

Current legislation

and jurisprudence

09 | 2023

For all taxpayers

Tax exemption for small photovoltaic systems:

Application letter from the Federal Ministry of Finance

| The Annual Tax Act 2022 (BGBl I 2022, p. 2294) introduced a tax exemption for small photovoltaic systems (PV systems) in the Income Tax Act. In practice, people were waiting for an application letter from the tax authorities, which has now been published. |

New legal regulations

In a letter dated October 29, 2021, the Federal Ministry of Finance granted the right to choose for small PV systems with an installed output of up to 10 kW/kWp (= hobby that is irrelevant for tax purposes at the request of the taxpayer). This right to choose was replaced by a tax exemption (Section 3 No. 72 Income Tax Act (EStG)) as part of the 2022 Annual Tax Act.

for the application of tax exemption according to Section 3 No. 72 EStG must not be exceeded.

NOTE | The tax exemption according to Section 3 No. 72 EStG applies - regardless of the time at which the PV system is commissioned - to income and withdrawals generated after December 31, 2021 be made.

When it comes to the tax exemption of income and withdrawals in connection with the operation of PV systems, certain maximum limits must be observed (see detailed information below), whereby the gross installed capacity according to the market master data register is taken into account here. Overall, there is an upper limit of 100 kW (peak) per taxpayer or joint taxpayer.

1. Personal scope
Section 3 No. 72 Sentence 1 EStG applies to natural persons, joint ventures and corporations.
2. Favored PV systems (including roof-integrated and facade PV systems) and maximum limits
It depends on the type of building how relevant

Data for the month
October 2023

☞ TAX DATES

Due date:
• VAT, LSt = 10/10/2023

Transfers (payment grace period):
• VAT, LSt = October 13, 2023

Check payments:
If paying by check, the check must be submitted to the tax office at least three days before the due date!

☞ SOCIAL SECURITY CONTRIBUTIONS

Due date for contributions 10/2023 = October 27, 2023 (or October 26, 2023 for federal states in which Reformation Day is a public holiday)

☞ CONSUMER PRICE INDEX
(Change compared to previous year)

7/22	12/22	3/23	7/23
+ 8.5%	+ 9.6%	+ 7.8%	+ 6.5%

Power of the system(s) in kW (peak) each
The taxpayer/co-entrepreneurship is (building-related consideration):

- Single-family house (30 kW (peak))
- Two-bed/room for residential purposes
Apartment building (15 kW (peak) each residential unit)
- mixed-use property (15 kW (peak) per residential/commercial unit)

- Non-residential building building, e.g. B. Commercial property with a commercial unit, garage property (30 kW (peak))
- Commercial property with several commercial units (15 kW (peak) per commercial unit)

ÿ Examples

Taxpayer A has a system with an output of 25 kW (peak) in three single-family homes.

All three systems are favored.

A has two living quarters on his house units and the associated garage each have a system with an output of 15.10 kW (peak). Both systems are not eligible because their output (total 30.20 kW (peak)) exceeds the 30.00 kW (peak) permitted for this type of building.

Note | It is not necessary that the operator of the PV system is also the owner of the building on, on or in which the system is located.

In a second step, it must be checked whether the 100 kW (peak) limit has been adhered to. The services of all PV systems benefiting from Section 3 No. 72 EStG must be added together.

ÿ Example

A taxpayer operates two systems with an output of 30 kW (peak) on a single-family home and one ground-mounted PV system with an output of 50 kW (peak).

Since ground-mounted PV systems (regardless of size) are not eligible, this system is not to be included in the test for the 100 kW (peak) limit. The investments on single-family houses are therefore favored.

If a taxpayer or a partnership that operates preferential PV systems is also involved in the partnership of a PV system operator,

The systems operated by the other co-entrepreneur are not to be taken into account proportionately when checking the 100 kW (peak) limit.

Note | If the taxpayer operates PV systems with a total output of more than 100 kW (peak), the tax exemption does not apply overall (exemption limit).

3. Scope of tax exemption

The tax exemption covers income and withdrawals regardless of the use of the electricity generated by the PV system.

The income includes in particular the feed-in tariff, fees for other electricity deliveries (e.g. to tenants), payments for charging electric/hybrid electric vehicles, subsidies and sales tax collected and refunded in the income surplus calculation.

4. Tax reduction according to Section 35a EStG
If Section 3 No. 72 EStG applies, it is assumed that the system is operated without the intention of making a profit. A tax reduction can be granted under the conditions of Section 35a EStG.

5. Investment deductions (IAB)
IAB that were used in financial years ending before January 1, 2022 and were not yet added to profit up to and including December 31, 2021, must be reversed in accordance with Section 7g (3) EStG if they are beneficiaries of Section 3 No. 72 EStG PV systems were invested.

6. Further aspects shortly

In addition to the aspects presented, these points are also discussed:

- Prohibition of business expense deductions (§ 3c para. 1 EStG)
- Relation to Section 6 Paragraphs 3 and 5 EStG (transfer or transfer of a PV system at book value)
- Elimination of commercial infection (Section 15 Paragraph 3 No. 1 EStG) in old cases
- Treatment of PV systems in other business assets
- Consequences if Section 3 No. 72 EStG is applied for the first or last time during the year

7. Temporal application

The letter applies to all income and withdrawals earned or made after 2021. Applications for the application of the simplification regulation
According to the letter dated October 29, 2021, this is no longer possible for PV systems that were put into operation after 2021. For systems that were put into operation by December 31st, 2021, the deadline for submitting an application has been extended to December 31st, 2023!

Source | BMF letter dated July 17, 2023, Ref. IV C 6 - S 2121/23/10001:001, at www.iww.de, access number. 236439; BMF letter dated October 29, 2021, Ref. IV C 6 - S 2240/19/10006:006

For all taxpayers

Online poker winnings may be taxable

| Winnings from playing online poker can be subject to income tax as income from commercial operations. The Federal Finance Court has recently decided this. |

ÿ Facts

A student had online in 2007 Poker game (in the "Texas Hold'em/ Fixed Limit" variant) started. Starting from small stakes and winnings, he gradually increased his stakes. His profits also increased significantly. In the year of the dispute, 2009, he made a profit of over EUR 80,000, which continued to increase in the following years. Only in the period from July to December Over 2009, his total recorded playing time was 673 hours.

The Münster Finance Court assessed the facts to the effect that the student had been commercially active from October 2009 and the income earned from October to December 2009 Winn of around 60,000 EUR subject to income tax. The Federal Finance Court has now confirmed this, building on previous decisions regarding poker games in the form of face-to-face tournaments and in casinos.

Note | From an income tax perspective, poker is not just a game of chance, but is also characterized by elements of skill. This also applies to online poker, even if personal contact with other players is not possible.

NOTE | But not every poker player is subject to income tax. For recreational and hobby players, this is a private activity in which profits and losses are taxed not have any effect. However, if the scope of a private hobby activity is exceeded, the activity is to be viewed as commercial. The decisive factor is the structural comparability with a trader or business reputation players (e.g. the planned nature of the action, the exploitation of a market or the extent of the invested money and time budget).

Source | BFH ruling of February 22, 2023, file no. XR 8/21, at www.iww.de, access no. 236046; BFH, PM No. 31/23 from June 29, 2023

For landlords

Tax investigation receives Data from online

Rental portal

| The Hamburg tax investigation department has again received and processed data for tax control purposes from a portal for booking and arranging accommodation.

The data is now distributed to the tax administrations of the federal states so that they can compare the declared income with the available data. There is data on rental sales from around 56,000 hosts with a total sales volume of more than EUR 1 billion. |

Background: Hamburg had already fought for a supreme court decision to release data in 2020 with an international group request. The analysis of the data at that time led to additional taxes amounting to approximately EUR 4 million nationwide in 2021 and 2022. This was the reason for the Hamburg tax investigation department to submit another international group request to request more current data from the brokerage portal on German landlords who have rented out living space via this platform.

Source | Hamburg Financial Authority, PM dated July 6, 2023

For entrepreneurs

Reimbursement interest for trade tax as

Operating income

| According to Section 4 Paragraph 5b of the Income Tax Act: The trade tax and the associated additional services are not business expenses. Nevertheless, the Düsseldorf Finance Court decided that refund interest for trade tax is taxable business income (appeal was permitted). |

Note | A corresponding reduction in profits is only necessary for reasons of equity if reimbursement interest is related to countervailing additional interest that was not previously recorded as operating expenses.

Source | FG Düsseldorf, judgment of May 4, 2023, Ref. 9 K 1987/21 G,F, at www.iww.de, access no. 236518

For all taxpayers

Household-related services: tax reduction also for tenants

| The Federal Finance Court has decided that tenants can deduct expenses for household-related services and tradesmen's services in accordance with Section 35a of the Income Tax Act (EStG) - even if they have not concluded the contracts with the service providers themselves. |

Background: Taxpayers can claim a tax reduction of 20% of expenses for household-related employment, household-related services and craft services. The following maximum amounts apply in detail:

- maximum 4,000 EUR for household close employment relationships, household-related services as well as care and support services,
- Maximum 510 EUR for household items Employment relationships for marginally employed people and
- a maximum of 1,200 EUR for the Inan Claiming craftsman services (labor costs only).

Ÿ Facts

The couple lived in a rented condominium. The landlord submitted the utility bill

Invoices include expenses for garden maintenance and checking smoke detectors.

To do this, they sought tax relief for household-related services and craftsmen's services. The tax office and the tax court rejected it - but not the Federal Finance Court.

The tax reduction does not prevent tenants from signing contracts with service providers (e.g. the cleaner

For all taxpayers

Growth Opportunities Act in the pipeline

| The Federal Ministry of Finance has published a draft bill for a "Law to strengthen growth opportunities, investments and innovation as well as tax simplification and tax fairness (Growth Opportunities Act)" (processing status: July 14, 2023). |

On 279 pages, the draft contains, among other things, changes to the income tax law (increasing the limit for low-value assets from EUR 800 to EUR 1,000, introducing an exemption limit (EUR 1,000) for income from renting and leasing, etc.).

operation) on a regular basis. It is sufficient that the services benefit the tenant.

If the law also requires that the taxpayer has received an invoice for the expenses and the payment has been made to the service provider's account, this is sufficient proof also a statement of additional residential costs or a certificate that corresponds to the recognized model (see Appendix 2 of the letter from the Federal Ministry of Finance dated November 9, 2016).

This must indicate the type, content and timing of the service as well as the service provider and recipient as well as the fee and the reference to non-cash payment. Only if doubts arise as to the correctness of these documents does the tax office have the right to demand the presentation of the invoices. The tenant must then obtain the invoices from the landlord.

NOTE | This case law applies accordingly to the expenses of the apartment owners if the services were commissioned by the apartment owners' association.

Source | BFH ruling of April 20, 2023, Ref. VI R 24/20, at www.iww.de, access no. 236254; BFH, PM No. 33/23 from July 13, 2023

Note | We will report on the government draft, which is to be introduced into the legislative process by the Federal Cabinet on August 16, 2023, in the next issue.

For employees

Double budget management: Federal Finance Court must decide on the deduction of parking space costs

| The Finance Court of Lower Saxony has decided that parking space costs in the context of dual household management are among the other additional expenses (which can be deducted in full). However, until a supreme court decision is made (the appeal is pending), resistance from the tax offices is to be expected, as the Federal Ministry of Finance takes a different view. |

background

Since 2014, employees who keep double households for work reasons can only deduct accommodation costs up to a maximum of EUR 1,000 per month as business expenses. The maximum amount includes all expenses incurred, such as: B. Rent, operating costs and costs of ongoing cleaning and maintenance of the second apartment or accommodation; However, this does not include expenses for household goods, furnishings or work equipment with which the second home is equipped.

Expenses for the necessary furnishings and equipment of the second home, as long as they are not excessive, can be taken into account as other necessary additional expenses for dual household management (outside the maximum amount). This ruling by the Federal Finance Court is accepted by the tax administration.

Note | In the letter from the Federal Ministry of Finance from 2020

further explained: If the acquisition costs for furnishing and equipment of the second home exceed (excluding

Work equipment) overall does not meet the requirements

For investors

Financial Accounts Information Exchange Act:

The final state exchange list for 2023 is available

| According to the requirements of the Financial Account Information Exchange Act, information about financial accounts in tax matters is automatically exchanged between the Federal Central Tax Office and the responsible authority of the other country. The Federal Ministry of Finance has now announced the 2023 state exchange list. Included are the countries with which the automatic data exchange will take place on September 30, 2023. |

For data exchange as of September 30, 2024
A new state exchange list for 2024 will then be published in another letter.

Further information on the exchange of information about financial accounts

The contribution of EUR 5,000 including VAT can be assumed for reasons of simplification that these are necessary additional expenses for dual household management.

Parking space costs

According to the Federal Ministry of Finance, rental/lease fees for vehicle parking spaces are included in the maximum amount. However, the tax court of Lower Saxony (like the tax courts of Saarland and Mecklenburg-Western Pomerania before it) rejected this view. After that, separate parking space costs are not accommodation costs.

The Lower Saxony Finance Court even goes one step further than its colleagues from Saarland and doubts that the case would be assessed differently if the accommodation and parking space form "an inseparable unit", i.e. if the use of the accommodation does not come without expenses for use a parking space would be possible.

Source | FG Lower Saxony, judgment of March 16, 2023, Ref. 10 K 202/22, Rev. BFH Ref. VI R 4/23, at www.iww.de, access no. 235999; BMF letter dated November 25, 2020, Ref. IV C 5 - S 2353/19/10011:006

You can find information on the website of the Federal Central Tax Office (at www.iww.de/s2991).

Source | BMF letter dated July 20, 2023, Ref. IV B 6 - S 1315/19/10030:057, at www.iww.de, access no. 236519

For all taxpayers

Car accident abroad:

End of vehicle tax obligation when not in use

| If a domestically registered vehicle that was confiscated due to involvement in a traffic accident in Italy is scrapped several months later, the vehicle tax liability may end at the time of confiscation. This was decided by the Münster Finance Court. |

Facts

A (resident in Germany and in Italy) was in Germany with his on January 6th, 2020 registered vehicle involved in an accident in Italy. The vehicle was confiscated and the driver's license was confiscated due to lack of registration in Italy. Due to the high costs, A decided not to re-register and had the vehicle scrapped. Due to the necessary approval from the Italian authorities, it only came on June 20, 2020 for scrapping. Only then did A receive the vehicle documents back and he was able to register the vehicle with the domestic Zurich on July 14, 2020 deregister from the licensing authority.

A applied to the main customs office for tax liability to end on January 6, 2020. However, this was based on the time of scrapping (June 20, 2020) and set the vehicle tax accordingly. An earlier end could not happen be taken because A is responsible for the delay himself. The tax court saw it differently.

In the event of a dispute, Section 5 Paragraph 4 Sentence 2 of the KraftStG applies, according to which an earlier point in time can be used as the basis for the end of tax liability if the tax debtor credibly demonstrates that he has not used the vehicle since this point in time and he has not culpably delayed deregistration has. Preservation of evidence is therefore the top priority.

Source | FG Münster, judgment of April 14, 2023, ref. 10 K 824/22 Kfz, at www.iww.de, access no. 236520

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