Latest legislative news and case law

07 | 2024

for employer

Company events: Two important rulings on flat-rate wage tax

| According to a recent decision by the Federal Finance Court, flat-rate taxation (tax rate of 25%) for company events is also permissible for events that are not open to all employees. Not so encouraging, however, is a ruling by the Federal Social Court, according to which the delayed flat-rate taxation does not lead to exemption from social insurance contributions.

leads. |

background

Benefits provided by the employer to its employees and their companions on the occasion of company-level events of a social nature (company events) result in wages. This is regulated in Section 19 Paragraph 1 Clause 1 No. 1a Clause 1 of the Income Tax Act (EStG).

To the extent that such benefits do not exceed the amount of EUR 110 per company event and participating employee,

However, if the costs exceed the maximum amount, they do not count as income from employment if participation is open to all members of the company or part of the company. This applies to up to two company events per year (Section 19, Paragraph 1, Sentence 1, No. 1a, Sentence 3 and Sentence 4 of the Income Tax Act).

Judgment of the Federal Finance Court

The question of whether a “company event” also exists when it is held within a closed circle (for example, board and management celebrations) has not been clarified so far.

Please note: In this case, no tax allowance of EUR 110 can be granted, but a flat-rate wage tax of 25% would be possible in accordance with Section 40 Paragraph 2 Clause 1 No. 2 EStG.

The Federal Fiscal Court (in contrast to the previous instance) has now decided this question in favour of the taxpayer. According to the definition in Section 19 Paragraph 1 Clause 1 No. 1a Clause 1 of the Income Tax Act, which applies from the 2015 assessment period, a company event can also

if it is not open to all members of a company or part of a company. And since this definition corresponds to the element of "company event" in Section 40 Paragraph 2 Sentence 1 No. 2 of the Income Tax Act, a flat-rate taxation is possible.

Data for the month August 2024

ÿ TAX DATES

Due date:
VAT, LSt = 12.8.2024
Trade tax, property tax = 15.8.2024

Transfers (payment grace period):
VAT, LSt = 15.8.2024
Trade tax, property tax = 19.8.2024

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 8/2024 = 28.8.2024

ÿ CONSUMER PRICE INDEX

(Change from previous year)

5/23	10/23	1/24	5/24
+ 6.3% +	3.0% + 3.1	% + 2.8%	

Judgment of the Federal Social Court

The dispute before the Federal Social Court also concerned company events – namely the question of what consequences a delayed flat-rate wage tax assessment has for social insurance.

ÿ Facts

A company celebrated with its employees a company anniversary on 5 September 2015. On 31 March 2016, it paid the employees' salaries for September 2015 to an amount of around 163,000 EUR.

After an audit, the pension insurance provider demanded social security contributions and levies from the company amounting to around EUR 60,000 – and

Rightly so, as the Federal Social Court has decided (the contrary decisions of the lower courts were overturned).

Expenses of more than EUR 110 per employee for a company anniversary celebration are subject to social security contributions as a non-cash benefit if they are not taxed at a flat rate with the payroll but only considerably later.

It is crucial that the flat-rate taxation takes place "with the salary statement for the respective accounting period".

In this specific case, this would have been the payroll for September 2015. In fact, however, the flat-rate taxation was not carried out until the end of March 2016, and thus even after the date on which the wage tax certificate for the previous year had to be submitted.

NOTE | In the meeting results of 20 April 2016 (item 5), the leading social security organisations are of the opinion that a subsequent flat-rate taxation can only be claimed until the wage tax certificate is issued, i.e. no later than 28 February of the following year. The Federal Social Court has now agreed with this.

sen.

Source | BFH ruling of March 27, 2024, Ref. VI R 5/22, at www.iww.de, retrieval no. 241427; BSG ruling of April 23, 2024, Ref. B 12 BA 3/22 R, at www.iww.de, retrieval no. 241172, BSG, PM no. 15/24 of April 23, 2024; Leading organizations of social insurance, meeting result of April 20, 2016, TOP 5, at www.iww.de,

Retrieval No. 230282

For entrepreneurs

Renewal of the heating system: No input tax deduction when renting out residential property

| If the landlord of living space is also obliged to provide heat and hot water for contractual use, the landlord's costs for a new heating system are in any case directly and immediately related to the tax-free rental if they are not operating costs that the tenant has to bear separately. The bottom line of this decision by the Federal Finance Court: The landlord cannot claim input tax deduction for the heating system. |

Background: According to Section 15 Paragraph 2 Clause 1 No. 1 of the Sales Tax Act, input tax deduction is excluded for deliveries and other services that the entrepreneur uses to carry out tax-free transactions.

The Münster Finance Court had assessed the dispute differently and based it on separate services, namely tax-free rental services on the one hand and taxable energy supplies on the other.

The Federal Finance Court rejected the Landlords demanded input tax deduction from the heating exchange, however, because the landlord there, in accordance with the tenancy law framework conditions, provides an apartment for the intended use - ie including the provision of hot water – and the relevant payments were not to be regarded as operating costs that could be charged separately to the tenant within the meaning of Section 556 of the German Civil Code.

Source | BFH ruling of December 7, 2023, ref. VR 15/21, at www.iww.de, retrieval no. 240298

For all taxpayers

Increase in statutory old-age pensions from 1 July 2024

| Statutory old-age pensions will increase by 4.57% as part of the annual pension adjustment on 1 July 2024 (for the first time nationwide)

(subject to approval by the Federal Council, which was not yet available at the time of going to press). Around 21 million pensioners will benefit from this. |

The pension adjustment can lead to pensioners becoming liable to pay taxes for the first time and having to submit a tax return. However, tax liability only arises if the taxable part of the annual gross pension

- plus other income (e.g. from renting) and taking into account any allowances and other deductions - exceeds the basic tax allowance. For 2023, the basic allowance is EUR 10,908 per year, for 2024 it is currently EUR 11,604. If married couples are taxed jointly, double the amounts apply.

In addition to the basic allowance, the pension allowance plays an important role: This is the part of the pension that is not taxed. The year in which the pension begins is decisive for the pension allowance. The pension allowance is a fixed amount that remains unchanged for the pensioner in subsequent years. The annual pension increases that follow during the course of the pension must be taxed in full.

Please note: The taxable portion of the pension from a basic pension is 50% if the pension began in 2005 or earlier. The taxable portion is gradually increased for each new generation of pensioners.

For example, anyone who retired in 2023 is only entitled to a pension allowance of 17.5%. This means that 17.5% of the pension remains tax-free and 82.5% of the pension is subject to taxation. Since the taxable portion will increase by half a percentage point for each new retirement year from 2023, 100% taxable portion will then apply for the first time in 2058 (= year of pension commencement).

Source | The Federal Government, announcement of 24 April 2024: "Pensions will rise again significantly on 1 July"

For entrepreneurs

Investment allowance: Reversal for a subsequently tax-exempt Photovoltaic system

| There is no objection to the reversal of investment allowances for the purchase of photovoltaic systems that are tax-exempt from 2022. This is the ruling of the Cologne Finance Court in a suspension procedure that confirms the view of the Federal Ministry of Finance. |

background

The Annual Tax Act 2022 made income from the operation of a photovoltaic system, which could previously lead to taxable commercial income, tax-free under the conditions of Section 3 No. 72 of the Income Tax Act (EStG) - retroactively from January 1, 2022.

However, with regard to a photovoltaic system to be built, taxpayers have created a profit-reducing investment allowance as part of their profit calculations or income tax returns for 2021. In the opinion of the administration, these investment allowances are to be reversed in accordance with Section 7g Paragraph 3 of the Income Tax Act by changing the income tax assessment for 2021. Whether this is legal is currently controversial.

Decision of the Cologne Finance Court

In a preliminary legal protection procedure, the Cologne Finance Court has now confirmed the opinion of the Federal Ministry of Finance - among other things, an unconstitutional retroactive effect and a violation of the principle of protection of legitimate expectations should be excluded due to the favorable legal consequences of Section 3 No. 72 of the Income Tax Act.

Please note | The decision is not final because the taxpayer has lodged an appeal.

Source | Finance Court of Cologne, decision of March 14, 2024, ref. 7 V 10/24, Federal Fiscal Court: ref. III B 24/24, at www.iww.de, retrieval no. 240797; BMF letter dated 17 July 2023, ref. IV C 6 - S 2121/23/10001:001, para. 19

For employees

No reduced taxation: Lump sum payment of a pension

| The payout of a direct insurance policy after exercising a contractually granted capital option is not subject to the reduced tax rate.
However, an appeal against this decision of the Münster Finance Court is pending. |

ÿ Facts

In the dispute, the taxpayer had agreed with her then employer to convert part of her salary into contributions to a direct insurance scheme under the Company Pension Act. The employer then concluded

The employer takes out such insurance for the taxpayer with a premium payment period of 14 years.
A lifelong monthly pension should be paid or, upon request, a one-off lump sum payment should be made.

In the year in dispute, 2019, the taxpayer exercised the capital option and received approximately EUR 44,500. The tax office treated this amount as tax-

pension and taxed him at the regular tax rate. The appeal against this was unsuccessful.

Remuneration for activities over several years can be considered extraordinary income, which is subject to reduced taxation (fifths rule). However, since the element of extraordinary income was missing in the case in dispute, reduced taxation was not considered.

With regard to the capital payment of pensions, the previous

Jurisprudence of the Federal Finance Court exclusively on the contractual agreement (no reduced taxation if the capital option was already included in the original pension arrangement). In later decisions, however, the Federal Finance Court considered it more important whether the capital option is actually exercised only in atypical individual cases, for which statistical material must be evaluated.

Against this background, the Münster Finance Court has allowed the appeal with the following wording: "The Federal Finance Court must be given the opportunity to decide again on the refinement of the criteria for determining the atypical nature of capital payments of pensions, since in its previous decisions it (erroneously) assumed that statistical material on the frequency of the exercise of capital options is available."

NOTE | Since the taxpayer has filed an appeal, suitable cases can be kept open with an objection until the decision of the Federal Finance Court.

Source | FG Münster, judgment of October 24, 2023, ref. 1 K 1990/22 E, Rev. BFH: ref. XR 25/23, at www.iww.de, retrieval no. 238312

For all taxpayers

FAQ on tax incentives for energy Building renovation

| For energy-saving measures on a building used for one's own residential purposes, a tax reduction is possible under Section 35c of the Income Tax Act (EStG). The Federal Ministry of Finance has now published a FAQ (as of February 15, 2024; available at www.iww.de/s10937). |

The Federal Ministry of Finance provides, among other things, Answers to the following questions:

- What is supported and how high is the tax incentive?
- What are the requirements?
- Who is allowed to carry out the energy measures?
- What alternatives are there to tax incentives?

For landlords

Depreciation: Shorter remaining useful life of a building through expert estimation

| The Federal Fiscal Court has once again dealt with the question of how a shorter actual useful life of a building (Section 7 Paragraph 4 Sentence 2 of the Income Tax Act (EStG)) is to be demonstrated and decided that the taxpayer can use any expert method that appears suitable in the individual case to provide the necessary evidence. |

In the case of buildings, the fixed percentages specified in Section 7 Paragraph 4 Sentence 1 of the Income Tax Act are to be deducted from the acquisition costs as depreciation. The percentages are based on a standardized useful life, which does not have to have anything in common with the actual useful life at the time of acquisition. According to Section 7 Paragraph 4 Sentence 2 of the Income Tax Act in the version applicable in the year in dispute, depreciation corresponding to the actual useful life of a building can be made (option) instead of these depreciations.

The burden of proof and determination for a shorter actual period of use, the taxpayer bears the costs, which must be estimated. The taxpayer can use any expert method that appears suitable for providing evidence. According to the Federal Finance Court, the restrictions made by the Federal Ministry of Finance in its letter of February 22, 2023 cannot be fully derived from the law.

Above all, the expert determination of the remaining useful life according to Section 4 Paragraph 3 of the Real Estate Valuation Ordinance of July 14, 2021 is an estimation method recognized by experts.

NOTE | However, the taxpayer cannot demonstrate and prove a shorter actual useful life within the meaning of Section 7 Paragraph 4 Sentence 2 of the Income Tax Act by simply referring to the model-based total and remaining useful life of a building in accordance with the relevant real estate valuation regulation. Rather, the estimate of the useful life requires an expert assessment that relates in particular to the individual circumstances of the property (for example, repairs or modernizations carried out or not carried out).

Source | BFH ruling of January 23, 2024, ref. IX R 14/23, at www.iww.de, retrieval no. 241431; BMF letter of February 22, 2023, ref. IV C 3 - S 2196/22/10006: 005

for employer

Tax-free allowances: Necessary between domestic work and Home working after Homework Act

| During external wage tax audits, auditors are increasingly encountering situations in which the employer has reduced the basic wage as part of a salary conversion and paid a tax-free homeworker's allowance in accordance with Section 3 No. 30 and No. 50 of the Income Tax Act (EStG) to compensate for the expenses associated with home work (e.g. for rent, heating and lighting of the work rooms). And caution is advised here: In many cases, the requirements for the tax-free homeworker's allowance under the Homework Act (HAG) are not met. |

Information on the homeworker allowance is contained primarily in wage tax guideline 9.13. Paragraph 2 states: “Wage allowances paid to homeworkers in addition to the basic wage to compensate for the expenses associated with homework are, for simplification reasons, tax-free in accordance with Section 3 Nos. 30 and 50 of the Income Tax Act, provided they do not exceed 10% of the basic wage.”

NOTE | However, this tax exemption only applies to home workers within the meaning of Section 2 Paragraph 1 HAG. The tax-free allowances cannot therefore be claimed by employees who have been (partly) working from home since the Corona pandemic.

Source | R 9.13 para. 2 Wage Tax Guidelines; Section 2 Home Working Act

For employees

No wages: reimbursement of costs of a church Employer for extended criminal records

| The Federal Finance Court (judgment of February 8, 2024, file number VI R 10/22) has decided: reimbursement of costs by a church employer to its employees for the issuance of extended certificates of good conduct, which the employer is obliged to obtain under church law for the purpose of preventing sexual violence, does not result in wages. |

For all taxpayers

Tax tips for people with disabilities

| The Ministry of Finance of Baden-Württemberg has published a tax guide for people with disabilities (2nd edition, May 2024; available at: fm.baden-wuerttemberg.de/de/service/publikationen). |

The legislature provides various tax reliefs and benefits for people with disabilities

The guidebook contains the most important

The most important regulations for people with disabilities and their relatives in wage tax, income tax and sales tax are presented.