Dear Readers,

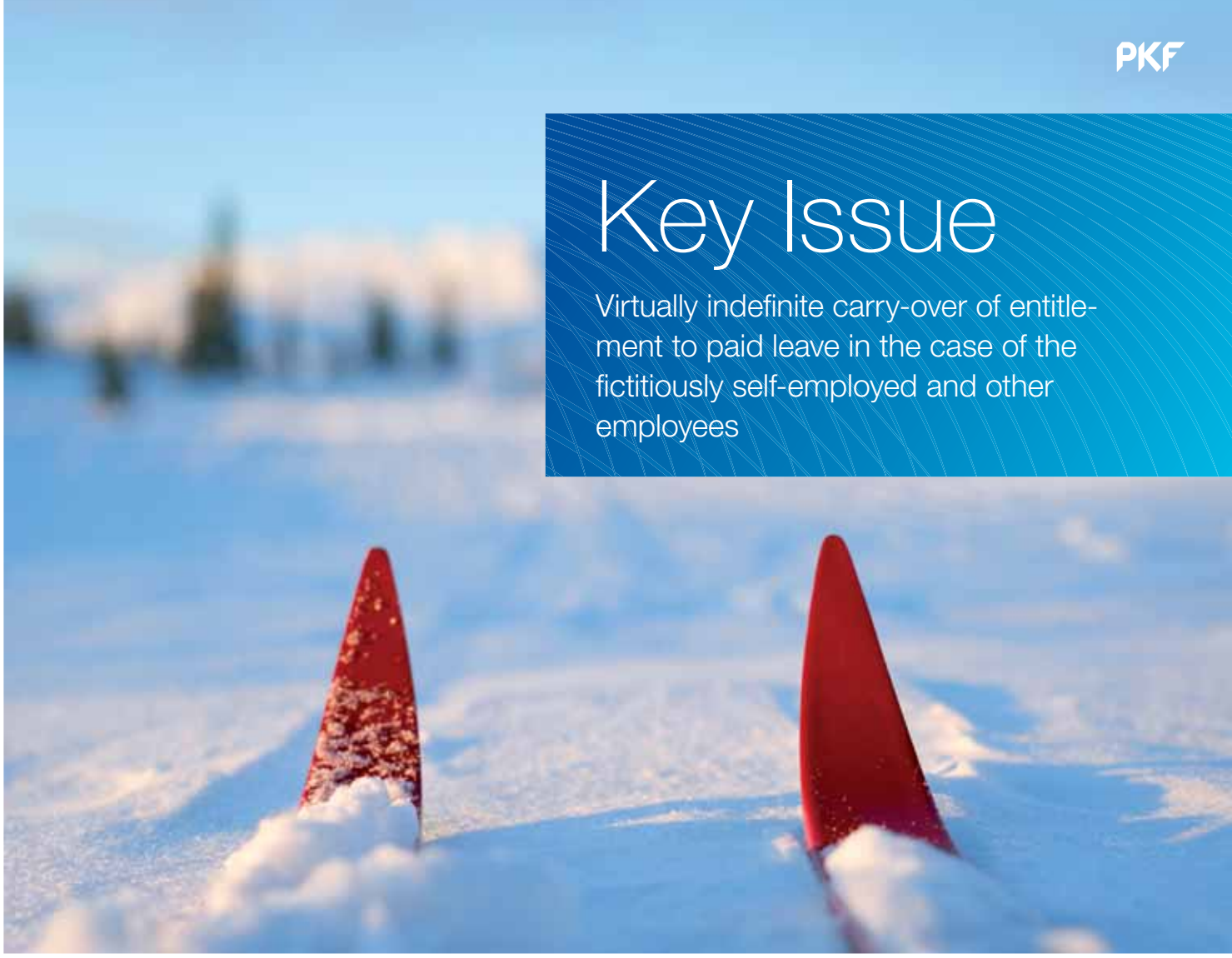
We hope that 2019 has started well for you. Whether or not periodicals and newsletters are modern and informative is not solely a matter of the content but also of the optics. After making journalistic enhancements to our PKF Newsletter in recent years, as of this issue we have a new layout. Clear typography and specific colour accents ensure that the optics are uncluttered. With the new design and even more images it should be possible to grasp the complex tax and legal issues more quickly and thus for them to become more vivid.

In the 'Tax' section, first of all, we discuss **the prohibition on the tax deduction of debt interest**. Here, the calculation, which is at any rate already complex, is affected not only by the capital contributions and withdrawals but also by losses. The second article revolves around the ending of the German right to tax business assets - this is also referred to as a **taxable disjunction** *(Entstrickung)*. The focus here is on situations that can occur without any active actions on the part of the taxpayer (for example, as a result of regulatory changes). Whether or not it is legally (and morally) acceptable, firstly, to sell a client base and, subsequently, to provide services again to these clients is not a question that can be decided by the Federal Fiscal Court. However, a new ruling has of course been published insofar as a decision was pending on the **tax concession on a sale**. Furthermore, we present the **real estate tax reform** considerations and it appears that these will become one of the tax legislator's big projects for 2019. And finally, our fifth report is on a frequently discussed VAT issue - what are all the elements that should be included in **an address** so that the **invoice will be eligible for input tax deduction**?

The 'Legal' section focuses on the entitlement to paid leave. We selected the **(non-)expiry of the entitlement to paid leave** as the **key issue** in this edition because of the far-reaching effects of this in practice. This topic has been a grey area for a long time and the carry-over of this entitlement was subject to specific conditions. However, the new ruling is likely to have the effect of establishing the principle that the entitlement to paid leave practically never lapses. The second article deals with the question of whether or not the paid leave entitlement of deceased persons can be transferred to their legal heirs.

With our best wishes for an interesting read and a successful year.

Your Team at PKF



Key Issue

Virtually indefinite carry-over of entitlement to paid leave in the case of the fictitiously self-employed and other employees

Contents

TAX

WP/StB [German public auditor/ tax consultant] Dr. Matthias Heinrich/Julia Hellwig

Prohibition on the deduction of debt interest – Newly defined limits for taking losses into account

The tax authorities recently expressed their view on the restriction on the deduction of debt interest in accordance with Section 4(4a) of the German Income Tax Act (Einkommenssteuergesetz, EStG). In its circular from 2.11.2018, the Federal Ministry of Finance (*Bundesministerium der Finanzen*, BMF) adopted the Federal Fiscal Court's (*Bundesfinanzhof*, BFH) restrictive interpretation on taking losses into account that had been provided recently in the latter's ruling from 14.3.2018 (case reference: X R 17/16; see issue 9/2018).

Pursuant to the intention and purpose of Section 4(4a) EStG, the deduction of debt interest that arises in connection with business would be ruled out if the interest had been incurred for the purpose of financing withdrawals that were made above and beyond the amount of the available equity. Therefore, for tax purposes, the deduction of debt interest that arises in connection with business is only possible to a limited extent if so-called excess withdrawals have been made. Withdrawals are deemed to be excessive if they exceed the sum of the profits and capital contributions for the financial year. The definition of profit here covers negative results as well as positive ones. The standard basis for calculating non-deductible debt interest is to take 6% of the sum of the respective excesses/ deficits in withdrawals (the so-called cumulative excess withdrawals) for all the financial years that have to be included (the so-called total period, starting from 1999 up to the current financial year in each case).

Up to now, for the purpose of taking losses into account, the tax authorities have made a distinction between deficits in withdrawals and losses in the current financial year and ones from previous financial years. Here, deficits in withdrawals

- ...for the current financial year had to be offset primarily against losses from the previous year that had not been compensated,
- ...for the previous year had to be offset primarily against losses from the current year that had not been compensated.

This meant that, even in years when no withdrawals were made at all, losses could result in excess withdrawals being determined and thus also (in some cases) in the deduction of debt interest being refused.

However, the BFH is of the view that the assessment base for non-deductible debt interest should be limited because, according to the intention and purpose of the provision, losses may neither provide a basis for nor increase excess withdrawals. For the assessment base – therefore as cumulative excess withdrawals – at the maximum, the withdrawal surplus for the total period may be used, thus, the balance of withdrawals and capital contributions. In this way it is ensured that a loss generated in the total period does not increase the assessment base. Moreover, the loss for the current year would not be valued differently than one for previous years.

In the case of losses, the restriction that was made by the BFH and recently also by the BMF usually works to the advantage of the taxpayer if capital contributions have been made. However, when calculating withdrawal surpluses, profits generated in the past are likewise not taken into account so that withdrawals that were covered by profits in earlier years can still turn into excess withdrawals as a result of subsequent losses. Consequently, taxpayers are thus required to plan their withdrawals proactively, even in years when profits are generated

Recommendation

The BMF circular from 2.11.2018 has replaced earlier circulars from 17.11.2005, 7.5.2008 and 18.2.2013. Generally, the circular should be applied to all open cases and, consequently, for all assessment periods that are still open you should determine if the withdrawal surplus is lower than the excess withdrawal that has been calculated to date. Upon application, the BMF's previous interpretation of the law can be applied one last time for the financial year that started prior to 1.1.2018.

WP/StB [German public auditor/tax consultant] Dr. Dietrich Jacobs / StBin [German tax consultant] Isabee Falkenburg

Tax on the disjunction of assets – Tax charges can loom with no involvement from taxpayers

If, in Germany, tax-related access to an asset becomes precluded or restricted then German tax law has many rules for taxing the hidden reserves stored up in the respective asset at the last moment of unrestricted tax-related access (so called exit tax or tax on the disjunction of assets).

- In various constellations such as, for example, in the event of a transfer of business assets to a foreign permanent establishment, the law simulates a taxable withdrawal or disposal at the point in time when Germany loses the unrestricted right to tax or tax-related access, e.g., becomes restricted through the obligation to offset foreign tax credits (Section 4(1) clause 3 of the German Income Tax Act (Einkommenssteuergesetz, EStG), Section 16(3a) EStG and Section 12(1) and (3) of the German Corporation Tax Act).
- Furthermore, those who have hitherto had unlimited tax liability, under certain other conditions, will generally have to pay tax of at least 1% on the hidden reserves from equity interests in corporations held in their private assets if the unlimited tax liability status is terminated as a result of moving abroad, or if there are similar circumstances (so-called exit taxation – Section 6 of the German Foreign Transaction Tax Act).

In many cases the above-mentioned tax-related access is associated with the taxpayer actively doing something – such as, for example, transferring domestic (German) business assets to a foreign permanent establishment or a taxpayer moving abroad. However, a new circular from the Federal Ministry of Finance (Bundesministerium der Finanzen, BMF) has clarified the administrative opinion that the taxation of hidden reserves can also be triggered, e.g., by a new legal situation simply coming into force. Consequently, tax on the disjunction of assets can potentially result from

- the coming into force of a double taxation agreement that obliges Germany to exempt foreign income from tax or offset foreign tax credits where Germany hitherto had had unrestricted tax-related access, or
- a switch from the imputation method (where Germany does indeed take the income into account but offsets the foreign tax credits) to the exemption method (Germany excludes the foreign income from the domestic (German) assessment base).

However, the taxation on the disjunction of assets could prove to harbour hidden dangers, too, for example, in connection with the impending Brexit because there are various rules, such as, on interest-free deferments of the tax triggered by the disjunction whose impacts, in some cases, are admittedly limited to the EU/EEA region. Therefore, if the applicable conditions are no longer satisfied, for example, in the case of Brexit, then the tax on the disjunction of assets could potentially be due and payable in 2019. Currently, the German government is planning a law (the so-called Brexit Accompanying Tax Act) that should mitigate such legal consequences of a Brexit (see issue 12/2018); however, an eye needs to be kept on the political developments.

More Information: The above-mentioned BMF circular is from 26.10.2018 (case reference: V B 5 – S 1348/07/10002-01); the circular as well as the governmental draft of the above-mentioned Brexit Accompanying Tax Act are available online on the website of the Federal Ministry of Finance (www.bundesfinanzministerium.de) (German version only).

Recommendation

Together with your tax consultant you should analyse, in advance, if/to what extent you could be affected by such a tax charge not only in connection with the coming into force of a new DTA but also with respect to Brexit.

RA [German lawyer] Johannes Springorum

Real estate tax reform – A basis for discussion has been presented

On 29.11.2018, the Federal Ministry of Finance (*Bundesministerium der Finanzen*, BMF) presented its real estate tax reform considerations. Two different valuation approaches will now be discussed with the Federal States in order to implement the new rules into law on time by the end of 2019.

1. Two reform approaches

A value-based model and a value-independent model constitute the basis for discussion. The latter starts from the area of the properties and the available buildings. Here, the building area is supposed to be determined using a simplified method that is oriented towards, for example, the floor space. Subsequently, special factors are applied to the area of the land as well as the buildings that has been calculated using this method. These factors differ depending on how the building is used and result in values that are lower for residential property than for business premises.

The starting point for the value-based model, which is favoured by the BMF, is the actual value of a property. To this end, the values of the land as well as the buildings have to be calculated using a particular simplified method.

2. Three-stage approach of the value-based model

This model retains the current three-stage method for calculating real estate tax. Firstly, the value of the property is calculated, after that the tax assessment base is determined and, ultimately, the real estate tax assessment is made by applying the respective multiplier as stipulated by the municipality.

With due regard to the requirements from Karlsruhe (where the Federal Constitutional Court is based), the BMF has proposed that, in stage 1, the hitherto applicable valuation method for calculating the value of properties for real estate tax purposes should be modernised and the base rates for tax purposes adjusted.

- The value of **undeveloped real estate** would be the product of multiplying the surface area by the current (local) indicative land value, as previously.
- In the case of **real estate that has been developed**,

in future, the valuation would generally be carried out on the basis of the so-called income capitalisation method. The capitalised income value is essentially calculated on the basis of the net rent exclusive of heating, lighting and other service costs that has actually been agreed and indeed by taking into account the remaining useful life of the building and the discounted land value.

- In the case of **residential buildings** that are owner occupied, a notional rent – based on data from the Federal Statistical Office – would be applied and scaled in accordance with regional rent levels.
- **Non-residential properties** – such as, e.g., special commercial properties – frequently cannot be valued on the basis of the income capitalisation method because there are no current rents. For such properties, the applicable method would be one that takes the production costs for buildings as a starting point and likewise takes into account the value of the land.

Please note

The property values would have to be updated by the local tax offices every seven years (building areas, the level of net rent exclusive of heating, lighting and other service costs, or structural changes).

- For **agricultural and forestry enterprises** there would be a special method for performing the valuation

The property values calculated in this way in stage 1 would undergo a downward adjustment in stage 2 via a base rate for tax purposes in order to achieve revenue neutrality. In stage 3, the municipalities would apply multipliers. In that way they would be able to ensure revenue neutrality in their municipalities.

StB [German tax consultant] Dennis Brügge / Marc Hendrik Finke

Tax-privileged sale of an individual freelance practice – 'Harmful' resumption of business activities

Recently, the Federal Fiscal Court (*Bundesfinanzhof*, BFH) specified the conditions for a tax-privileged sale of an individual freelance practice in accordance with Section 34(2) no.1 of the German Income Tax Act (*Einkommenssteuergesetz*, EStG). Here, the distinction between a tax-privileged definitive transfer of all the assets and a non-tax-privileged merely temporary interruption of business activities was particularly important.

Issue: In the case in question, which gave rise to the ruling from 21.8.2018, a taxpayer who worked on a freelance basis (the claimant) had sold his tax consultancy firm, in January 2008, to a tax consulting company (a German limited partnership (*Kommanditgesellschaft*, KG)) in which the claimant had not had a financial interest at any time. The object of the purchase contract, besides the moveable furniture and equipment in the practice office, was also the entire client base. All the supply and service agreements as well as the rights and obligations vis-à-vis the staff were transferred to the acquiring KG. At the same time, the claimant concluded a freelance work agreement with the KG for a fixed-term until 31.12.2010. In this he undertook to cooperate in the transitioning of the mandates and, furthermore, up to 31.12.2010, to acquire new clients for the KG and subsequently provide advice to them in the name and on the account of the KG. However, by 28.2.2010, the claimant had given up this freelance work and, having taken back the vast majority of his original customer base, had once again taken up his consulting work within the framework of an individual practice at the same location.

In the opinion of the BFH, as a consequence of resuming this work after having taken back a large share of the client base, in retrospect, a tax-privileged sale could not be assumed. According to the BFH, a tax-privileged sale of an individual freelance practice (Section 18 (3) in conjunction with Section 34 EStG) presupposes that the taxpayer transfers the essential business assets to the purchaser in return for payment and, in particular, definitively. To this end, sellers have to discontinue their freelance work in a field of activity in the previous region for at least a certain period.

Here, the 'definitive' transfer of the essential business assets (in this case, in particular, the client base) would ultimately depend on the circumstances of an individual case. Apart from the duration of the suspension of the freelance work, other criteria that would have to be taken into account are, in particular, the physical distance between the practice that has been sold and the place where the occupation that has been resumed is being carried out, the comparability of the activities, the type and structure of the mandates as well as the useful life of the value of the practice that has been acquired.

Accordingly, in the case in question, there was no definitive transfer because the work was resumed or continued with the same or part of the same client base at a subsequent point in time in the same place. In this respect, the "sale" undertaken by the claimant constituted merely a non tax-privileged suspension.

More Information: The BFH ruling was from 21.8.2018 and is available online under case reference: VIII R 2/15 at www.bundesfinanzhof.de. (German version only).

Recommendation

If a tax concession pursuant to Section 34 EStG is to be claimed for the sale of an individual freelance practice then it has to be ensured that the conditions necessary for this are satisfied both on the date of the sale as well as during the subsequent period.

RAin StBin [German lawyer and tax consultant] Antje Ahlert

Invoice element: “complete address” – Amended ruling simplifies input tax deduction

Issue: In principle, a business can deduct the VAT that is legally due on the supply of goods and other services that have been received. Here it is assumed that those with a right to deduct input tax have invoices that have been prepared in accordance with Sections 14 and 14a of the German VAT Act, which contain all the information that is required. This includes, among other things, the complete name and complete address of the supplying business. According to the legal rulings hitherto by the Federal Fiscal Court (*Bundesfinanzhof*, BFH), the “complete address” criterion could only be satisfied if the address provided by the supplying company was the one where it pursues its commercial activities. Here, a letterbox address that merely provided for a company to be contactable by post and where, at the point in time when the invoice was issued, it did not have any commercial activities would not have satisfied this criterion. If the “complete address” criterion was infringed then the input tax deduction could be refused.

Both VAT Senates of the BFH have now amended their legal rulings. Exercising the right to deduct input tax no longer requires that the commercial activities of the supplying company be carried out at the address on the invoice. The only crucial factor is whether or not the supplying business can be contacted at the address that it has stated on the invoice.

The amended ruling has simplified input tax deduction for companies in the future because checks will no longer have to take place to determine whether or not a supplier really pursues its commercial activities at the address that has been stated. An amendment to the VAT application decree is expected soon.

More Information: The BFH’s change to its case law was effected via its rulings from 13.6.2018 (case reference: XI R 20/14) and 21.6.2018 (case reference: V R 25/15) that are available at www.bundesfinanzhof.de (German version only). The guidelines laid down by the ECJ in its judgement from 15.11.2017 (case: C-374/16) have thus been implemented. A judgement of the ECJ from 21.11.2018 (case: C-664/16) went even further. According to this, an invoice is not required for an input tax deduction. We will report on the details of the judgement and the consequences for national law in subsequent issues of the PKF Newsletter.

Recommendation

In practice, this ruling means that the organisational efforts involved in checking the address on an invoice will no longer be necessary. In the future, the crucial point will be that it has to be possible to contact a company at the address that is stated on its invoice. These rulings could be helpful for the argumentation in tax defence consultations and during tax audits.

RAin [German lawyer] Sonja Blümel

Virtually indefinite carry-over of entitlement to paid leave in the case of the fictitiously self-employed and other employees

The ECJ ruling means that organisational measures are required

A few years ago already, the ECJ decided that paid leave may be carried over in the case of sickness for up to 15 months after the end of the year in which the leave was granted and, in the meantime, the German courts have confirmed this. Now, in the "King" case, the ECJ has passed a judgement on the carry-over of entitlement to paid leave that goes significantly further still. For employers, this latest decision could result in the almost unlimited carry-over of entitlements to paid leave, or in a massive increase in the risk of having to make payments in lieu of unused leave.

1. Facts on which the ECJ ruling was based

The "King" ruling by the ECJ was based on the following facts. Mr King (K), a British national, claimed financial compensation from the company The Sash Window Workshop Limited for the period from 1999 until he retired in 2012 (13 years) for annual leave that had not been taken and / or had been unpaid. He had worked for this company, for the above-mentioned period, on a "self-employed commission-only contract". K had requested paid leave but this had been refused. Consequently, he took some unpaid leave and sometimes none at all. Thereafter, he raised a claim for compensation covering all the days of holiday over the period of 13 years.

Please note: At that time, in the United Kingdom, employees were allowed a (minimum) of four weeks of annual leave and this generally lapsed at the end of the year in which the leave was granted. Payment in lieu arose only in the case of employment being terminated.

2. The ECJ ruled in favour of the claim for payment in lieu of leave

The ECJ awarded K – who was classified as an employee and fictitiously self-employed – payment in lieu of leave retroactively for 13 years. The Court based its decision (ECJ, judgement from 29.11.2017, case: C-214/16 – King) essentially on the following points:

(1) Restriction generally constitutes a violation of EU law – According to the ECJ, restricting the entitlement to (a minimum amount of) leave to a particular reference period and providing for a subsequent expiry with no compensation constitutes a violation of EU law. Such restrictions in national legislation are deemed to be contrary to EU law if employees are prevented from exercising their rights to paid leave for reasons that are unconnected to their wishes. This is particularly the case where the restrictions also regulate the expiry of entitlement to paid annual leave with no compensation after the end of a reference period and/or a carry-over period defined in national law. If employees are not allowed to take their paid annual leave (e.g. because the leave request has been refused by the employer), or if they do not even exercise their rights to leave in the first place because of the prior refusal by the employer to grant them paid leave then, until the employment contract is terminated, the leave has to be carried over and, if necessary, accumulated until then. Furthermore, after the termination, employees are then entitled to financial compensation in accordance with Article 7(2) of the EU Directive 2003/88.

(2) Exception – According to the ECJ, it would only be possible for the annual leave entitlement to expire after a reference period or a carry-over period under special circumstances. Otherwise the entitlement can be carried over indefinitely. Special circumstances are deemed to exist, according to the ECJ, if it was not possible for an employee to take the paid (minimum) annual leave because of sickness. The leave then lapses in the event of sickness but, at the very latest, 15 months after the end of the year in which the leave was granted. A time limit is exceptionally justified here because the employer also has to be protected in this case.

Please note: The ECJ ruling from 22.11.2011 (case: C-214/10 – KHS v. Schulte) was also confirmed by the Federal Labour Court (*Bundesarbeitsgericht*, BAG) in its ruling from 7.8.2012 (case reference: 9 AZR 353/10). Up to now, there have been no time limits for other cases

(3) Application in the circumstances of the case – According to the ECJ, the King case was not one of those exceptions. Protection for the employer was not absolutely essential here. Indeed, the employer benefited continuously from the fact that K did not interrupt his professional activity in order to take (paid) leave and from not seeking comprehensive information about its obligations as a de facto employer. Furthermore, it was also not deemed acceptable for the employee to take leave without the certain knowledge that the leave would be paid. If the employer did not allow the employee to exercise his right to paid annual leave then it must bear the consequences of this.

Interim conclusion: Here, the ECJ thus saddled the employer with all the (non-time-limited) legal leave-related consequences and, therefore, also the overall assessment and cost risks of fictitious self-employment.

3. The implications of the "King" decision for German (leave) legislation

Up to now, for statutory minimum leave, German leave legislation, in the Federal Leave Act, has provided for expiry with no compensation of the (minimum) annual leave of four weeks at the end of the year in which the leave was granted, but at the very latest after the carry-over period has ended on 31.3 of the subsequent year. One exception currently is the carry-over of leave in the case of sickness where the leave lapses, at the latest, after 15 months following the end of the year in which the leave was granted. Payment in lieu of leave is generally provided for only when an employment contract is terminated.

Please note: The above statements basically also apply to the leave time granted in employment contracts that is above and beyond the minimum amount of leave, unless the parties to such a contract have expressly and effectively agreed something else for the additional contractual leave time.

In view of the "King" decision, the question that now arises is whether or not in all cases (apart from sickness, please see above) where employees are prevented from exercising their entitlement there is a risk of indefinite carry-over and accumulation of leave until termination – and then, accordingly, the threat of payment in lieu of leave in the case of termination. The legal uncertainty regarding these issues will persist until the judges at the BAG, based in Erfurt, have delivered a final ruling on the problems raised by the "King" case. However, until then there will be considerable legal and business risks for employers with regard to potential payments in lieu of leave; in particular, these will relate to cases of fictitious self-employment. The employer's risk would increase massively here in the event of an indefinite carry-over of leave.

4. Urgent action is needed

Until there is legal clarification of the exact implications of the "King" case in Germany, in order to avoid unnecessary risks, employers should address the issue without delay and carry out an appropriate risk assessment particularly if they have many employees with high levels of residual leave or if they deploy freelance staff.

In addition, especially with regard to the termination of employment contracts (e.g. in the case of a notice of termination or a severance agreement or an upcoming retirement), it should be ensured that the necessary organisational measures are adopted so that any leave that still remains can be applied for and taken in good time in the relevant year in which the leave was granted. Higher levels of unused leave entitlement should preferably not be accumulated in the first place.

Moreover, existing freelance employment relationships and similar constructs (such as e.g. a single-member GmbH (German private limited company) and a single-member UG (German enterprise company) should be assessed for any risks as a precautionary measure and new arrangements of this type should only be entered into after a prior clarification of the tax and legal risks.

Conclusion

In the light of decision-making practice hitherto of the German courts it can be assumed that the opinion of the ECJ will indeed be confirmed. The issues of granting leave and payment in lieu of leave will thus become more important, particularly for employment contracts and termination cases and, moreover, will increasingly come under the scrutiny of the supervisory authorities – particularly during tax audits and in (potential) fictitious self-employment cases.

WPin [German public auditor] Julia Rösger

Employment law – Inheritable entitlement to leave

The legal heirs of a deceased employee can claim financial compensation for paid leave not taken by the former employee.

1. Issue referred by the Federal Labour Court to the ECJ

The ECJ, in its ruling from 6.11.2018 (case: C-569/16 and C-570/16) decided that the legal heirs of a deceased employee may claim financial compensation from his former employer for the paid annual leave not taken by the employee.

Two widows had made requests to the former employers of their late husbands for a financial allowance in lieu of the days of leave not taken. The employers had refused the requests and that was why the wives had brought proceedings before German labour courts.

The Federal Labour Court (*Bundesarbeitsgericht*, BAG) asked the ECJ to interpret EU law in this context. As a starting point in the grounds the Court argued that, in Germany, each employee obtains an entitlement to a minimum of four weeks of paid leave and this entitlement may not be replaced by a financial allowance in lieu (except where the employment relationship is terminated). Furthermore, the BAG had pointed out that the ECJ, in its judgement from 2014, had already decided that the entitlement to paid annual leave is not lost upon the death of an employee. However, from the point of view of the BAG, it is questionable if this judgement should also be applied where national law prevents such financial compensation from forming part of the estate of the deceased.

2. The ECJ approved the claim for payment in lieu

In its judgement from 6.11.2018 (cases: C-569/16 and C-570/16) the ECJ decided that the legal heirs of a deceased employee may claim financial compensation from his former employer for the paid annual leave not taken by the employee. In the reasons given for the judgement it was argued as well that an employee's entitlement to paid annual leave is not lost upon his death. The legal heirs of the deceased employee have a right to a financial allowance for the paid annual leave not taken.

The ECJ thus acknowledged that an inevitable consequence in the event of the death of an employee would be that his accrued paid leave could no longer be taken. Apart from this time component, the entitlement to remuneration whilst on leave as a financial component is an important principle of EU social law. This financial component is accordingly of a purely pecuniary nature and intended to pass into the employee's assets (and in the event of death into those of his legal heirs).

Recommendation

If, as in the above-mentioned case, national law precludes such a possibility then the legal heirs can rely directly on EU law. This will apply irrespectively of whether the employer is governed by public law or by private law.

LATEST REPORTS

Umsatzsteuer:

Supplies via consignment stock – The period for transitional arrangements has been extended again

In January 2018, we reported that in its circular from 10.10.2017, the Federal Ministry of Finance (Bundesministerium der Finanzen, BMF) had adopted the recent ruling of the Federal Fiscal Court (*Bundesfinanzhof*, BFH) concerning the VAT treatment of deliveries from abroad via consignment stock in Germany and had amended the VAT Application Decree accordingly (PKF Newsletter 1/2018 p.6). According to this, from a VAT perspective, a direct supply (transport or dispatch deliveries) shall be deemed to have occurred if the customer is already known at the beginning of the transfer operation and if the goods are temporarily stored in a consignment warehouse for just a short period. The BMF circular should generally be applied to all open cases as of 1.1.2018 and was extended by another circular from 14.12.2017 (cf. PKF Newsletter 4/2018 p.2). In its circular from 31.10.2018, the BMF has now once again extended the transitional arrangements, which were originally presented in its circular from 14.12.2017, for deliveries that were carried out prior to 1.1.2019. According to that, there will be no objections if the hitherto valid regulations are applied to supplies made prior to 1.1.2020.

Please note

Businesses that are affected will now have the opportunity, until 31.12.2019, to clarify the VAT treatment or future contractual arrangements and logistical processing of such supplies.

Statutory Health Insurance Funds-Contribution Relief Law

Equal financing of health insurance

Up to the end of 2018, the general contribution rate for health insurance had to be equally shared between employers and employees while the supplementary contribution, which was set by the individual health insurance companies, was financed by the employees alone. That changed as of 1.1.2019. At the turn of the year, the members of the statutory health insurance schemes – around 56 million people – obtained significant relief under the Statutory Health Insurance Funds-Contribution Relief Law (GKV-*Versichertenentlastungsgesetz*), from 23.11.2018, because employers now, once again, have to pay half of the total contribution.

Key Social Insurance Values and Tax Dates for 2019

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*	60,750.00	60,750.00
B) For those with private health insurance on 31.12.2002 due to breaching the 2002 threshold **	54,450.00	54,450.00
Contribution assessment ceiling *(Beitragsbemessungsgrenze)*		
Statutory Pension Insurance and Unemployment Insurance monthly	6.700,00	6.150,00
annual	80.400,00	73.800,00
Health Insurance and Long-term care Insurance monthly	4.537,50	4.537,50
annual	54.450,00	54.450,00
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)	2,5 %	2,5 %
Health Insurance + supplementary contribution set by individual health insurers (of which employer and employee pay ½ each)	14,6 %	14,6 %
Average supplementary contribution	0,9 %	0,9 %
Long-term Care Insurance for people with children (of which employer and employee pay ½ each)***	3,05 %	3,05 %
for childless people	3,30 %	3,30 %
Max. employer-paid subsidy voluntary statutory health insurance	331,24 + half of the individual supplementary contribution	331,24 + half of the individual supplementary contribution
Max. employer-paid subsidy for private health insurance**	351,66	351,66
Max. employer-paid subsidy long-term care insurance (apart from Saxony)	69.20	69.20
long-term care insurance (only Saxony)		46.51
Reference values for statutory pension insurance/ unemployment insurance monthly	3,115.00	2,870.00
annual	37,380.00	34,440.00

* 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 0.9 % 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	6.432,00 3.216,00
Minimum payment amount for the obligation to make contributions for pension benefits in health insurance and long-term care insurance schemes	155,75
Allocation to statutory insolvency insurance	0,06 %
Allocation to social security contributions for artists	4,2 %

Reference values for benefits in kind in 2019

Meal allowance in EUR
Employees and adult family members

	Breakfast	Lunch	Dinner	Meals overall
monthly	53,00	99,00	99,00	251,00
daily	**1,77**	**3,30**	**3,30**	**8,37**

Accommodation allowance in EUR

(monthly)	231,00
per calendar day	**7,70**

Due Dates for Social Security

Month	Filing date for the contribution statement	Payment due date
January 2019	25.01.2019	29.01.2019
February 2019	22.02.2019	26.02.2019
March 2019	25.03.2019	27.03.2019

AND FINALLY...

„We don‘t want an America that is closed to the world. What we want is a world that is open to America.“

George H. W. Bush, 41st President of the USA (1989 – 1993), 12.6.1924 – 30.11.2018.

Impressum

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