow when determining profits by means of the income statement.

### Tax recognition of the appointment of a temporary usufruct of a property leased to a parental limited liability company for a long period of time

If parents grant their minor dependent children temporary usufruct of a property which is rented out to a GmbH controlled by the parents on a long-term basis until the usufruct is terminated, this usufruct is not to be recog-

nised for tax purposes. The Berlin-Brandenburg Fiscal Court ruled that in this respect the GmbH controlled by the parents cannot be regarded as a third party with independent decision-making from the parents.

The temporary transfer of a rental agreement between parents and GmbH, which is identical in terms of time and cannot be terminated, to the minor children appears to be uneconomical, cumbersome, artificial and superfluous and only proves to be a formal measure to save tax (utilisation of the basic tax allowances of the children and the progression differential between parents and children).

### Deduction of taxi costs for journeys between home and work only to the amount of the distance allowance

The Federal Fiscal Court (Bundesfinanzhof) ruled that even if an employee uses a taxi to travel between home and work, he may only deduct expenses



as income-related expenses at the rate of the distance allowance of EUR 0.30 for each kilometre travelled. A taxi is not a privileged means of public transport.

### Value added tax

#### Input tax deduction for services provided by so-called outplacement companies for personnel reduction

If the entrepreneur purchases services from so-called outplacement companies for the purpose of downsizing, with which employees who cannot be dismissed and are not on fixed-term contracts are to be individually supported in establishing new employment relationships, in particular by means of so-called job application training, the entrepreneur is entitled to deduct input tax.

The entrepreneur is entitled to deduct input tax on the basis of an overriding interest of the company. This was the decision of the Federal Fiscal Court.

#### Turnover from the operation of slot machines still taxable

Turnover from the operation of slot machines will continue to be taxable even after the amendment to the law on virtual slot machines that came into force on 1 July 2021. This was decided by the Federal Fiscal Court.

The court clarified that this unequal treatment is permissible. Turnover in amusement arcades and online turnover were already not comparable for several reasons (different payout ratios, different availability, potentially

larger customer base online, different risks of gambling addiction).

#### Note

The Federal Fiscal Court has already ruled several times that turnover from the operation of slot machines is subject to VAT. Until 30 June 2021, this applied irrespective of whether the turnover was generated in arcades and the like or online (so-called virtual slot machine games). However, the legislator has changed the legal basis as of 1 July 2021: Since then, virtual slot machines have been subject to the race betting and lottery tax. They are therefore exempt from turnover tax. Turnover in arcades, on the other hand, is still subject to VAT. However, they are not subject to racing betting and lottery tax. The background to the amendment was, among other things, the fact that online offers are to be classified differently from terrestrial offers (e.g. in amusement arcades) with regard to their gambling-addiction triggering aspects.

#### Invoice correction - retroactive effect for input tax deduction?

If an entrepreneur issues an outgoing invoice without domestic tax being shown on it on the assumption that the service will be rendered abroad, he cannot correct it in such a way that the subsequent showing of domestic VAT has retroactive effect on the input tax deduction of the recipient of the service.

The right to deduct input tax may be exercised on the basis of a corrected invoice already for the taxable period in which the invoice was originally issued if an invoice is initially issued that does not meet the requirements of §§ 14, 14a UStG but this invoice is subsequently corrected. However, the Federal Fiscal Court requires that the information on the issuer of the invoice, the recipient of the service, the description of the service, the remuneration and the invoice must be correctable.

### Trade tax

#### A property dealer is liable for trade tax at the earliest when he acquires his first property

The factual trade tax liability of a property dealer begins at the earliest with the conclusion of a purchase contract for a first property. Only through the corresponding purchase are they in a position to offer their services on the market. This was the decision of the Federal Fiscal Court.

## Procedural law

### Adjustment of interest assessments for subsequent tax payments and refunds

In its decision of 8 July 2021, the Federal Constitutional Court (Bundesverfassungsgericht) ruled that the federal statutory interest rate of 6% per annum for tax arrears and refunds was unconstitutional. As a result, the federal legislature passed a new interest rate regulation in accordance with the constitution, with retroactive effect from 1 January 2019, which is now 1.8% per year.

In November 2022, the Bavarian tax offices will now be sending around two million amended interest notices to the affected citizens in all open cases due to this change in the law. This means that no application is required.

If taxpayers have already received a notice of assessment with a tax refund and an interest assessment with the application of the original 6% annual interest, there is usually a protection of confidence in this respect and no partial repayment of the interest is necessary. Only if the interest has not yet been fixed will this now be done at the new interest rate of 1.8%.

## Inflation Compensation Act

### Even further increase in tax allowances and child benefit then originally planned

In view of the high inflation, the Finance Committee has raised the planned increases in tax allowances and child benefit even further. The coalition draft originally provided for an increase of the basic tax allowance from currently EUR 10,347 to EUR 10,632 in the coming year.

The amount is now (as of 8 November 2022) to rise to EUR 10,908. In 2024, according to the draft law, the basic tax-free allowance should further increase to EUR 10,932. With the amendment, this figure will be raised to EUR 11,604.

The child allowance for the first, second and third child is also to be increased next year to a uniform EUR 250 per month. The coalition draft provided for an increase of EUR 237, which is based on the 14th report on the minimum subsistence level. The tax-free child allowance will also be increased.

## Legislation

### Relief for tenants - Fair distribution of the CO2 price

Since 2021, an additional CO2 levy for heating with oil or natural gas has been charged. Until now, tenants had to bear these costs alone. The Bundestag has now passed a bill that provides for a fair distribution of the CO2 costs in the tenancy relationship.

A model with different stages is to apply to **residential buildings**: The worse the energy condition of a building, the higher the share of costs for landlords. If they invest in climate-friendly heating systems and energy-efficient renovations, their share of the CO2 costs will decrease. The distribution depends on the CO2 emissions per square metre of living space per year.

Landlords determine the CO2 costs and the distribution key in the course of the annual heating bill. In some cases, regulations - e.g. due to the preservation of historical monuments, the obligation to use district heating, or the protection of urban districts - prevent landlords from improving the energy balance of buildings. Their share of the costs is then halved or eliminated altogether.

In the case of **non-residential buildings**, the CO2 price will initially be divided in half. A graduated model like the one for residential buildings is not suitable at present, as the characteristics of these buildings are too different. The draft law provides for the collection of the necessary data by the end of 2024. A phased model for non-residential buildings is then to be introduced at the end of 2025.

After the Bundestag's decision, the law still has to pass the Bundesrat. It is to come into force on 1 January 2023.

### New regulation for income tax certificates of the year 2023

For the years from 2023 onwards, electronic income tax certificates issued by employers may only be transmitted to the tax office with the employee's tax identification number. The previous possibility of making a clear personal allocation with a so-called eTIN (electronic Taxpayer Identification Number) will cease from 2023 onwards. Employers must therefore ensure in good time that they have the taxpayer identification numbers of all their employees.

**Employees who are required to register** with the registration office in Germany are automatically assigned a tax identification number by the Federal Central Tax Office (BZSt). For persons born in Germany, the tax identification number has been issued from birth since its introduction in 2007. If you no longer know your

identification number, you can request that it be sent to you again via the BZSt website at [www.bzst.de](http://www.bzst.de).

**Employees who are not required to register**, e.g. persons working in Germany and residing abroad, who have not yet been allocated a tax identification number by the BZSt, can apply for one at the tax office responsible for the employer (the so-called "Betriebsstättenfinanzamt").

Employers can also apply for the first allocation of an identification number if they are authorised to do so by their employees. No specific form is required for the authorisation. It only has to be unique.

### Extension of disclosure deadline for annual financial statements 2021

Corporations in particular are obliged to disclose their annual financial statements electronically, i.e. to publish or file them. For the financial year with a balance sheet date of 31 December 2021, the statutory deadline for this will in principle expire on 31 December 2022.

However, the Federal Office of Justice will not initiate administrative fine proceedings under section 335 of the German Commercial Code (HGB) before **11 April 2023** due to the continuing after-effects of the COVID 19 pandemic.

## Emergency relief

### December relief for gas and heat customers is coming

On 14 November 2022, the Bundesrat approved the December emergency relief for end consumers of natural gas and customers of heat, which the Bundestag had passed on 10 November 2022. The law can therefore enter into force after being signed by the Federal President and immediately on the day after its promulgation in the Federal Law Gazette.

**Household customers** and **small businesses** with an annual consumption of up to 1,500 megawatt hours of gas will be relieved of the dramatically increased costs by the one-time emergency aid - as a bridge until the planned gas price brake takes effect next year. Among others, nursing, rehabilitation and research institutions, day-care centres for children, workshops for people with disabilities and homeowners' associations are eligible for aid, regardless of their annual consumption.

For those affected, there is no obligation to make the contractually agreed instalment payments for the month of December. In the case of heat supply, relief is provided in the form of a lump-sum payment, which is essentially based on the amount of the instalment paid in September.

For **tenants** who do not have their own contracts with the energy suppliers, but are affected by ancillary cost billing, differentiated special rules are provided for depending on the contract structure vis-à-vis the landlord. The aim is to relieve these households of the cost increases in a timely manner.



Dates Taxes / Social Security

December/January 2022

Tax type		Due date	
Wage tax, church tax, Solidarity surcharge		12.12.2022 <sup>1</sup>	10.01.2023 <sup>2</sup>
Income tax, church tax, Solidarity surcharge		12.12.2022	not applicable
Corporate income tax, solidarity surcharge		12.12.2022	not applicable
Value Added Tax		12.12.2022 <sup>3</sup>	10.01.2023 <sup>4</sup>
End of the grace period of the above tax types in case of payment by:	Bank transfer <sup>5</sup>	15.12.2022	13.01.2023
	Check <sup>6</sup>	12.12.2022	10.01.2023
Social security <sup>7</sup>		28.12.2022	27.01.2023
Capital gains tax		The capital gains tax and the solidarity surcharge thereon must be paid to the competent 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, for annual payers for the previous calendar year.
- 3 For the past month, in the case of a permanent extension for the penultimate month.
- 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 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 in good time 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 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.
- 7 Social security contributions are uniformly due on the third last bank working day of the current month. In order 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 they are due (i.e. 23.12.2022/25.01.2023, 0:00 hrs in each case). 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 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](mailto:m.niehaus@nhsgroup.de)

Dominik von den Berg  
 Certified Tax Advisor  
 +49 211 99 33 99 08  
[d.vondenBerg@nhsgroup.de](mailto:d.vondenBerg@nhsgroup.de)

NHS GmbH Wirtschaftsprüfungsgesellschaft  
 Am Wehrhahn 100 · 40211 Düsseldorf  
[nhsgroup.de](http://nhsgroup.de)

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