

# Current legislation and jurisprudence

01 | 2024

for employer

## New calculation variables in social insurance for 2024

| The Federal Council has approved the ordinance on relevant calculation variables for social insurance for 2024 (Social Insurance Calculation Variables Ordinance 2024). These new values must therefore be taken into account in the payroll office from 2024. |

Background: The calculation variables for social insurance are calculated based on income development on a regular basis on January 1st. adjusted for one year. This is done by regulation.

Important calculation variables are listed in excerpts below:

### reference size

The reference value is of great importance for many values in social insurance – among other things, for determining the minimum contribution assessment bases for voluntary members in statutory health insurance or for calculating contributions for self-employed persons subject to compulsory insurance in statutory pension insurance.

**Note** | The reference amount will increase to EUR 3,535/month in 2024 (2023: EUR 3,395/month); the reference size (East) is 3,465 EUR/month (2023: 3,290 EUR/month).

### general pension insurance

The contribution assessment limit in general pension insurance increases to EUR 7,550/month (2023: EUR 7,300/month) and the contribution assessment limit (East) to EUR 7,450/month. month (2023: EUR 7,100/month).

Background: The contribution assessment limit is the maximum amount up to which wages and employment income are taken into account when calculating the insurance contribution. No contributions are payable for any income exceeding this amount.

### Health insurance

The nationwide uniform insurance The compulsory insurance limit in statutory health insurance (annual salary limit) is EUR 69,300 in 2024 (2023: EUR 66,600). The also uniform nationwide

### Data for the month February 2024

#### TAX DATES

Due date:

- VAT, LSt = 12.2.2024
- GewSt, GrundSt = February 15, 2024

#### Transfers (payment grace period):

- VAT, LSt = February 15, 2024
- GewSt, GrundSt = February 19, 2024

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 2/2024 = February 27, 2024

#### CONSUMER PRICE INDEX

(Change compared to previous year)

11/22	4/23	7/23	11/23
+ 11.3%	+ 7.6%	+ 6.5%	+ 2.3%

The contribution assessment limit in statutory health insurance increases to EUR 62,100 annually (2023: EUR 59,850) or EUR 5,175 per month (2023: EUR 4,987.50).

Source | Social Security Calculation Size Ordinance 2024, BR-Drs. 511/23 (B) dated November 24, 2023; BMAS, communication from October 11, 2023

## For landlords

### Hobby: No tax savings from renting luxury properties

If a property with a size of more than 250 square meters of living space is rented, rental losses cannot easily be offset against the taxpayer's other income. This was decided by the Federal Finance Court.

#### Facts

The couple had purchased a total of three villa buildings, each with a living space of more than 250 square meters, and financed the full amount through debt. They rented out movable property for an indefinite period to their adult children and their spouse. As a result of the rental, the taxpayers incurred annual losses of between EUR 172,000 and 216,000 EUR. Offsetting these losses against their other income, which resulted in a considerable income tax savings resulted.

However, after an external audit carried out on the couple, the tax office refused to recognize them for tax purposes. The Baden-Württemberg Finance Court dismissed the lawsuit against this as unfounded. The Federal Finance Court has also ruled against the deduction of losses with other income and the associated costs. Tax savings not permitted.

Because it generates losses over a longer period of time, the rental activity is a so-called hobby that is not significant for tax purposes. In this case, losses arising from this activity cannot be offset against other positive income.

With this decision, the Federal Finance Court confirms its previous case law, according to which the rental of lavishly designed or equipped properties (e.g. living space of more than 250 square meters; swimming pool) cannot automatically be assumed to be a taxable activity. In this respect, these are properties for which the market rent does not adequately reflect the particular residential value and which often cannot be rented out to cover costs due to the costs associated with them. Therefore, for these properties it must be regularly proven that a positive result can be achieved over a 30-year forecast period.

In the case of a long-term rental activity, it can generally and typically be assumed that the taxpayer intends to generate a surplus of income,

even if there are surpluses in advertising costs over longer periods of time. However, this only applies to the rental of apartments and not to the rental of commercial properties.

However, according to the Federal Finance Court, if a property with a living space of more than 250 square meters is rented, the taxpayer must prove that the rental is done with the intention of generating a financial surplus. If he cannot provide this proof

**Note** | The Federal Finance Court has referred the dispute back to the Baden-Württemberg Finance Court for another hearing and decision. The Finance Court's previous findings were not sufficient for the Federal Finance Court to be able to finally decide whether the Finance Court was right to deny the couple's intention to generate a surplus.

Source | BFH ruling of June 20, 2023, Ref. IX R 17/21, at [www.iww.de](http://www.iww.de), access no. 238313; BFH, PM No. 44/23 from November 16, 2023

## For employees

### New foreign travel packages for 2024

The Federal Ministry of Finance has published the flat-rate amounts for additional meal expenses and overnight accommodation costs for business trips abroad from January 1, 2024. The letter dated November 21, 2023 can be downloaded at [www.iww.de/s9935](http://www.iww.de/s9935).

## For all taxpayers

### Growth Opportunities Act stopped for now: Mediation committee called

The "Law to Strengthen Growth Opportunities, Investments and Innovation as well as Tax Simplification and Tax Fairness (Growth Opportunities Act)" was passed by the German Bundestag on November 17, 2023.

Just a week later, it was already on the Federal Council's agenda. However, approval was not given; among other things, the unequal distribution of burdens between the federal and state governments was criticized. The Growth Opportunities Act is now going to the Mediation Committee. The result had not yet been determined at the time of going to press.

**Background:** The legislative package includes numerous tax-relevant new regulations and adjustments. Among other things, investments in climate protection should be promoted through an investment bonus and additional depreciation options should encourage rental housing construction.

## For entrepreneurs

### Sales tax relief for the catering industry will not be extended

The reduction in sales tax for food in the catering industry from 19% to 7% will not be extended, so from 2024, 19% sales tax will have to be charged again. The federal government has agreed on this.

**Background:** The sales tax that restaurateurs have to pay to the tax office is (simplified) differentiated as follows: Takeaway food subject to the reduced tax rate of 7%. Food consumed on site is taxed at 19%.

In order to relieve the burden on the catering industry during the Corona pandemic, the tax rate was (temporarily) reduced to 7%. This reduction was extended several times, most recently until the end of 2023, in order to mitigate the consequences of increased energy prices.

For entrepreneurs

## Flat rate operating expenses: Administration is allowed to design the rules largely freely

| Some entrepreneurs can also claim flat-rate amounts instead of actual business expenses. The Federal Finance Court has now decided that the financial administration is largely free to design and interpret the flat rates. |

The administration grants these flat rates for the following professional groups:

### • The two case groups

Main professional freelance writing or journalistic activity:

- Flat rate operating expenses as a percentage of income: 30%
- Annual maximum amount: EUR 3,600

Scientific, artistic or literary sideline activity (also lecturing or part-time teaching and examination work), unless it is an activity in the sense of S. of Section 3 No. 26 of the Income Tax Act ("exercise instructor allowance"):

- Flat rate operating expenses as a percentage of income: 25%
- annual maximum amount: EUR 900; is only granted once for all secondary activities that fall under the simplification regulation

In the event of a dispute, the spouses each claimed a flat rate of 30%. However, the tax office recognized the activities as secondary activities and only granted 25%. The reason: The terms main and secondary employment are not independently defined in H 18.2 "Flat-rate operating expenses" of the Income Tax Information (EStH). The tax office therefore resorted to the definition of part-time employment in Section 3 No. 26 of the Income Tax Act, according to which an activity is part-time if it does not take up more than a third of the working hours of a comparable full-time job.

The Federal Finance Court came to the following conclusion: The interpretation of the administrative instructions by the tax office is possible and does not exceed the legal framework.

Source | BFH ruling of July 4, 2023, reference VIII R 29/20, at [www.iww.de](http://www.iww.de), access no. 237109

For all taxpayers

## No estate liabilities: Taxes incurred in the event of retroactive cessation of business by heirs

| If heirs retroactively declare the testator's business to be discontinued, the resulting taxes are not tax-reducing estate liabilities when it comes to inheritance tax. This is a decision by the Federal Finance Court. |

### background

According to Section 10 Paragraph 5 No. 1 of the Inheritance Tax and Gift Tax Act (ErbStG), the following are deductible as estate liabilities: The debts arising from the testator, insofar as they are not related to a (share in a) commercial business or Share in an agricultural and forestry business is economically related and has already been taken into account when assessing the economic unit.

**NOTE |** In the case of an acquisition on death, tax liabilities from the testator's assessment for the year of death can also have a reducing effect on the enrichment, although they are at the time of death inheritance has not yet legally arisen were. Because the heir has this tax to bear debts. However, the decisive factor for the deduction of tax debts is that the testator is in person and not the heir as a guardian. The legal successor has realized tax-relevant facts and therefore a tax arises "for the testator" as a taxpayer.

declared before the death of the testator (Section 16 Paragraph 3b Sentence 2 of the Income Tax Act (EStG)) and the resulting income tax was claimed as an estate liability when determining the inheritance tax - but wrongly, as the Federal Finance Court has now decided.

In such a case, the heirs cannot consider the income tax that arises on the transfer profit and the associated additional taxes as estate liabilities

deduct. The income tax incurred at the end of the assessment period is that of the testator for the year of his death;

However, according to Section 16 Paragraph 3 EStG, the transfer benefit only arises through the heirs' declaration of abandonment.

**Note |** The testator himself had not made a declaration of abandonment, so that at the time of death a business was passed on to the heirs. Consequently, only the heirs' declaration of abandonment was made the decisive cause for the retroactive closure of the business and the resulting income tax plus additional taxes. The taxes established by the declaration of abandonment were therefore not borne by the testator, but by the heirs.

Source | BFH ruling of May 10, 2023, Ref. II R 3/21, at [www.iww.de](http://www.iww.de), access no. 237545

### Facts and decision

In the event of a dispute, the heirs had to give up farming and forestry operations retroactively to a point in time

For all taxpayers

## Tax relief due to storm surges in Schleswig-Holstein

| A storm surge on October 20th and 21st, 2023 caused considerable damage in Schleswig-Holstein, especially in large parts of the Baltic Sea coast as well as the Trave and Schlei regions. Since repairing this damage will result in high financial burdens for many taxpayers, a disaster decree was issued (at [www.iww.de/s9936](http://www.iww.de/s9936)) published with tax relief. |

Upon request, there are, for example, deferrals and adjustments to advance payments. In a statement dated October 26, 2023, the Ministry of Finance

Schleswig-Holstein pointed out that the Federal Ministry of Finance has now approved the disaster decree.

## For landlords

## Usufruct for the benefit of minors Children does not have to be a design abuse

| Parents can grant their minor children a temporary usufruct generate income from renting and leasing a rental property, which the children then earn out of their own right. In contrast to the previous instance, the Federal Finance Court did not see any abuse of design in the decided case. |

### background

The ordering of a (dedicated) Usufruct of a rental property In favor of a close relative is generally recognized for tax purposes if the usufruct is as agreed between third parties and is actually carried out.

In addition, the usufructuary must assume the legal status of a landlord vis-à-vis the tenants. If these requirements are met, the rental income is no longer attributable to the owner but to the usufructuary.

Particularly in the case of usufruct agreements between parents and their (underage) children, disputes often arise with the tax office regarding tax recognition if this constitutes an abuse of structure in the sense of. S. of Section 42 of the Tax Code (AO).

### ̣ Simplified facts

Parents gave their minor children entitled to maintenance a usufruct for a limited period of time  
Property ordered which is rented long-term to a GmbH until the end of the usufruct. Into the dispute  
The father was the sole shareholder of the GmbH in 2016 and the mother in 2017.  
The tax office calculated the rental  
However, the income from training does not go to the children, but rather to their parents personally.  
The Berlin-Brandenburg Finance Court dismissed the lawsuit against it because, among other things, there was an abuse of design options (Section 42 AO).  
However, the Federal Finance Court has now assessed this differently.

The temporary transfer of the Source of income Renting and leasing through the free appointment of a limited usufruct right is not abusive within the meaning of Section 42 AO if the donor has no other tax benefit apart from the relocation of the source of income

Advantage arises. The Federal Finance Court pointed out that it remains to be seen whether there is any personal closeness between the children's parents as landlords and the GmbH, which is controlled by only one parent. Neither the tax office nor the tax court have found any evidence that the content of the contract does not stand up to an arm's length comparison.

There is no abuse of design if the minor child, as usufructuary, rents the property provided to him for use to third parties. Then the rental income is to be attributed to the child. In the case of the dispute, the establishment of the usufruct only resulted in a transfer of the source of income. The rental income was no longer generated by the owner (the parents), but by the usufructors. If, when viewed as a whole, this results in a tax advantage, this is the result of the facts to be recognized for tax purposes and is therefore "provided for" by law.

In such a case, there is no further tax advantage. In particular, maintenance expenses that are not irrelevant for tax purposes are transferred to the income area. The GmbH was able to deduct the business rent as a business expense even before the usufruct was established. By transferring the source of income, the children's parents do not receive any tax advantage, apart from the transfer of income, compared to the transfer of taxed income.

**Note |** Against this background, the Federal Finance Court did not need to deepen the question raised by the Finance Court as to whether the GmbH was a third party in relation to the children or the parents.

Source | BFH ruling of June 20, 2023, Ref. IX R 8/22, at [www.iww.de](http://www.iww.de), access no. 237558

## For all taxpayers

## Nothing extraordinary Charges: costs for Private school attendance for a gifted child

| For the Münster Finance Court, expenses for a gifted child's private school attendance are not an extraordinary burden. |

### ̣ Facts

The taxpayer's daughter attended a boarding school. The medical officer had previously diagnosed him as highly gifted and constantly under-challenged at school, resulting in psychosomatic complaints requiring treatment. For health reasons he had to

The search for a school with individual support options tailored to gifted people is strongly encouraged. The tax office saw the official medical

This opinion does not constitute an official medical report. S. of Section 64 Paragraph 1 No. 2 of the Income Tax Implementation Ordinance and rejected the deduction of costs for income tax.

Regardless of the problems with proof, the Münster Finance Court did not view the costs as direct medical costs.

Expenses for attending a private school can only be viewed as medical expenses if the school attendance is for the purpose of medical treatment and a special medical treatment is carried out there under the supervision of medically trained specialist staff.

Costs for school support for a child due to giftedness are not exceptional burdens if they only concern the social consequences of an illness and only generally serve to prevent psychological stress.

Source | FG Münster, judgment of June 13, 2023, ref. 2K 1045/22 E; NZB BFH: Ref. VI B 35/23, at [www.iww.de](http://www.iww.de), access no. 236811

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