PKF

Newsletter

Key Issues:

Signing annual financial statements and shareholders' meetings during coronavirus times

01|22

Dear Readers,

We hope that 2022 has started well for you. The January edition of our newsletter begins in the Tax section with a closer look at the **assessment bases** that will, in future, be relevant for the so-called **'supplemental taxable events'** *(Ergänzungstatbestände)* under the new **German Real Estate Transfer Tax Act.** The aim of these regulations is to prevent structuring intended to minimise real estate transfer tax. Subsequently, you will find advice and information, based on a new ECJ ruling, on exercising the VAT-related option when making allocations to private assets or business assets.

The next two reports after that are of particular practical significance in view of the coronavirus pandemic and, therefore, constitute our Key Issues. First of all, in the Accounting and Finance section, we discuss the tendency that **electronic signatures** are also likely to be acceptable for the **signing of annual financial statements** and, thus, the presence of the respective signatories can be unnecessary. Next up, in the Legal section, we present the **formal and notice period requirements** that have to be complied with when issuing invitations to **shareholders' meetings** in the event that there are **travel restrictions.** Here, the Stuttgart Regional Court established that there was a right to participate in person.

The article that follows deals with the **timing of profit distributions** in the case of companies that are in danger of becoming **insolvent**. It is questionable whether or not shareholders may still distribute between themselves the profits that were generated in the past (retained income brought forward, revenue reserves) without the risk of this being challenged subsequently by an insolvency administrator.

A colourful array of reports in our 'In Brief' section – for example, on occupational pension schemes, on child benefit in the case of adult children, or on the use of the so-called renovation clause in rental agreements – is moreover followed, in this January edition of our newsletter, by the **social insurance values for 2022**.

We continue our journey around the PKF locations in Germany through the illustrations that break up the reports from our experts with a visit to the region of Zollernalb and Balingen.

With our best wishes for a healthy and prosperous year during which, hopefully, more in-person meetings will soon be permitted.

Your Team at PKF

Front cover photo: Hohenzollern Castle

Key Issues

Signing annual financial statements and shareholders' meetings during coronavirus times

Contents

TAX

StB [German tax consultant] Steffen Zipperling

New regulations pertaining to the assessment base for real estate transfer tax (RETT) purposes – Restrictions already in effect

In the PKF newsletter 11/2021 we had already reported on the Law Amending the Real Estate Transfer Tax Act *(Gesetz zur Änderung des Grunderwerbsteuergesetzes, GrEStG)* of 12.5.2021. Besides the widening of the scope of the so-called 'supplemental taxable events' *(Ergänzungstatbestände)* that is described in this legislation, a regulation pertaining to the assessment base for RETT purposes was also adopted there and is analysed in more detail in the following section. This regulation aims at preventing structuring intended to minimise RETT and has already been in effect since 1.7.2021.

1. The consideration or the value of the real estate as an assessment base?

If a piece of real estate is transferred from a seller to a purchaser then, normally, the RETT would be determined on the basis of the agreed consideration, i.e. the purchase price agreed between the contracting parties for the piece of real estate. This principle applies even if the agreed purchase price deviates considerably from the fair market value of the piece of real estate because of a personal relationship between the seller and the buyer. The difference between the purchase price and the fair market value of a piece of real estate would not be included in the assessment base for RETT purposes even in the case of a sales transaction between a company and its shareholder(s) (although for income tax purposes the difference would have to be treated as a constructive dividend) insofar as

Hohenzollern Castle

the purchase price is not merely a symbolic one (e.g., €1).

It is only in specific cases that RETT would not be determined on the basis of the consideration but, instead, based on the value of the real estate; in such cases, under German valuation law, the real estate value would then have to be separately assessed. These rules are also applied, in particular, in the case of corporate reorganisations (if the conditions of the exempting corporate group clause have not been met) where the real estate owned by the transferring legal entity is not transferred to the acquiring entity via an individual real estate purchase agreement but instead via universal succession.

2. Previous tax structures in the case of corporate reorganisations

Up to now, when applying these rules, it has been possible to significantly reduce the high RETT charges that are incurred on real estate assets when they are transferred by making use of specific structures.

Such tax structuring made use of the retroactive effect to the prior year's balance sheet that is usual in the case of corporate reorganisations for income tax purposes. In the course of this, in the retroactive period, the pieces of real estate included in the assets that are transferred are sold to the acquiring entity at a purchase price below the fair market value. As per the priority to take the consideration as an assessment base, as described above, the RETT would thus only have to be paid on the purchase price that is actually too low. Additional income tax disadvantages (such as tax charges on constructive dividends) would not even arise as a result of the retroactive application.

3. The legislative response – a break with the prioritisation of the consideration

Lawmakers have now classified individual sales of real estate ahead of the corporate reorganisation coming into effect under civil law as inappropriate tax structuring. The inclusion of Section 8(2) sentence 1 no. 4 GrEStG has closed this tax loophole.

Under this new provision, – and starting from 1.7.2021 already –, in such cases, RETT will no longer be calculated on the basis of the too low a purchase price paid but, instead, on the basis of the value of the real estate. This will thus ensure that the treatment for RETT purposes would be the same as in the case of corporate reorganisations where no real estate was sold during the retroactive period.

Recommendation

The recent developments in RETT legislation mean that, in terms of tax, there will be further restrictions with respect to the leeway and optimisation possibilities. Forthcoming business restructurings that involve real estate-owning companies should routinely be subjected to a comprehensive review as regards RETT.

Limitation period for VAT purposes in respect of the allocation to private assets or business assets

The European Court of Justice (ECJ) has grappled with the issue of the applicable time limits with respect to the allocation to business assets for VAT purposes. The court did not reject these time limits in principle.

1. Basic right to choose

When purchasing an item or a building a business owner has the right to choose whether it should be allocated to private assets or to business assets. This right to choose has to be exercised already at the time when the purchase is made. However, for practical reasons, it is also still possible to carry out a timely allocation together with the submission of the annual VAT return. In doing so, according to the case-law of the Federal Fiscal Court *(Bundesfinanzhof, BFH)*, the deadline for submission of the return (31.7 of the subsequent year) should be complied with. If the allocation is not documented vis à vis the local tax office within this time limit, then this authority would assume that the item has not been allocated to the business. As a consequence, the input tax deduction would be definitively refused.

2. Clarification by the ECJ

In two requests for preliminary rulings, the BFH had directed questions to the ECJ that were related to the

decision to allocate to business assets for the purposes of input tax deduction. The aim here was to obtain clarification on whether or not a Member State may provide for a time limit for the allocation to business assets if, upon the expiry of the statutory deadline for filing of annual VAT returns, no allocation decision identifiable by the tax authorities has been submitted. Furthermore, clarification was also sought on the legal consequences that arise if the deadline is missed.

The ECJ, in its ruling of 14.10.2021 (case: C-45/20; case: C-46/20), in principle, did not reject this firm deadline for allocation on any grounds relating to EU law and has now left the decision on the question of the deadline for the documentation of the allocation decision to the BFH.

According to the ECJ, an infringement of the formal requirements should not lead to the of the loss of the right to deduct input tax. Merely missing the documentation deadline should not prevent a business owner from providing reliable evidence of an allocation decision at the time when the purchase was made.

3. Outlook

The BFH will now consider if a firm allocation deadline is proportionate in order to achieve the objective of maintaining the principle of legal certainty. Furthermore, it should be noted that the tax administration also has other sanctions against delinquent taxpayers.

Recommendation

The BFH's decision will thus be highly anticipated. Until then, you should continue to comply with the normal time limit for filing tax returns (usually 31.7 of the subsequent year) for the documentation of the allocation to business assets.

ACCOUNTING & FINANCE

WP/StB [German public auditor/ tax consultant] Kevin Kuß

Signing annual financial statements using a qualified electronic signature

The development towards a digitalised work environment has accelerated rapidly since the beginning of the coronavirus pandemic. This will also affect the activities related to the drawing up of annual financial statements that, for more and more companies, are being carried out mostly or even completely in a home office. It is questionable whether or not a handwritten signature on the annual financial statements can be exclusively replaced by an electronic signature.

1. Requirement to sign annual financial statements

A business person is required to sign the annual financial statements and indicate the date (Section 245 of the German Commercial Code [Handelsgesetzbuch, HGB]). In the case of a sole proprietorship the signatory would be the sole proprietor, in the case of partnerships it would be the personally liable shareholders and for corporations the signatories would be either all the members of the management team (for a GmbH) or all the members of the management board (for an AG [a joint stock company]).

The persons who sign are documenting with their signatures that they accept responsibility for the completeness and correctness of the annual financial statements. The signature has to be put beneath the annual financial statements.

2. Qualified electronic signature

Annual financial statements have to be personally hand signed. Consequently, merely replacing a handwritten signature with an electronic copy or a printed reproduction of the original signature is not a valid option. However, a qualified electronic signature as a substitute, which complies with formal requirements, could possibly be considered.

A qualified electronic signature is a digital signature that is the equivalent of a handwritten signature and can thus be used in legal dealings. To this end, specific Trust Service Providers issue qualified certificates and link these electronically with the document that has to be signed.

Balingen · Friedrichstraße

As a result, the natural person who is the signatory can be clearly identified.

3. Admissibility of digital signatures not yet conclusively clarified

At this point in time, there are no clear legal regulations with respect to the admissibility of using qualified electronic signatures as a way of signing annual financial statements. Moreover, the accounting commentaries in this respect are modest in number as well as mixed. It is notable that qualified electronic signatures are already being used as substitutes for handwritten signatures in comparable areas of application.

For example, the Institute of Public Auditors in Germany (IDW) has deemed it to be admissible for auditors of annual accounts to use qualified electronic signatures when they issue audit opinions and draw up audit reports. Moreover, the use of qualified electronic signatures by preparers of financial statements on declarations of completeness has likewise been deemed by the IDW to be equivalent to handwritten signatures. The working group on accounting at the Chamber of Tax Consultants in South Baden also holds the view that qualified electronic signatures may be used on original digital documents.

4. Conclusion

Currently, there is continued legal uncertainty for preparers of financial statements in cases where solely qualified electronic signatures are used on annual financial statements. Since the approval of the annual financial statements does not depend on them being signed there is admittedly no risk of the statements being rendered invalid, nevertheless, this state of affairs could constitute a regulatory offence.

Recommendation

Furthermore, it should be noted that the record retention requirement under Section 257(3) HGB obliges preparers of financial statements to retain the annual financial statements in paper form and consequently to sign them by hand even if these have been drawn up and signed digitally. It would be desirable for lawmakers to clarify or review the current guidelines with respect to the signing of financial statements as well as the record retention requirements. We will keep an eye on further developments for you.

LEGAL

RA [German lawyer] Sven Hoischen

The right to participate in a shareholders' meeting in person during times when there are travel restrictions

In times of the coronavirus pandemic, it has not been uncommon to have travel restrictions and these can make it necessary to postpone or cancel a physical shareholders' meeting. A recent court ruling clarified that a GmbH *[German limited liability company]* that sends invitations to a meeting has to ensure that the shareholders receive these together with the agenda in good time so as to be able to actually organise the participation in the shareholders' meeting as well.

1. Sending invitations to a shareholders' meeting during times when there are travel restrictions

In the case that was recently decided by the Stuttgart Regional Court *(Landesgericht, LG),* some of the shareholders of a GmbH based in Germany lived abroad. The GmbH, in its invitation letter of 10.8.2020, duly convened a shareholders' meeting for 14.9.2020. On the date of the shareholders' meeting, there were restrictions on travel to Germany on account of the COVID-19 pandemic.

The statutes of the GmbH did not provide for shareholders' meetings in the form of phone conferences or video conferences. According to the statutes of the GmbH, the shareholders had to be notified of the agenda three days before the shareholders' meeting, at the very latest. The shareholders who lived abroad received the agenda 11 days prior to the planned shareholders' meeting and, thus, within the period stipulated in the company's statutes. The agenda included, among other things, the removal of one of the shareholders – who was also one of the claimants – as the managing director of the GmbH.

Lichtenstein Castle

Some of the shareholders who lived abroad petitioned the Stuttgart LG to cancel the extraordinary shareholders' meeting on account of the restrictions for entry into Germany, which were blocking the possibility of participating in the meeting.

2. The decision of the Stuttgart LG – A right to participate in person

While all the formal and notice period requirements provided for in the statutes had been fulfilled, nevertheless, the Stuttgart LG complied with the petition of the shareholders who had brought the action. In its ruling of 10.2.2021 (case reference: 40 O 46/20), the court explained that while the statutes of the GmbH admittedly included provisions on the passing of resolutions, however, these did not provide for any possibility of a meeting on the basis of phone conferencing or video conferencing. In this respect, an exhaustive rule had been made for the passing of resolutions under the company's statutes.

Consequently, the court awarded the shareholders who had brought the action the right to participate in a shareholders' meeting in person. However, during times when there are travel restrictions, the meeting has to be convened early enough and notification of the agenda has to be such that the shareholders have the possibility of organising their journeys and fulfilling any quarantine requirements. To substantiate this the court pointed out that a shareholder's right to participate forms a part of the inalienable core of membership rights and that a shareholder can only embark on a decision-making process with regard to their participation after being notified of the agenda.

Ultimately, the GmbH did not adequately carry out its acknowledged duty to give due consideration to the interests of the shareholders.

3. Putting the ruling into context

Regardless of the currently existing coronavirus pandemic, travel restrictions can be imposed for a variety of reasons. A shareholders' meeting that, according to a company's statutes, requires attendance in person would have to be postponed if it were not possible to enter the country as well as participate in the meeting in good time. Potential travel restrictions should be taken into consideration when sending out invitations to a shareholders' meeting.

Recommendation

Statutes and memorandums of association should be reviewed as to whether or not these include rules for the passing of resolutions in the form of phone conferences or video conferences. Managing directors should take travel restrictions into account when they are issuing invitations to a shareholders' meeting.

RA/StB [German lawyer/tax consultant] Frank Moormann

An insolvency administrator may challenge profit distributions

In the event of a looming crisis at a GmbH *[German limited liability company]*, a question that frequently arises for shareholders is whether or not they may still distribute between themselves the profits that were generated in the past (retained income brought forward, revenue reserves) without the risk of this being challenged subsequently by an insolvency administrator. The Federal Court of Justice *(Bundesgerichtshof, BGH)* has now, in principle, replied in the negative – there is therefore a risk of this being challenged.

1. Background

Certain legal acts that are performed prior to the opening of insolvency proceedings may be challenged by the insolvency administrator. This also includes the satisfaction of a loan granted by a shareholder to the company if the repayment is made in the last year prior to the opening of insolvency proceedings. This however likewise applies to payments that are the economic equivalent of loans. Whether or not the latter also applies to profits 'that have been left in the company' has been disputed for a long time now.

2. Retained income brought forward is the economic equivalent of a loan

In the opinion of the BGH (ruling of 22.7.2021, case reference: IX ZR 195/20) the crucial point is that a capital asset is made available for a period for use by the

company and a financing function is thus attributed to the legal act. This can then also be deemed to be so if the sole shareholder decides not to distribute profits that have been generated but, instead, to carry them forward to new account.

A subsequent distribution would then be the economic equivalent of a loan repayment even though this concerns equity capital and not debt capital. Consequently, the creation of revenue reserves or voluntary payments into the capital reserves should be rated as being 'similar to a loan'.

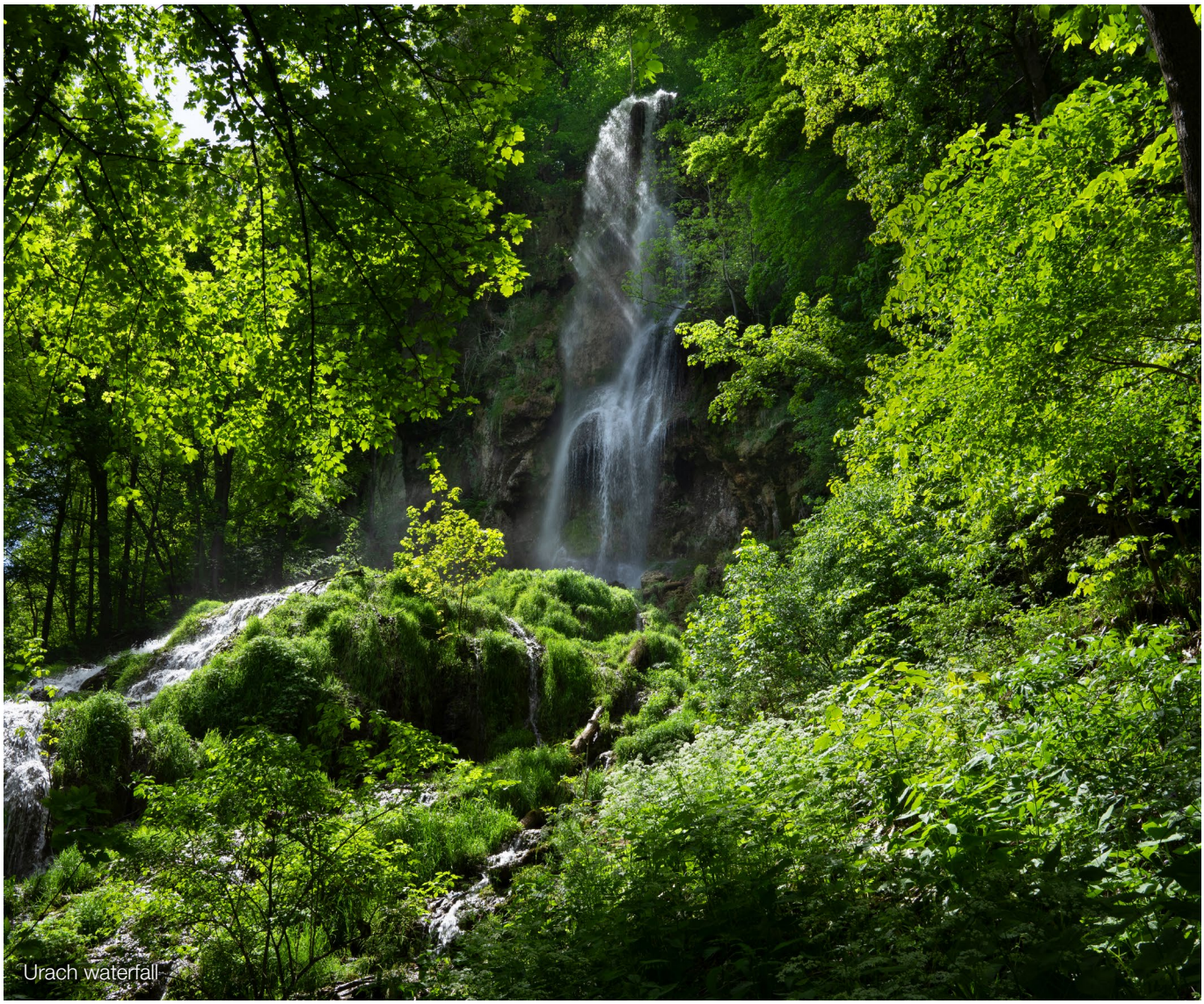
3. Applicable also in the case of majority decisions?

The BGH ruling related to the case of a sole shareholder who had made a financing decision by carrying the income forward to new account. According to the court's explanations, the same could also readily be assumed for the majority shareholders of a multiple ownership company if they were to vote in favour of retaining profits.

Please note: By contrast, in the case of out-voted minority shareholders it would likely not be possible to assume that there had been a distinct financing decision because there would have been no voluntary decision to leave profits in the company.

Recommendation

In view of the one-year time limit prior to the opening of insolvency proceedings, during which profit distributions are at risk of being challenged, in principle, the recommendation can only be to actually distribute earnings so long as it is possible do so without causing an adverse balance in the accounts but with the clear understanding that for shareholders who are basically willing to provide finance this would represent a dilemma. For minority shareholders it would be advisable, as a precautionary measure, to vote against the respective resolutions to carry forward retained income.



Urach waterfall

Clarification by the Federal Ministry of Finance on occupational pension schemes

The fiscal administration has revised its wide-ranging letter on the application of tax incentives for occupational pension schemes and has regulated a number of individual issues for all open cases. According to the new letter of 29.9.2021 and 10.1.2022, the following, among other things, will thus apply:

(1) The employer's pension commitment has to serve a pension objective that is regulated in the German Occupational Pensions Act and the obligation to pay pension benefits has to be triggered by a biological event specified in the legislation. Moreover, it is assumed that through the planned benefit a biometric risk that is mentioned in the legislation will be at least partially accepted.

(2) With the commencement of a reduction in earning capacity, an inability to work or occupational disability the criteria for the biometric risk of invalidity will have been basically fulfilled. This would also apply even if the benefit entitlement is not additionally linked to the employee actually being restricted in the exercise of their profession as a result of the commencement of the degree of invalidity. However, with respect to their pension commitments, employers are however free to restrict the benefit entitlement to that effect.

(3) Basic skills insurance would likewise serve to protect against the biometric risk of 'invalidity' and, therefore, meets the requirements under the German Occupational Pensions Act. By contrast, insuring the risk of longer-term incapacity for work does not constitute protection against the biometric risk of 'invalidity' and, therefore, cannot be used for an occupational pension scheme.

(4) If the vehicles for old-age provision of direct insurance, Pensionskassen [legally independent insurance companies that entitle employees or their surviving dependants to retirement benefits] and pension funds include an agreement for an exemption from premium payments for certain periods (e.g., during periods of incapacity for work and periods when employees receive sickness benefits) then this would not preclude recognition as an occupational pension scheme for tax purposes.

(5) There would be no scope for a reduction in the taxable allocated charges while an additional financing requirement exists in the form of the so-called tax-exempt recapitalization payments (Sanierungsgelder).

(6) If employees avail themselves of the option of the additional capital accumulation benefits provided by employers for the building of occupational pensions and, within the framework of salary sacrifice, make use of these benefits via the vehicles for old-age provision of pension funds, Pensionskassen or direct insurance then such contributions would be tax-exempt within the statutory limits. This would also apply to the supplements given by employers in this connection (e.g. increased amount for occupational pensions of €26 instead of capital accumulation benefits of €6.65) and for supplements given by employers that depend on an additional salary sacrifice (e.g. an increased contribution to the occupational pension of €50 if the employee sacrifices €13 of their remuneration).

Tax deduction for school fees and extra tuition costs

During the coronavirus pandemic, the temporary suspension of in-class teaching at many schools has given rise to considerable gaps in knowledge for many pupils. The costs for extra tuition may not normally be deducted in order to reduce the tax liability because such costs are deemed to already be covered by the child benefit or the child allowance. Even if the tutor comes to the home, nevertheless, this service cannot be deducted against tax as a household-related service.

An allowable deduction is likewise generally excluded. There is however one exception. If children have to change schools because their parents have to move for professional reasons and if the children fail to keep up with the curriculum in their new classes then the costs for extra tuition would be deemed to be allowable deductions. The amount would depend on the date of the move. If the move occurred between 1.3. and 1.6.2020 then it would be possible to deduct up to €2,066 per child. If the move took place after 1.6.2020 then a maximum of

€1,146 would be deductible because the German Federal Moving Costs Act has been fundamentally reformed. As of 1.4.2021, the deductible amount has been €1,160. It is important to keep all documents and receipts.

Furthermore, since 2007, it has been possible to claim for private school fees as special expenses in your tax returns. It does not matter here who the school service provider is. These could be educational facilities operated by a church or an independent entity, however, the private school and the school or vocational qualifications have to be state-approved. In the case of a private Gymnasium [a type of German secondary school], the subject combination for a student in years 11 to 13 has to be consistent with combinations that have been approved by the Ministry of Education and Cultural Affairs.

Please note: If the parents are entitled to child benefit then it would be possible to claim a tax deduction for 30% of teaching-related costs, up to a maximum of €5,000, per child and year. The tax benefit will accrue to the parent who bears the costs.

Work-related activities away from home – No lump-sum allowances instead of ticket costs

When employees go on business trips the rule is that the travel costs that they paid for themselves can be deducted as work-related costs in their tax returns insofar as these costs have not been reimbursed free of tax by their employers. Such expenses cover, among other things, using a means of transport (e.g., ticket costs). Alternatively, it is also possible to claim flat rates per kilometre that, under the Federal Travel Expenses Act, have been determined as the highest distance allowance.

The Federal Fiscal Court *(Bundesfinanzhof, BFH),* in its ruling of 11.2.2021 (case reference: VI R 50/18), decided that employees may not claim flat rates per kilometre – € 0.30 per km may be deducted for the use of a car and €0.20 per km for the use of other motor vehicles such as,

Weighing Scales Museum in Zollern Castle

e.g., a moped or a motorcycle – if for their work-related activities away from home they use means of transport that operate regularly, such as, railways, aircraft, ferries, buses, underground trains, suburban trains or trams. The claimant had wanted his trips to be taken into consideration at a rate of €0.20 per km travelled instead of at the actual lower cost of tickets for the public transport used for which his employer had reimbursed him – the resulting surplus for his claim was €2,895. However, the BFH refused to allow his work-related cost deduction and clarified that, in such cases, it is only the actual ticket costs that were incurred that may be deducted in tax returns.

Cosmetic repairs – Obliging a tenant to renovate is only possible to a limited extent

Last year, the so-called renovation clause received a lot of media attention on account of a ruling by the Federal Court of Justice *(Bundesgerichtshof, BGH).* The Krefeld Regional Court *(Landgericht, LG)* further developed this case law to the detriment of landlords in a tenancy law dispute that is described in the following section.

The ruling of 25.8.2021 (case reference: 2 S 26/20) related to a case where the tenants had moved into an unrenovated apartment about four and half years previously. Inside the apartment, special borders had been affixed and unusual wall paints and patterns had also been chosen. These decorations dated back to the time of the previous tenancy and the current tenants had agreed that the decorations could remain unchanged. The current rental agreement provided that the tenants were obliged to carry out repairs or have them carried out at their own expense in the rental property. That should however only be needed insofar as this was made necessary as a result of the use of the rented property by the tenants. While taking the degree of wear and tear into consideration they were supposed to carry out cosmetic repairs at regular intervals of five, eight and ten years. Returning the apartment with a coat of paint in neutral colours would only be required in the case where the tenants had changed the colour scheme. The matter in dispute for both parties was that the landlady was demanding that the cosmetic repairs be carried out and was withholding the security deposit. The tenants filed a lawsuit to recover the security deposit and took the matter to court.

The LG had a clear view – even if the BGH had previously approved flexible time schedules, nevertheless, clauses with such time schedules breach the rule in Section 309 no. 12 of the German Civil Code. This is because the tenant would then have to prove that there was no need for renovation. However, it cannot actually be presumed either from an expert point of view or an empirical perspective that there will be a need for renovation after certain periods of time have elapsed. According to the BGH ruling, in the event of a dispute this would however ultimately not be important because a standard clause concerning the passing on of the obligation to carry out cosmetic repairs would only be possible in the case of an apartment that had been renovated. Moreover, in the case of an unrenovated apartment, this rule would only apply if the landlord paid the tenant adequate compensation. That is why, in this case, the tenants were not obliged to renovate the apartment and the landlady had to pay out the security deposit to them.

Please note: It is not even possible to transfer the renovation obligation to tenants in pre-formulated rental agreements unless the rented apartment is handed over in a renovated state. This is a principle that landlords should observe and tenants should be aware of.

Drawing child benefit in the case of adult children

Child benefit represents a not insignificant part of household income, particularly in the case of large families. Since 1.1.2021, for the first and second child, €219 has been paid to parents monthly for each child. For the third child, the child benefit goes up to €225 and an amount of €250 is paid for each additional child. It is possible that the new German government will even resolve to raise these amounts for 2022.

If the child is an adult then the Family Benefits Office *(Familienkasse)* will continue to still pay child benefits up to the child's 25th birthday if, during this period, the child

- is undergoing vocational training or studying (even in the case of a second vocational training course or a second degree course),
- has to wait for a place on a training course or a degree course,

» is doing voluntary work within the scope of the voluntary social year (freiwilliges soziales Jahr) or Federal voluntary service (Bundesfreiwilligendienst), or
» is taking a break of no more than four months between the stages of vocational training.

If the child is already completing a second course of vocational training then, normally, they are not allowed to do more than 20 hours of additional work per week in order for the child benefit to continue to be paid (so-called employment test). If the 20-hour limit is exceeded then this side job would be deemed to be a main job so that there would no longer be an entitlement to child benefit.

Please note: After successfully completing a bachelor's degree programme, if the child immediately embarks on studies for a relevant master's degree then, normally, the latter course of studies would not be deemed to be a second vocational training programme but rather still part of the first course of training. Consequently, the Family Benefits Office would not yet be allowed to perform an employment test and, therefore, the child benefit would have to be paid out irrespective of the number of hours worked in the side job.

If there is more than four months between the completion of the child's first training course and the start of the second training course then the parents would not be entitled to child benefit for these months. In such a case, two points in time would be crucial for the Family Benefits Office, namely,
» the date of completion of the first training course and
» the start date of the second one.

The Family Benefits Office would consider the first training course to have been completed once the written certificate has been provided and, for example, can be downloaded via an online portal (thus not the date when the child actually collected their certificate). The Family Benefits Office takes the view that the second training course begins on the date that the programme actually starts.

For a course of studies this implies that the crucial factor is not the date of the application or matriculation but rather of attending seminars and lectures. Only if this period of time between the end of the first training course and the start of the second one is less than four months would it be deemed to be a 'transitional period' during which parents are entitled to child benefit.

RAin [German lawyer] Maha Steinfeld

Social security thresholds for 2022

Parity financing of health insurance contributions was reintroduced in 2019 and will likewise continue for 2022. Accordingly, employees and employers each pay half towards the contribution to the statutory health insurance providers.

In the case of trainees who receive remuneration of up to €325 monthly, the employer solely pays the contributions. If this limit is exceeded through a one-off payment such as, e.g., a Christmas bonus or a holiday bonus then this relief ceases to apply. Employees and employers then, as usual, share the payment of the contributions equally.

The average supplementary rate of contribution to the statutory health insurance providers for 2022 is unchanged at 1.3%. For the current social security values please refer to the overview that follows.

Furthermore, it should be noted that the minimum wage was increased as of 1.1.2022 from €9.60 to €9.82; as of 1.7.2022 it will go up to €10.45. As a result, until 31.6.2022, the monthly maximum working hours for mini jobbers will be reduced to 45 hours/monthly.

In the course of year end reporting activities in personnel departments other contributions have to be taken into account. The allocation to social security contributions for artists has remained at 4.2%. We would like to remind you that the report on the fees paid, in 2021, that are liable to social security contributions has to be submitted by 31.3.2022. This report forms the basis of the contribution assessment that, once it has been issued, results in a payment obligation that will be in addition to any prepayments that have possibly been determined.

Likewise, information relating to and the payment of the countervailing charge for not employing severely handicapped people in 2021 have to be submitted by 31.3.2022. The salary and wages verification statement for the Berufsgenossenschaft has to be submitted electronically to the competent Berufsgenossenschaft by 16.02.2022. The contributions have to be paid once the contribution assessment has been issued.

All the relevant values are shown in the table on the following page:

Key Social Insurance Values and Tax Dates for 2022

All data in EUR and monthly, except where otherwise specified.

Type of Contribution	Old Federal States	New Federal States
Income threshold for compulsory insurance in the statutory health insurance scheme		
A) General, annual*	64,350.00	64,350.00
B) For those with private health insurance on 31.12.2002 due to breaching the 2002 threshold **	58,050.00	58,050.00
Contribution assessment ceiling *(Beitragsbemessungsgrenze)*		
Statutory Pension Insurance and Unemployment Insurance monthly	7,050.00	6,750.00
annual	84,600.00	81,000.00
Health Insurance and Long-term care Insurance monthly	4,837.50	4,837.50
annual	58,050.00	58,050.00
Contribution Rates		
Statutory Pension Insurance (of which employer and employee pay ½ each)	18.6 %	18.6 %
Unemployment Insurance (of which employer and employee pay ½ each)	2.4 %	2.4 %
Health Insurance + supplementary contribution set by individual health insurers (of which employer and employee pay ½ each)	14.6 %	14.6 %
Average supplementary contribution	1.3 %	1.3 %
Long-term Care Insurance	3.05 %	3.05 %
for people with children (of which employer and employee pay ½ each)***		
for childless people	3.40 %	3.40 %
Max. employer-paid subsidy voluntary statutory health insurance	382,17 + half of the individual supplementary contribution	382,17 + half of the individual supplementary contribution
Max. employer-paid subsidy for private health insurance**	384.58	384.58
Max. employer-paid subsidy long-term care insurance (apart from Saxony)	73.77	73.77
long-term care insurance (only Saxony)		49.58
Reference values for statutory pension insurance/ unemployment insurance monthly	3,290.00	3,150.00
annual	39,480.00	37,800.00

* Section 6(6) of Volume V of the German Social Security Code
** Section 6(7) of Volume V of the German Social Security Code
*** For employees, in addition, there could potentially be a surcharge on the contribution for those who are childless (0.25%) that they would have to bear alone and for which they would receive no subsidy. In Saxony the contribution costs are borne differently: employer 1.025 % and employee 2.025 % (potentially plus 0.25 % surcharge on the contribution for the childless).
**** the average supplementary contribution of 1.3 % is included in this contribution

Mini Jobs

Type of Contribution	Amount
Contributions for low-wage employees (mini jobs) Employer's flat-rate contribution	
Health insurance	13 %
Statutory pension insurance	15 %
Flat-rate tax (including church tax and the solidarity surcharge)	2 %
Remuneration threshold for marginal jobs (Mini Jobs)	450.00
Minimum basis for assessment of statutory pension insurance for marginal employees	175.00
Minimum contribution/month (175 € x 18.6 %)	32.55
Sliding scale (until 06.2019)	450.01 bis 850.00
Transition range (from 01.07.2019)	450.01 bis 1,300.00
Low earners threshold for trainees (social security contributions are borne by employers alone)	325.00
Maximum contribution for direct insurance schemes annually 8 % of the tax-exempt contribution assessment ceiling for pension insurance thereof max. exempt from social security charge	6,768.00 / 3,384.00
Minimum payment amount for the obligation to make contributions for pension benefits in health insurance and long-term care insurance schemes	164.50
Allocation to statutory insolvency insurance	0.09 %
Allocation to social security contributions for artists	4.2 %

Reference values for benefits in kind in 2022

Meal allowance in EUR
Employees and adult family members

	Breakfast	Lunch	Dinner	Meals overall
monthly	56.00	107.00	107.00	270.00
daily	**1.87**	**3.57**	**3.57**	**9.00**

Accommodation allowance in EUR

(monthly)	241.00
per calendar day	**8.03**

Due Dates for Social Security

Month	Filing date for the contribution statement	Payment due date
January 2022	25.01.2022	27.01.2022
February 2022	22.02.2022	24.02.2022
March 2022	25.03.2022	29.03.2022

AND FINALLY...

“Most entrepreneurial ideas will sound crazy, stupid and uneconomic, and then they’ll turn out to be right.”

Reed Hastings, born 8.10.1960 in Boston. He is the co-founder and CEO of the media company Netflix.

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