PKF

Newsletter

Key Issue
Provisions for bonus points –
New recognition requirement

01|23

Dear Readers,

We hope that 2023 has started well for you. We kick off the January edition of our newsletter with the first part of a wide-ranging report on the **taxation of photovoltaic systems**. The focus here is on the new regulations applicable to income tax - which were adopted at the end of December together with the German 2022 Annual Tax Act - that took effect from 1.1.2022. The report that then follows deals with the regulation - likewise introduced at short notice - relating to the **levy for skimming off windfall profits** on the electricity income of producers that operate plants using renewable energy sources. In fiscal terms, this levy is understandable because it is intended, in turn, to finance the relief for citizens and companies from high energy prices. However, both the new regulations on photovoltaic systems as well as the levy for skimming off windfall profits leave many questions unanswered, as is so often the case with short-term amendments to legislation.

The Key Issue for this edition appears under the Accounting and Finance section. It is one whose practical implications are highly relevant because, according to a new ruling by the Federal Fiscal Court, in the future, it will be possible to create provisions that reduce taxable profit if, as part of a customer loyalty programme, customers earn credits in Euros that can be used unconditionally to offset against the purchase price in future transactions. In the underlying legal proceedings, PKF experts from Würzburg successfully represented a client before the Federal Fiscal Court against the fiscal administration - including the Federal Ministry of Finance that intervened in the case - and brought about a **change to the opinion on the requirement to recognise a liability for bonus points at issuance in the financial and tax accounts.**

In the Legal section, we report on a topic that, in our increasingly digitalised world, is of growing relevance in the event of death. We have therefore provided a review of how the **legacy of personal digital data**, in particular in the social media, can be settled.

Last year, we illustrated the PKF newsletter with impressions from German cities where PKF has a presence. This year, we will be visiting places where PKF Meetings take place with the aim of further strengthening international collaboration in the areas of audit, tax and consultancy for the benefit of our clients. We start in Madrid where the international Tax & Legal Meeting took place last November.

With our best wishes for a healthy and prosperous year.

Your Team at PKF

Front cover photo: Diego Velazquéz monument in front of the Prado

Key Issue

Provisions for bonus points – New recognition requirement

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TAX

StBin [German tax consultant] Anna Karin Spångberg Zepezauer

Changes in the taxation rules applicable to photovoltaic systems – Part I – Income tax treatment

In some German federal states, the installation of photovoltaic (PV) systems on all new non-residential buildings – on company rooftops or production halls, for example – has been mandatory since 1.1.2022. This development has been further accelerated by the sustained increases in energy prices. Besides ongoing issues concerning regulations applicable to income tax and VAT, increasingly there are questions regarding the configuration of the acquisition, operation and disposal of PV systems. In part one of our series, we discuss the new regulations applicable to income tax as set out in the German 2022 Annual Tax Act; we start with the basic classifications for tax purposes. In the February issue of our newsletter the new provisions on VAT, in particular, will then follow.

1. Basic classifications up to now

(1) Income tax – Normally, the electricity that is generated using a PV system is entirely or partly sold to a grid operator. This economic activity constitutes a commercial operation for tax purposes. Up to 2021, upon application, the fiscal administration granted operators of smaller PV systems an income tax waiver.

(2) Value added tax – Operators of PV systems are normally considered to be business owners for VAT purposes. Up to now, this also applied to house owners who themselves live in their houses and who do not otherwise pursue any business activities provided that the electricity that is generated is normally entirely or partly fed into the public grid.

Calle de Alcala and Gran Via in Madrid

(3) Trade tax – Since 2019, legislation has been in place stating that smaller systems with a power output of up to 10 kWp can be exempted from trade tax. If trade tax is incurred then this can generally be offset in the income tax return.

This new year has now ushered in very fundamental changes in all areas; in section 2 below we present the changes related to the income tax effects and then, in Part II in the next PKF newsletter, in particular, the VAT treatment.

2. Income tax changes

The legislative procedure that was completed in 2022 produced a special surprise at the end. An income tax-exempting provision with effect already from 1.1.2022 was included in the 2022 Annual Tax Act.

2.1 Tax exemption with capacity limits

In the case of income tax, a statutory tax exemption has been provided within a defined framework; therefore, in this respect, there is no longer any option. The limit for the permitted sizes of the systems has now been clearly defined under law; what matters is the gross nominal capacity as per the core energy market data register *(Marktstammdatenregister)*. These income tax changes, which came into effect together with the 2022 Annual Tax Act, apply retroactively from 1.1.2022, or they apply to all systems that have been supplied and installed since 1.1.2022.

The law now stipulates that income and withdrawals that are generated in connection with the operation of PV systems on **single-family homes or non-residential buildings** with a power output of up to 30 kWp (peak) will be tax-free. For PV systems on **other buildings that are used mainly for residential purposes**, this statutory provision for exemption from income tax will apply to systems with a power output of up to 15 kWp (peak). In the final version, **mixed-use buildings** that are not used mainly for residential purposes are included; therefore, owners of buildings that are used 51% for commercial purposes and 49% for residential purposes are likewise exempted from income tax.

Where there are several systems, the tax exemption will be restricted to a power output of 100 kWp per taxpayer or partnership.

Please note: Multiplying by the number of residential or commercial units will thus now also remove even large systems form the scope of taxation.

2.2 Rules on aggregation

Testing for the new 30 kWp limit no longer requires several systems to be added together, therefore, the calculation has to be based on individual systems. This also basically applies for the multiplication limit (e.g., two 3-family homes: in each case 3 x 15 kWp = 45 kWp per property is permitted).

However, the aggregation has to be carried out for a planned upper limit of 100 kWp; this limit applies to all the systems of a taxpayer or partnership collectively. If, according to the core energy market data register, the overall gross capacity of a taxpayer's systems thus exceeds 100 kWp then the tax exemption would not apply to any of the systems.

Aggregation may only be carried out if the legal entity is the same. For example, it would not be possible to add together the systems of jointly assessed spouses and also not if one system is operated by an individual and other systems in partnerships (GbR [company under German civil law]) together with other persons.

Please note: Aggregation may likewise not be carried out when there are several partnerships that, in our opinion, can also have identical ownership stakes.

2.3 Use is an irrelevance

The tax exemption, which is described above, will apply irrespective of how the generated electricity is used. Consequently, income will also be tax-exempt even if the generated electricity is fed entirely into the public grid, used to charge an electric vehicle that is used for private or business purposes, or used by tenants.

2.4. Businesses with solely tax-exempt income

If a business generates solely tax-exempt income from the operation of tax-privileged PV systems then profit would no longer need to be calculated. Correspondingly, the prohibition on the deduction of business expenses would then apply.

2.5 Asset managing partnerships

In the case of asset managing partnerships (e.g., a letting GbR), the operation of PV systems that do not exceed the tax-privileged system size limits would not result in the commercial 'infection' of the income from letting and leasing. Consequently, in future, asset managing partnerships will also be able to install PV systems with a power output of up to 15 kWp per residential or commercial unit (max. 100 kWp) on their rental properties and supply their tenants with self-generated electricity without having to fear any tax disadvantages.

StB [German tax consultant] Lukas Bien

Introduction of a levy to skim off windfall profits for quantities of electricity generated from renewable energy sources

The war in Ukraine has resulted in enormous upheavals on European energy markets. In the course of this, some companies were able to benefit from the high electricity prices and have generated so-called windfall profits. By the same token, the high prices have been a burden for many citizens and companies and the state has thus provided compensatory support to them. In order to finance the state's relief packages, within the scope of the so-called price brake for electricity, the German Federal government approved a levy to skim off windfall profits for a limited time initially.

1. The Legal Framework

The levy to skim off windfall profits relates to quantities of electricity produced using an electricity generation plant. The new regulation was adopted by the Bundesrat (upper house of German parliament), on 16.12.2022, as a part of the Act on the Introduction of an Electricity Price Brake *(Gesetz zur Einführung einer Strompreisbremse, StromPBG)*. With regard to electricity from plants using renewable energy sources, the scope of application of the levy to skim off windfall profits within the meaning of the StromPBG comprises:

- the quantities of electricity that were generated in the German federal territory after 30.11. 2022 and before 1.7.2023 and
- hedging transactions that had to be entirely or partly executed in the German federal territory after 30.11.2022 and before 1.7.2023 (these will not be included in the following section for reasons of complexity).

An extension of these application periods up to 30.4.2024 is possible (see Section 13(2) sentence 1 StromPBG); however, a political decision in this respect would have to be made by 31.5.2023 at the latest.

The legislation has provided for limits to the scope of application, namely, that the power plants have to have nominal electrical power output of more than 1 MW and that the respective generated quantities have to be traded within the framework of one of the various direct marketing or market bonus schemes under the Expansion of Renewable Energy Sources Act *(Gesetz für den Ausbau erneuerbarer*

Palacio Real, the Royal Palace of Madrid

Parque del Retiro with the monument to Alfonso XII

Energien, EEG). At this juncture, the type of electricity generation (i.e. renewable energies in the form of solar or wind or as part of co-generation/a CHP unit) is not important.

Please note: The levy to skim off windfall profits does not affect generation plants funded at the respective fixed rate under the EEG as well as generation plants that produce electricity in the space of one month entirely or mostly on the basis of light heating oil, hard coal, natural gas and other gases (Section 14(3) no.1 and 2 StromPBG).

2. Calculation of the windfall levy

The amount of the windfall levy will be 90% of the excess income. The windfall levy will have to be paid for the first time for the taxable period 1.12.2022 – 31.3.2023 by the 15th calendar day of the fifth month that follows the respective taxable period (i.e. for the first time by 15.8.2023) to the respective grid operator. As of 1.4.2023 the respective quarter will be deemed to be the taxable period.

As the vast majority of the quantities of electricity in question will be sold via the futures market, the German government has provided for the windfall levy to be determined within the framework of a multi-stage process as follows:

(1) The so-called 'reference income' has to be determined on the basis of hourly electricity prices. From this you have to deduct the reference costs, adjusted by a safety margin, for the quantity of electricity that has been fed in. This will ensure that the standard profit that can be expected is taken into consideration in the calculation. The interim result will constitute the calculated windfall levy.

(2) This windfall levy amount as calculated in section (1) may be reduced by the plant operator by the results of any futures transactions or other long-term contracts (in view of the increased electricity prices, it is likely that, in practice, most operators will thus make use of this possibility). In the future, the effects of adjustments made to take into account the futures market could possibly be neutral or even result in increases.

In the case of generation plants based on wind and solar, by way of derogation, the starting point for the calculation will be the technology-specific monthly market value instead of the hourly electricity prices. The purpose of this particularity is to avoid possible wrong incentives for wind and PV plant operators and, in times of lower electricity prices, would give reason to expect that the windfall levy could be reduced to a lower amount.

Please note

At the time this newsletter went to press, in the course of specialist discussions, experts had not yet formed a conclusive opinion on how the above situations should be shown in the balance sheets and P&Ls of the operators of electricity generation plants. Likewise, there is currently still no further information available about the monetary processing of the windfall levy vis à vis the competent network operators (see Section 14(1) StromPBG).

ACCOUNTING & FINANCE

StB [German tax consultant] Dr Dirk Altenbeck

Provisions for bonus points – New recognition requirement for many businesses

A great number of businesses – even smaller ones, such as, pharmacies or bakeries – use bonus point systems or loyalty card schemes to strengthen customer loyalty and to create incentives for future purchases. A recent Federal Fiscal Court *(Bundesfinanzhof, BFH)* ruling, of 29.9.2022, departed from the previous prevailing opinion relating to recognition in the financial and tax accounts in this regard and, in many cases, this will now lead to a recognition requirement.

1. The customer loyalty card scheme in the case in question

The proceedings before the BFH that were brought by PKF (case reference: IV R 20/19) concerned a retail company's highly developed customer loyalty card scheme that, beyond the specific case, is exemplary of many other comparable schemes. The scheme is applied as follows – customers join the loyalty scheme in writing and for each purchase the customer's card is individually credited with 3% or 5% of the value of their purchase in the form of bonus points. The credited bonus points can then be offset against the price of subsequent purchases made by the customer and used as a means of payment with no upper limit; for example, this also means that it is possible to pay solely with the loyalty card using the bonus points that were previously collected. The bonus points that have been collected cannot however be paid out in cash.

2. Criteria for the creation of provisions and ...

In the statement of justification, the BFH initially focused on the criteria for the creation of provisions because, in principle, the liabilities are still of uncertain timing or amount on the balance sheet date. Admittedly, an obligation does indeed already exist for the company to accept the collected bonus points as a means of payment for a future purchase of goods. However, the actual specific obligation to offset bonus points against the price is based precisely on the assumption that there will first be a future purchase. For accounting purposes, a liability in the legal sense has therefore not yet arisen.

Generally speaking, provisions for liabilities of uncertain timing or amount have to be recognised if solely the amount of the liability is uncertain or if, in principle, the liability is indeed (possibly also) uncertain but it is, nevertheless, reasonably probable that the liability will arise in the future and its economic cause arose before the balance sheet date. Furthermore, the debtor has to be able to seriously expect that it will be taken up.

... their use in the case in question

The case that was ruled on concerned such a liability that was, in principle, of uncertain timing or amount. The key question concerned the point at which the economic cause of the liability arises. Specifically, did the economic cause arise

- before the balance sheet date with the goods transaction for which the bonus points will be credited, or
- after the balance sheet date with the goods transaction for which the bonus points will be redeemed.

According to the established case law of the BFH, the presence of an economic cause of a liability in the preceding fiscal year would assume that the economically material defining criteria had been met and the situation where that liability would arise in the future depended solely on economically immaterial defining criteria. Therefore, the legal and economic points of reference for the liability ultimately have to lie in the past.

In keeping with PKF's view – and thus contrary to the opinion of the local tax office and also that of the Federal Ministry of Finance that intervened in the case -, the BFH now argues that, for similar developed bonus points systems or customer loyalty card schemes, the economic cause will lie in the past; this is thus a differentiation in terms of BHF case law. The purchase transaction for which bonus points are granted is not just the reason for granting bonus points as such, but also the criterion for the number of bonus points that have to be credited. The entitlement of the holder of a customer loyalty card to a future price deduction thus depends, in terms of the reason and the amount, on a purchase transaction for which bonus points are granted. By contrast, the BFH regards the future redemption transaction, where the previously earned bonus points are off-

set, as being an economically immaterial defining criterion because the loyalty cardholder's benefit neither gives rise to the transaction nor influences its amount.

Please note: The additional requirements for the creation of a provision, namely, the probability of the liability arising and the serious expectation that it will be taken up, were clearly present as could be demonstrated through the everyday practice of such a bonus point system or loyalty card scheme and were thus also not relevant to the issue in this case.

3. Recognition of a provision ...

Whenever a customer earns offsetable credit via a customer loyalty programme

- that arises via a transaction before the balance sheet date and
- the amount of which is likewise fully determined as a Euro value from this transaction and
- that can be unconditionally used as a means of payment to offset the purchase price in future customer transactions after the balance sheet date,

in the future, the recognition of a provision for liabilities of uncertain timing or amount in the financial and tax accounts will be mandatory. Merely a percentage discount off a future transaction after the balance sheet date would not be sufficient because, in that case, the size of the future transaction would determine the amount of the benefit as a Euro value for the customer.

... with a broad impact

Consequently, it is not only all highly developed bonus point systems or customer loyalty card schemes, comparable with the one in the case that was ruled on, that will fall under the provision requirement but, according to the view expressed here, a large number of simple customer loyalty card schemes that basically have the same business model will also be affected.

Please note: This could possibly apply to commonplace 'stamp' or 'sticker' cards that are issued, for example, by bakeries, car wash facilities, espresso bars, or chemists. Here, a stamp or sticker is typically added to a customer card for each transaction, although the number of stamps

Cuatro Torres financial district

or stickers depends on the amount of that transaction value. Once the card has been completely filled, the customer gets a loaf of bread, an espresso or a car wash free of charge, or a specific accumulated Euro amount is deducted, as a quasi means of payment, from a future purchase – this is frequently the case with chemists.

Even in the case of these simple systems, it is solely the original purchase transaction that determines the amount of credit to which the customer will be entitled. The fact that no written agreement is concluded here would not be a sufficient reason to differentiate this from the case that was ruled on because agreements can also be concluded verbally and there would, at least, be a de facto obligation to offset or redeem the credit on the loyalty card issued by the company.

4. Measurement issues

In all cases, the provision must not be recognised at the full Euro value amount of all the issued bonus points or customer cards with credits, but instead only at the amount of the full costs that will arise in relation to future redemption because the issuing company will only incur the latter amount. Economically speaking, this would be an obligation to supply goods as cash payments are excluded.

Please note: Furthermore, the probability of redemption has to be taken into account, i.e. an additional amount should be deducted to cover the bonus points or customer cards with credits that are likely not to be redeemed.

LEGAL

RA/StB/Notar [German lawyer/tax consultant/notary] Herbert Buschkühle

The digital legacy – What happens with data after death?

Our lives are increasingly shifting into digital spaces; here, passwords protect access to personal services such as online banking or social networks. However, not many people have made a plan for their digital legacy. In such cases, frequently, the legal heirs desperately search for accounts, login data and agreements. In order to ensure that any unwanted persons are not able to obtain such sensitive data you will have to put arrangements into place during your lifetime already.

1. Applicable legal basis

A digital legacy will be assessed in accordance with general German inheritance law because, in this respect, there is no 'special digital inheritance law' (see key ruling by the Federal Court of Justice, of 12.7.2018, case reference: III ZR 183/17). Therefore, the digital circumstances of life will be appraised on the basis of the already existing provisions for the analogue world under German inheritance law.

Ownership of the physical storage medium will pass to the legal heirs while, in the case of external data, the legal heirs will enter into an agreement with the service provider. This is however not permitted in the case of highly personal rights or the testator's data; the reason for this is that the basic assessment of the legislator is that the protection of personality rights will continue to have an effect.

2. Possible arrangements

Arrangements for your digital legacy – based on the general provisions under inheritance law – can therefore be planned via a power of attorney or in a will. It is therefore recommended that you consult a notary. Here, the grantor of the power of attorney should also agree a procedure for managing the digital legacy. Power of attorney solely for the digital area would be appropriate. The grantor of the power of attorney can even give specific instructions on how to deal with the data or a specific user relationship.

It is likewise possible to include an appropriate provision in a succession agreement or in a will. This could be a sensible course of action, in particular, if you wish to prevent certain persons from viewing sensitive data. For example, an executor could be instructed to erase certain information or terminate specific contractual relationships without seeing them previously. In this respect, it should


Almudena Cathedral and Palacio Real

be noted that the will as well as the power of attorney have to be handwritten, dated and signed. It is vital for the power of attorney to still be valid after death.

3. Handling by third parties

In some cases, the internet service providers have already put arrangements in place (although this is not normally the case). For example, Google has developed its own tool that helps users to specify, during their lifetimes, who should be able to access their data and when their accounts should be deleted. The extent of the arrangements that you will need for your legacy should not be underestimated. Depending on your usage, the accounts could include, among other things, own photos, calendars, (YouTube) videos or else payment data. Facebook provides the option to memorialise an account. Furthermore, a contact person for the legacy can be designated to take care of the memorialised account. Alternatively, it is possible to decide that the account should be permanently deleted. There are moreover companies who can manage the digital legacy for the benefit of the customer. Although, a major disadvantage of such external providers that manage the legacy is, on the one hand, that this involves costs and, on the other hand, that access is granted to – in some cases very personal – data.

4. Conclusion

Legally sound arrangements worth mentioning are the drawing up a power of attorney or making a will authenticated by a notary in each case and the associated filing of the information for the legal heirs. This can be done via a list with the login data on an encrypted and password-protected local data carrier (such as, e.g., a USB stick); in this case, the master password should be communicated to a person who you trust. In view of the high level of protection (confidentiality obligation), you might likewise consider consulting a notary in this respect.

Recommendation

The person who you trust, or possibly a notary can be given instructions in a digital power of attorney to hand over the ‘master password’ to particular people only under certain conditions. In addition, in the power of attorney, detailed information should be provided about which data should be deleted and which agreements should be cancelled and, moreover, what should happen to the profiles in social networks and the photos available on the net.

IN BRIEF

Tax-exempt sale of property – Self-use in the year in which the sale takes place is essential

If property that is held in private assets is sold before the end of the ten-year speculation period then the appreciation in value that is realised has to be taxed as gains from private disposals so that, frequently, a significant tax hit occurs. Self-use of the property can prevent this. Recently, the Federal Fiscal Court *(Bundesfinanzhof, BFH)* decided on the conditions under which such self-use would be recognised.

The speculation period for properties where there is no own use is basically ten years. That is the case if the house or flat is let. The speculation period for properties that are self-used is significantly shorter. In order for there to be a presumption of self-use where no tax would have to be paid, a property would have to have been used for your own residential purposes either over the entire period between its acquisition and sale, or in the year in which the sale took place as well as in the two preceding years.

The BFH, in its ruling from 3.8.2022 (case reference: IX B 16/22) precisely defined the conditions for self-use. This would be the case "in the year in which the sale took place as well as in the two preceding years" if there had been self-use

- in the year in which the sale took place and the year before the previous year on at least one day and
- continuously in the year preceding the year in which the sale took place.

However, in the case in question, there had been no more self-use for own residential purposes in the year in which the sale took place so that the property owner making the claim was no longer able to invoke tax exemption due to self-use.

Outcome: For a tax-exempt sale of a property within the ten-year time limit it is thus necessary to have a consecutive period of self-use of one year and two days that has to have stretched over three calendar years and ended in the year in which the sale took place.

Actual implementation of a profit transfer agreement in a consolidated tax group

According to settled case law, a profit transfer agreement (PTA) would only have actually been implemented if the profit that has been determined is transferred within a reasonable period of time. The Cologne tax court dealt with the issue of whether or not these preconditions would be met if no payment occurs but, instead, there is only offsetting.

In the case in question, where the Cologne tax court made a decision, in its ruling of 21.6.2022 (case reference: 10 K 1406/18), a subsidiary company (SC) posted the profit that had to be transferred and the interest that had to be paid to the 'liabilities owed to the shareholders' account. However, in the relevant years, no counter claims or compensatory payments were posted. The parent company (PC) did not post an offsetting claim either. It was only some years later that an offset occurred against a private liability of the PC sole trader. As no PTA was actually implemented, as required by law, the tax audit did not recognise the consolidated tax group. Posting to a current offset account is indeed generally allowed, however, this would only result in the fulfilment of the PTA if counter claims were normally recorded there or if, at least, lump sum payments were made in order to balance the offset account.

The taxpayer objected to this argument by pointing out that the 'liabilities owed to the shareholders' account constitutes such an offset account. Consequently, the profit transfer obligation in the PTA was actually implemented with the postings made to this account. Moreover, the taxpayer was of the view that it was sufficient for the profit transfer obligation to be fulfilled only once the PTA had been terminated. As a last point, the taxpayer explained his actions by saying that entering the items in the offset account was the equivalent of an immediate novation, which is why a previous

entry as a claim or liability from the PTA and a subsequent reclassification into an offset account was not necessary.

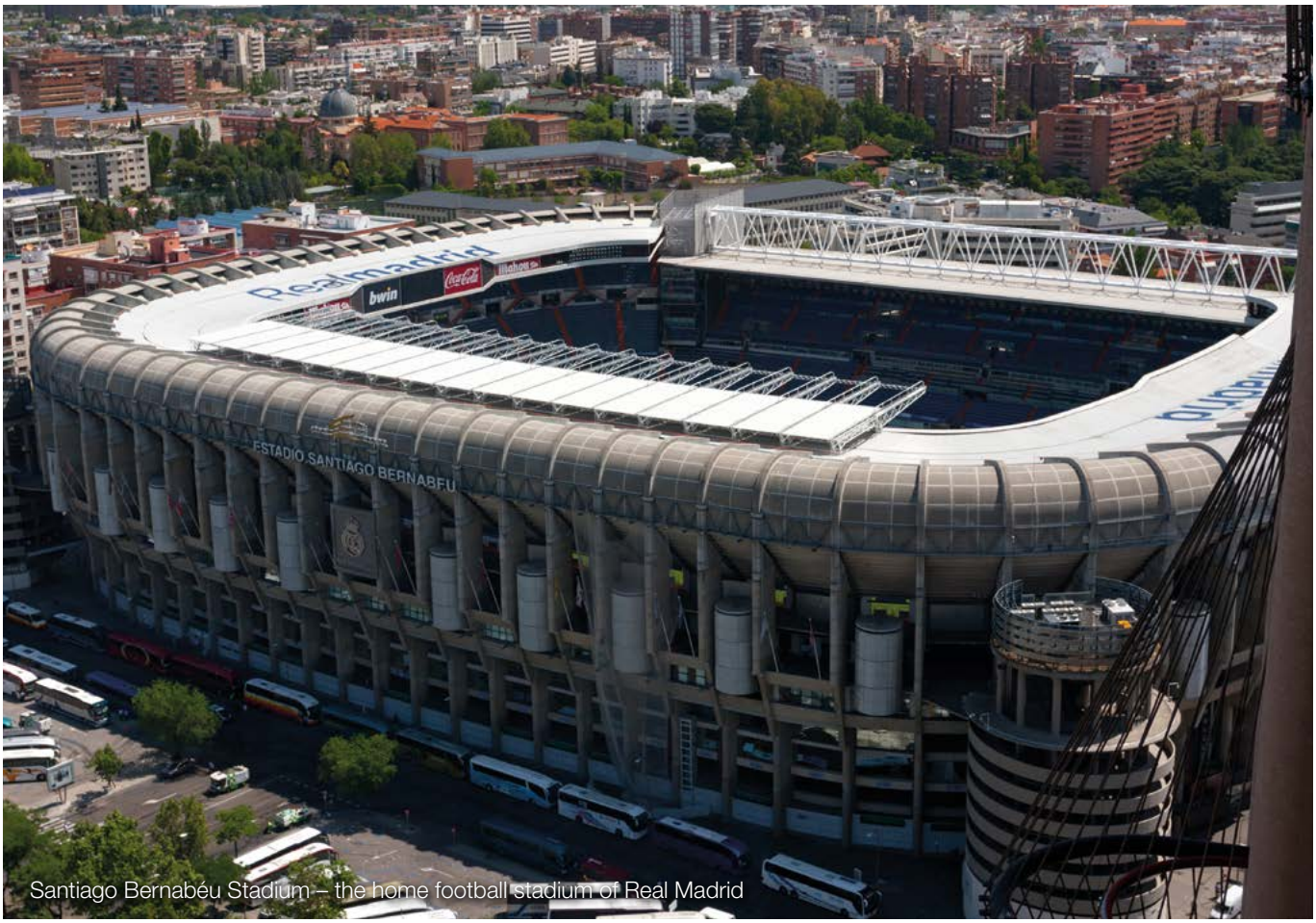
Outcome: However, the Cologne tax court adopted the view of the fiscal administration. Posting to the 'liabilities owed to the shareholders' account was not sufficient. In particular, the offsetting several years later did not occur in a timely manner and, in the case in question, because the offset was against the private debt of the PC sole trader it was not offset against the PC.

Employers only have to remunerate mandatory or approved overtime

Overtime is only paid out if the employer is aware of the additional work that has been performed. In cases of doubt, the employee has to be able to provide proof for every single hour. A case that was recently decided before the Federal Labour Court *(Bundesarbeitsgericht, BAG)* demonstrates that this burden of presentation and of proof could lead to difficulties.

The case on which the BAG decided, in its ruling of 4.5.2022 (case reference: 5 AZR 359/21) concerned an employee who worked as a delivery driver. He used a time recording device to log his working period, although only the beginning and the end of his daily working period; his break periods were however not recorded. Upon the termination of his employment the report from the time recorder showed 348 plus hours. Therefore, the driver brought a claim for €5,000 as overtime pay. He argued that he had worked during the entire recorded time period. It had not been possible to take breaks because otherwise he would not have been able to process all the delivery orders.

Outcome: The BAG took a different view. According to the court, the ECJ ruling on an employer's obligation to record work time had not resulted in any changes to the burden of presentation and of proof. According to the established case law of the ECJ, the aim is the protection of the safety and health of employees – and not their remuneration. The



Santiago Bernabéu Stadium – the home football stadium of Real Madrid

obligation to measure the daily work time, which has its basis in EU law, thus has no effect on the established principles relating to the allocation of the burden of presentation and of proof in the overtime remuneration process. As the employee was not able to offer this proof, his claim had no prospect of success.

Dealers' guarantee commitments – Insurance premium tax treatment and VAT treatment

The Tax Law Committee of the German Association of Tax Advisers *(Deutscher Steuerberaterverband e.V., DStV)* has prepared and published a practice statement [in German] on insurance premium tax and VAT in the case of dealers' guarantee commitments.

Last year already, the BMF had stated its position on the VAT treatment and insurance premium tax treatment for the guarantee commitments of motor vehicle dealers. The effective date of the principles mentioned there was postponed several times. The guidelines will now be applicable from 1.1.2023. In this respect, the administration has adopted the ruling by the German Federal Fiscal Court.

In the future, a motor vehicle dealer's guarantee commitment in return for payment, as a service in its own right, will generally be subject to insurance premium tax. This will apply irrespectively of whether, in the event of a guarantee claim, a monetary payment or a repair is made. It should be noted that in view of the VAT exemption for the insurance benefit, in this respect, input tax deduction is not possible. In its report of 2.10.2022, the DStV pointed out that the BMF circular should apply across all industries and recommended that the companies concerned should check whether or not their agreements meet the criteria for any exemptions from the insurance premium tax liability. For example, if no separate fee is charged for the guarantee and if a purchase without a guarantee is not possible then there is no insurance benefit.

Please note: A guarantee commitment in the context of a full maintenance agreement would likewise not trigger an insurance premium tax liability. This would constitute a VATable service of its own kind. If a company acts as an intermediary merely to provide insurance coverage then, likewise, no insurance premium tax will arise since the direct contractual relationship will exist between the customer and the insurance company.

RAin [German lawyer] Maha Steinfeld / Lai Mei Wong

Social security – Thresholds for 2023

Parity financing of health insurance contributions was reintroduced in 2019 and will likewise continue for 2023. 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 € 325.00 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 2023 is 1.60%. For the current social security values please refer to the overview that follows.

The minimum wage was increased as of 1.10.2022 to € 12.00. The de minimis threshold became a dynamic one. It is based on a weekly working time of ten hours at minimum wage conditions and is currently €520.00 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 been raised to 5%. We would like to remind you that the report on the fees paid in 2022 that are liable to social security contributions has to be submitted by 31.3.2023. 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 2022 has to be submitted by 31.3.2023.

The salary and wages verification statement for the Berufsgenossenschaft has to be submitted electronically to the competent Berufsgenossenschaft by 16.02.2023. The contributions have to be paid once the contribution assessment has been issued.

Key Social Insurance Values and Tax Dates for 2023

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*	66,000.00	66,000.00
B) For those with private health insurance on 31.12.2002 due to breaching the 2002 threshold **	59,850.00	59,850.00
Contribution assessment ceiling (Beitragsbemessungsgrenze)		
Statutory Pension Insurance and Unemployment Insurance monthly	7,300.00	7,100.00
annual	87,600.00	85,200.00
Health Insurance and Long-term care Insurance monthly	4,987.50	4,987.50
annual	59,850.00	59,850.00
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)	2.64 %	2.6 %
Health Insurance + supplementary contribution set by individual health insurers (of which employer and employee pay ½ each)	14.6 %	14.6 %
Average supplementary contribution	1.6 %	1.6 %
Long-term Care Insurance for people with children (of which employer and employee pay ½ each)***	3.05 %	3.05 %
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**	403.99	403.99
Max. employer-paid subsidy long-term care insurance (apart from Saxony)	76.06	76,06
long-term care insurance (only Saxony)		51.12
Reference values for statutory pension insurance/ unemployment insurance monthly	3,395.00	3,290.00
annual	40,740.00	39,480.00

* 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 1.6 % 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)	520.00
Minimum basis for assessment of statutory pension insurance for marginal employees	175.00
Minimum contribution/month (175 € x 18.6 %)	32.55
Sliding scale (1.7.2019 - 30.9.2022)	450.01 – 1,300.00
Sliding scale (1.10.2022 - 31.12.2022)	520.01 – 1,600.00
Sliding scale (from 1.01.2023)	520.01 – 2,000.00
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	7,008.00 3,504.00
Minimum payment amount for the obligation to make contributions for pension benefits in health insurance and long-term care insurance schemes	169.75
Allocation to statutory insolvency insurance	0.06 %
Allocation to social security contributions for artists	5.0 %

Reference values for benefits in kind in 2023

Meal allowance in EUR

Employees and adult family members

	Breakfast	Lunch	Dinner	Meals overall
monthly	60.00	114.00	114.00	288.00
daily	**2.00**	**3.80**	**3.80**	**9.60**

Accommodation allowance in EUR

(monthly)	265.00
per calendar day	**8.83**

Due Dates for Social Security

Month	Filing date for the contribution statement	Payment due date
January 2023	25.01.2023	27.01.2023
February 2023	22.02.2023	24.02.2023
March 2023	27.03.2023	29.03.2023

AND FINALLY...

"Success is no accident. It is hard work, perseverance, learning, studying, sacrifice and most of all, love of what you are doing or learning to do."

Pelé, 23.10.1940 – 29.12.2022; real name Edson Arantes do Nascimento. Together with the Brazil national team – for whom he started playing at age 16 – he won three World Cups (1958, 1962, 1970), the only player ever to do so.

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