PKF

Newsletter

Key Issue

Stricter rules for the cross-border transfer of functions as of 2022

11|22

Dear Readers,

In the Key Issue section of this edition of the PKF newsletter, we examine the so-called **transfer of a function**. If entire business functions and not just individual assets are relocated across a border, normally, companies face considerable business and tax challenges. The recently adjusted provisions in this regard in the German Foreign Transactions Tax Act are complicated. Moreover, with the German legislator's new ordinance on the transfer of functions a further tightening of the legal situation is looming ahead.

Our second report in the Tax section is likewise about transfers. Here we discuss how, for reasons of tax and family politics, it could be a sensible course of action to carry out a lifetime **transfer** of your **own home** to your spouse or children.

If children continue vocational training subsequent to a course of study there are always uncertainties as to whether or not there is still an **entitlement to child benefit** and so, in our third report, we discuss the general aspects of this issue on the basis of two recent court rulings. Finally, we round off the Tax section with a summary of the changes to **property valuation in the German 2022 Annual Tax Act**.

In our Legal section, the topic is – once again, as in one of the above-mentioned reports in the Tax section – making use of tax allowances for **gifting** that are newly granted every ten years. The focus here is on considerations as to how an **entitlement to a compulsory portion of a testator's estate** can effectively be **reduced** in volume.

After a two-year Coronavirus-induced break, the PKF Global Gathering took place again in September. You can read a report on this in the section titled 'On our own behalf'. Moreover, this November edition of our newsletter has been illustrated with images of Chicago, which was the location for the gathering.

We hope that you will find the information in this edition to be interesting.

Your Team at PKF

Front cover photo: Chicago Skyline

Key Issue

Stricter rules for the cross-border transfer of functions as of 2022

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TAX

WP/StB [German public auditor /tax consultant] Dr Dietrich Jacobs

Stricter rules for the cross-border transfer of functions as of 2022

If business functions are relocated from Germany to affiliated foreign companies or permanent establishments then the German fiscal authorities will tax not only the hidden reserves that exist in the individual transferred assets, but generally also the potential overall gain associated with the transferred function. Following the reform of the transfer of functions rules in the Foreign Transactions Tax Act *(Außensteuergesetz, AStG)* – which took effect from the 2022 calendar year and, in some cases, involved significant tightening – now, the ordinance on the transfer of functions *(Funktionsverlagerungsverordnung, FVerlV)* has also been updated. The amended version of the FVerlV was published in the German Federal Law Gazette on 25.10.2022 and has, thus, likewise come into effect for 2022.

1. Criteria for a transfer of a function

According to the previous version of the ordinance, a transfer of a function occurred when "a company (the transferring company) transferred, or made available for use, assets [..] [or] other benefits as well as the associated opportunities and risks to another affiliated company (acquiring company) so that the acquiring company was able to perform a function that was previously performed by the transferring company and, as a result, there was a restriction at the transferring company in the performance of the relevant function" (Section 1(2) FVerlV, old version).

The new FVerlV has modified the old version in a more stringent way for the taxpayer.

- So, a **partial** transfer would already be sufficient for a transfer of a function.
- In addition, for a transfer of a function it is no longer necessary for assets or other benefits to be transferred or made available for use. The simple relocation of a **function** would likewise suffice. This would be understood to be a business activity that consists of similar operational tasks that are carried out by specific divisions/departments in a company.
- Furthermore, a transfer of a function would also occur if the acquiring company does not perform the relo-

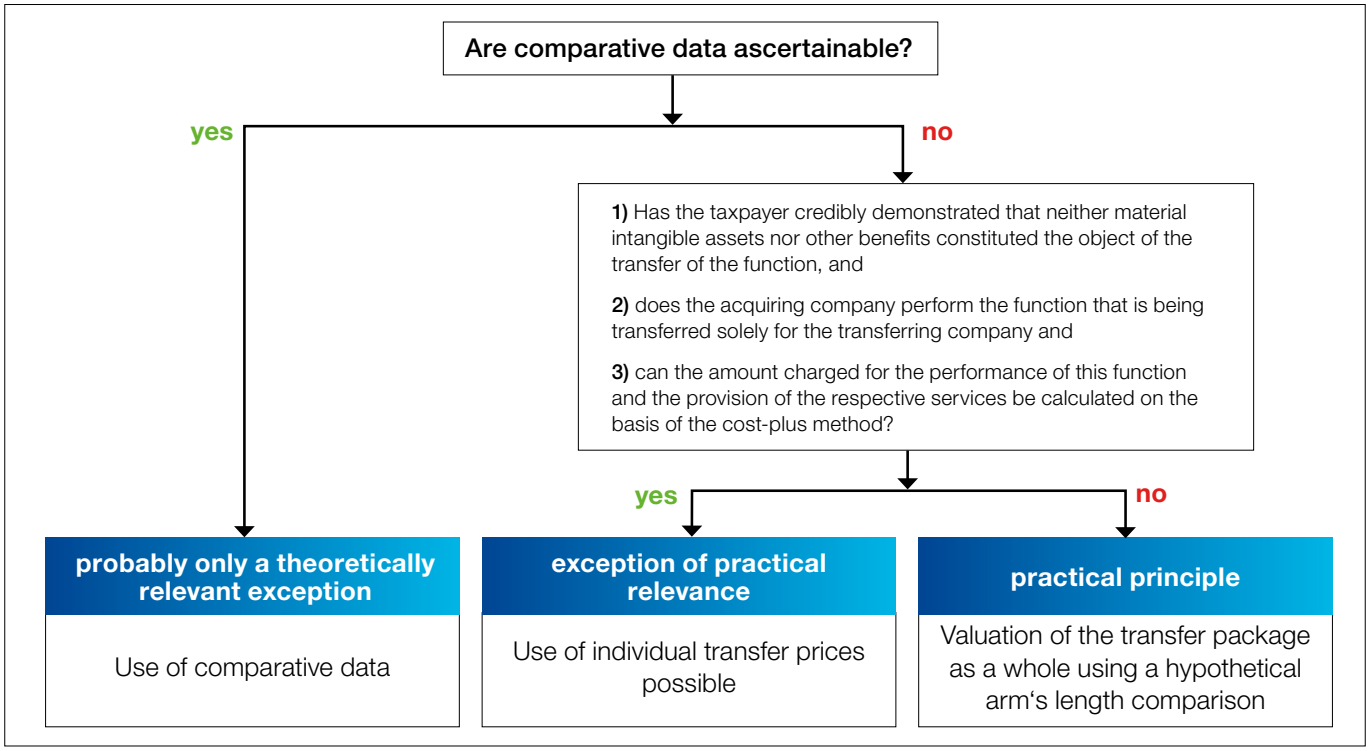

Fig. 1: Systematic overview of the legal consequences of a transfer of functions

cated function but, instead, is able to **expand an existing function.**

» Ultimately, the requirement for a **restriction of function** at the transferring company was removed from the definition. This is however unlikely to have many practical implications since a transfer of a function will not occur at another point (as would have been the case under the old version of the FVerlV) if no restriction of the function has occurred at the transferring company within five years after the transfer (i.e. there is a so-called **duplication of functions**), or if it can be credibly demonstrated that the restriction of the function is not directly attributable to the transfer.

» Under the old version of the FVerlV, there were **specific exceptional cases where no transfer of functions** would have occurred (Section 1(7) FVerlV old version; in particular, in the case of mere services). These exceptions are no longer included in the new version.

2. Legal consequences of a transfer of functions

The legal consequences of a transfer of functions can be inferred from figure 1 on p. 4.

Please note: In the section below we have not discussed the use of appropriate comparative data in detail since this only occurs in exceptional cases.

2.1 The Norm – Transfer package valuation

In the course of the transfer of a function it is necessary to value the relocated function, the associated opportunities, risks, assets and benefits that are transferred/made available for use as well as the services provided in this regard as a whole (taken together: the **transfer package**). Here, recognised economic valuation techniques will be applied – in order to determine the marginal prices of the transferring company (**lower price limit**) and the acquiring company (**upper price limit**) – that usually require investment calculations. If the taxpayer does not credibly demonstrate a different price within the area of agreement then the **average value** will be used to calculate the tax charge. Therefore, according to this presumption rule, all kinds of locational advantages including also, for example, those of a purely fiscal nature, that can be achieved solely by the acquiring company will result in an increase in the value to be assigned to the transfer package.

Chicago River

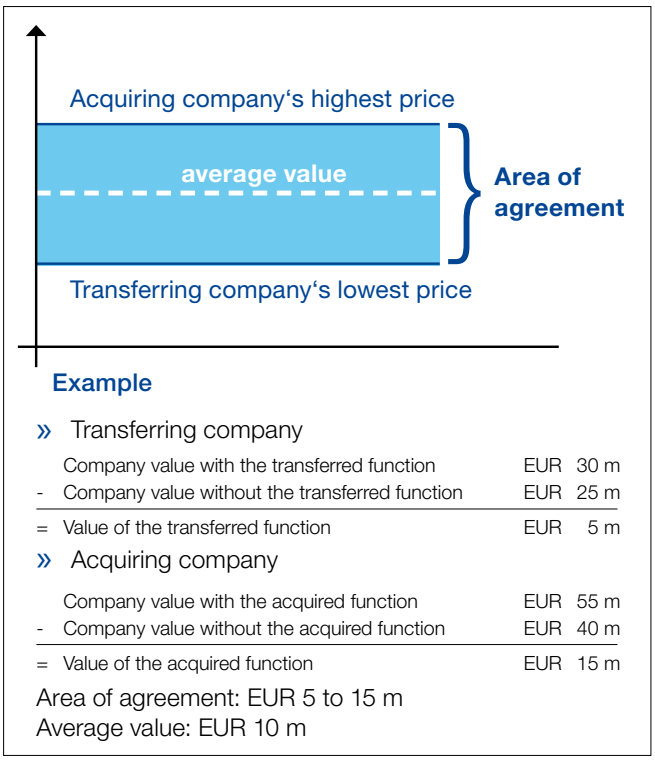

Fig. 2: Example of average value

In this connection, the new version of the FVerlV provides for the following adjustments to the current situation.

» Under the old version of the FVerlV, if there were any doubts as to whether it could be presumed that the transfer package or individual parts thereof had been transferred or made available for use then, **at the request of the taxpayer, the provision of usage rights was assumed**. This simplification provision is no longer to be found in the new version of the FVerlV, although it remains to be seen whether or not this actually constitutes a relevant change.

» Under the old version of the FVerlV, when capitalising future earnings it was possible to use a **forecast period shorter than infinity** if the relevance of the shorter period was plausibly demonstrated. By contrast, in the new version of the FVerlV, there is a requirement for **(full) evidence** to be presented.

» The old version of the FVerlV stipulated that the **discount rate** had to be determined on the basis of the after-tax interest rate for a risk-free investment to which a premium was added that adequately reflected the function and the risk. Here, standard business risk assessments had to be used from the perspective of the transferring company and the acquiring company respectively; in practice, simplifying approaches were also applied here. However, the new version of the FVerlV explicitly prescribes the derivation of a capital market premium so that it can be expected that there will, potentially, be a greater effort involved in determining the discount rate.


Carbide and Carbon Building

Under certain circumstances, it will still be possible to make retroactive adjustments to the transfer package valuation that could be disadvantageous to German taxpayers (statutory **price adjustment rule**) if (cumulatively)

- material intangible assets or benefits are the object of the business relationship,
- the transfer prices that would have been agreed had the actual profit development become known in the first seven years following the conclusion of the transaction deviate by more than 20% from the agreed transfer prices,
- there is no appropriate price adjustment rule and
- the taxpayer does not refute that, at the time when the transaction was concluded, there were uncertainties as regards the determination of transfer pricing and that independent third parties would have agreed an appropriate price adjustment rule.

Please note: In such a case, normally, it has to be assumed that in the eighth year following the conclusion of the transaction an appropriate adjustment amount would have been added to the transfer price used as a basis to calculate the tax charge.

2.2 The exception – Valuation based on individual prices

If all the conditions that are mentioned in Figure 1 on page 4 have been met then the taxpayer may use the individual transfer prices instead of the overall transfer package valuation as a basis. In this case, the individual transferred assets would be recorded at their assessed market values. How these values have to be calculated can only be determined in specific individual cases. An individual value assessment is normally easier and involves less work than the definition and overall valuation of a transfer package, as described above.

The conditions for such a simplification of the process have been developed so that they apply primarily to the transfer of routine functions. Examples here could be, besides the establishment of a **contract manufacturer**, the transfer of the sales function to a **low-risk distributor** that is remunerated

- on the basis of a **cost-based** form of the transactional net margin method (TNMM), or
- one that includes **commission** that reflects the low risk.

Please note

You can find the (German) version of the FVerlV that was passed by the Bundesrat [upper house of the German parliament] online at www.bundesrat.de as BR-Drucks. 423/22. This version corresponds almost entirely to the preceding draft law and it is also available online (in German) on the website of the Federal Ministry of Finance (www.bundesfinanzministerium.de) along with the comments that were submitted by various trade associations.

WP/StB [German public auditor/ tax consultant] Dr Matthias Heinrich/ StBin [German tax consultant] Stephan Lüneburg

Tax-optimised transfer of own home to relatives

In the case of inheritance, while it is possible to transfer an owner-occupied home to the remaining spouse free of inheritance tax, nevertheless, this generally initiates a self-usage period of 10 years. If the children inherit the home then the tax exemption would be limited to a living area of 200 sq. m. In the following section, we have highlighted lifetime structuring approaches for tax optimisation.

1. General information

For tax purposes, every ten years it is possible to make use of an exempt allowance in the amount of € 500,000 between spouses and € 400,000 for each parent in the case of children. Yet, transferring an estate through lifetime gifting can prevent the creation of a community of heirs – something that frequently entails complications in terms of tax and family politics – and, therefore, disputes over inheritance. Through anticipated inheritance, testators are able to actively decide what they wish to do and realise this in a targeted manner during their lifetimes.

2. Transfer to a spouse

The example of an owner-occupied home also provides an illustration of this. Upon succeeding into the rights of inheritance, a tax-exempt acquisition of the home by a spouse would be possible, however, this would be subject to a self-usage obligation for the following ten years under reservation of subsequent taxation. A further trans-

fer under reservation of usufruct is thus likewise excluded despite the continued own use. This would not apply only if the acquirer is prevented from self-usage for objectively justified overriding reasons, for example, because nursing care is needed or there is mental illness. In this regard, the Federal Fiscal Court (Bundesfinanzhof, BFH), in its ruling of 1.12.2021 (case reference: II R 1/21, BFH/NV 2022 p. 1120) decided that the application of this provision has to be property-based and not beneficiary-based.

The self-usage obligation can be avoided if, during the lifetime of one of the spouses, the property is already transferred to the spouse who is expected to live longer. Nevertheless, safeguards should be put in place for the event that the spouse who received the gift does actually die earlier as well as for the event that the couple divorces. This can be achieved under civil law, for example, via an agreement on recovery rights with a resolutive condition in the original gift agreement. Gifts of owner-occupied homes between spouses do not initiate any self-usage time periods.

Prior to the gifting, existing loan liabilities should be repaid – at the expense of the other assets – as such loans cannot be taken into account to reduce the tax liability in view of the tax exemption. The tax exemption would thus have a greater effect, the lower the encumbrance on the owner-occupied home. At the same time, fewer other assets would have to be transferred in the subsequent period (e.g. cash assets).

3. Transfers to children

German lawmakers have not provided for a tax exemption for the gifting of an owner-occupied home by parents to their children for self-usage. Solely upon succeeding into the rights of inheritance would there be a tax exemption limited to a living area of 200 sq. m. However, as part of a gifting process it would be possible to grant the parents the right of usufruct. The younger the parents making the gift, the lower the value of the gift because, statistically, the restriction on the use will then still be in place for some time. Here, too, a safeguard can be added to the notarised agreement for the benefit of the parents in the form of an appropriate civil law agreement. Prior to the gifting, loan liabilities should not normally be repaid because – in the absence of a tax exemption – these would now additionally reduce the tax.

WP/StB [German public auditor/tax consultant] Daniel Scheffbuch / Christina Schultz

Child benefit entitlement – Disputes following initial vocational training

The entitlement to child benefit continues to exist even after the child's 18th birthday and at least until their initial vocational training has been completed. Whether or not it is possible to subsequently continue claiming the benefit will depend on various factors and is frequently a matter of dispute. In the following section, we present important parameters in this regard based on two court rulings.

1. Initial vocational training as opposed to a second course of vocational training

In the context of an initial vocational training, it is possible to draw child benefit for a child until their 25th birthday. The initial vocational training has to be completed on a publicly approved training course where a qualification is acquired via an examination. For example, if a bachelor's degree course is followed by a master's degree course this is then referred to as initial vocational training that constitutes a whole programme [in German referred to as einheitliche Erstausbildung] (Münster tax court, in its ruling of 22.1.2019, case reference: 12 K 3654/17 Kg). A distinction also needs to be made between employment pursued alongside that and any work-related further training that is undertaken (second course of vocational training).

2. Recent rulings on study-related issues

2.1 Advanced education and training to become a specialist physician

The tax court in Lower Saxony, in its judgement of 17.11.2021 (case reference: 9 K 114/21), had to rule on whether or not it was still possible to draw child benefit for a student, who had already completed her medical studies, during her advanced education and training to become a paediatrician. In the case in question, the claimant's daughter, after having completed her medical studies, started her advanced education and training, as of 1.1.2021, to become a paediatrician. On the basis of the assessment notice dated 11.3.2021, the child benefit payments were stopped as of April 2021 because, according to the documentation provided, the daughter

had finished her university course in March 2021.

The legal action was not successful. While there was a close temporal and material link between the medical studies and the advanced education and training to become a paediatrician, nevertheless, in the opinion of the tax court, the training within the framework of advanced specialist education and training was subordinate to the child's professional activity. The daughter had taken up her advanced specialist education and training together with 42 hours of work a week for a period of 60 months and was, therefore, tied to one employer for the long term. The remuneration she received for her work as a physician undergoing postgraduate training was, above all, for the work that she performed and not for taking part in the vocational training programme.

2.2. Bracketing undergraduate studies and second degrees together

The Federal Fiscal Court (Bundesfinanzhof, BFH), in its ruling of 7.4.2022 (case reference: III R 22/21), expressed its view on the conditions for the possibility of bracketing undergraduate studies and second degrees together so that they constitute one whole initial vocational training programme. In principle, adult children who have already completed initial vocational training or an undergraduate course of study may only claim child benefit during a subsequent second course of vocational training if they are not employed for more than 20 hours per week.

Accordingly, there is no longer an entitlement to child benefit if, after a 'dual course' of study to become a Diplom-Finanzwirt [graduate in financial economics] the child works for more than 20 hours per week at the local the tax office and, alongside that, pursues a course of law studies in the process. There was indeed a close temporal and material link between the two training courses because the second course of study was taken up directly after the 'dual course' of study had finished and there was a content-related proximity between the 'dual course' of study and the course of law studies. However, a further condition for bracketing courses of study together so that constitute one whole initial vocational training programme is that the training element during the second training period has to form the child's main activity and


Cloud Gate - Sculpture by Anish Kapoor

not be subordinate to their gainful employment. This condition appeared, at first, to have been satisfied because the student had invested an equal amount of time into training and employment and the training periods were determined by the non-working periods. Ultimately, the child benefit entitlement was however revoked because the total limit of 20 hours was exceeded.

3. Conclusion

In summary, it can be said that in the case of children who are employed, in particular, the entitlement to child benefit can be a matter of dispute. While in the case of a second degree it will be necessary to carry out an employment test, however, the extent of the employment would be irrelevant if all the training courses still belong to a single initial vocational training programme. In such a case, the Family Benefits Office (Familienkasse) would continue to pay child benefit irrespective of the number of hours worked per week.

Recommendation

Generally, you first have to differentiate as to whether or not this constitutes one whole initial vocational training programme. Here, it should be ensured that there is a close temporal and material link between the two vocational training courses. Furthermore, the continuing education programme has to constitute the child's main activity while the employment may only constitute a secondary activity.

WP/StB [German public auditor/ tax consultant] Tanja Schmitz

Property valuation – Important changes to the German Valuation Act in the 2022 Annual Tax Act

The draft of the 2022 Annual Tax Act (Jahressteuergesetz, JStG) contains – besides many other changes (please see our report that appeared already in edition 10/22 of the PKF newsletter, p.7) – amendments to provisions in the Valuation Act (Bewertungsgesetz, BewG), which we describe in the overview below.

In view of the amendments that were already made to the German Regulations for Determining Property Value, in 2021,– which mainly included adjustments to the calculation of assessed market values –, the provisions in the BewG on the valuation of land and property for the purposes of inheritance and gift taxes will now be adapted accordingly.

In this respect, the following important changes are planned.

- The service life of residential properties will be raised from 70 years to 80 years.
- For the income capitalisation method, approximated operating expenses based on a percentage of the annual rent will no longer be taken into account. In future, the regulations will allow for a differentiated calculation broken down by administrative and maintenance costs as well as loss of rental income risk in accordance with Appendix 23 to the BewG. The values that are provided there have to be adjusted to the consumer price index.
- The property yields pursuant to Section 188 BewG, which lower the building value in the income capitalisation method, have been reduced when compared with the previous provision.
- For the asset value method, regional factors will be introduced and these have (yet) to be published by the committees of valuation experts.
- The valuation of cases where there are heritable building rights will be revised.
- In future, cases where there are buildings on third-party land will be valued analogously to cases where there are heritable building rights.
- In future, statements illustrating the determination of the bases for tax assessment will have to be submitted electronically. This will be implemented as soon as the technical conditions have been met.

The new provisions will apply to valuation cut-off dates after the 31.12.2022. It is anticipated that real estate values calculated in this way will be above the previous values. However, an accurate calculation of the appreciation in values is however not possible at this juncture.

Recommendation: If transfers of property through gifting are already envisaged then you should consider still making the gift in 2022 in order to secure real estate values that are likely to be more favourable. It is still nevertheless possible to provide an expert report as proof of a lower assessed market value.

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

Right to a compulsory portion of a testator's estate – 10-year time period in the case of gifting

There is sometimes a desire not to bequeath wealth that has been built up in accordance with the statutory succession rules. This can moreover be achieved without further ado by creating a will, at any rate, up to the limit of the entitlements to compulsory portions of close relatives. In order to circumvent rights to compulsory portions, it would be possible to make use of lifetime transfers through gifting. There are however a number of pitfalls that you need to watch out for.

1. General information about the compulsory portion

The beneficiaries of a compulsory portion will be the biological or adopted children and the children of children who have already passed away, as well as a spouse. In the case of childless persons, the parents of the deceased person will also be beneficiaries of a compulsory portion, something that is not infrequently overlooked. The beneficiaries of a compulsory portion are entitled to half of their statutory portion of the inheritance.

2. Gifting and an augmented compulsory portion over a time period of 10 years

The relevant estate for the calculation of the compulsory portion can be reduced through lifetime gifting. However, for a period of 10 years after the gifting, the beneficiary of a compulsory portion would be entitled to have their compulsory portion augmented by adding back the gifted assets to the estate for the calculation of the compulsory portion. This entitlement to an augmented compulsory portion decreases by 1/10 for each year that has elapsed since the gifting. After 10 years, the gifting will thus no longer be taken into consideration for the calculation of the compulsory portion.

Example: A father, F, has two sons, A and B, of whom B has fallen out of favour with his father and has been disinherited in F's will. In order to also reduce B's compulsory portion, F signs over most of his wealth (a property worth € 400k) via a lifetime transfer to his son A. If F were now to die, 6 years after the gifting, then the gifted property would still be taken into account for the calculation of the compulsory portion at a value of €160k ((€400k minus 6/10).

3. Start of the 10-year time period

In the respective cases it will thus be in the interest of the transferor that the 10-year period will be initiated together with the gifting. However, there are two important exceptions to this:

(1) A gift to a spouse – When a gift is made to a spouse, the period is only initiated when the marriage is dissolved (divorce or death). Therefore, gifts made to a spouse are not normally a suitable way to limit entitlements to compulsory portions. The only case where there would be an effect is if an appreciation in value were to occur subsequent to the gifting.

(2) Reserved right of use – According to case-law, the period will also not be initiated if the donor "has not yet forgone the use of the object of the gifting". This is always the situation where the usufruct has been reserved. However, if the donor reserves for themself the right to reside in the gifted property then, for the start of the time period, the extent of the right to reside would be important. If the right encompasses the entire gifted property then, in terms of content, this would approximate a usufructuary right and would not initiate the time period. This was recently clarified by the Munich court of appeals in its ruling of 8.7.2022 (case reference: 33-U-5525/21). However, if the right to reside encompasses merely a part of the property then this would generally not inhibit the start of the period of time. However, there is unfortunately no clear answer to the question as to what extent of the residential right would be detrimental and it would depend on the circumstances of the individual case. For example, the Federal Court of Justice accepted that continued use of one floor in a three-storey house would initiate the time period.

Recommendation

If compulsory portion considerations do not play a role, and in the case of gifting where the main focus is on making use of gift tax allowances multiple times, then a reserved right of use could however be an appropriate means to reduce the taxable value of the enrichment. Here, it is a case of the sooner you tackle this with appropriate measures, the greater the tax effect will be.

Beach on Lake Michigan

Requirements for the recognition of childcare costs for tax purposes

Deductions for childcare costs may generally be claimed in your tax return. It is however questionable how spouses who live in permanent separation from each other as well as unmarried couples can take into account the payments that have been made as special expenses.

In a case in this regard, which was heard by the tax court in Thuringia, the father of an under-age daughter had paid a portion of the childcare costs; however, the local tax office had then refused the deduction that had been claimed (court notice of 1.1.2022, case reference: 3 K 210/21). The daughter lived exclusively with her mother – who was living in permanent separation from the father – and was thus not a member of the claimant's household in 2020. The claimant was not paying any spousal maintenance. During the assessment period, the daughter frequented both a kindergarten as well as a day care centre while the child's mother paid the fees. Even though the father reimbursed the mother every month for half the amount of the fees, nevertheless, he was denied the ability to take into account as special expenses the payments that he had actually made.

The tax court viewed the claim as being unfounded. Household membership, which is a condition for the deduction as a special expense, requires not only living together with the child in a given place, but also meeting other criteria. In the case of parents who are unmarried or are living in permanent separation from each other, the parent who is authorised to claim the deduction is the one who has borne the costs and where the child is a member of their household. In the case in question, the child was not a member of the claimant's household.

Please note: In the view of the court, this statutory provision is constitutional and household membership is an appropriate point of reference.

New federal authority for tackling financial crime

The Federal Ministry of Finance (Bundesministerium der Finanzen, BMF) has announced that it is pooling forces of the state in a newly created authority with the aim of taking effective action against financial crime and so that it can resolutely enforce sanctions. In the future, this Higher Federal Authority for Combating Financial Crime (Bundesoberbehörde zur Bekämpfung von Finanzkriminalität, BBF) will consist of a new Federal Police Office for Financial Crime (Bundesfinanzkriminalamt) (BFKA), a Financial Intelligence Unit (FIU) and a new central office for anti-money laundering supervision.

In the coalition agreement, the governing parties had already announced that they would take decisive action against money laundering. According to the BMF announcement of 25.8.2022, the functions of the new units will be as follows:

- The BFKA will focus on solving complex cases of financial crime and on pooling the necessary expertise for this. It will pursue a 'follow the money' approach and will thus focus on illicit financial flows. Furthermore, it will provide clear structures for enforcing sanctions effectively.
- The FIU, as an independent analysis unit, will bundle suspicious transaction reports, which are the starting point for investigations.
- The new central office for anti-money laundering supervision will, in future, manage the supervision of the very broad and diverse non-financial sector that, besides very different types of traders, also includes, for example, gambling operators. The central office will have the additional task of developing uniform guidelines and standards for risk-based supervision. It will moreover act as a central point of contact for the future European Anti-Money Laundering Authority (AMLA) for issues relating to the non-financial sector in Germany.

Please note: The BMF likewise announced that it would organise more training for highly qualified financial investigators and drive forward the digitalisation and linking of registers so that, in the future, it will be possible to check information on ownership and beneficial owners more efficiently.

Input tax deduction – Right to choose classification in the case of mixed-use items

Input tax deduction for items that are used not just for business purposes requires these items to be promptly allocated to business assets. Recently, the Federal Fiscal Court (Bundesfinanzhof, BFH) decided that there is no time limit for sending the documentation of the allocation of such items to the local tax office.

Business owners may deduct, as input tax, the VAT that is legally due for services performed for their enterprises by other business owners. After purchasing a standardised item that is intended to be used both for business purposes as well as privately, a business owner will have the right to choose how it should be classified. They have the option of allocating the item either completely to their enterprise or of leaving the item entirely in their private assets. Moreover, the business owner may also opt to allocate to their enterprise the respective (estimated) share of the use of the item for business purposes. The fiscal administration is of the view that this classification choice is an internal matter of fact that can only be identified through external evidence. If the allocation had thus not been documented for the advance VAT return then it would have had to have been declared, at the very latest, by the deadline for submitting tax returns to the local tax office.

The BFH, in its ruling of 4.5.2022 (case reference: XI R 29/21 (XI R 7/19)), argued against such a time-limited submission of the documentation to the local tax office. Even after the documentation deadline has expired, externally objective points of reference for the allocation may be sent to the local tax office. Generally, the classification decision has to be made when the item is acquired, produced or contributed. Besides claiming or not claiming input tax deduction, other objective points of reference for an express or implied classification to the enterprise that can also be used as evidence are:

- designation of a room as a workroom subject to further objective points of reference,
- acquisition of items under the company name,
- the company providing insurance cover for the item, and
- the accounting treatment.

Please note: In practice, the decision by the BFH could provide a lifeline if the timely allocation turns out to be a matter of dispute. We would nevertheless recommend a timely and clear declaration to the local tax office in order to avoid disputes upfront already.

Towing away illegally parked vehicles

If a car parking space renter does not actually use their space at all then a question that arises is whether or not a vehicle that has been illegally parked in the space may be removed.

In a case that was decided by the Munich Regional Court, in its ruling of 23.6.2022 (case reference: 31 S 10277/19), a motorist had illegally parked his vehicle in a private parking space. Thereupon, the parking space renter called a towing company. When they arrived, the motorist had already driven away in his vehicle. Subsequently, the towing company invoiced the owner of the car for an empty trip. He refused to pay and pointed out that the parking space renter had not even wanted to use it during that time and that towing away his vehicle would have been disproportionate. In the first instance, the towing company's case was dismissed with the argument that the towing had been financially disproportionate insofar as no specific use had been planned. By contrast, the Regional Court was of the view that the entitled party does not need to have a specific intention to use the parking space in order to organise for a vehicle to be towed away from a private space. Moreover, there is no obligation to wait, especially not when there is absolutely no indication as to when the motorist will return. Towing is also not disproportionate since it would not have been cheaper to remove the vehicle in any other way.

Outcome: Therefore the car owner who had parked illegally had not suffered a disproportionate disadvantage that could have been avoided by opting for other equally appropriate defence measures. Moreover, for the renter it would not have been acceptable to tolerate the trespass until such time as the motorist had driven away. Therefore, the average costs for the local area for an empty trip plus the night surcharge had to be paid by the owner of the car.

WP / StB [German public auditor/ tax consultant] Christian Müller-Kemler

PKF Global Gathering in Chicago

At the end of September, after three years without any in-person events, a gathering of around 200 partners and executives from the global PKF family took place in Chicago. While e-mails, telephone calls and video conferences are helpful communication tools, there is however no substitute for personal encounters.

Particularly when providing cross-border services to our clients, having good connections to our colleagues abroad is of crucial importance for the quality and speed of the services. And so there was then ample opportunity to renew existing contacts and establish new ones. From Belgium to New Zealand and from South Africa to Malaysia. Something that was especially useful was the expert exchange of experiences and information on new developments in technical solutions for our work, on the regulatory environment, particularly in auditing, on ways to further improve cross-border collaboration and also on one of the greatest challenges of our time, namely, recruiting and retaining specialists and executives. The gathering was rounded off by two stylish evening events and everyone went home again with many positive impressions and memories. We are now looking forward to applying our newly acquired knowledge for you.

fLTR.: Kai Schöneberger, Partner PKF Fasselt / Duisburg, David Nissen, Partner PKF Mueller / Chicago, Theo Vermaak, CEO PKF International, Christian Müller-Kemler, Partner PKF Fasselt / Duisburg, Scott Anderson, Manager PKF Mueller / Chicago

Frederik Hegmanns, Associate Partner PKF Fasselt

Don‘t miss the Blues Brothers.

AND FINALLY...

"You're either part of the solution, or you're part of the problem. I've opted for the former."

Mikhail Sergeyevich Gorbachev, 2.3.1931 – 30.8.2022. He served as General Secretary of the Central Committee of the Communist Party of the Soviet Union (CPSU) from March 1985 until August 1991 and was the first and last President of the Soviet Union from March 1990 until December 1991. He took new steps in Soviet policy-making with glasnost („openness"), a commitment to freedom of opinion and perestroika („restructuring"). In disarmament negotiations with the USA he ushered in the end of the Cold War. In 1990, he was awarded the Nobel Peace Prize.

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