Latest legislative news and case law

06 | 2024

For entrepreneurs

Financial administration relaxes view on incorrect Tax identification in invoices to end consumers

| If the entrepreneur has shown a higher tax amount in an invoice than the Value Added Tax Act (UStG) provides for, he also owes the additional amount (incorrect tax statement according to Section 14c Paragraph 1 UStG). This "penalty tax" has previously been interpreted strictly. However, due to a ruling by the European Court of Justice, this has now changed and the Federal Ministry of Finance is more generous in a recent letter. |

Until now, a tax liability existed under Section 14c of the VAT Act regardless of whether the incorrectly declared tax amount was also deductible as input tax. However, in a case involving an incorrect tax rate, the European Court of Justice ruled that a taxpayer is not liable for the incorrectly invoiced part of the VAT if there is no risk to tax revenue. This is the case if a service was provided exclusively to end consumers who are not entitled to deduct input tax.

The Federal Ministry of Finance has now responded to this: No tax will be levied pursuant to Section 14c Paragraph 1 of the VAT Act, if an entrepreneur has actually performed a service and has issued an invoice to an end consumer with an incorrect tax statement.

Section 14c Paragraph 2 Sentence 1 of the VAT Act (unjustified tax declaration) should also be omitted if a small business owner has provided a service and issued an invoice with a tax declaration to an end consumer. However, the restrictive interpretation should not apply to other cases of Section 14c Paragraph 2 of the VAT Act (e.g. in the case of fictitious invoices).

NOTE | The fact that the invoice was issued to an end consumer represents a fact that limits the tax claim, which must be credibly demonstrated or plausibly justified by the entrepreneur.

The end users include the administration, especially non-entrepreneurs and entrepreneurs who do not act as such (in particular entrepreneurs

mer when receiving benefits for their private sphere or for a non-economic activity in the narrower sense).

In mixed cases where the same Invoices relating to services with incorrect tax information both to end users as well as to entrepreneurs for their business activities, the above principles apply only to the

Invoicing to end consumers

Data for the month July 2024

ÿ TAX DATES

Due date:

• VAT, income tax = 10.7.2024

Transfers (payment grace period):

• VAT, income tax = 15.7.2024

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

ÿ SOCIAL SECURITY CONTRIBUTIONS

Due date of contributions 7/2024 = 29.7.2024

ÿ CONSUMER PRICE INDEX

(Change from previous year)

4/23	9/23	12/23	4/24
+ 7.6% +	4.3% + 3.8%	+ 2.4%	

to be applied. Neither an estimate nor a probability calculation or anything similar can be made.

The type of service can be taken into account when assessing whether the service recipient acted as an end consumer. For services that are, by their nature, most likely intended for private use, the Federal Ministry of Finance refers to its instructions on Section 3a Paragraph 1 of the VAT Act ("Place of other services"). However, this list of services is irrelevant if it is established in the individual case that the service was not provided to an end consumer.

If no "Section 14c tax" has been incurred on an invoice to an end consumer, no further invoice correction is required from a VAT perspective.

NOTE | According to the tax authorities, it is not decisive for the tax liability according to Section 14c UStG whether and, if so, to what extent an input tax deduction has actually been made. Therefore, the tax also arises if the invoice is sent to a small business owner or an entrepreneur

with output transactions that exclude input tax deduction in whole or in part. Even in these cases, input tax deduction is not completely excluded (e.g. through a later option to become liable for tax). However, the Cologne Finance Court recently decided otherwise.

Since the appeal is pending, further developments remain to be seen.

Source | BMF letter dated February 27, 2024, ref. III C 2 - S 7282/19/10001 :002, at www.iww.de, retrieval no. 240327; FG Cologne, judgment of July 25, 2023, ref. 8 K 2452/21, Rev. BFH: ref. VR 16/23

For GmbH shareholders

Option for the partial income method: The requirements only have to be met in the year of the application

| If a corporation distributes profits to the shareholder, these can be taxed under the partial income method under certain conditions. The Federal Fiscal Court has now ruled on this: After an effective first application, the substantive application requirements must be assumed by the tax office in the following four assessment periods (VZ). These only have to be present for the first application year. |

background

Profit distributions to the shareholder are generally subject to capital gains tax (25%); actual business expenses are not deductible.

Only the saver's allowance is available of EUR 1,000 (in the case of joint assessment: EUR 2,000).

However, according to Section 32d Paragraph 2 No. 3 of the Income Tax Act (EStG), there is the option of taxing profit distributions according to the partial income method according to Section 3 No. 40 of the Income Tax Act (progressive rate). In this case, the actual advertising costs are deductible on a pro rata basis. The prerequisite is that the taxpayer in the tax year for which the application is first submitted directly or indirectly

- holds at least 25% of the capital company or
- holds at least a 1% stake in the corporation and can exercise significant entrepreneurial influence on its economic activities through professional activities for the corporation.

The application must be submitted at the latest together with the income tax return for the respective tax year. As long as it is not revoked, it is also valid for the following four tax years without the application requirements having to be proven again.

Decision

The wording of the law allows the conclusion that the application requirements for the continued application do not have to be (actively) proven again by the applicant in the following years, but the choice of the partial income method is not permissible if the application requirements no longer apply after the year in which the application is submitted. This is the (previous)

View of the financial administration.

However, the Federal Fiscal Court has now decided that the application requirements only have to be met for the first year of application. The fact that they are no longer met in the following four tax years is irrelevant.

Source | BFH ruling of December 12, 2023, Ref. VIII R 2/21, at www.iww.de, retrieval no. 240580

For all taxpayers

Draft bill for a Annual Tax Act 2024

| The Growth Opportunities Act has only just been announced (Federal Law Gazette I 2024, No. 108), and the Annual Tax Act 2024 is already casting its shadow. The 240-page (unofficial) draft bill (as of March 27, 2024) represents a very early stage in the legislative process, so some adjustments will still be made. Therefore, only a brief overview of some planned changes follows. |

If the employee is granted benefits from a mobility budget of up to EUR 2,400 per year (in addition to the wages owed), employers should be able to apply a flat-rate tax (25%). The mobility budget is the offer made available to the employee for the use of non-work mobility services (e.g.

E-scooters). Since the focus is on the short-term and occasional provision of various forms of mobility, the possibility of permanent use of motor vehicles (e.g. rental car models designed for long-term use) is excluded from the scope of application.

Tax exemption for photovoltaic systems (Section 3 No. 72 EStG): The permissible gross output according to the market master data register is to be increased from 15 kW (peak) to 30 kW (peak) per residential or commercial unit. It is to be clarified that • photovoltaic systems of up to 30 kW (peak) per commercial unit are also eligible for tax relief in buildings with several commercial units (but without residential units) and

- it is an exemption limit.

§ 19 Value Added Tax Act: A number of changes are planned for the small business regulation - including an increase in the turnover limit from EUR 22,000 in the previous year to EUR 25,000 and in the current year from EUR 50,000 to EUR 100,000 (if EUR 100,000 is exceeded: no more small business regulation from this point onwards).

A new invoice requirement is to be introduced if the issuer is subject to actual taxation.

For the timing of input tax deduction A distinction should be made as to whether this results from the invoice of an estimated taxpayer, an actual taxpayer or an advance payment invoice.

For all taxpayers

Reversal of a Consumer loan agreement does not trigger Income tax from

| The receipt of compensation for use in the context of the pure reversal of a consumer loan agreement after revocation, no income tax is triggered. This good news comes from the Federal Finance Court. |

ÿ Facts

In 2008, the couple entered into a loan agreement to finance a residential property for their own use. In 2016, they revoked the loan agreement.

contract, citing incorrect cancellation instructions. On the basis of a civil court settlement, the bank paid the couple compensation for use for interest and repayments made up to the cancellation date in the amount of EUR 14,500. The tax office recorded the compensation for use as income from capital assets - however, this was wrong, as the Federal Finance Court has now ruled.

The compensation for use is not capital gains within the meaning of Section 20 Paragraph 1 No. 7 of the Income Tax Act (EStG). The reversal of a contract revoked by the borrower takes place outside the taxable sphere of income. The repayment obligation is to be treated as a unit for income tax purposes. Therefore, the individual claims from the repayment obligation cannot be considered in isolation - in the sense of an involuntary transfer of capital - part of a taxable income-oriented activity.

Please note: There is also no other income (Section 22 No. 3 EStG).

NOTE | The decision concerns “old” consumer loan agreements.
The reform of the consumer
Section 357a, paragraph 3, sentence 1 of the old version of the German Civil Code (now Section 357b of the German Civil Code), which was inserted into the German Civil Code as a protective right, has, among other things, eliminated the borrower's claim to compensation for use in the future. The new legal situation is applicable to consumer loan agreements concluded after June 12, 2014.

Source | BFH ruling of November 7, 2023, ref. VIII R 7/21, at www.iww.de, retrieval no. 240444; BFH, PM no. 16/24 of March 21, 2024

For employees

Double household: Second home tax falls below the maximum amount of EUR 1,000

| In the context of a domestic dual household, the deduction of accommodation costs is limited to EUR 1,000 per month. The Federal Finance Court has now ruled that this maximum amount also includes the second home tax payable for the apartment at the place of employment. |

Background: In the case of dual household management for professional reasons Employees can only deduct accommodation costs up to a maximum of EUR 1,000 per month as business expenses. The maximum amount includes all expenses incurred, such as rent, operating costs and costs for the ongoing cleaning and maintenance of the second home or accommodation; but not expenses for household goods, furnishings or work equipment with which the second home is equipped.

ÿ Facts

An employee had
A second home was rented at the place of work in Munich. The second home tax paid for this in the years in dispute amounted to EUR 896 or

She made 1,157 EUR in addition to other
Costs for the apartment of more than EUR 12,000 each as expenses
ments for their dual household management. The tax office recognized the accommodation costs on
Location of the first place of work in Munich with the statutory maximum amount of EUR 12,000. However, the tax office did not take the second home tax into account in the other expenses associated with maintaining two households.

The lawsuit against this was successful. Unfortunately, the Federal Fiscal Court has now overturned the preliminary decision.

The second home tax is an expense for the use of the accommodation and is therefore subject to the deduction restriction for the additional expenses for maintaining two households.

The emergence of the second home tax is largely linked to the possession of another apartment in Munich in addition to the main residence and thus to the regular use of this apartment. The tax is a local expenditure tax within the meaning of Article 105, Paragraph 2a of the Basic Law and is justified by the fact that the possession of another apartment for personal needs (second home) in addition to the main residence is a situation that usually requires the use of financial resources (income) and thus regularly expresses the economic performance of the apartment owner.

Please note | The Federal Finance Court has thus confirmed the legal opinion represented by the tax authorities.
The question of how costs for a separately rented parking space

to be treated.

Source | BFH ruling of December 13, 2023, ref. VI R 30/21, at www.iww.de, retrieval no. 240677; BFH, PM no. 18/24 of April 4, 2024; pitch: Rev. BFH under ref. VI R 4/23

For GmbH managing directors

Size classes: Raising the thresholds is fixed

| The monetary thresholds (total assets and sales revenues) standardized in Sections 267 and 267a of the German Commercial Code (HGB) have been raised (Second Act to amend the DWD Act and to amend commercial law provisions, Federal Law Gazette I 2024, No. 120). The increase in the thresholds is accompanied by a reclassification into a lower size class for the benefiting (often small) companies and thus a reduction in reporting obligations.

If desired, the new values can already be used for the 2023 annual financial statements (option). The new values are mandatory for financial years beginning after December 31, 2023. |

For GmbH shareholders

Without the will to donate there is no hidden profit distribution

| A transfer of assets from a corporation to a shareholder caused by the partnership relationship requires an intention to make a donation - and such an intention may be lacking due to an error on the part of the shareholder-manager. In the opinion of the Federal Finance Court, the decisive factor in this respect is whether the specific shareholder-manager made an error, not whether a manager acting properly and conscientiously would have made the same error. |

Background: A hidden profit distribution (vGA) is – in simple terms – a financial advantage that is granted to the shareholder of a corporation outside the profit distribution under company law.

A vGA may not reduce the company's profits.

ÿ Facts

The plaintiff was a GmbH whose share capital was controlled by the sole shareholder and managing director, among others.
by contributing a 100% stake in another GmbH.

A capital increase was carried out for the GmbH to be incorporated, which
Managing Director and Partner
The tax office saw this as a transfer of assets from the GmbH to its
The GmbH argued that the donation to the shareholder-managing director was made in error due to an oversight in the notarial certification.

the capital increase had taken place.

The Schleswig-Holstein Finance Court dismissed the case because a proper and conscientious business manager ter the error presented by the GmbH would not have occurred. However, the Federal Fiscal Court has now clarified that the question of whether the willingness to donate required for the acceptance of a vGA exists depends solely on the person of the specific shareholder-managing director. It therefore referred the dispute back to the Fiscal Court for further clarification of the facts.

NOTE | In its reasoning for the judgment on the existence of a vGA, the Federal Finance Court also cites the following
The acting shareholder does not have to take into account
the corporate relationship, he does not have to meet the requirements of the vGA
know and he must know what happened
nor can it be properly assessed. Rather, personally attributable action is usually sufficient.

However, these principles do not apply without restriction, since the acceptance of a vGA – as with an open
Distribution of profits – requires a willingness to donate.

Source | BFH ruling of November 22, 2023, Ref. IR 9/20, at www.iww.de, retrieval no. 240822; BFH, PM No. 20/24 of April 11, 2024

for employer

Several mini-jobs at the same time: These rules must be followed

| In principle, several mini-jobs can be carried out at the same time. However, there are a few rules to be observed. The mini-job center has compiled a list of these. |

If employees do not have a main occupation subject to insurance contributions,
then they can do several mini-jobs at the same time. However, the sum of all earnings must not exceed the marginal income limit (since 1.1.2024: 538 EUR
per month).

Please note: If the total earnings from several mini-jobs exceed EUR 538, all jobs are subject to social insurance contributions. The consequence: All employers must now register the employment with the statutory health insurance fund as subject to social insurance contributions. Employment reported to the mini-job center must be deregistered.

NOTE | Employees with a main job subject to social insurance contributions may only do one mini-job with an earnings limit. If additional jobs are added, the chronological order is decisive.

Only the first mini-job remains registered with the mini-job center as a mini-job.
All other mini-jobs must be reported to the statutory health insurance fund as employment subject to social insurance contributions, regardless of the amount of earnings.

Please note | Employers can, for example, use a personnel questionnaire to ask whether their employees already have other jobs. By signing, they also agree to report any changes.

Source | Minijob-Zentrale from 3.4.2024: “Multiple mini-jobs: The most important information for employers & employees”, at www.iww.de/s1079 |

For all taxpayers

Parental allowance: New regulations for births from 1 April 2024

| For births from April 1, 2024, a new income limit will apply, above which the entitlement to parental allowance will no longer apply. In addition, the options for receiving parental allowance in parallel will be redesigned. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth provides answers to important questions (at www.iww.de/s10727). |

For all taxpayers

BAFA: The new funding compass 2024 is here

| In the 2024 funding compass, the Federal Office for Economic Affairs and Export Control (BAFA) brings together the most important information on the funding programs. The funding compass is aimed at small and medium-sized companies, but also at private individuals and municipalities. As in 2023, the areas of energy and climate protection are again in focus in focus. For further information visit www.iww.de/s10773. |