# Current legislation and jurisprudence

02 | 2024

For all taxpayers

## Partnerships with real estate: Uncertainties regarding real estate transfer tax have been eliminated

| Through the Act to Modernize Partnership Law (MoPeG) The law governing partnerships was reformed with effect from January 1, 2024. This created uncertainties regarding real estate transfer tax, which are now “off the table” thanks to the Secondary Credit Market Promotion Act. |

### background

The MoPeG will make significant civil law changes for civil law companies and other partnerships effective from 2024. As with corporations, from January 1, 2024 there will be a strict separation of the spheres of assets between the partnership and the partner.

Note | The changes brought about by the MoPeG also have a particular impact on real estate transfer tax.

Through the Growth Opportunities Act The status quo with its different property transfer tax treatment of personal and property transfer tax should be replaced Corporations (particularly in the area of tax relief

Sections 5 and 6 of the Real Estate Transfer Tax Act (GrEStG) are retained. It was planned that partnerships would continue to be treated as a joint entity for the purposes of the real estate transfer tax - initially for a limited period of time until 2024. This was intended to gain time to meet the need for adjustments to the real estate transfer tax law between the federal government and the states to be able to advise.

But now there was a problem: The Federal Council had stopped the Growth Opportunities Act in November 2023. The mediation committee was called. Since no agreement could be reached in 2023, there was a risk of the worst case scenario, i.e. taxation, in the event of corresponding business tax issues from January 1st, 2024.

However, this could be prevented because the necessary adjustments were now made in the Secondary Credit Market Promotion Act were made. So everything stays the same (for now). For example, the son can be accepted into a sole proprietorship and set up a general partnership with his father in the future.

**Data for the month March 2024**

ÿ TAX DATES

Due date:

- VAT, LSt = March 11, 2024
- Income tax, corporate tax = March 11, 2024

Transfers (payment grace period):

- VAT, LSt = March 14, 2024
- Income tax, corporate tax = March 14, 2024

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 3/2024 = March 26, 2024

ÿ CONSUMER PRICE INDEX

(Change compared to previous year)

| 12/22 | 5/23 | 8/23 | 12/23 |
|---|---|---|---|
| + 9.6% | + 6.3% | + 6.4% | + 3.8% |

without this transfer process triggering real estate transfer tax on the business property.

Note | It is pleasing that the legislature has extended the initially intended transition period from one year to three years. As a result, the property transfer tax benefits will remain in effect at least until the end of 2026.

## Further information

Two further time-critical regulations from the Growth Opportunities Act were also implemented by the Secondary Credit Market Promotion Act:

- In particular, in order to reduce the enforcement costs in the financial administration, the taxation of the so-called December aid 2022 for gas and district heating was waived. As a result, Sections 123 to 126 of the Income Tax Act (EStG) were repealed.
- In addition, adjustments were necessary to the interest rate cap regulation. The interest deduction restriction (Section 4h EStG and Section 8a of the Corporation Tax Act) had to be adjusted to the requirements of the ATAD (Anti-Tax Avoidance Directive) by December 31, 2023.

Source | Secondary Credit Market Promotion Act, Federal Law Gazette I 2023, No. 411

For all taxpayers

# basic allowance, The maximum amount of maintenance and the child allowance should be increased

| The federal government wants to increase the basic tax allowance, up to which no income tax has to be paid, and the child allowance more than initially planned. Federal Finance Minister Christian Lindner believes this is necessary despite the tense situation. |

## background

As a result of the Inflation Compensation Act (already announced in the Federal Law Gazette in 2022), the basic tax allowance will increase from EUR 10,908 to EUR 11,604 as of January 1, 2024. According to the new plans, there will be a further increase – to EUR 11,784.

Note | Since the maximum maintenance amount corresponds to the basic allowance, an increase would also have an impact here.

According to the Inflation Compensation Act, the child allowance per child and parent is EUR 3,192 in 2024. In the case of joint tax assessment, the amount doubles (EUR 6,384). Here too, Lindner is planning an increase to EUR 6,612.

Source | FDP: We are relieving the burden on the working middle, message from December 5th, 2023; Inflation Compensation Act, Federal Law Gazette I 2022, p. 2230

For employees

# From 2024, more taxpayers will benefit from the employee savings allowance

| With the new version of Section 13 Paragraph 1 Sentence 1 of the Fifth Capital Formation Act (5th VermBG), the income limit for the employee savings allowance for the investment of capital-forming benefits in asset investments (including investment funds) and for the housing-related use of the capital-forming benefits was Men's benefits (including building savings) are increased to EUR 40,000 or, in the case of joint assessment, to EUR 80,000. The increase in income limits resulting from the Future Financing Act applies for the first time to capital-forming benefits that are invested after December 31, 2023. |

## background

The employee savings allowance is a cash allowance granted by the state to promote the capital formation of employees, civil servants, judges and soldiers on the basis of the 5th Property Act. It is a subsidy for capital-forming benefits. These are cash benefits that the employer invests for the employee. Wages that are invested as assets are also assets that form assets.

NOTE | The savings allowance is determined upon application by the tax office responsible for taxing the employee. The assessment must be applied for regularly with the income tax return.

The employee savings allowance is:

- for investment in building savings contracts and for housing purposes, 9% of the assets invested in this way Benefits as long as they do not exceed EUR 470 per year.
- for investments in productive capital (e.g. shares) 20% of the invested capital-forming benefits, provided these do not exceed EUR 400 per year.

Note | If both forms of investment are used, the savings allowance is a maximum of EUR 123 (EUR 470 × 9% and EUR 400 × 20%) and for spouses a maximum of EUR 246 per year.

The prerequisite was that the income in variant 1 (building savings contracts, etc.) was a maximum of EUR 17,900 (EUR 35,800 for spouses). In variant 2 (productive capital) the limit was 20,000 or 40,000 EUR. Both limits have now been standardized with effect from 2024 and increased to EUR 40,000 and EUR 80,000 respectively. The decisive factor is the taxable income in accordance with Section 2 Paragraph 5 of the Income Tax Act.

Source | Future Financing Act, Federal Law Gazette I 2023, No. 354

For all taxpayers

# Property tax assessment: New regulations again unconstitutional?

| Are the (new) regulations for assessing property tax also unconstitutional? This question has not yet been decided, but something is happening. If you look solely at the determination of the property tax value as of January 1, 2022 according to the federal model, then a lawsuit is pending at the Berlin-Brandenburg Finance Court (ref. 3 K 3142/23). In addition, the Rhineland-Palatinate Finance Court has two urgent app granted. The administration has lodged a complaint (ref. to the BFH: II B 78/23 [AdV] and II B 79/23 [AdV]). |

For GmbH managing directors

## Disclosure of the 2022 annual financial statements: No fine proceedings before April 2, 2024

| The disclosure period for the annual financial statements for 2022 ended on December 31, 2023 (particularly applies to AG, GmbH and GmbH & Co. KG). However, the Federal Office of Justice (BfJ) has now announced that it will not initiate any administrative fine proceedings before April 2, 2024. |

### background

The disclosure medium has changed for the annual financial statements for 2022. The annual financial statements no longer have to be submitted to the Federal Gazette, but rather sent to the company register for disclosure. Further information can be found at www.publikations-plattform.de.

If the company does not comply with the disclosure obligation on time or in full, the BfJ initiates administrative fine proceedings. The company is requested to comply with the statutory disclosure obligations within a six-week grace period. At the same time, the BfJ threatens to impose a fine (usually EUR 2,500). If the company does not comply with the request, the fine will be assessed.

Note | Threats and assessments of fines can be repeated until publication has taken place. The fines will be increased gradually.

With the threat, the costs of the proceedings are imposed on those involved. These do not cease to apply if the disclosure obligation is complied with within the set grace period.

NOTE | Small capital companies (according to Section 267a of the Commercial Code) only have to submit their balance sheet (no appendix or profit and loss statement). They can also use their pub- fulfill the liability obligation through disclosure or permanent deposit. Stored balance sheets are not immediately accessible; Upon request, they will be sent to third parties for a fee.

Source | BfJ at www.iww.de/s7329

For employees

## New flat rate moving costs from March 1, 2024

| Moving costs caused by work are business expenses. For other moving costs (e.g. costs for dismantling electrical appliances) as well as for moving-related teaching costs, the tax administration grants flat rates, the amount of which is based on the Federal Moving Costs Act (BUKG). The Federal Ministry of Finance has now published the flat rates that apply to moves from March 1, 2024. |

The new flat rates and the previous flat rates (for moves from April 1, 2022) are shown below.

Note | The old flat rates are no longer applicable to moves where the day before the moving goods are loaded is after February 29, 2024.

The maximum amount for which the Additional lessons for a child due to moving are:

- from April 1, 2022: EUR 1,181
- from March 1, 2024: EUR 1,286

Other moving expenses can be distinguished as follows:

- Beneficiaries with an apartment: from April 1, 2022: EUR 886
  from March 1, 2024: 964 EUR
- Any other person (especially spouses and unmarried children): from April 1, 2022: EUR 590
  from March 1, 2024: 643 EUR
- Those without an apartment: from April 1, 2022: EUR 177
  from March 1, 2024: 193 EUR

Instead of the flat rate, the higher moving costs proven in individual cases can also be deducted. There is no deduction if moving costs were reimbursed tax-free by the employer.

PRACTICAL TIP | If the move is initiated privately, a deduction for business expenses is not possible. However, a tax reduction in accordance with Section 35a of the Income Tax Act can be considered for moving services.

Source | BMF letter dated December 28, 2023, Ref. IV C 5 - S 2353/20/10004:003

For landlords

## Special depreciation for new rental apartment construction: New regulations for the first time in the 2023 tax r

| According to Section 7b of the Income Tax Act (EStG), special depreciation applies to new rental apartment construction. In principle, only construction work based on a building application submitted after August 31, 2018 and before January 1, 2022 or a building notice made during this period should be funded. The special depreciation was relaunched with the 2022 annual tax law. It applies to building applications/
-ads after December 31, 2022 and before January 1, 2027. There will therefore be no special depreciation for apartments with a building application/notification in 2022 into consideration. |

In the year in which a new rental apartment is purchased or constructed and in the following three years, in addition to the "normal" depreciation, up to 5% special depreciation can be claimed. Overall, up to 20% can be added to the regular depreciation in the first four years be written off.

Note | The apartment must be used for residential purposes in the year of purchase or construction and in the following nine years for consideration.

In contrast to the previous regulation, which is still relevant for "old cases", the building must meet the criteria of an "Efficiency House 40" with a sustainability class. This can be proven by the Sustainable Building (QNG) quality seal.

The acquisition/manufacture costs of the apartment may amount to a maximum of EUR 4,800 ("old cases": EUR 3,000) per square meter of living space. The assessment basis for depreciation is subject to a limit of EUR 2,500 ("old cases": EUR 2,000) per square meter of living space.

For all taxpayers

## School fees: Contribution to the school support association can be made Allow special expenses to be deducted

| If a recognized, independent alternative school finances the school's operations from funds that the school support association receives from membership fees, parents are threatened with a tax disadvantage. Because the contributions represent "hidden" school fee payments, they do not constitute donations. However, because they do not flow to the school as school fees, the special expense deduction in accordance with Section 10 Paragraph 1 No. 9 of the Income Tax Act (EStG) is also at risk. The Münster Finance Court has now ruled in favor of the parents and recognized the funding contributions as school fees. Since the appeal is pending, the Federal Finance Court must now decide. |

Background: Under certain conditions, parents can deduct 30% of the salary (but a maximum of EUR 5,000) for their child's attendance at a private school as special expenses in accordance with Section 10 Paragraph 1 No. 9 EStG. Expenses for accommodation, care and meals are not eligible.

ÿ Facts

The children of those assessed together Parents attended a state-approved knew a replacement school run independently by a foundation. In the year of the dispute, 2019, the parents paid a total of EUR 1,000 to the school's support association, which is recognized as a non-profit organization. After that According to its statutes, the association promotes teaching activities and school life, in particular by supporting school facilities and events, study trips, school stays and working groups.

The support association received a total of EUR 37,500 from the parents whose children attended the school. He himself paid EUR 43,500 to the foundation. This transferred at least EUR 54,000 to finance nancing of the school board's own share (a total of EUR 87,000) to the school.

In their tax return, the parents claimed the payments (EUR 1,000) as school fees. The tax office did not follow this because, according to the association's statutes, the payments were not made purely for school attendance. The payments also do not qualify as donations.

According to the Münster Fiscal Court in its reasons for the judgment, the term remuneration is not defined in more detail in Section 10 Paragraph 1 No. 9 EStG. This refers to the school fees that parents have to pay for their children to attend school, although the term "school fees" is irrelevant. These must be the costs for normal school operations, insofar as these costs would be borne by the public sector at a state school.

The Münster Finance Court made an economic analysis. It is important that the parents' corresponding services are in return for the child's attendance at school. That's why the funding contributions here were school fees. From an economic perspective, they were paid to finance the school board's own contribution. The contributions went entirely to the school authority and were not enough to cover the school authority's own contribution. This means that the contributions were used in full for ongoing school operations.

Note | In the opinion of the tax court, it does not matter whether the statutes of the support association contain a provision that provides for the funds to be used exclusively for normal school operations.

Source | FG Münster, judgment of October 25, 2023, ref. 13 K 841/21 E, Rev. BFH ref. XR 27/23, at www.iww.de, access no. 238778

For all taxpayers

## The federal government must save: new ones Income limits for parental allowance

| The Household Financing Act 2024 lowers the income limit up to which you are entitled to parental allowance. The Federal Ministry for Families, Senior Citizens, Women and Youth has summarized the new regulations as follows: |

For births from April 1, 2024, the limit of taxable annual income (income limit), above which entitlement to parental allowance no longer applies, will be reduced from EUR 300,000 to EUR 200,000 for those jointly entitled to parental allowance. As of April 1, 2025, it will be reduced again to EUR 175,000 for couples. An income limit of EUR 150,000 will apply to single parents from April 1, 2024.

In addition, the possibility of receiving parental allowance at the same time has been newly regulated. In the future, it will only be possible to receive basic parental allowance at the same time for a maximum of one month until the child is 12 months old. There will be exceptions for simultaneous receipt of the parental allowance plus, the partnership bonus as well as multiple births and premature births.

Note | Further information on parental allowance (including parental allowance calculator) can be found on the website of the Federal Ministry for Family, Senior Citizens, Women and Youth (at: www.iww.de/s10085).

Source | Federal Ministry for Family, Senior Citizens, Women and Youth: Parental allowance, background information from December 27, 2023; Budget Financing Act 2024, Federal Law Gazette I 2023, No. 412

for employer

## Improvements in employee equity ownership

| The future financing law (BGBl I 2023, No. 354) has improved the tax framework for employee equity participation. Among other things, the tax exemption amount (regulated in Section 3 No. 39 of the Income Tax Act (EStG)) will increase from EUR 1,440 to EUR 2,000 from 2024. The deferred taxation regulated in Section 19a EStG was also modified. |