

# Current legislation and jurisprudence

04 | 2024

For partnerships

## Partnerships with identical investments: Book value transfers are encouraged

| The Federal Constitutional Court has decided that Section 6 Paragraph 5 Sentence 3 of the Income Tax Act (EStG) is incompatible with the Basic Law insofar as partnerships with identical investments are excluded from transfers of assets at book value. |

Section 6 (5) EStG enables a tax-neutral transfer or transfer of assets under the conditions stated there.

Any hidden reserves are therefore not revealed.

In addition to the transfer of an asset between different business assets of the same taxpayer, the regulation also covers asset transfers within the same co-entrepreneurship and between two companies or co-entrepreneurs that are linked to one another via their (co-)entrepreneurs.

The transfer of assets between partnerships in which the same partners hold shares in the same proportion (partnerships with identical shareholdings) is not covered by Section 6 Paragraph 5 Sentence 3 EStG

- and in the opinion of the Federal Constitutional Court this violates the general principle of equality.

The court justifies its view as follows, among other things: Section 6 Paragraph 5 Sentence 3 EStG enables constellations in which hidden reserves are partially or completely transferred to other taxpayers. On the other hand, a transfer of assets between sister partnerships with identical investments results in the discovery of hidden reserves, although this is also a transfer of assets within the circle of co-entrepreneurs and does not result in a transfer of hidden reserves reserves transferred to another taxpayer.

**Note** | The legislature must retroactively make new regulations for transfers after December 31, 2000.

### Data for the month May 2024

#### TAX DATES

Due date:

- VAT, LSt = May 10, 2024
- GewSt, GrundSt = May 15, 2024

#### Transfers (payment grace period):

- VAT, LSt = May 13, 2024
- GewSt, GrundSt = May 21, 2024

Check payments:

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

#### SOCIAL SECURITY CONTRIBUTIONS

Due date for contributions 5/2024 = May 29, 2024\*

\*In federal states where Corpus Christi is a public holiday, May 28, 2024 applies.

#### CONSUMER PRICE INDEX

(Change compared to previous year)

2/23	7/23	10/23	2/24
+ 9.3%	+ 6.5%	+ 3.0%	+ 2.7%

Section 6 Paragraph 5 Sentence 3 EStG remains applicable until it comes into force with the proviso that the regulation also applies to transfers of assets between partnerships with identical investments after December 31, 2000.

Source | BVerfG, decision of November 28, 2023, Ref. 2 BvL 8/13 and PM No. 5/2024 of January 12, 2024

## For entrepreneurs

### Influencer: No operating expenses for middle-class clothing and accessories

| The Lower Saxony Finance Court has addressed the question of whether an influencer can claim expenses for clothing and accessories for tax purposes.

Unfortunately, the decision was to the detriment of the taxpayers. |

#### Fact

A taxpayer operated on various social media channels and via a website a fashion and Lifestyle blog and created photos and stories. In addition to the goods she received from various companies to promote as part of her work, she purchased various clothing items and accessories (e.g.

Handbags from well-known brands). The influencer wanted to include the expenses for the clothing and accessories as operating expenses in her commercial activity.

The tax office refused the application deduction of business expenses on the grounds that all items can also be used privately and it is not possible to differentiate between the private and business spheres. In particular, the tax

The defendant did not explain to what extent she had used the clothing and accessories for private or business purposes.

The lawsuit brought against this was unsuccessful.

The Lower Saxony Finance Court was also of the opinion that a separation between the private and business spheres is not possible when it comes to ordinary, middle-class clothing and fashion accessories. From Section 12 No. 1 of the Income Tax Act (EStG), there is a prohibition on deducting expenses for the lifestyle of taxpayers that affect their economic or social position

## For all taxpayers

### Updated certificates for tax purposes Promoting energy-efficient building renovations

| The tax reduction in Section 35c of the Income Tax Act promotes energy-saving measures on buildings used for residential purposes. The Federal Ministry of Finance provides templates for the certificates to be submitted with the tax return. For energy measures in 2024, the model certificates have now been supplemented, among other things, with information on environmental measures (cf. BMF letter dated February 6, 2024, Ref. IV C 1 - S 2296-c/20/10003:006). |

even if the expenses are made to promote the profession or activity of the taxpayer.

**NOTE** | It doesn't matter how the taxpayer actually used the items. The obvious possibility of private use of bourgeois clothing and fashion accessories alone leads to tax consideration.

is excluded.

In addition, the items purchased by the influencer are not typical work clothing for which a business expense deduction is possible. This only includes those items of clothing that, due to their nature, are objectively intended and suitable almost exclusively for professional use and are necessary due to the nature of the profession, or for which the professional use is already determined by their nature their distinguishing function or through their protective function (e.g. in work shoes).

**Note** | In this respect, the profession of an influencer or blogger should not be judged differently than other professions.

Whether the clothing items and accessories are actually used exclusively for business purposes is irrelevant. Therefore, clarifying the extent of the actual private use of the clothing was not crucial.

Source | FG Lower Saxony, judgment of November 13, 2023, ref. 3 K 11195/21, at [www.iww.de](http://www.iww.de), access no. 239874

## For entrepreneurs

### Flat rates for Property withdrawals 2024

| The Federal Ministry of Finance has published the flat rate amounts for material withdrawals (own consumption) for 2024. |

The flat rates are based on empirical values and offer the taxpayer the opportunity to record withdrawals of goods on a monthly flat rate. This releases him from having to record many individual withdrawals.

**Note** | Since this regulation of In order to simplify things, surcharges or deductions due to individual eating or drinking habits are not permitted. Even illness or vacation does not justify different handling.

The Federal Ministry of Finance points out that these are general annual values for one person.

There is no flat rate charge for children up to the age of 2. Up to the age of 12, half of the respective value must be applied.

Source | BMF letter dated February 12, 2024, Ref. IV D 3 - S 1547/19/10001:005, at [www.iww.de](http://www.iww.de), access no. 240054

## For all taxpayers

### The grant recipient register is online

| The Federal Central Tax Office announced on February 7, 2024 that the grant recipient register is now available online. |

The grant recipient register includes all organizations that are authorized to issue donation receipts to their donors. The register therefore offers, among other things, an easy way to find out about the non-profit status of organizations.

**Note** | Further information on the grant recipient register can be found at: [www.iww.de](http://www.iww.de).

de/s10443.

For employees

## Loan after Advancement Training Promotion Act: Partial remission is wages

| The Federal Finance Court has decided that partial loan forgiveness for professional advancement training leads to taxable wages. |

### ŷ Facts

A taxpayer took part in advancement training courses in 2014 and 2015 (see also the Advancement Training Promotion Act [AFBG]). The costs of the courses were supported by the Lower Saxony Investment and Development Bank (N Bank) with grants and loans, with the loans being provided by the Kreditanstalt für Wieder-

construction (KfW) were granted. According to the conditions, if the advanced training examination is passed, a certain percentage of the loan that has not yet become due at that point in time should be waived for the course and examination fees. The tax office recognized the costs of the courses - partly reduced by the subsidies - as advertising costs.

After successful completion, KfW forgave 40% of the outstanding loans in 2018, the year of the dispute. On it- the tax office increased the gross wages by the waiver amount. The Federal Finance Court has confirmed this (in contrast to the previous instance).

The reimbursement (replacement) of expenses that can be deducted as advertising costs for reasons related to the sphere of employment must be recorded as income for the type of income from which the advertising costs were previously deducted. A connection to a current employment relationship is not necessary.

The subsidies and partial waivers are based on reasons within the sphere of employment. The waiver depends solely on passing the exam and not on personal life circumstances

away. With the training, the taxpayer sought to improve her professional opportunities so that the KfW benefits were sufficiently related to employment.

Source | BFH ruling of November 23, 2023, Ref. VI R 9/21, at [www.iww.de](http://www.iww.de), access no. 239751; BFH, PM No. 8/24 from February 15, 2024

For all taxpayers

## Repayment of an inherited loan using “Residential Riester” is probably permissible

| The Berlin-Brandenburg Finance Court recently had to decide on a “Wohn-Ries-ter case”. This was about a husband who had inherited his late wife’s apartment and the loan agreement. He wanted to pay off the loan. He therefore requested approval for the withdrawal of subsidized capital for housing use from retirement provision assets (Section 92b Paragraph 1 Sentence 3 of the Income Tax Act [EStG]). So much in advance, the decision was in favor of the taxpayer. |

Background: Through the Riester pension Possible gaps in care in old age should be at least partially compensated for. This is done by establishing a funded supply.

The “Wohn-Riester”, a variant of building savings, in which investors receive capital from the contract for the purchase or construction of an apartment, is also supported by the state. You can also use the “Wohn-Riester” to pay off a real estate loan.

### ŷ Facts

A husband (EM) inherited as sole heir from his wife (EF) an apartment built by the EF and shared with her, as well as the loan taken out by the EF to finance the apartment.

In order to repay the loan, the EM requested approval for the withdrawal of subsidized capital for housing use from pension assets.

However, this was denied to him on the following grounds: A purchase transaction required for residential use in accordance with Section 92a Paragraph 1 Sentence 1 No. 1 EStG did not exist in the person of the EM, as he owned the property. acquired the information free of charge by way of inheritance. But the Berlin-Brandenburg financial court saw things differently.

The assumption of a loan as an estate liability does not justify the purchase of the financed apartment by the heir.

However, the repayment option in Section 92a Paragraph 1 Sentence 1 No. 1 EStG must be interpreted in such a way that it also applies in cases in which an heir takes over a loan taken out to purchase or create preferential living space by way of universal succession.

The wording of Section 92a Paragraph 1 Sentence 1 No. 1 EStG requires the use of the retirement home equity amount to repay a loan taken out for this purpose (i.e. for purchase or production). However, the universal successor assumes the legal status of the testator in such a way that the purchase or

Production by the testator is to be attributed. There is therefore an uninterrupted causality between the repayment of the loan and the loan originally used for the purchase or production.

**Note** | The German Pension Insurance Federal Central Allowance Office for Retirement Assets is not satisfied with the ruling and has lodged an appeal with the Federal Finance Court.

Source | FG Berlin-Brandenburg, judgment of December 18, 2023, ref. 15 K 15045/23, Rev. BFH: ref. XR 2/24, at [www.iww.de](http://www.iww.de), access no. 239855

For entrepreneurs

## Flat rate income tax for VIP boxes

| The free provision of seats in a VIP box to business partners and employees is a benefit in kind that can be taxed at a flat rate in accordance with Section 37b of the Income Tax Act (EStG). In this context, the Federal Finance Court (November 23, 2023, Ref. VI R 15/21) has now decided the following: The subject of the donation in kind is the provision of the individual box seat.

Expenses attributable to empty spaces should therefore not be taken into account. The taxpayer’s expenses for the spaces provided can be determined using an appropriate estimate. The same applies to the advertising portion attributable to the donation. |

## For entrepreneurs

**Investment deduction amount: How is the profit limit to be determined?**

| The courts often have to deal with the requirements for an investment deduction (IAB according to Section 7g of the Income Tax Act [EStG]). Recently, two cases (previous instance: Finance Court of Lower Saxony) made it to the Federal Finance Court with this question: Is the tax balance sheet profit or a profit corrected for off-balance sheet effects (such as non-deductible operating expenses and income tax-free income) relevant for the profit limit? |

Background: For the future (investment period of three years) purchase or production of wearable movable fixed assets (e.g. machines) up to 50% of the expected

Purchase/manufacture costs are deducted to reduce profits. Since the legislature uses this tax deferral option primarily for investments by small and medium-sized companies

If you want to make it easier for companies, the profit must not exceed EUR 200,000.

## Facts

In a case brought by the Lower Saxony Finance Court, the balance sheet profit amounted to EUR 189,821 and was therefore below the limit of EUR 200,000 set out in Section 7g EStG. Nevertheless, the tax office failed to form an IAB because after adding the trade tax (see Section 4 Para. 5b EStG) it increased from EUR 25,722 to one over

Profit of EUR 215,543 exceeded the limit amount.

The question of how the profit is to be determined in accordance with Section 7g Paragraph 1

Sentence 2 No. 1 Letter b EStG has not yet been clarified by the highest court. There are (simplified) two opinions on this:

- For the Federal Ministry of Finance, profit is the amount that without

Consideration of deductions and Additions in accordance with Section 7g Paragraph 1 and Paragraph 2 Sentence 1 EStG of the Taxation is to be taken as a basis; off-balance sheet corrections to tax accounting balance as well as additions/deductions in the income surplus calculation must be taken into account.

- Parts of the literature represent in- of the position that only the tax accounting profit is taken into account what would lead to a more favorable outcome in the event of a dispute. The tax balance sheet profit is also relevant for the Baden-Württemberg tax court - and not the profit in the sense. S. of Section 2 Paragraph 2 Sentence 1 No. 1 EStG. A correction around finds off-balance sheet items not taking place.

**Note** | The tax court Lower Saxony has adopted the concept solution of the Federal Ministry of Finance. Because the revision is pending, taxpayers can file an objection in appropriate cases.

Source | FG Lower Saxony, judgments of May 9, 2023, Ref. 2 K 202/22, Rev. BFH: Ref. BMF letter dated June 15, 2022, Ref. IV C 6 - S 2139-b/21/10001:001; FG Baden-Württemberg, judgment of May 2, 2023, Ref. 10 K 1873/22, Rev. BFH: Ref. III R 38/23

## For all taxpayers

**Growth Opportunities****Act: Will the Federal Council agree?**

| The billion-dollar Growth Opportunities Act was actually supposed to be passed last year. But the Federal Council refused its consent in November 2023. Therefore, the mediation committee was called - and a recommendation for a resolution was agreed on on February 21, 2024. The Bundestag approved this two days later. In order for the law to (finally) come into force, the Federal Council still needs to approve it. The next meeting is scheduled for March 22, 2024. |

**Note** | However, the majority in the mediation committee came without the consent of the Union (CDU/CSU). Because this had made its approval dependent, among other things, on the federal government reversing the cuts in agricultural diesel. Whether there will be a change here remains uncertain, so it is currently impossible to estimate how the Federal Council will decide on March 22, 2024.

The amended bill passed by the Bundestag includes many changes compared to the government draft. The relief volume was significantly reduced and the climate protection investment bonus was canceled.

Nevertheless, the legislative package still contains numerous tax changes and new regulations, for example the temporary reintroduction of declining balance depreciation for movable fixed assets and the temporary introduction of declining balance depreciation for residential buildings.

## For all taxpayers

**Properness of an electronic logbook**

| In company audits there are often disputes as to whether logbooks are considered correct are to be recognized. The Düsseldorf Finance Court (judgment of November 24th, 2023, Ref. 3 K 1887/22 H[L]) has currently decided the following: An electronic logbook does not meet the requirements for proof of the actual extent of private use of a company vehicle, if subsequently Changes to the data entered earlier are not documented in the file itself, but in external log files. The requirement to keep a logbook in a timely manner is not satisfied if the entries - which have been recorded on notes in the meantime - are only made several days or weeks after the journeys in question have been completed. |

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