PKF

Newsletter

Key Issue
Environmental, social and governance policies in the context of employment law

10 | 23

Dear Readers,

We waited a long time before reporting on the **German Growth Opportunities Act** because it was a political football for the government's coalition partners. Now however, in the first report in our Tax section, you can read details about the deduction of losses and the eligibility criteria for depreciation that constitute two focus areas in the latest draft which, when compared with the previous version, unfortunately includes changes that will be to the disadvantage of taxpayers. In the second report, we have compared the rules for deducting costs or **blanket allowances** for a workroom and a **home office** respectively.

Subsequently, in the Legal section of this October edition of our newsletter, you will find our Key Issue report. Sustainability reporting or **environmental, social and governance reporting** are currently the subjects of discussion in countless articles. To begin with, we summarise the current state of affairs to provide context and then we focus on the **employment law aspects** of this topic.

Next up, we continue our examination of the new forms of working. In the last issue of our newsletter, we took a look at the aspects of employment law and data protection law that relate to **remote work** and the **workation**. Here, the focus is now on the **consequences in respect of tax and social security regulations** for these new forms of working. In the last main report we discuss the essential features of new legislation where, under certain circumstances, **tenants** who themselves have concluded contracts directly with energy providers could be entitled to **claim reimbursements** from their **landlords**.

Finally, in a short report, you can find current information on workplace health promotion when visiting a fitness studio.

We then continue our journey around the PKF locations in the neighbouring European countries through the illustrations that break up the reports from our experts - this time we visit Switzerland.

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

Your Team at PKF

Zürich – Old town with St. Peter's church, the Fraumünster church and the Großmünster church

Front cover photo: Zermatt with the Matterhorn

Key Issue

ESG policies in the context of employment law

Contents

TAX

Lai Mei Wong

The German Growth Opportunities Act – Improvements of loss deduction and depreciation options

On 30.8.2023, the Federal Cabinet approved a government draft of the Growth Opportunities Act *(Wachstumschancengesetz)* and thus moved it a step further along the legislative process. This government draft act has undergone further development when compared with the draft act of 14.7.2023, which was published by the Federal Ministry of Finance *(Bundesministerium der Finanzen, BMF)*. The aim of the act is not merely to provide greater impetus for growth, investment and innovation but also to simplify the existing tax system and to make it fairer by using a wide variety of measures to facilitate this. The focus of this report is the proposed improvement of tax loss deduction as well as the expansion of depreciation options that relate to two fields of action that should noticeably ease the burden for many taxpayers.

1. Improvement of tax loss deduction

The loss carryback period pursuant to Section 10d(1) of the Income Tax Act *(Einkommenssteuergesetz, EStG)* was already extended in the Fourth German Coronavirus Tax-Related Assistance Act. As of the 2022 assessment period, the previous one year loss carry-back was permanently extended to two years and the maximum amounts for the loss carryback were also increased for 2022 and 2023 to €10m or €20m (where spouses are assessed jointly). Firstly, according to the new draft legislation, as of 2024, the loss carryback period will be extended to three years; secondly, the aforementioned increase in the maximum amount will be retained permanently. It should be noted here that these extensions will also apply analogously for corporations.

An extension is likewise envisaged for the tax loss carryforward pursuant to Section 10d(2) EStG. Up to now, it has been possible to carry forward a basic loss amount of €1m or €2m (where spouses are assessed jointly) into the subsequent assessment periods without any restrictions. The portion of the tax loss carryforward over and above the basic amount is restricted to 60% of the overall amount of income. Under the new draft legislation, for the 2024 to 2027 assessment periods, the percentage limit will be raised temporarily to 80% from the current level of 60%.

Please note: It should be noted that the increase in this percentage limit will be applicable not only for German income tax and corporation tax, but likewise for trade tax (by means of the relevant adjustment to Section 10a of the German Trade Tax Act).

2. Improvements to depreciation options

2.1 Declining balance method of depreciation for residential buildings ...

There are plans for the temporary introduction of the declining balance method of depreciation for new residential buildings pursuant to Section 7(5a) EStG; accordingly, it will be possible to charge depreciation annually in the amount of 6% of the acquisition and construction costs. At the same time, there will also be the right to switch to straight-line depreciation pursuant to Section 7(4) EStG.

The prerequisite for the application of this provision is that a residential building will be constructed and construction will start between 1.10.2023 and 30.9.2029. Alternatively, this depreciation option will also be applicable in the event of an acquisition insofar as the purchase agreement is concluded by the end of the year in which the building is completed and a binding agreement is concluded between 1.10.2023 and 30.9.2029.

2.2 … and for long-term movable assets

A further new measure included in the government draft is the temporary re-introduction of the declining balance method of depreciation for long-term movable assets pursuant to Section 7(2) sentence 1 EStG. This depreciation option will be applicable for assets that will be or have been acquired or manufactured between 1.10.2023 and 31.12.2024. The rate will still be, at most, 2.5 times that of the straight-line depreciation percentage rate, but a maximum of 25%.

2.3 An overview of other depreciation measures

In addition, the following measures relating to depreciation and proposed by the BMF were adopted in the government draft:

- increase in the limit on low-value assets from €800 to €1,000 (Section 6(2) EStG),
- increase in the value limit for the creation of a compound item from €1,000 to €5,000 as well as a reduction in the reversal period for compound items from 5 years to 3 years for assets that are acquired, manufactured or contributed to business assets after the 31.12.2023 (Section 6(2a) EStG),
- increase in special depreciation pursuant to Section 7g(5) EStG from the current level of 20% of investment costs to 50% of investment costs for movable assets acquired or manufactured as of 1.1.2024. The only businesses that will still be eligible for this concession will be ones that do not exceed a profit threshold of €200,000 in the year prior to the investment.

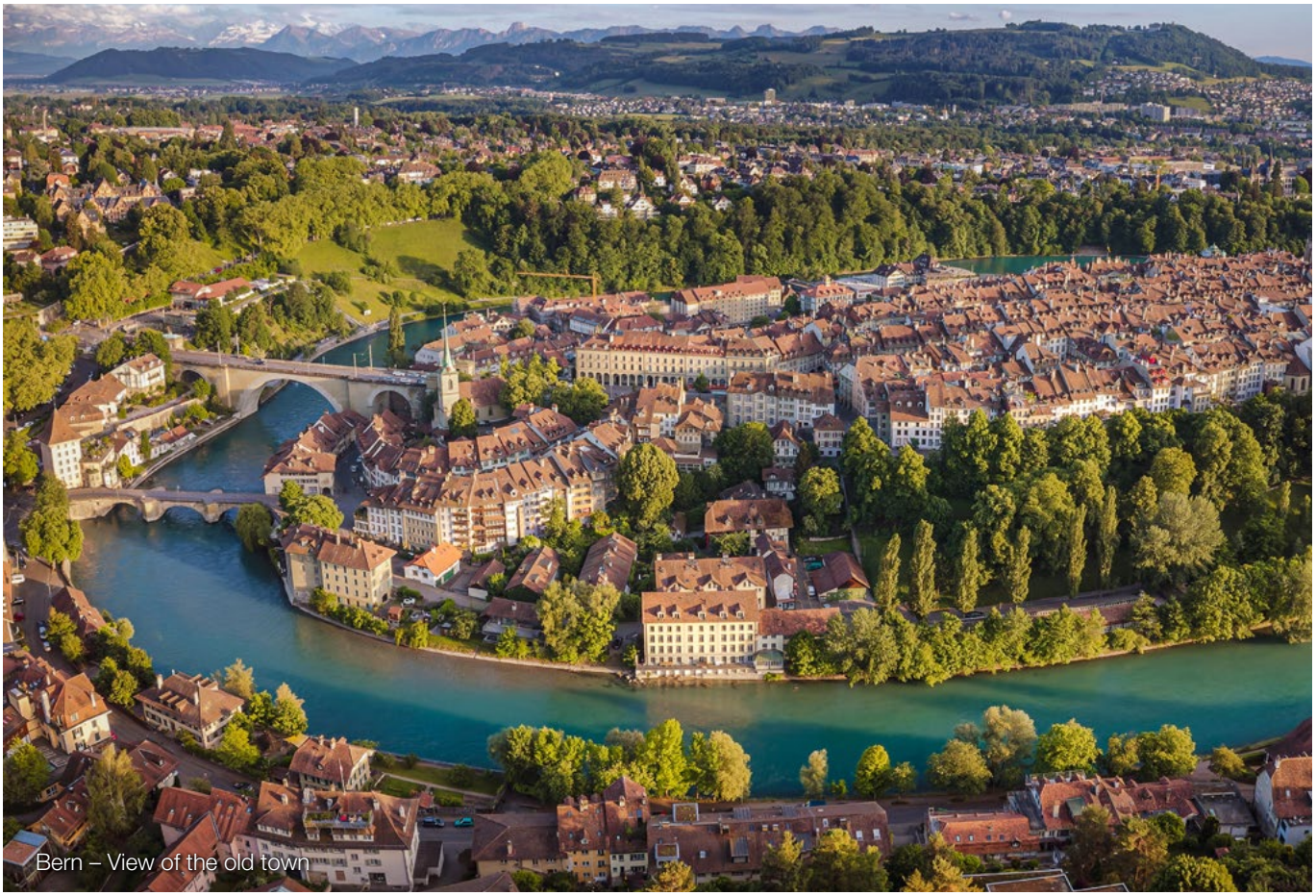
Outlook

According to the current plans, the aim is for the legislation to be passed by the Bundestag [lower house of German parliament] in November and for the Bundesrat [upper house of German parliament] to give its approval in December. It remains to be seen if and the extent to which the contents of the government draft law will still change in the course of the legislative procedure.

StBin [German tax consultant] Patricia Breit

Workroom at home vs. home office blanket allowance

The tax deductibility of the costs and blanket allowances, respectively, for a workroom at home and a home office is to some extent unclear. The Federal Ministry of Finance *(Bundesministerium der Finanzen, BMF)*, in its circular of 15.8.2023, has now compared and contrasted the individual rules.



Bern – View of the old town

1. Workroom

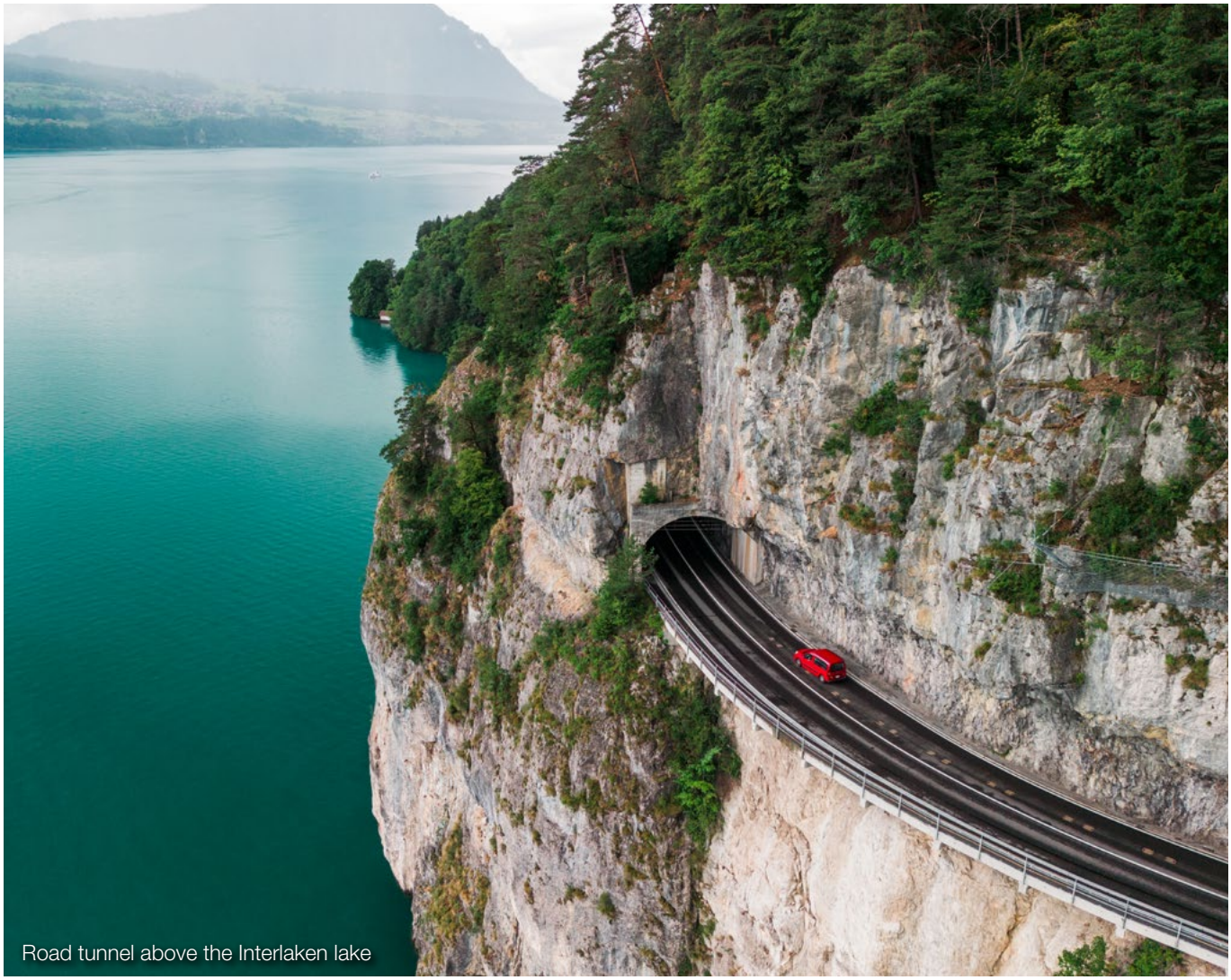
For tax deductibility to be an option the workroom has to be a separate, self-contained room and has to be used almost exclusively for business purposes; a low level of joint use of the room of up to10 % would not be detrimental from a tax point of view. If the workroom constitutes the focus of the entire business and professional activities then the proportionate costs incurred for the workroom can now be fully deducted. Proof would possibly have to be provided for the individual costs.

Please note: Until 31.12.2022, the workroom did not have to constitute the focus of the entire business and professional activities; the deduction was then limited to €1,250 of the documented costs.

Alternatively, since 2023, it has been possible to deduct a blanket allowance in the amount of €1,260 annually to cover workroom costs. However, for every full month when the workroom conditions are not satisfied the blanket allowance has to be reduced by one twelfth in each case. If several people live in one household then the blanket allowance can be deducted for each person where the conditions for deductibility have been satisfied (personal blanket allowance).

If the employer makes an additional workstation available then this would not preclude the deduction of costs for the workroom at home. The workroom at home would still constitute the focus of the entire professional activities even if the employee had to perform their professional activities at a workstation at home for three days each week and for two days in the employer's workplace (Federal Fiscal Court ruling of 23.5.2006, Federal Law Gazette II. p. 600). In this case, the work performed in the workplace and in the workroom at home has to be of equivalent quality.

Please note: The legal situation in respect of the focus of work activities has hitherto remained unchanged. That is why the case law that the fiscal administration has followed up to now has continued to apply since 1.1.2023. Nevertheless, in this regard it remains to be seen how the case law will develop further since the wording of the legislation has now been tightened up.



Road tunnel above the Interlaken lake

2. Home office blanket allowance

The home office blanket allowance can be deducted on those days when the business and professional activities are carried out mainly from home and no primary workplace is frequented. If an outside appointment is attended then this would not be harmful for the deductibility of the home office blanket allowance. In such a case, both the blanket allowance and the travel costs may be deducted.

For each home office day a blanket allowance amount of €6 may be deducted; the maximum deductible amount is €1,260 (this corresponds to 210 days per calendar year). The blanket amount may only be deducted once per person, therefore, if several activities are performed it cannot be deducted separately for each activity.

3. Examples

The above-mentioned BMF circular contains several examples of cases that have been outlined in the table below.

Recommendation

In the wake of the new regulations in respect of a workroom at home and the home office blanket allowance a review should be carried out of how these have hitherto been taken into account in the tax return. If activities are performed in a home office to some extent then records have to be maintained that document the number of days.

Example	Issue	Solution
1st Example	Employee A plans fitted kitchens for his employer's customers solely in his workroom at home. Once the customer-specific kitchen has been made ready, A travels to the customers and oversees the installation on site.	The qualitative emphasis of A's professional activity and, thus, the focus of his work activities is his workroom at home. An outside visit to a customer does not preclude the tax deductibility of the workroom. The full amount of the expenses for the workroom at home can be deducted as work-related costs. If the documented annual costs amount to, for example, €2,000 then A can deduct the actual costs. Otherwise, the annual blanket allowance of €1,260 may be deducted.
2nd Example	The field service employee A carries out organisational tasks from home on Mondays and Fridays. He does not have a primary workplace or a workstation at the employer's workplace. His field service work constitutes the main focus of his entire professional activities.	A is entitled to claim the per diem allowance of €6 for the two days when he works from home.
3rd Example	From Tuesday to Thursday, A carries out customer visits, but he also makes telephone calls and carries out office work in his workroom.	A is also able to deduct the per diem allowance of €6 for these three days.
4th Example	The teacher A's primary workplace is his school. However, no other permanent workstation is available for him. He does the preparation and follow-up work for his teaching units in his workroom at home.	A is not able to deduct the expenses for the workroom at home as work-related costs because the workroom does not constitute the focus of his professional activities. Although, he is entitled to claim the home office blanket allowance of €6 per day for a maximum of 210 calendar days. Apart from the home office blanket allowance, he can also deduct the distance-related blanket allowance for journeys between his home and primary workplace.

Table: Examples of cases for workrooms and home offices

LEGAL

RAin [German lawyer] Maha Steinfeld

Environmental, social and governance (ESG) policies in the context of employment law

The inclusion of sustainability criteria is becoming increasingly important. Within the scope of a business strategy, a company's business practices should be aligned with sustainability criteria, or these should at least be given due consideration. Here, the concept of sustainability includes not only financial and economic aspects but, most notably, also non-financial ones. In the sections below we discuss what constitutes sustainable and, in particular, socially responsible business management and how this can be implemented in the context of employment law.

1. Background and conceptual definition

In 2014, for certain companies, the EU first introduced CSR (corporate social responsibility) guidelines in the field of reporting under commercial law. The aim has been to provide greater transparency about the environmental and social aspects of companies in the EU by, among other things, expanding reporting requirements in the management report. The Non-financial Reporting Directive (NFRD), which has to be applied now already, has been tightened further under the Corporate Sustainability Reporting Directive (CSRD) that is now supposed to be transposed into national law by 6.7.2024.

The environmental, social and governance (ESG) elements can be defined as follows within the scope of a business strategy.

(1) E = Environmental (protection of the natural environment) – In this regard, it is possible to turn to Art. 9 of the Taxonomy Regulation where six environmental objectives have been defined:

- climate change mitigation,
- climate change adaptation,
- the sustainable use and protection of water and marine resources,
- the transition to a circular economy,
- pollution prevention and control,
- and the protection and restoration of biodiversity and ecosystems.

In Germany, the objective that has been set out in the Federal Climate Change Act *(Bundes-Klimaschutzgesetz, KSG)* is to provide protection from the effects of worldwide climate change by ensuring achievement of the national climate targets and compliance with the European targets. However, there is an absence of clear guidelines as to how these targets can be achieved.

(2) S = Social (social elements) – Employment law, in particular, covers a large area of the social responsibility of companies since its purpose is the protection of the employee as the weaker contractual party and the protection of specific human rights. It covers various subject areas, such as, notably working conditions, human rights, diversity and inclusion.

(3) G = Governance (responsibilities of business leaders) – This includes, for example, management and monitoring processes to ensure compliance with legal provisions and disclosure requirements as well as the aspects of management remuneration and the implementation of a sustainability strategy.

2. An overview of the legal framework

The EU Commission's strategy for enforcing ESG requirements involves the use of a mix of different instruments:

- mandatory legal requirements, in particular, on the basis of EU directives and regulations that, in some cases, will have to be transposed into national law.
- 'Soft law', thus requirements that have no binding force, for example, in the form of 'expectations' and 'recommendations'.
- Other soft control mechanisms, such as, those for the development of best practices.

In terms of the requirements under employment law, the international labour standards (ILS) drawn up by the International Labour Organisation (ILO) that form part of United Nations Law constitute the core international standards. Five basic principles determine the ILO's identity and actions:

- the freedom of association and the right of collective bargaining,

- the elimination of forced labour,
- the abolition of child labour,
- the ban on discrimination in respect of employment and occupation,
- and occupational health and safety.

In the national context, the international standards (such as, occupational health and safety, ban on child labour and co-determination) are implemented into national law and their criteria are also taken into account in national case law (for example, the enforcement of equal pay). The standards are used internationally, for example, in the ethics codes of corporate groups or businesses and in international framework agreements under civil law in the sense of voluntary commitments.

3. Instruments for implementation in a company

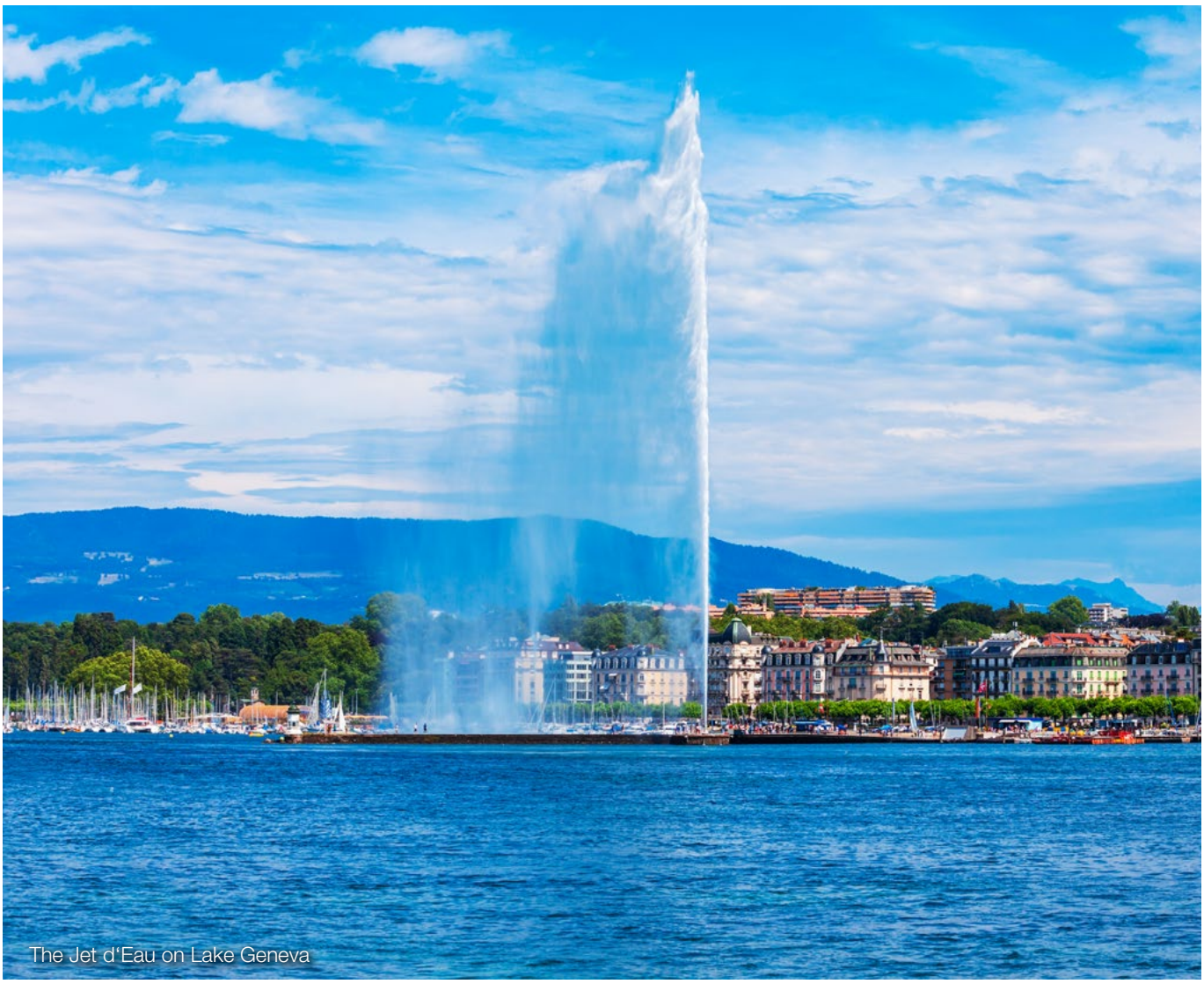
3.1 Supply chain due diligence requirements

The purpose of the Act on Corporate Due Diligence Obligations in Supply Chains *(Lieferkettensorgfaltspflichtengesetz, LkSG)*, which came into force on 1.1.2023, is to improve the international human rights situation. This legislation provides binding requirements for large companies in respect of organising their supply chains in a responsible way. To begin with, it applies to all companies with, ordinarily, at least 3,000 employees in Germany (from 2024: 1,000 employees). Companies of this size based in Germany will be required to perform a review of their global supply chains with respect to human rights and environmental risks. The 'supply chain' in this case includes all the company's products and services.

The companies concerned are required to set up control mechanisms within the supply chain, in particular, with respect to compliance with international standards (this with reference to the numerous ILO Conventions). The controls should cover not just the actions of the company itself but also those of its direct and indirect suppliers.

The companies have to prove that they complied with the legally defined due diligence requirements. These include, in particular,

- an effective risk management system,



The Jet d'Eau on Lake Geneva

- a human rights strategy,
- in-house responsibility for the monitoring of risk management (for example: a position for an official representative for human rights and complaints),
- appropriate and effective preventative measures (among others, a complaints procedure).

Please note: Complaints procedures in accordance with the LkSG can or should be aligned with the reporting systems based on the German Whistleblower Protection Act ('Whistleblower Systems').

Those affected by human rights violations within the supply chain may, for example, authorise German trade unions to sue.

Please note: In reality, the LkSG could affect not just the companies with, ordinarily, at least 3,000 employees (from 2024: 1,000), but also SMEs with (considerably) less than 1,000 employees. This is because if they are suppliers to one of the companies that fall within the scope of application of the legislation and they are contractually obliged by this company to comply with the due diligence requirements then, effectively, they have to meet these obligations, too.

3.2 Reporting requirements

The transposition of the CSR Directive resulted in the companies concerned having to add a non-financial statement to their reporting. In terms of content, the statement needs to include, among other things, 'employee matters'. According to the legislation, these could relate to the following points:

- the measures that have been taken to ensure gender equality,
- the working conditions,
- the implementation of the basic conventions of the International Labour Organisation,
- the respect for the rights of employees to be informed and consulted,
- social dialogue,
- the respect for the rights of the trade unions,
- occupational health and
- safety at work.

Please note: The EU Commission has adopted twelve European Sustainability Reporting Standards (ESRS) with a view to harmonising the reporting. Disclosure requirements specific to employment law have been set out in ESRS S1. On this topic, please see also the article: "ESG reporting – Measuring non-financial performance on the basis of the Women's Career Index" in the PKF newsletter 07-08/2023 from p.8 onwards as well as the three-part series of articles on sustainability reporting in the SME sector, which were published in 2022 (beginning with Part I in issue 04/2022 of the PKF newsletter); these can be found at: https://www.pkf.de/en/publications.html.

3.3 Sustainability measures

Irrespective of the legal requirements ('hard law') – it can indeed be expected that they will be expanded in the future, in particular, at the EU level – an individual company has at its disposal a range of measures that can play a role within the scope of an ESG strategy depending on the size of the company, its sector, etc. Such measures could be, for example, the following (not an exhaustive list):

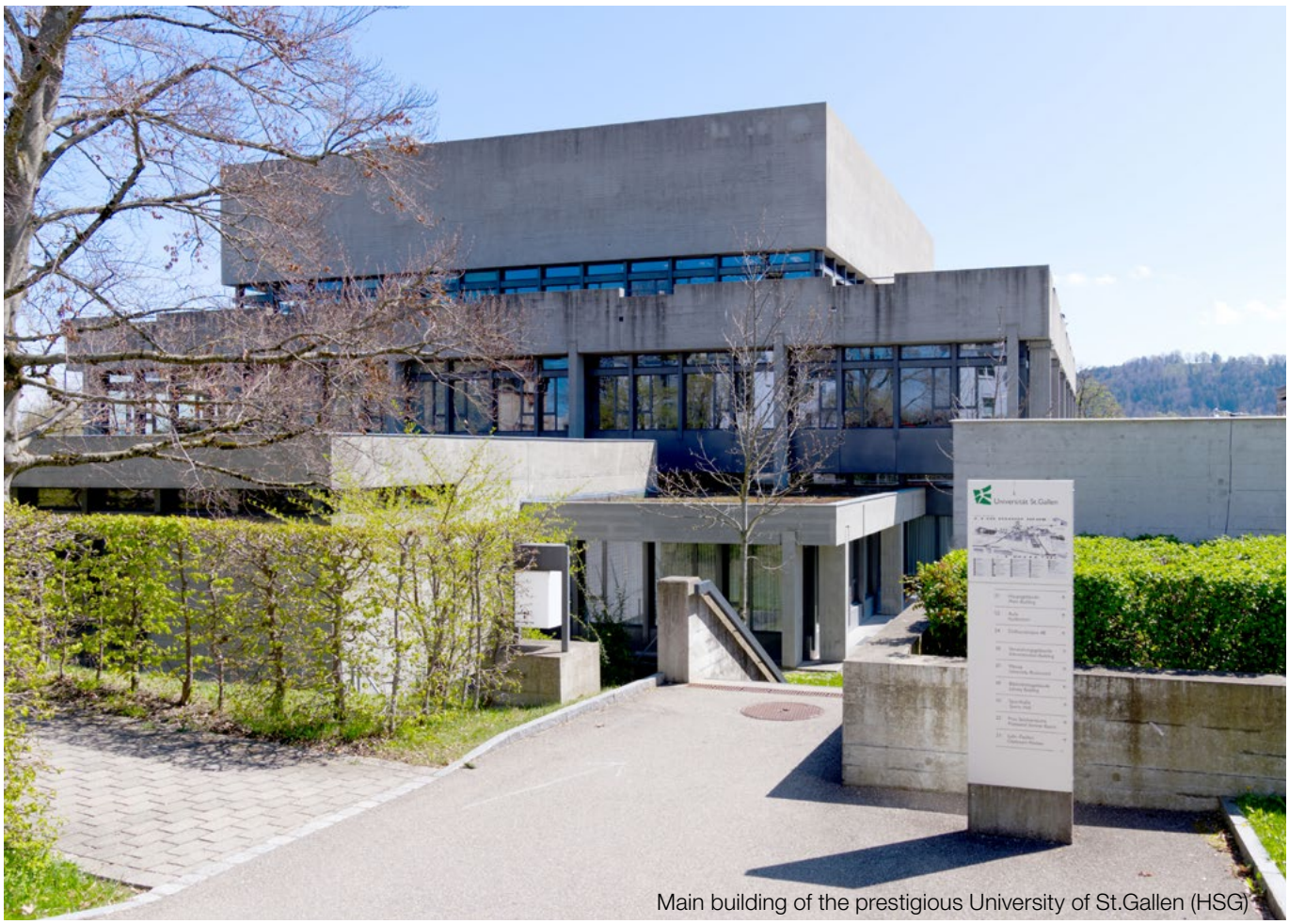
(1) Introduction of a Code of Conduct – A Code of Conduct can be drawn up on the part of management – as early as possible – in order to document desirable employee behaviour and to increase acceptance by the staff and the works council, if there is one.

(2) Employee surveys and collection of employee data – Employers can use (voluntary) employee surveys with respect to, for example, the social aspects in the company as the starting point for their strategies. Furthermore, employers could also be interested in collecting data, for example, with a view to analysing a company's own CO2 consumption. Ultimately, there could also be an interest in gathering employee mobility data in order to meet the requirements of non-financial reporting (see also the next measure (3)).

Please note: Aspects of data protection law are especially relevant in the context of the aforementioned measures. Whether or not data processing for such purposes is ultimately justified is a normative question that, as far as we can tell, has as yet not been decided. In addition, issues concerning regulations applicable to co-determination, in particular, play an important role.

(3) Steering employee mobility – Including the employee mobility sphere within the scope of an ESG company strategy is an obvious choice. This is because, to begin with, employee mobility plays an important role for the climate protection aspect (avoidance of greenhouse gas emissions). Depending on the type of company, various measures could be considered, such as, for example:

- concepts for flexibility about where people work (avoidance of journeys to work), for instance, by introducing a desk sharing workplace concept;
- encouraging the use of public transport, including



Main building of the prestigious University of St.Gallen (HSG)

via short-distance public transport season tickets for employees,

» and offers for the use of company bicycles.

In doing so, legal aspects have to be taken into account, such as, compliance with data protection regulations, safeguarding the co-determination rights of the works council/employee representative body and occupational health and safety aspects (working from home). Moreover, it is important to consider the (payroll) tax implications of the benefits provided by employers. Appropriate company policies (for example, on travel costs, or the use of a company car) have to be drawn up while taking particular account of the principle of equal treatment under employment law.

(4) Switching to sustainable resources – A climate change mitigation measure that could be considered is switching to sustainable operating resources in all the business divisions right down to changing the production goods or products. Here, depending on the implementation, different legal requirements will be relevant. If a restructuring of the company is under discussion then, from an employment law perspective, it would be advisable to involve the works council early on.

(5) Fostering inclusion, diversity and equality of opportunity – Measures in this respect could be taken to achieve the following goals:

» gender equality and, in particular, equal pay for work of equal value,
» boosting training and continuing education,
» employment and inclusion of persons with disabilities,
» curbing violence and harassment at work,
» strengthening diversity in the company.

Conclusion

The implementation of the transformation processes described above will be in the interests of a company. This is because it can be assumed that, in the future, the reporting requirements will be expanded and uniform standards will have to be followed. Moreover, companies that do not adapt their processes to the new requirements will have to put up with the drawbacks. In any event, in the future, an increase in requests for information from companies in the supply chain that are subject to the reporting obligation or inquiries from investors can be expected.

RAin [German lawyer] Yvonne Sinram

New forms of working – ‘Remote Work’ and the ‘Workation’ (Part II: Important aspects of tax and social security law)

In the last issue of the PKF Newsletter we defined the concepts behind the new forms of working and discussed the relevant aspects of employment law and data protection law (sections 1-3). In this issue of our newsletter, in sections 4 and 5 of the overall report, we now provide a closer examination of the consequences with respect to tax and social security law.

4. Tax law-related requirements and risks

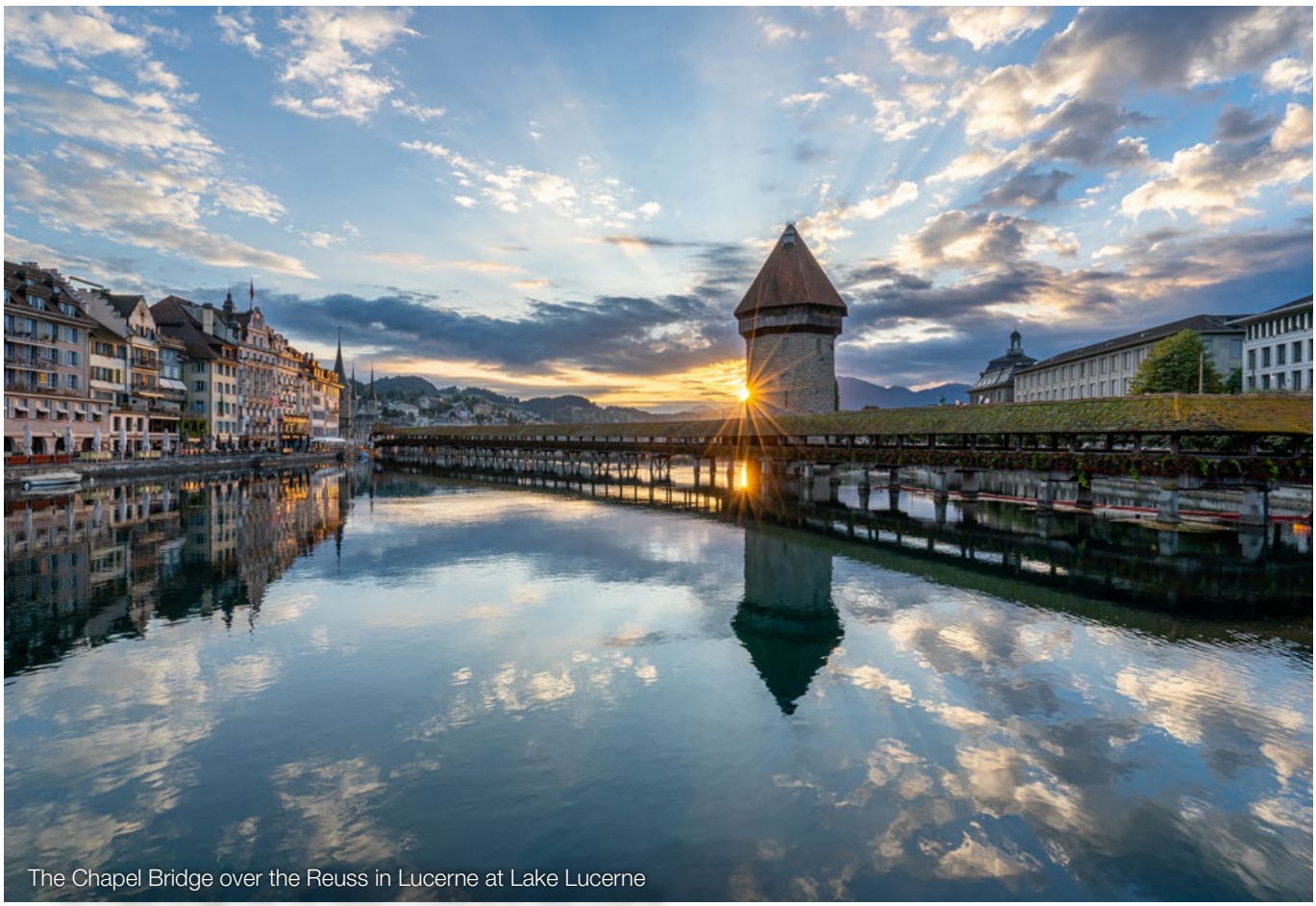
4.1 Payroll tax deductions

The right to tax salaries and wages is generally accorded to the country where the work is carried out (= country where the work is performed). According to this principle, in the case of remote work/a workation this would be the foreign place of work.

Deviations from this principle can arise as a result of double taxation agreements (DTAs). If an employee is deployed abroad for a short time only or temporarily then, according to many German DTAs, the right to tax remains with the country of residence if

- the employee who is resident in Germany does not stay or work in the foreign country where the work is performed for a period that exceeds 183 days during the respective tax year, or during a 12-month period and
- the remuneration is paid by, or on behalf of, an employer who is not based in the country where the work is performed and
- the remuneration is not attributable to a permanent establishment or a fixed place of business that the employer has in the country where the work is performed.

The respective DBA will determine if the basis for the calculation of the 183-day period will be the calendar year, a tax year that is different or a 12-month period and



The Chapel Bridge over the Reuss in Lucerne at Lake Lucerne

whether it will be based on the number of days of the stay or of working days.

Consequently, in regard to the payment of payroll tax, the first step will be to clarify whether the employee wants to work from a foreign country for their German employer only temporarily, or if they will be moving abroad permanently and giving up their domicile and permanent residence in Germany. In the first case, the 183-day rule would be applicable and – provided that the other requirements have been fulfilled – the German employer would be able to pay the payroll tax in Germany. This is because, in Germany, the domestic employer is obliged to pay the payroll tax while the employee has restricted tax liability on account of work carried out or realised in Germany.

By contrast, if the employee gives up their domicile and permanent residence in Germany then the country where the work is performed will have the right to tax and the German employer will potentially have to pay the payroll tax in the country where the work is performed or oblige the employee to pay this themselves if the respective national law permits this.

4.2 Permanent establishment risk

When an employee works abroad there is a risk that the German company will thus create a permanent establishment in the country where the work is performed. This could mean that the profit from the workation activities attributable to the company would be subject to taxation in the country where the work is performed and, moreover, obligations could arise in respect of registration, tax declaration, keeping accounts and other records and of documentation.

Recommendation: The risk of creating a permanent establishment should be assessed in each specific case by tax consultants from the country where the work is performed. In this connection, the consultants in our international PKF network would be pleased to assist you.

5. Social security law

5.1 The relevant social security regulations

Employees are generally subject to the social security regulations of the country where their work is performed. This is also true in the case of remote working from abroad on an ongoing basis. There are the following exceptions to this principle:

- The employee is posted abroad by the employer and the posting does not last longer than 24 months.
- The employee works in several foreign countries.

5.2 Posting

Posting occurs when a worker who is employed in Germany goes to another country when instructed to do so by their employer in order to perform work there for the said employer. It is crucial that a connection to German law exists both before as well as after the assignment abroad. This means that, prior to being posted abroad, the employee's habitual abode had been Germany and that the prospect of subsequent continued employment following the assignment abroad had existed. Furthermore, the employee must not have been recruited for the purpose of being posted abroad and/or may not be a replacement for any employee who was posted before them.

Please note: Whether or not a workation/remote work constitutes a posting is the subject of dispute and the supreme court has not yet clarified this. Although, if it is possible to demonstrate that the work is carried out from abroad not just because the employee wishes to do so, but that it is also in the interests of the employer then it may be assumed that it is a posting.

5.3 Working in several countries

The German social security system would likewise continue to be applicable if the employee retained a domicile in Germany and still spent at least 25% of their working time in Germany. Then, for the remaining 75% of their working time, they could work abroad remotely for their German employer. What would matter is the expected situation in the following 12 calendar months.

5.4 New multilateral framework agreement

A multilateral framework agreement came into force on 1.7.2023. Under certain circumstances, workers can spend up to 49.99% of their total working time teleworking across borders, nevertheless, the social security legislation of the Member State where the employer is based will apply. 'Cross-border teleworking' refers to activities that can be performed independently of location, i.e. either at the employer's premises as well as anywhere else in the world using information technology. Customer and trade fair visits are therefore not included.

Please note: The framework agreement may only be applied if it has been signed by both the country where the employed person is resident as well as the country where the employer is headquartered. Germany has signed the agreement.

5.5 A1 certificate

If German social security regulations are still applicable despite deployment abroad then a so-called A1 certificate has to be applied for in order to provide proof that the employee is subject to the German social security system. The German Liaison Office for Health Insurance Abroad *(Deutsche Verbindungsstelle Krankenversicherung – Ausland, DVKA)* can provide help with respect to A1 certificates.

However, if the employee is subject to the social security system of the country where the work is performed and frequently stays in Germany (for example, at their employer's headquarters) the appropriate certificate should be applied for in the country where the work is performed.

Recommendation

It would be advisable, already upfront, to make clear arrangements under the contract of employment. Therefore, the working time and occupational health and safety arrangements, the choice of applicable law and also the requirements under the German Act on Notification of Conditions Governing an Employment Relationship between an employee and employer should be set out in writing. There is also a need for a detailed consideration of the review of which national tax and social security regulations have to be applied.

RAin [German lawyer] Edda de Riese, LL.M.

A tenant's entitlement to reimbursement under the German Carbon Dioxide Cost Allocation Act

The Carbon Dioxide Cost Allocation Act (Kohlendioxidkostenaufteilungsgesetz, CO_2KostAufG) has introduced an entitlement for tenants to reimbursements from their landlords in cases where a tenant contracts directly with energy suppliers for the rented premises and no contracts go via the landlord. In the following section the essential features of such an entitlement to reimbursement are specified.

1. Background to the cost allocation

The purpose of the legislation is to allocate the fuel-related carbon dioxide costs included in the heating and hot water costs between landlords and tenants in relation to their spheres of responsibility and scope of influence. This is intended to create an incentive to minimise emissions. Since the allocation between landlords and tenants – at least in the area of housing – is based on quotas that, in turn, are based on the energy efficiency class of the buildings, it will be in the interests of the landlord for the fabric of the building to be as energy efficient as possible and, if necessary, to retrofit the building. Then again, tenants wish to minimise their cost burdens and are able to do this by managing their energy consumption.

2. The essential features of the cost allocation

Up to now, the CO_2 costs, as part of the cost of fuel, were fully borne by tenants. No provision was made for the landlord to contribute to the costs. This will now change – for billing periods starting 1.1.2023 landlords will also have to contribute to the CO_2 costs. Tenants will however be free to choose the timing and frequency of their reimbursement claims. The only thing that matters here is determining the total CO_2 emissions that relate to the reimbursement period. This is particularly important because this will make it possible to calculate the right proportion of the costs. The calculations will be based on a tiered model that is relevant for specific carbon dioxide emissions. In commercial tenant-landlord relationships the allocation quota is currently always 50%, although there are plans to introduce a tiered model in the future.

3. Requirements related to reimbursement claims

The legislation, in Section 6(2), provides for some formalities for the tenants' claims for reimbursement. For example, tenants have to assert their claims in text form. An e-mail requesting reimbursement is sufficient. In addition, this claim for reimbursement has to be made within 12 months after the tenant has received the final bill for fuel or heat supplies. This is a preclusive period that is supposed to provide the landlord with certainty about the reimbursement claim.

Please note: The reimbursement claim has to contain minimum verifiable information, such as, the carbon dioxide emissions produced during the reference period. The tenant, as the contractual partner, has to forward the necessary data from the utility company to the landlord.

4. Landlord's obligations following receipt of the reimbursement claim

According to Section 6(2) sentence 3 CO_2KostAufG, the landlord may offset a tenant's claim for reimbursement as part of the next annual reconciliation of service charges. If there is no offset then the landlord has to reimburse this amount to the tenant no later than 12 months following receipt of the reimbursement claim. According to Section 6(2) sentence 4 CO_2KostAufG, this period for payment postpones the due date of the reimbursement claim.

5. Outlook

Given that costs will be capped at least until the expiry of the statutory price limit in national fuel emissions trading, it thus remains to be seen to what extent tenants will actually exercise their right to claim reimbursements. It is likely that, for the present, carbon dioxide prices will therefore remain in a low range. Thus, for some tenants the effort involved in making their claim for reimbursement may appear too great.

IN BRIEF

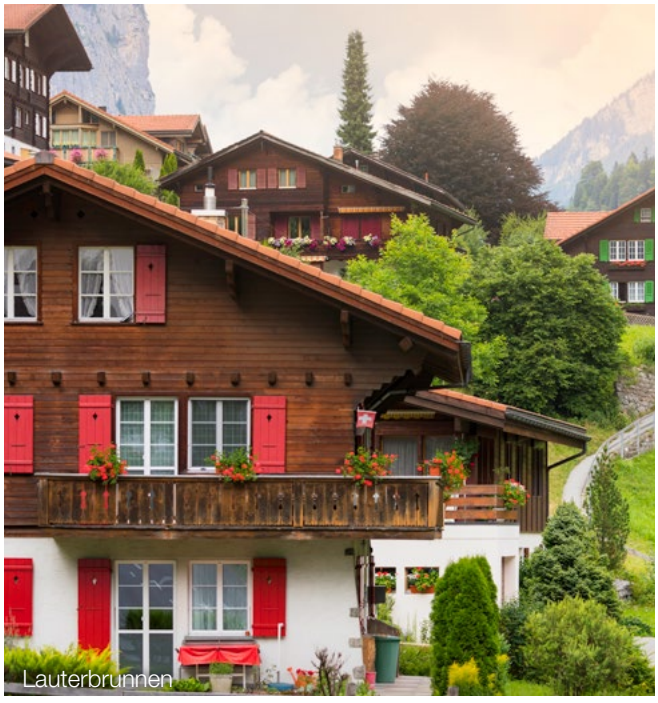
Workplace health promotion in the fitness studio

Under Section 3 no. 34 of the German Income Tax Act, employers are able to provide an attractive benefit to their employees in the form of tax-free benefits for health promotion up to a value of €600 per year. .

The BMF circular of 20.4.2021 specifies which benefits are included here. 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. However, the condition for 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 trains freely on gym equipment. The exemption limit for payments in kind can be used 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 negotiates 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.


Lauterbrunnen

AND FINALLY...

"The deep things in science are not found because they are useful; they are found because it was possible to find them."

J. Robert Oppenheimer (22.4.1904 – 18.2.1967) is regarded as the "father of the atomic bomb"; however, he deplored its continued use after having seen the fallout from the atomic bombs that were dropped on Hiroshima and Nagasaki.

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PKF Deutschland GmbH Wirtschaftsprüfungsgesellschaft

EUREF-Campus 10/11 | 10829 Berlin | Tel. +49 30 306 907 - 0 | www.pkf.de

Please send any enquiries and comments to: pkf-nachrichten@pkf.de