PKF

Newsletter

Key Issue

ESG reporting – Measuring non-financial performance on the basis of the Women's Career Index

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Dear Readers,

We begin this summer double issue of our newsletter with an overview of current case law with respect to **adding back expenses for trade tax purposes** that are largely attributable to the sphere of rent. The fiscal administration frequently interprets these add-backs too broadly. The cases that are discussed in our first report reflect the relevant considerations of the judges at the Federal Fiscal Court in cases of doubt. The second contribution in the Tax section classifies **e-charging stations for tax accounting purposes**. While the accounting treatment of electric vehicles is clearly regulated, e-charging stations can be components of buildings or movable assets - and this will have different consequences for their measurement.

Our Key Issue report appears under the Accounting and Finance section. Many contributions on the topic of environmental, social and governance reporting – **ESG** for short - focus solely on the history, the reporting requirements and which companies have to provide information and by when. In our article on **measuring sustainability performance** we stress the opportunities arising with respect to stakeholders from good reporting. We discuss the social factor using the example of the **Women's Career Index *(Frauen-Karriere-Index, FKI)*** to show how a non-financial KPI can be derived and measured.

In the Legal section we kick off with a presentation of the main features of the **German Whistleblower Protection Act**, which many companies have had to comply with since July. In Germany, greater attention might possibly have been paid to this legislation if the working title, in German, had been *Whistleblowerschutzgesetz* rather than *Hinweisgeberschutzgesetz*.

In the subsequent report we address the framework conditions for **advertising using sustainability claims**; an EU Directive will mean that stricter rules will soon apply in order to protect consumers from misleading environmental claims.

We then continue on our journey around the PKF locations in our neighbouring countries through the illustrations that break up the reports from our experts. This time we visit Austria – a destination that is especially suitable for a summer holiday.

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

Your Team at PKF

Front cover photo: Village of Going at the foot of the Wilder Kaiser mountains in Tyrol

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ESG Reporting – Measuring non-financial performance on the basis of the Women's Career Index

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TAX

StB [German tax consultant] Steffen Zipperling

Update on trade tax add-backs of rental and lease payments

In recent years, trade tax add-backs have frequently been the subject of disputes between taxpayers and the fiscal administration. Tax audits rarely remain unaffected by this issue. Accordingly, a recent court ruling on this long-running contentious issue was wide ranging in its scope. In the following section we provide, first of all, a systematic classification of the requirements for tax purposes. Subsequently, we discuss some of the more recent decisions by the Federal Fiscal Court (Bundesfinanzhof, BFH) regarding trade tax add-backs of rental and lease payments.

1. Legal rules that apply to trade tax add-backs

When calculating the trading profit, in accordance with Section 8, no. 1(d) and (e) of the Trade Tax Act *(Gewerbesteuergesetz, GewStG)*, it is necessary to add back the rental payments that are made in return for the use of movable and immovable capital assets that will have been deducted when determining taxable earnings. However, the full amount is not added back, but instead a standardised interest portion included in the rental expenses (at a rate of 5% for movable capital assets and 12.5% for immovable capital assets).

The background to this is the intention of the German legislator to levy approximately the same level of trade tax – as an impersonal tax (a so-called *Objektsteuer*) – on all taxpayers. In principle, it should make no difference whether the financing is equity-based or debt-based. However, as financing interest will have reduced the taxable profit of an enterprise, under trade tax regulations this interest has to be added back again. The decision not to purchase fixed assets but, instead, to rent them should

Vienna's Hofburg Palace

likewise not affect the level of the trade tax debt. Those taxpayers who have reduced their taxable profit via rental payments instead of depreciation amounts thus have to add back an appropriate notional interest portion.

2. More recent BFH case law

2.1 Real estate tax passed on to the tenant

In this case (BFH ruling of 2.2.2022, case reference: III R 65/19), the subject-matter of the dispute was whether or not the real estate tax that had been passed on to the tenant had to be included as an add-back amount in addition to the rent. As the real estate tax forms part of the encumbrance on the property it generally has to be borne by the landlord. However, the real estate tax may be passed on to the tenant (as happened in the case in question) via a contractual agreement. In this case, the real estate tax borne by the tenant also has to be included in the amounts that have to be added back. This is because the BFH typically presumes that the assumption of the real estate tax charge by the tenant will have had a positive impact on the actual amount of rent.

2.2. Rent for reusable containers in business

The issue at the heart of the dispute in this case (BFH ruling of 1.6.2022, case reference: III R 56/20) was whether or not rental payments existed under civil law. These are the only ones at all where there is a requirement for them to be added back, which is why the user agreement, according to its key legal content, has to be a rental agreement in terms of civil law. In the case in question, the claimant marketed fruit and vegetables and rented so-called reusable crates for transport purposes. The object of the contract that had been agreed with the business that rented out the crates also included a comprehensive system of services, such as transporting the empty crates to the grower, the entire reverse logistics process, waste disposal, sorting, repairing and washing the crates as well as their interim storage at different stages of the goods handling process. The BFH ruled in favour of the claimant that this was a case of a rental agreement with multiple inseparable service components where the rental services do not particularly characterise the contractual relationship. Therefore, add-backs were ruled out because the expenses did not constitute rental payments within the meaning of the add-back regulations.

2.3 Maintenance costs in the case of lease agreements

In this case, within the scope of lease agreements for motor vehicles, a lessee had assumed the obligation to also bear the maintenance fees that are incurred. The local tax office included these maintenance fees as add-back amounts in addition to the lease rate. The BFH ultimately confirmed this opinion (ruling of 20.10.2022, case reference: III R 33/21). The definition of a lease rate has to be construed in economic terms, which is why the maintenance costs that are contractually passed on to the lessee are part of the 'lease rate' and, thus, there is also a requirement for them to be added back. This is because passing on the costs to the lessee usually leads to a reduction in the regular ('pure') lease rate.

2.4 Add-backs as a function of the business purpose

The adding back of rental payments is based on the assumption that the case is one of so-called notional fixed assets. This means that it will be necessary to check if the capital assets for the use of which the rent was paid would be the renter's fixed assets if they were owned by the renter. This check has to be based on the operational circumstances of the respective taxpayer. In this regard, you would have to ask if the business purpose requires the permanent availability of such capital assets. Therefore, since it is the specific designated business purpose that matters, it is possible that while for one company same capital assets will constitute notional fixed assets this will not however be the case for another company.

In the case in question here, (BFH ruling of 19.1.2023, case reference: III R 22/20), the claimant ran an exclusive production and events agency in the field of fashion, lifestyle and culture. When organising fashion shows, product presentations, photo shoots and exhibitions, the claimant would hire a wide range of equipment and event venues. The respective rental payments were added back for trade tax purposes by the local tax office. The tax court (Finanzgericht, FG) accepted this. However, the opinion of the BFH was that the FG had not taken sufficient account of the fact that the incoming supplies had always been used only once because the ordering party had wanted to continually organise new and different events. Multiple use was out of the question for the ordering party and, thus, also for the claimant. In accordance with the stipulations of the BFH, it is necessary to check the extent to which the hired capital assets constituted inputs for the production of the 'product', namely, the event. This is because, in this respect, the capital assets would be used up when they are input into the product. Therefore, it is more likely that classifying them as current assets and precisely not notional fixed assets would be considered. This would rule out adding back the rental payments.

2.5 No adding back of advertising and sponsorship expenditure

In the case of sponsorship agreements where the sponsor normally gets various types of advertising service in return for their financial support, the BFH, in its ruling of 23.3.2023 (case reference: III R 5/22) concluded that these were sui generis agreements with inseparable performance obligations. Therefore, contrary to the opinion of the lower court, in particular, there cannot even be partial add-backs for renting advertising space such as, for example, shirt sponsorship or perimeter advertising. The main focus of such agreements is on the advertising services to be provided because solely these and not the use of advertising space have a commercial value for the sponsor.

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

E-charging stations – Accounting for their acquisition and maintenance by companies

In the course of the energy transition process, electromobility is being encouraged in a number of ways. It will also be necessary to develop the requisite charging infrastructure and, in particular, to install e-charging stations. In the following section, we discuss important aspects of the construction and operation of e-charging stations from a business perspective.

1. Classification for tax purposes

If an e-charging station is constructed for business purposes on the company's property or building then it will be a business asset. In such a case, it is unimportant whether the company owns the property or building or has merely leased it. For tax purposes, the following allocation within business assets is relevant:

- **(1)** operating equipment,
- **(2)** tenant installation, or
- **(3)** a component of the building or a standalone part of the building.

(1) The crucial factor for the reporting and measurement of the asset is the company's business purpose – if this is supplying electricity, in particular, as charging current for electric vehicles then the e-charging station would constitute operating equipment that should be accounted for and depreciated independently of the building or the car park. In the case of a different business purpose the e-charging station would not constitute operating equipment.

(2) If the company, as a tenant, installs the e-charging station in a third-party building then this could be a so-called tenant installation if the commercial operations through the charging station are carried out directly by the company. Depreciation would be charged similarly to operating equipment. Consequently, as an own capital asset, the e-charging station can be accounted for separately from the building, on a standalone basis, and can be depreciated over a shorter expected useful life than the building (see section 2).

(3) If the charging station constitutes neither operating equipment nor a tenant installation then a check should be performed to determine whether it can be regarded as a component of the building or a standalone part of the building. Where there is a common use and function that is shared with the building and the e-charging station then this would constitute a component of the building. The asset would then be recognised in a similar way to the depreciation of a building over a period of up to 33 years.

2. Useful life of charging stations

After agreement was achieved between the Federal Government and the German federal states, Thuringia's Ministry of Finance published a decree for tax purposes, on 15.3.2021. In this respect, the average useful life that can be assumed for tax purposes for wallboxes or wall connectors as intelligent wall-mounted charging stations for electric vehicles as well as for publicly accessible charging infrastructure (such as charging stations in public car parks) is a period of six to ten years in the case of a standalone asset. By contrast, under German commercial law it is possible to take a different useful life as a basis. The sole criterion is the length of time that the charging station can probably be able to be used by the company.

Please note: Mobile charging stations that are not firmly affixed to the ground constitute movable standalone assets. The depreciation will therefore be independent of

the depreciation period for a building and, thus, is frequently shorter.

3. (No) maintenance expenses

If an e-charging station is only installed later in a parking area then no immediately deductible maintenance expenses will be assumed but, instead, there will be subsequent acquisition costs. Adding a charging station at a later date constitutes a substantial improvement because the parking space will now have been significantly expanded beyond its original use and can be used together with the e-charging station. By contrast, the subsequent servicing and maintenance expenses for a charging station added at a later date will be immediately deductible.

4. Renting out e-charging stations

Operating an e-charging station constitutes a commercial activity. That is why a tax consultant should normally review an asset management activity (e.g., letting out residential property) beforehand in order to determine if the new activity would result in the 'infection' of such income. If this is the case then the income generated from letting out residential property would also be commercial income. This could result in a higher trade tax burden if the extended trade tax exemption for property is refused. Through the Fund Location Act, together with Section 9 no. 1 sentences 3 and 4 of the Trade Tax Act, German lawmakers correspondingly introduced a harmlessness threshold of 10% as of 2021. According to that, the extended trade tax exemption for property would not be refused if the income from supplying electricity via charging stations is no greater than 10% of the total income from making the property available for use.

Please note

An alternative would be to rent out the e-charging station via a different company from the asset management company in order to be able to exclude the possibility of a 'harmful infection'.

The famous Burgtheater (Imperial Court Theatre) on Ringstrasse in Vienna

ACCOUNTING & FINANCE

Dominik Römer

ESG reporting – Measuring non-financial performance on the basis of the Women's Career Index *(Frauen-Karriere-Index, FKI)*

While, in the past, sales revenue and profit were regarded as the sole criteria for economic success, these days, companies also have to be judged on the basis of non-financial factors. In this respect, the ESG aspects, in particular, are growing in importance for all stakeholders, whether these be customers, investors or (potential) employees. In the following section, first of all, we describe the main features of ESG reporting, which companies use to document their sustainability activities transparently and systematically. Subsequently, as an example, we discuss performance measurement on the basis of the metric of the 'Women's Career Index'.

1. What is ESG reporting?

ESG stands for environmental, social and governance. The ESG factors relate to the non-financial aspects of a business that go beyond the traditional financial indicators.

- The ESG **'E'** pillar includes all types of protection of the climate and the environment as well as the reduction of greenhouse gas emissions, energy efficiency and the conservation of resources.

- **'S'** relates to a company's relationships with its employees, customers, suppliers and society. This covers various subject areas, such as, working conditions, human rights, diversity and inclusion.

- The **'G'** pillar describes topics such as corporate values or management and monitoring processes as well as shareholders' rights and business ethics.

The ESG reporting process helps companies to measure their performance in the area of sustainability and to monitor and publish this. Companies are thus able to create transparency and make it possible for stakeholders, such as, investors, customers, employees and the public to understand the company's sustainability achievements.

2. Key Performance Indicators (KPI)

The tools that are used to judge ESG factors are KPIs (key performance indicators). These are measurable indicators that can track and evaluate the progress and performance of a company or a project. These are specific indicators for the purpose of identifying and monitoring important objectives and success factors. These can likewise be allocated to the three pillars of ESG reporting. Important indicators are:

(1) Environmental, e.g.:
- water consumption per unit of output
- energy consumption per square metre of surface
- amount of waste per unit of output

(2) Social, e.g.:
- employee satisfaction
- equality of opportunity and diversity
- investment in staff development

(3) Governance, e.g.:
- transparency of corporate reporting
- effectiveness of the internal control systems
- industry benchmarking

KPIs can vary depending on the industry, company size and geographical location. There is thus no specific system for preparing an ESG report. Companies normally select those KPIs that best suit their objectives, their strategy and their focus.

3. Women's Career Index (FKI)

A topic that is increasingly growing in importance is equality of opportunity, in particular, equality between men and women. A tool for measuring the performance in this respect is the Women's Career Index (FKI). This index serves as a measurement tool that can be used to document equality of opportunity between the sexes in relation to career opportunities.


Karlskirche (St. Charles' church) in Vienna

The FKI is based on an in-depth analysis of the factors that impact the working conditions for women. These include, for example, fair compensation, the percentage of women in leadership positions as well as the work and family life balance. These indicators make it possible to use the index to consider the situation with regard to gender equality in a nuanced way in various industries. The FKI draws attention to existing imbalances and encourages companies as well as policy makers to take measures to promote equal opportunities in professional life. Companies use the index to review their own equality policies and to find potential improvements in order to create an inclusive workplace for all employees.

The analysis of the FKI that is described here is based on a standardised questionnaire that is suitable for all companies in all industries and of every size. The standardised evaluation mechanism means that a generally valid reference value is generated. The questionnaire enables companies to collect specific information on gender equality at their organisations. The evaluation mechanism scores these data and generates a reference value that allows companies to assess their progress as regards the promotion of equal opportunities and to compare this with other companies. On the basis of these objective and measurable results that the FKI provides, companies that use it are able to

- promote diversity and inclusion in their workplace,
- make better use of the potential of their female employees and, thus,
- create a fairer workplace.

Moreover, using the FKI makes companies more attractive employers for both excellent women as well as men. The FKI demonstrates a commitment to equality of opportunity and equal treatment and indicates to potential employees that the company provides an inclusive and diverse workplace. This can help to attract qualified skilled personnel and to expand the talent pool. Furthermore, the FKI can boost the confidence of employees within the organisation and promote their satisfaction and this can have a positive effect on the retention and motivation of the employees. Using the FKI thus enables companies to position themselves as trendsetters in the terms of equal opportunities and, as a result, gain a competitive advantage in the job market.

4. The benefits of good ESG reporting

The recruitment, selection and development of excel-

lent skilled personnel is an essential and forward-looking task for every company. By implementing ESG reporting a company will be able to demonstrate that it is taking its responsibility with respect to the environment, society and governance seriously and this can lead to a positive perception as a result of building a sustainable corporate image. Furthermore, publishing ESG data and initiatives enables companies to gain the interest and support of sustainably-oriented investors. For companies, this can open up access to capital markets and financing alternatives because more and more investors wish to specifically invest in sustainability.

Moreover, the innovation rate can be boosted by ESG reporting because it encourages the identification of new business opportunities and sustainable solutions. Companies can use analysis and data to discover trends and potentials and align their business strategies with long-term and sustainable business models that aim not just at economic success but also at having a positive impact on society and the environment.

5. History & Outlook

In 2014, the EU introduced CSR (Corporate Social Responsibility) guidelines for the first time. These specified that, besides financial information, non-financial information also had to be included in the reports of corporations.

Since 2017, these CSR guidelines have had to be applied by capital market-oriented companies with more than 500 employees, total assets of more than €20m, or annual net turnover of more than €40m. Under the guidelines, companies are required to report on environmental matters, social conditions and diversity in the business. This report has to consist of a comprehensive description of the environmental impacts, the measures put in place to reduce the company's ecological footprint as well as the initiatives to promote social responsibility and equal opportunities

Since 2021, the EU has been working on reforming these guidelines so that even more companies will have to publish non-financial reports. Under the CSRD (Corporate Sustainability Reporting Directive), starting from the 2023 financial year, medium-sized enterprises with a stock market listing and over 250 employees as well as companies from third countries that are listed on a stock market in the EU will now also have to comply with ESG reporting requirements and report on their sustainability activities.

Please note

The EU is convinced that the sustainability reporting requirement is not just of societal relevance, but also offers added value for companies.

LEGAL

RAin [German lawyer] Maha Steinfeld

German Whistleblower Protection Act has entered into force

The 'Act for better protection of whistleblowers as well as for the transposition of the EU directive on the protection of persons who report breaches of EU law' *('Gesetz für einen besseren Schutz hinweisgebender Personen sowie zur Umsetzung der Richtlinie zum Schutz von Personen, die Verstöße gegen das Unionsrecht melden', HinSchG)* came into force on 2.7.2023. It has created many new obligations for employers.

1. Breaches of law covered by the HinSchG

The HinSchG applies to all breaches that attract penalties under national law as well as to

- breaches that are punishable with fines under national law insofar as the purpose of the provision that has been infringed is to protect life, limb or health or to safeguard the rights of employees or their representative bodies and, in particular, to
- breaches of certain EU legal acts (this includes areas such as corruption, money laundering, public procurement and product safety).

2. Obligation to establish and operate internal reporting channels

Under the HinSchG, businesses and the public sector are

obliged to set up whistleblower systems (establishment and operation of internal reporting channels). There are obligations

- for companies with at least 50 employees;
- irrespective of this limitation, for all private companies in special sectors such as, in particular, the financial services sector, the field of financial products, financial markets and the insurance industry;
- for the German federal and state governments in accordance with the provisions of the highest federal and state authorities;
- for the municipalities and municipal associations in accordance with the respective regional law.

In principle, the requirement to establish the internal reporting channels has been in place since 2.7.2023.

Please note: For companies with fewer than 250 employees, this requirement will only apply from 17.12.2023.

An internal reporting channel is established by entrusting own employees or a third party with the responsibilities. Companies with fewer than 250 employees may establish joint reporting channels for receiving reports.

3. External reporting and disclosure

Besides communicating via the internal reporting channel, the whistleblower is able to directly contact the external reporting channels (external report) that have likewise been provided for under the law. The Federal Office of Justice (Bundesamt für Justiz) is the competent body for the German federal government. The aim is to establish further external reporting channels.

Please note: Whistleblowers are basically under no obligation to give priority to internal reports.

A third reporting channel is the public disclosure of information about breaches, for example, to the press. However, whistleblowers may only go down this path if they do not get an adequate response to the reports they have pro-

Mirabell Palace with the historic fortress in Salzburg

vided to an external channel, or if a disclosure is in the public interest, for example.

4. Arrangements for the internal reporting channel

Internal reporting channels have to give whistleblowers the opportunity to provide information orally or in writing. It has to be possible to provide oral reports via telephone or another type of voice transmission. If the whistleblower wishes to make their report in person then a private meeting with the person who is responsible for receiving the reports at the internal reporting channel has to be facilitated within a reasonable period of time.

The internal reporting channel should also handle reports that are provided anonymously; however, the legislation does not provide for an explicit obligation for employers to do so. Confidentiality of the identity of the whistleblower and any third parties that are mentioned in the report has to be guaranteed. It is necessary to ensure that unauthorised employees are not able to access the report.

Please note: The data protection requirements pursuant to the GDPR and the German Federal Data Protection Act (BDSG) have to be complied with in all cases. Implementing a whistleblower system could trigger the participation rights of the works council or staff council (cf., for example, Section 87(1) no. 1, no. 6 of the German Works Council Constitution Act) – this will depend on the planned arrangements.

Once a report has been received this has to be confirmed within seven days. The reporting channel has to check whether or not the reported breach falls under the material scope of application of the HinSchG and whether or not the report that has been received is substantive. In doing so, the whistleblower can be asked for further information. Subsequently, the appropriate follow-up measures need to be taken; these could be, for example, internal investigations, terminating the procedure because of a lack of evidence or passing it on to the competent authority for further investigation. The whistleblower generally has to get a response within three months.

5. Measures to protect whistleblowers

The HinSchG provides for a prohibition of retaliation against whistleblowers. The prohibition covers, among other things,

View of Rust and Lake Neusiedl in the federal province of Burgenland

suspensions, dismissals, salary reductions or issuing negative employment references. If discriminatory measures are taken against the whistleblower then the employer will bear the burden of proof and will have to demonstrate that the respective measure was not due to the report by the employee. However, the protection of the whistleblower will only apply if they have not passed on false information either deliberately or through serious negligence.

6. Sanctions

Breaches of the law are punishable with fines; here, it is worth mentioning, in particular, the following offences that are punishable with fines:

- hindering the reporting to/communication with a reporting channel by a whistleblower (fine of up to €50,000)
- retaliation against whistleblowers and protected persons (fine of up to €50,000)
- breach of rule on confidentiality (fine of up to €50,000)
- disclosure of incorrect information (fine of up to €20,000)
- breach of the obligation to establish an internal reporting channel (fine of up to €20,000).

Moreover, the whistleblower would be entitled to compensation in the event that the prohibition on retaliation is breached.

RA [German lawyer] Prof. Heiko Hellwege

Green Claims – EU criteria against greenwashing and misleading environmental claims

On 22.3.2023, the EU Commission presented a draft directive on common criteria against greenwashing and misleading environmental claims. The Commission thus supplemented the proposals it made last year for changes to the Unfair Commercial Practices Directive.

1. Key points of the draft directive

According to the Commission's proposal, when companies make environmental claims (green claims) about their products or services they will have to comply with minimum standards. Before companies include environmental claims in their information for consumers, in the future, such claims will need to be proven on the basis of scientific findings. With the exception of micro-enterprises (below 10 employees and €2m of sales), companies will moreover need to have this information verified by an accredited organisation.

Please note: Advertising claims or labels that use aggregate scoring of the product's overall environmental impact will no longer be permitted, unless this is explicitly provided for under EU rules. It is yet to be clarified whether or not this would be applied retroactively, for example, labels that were legitimately conferred in the past might even have to be removed again.

2. Rules on labelling schemes

The draft also provides for the regulation of environmental labels. According to information from the Commission, there are currently at least 230 different labels. In future, new public labelling schemes will not be allowed, unless they have been developed at EU level. New private schemes will then need to obtain prior approval and demonstrate that the environmental objectives that are being pursued are more ambitious than those of the existing scheme.

3. An initial appraisal

The Green Claims Directive could pose a risk of over-regulation. In particular, small and medium-sized enterprises will effectively, in the future, no longer be able to use green claims in their advertising if they are not able to afford the certification. These rules appear to be too far-reaching given that, previously, misleading advertising and advertising using self-evident content had already been prohibited.

Outlook

After translation, the draft directive still has to be approved by the Council and Parliament of the EU. It is to be hoped that the rules for medium-sized enterprises will be further relaxed and liberalised. Otherwise, this would be doing a disservice to, ultimately desirable, competition with respect to the fair and truthful presentation of environmentally-friendly features if only the 'big companies' were able to afford to make use of this for their advertising.

IN BRIEF

Workplace health promotion in the fitness studio

Employers are able to provide an attractive benefit to their employees in the form of tax-free payments for health promotion up to a value of €600 per year. Besides classes to enhance mental and physical fitness, such as, for example, nutritional counselling or quitting smoking, there is also encouragement to visit the fitness studio in the form of tax-free employer subsidies.

The condition for being classified as tax-privileged subsidies is that they have to be paid in addition to the regular salary. Furthermore, only classes such as yoga, Pilates or back workouts are tax-privileged via the €600 allowance, but not purely training with gym equipment. Here, one option is for the employer to become the contractual partner of the fitness studio so that the staff can take part in a selection of tax-privileged health classes there. Alternatively, employees can also subsequently have the costs of taking part in certified classes in other studios reimbursed by their employers – exempt from tax and social security contributions – insofar as their health insurance schemes do not pay a subsidy. A certificate of attendance for the class can serve as proof.

Furthermore, in addition to the regular salary payment, employers have the option to use the exemption limit for payments in kind of €50 per month – exempt from tax and social security contributions – to subsidise the fitness studio membership fees of individual employees up to this amount. In this case, it is unimportant whether the employee takes part only in eligible classes or train freely on gym equipment. The exemption limit for payments in kind can be used either to the effect that the employer pays the basic amount of €50 directly to the selected fitness studio where the employees are then able to do their fitness training. Alternatively, employers can also hand out €50 vouchers to their employees every month that can be redeemed in a specific fitness studio. It is frequently possible to negotiate discounted membership fees if the employer agrees a corporate fitness contract with a fitness studio. If the monthly amount is then still above the €50 exemption limit then only the exceeding amount will have to be paid by the employees themselves.

Please note: The €600 tax-free allowance and the monthly €50 exemption limit can be combined with each other so that an annual tax-free bonus of up to €1,200 for workplace health promotion would be possible.

Increased tax-exempt amount for vocational training – How parents can reduce their tax burden

When children are studying or undertaking vocational training their parents frequently help them out financially. If the child does not live at home and if the parents are still entitled to child benefit then they are able to deduct a tax-exempt amount for vocational training as an extraordinary burden. This was raised from €924 to €1,200 per year and child as of 1.1.2023.

The local tax office will accept non-residence in many forms, e.g., in student residences, in rented one-room apartments, or in shared housing. What is important is that the child needs to run their own household independently over a longer time period and not live in the household of the parents or one of the parents. A further condition for being allowed a tax-exempt amount is that the child has to be an adult already and have demonstrably completed vocational training or a course of studies.

Please note: It is unimportant whether the child also has a job while undertaking their vocational training or course of studies because the child's income will not be offset against the tax-exempt amount. The same will apply to education allowances such as BAföG [a federal education assistance loan].

If the above-mentioned conditions are not satisfied for the full year then the local tax office will allow a tax-exempt amount for vocational training, at least, on a pro rata basis (monthly at one twelfth). If the parents are separated or divorced and they are each entitled to half the child tax allowance then, generally, they likewise have to split the tax-exempt amount for vocational training.

If parents are no longer entitled to child benefit for their child (e.g., because the child who is studying is more than

25 years old), frequently, they will still be able to deduct their financial contributions in their tax returns as maintenance payments up to the amount of the respective basic personal tax allowance (plus any health and long-term care insurance premiums that they have assumed for the child). However, the local tax office will only allow this cost deduction if the child also 'requires support'. To this end, the child's assets cannot exceed €15,500. However, vitally important assets are excluded here, such as, for example, an (appropriate) owner-occupied property belonging to the child. If, in the year when the maintenance payments are made, the child has income in excess of €624 then, moreover, the exceeding amount has to be deducted from the parents' maintenance payments that can be offset.

Please note: Upon application, the local tax office can enter the tax-exempt amount in the electronic PAYE deductions so that, when the payroll tax deduction is calculated, a tax-exempt amount of €100 can be taken into account and used to reduce the withholding amount. Alternatively, it is also possible to wait and claim the tax-exempt amount when you complete your tax return.

New ruling on exit tax by the Bundesfinanzhof

Under the German Foreign Transactions Tax Act, exit tax has to be paid by those who hold substantial stakes in a corporation (at least 1%) and who terminate their unlimited tax liability status in Germany by giving up their German domicile or habitual residence in Germany. In such a case, the person has to pay tax on the disposal gain for the shares they hold in a corporation, although the sale price is then replaced by the market value of the shares. There is however the option of the return provision that subsequently averts the tax hit again. The Federal Fiscal Court *(Bundesfinanzhof, BFH)* recently decided on the conditions for such a return provision.

In its ruling of 21.12.2022 (case reference: I R 55/19), the BFH contradicted the fiscal administration to-date that has stipulated that there should be an intention to return (together with the respective credible demonstration) when the move happens. The BFH has now decided that for the return provision to apply it is not necessary for the shareholder to have the intention to return already at the time when the move away from Germany occurs. If the original termination of the unlimited tax liability status was based on a merely temporary absence by the shareholder and if within seven years after terminating the unlimited tax liability status in Germany they once again have unlimited tax liability then, under certain conditions, the tax claim will once again be cancelled. The BFH judges did not see an adequate basis in the wording of the legislation for the criterion of an intention to return already at the time when the move happens.

Evening atmosphere in Innsbruck

AND FINALLY...

"The chief problem with the individual investor: He or she typically buys when the market is high and thinks it's going to go up, and sells when the market is low and thinks it's going to go down."

Harry Max Markowitz (born 24.8.1927 in Chicago, died 22.6.2023 in San Diego) was a US American economist. He was the pioneer of modern portfolio theory and, in 1990, alongside Merton H. Miller and William F. Sharpe, he was awarded the Alfred Nobel Memorial Prize in Economic Sciences for his Portfolio Selection Theory.

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