

Current legislation and jurisprudence

05 | 2024

For all taxpayers

Growth Opportunities Act: The odyssey is over

| As early as July 2023, the Federal Ministry of Finance presented a draft bill for a growth opportunities law worth billions. The goal: a farewell in 2023. As is well known, nothing came of it. Rather, the legislative process amounted to a farce, which has now ended with the approval of the Federal Council on March 22, 2024 and the promulgation of the law on March 27, 2024. |

Preliminary remarks

The passed law contains many changes compared to the original speaker and government draft. Among other things, the relief volume was reduced and the climate protection investment bonus was canceled.

In addition, time-critical regulations were already implemented at the end of 2023 through the Credit Wide Market Promotion Act, e.g. B. the elimination of uncertainties regarding real estate transfer tax due to the law to modernize partnership law as well as adjustments to the interest limit regulation.

Nevertheless, the legislative package still contains numerous changes.

New regulations, which are presented in excerpts.

New regulations

Declining balance depreciation for movable assets

For movable fixed assets that were purchased or manufactured after December 31, 2019 and before January 1, 2023, the taxpayer can apply a declining balance of 25% instead of the linear depreciation.

(maximum 2.5 times the straight-line depreciation).

The de-gressive depreciation, intended as an investment incentive, has now been reintroduced - again for a limited period for purchases or production after March 31, 2024 and before January 1, 2025.

Note | The depreciation rate was reduced to 20% (maximum 2 times the straight-line depreciation).

Data for the month June 2024

TAX DATES

Due date:

- VAT, LSt = June 10, 2024
- Income tax, corporate tax = June 10, 2024

Transfers (payment grace period):

- VAT, LSt = June 13, 2024
- Income tax, corporate tax = June 13, 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 6/2024 = June 26, 2024

CONSUMER PRICE INDEX

(Change compared to previous year)

3/23	8/23	11/23	3/24
+ 7.8%	+ 6.4%	+ 2.3%	+ 2.3%

Declining balance depreciation for residential buildings

With Section 7 Paragraph 5a of the Income Tax Act (EStG), a declining balance depreciation was introduced. H. of 5% for residential buildings introduced. Requirement: Production began after September 30, 2023 and before October 1, 2029 or the purchase took place in the year of completion due to an after

Mandatory contract legally concluded on September 30, 2023 and before October 1, 2029. If declining depreciation is used, it should be noted that:

- Deductions for extraordinary technical or economic wear and tear are not permitted,
 - depreciation must be made pro rata in the year of purchase or manufacture and
- a later switch to straight-line depreciation can take place.

Special depreciation for new rental apartment construction

New rental apartments are to be created in the lower and middle price segments. As an incentive, the legislature grants special depreciation

(Section 7b EStG), which means a total of up to 20% additional in the first four years can be written off for normal/regular depreciation.

The cost caps were retroactively increased for building applications submitted after December 31, 2022 as follows:

- Construction cost cap (purchase/manufacture costs of the apartment per square meter of living space): by EUR 400 to EUR 5,200,
- Maximum assessment basis for depreciation (per square meter of living space): from EUR 2,500 to EUR 4,000.

NOTE | In addition, the temporal scope of application has been expanded: The regulation applies to apartments for which the building application or building notice is submitted before October 1st, 2029 (previously: January 1st, 2027).

Special depreciation according to Section 7g Paragraphs 5 and 6 EStG

Special depreciation in accordance with Section 7g Para. 5 EStG is possible for depreciable movable fixed assets if the profit limit of EUR 200,000 is not exceeded in the year preceding the investment.

The special depreciation, which can be spread over the year of purchase or manufacture and the following four years, was increased from a total of 20% to up to 40%.

The new limit applies to purchases and production after December 31, 2023.

E-vehicles/company cars

The taxation of a company car (non-business use) can be reduced by not choosing a combustion engine but an electric vehicle

becomes. This is because only a quarter of the gross list price can be applied here if the maximum amount of EUR 60,000 is adhered to. This was increased to EUR 70,000 for vehicles purchased after December 31, 2023.

Retirement income

The taxable portion of the pension from a basic pension is 50% if the pension starts in 2005 or earlier. The tax rate is gradually increased for each new cohort of retirees. Until now, pensions from 2040 (year of retirement start) would have to be taken into account at 100%.

Now the increase in the tax share for each new retirement age group has been reduced to half a percentage point annually from 2023 (for 2023 only 82.5% instead of 83%). 100% will then apply for the first time in 2058.

Gift limit

Gifts to business partners and customers are only tax-reducing business expenses if a limit is met. This was increased from EUR 35 to EUR 50 for financial years beginning after December 31, 2023.

Loss carryforward

According to Section 10d Paragraph 2 EStG, a loss carryforward is unlimited up to a total amount of income of EUR 1 million (for joint assessment: EUR 2 million), beyond this up to 60% of the EUR 1 million or EUR 2 million in excess of the total amount of income is possible. From the 2024 assessment period

Instead of 60%, 70% will apply (from 2028 60% will be relevant again).

Accumulation benefit

For sole proprietorships and partnerships that do their own accounting, Section 34a EStG provides tax relief for profits that have not been withdrawn and that are intended to remain in the company (in the long term). Since this benefit has rarely been used to date (not least due to its complexity), the legislature has "reformed" Section 34a EStG with effect from the 2024 assessment period. Whether the changes will lead to higher "demand" or usage remains to be seen.

Corporate tax option

According to Section 1a of the Corporation Tax Act (KStG), partnerships and partnerships in the area of income tax can be treated like corporations.

properties are treated. Some changes (e.g. registered GbRs can now also opt in) are intended to make the option more attractive.

Electronic invoice

In the area of sales tax, the Introduction of mandatory electronic invoices for sales between domestic companies (B2B) certainly represents the most relevant change.

The new regulation will come into force on January 1, 2025. However, since implementation will take some time, transitional regulations can be used in accordance with Section 27 of the Sales Tax Act (UStG). The general transition period is two years (obligatory from 2027); three years apply to entrepreneurs with a total turnover of

rate of up to EUR 800,000 in 2026.

Reducing sales tax bureaucracy

Under certain conditions, sales tax can be collected

Fees (actual taxation) are calculated, which enables a liquidity advantage. The relevant previous year's sales limit was increased from EUR 600,000 to EUR 800,000 (applies from the 2024 taxation period).

The limit at which entrepreneurs can be exempt from submitting advance sales tax returns has been raised from EUR 1,000 to EUR 2,000

(applies from taxation period 2025).

Basically small business owners

(Section 19 UStG) is exempt from submitting a sales tax return (zero return) from the 2024 tax period.

Raising accounting limits

If commercial entrepreneurs exceed certain accounting limits, they cannot use their profits

Calculate income surplus calculation, but are obliged to record them. The limits regulated in Section 141 of the Tax Code were increased from EUR 600,000 to EUR 800,000 (sales).

and from EUR 60,000 to EUR 80,000

(profit) increased. This applies to financial years beginning after December 31, 2023 (with transitional regulations).

The accounting limits in Section 241a of the Commercial Code were also set at EUR 800,000 (sales revenue) or EUR 80,000 (annual surplus) increased.

For all taxpayers

Extraordinary burdens: What costs are appropriate for a disability-related conversion?

| Additional expenses for a disabled-accessible conversion or new construction of a house or apartment are generally deductible as an extraordinary burden. This also applies to any resulting rent increase. But: A deduction is only permitted if the expenses are necessary under the circumstances and do not exceed a reasonable amount. |

The dispute before the Munich Finance Court concerned the increase in annual rent due to renovation work, which was caused by the construction of a disabled-accessible connecting building with a nursing bathroom between two single-family homes. In terms of the amount, the tax court saw a limit on the deductibility of the expenses - in view of the fact that there would have been a cheaper alternative to the renovation work actually carried out that would have taken the disability into account in the same way would have worn.

PRACTICAL TIP | The Federal Finance Court has allowed the appeal. He can now clarify whether the taxpayer should be granted discretion when assessing whether expenses are necessary and appropriate.

Until then, suitable cases can be kept open through an objection.

Source | FG Munich, judgment of October 27, 2022, Ref. 10 K 3292/18, Rev. BFH: Ref. VI R 15/23

For all taxpayers

Tax tips for families

| The Baden-Württemberg Ministry of Finance has reissued its guide "Tax tips for families" (publication date: 1/2024). The guide provides, among other things, an overview of the tax relief for families and single parents and can be found at www.iww.de/

s10532 can be downloaded. |

For all taxpayers

Tax disadvantages with a Berlin will

| In the Berlin will, spouses appoint each other as sole heirs for the first inheritance and designate the children as final heirs (e.g. in equal shares). The aim is to distribute the estate fairly between the children, but first to provide for the surviving spouse. However, the children can unhook the construct by asserting their claim to a compulsory portion upon the death of the first person to die. To prevent this, a penalty clause can be included, e.g. B. the Jastrow clause. The Federal Finance Court now had to decide on such a case. The ruling shows that such regulations can be disadvantageous, at least from an inheritance tax perspective. |

Facts

The parents of the plaintiff (K) named each other as sole heirs, with the surviving spouse being able to freely dispose of the estate and his own assets. As heirs of the surviving spouse, the couple named K and three of her sisters

tern. A brother and another Sisters were disinherited.

In addition, the Berlin Testament contained ment a Jastrow clause. This stipulated that in the event that one of the children died after the first dying parent receives the compulsory share demands that this child also be part of the estate of the parent who died last should only receive the compulsory portion. Those heirs who do not demand the compulsory portion upon the death of the first deceased If the longer-living spouse dies, they should be paid out of the estate of the First deceased only at death the longer-living spouse receives a bequest in the amount of the compulsory portion.

The disinherited siblings of K make th after the death of the first deceased father claims her compulsory share. K therefore acquired it when her father died corresponding legacy that became due upon the death of the mother.

After the mother also died the tax office imposed inheritance tax on the acquisition after the mother. The legacy neither included it in the acquisition nor was it used as a legacy association liability is deducted. K, on the other hand, was of the opinion that her legacy had been added twice and was therefore considered a legacy link.

ability deductible. However, the Federal Finance Court saw this differently.

The value of the legacy was first taxed, namely after the death of the father by the mother

his sole heir. Since the legacy had already been created at that time, but only became due when the mother died, the father's estate passed to the mother undiminished (including the assets from which the legacy was to be fulfilled). The mother could not deduct the legacy liability from her inheritance because she did not have to pay this debt because it was not due.

After the mother's death, K had to pay tax on the legacy that was now due. As the final heir, her mother's estate was also subject to inheritance tax. There she was able to deduct the legacy liability that then became due as an estate liability.

The legacy was therefore only subject to taxation once at K.

NOTE | That with regard to the aged legacy, inheritance tax arises twice - once

(without the possibility of deduction as an estate liability) with the mother after the death of the father and a further res time at K after the death of the Mother – although unfavorable, it is not objectionable from a legal point of view.

According to the Federal Finance Court, this is due to Jastrow's clause, which allows the legacy to be passed on upon the death of the first decedent. benen, but only becomes due upon the death of the longer-living spouse.

In short: Anyone who has a Berlin will If you want to set up an agreement, you should not only consider the civil law aspects, but also the inheritance tax consequences.

Source | BFH ruling of October 11, 2023, Ref. II R 34/20, at www.iww.de, access no. 239990; BFH, PM No. 11/24 from February 27, 2024

For all taxpayers

Energy-efficient building renovation: When is the tax reduction for payment in installments to be granted?

| As of January 1st, 2020, Section 35c of the Income Tax Act (EStG) introduced a tax reduction for energy measures in buildings used for private residential purposes. However, this complex regulation raises a number of questions, which the Federal Ministry of Finance has partially answered in a letter. Proceedings are now pending before the Federal Finance Court (previous instance Finance Court Munich) regarding the heating exchange, which is about whether the tax reduction only comes into consideration once the bill has been paid in full. |

background

Eligible expenses/measures include the thermal insulation of walls, roof surfaces and floor ceilings as well as the renewal of windows, external doors or the heating system.

The maximum amount of tax reduction per beneficiary property is EUR 40,000, with the reduction being distributed over three years in accordance with Section 35c (1) EStG.

Fact

The taxpayers had a new heating system installed in the building they used themselves in 2021. To settle the invoice amount, a monthly installment payment was agreed for the years 2021 to 2024.

The question now is whether the energy measures have already been completed when the heating system has been replaced (here in 2021) or only when the invoice amount has been paid in full (probably in 2024).

In its letter dated January 14, 2021, the Federal Ministry of Finance stated in paragraph 43 that the tax reduction must be granted for the first time in the assessment period in which the energy measure was completed. The prerequisite is that with

The implementation of the energy measure began after December 31, 2019 and was completed before January 1, 2030.

The energetic (individual) measure is completed when

- the service has actually been provided (completely carried out),
- the taxpayer has received an invoice (final invoice) and
- the invoice amount has been paid into the account of the service provider.

Completing insignificant remaining work that does not hinder the actual reduction of emissions is harmless. Even if partial invoices have been created and paid for individual partial services in the case of a multi-part measure, the tax reduction, contrary to the outflow principle, is only granted from the assessment period of completion of the energy measure, according to the Federal Ministry of Finance.

Note | Since the appeal is pending, the Federal Finance Court will now decide. Until then, suitable cases can be kept open with an objection.

Source | FG Munich, judgment of December 8, 2023, Ref. 8 K 1534/23, Rev. BFH: Ref. IX R 31/23; BMF letter dated January 14, 2021, Ref. IV C 1 - S 2296-c/20/10004 :006

For entrepreneurs

Input tax refund procedure: Submit applications by September 30, 2024

| The EU member states reimburse domestic entrepreneurs for the sales tax paid there under certain conditions. If the entrepreneur is not registered abroad for VAT purposes, he can claim the amounts through the input tax refund procedure. Applications for 2023 must be submitted via the online portal of the Federal Central Tax Office by September 30, 2024.

Further details can be found at www.iww.de/s3640. |

For all taxpayers

No advertising costs: Process costs for obtaining post-marriage maintenance

| Legal costs for obtaining post-marital maintenance are privately incurred expenses and not (anticipated) business expenses for the later maintenance income in the sense. See Section 22 No. 1a of the Income Tax Act (EStG). With this decision, the Federal Finance Court contradicted the different view of the Münster Finance Court (previous instance). |

Background: With limited real splitting, the person obligated to pay maintenance can deduct maintenance payments of up to EUR 13,805 per year (plus the contributions paid for health and nursing care insurance [basic care]) as special expenses. However, this requires the consent of the person entitled to maintenance, who in turn must tax the maintenance payments as other income.

Only through the application and consent are maintenance payments transferred to the tax-relevant area. The requalification marks the time limit for the existence of deductible acquisition expenses; Expenses previously incurred by the maintenance recipient do not constitute business expenses.

Note | The Federal Finance Court referred the dispute back to the Finance Court. This must now clarify whether there are any extraordinary burdens. There is a ban on deducting legal costs (Section 33 Paragraph 2 Sentence 4 EStG). However, this does not apply if the taxpayer's livelihood or vital needs are affected.

Source | BFH ruling of October 18, 2023, file no. XR 7/20, at www.iww.de, access no. 240004

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