Current legislation and jurisprudence

10 | 2023

For all taxpayers

Growth Opportunities Act: Government draft is now (finally) available

| Shortly after the summer break there was another dispute in the traffic light coalition. This time it was about the “Law to Strengthen Growth Opportunities, Investment and Innovation as well as Tax Simplification and Tax Fairness (Growth Opportunities Act)”. The government draft was initially blocked by Federal Family Minister Lisa Paus (Alliance 90/The Greens). She called for greater funding for basic child welfare. After agreement was reached, the government draft could then be presented (belatedly). |

The draft contains numerous (tax) changes on 287 pages (!), excerpts of which are presented.

Investments in climate protection

The independent “Climate Protection Investment Premium Act” is intended to promote the transformation of the economy, particularly in the direction of greater climate protection – through an investment premium (referred to as “super depreciation” in the coalition agreement).

Taxpayers i. S. of the Income and Corporation Tax Act (EStG and KStG) insofar as they have taxable income from agriculture and forestry, commercial operations or self-employment work and are not exempt from taxation. In the case of commercial partnerships, co-entrepreneurs should be entitled to claim.

The purchase or production of a new wearable movable fixed asset as well as measures on an existing movable wearable fixed asset (subsequent acquisition/manufacture costs) are eligible if the asset is included in a savings concept and serves to: to improve energy efficiency.

Not eligible: Investments in combined heat and power or district heating.

The investment bonus should apply for a limited time. The draft specifically states:

The investment is favored if it meets the calculation started after December 31, 2023 (at the earliest on the day the law was promulgated) and was completed before January 1, 2030. Investments completed after 2029 are eligible if partial production costs were incurred before January 1, 2030 or advance payments were made on acquisition costs.

The investment bonus can only be claimed if those eligible

Data for the month November 2023

ÿ TAX DATES

Due date:

- VAT, LSt = 11/10/2023
- GewSt, GrundSt = November 15, 2023

Transfers (payment grace period):

- VAT, LSt = 11/13/2023
- GewSt, GrundSt = November 20, 2023

Check payments:
If paying by check, the check must be submitted to the tax office at least three days before the due date!

ÿ SOCIAL SECURITY CONTRIBUTIONS

Due date for contributions 11/2023 = November 28, 2023

ÿ CONSUMER PRICE INDEX

(Change compared to previous year)

8/22	1/23	4/23	8/23
+ 8.8%	+ 9.2%	+ 7.6%	+ 6.4%

Expenses amount to at least EUR 5,000. The assessment basis refers to the total eligible expenses during the funding period and should be limited to EUR 200 million per beneficiary for the entire funding period.

The investment bonus amounts to 15% of the applied assessment basis. With a maximum permissible assessment basis (EUR 200 million), the premium can therefore amount to a maximum of EUR 30 million.

The electronic application for an investment bonus should be able to be submitted to the tax office independently of the tax return. It should be noted that the assessment basis must be at least EUR 10,000 and each eligible person can submit a maximum of four applications after December 31, 2024 and before January 1, 2032.

Within one month of the announcement of the investment bonus decision The premium should be paid out from income tax revenue (for taxpayers within the meaning of the corporate tax law, from corporate tax revenue).

NOTE | The investment bonus should be treated as income that has no effect on profit or loss. For corporations, it should be recorded in retained earnings.

From the time the investment premium is determined, depreciation should be made on the acquisition or production costs less the investment premium. As a result, the (profit-reducing) depreciation is reduced in the following years.

Partnership Law Modernization Act

A (further) core element of the draft is the adaptation of the tax code (AO) and other tax laws to the Partnership Law Modernization Act (MoPeG) of August 10, 2021, which comes into force on January 1, 2024.

Section 14a AO is intended to contain a legal definition of the term “association of persons”. Insofar as associations of persons are named in the AO and the tax law, they should, in contrast to civil law, only be Per joint ventures without legal personality. A distinction is made between legal and unincorporated associations of persons.

A non-exhaustive list contains Section 14a Paragraphs 2 and 3 AO.

NOTE | Associations of persons without legal capacity include, in particular, communities of fractions (§ 741 BGB), communities of property (§ 1415 BGB) and communities of heirs (§ 2032 BGB).

When it comes to the announcement and the right to object to the separate and uniform determination, a distinction should be made between legal and non-legal associations of persons. In the case of associations of persons with legal capacity, the notices should no longer be addressed to an authorized recipient, but rather to the association of persons with legal capacity be announced.

Corporate tax option

According to Section 1a KStG, partnerships and partnerships can be treated like corporations for income tax purposes.

The federal government would like to make the option more attractive through various changes. For example, all partnerships should now be able to opt for corporate taxation.

Pension taxation

The taxable portion of the pension from a basic pension is 50% if the pension starts in 2005 or earlier. The tax share will be gradually increased for each new year of pensioners. Until now, pensions from 2040 (year of retirement start) would have to be taken into account at 100%.

Now the increase in the tax share for each new retirement age group is to be reduced to half a percentage point annually from 2023 (for 2023 only 82.5% instead of 83%). 100% will then apply for the first time in 2058.

More changes coming soon

From 2024 there will be an exemption limit for income from renting and leasing apply. Income i. S. of Section 21 Paragraph 1 EStG should be tax-free if the sum of this income is in the assessment period room total less than 1,000 EUR amounted to. However, the income should remain taxable upon application if the expenses are higher.

Gifts to business partners and customers are only tax-reducing business expenses if a limit is met. This is to be increased from EUR 35 to EUR 50 from 2024.

The limit for immediate write-off of low-value assets is to be increased from EUR 800 to EUR 1,000. For collective items (increasing the limit from EUR 1,000 to EUR 5,000), the resolution period should be reduced by two to three years. This should apply to assets that are purchased, manufactured or incorporated into business assets after 2023.

Also interesting: Increase in special depreciation (§ 7g EStG) for companies that do not exceed the profit limit of EUR 200,000 in the year before the investment from 20% to 50% of the investment costs for movable assets purchased or manufactured after 2023.

Additional meal expenses: increase in flat rates from EUR 28 to EUR 30 and from EUR 14 to EUR 15 from 2024.

At a company event, there is no wages if the allowance does not exceed the allowance of EUR 110 (from 2024: EUR 150).

The exemption limit for private sales transactions is to be increased by EUR 400 to EUR 1,000 from 2024.

ALSO PLANNED |

- Temporary reintroduction of declining balance depreciation for movable assets and temporary introduction of declining balance depreciation for residential buildings.
- Raising the limit for the accounting obligation of certain taxpayers and the limit for actual VAT taxation.
- Increase in the threshold for exemption from filing quarterly VAT returns from EUR 1,000 to EUR 2,000.
- Improvement of loss deduction.
- Changes to the retention allowance (§ 34a EStG) and the interest limit.

Source | Law to strengthen growth opportunities, investments and innovation as well as tax simplification and tax fairness (Growth Opportunities Act), government draft, processing status: August 29, 2023

For all taxpayers

Home office and home office flat rate since 2023:

Federal Ministry of Finance publishes application letter

| The 2022 Annual Tax Act partially reregulated the deduction for costs for a (domestic) office with effect from 2023. In addition, the home office or daily flat rate, which was previously valid for a limited period of time, has been permanently anchored in the income tax law. The Federal Ministry of Finance has now commented extensively on the new regulations. |

Workspace

As before, expenses for a home office are generally not deductible as business expenses or business expenses (Section 4 Paragraph 5 Sentence 1 No. 6b Sentence 1 and Section 9 Paragraph 5 Sentence 1 Income Tax Act (EStG)).

NOTE | The expenses are, in particular, the costs for the furnishings of the room (e.g. wallpaper), rent or depreciation for the building as well as water/energy costs. Work equipment (e.g. Filing cabinets) are not affected by the deduction restrictions.

But so far the focus of the entire operational and professional If the activity takes place in the home office, the expenses are fully deductible. Instead of the ab In addition to the actual expenses, a flat-rate deduction of EUR 1,260 is possible from 2023 (option).

This annual flat rate (reduction by 1/12 for each full calendar month in which the requirements are not met) is a person-related amount because it is based on the maximum amount of the home office flat rate (from 2023: EUR 1,260).

NOTE | Is the center of the If the activity is not carried out in the office, but no other workplace is available to the taxpayer, only the home office flat rate applies draggable. The deduction of expenses capped at EUR 1,250 will no longer be possible from 2023.

If the requirements for deducting expenses are not met for the entire year and the annual flat rate is reduced (“1/12”), the home office flat rate may be granted for this reduction period.

The Federal Ministry of Finance also goes into this in its letter pay particular attention to the following points:

- Use of the office to generate different incomes, by multiple taxpayers and during times of non-employment, as well as renting out a home office.

Home office flat rate

The home office flat rate applies to entrepreneurs (operating expenses) and to employees (business expenses). It can also be used to cover expenses for initial vocational training (special expenses). The special thing is that for this flat rate there is no need to have a home office that corresponds to the type concept. Even work “at the kitchen table” entitles you to a deduction.

From 2023, for every day on which the business or professional activity is carried out predominantly (time factor) in the home and no first place of work outside the home is visited, an amount of EUR 6 can be paid as a daily flat rate for the entire activity, max. 1,260 EUR per year (= 210 working days) can be deducted.

Note | Expenses for work equipment as well as telephone/internet costs for business or professional purposes are deductible at the same time.

ÿ Example

A works from home for five hours in the morning one day. In the afternoon he travels for three hours to a customer (work away from home).

Until 2022, A could only cover the costs of the Stop working away from home. From 2023 he can also pay the flat rate of 6 EUR claim because he performed most of his work from home on that day.

Variation: A does not drive to a customer, but to his place of work at his employer.

A only receives the distance allowance for the journey to the first place of work (no home office allowance).

If no other workplace is permanently available for the company or professional activity, a deduction of the daily flat rate is also permitted if the activity is carried out away from home or at the first place of work on the same calendar day (§ 4 Para. 5 No. 6c p . 2 EStG).

Note | Another workplace is basically any workplace that is suitable for carrying out office-related work.

To date, this regulation has been partially interpreted in such a way that the flat rate can only be deducted if the work in the home office predominates. However, the Federal Ministry of Finance rejected this view.

ÿ Example

Teacher L has been at school permanently no other job. In the morning she teaches five to six hours and in the afternoon she prepares lessons for one to two hours at home.

L can deduct the flat rate of EUR 6 for all days on which she worked even slightly in the home office (maximum EUR 1,260 per year). To In addition, she receives for the journeys School the distance allowance.

If accommodation costs are deducted for the apartment in which the home office is located as part of dual household management, the daily flat rate does not need to be applied. But: If the monthly limit of EUR 1,000 for accommodation costs is exceeded, all expenses can no longer be deducted and the daily flat rate must be applied.

Note | The flat rate must also be taken into account under the other conditions if the business or professional activity is carried out in your own (family) household.

Source | BMF letter dated August 15, 2023, Ref. IV C 6 - S 2145/19/10006:027, at www.iww.de, access no. 236925

For GmbH shareholders

EU standards for sustainability reporting

| On July 31, 2023, the EU Commission published the first complete, sector-independent set of sustainability reporting standards (= European Sustainability Reporting Standards, or ESRS for short). The set consists of two general standards that are to be used across the board for the preparation of sustainability reports and ten thematic standards that are assigned to the three areas of sustainability: “Environmental”, “Social” and “Governance”. |

background

According to Section 289d of the German Commercial Code (HGB), companies currently required to provide non-financial (group) reporting have the right to choose: You can use one or more national, European or international frameworks to prepare the non-financial report or do without (with the obligation to provide reasons). In contrast, the (parent) companies that have previously been required to provide non-financial reporting are:

- are large corporations within the meaning of Section 267 Paragraph 3 of the German Commercial Code (HGB) and at the same time
- have a capital market orientation within the meaning of Section 264d of the German Commercial Code (HGB) and
- have more than 500 employees on average per year,

are obliged to comply with the ESRS when preparing their sustainability reports for the financial year beginning on or after January 1, 2024.

For financial years beginning in 2025, the ESRS set must then be applied by all other large corporations and large partnerships within the meaning of Section 264a of the German Commercial Code (which are also required to report on sustainability).

In addition, the ESRS will also have an indirect significance for other companies that will be required to report on sustainability in the future. This is:

Group 1: Small and medium-sized capital market-oriented corporations (excluding: micro-companies and non-complex credit institutions and captive insurance companies). In principle, the initial creation of a sustainability report must be carried out for the financial years beginning on January 1, 2026.

Note | It is possible to postpone the initial preparation of a sustainability report until the financial years beginning on January 1, 2028, provided that the corresponding short justification is provided in the management report.

Group 2: Third-country companies based outside the EU if they have achieved net sales of more than EUR 150 million in the EU in the last two consecutive financial years and have a large subsidiary (TU) or a small one in the EU control a small or medium-sized capital market-oriented TU or, in the absence of such a TU, have a branch located in the EU with a net turnover of more than EUR 40 million. A consolidated sustainability report must be prepared for financial years beginning on January 1, 2028.

NOTE | Separate sets of standards for sustainability reporting should be issued for these two groups by June 30, 2024. Companies can then use the general standard set that is now available or the specific standards for the respective group that have yet to be issued.

Source | The full set of ESRS (published as Annex 1 to the Commission Delegated Regulation supplementing Directive 2013/34/EU as regards sustainability reporting standards) is available at www.iww.de/s8544.

For entrepreneurs

Brochure with tax tips for start-ups

| The Ministry of Finance of North Rhine-Westphalia has updated its brochure with tax tips for start-ups (as of April 2023). The 72-page brochure (at www.iww.de/s6252) contains, for example: B. Information on the start-up grant and shows what a VAT invoice must look like. |

For employees

Business trip: No flat-rate mileage rates for bicycle journeys

| If employees use their bicycle to travel to their first place of work, they can apply the flat rate travel allowance. However, the federal government has now stated that there are no flat-rate mileage rates (EUR 0.30 per kilometer driven) for trips away from home for work-related reasons. |

The reasoning makes sense. According to Section 9 Paragraph 1 Sentence 3 No. 4a Sentence 2 of the Income Tax Act, a business travel allowance is only provided instead of the actual travel costs if this can be found in the Federal Travel Expenses Act (BRKG). However, in Section 5 BRKG, flat rates are only provided for the use of a motor car or other motor-driven vehicle.

For business trips with a private bicycle, only the travel costs incurred can be claimed as advertising costs over the personal mileage rate determined based on the actual expenses.

Source | BT-Drs. 20/7889, p. 20 f. from July 28, 2023

For entrepreneurs

Sales tax: FAQ about Photovoltaic systems

| The Federal Ministry of Finance has again updated its question and answer catalog (FAQ) on the zero tax rate for deliveries of solar modules to the operator of a photovoltaic system with effect from January 1st, 2023 (as of June 23rd, 2023, at www.iww.de/s7492) . |