

## Client information at the end of the year 2022

Dear client,

The Corona pandemic, the Ukraine war, energy shortages - this year, too, one crisis follows the next. In addition, the effects of a shortage of skilled workers and supply difficulties are weighing heavily on many companies, which, like the consumer sector, are already being hit hard by inflation.

As a result of all these factors, the hoped-for upswing has failed to materialize for the time being. Overall, it is important to keep our nerve and not lose our optimism. Legislators have initiated a number of **support measures and relief measures**. These include in particular the **Tax Relief Act 2022**, the **Fourth Corona Tax Relief Act**, the

**Inflation Compensation Act** and the **Annual Tax Act 2022**. With the latter, some projects of the so-called **third relief package** have already been launched in parliament, e.g. the **reduction of the cold progression** and the deferral and increase of the **home office lump sum**. The fiscal courts also issued some landmark decisions this year. For example, the German Federal Fiscal Court (Bundesfinanzhof, BFH) ruled on how an asset must be allocated to the company in order to benefit from an input tax deduction.

This is why we are providing you with this client information about the most important new tax regulations, because especially in an **economically tense environment** and with **constant cost increases**, it makes sense to know the corresponding leeway.

Our client information is intended to help you identify the tax issues that are relevant to you so that, together with our support, you can be optimally positioned in this area.

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**Please note:** This client information cannot replace individual advice! Please contact us at in good time before the annual change if you have any questions - in particular about the topics presented here - or if you see a need for action. We will then be happy to clarify with you whether and to what extent you are affected by the changes and show you possible alternatives.

## I. Tips and advice for entrepreneurs

### Balance sheet tax law

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#### 1 Abolition of tax discounting of non-interest-bearing liabilities

Previously, non-interest-bearing liabilities with a remaining term of at least twelve months had to be discounted at an interest rate of 5.5% in the tax balance sheet. This rule does not apply to advance payments and prepayments. For fiscal years ending after December 31, 2022, this discounting is no longer to be applied. The reason for this is the low interest rate development.

After an informal application, **discounting** can already be waived for **fiscal years prior to 01.01.2023** if the corresponding assessment can still be changed or no tax return has yet been filed. In this case, for example, interest-free bonds and non-interest-bearing bridging aid granted in connection with the Corona pandemic in 2020 and 2021 can be recognized without discounting.

A first-time discounting generally results in an increase in profit for tax purposes, which potentially leads to an increase in the tax burden. This effect is now - upon application - no longer present. In the commercial balance sheet, there has long been a prohibition on discounting non-interest-bearing liabilities.

### Utilization of tax losses

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#### 2 Rules for the extended offsetting of losses

In 2020, the legislature introduced an extended loss deduction option in connection with the Corona crisis. The Fourth Corona Tax Relief Act has now extended these regulations. This relates to **the possibility of loss carryback**, i.e. offsetting losses of the current tax year against losses of previous years.

For the years 2022 and 2023, the maximum amount for loss carryback in income tax and corporate income tax will be increased to €10 million in each case. For sole proprietorships, the maximum amount in the case of joint assessment is even €20 million. Previously, the maximum possible loss carryback was €1 million, or €2 million in the case of joint tax assessment.

Another new feature is that the **loss carryback** will be **permanently extended to two years from 2022** and can thus be applied in the two immediately preceding years instead of only in the immediately preceding year as was previously the case. In return, however, the application of the loss carryback can no **longer** be **partially waived**, which leads to considerable disadvantages. For trade tax,

the only option is to carry forward losses. A carryback is not possible here.

**Example:** A-GmbH was able to generate profits of €10 million per year in 2020 and 2021 during the Corona crisis. In 2022, the procurement markets have collapsed and half of the workforce has resigned. This will result in a loss of €25 million in 2022.

**Explanation:** An amount of €20 million of the loss from 2022 can be carried back to 2021 and 2020. This means that corporate income tax already paid for these years will be refunded. The remaining €5 million loss in 2022 can be offset against future profits by way of a loss carryforward.

### Corona-related tax deferral options.

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#### 3 Investment periods extended again

The investment deduction pursuant to Section 7g of the German Income Tax Act (Einkommensteuergesetz, EStG) allows small and medium-sized enterprises to anticipate tax expenses for planned investments. In total, a **profit-reducing deduction of 50%** (until the end of 2019: 40%) of the expenses is possible in advance. Thereafter, a three-year investment period for the acquisition/production of the corresponding asset has so far applied. If no acquisition/production takes place during this period, the original deduction must be reversed in the assessment year in which it was created and, according to the current state of the law, **interest on arrears** for interest periods from 01.01.2019 of 1.8% per year will be incurred on the tax arrears.

For investment amounts deducted in 2017 and 2018, the **investment period** was **extended by** one and two years, respectively, to four and five years. As a result, beneficiary investments can still be made in 2022. The Fourth Corona Tax Assistance Act has now extended the deadline for investment deductions whose three-year or already extended investment deadlines would have expired in 2022 by another year until the end of 2023.

#### 4 More time in the reinvestment reserve

If certain fixed assets are sold (e.g. land, buildings and shares in corporations), the profits from this can initially be transferred tax-free to a reserve pursuant to Section 6b of the German Income Tax Act (EStG). This reserve must be transferred to newly acquired or manufactured replacement assets (e.g. land, buildings and shares in corporations) within four or, in some cases, six years. The reserve then reduces the acquisition or production cost of the reinvestment asset. This in turn immediately creates hidden reserves or results in lower depreciation in subsequent years. The regulation thus has the effect of a long-term tax deferral.

## Value added tax in gastronomy

### 5 Sale of baked goods for consumption on site

In a ruling of the BFH of 15.09.2021, it was a matter of a bakery that operated branches in so-called pre-cashier zones of supermarkets, which provided crockery, tables and seating for the consumption of baked goods and drinks on site. If the customers did not put the dishes away themselves in the containers provided after consumption, the sales staff took care of this.

It was disputed whether the bakery's services were subject to the reduced VAT rate of 7% or whether the standard VAT rate of 19% was to be applied.

The BFH considered the additional services, such as the provision of seating and the cleaning of reusable dishes, to constitute restaurant sales. As a result, the VAT rate of 19% was to be applied to the services.

### 6 Reduced tax rate for restaurant services

The reduced VAT rate of 7% will continue to apply to restaurant sales until the end of December 31, 2022. However, this only applies to the sale of food; the standard rate of 19% applies to beverages. If an amount is charged for food and beverages, for example in the case of all-inclusive offers (menus, buffets), a split of 30% for beverages and 70% for food can be made for reasons of simplification.

The federal parliament also passed a law on Sept. 22, 2022, **extending the reduction of the sales tax on food** in restaurants to **7%** beyond Dec. 31, 2022, to address the problems the restaurant industry continues to face as a result of inflation.

## Input tax deduction

### 7 Allocation of items to the Company

In principle, an entrepreneur can either allocate assets in their entirety to the company or leave them in their entirety as private assets or allocate the assets to the company in accordance with their estimated share of business use.

**Note:** An input tax deduction can only be claimed for the part that was permissibly allocated to the business assets. In most cases, this concerns real estate and photovoltaic systems.

In two proceedings before the BFH, a dispute has now arisen as to **which deadlines** had to be observed for the **allocation to business assets** and to what extent it is

still possible to claim the input tax deduction retrospectively if the deadlines for the allocation to business assets have already passed.

The proceedings concerned a photovoltaic system on the one hand and a study in a building on the other. According to the established case law of the BFH, the allocation decision must be documented in a timely manner.

However, the allocation is no longer "timely" if it is communicated to the tax office only after the statutory deadline for filing tax returns has expired. This was the case in both cases. The corresponding declarations would have had to be submitted by May 31 of the following year, otherwise an input tax deduction would no longer have been possible due to the lack of allocation.

Following the ECJ case law, the BFH now states that the tax office could, however, already have been informed of the allocation (to the company) beforehand by other objective evidence. In this case, the deadline for filing the tax return is no longer relevant.

With regard to the photovoltaic system, the BFH was of the opinion that the allocation was sufficiently documented, as a contract had been concluded with the grid operator for the supply of electricity subject to VAT. In the case of the allocation of the study, the difficulty was that there was no documentation. Only in the floor plan of the building was the corresponding area marked "work".

**Note:** The BFH rulings highlight the need to clearly document the allocation decision to the business at an early stage. If necessary, the tax office must already be informed during the construction phase about how a property is to be used later and to what extent it is to be allocated to the company's assets.

## Special depreciation rules

### 8 Possibility of declining-balance depreciation extended

In the course of the tax relief due to the Corona crisis, the option of declining balance depreciation for wear and tear (AfA) has been reintroduced in the determination of taxable profits for **movable** fixed assets acquired or manufactured after December 31, 2019 and before January 1, 2022.

The Fourth Corona Tax Relief Act has now **extended the option for declining balance depreciation to acquisitions or productions** in 2022.

The annual declining-balance depreciation amounts to 2.5 times the straight-line depreciation, but may not exceed 25% of the acquisition and production costs or the

respective carrying amount. The declining-balance depreciation is always calculated on the residual book value at the end of the previous fiscal year.

**Note:** Since declining-balance depreciation is expected to apply only in 2022, it may make sense from a tax perspective to make investments in movable fixed assets (e.g. vehicle fleet) this year. Due to the increased depreciation volume at the beginning of the useful life, tax savings potentials from depreciation are thus realized more quickly.

## 9 Immediate depreciation for digital assets

Certain "digital assets" acquired on or after January 1, 2021 can already be **fully depreciated in the year of acquisition**. By fiction, a useful life of no more than one year is assumed for these. The prerequisite for this is inclusion in the list of assets for tax purposes.

The simplification includes computer hardware and software, accessories such as monitors, storage media and printers. In the case of software, for example, operating systems and user programs, but also more complex ERP programs, are among the favored assets.

In a letter dated February 22, 2022, the German Federal Ministry of Finance (BMF) clarified that **full depreciation also** applies if, for example, a PC is acquired **during the year**. However, according to the assessment of the Institute of Public Auditors in Germany, the one-year useful life for digital assets should not be adopted for commercial law purposes. This may result in discrepancies between the valuation under commercial law and the valuation under tax law, which tends to make tax returns and the preparation of balance sheets more complicated.

## Tax audit

### 10 Planned changes in operational tests

In the course of implementing the EU directive known as "DAC 7", the German government has launched a draft bill for changes and tightening of tax audits. As early as January 1, 2023, **operators of digital platforms will be subject to special reporting and documentation obligations**. External audits are to be started and completed earlier in the future. The draft includes the following topics that will apply to years after Dec. 31, 2024.

#### Possibility of partial completion of the exam

If many topics of the audit have been clarified with regard to certain tax types and/or assessment years, a partial conclusion of the audit should be possible. In this way, legal certainty can be established at an early stage.

## Qualified request for cooperation

The so-called qualified request for cooperation is intended to create a **stronger obligation to** respond to the auditor's inquiries. The qualified request for cooperation is officially communicated to the company by means of a notice and includes the content of usual audit inquiries. The time for responding to the request is to be one month. If this deadline is not met, a delay fine must be assessed. This amounts to €100 per day (maximum for 100 days).

Further surcharges are possible. Both the **proper ordering of the qualified cooperation request** itself and any resulting **delay fees** and surcharges can be challenged with an objection or, if necessary, with an action before the Tax Court.

**Note:** In the future, the qualified request for cooperation will provide auditors with a means of increasing the time pressure when responding to audit requests. However, because legal remedies are possible, the appropriateness of the audit request can also be reviewed, e.g. whether it is at all appropriate in terms of its scope in the individual case.

## Limitation of the expiry suspension

Previously, the statute of limitations, i.e. the point in time at which tax assessments could no longer be changed by the tax office, only came into effect when the amended assessments issued as a result of the tax audit were formally final. Now, a **tax audit is only to suspend the expiry of the assessment period for a maximum of five years** after the issuance of the audit order. This provision is intended to encourage the tax offices to conclude audits in good time. However, in the event of deficiencies in the taxpayer's cooperation, the expiry of the assessment period may be delayed by at least another year.

As early as 2023, it will also be possible for tax offices to define audit priorities in order to make the audit process more efficient and speed it up. In addition, it will also be possible from 2023 to conduct negotiations and final meetings electronically, for example via video conferences.

## Transparency Register

### 11 Impending expiry of reporting deadlines

Due to money laundering prevention regulations, more and more institutions and companies - e.g. credit and financial service providers, tax and legal advisors, real estate and art dealers - must clarify the identity of their customers as "obligated parties" and, if money laundering is suspected, report it to the Central Financial Transaction Investigation Authority.

The linchpin here is the identification of the "beneficial owner". All legal entities, partnerships entered in the commercial register (including OHGs and KGs), partnership companies and other associations must now submit a **report to the transparency register**. Previously, registration could be waived if the "beneficial owner" was identified from other public registers. This is now no longer possible; only **transitional periods** apply, depending on the form of the reporting entity.

For stock corporations and partnerships limited by shares, the registration had to be made by March 31, 2022; for limited liability companies, cooperatives and partnerships, the deadline was already June 30, 2022.

**Note:** In particular, partnerships with a commercial register entry, certain trusts and fiduciaries, as well as foundations and associations with their registered office abroad and German real estate still have until **December 31, 2022** to report. Registered associations are exempt from the reporting requirement.

## Climate protection and taxes

### 12 Climate protection measures as operating expenses

In a ruling dated February 3, 2022, the Lower Saxony State Tax Office commented on the question of the cases in which a company's climate protection measures for **CO<sub>2</sub> compensation** (e.g. reforestation of forests) can be deducted as a business expense.

Generally speaking, climate protection measures are considered to be business-related if they are carried out with the aim of keeping the company's own CO<sub>2</sub> footprint as neutral as possible and this is also presented to the public in a manner that is effective in terms of advertising. A private contributory cause due to the personal conviction of the entrepreneur is not detrimental in this respect. However, it can be difficult to deduct business expenses for such measures if the expenses are unreasonable or disproportionately high in relation to the expected business benefits. In this case, a **business reason can** be questioned. It also plays a role whether the expenses are based on contracts with third parties or whether a benefit is to be granted to related parties.

If the company receives corresponding certificates (e.g. CO<sub>2</sub> certificates) in return for the measures, there is usually a business reason. As a result, the climate protection commitment of companies must always be aligned with business objectives. Measures taken by the company without any or with only a minor connection to the business and possibly without any significant advertising impact may therefore not be deductible business expenses.

## Act to Modernize the Law on Partnerships

### 13 Innovations for partnerships

The vast majority of partnerships are subject to the regulations of the Commercial Code and must therefore be entered in the Commercial Register. This applies, for example, to the general partnership or the limited partnership. Only for the partnership under civil law (GbR) has there been no public register to date. With regard to the GbR, therefore, there is a degree of legal uncontrolled growth, because there is no notarial verification with regard to the identity and business activities of the parties involved in a GbR.

As a result of the **Act to Modernize the Law on Partnerships (Personengesellschaftsrechtsmodernisierungsgesetz)**, it was decided as early as 2021 to introduce a **company register as of January 1, 2024**. The partners of a GbR are free to choose whether to register their company or not. However, registration is a **prerequisite for economically significant transactions** (such as the acquisition of real estate by a GbR), which should increase the incentive to enter a GbR in the company register.

## Electronic cash registers

### 14 Practical advice on cash inspection

Since 01.01.2020, all electronic cash registers must be technically capable of issuing a receipt. The **receipt** can also be issued in electronic form. According to the Cash Register Security Ordinance, the receipt must contain the **following information** in particular: Full name and full address of the performing entrepreneur, date, as well as various technical data on the security module, which, as a rule, every cash register must have. It is also possible to store this data on the receipt via QR code. This can be important in the context of the so-called **cash inspection**, an unannounced audit by the tax office.

If the document contains a QR code, the auditor can quickly obtain confirmation of the accuracy of the data by scanning it in his audit software. If the data is only displayed in plain text on the receipt, an audit would take longer and the auditor may decide to officially initiate the inspection sooner. The use of a QR code on the receipt may therefore lead to the auditor refraining from conducting a cash audit.

It is also important that the **company's service is** described as precisely as possible on the expense receipt. Collective descriptions such as "Miscellaneous" or "Miscellaneous" are insufficient. In addition to the type of service (e.g. beverage), the type (e.g. orange juice) should also be indicated. Accordingly, incorrect or imprecise information on the description of the service on the receipt

could also be a criterion for an auditor to enter into a cash register inspection.

### Intra-Group loan relationships

#### 15 Losses from unsecured intercompany loans

In a case decided by the BFH on January 13, 2022, the question was whether a loss from an unsecured intercompany loan is tax deductible for the lending company. In principle, intercompany loans must also stand up to an arm's length comparison. In addition to a market interest rate, the other conditions must also be at arm's length, for example with regard to collateral.

The tax office was of the opinion that the granting of loans without collateral in corporate groups does not comply with the **arm's length principle**. However, the BFH took a more differentiated view: In its view, a lack of collateralization of the loan does not necessarily lead to an arm's length nature and thus to a denial of the operating expense deduction for the loan loss. It would be conceivable, for example, that a higher interest rate could compensate for the lack of collateralization. According to the BFH, the interest rate could be based on the interest rate of unsecured loans on the open market.

**Note:** Particularly in an economic environment that is not entirely easy, loan defaults within the Group may occur to an increasing extent. The tax deductibility of these losses depends, among other things, on whether the interest rates were agreed at arm's length and whether there was sufficient collateral. Without collateralization, at least the interest rate must reflect the higher default risk. If the creditor holds more than 25% of the debtor, loan defaults between corporations are generally not tax deductible.

### Investment deduction for company cars

#### 16 A logbook is not the only admissible evidence

Owners of small and medium-sized enterprises can claim so-called investment deductions and special depreciation allowances for depreciable movable fixed assets, provided that the assets are used **exclusively or almost exclusively for business purposes**; for this purpose, private use may not exceed 10%.

In a new ruling, the Federal Fiscal Court (Bundesfinanzhof, BFH) has confirmed that the extent of business use of a company car does **not necessarily** have to be proven by a **proper logbook**. Accordingly, **other means of evidence** are also admissible. The federal judges explained that it is not prescribed by law how the business

use of an asset must be proven. Although, according to the case law of the highest court, proof can be provided by means of a logbook, other means of proof are not excluded. For example, witness statements, calendar entries or documentation of business trips are conceivable. The ruling is good news for entrepreneurs who have been denied the investment deduction due to a rejected logbook. They can refer to the BFH ruling and point to the admissibility of other evidence.

**Note:** The ruling only applies to the claiming of an investment deduction. If you want to avoid the so-called 1% rule for taxing the private share, you will still have to keep a logbook in the future.

## II. Tips and advice for GmbH shareholders and managing directors

### Digital innovations

#### 17 Online formation and certification now possible for GmbHs

Until now, going to a notary was mandatory for the **formation of** a GmbH or an Unternehmergesellschaft (UG). The same applied to certain resolutions and entries in the commercial register.

Since 01.08.2022, adapted legal regulations have now made it possible to carry this out online as well. This means that, at least in the case of a cash formation, it is possible to **carry out the** notary appointment for the **conclusion of the articles of association of** a GmbH or UG online. The same also applies to the shareholder resolutions passed during the formation process and to the appointment of the first managing director.

This is a particular convenience for shareholders who live abroad or not at the company's registered office. As a result, the parties involved then meet with the notary by video conference. However, a specially secured video communication system provided by the Federal Chamber of Notaries must be used for this purpose. The new system must enable both real-time communication and electronic transmission of documents and draft contracts. It can be assumed that not all notaries will be able to offer this option at present. From 01.08.2023, it should then also be possible to use the online procedure in the case of an exclusively or partially non-cash formation.

## Societies in crisis

### 18 Treatment of shareholder loan losses

Losses from a loan granted by the shareholder to his company may in part qualify as **subsequent acquisition costs** of his share. Such losses may occur if the GmbH can no longer service the loan for economic reasons. The issue is important if the company share is sold or the company even files for insolvency, because the increased acquisition costs increase a tax-relevant disposal or abandonment loss or reduce a profit.

In this regard, the BMF commented on the following aspects in a letter dated 07.06.2022:

Subsequent acquisition costs from a loan loss can only be taken into account if the **loan was prompted by company law**. This is to be assessed according to whether a third party would have (continued to) grant a loan to the company at all (crisis loan or loan left standing). In principle, however, only the (still) recoverable portion leads to subsequent acquisition costs; the non-recoverable portion can be taken into account for tax reduction purposes in the case of income from capital assets.

## III. Tips and advice for employers and employees

### Reduced taxed wages

#### 19 Tax reduction for subsequent overtime payment

The so-called quintuple rule allows reduced taxation for payments that extend beyond an assessment period and is usually applied to severance payments in the area of wages and salaries.

In a case decided by the BFH on December 2, 2021, the question was whether the reduction also applies if **overtime compensation** is paid in arrears by the employer for several years. In the case at hand, an employee had negotiated overtime compensation for three years in the course of the termination of the employment relationship. The tax office recorded the subsequent payments as wages without reduction.

In contrast, the BFH considered the conditions for the **application of the one-fifth rule to be met**. There was an earmarking for several years and the payments covered at least two assessment periods. Moreover, it also saw an economically reasonable reason for the aggregation of the income from the additional payment. According to the BFH, the use of reduced taxation was therefore not an abuse of the tax system.

**Note:** Such a constellation is conceivable, for example, if overtime clauses in an employment contract subsequently turn out to be invalid.

### Home office

#### 20 Necessity of a workroom for the professional activity

Does a home office have to be absolutely necessary for an employee's professional activity in order to be able to claim the costs for tax purposes? The BFH had to decide on this in a ruling in 2019. However, the decision was not published in the Federal Tax Gazette until March 2022; it has had to be applied by the tax offices since then. In the case in question, a flight attendant had set up a study in her own home. The room was used only for professional purposes, namely administrative activities related to her work as a flight attendant. According to the plaintiff, she had no other workplace at her employer's for this purpose. However, the tax office denied the deduction of the costs for the study due to the job description.

However, the BFH took a different view: If the study was used exclusively for the aforementioned administrative activities, the deduction was to be granted. According to the BFH, it does not matter that the kitchen table or similar could also be used for administrative activities. Since the study did not constitute the qualitative focus of the entire activity, the deduction of the costs was to be limited to € 1,250 per year.

**Note:** The ruling opens up considerable scope for making a home office tax-deductible. In addition to administrative activities, another reason could be professional training. However, it is also to be expected that the tax office will request confirmation from the employer that no other workplace is available.

#### 21 Innovations in the domestic workroom

The JStG 2022 introduces changes to the home office.

If no other workplace is available, the existing maximum amount of €1,250 is to be converted into a lump sum of the same amount. This means that detailed proof of the costs is no longer required. This is a considerable advantage over the previous regulation. If various activities are performed and the requirements for deducting the annual lump sum are met in each case, the annual lump sum is to be allocated to the various activities. The **annual flat rate** is to be applied on a **room-by-room basis** and is therefore to be divided among several users. Previously, a **user-related deduction amount** applied in the case of several users (each user could therefore claim the deduction amount of **up to € 1,250**).

A full deduction of the costs is now only possible if the home office forms the center of the entire business and professional activity.

## Tax free wages

### 22 Corona bonus for nursing professions

For employees working in hospitals and care facilities, a so-called **care bonus of up to €4,500** paid out by the employer in recognition of special services - such as during the Corona crisis - is treated as tax-free. Employees in outpatient surgery facilities, certain preventive care and rehabilitation facilities, dialysis facilities, doctors' and dentists' offices, and rescue services can also benefit.

Beneficiaries are corresponding disbursements from Nov. 18, 2021, to Dec. 31, 2022.

## Tax Relief Act 2022

### 23 Relief for employees

The Tax Relief Act of 2022, which went into effect on May 28, 2022, includes some notable relief for employees in response to the huge increase in energy prices.

#### Higher distance allowance

It was actually planned to increase the flat rate for long-distance commuters and taxpayers with dual households from €0.35 to **€0.38** from the 21st distance kilometer only as of Jan. 1, 2024. This regulation has now been brought forward and **applies retroactively from 01.01.2022**. The increase from the 21st distance kilometer applies up to and including 2026. For the first 20 kilometers, the flat rate remains unchanged at €0.30.

#### Higher employee lump sum

In the case of income from employment, a lump sum for income-related expenses is recognized by law, which does not have to be substantiated. This was previously €1,000 and was increased **retroactively to €1,200 for 2022**. The lump sum is also taken into account as part of the payroll tax deduction. However, this also means that in 2022 there will be no tax effect at all until income-related expenses exceed the amount of € 1,200.

Since the increase in the basic tax-free allowance and the employee lump-sum allowance has a direct impact on the amount of income tax, solidarity surcharge and, if applicable, church tax, the income tax deduction previously made in 2022 must be recalculated by the employer as a matter of principle.

## Changes to mini- and midi-jobs

### 24 Increase in limits for mini- and Midijobs and new minimum wage

Particularly in times of labor shortages, employment relationships below full-time can be interesting instruments for companies to respond to personnel bottlenecks. From a tax and social security perspective, these activities are attractive for employees due to few or no deductions; furthermore, they benefit from comparatively low taxation.

#### Increase in the remuneration limit for mini-jobs

In the case of so-called mini-jobs, a monthly marginal earnings threshold of €450 applied until September 30, 2022. As of 01.10.2022, the **marginal earnings limit** will increase to **€ 520 per month**.

As of 01.10.2022, the **statutory minimum hourly wage has** also been raised to **€12**, having already been increased to €10.45 as of 01.07.2022. The minimum wage must also be taken into account for mini-jobbers. Consequently, a certain maximum number of hours may not be exceeded in a month.

**Note:** If the mini-jobber receives the statutory minimum wage of €12 per hour as of 01.10.2022, a maximum number of hours of 43.33 per month is (mathematically) possible.

#### Change in the transitional area for midijobs

Until September 30, 2022, a midijob is defined as an employment relationship with a regular salary of between €450.01 and €1,300 per month. In this earnings range, social security contributions for employees are more favorable than in the regular contribution scheme. **As of 01.10.2022**, the transitional range has shifted to a range **between € 520.01 and € 1,600 per month, in line** with the increase in mini-jobs. With a minimum wage of €12 and the pay limit raised to €1,600, the maximum amount of work can therefore be 133.33 hours.

## Third relief package

### 25 Further relief for employees

As part of the so-called third relief package, the coalition government decided on September 3, 2022 to provide further financial relief against the backdrop of the energy crisis and inflation. The following relief in particular is planned for employees, although the details have not yet been determined.

#### Deferral of the home office allowance



The home office allowance, which is currently still valid until the end of 2022 with a maximum amount of €600 per year (120 days at a rate of €5 per day), will be permanently discontinued, and the maximum deduction amount will **increase to €1,000 per year**. This applies regardless of whether the activity takes place in a work corner or in the home office.

### Tax-free bonus for employees

Companies that pay their employees a bonus or premium in addition to the agreed salary are to be able to do so **tax- and social security-free up to an amount of €3,000**. The preferential period is limited to 31.12.2024.

### Access to short-time allowance remains easier

The current regulations on facilitated access to short-time allowance for companies, which are limited until September 30, 2022, are to be continued.

### Higher earnings with midijobs

As of 01.10.2022, the maximum limit for employment in the transitional sector (midijob) has been raised from €1,300 to €1,600. It is planned to raise this **maximum limit by a further €400 to €2,000** per month from 01.01.2023.

## Transparent working conditions

### 26 Stricter obligations for employers since 01.08.2022

Transparent and predictable working conditions - that is the aim of the new law transposing Directive (EU) 2019/1152 into national law. Hardly passed, the law also came into force on 01.08.2022 and leads to far-reaching changes that employers have to consider when **drafting employment contracts**.

Not only the Verification Act, but also the Vocational Training Act, the Handicrafts Code, the Employee Temporary Employment Act, the Maritime Labor Act, the Industrial Code, the Part-Time Work and Fixed-Term Employment Act, the Emergency Paramedic Act, the PTA Vocational Act and the Employee Posting Act are affected by the amendments and will be adapted accordingly.

**Note:** If you have further questions, please seek legal advice.

### Measures in the new detection law

According to the Evidence Act, the employer must put the essential contractual terms of the employment relationship in writing, sign the transcript and hand it over to the

employee if there is not a written employment contract anyway. Now, employers must include a lot of additional information in the minutes in addition to the previous information:

The period for informing the employee of the decisive contractual content is also shortened. With the implementation of the directive, this is now only seven days instead of one month.

Now, for example

- the maximum duration of the probationary period (which is now six months),
- the agreed working hours, agreed rest breaks and rest periods and, in the case of agreed shift work, the shift system, shift rhythm and prerequisites for shift changes,
- the minimum predictability of the work,
- the obligation to provide proof of the identity of borrowing companies, and
- Mandatory training

be recorded.

In the case of fixed-term employment contracts, the end date or the foreseeable duration of the employment relationship must be specified. This can be done in the form of a concrete time provision or end date or - if it is a fixed-term employment contract - by specifying the purpose.

A particularly serious aspect is that, in the future, violations of the Verification Act can be punished as an administrative offense with a **fine of up to €2,000 per violation**.

**Note:** In principle, the stricter disclosure requirements only apply to new employment contracts concluded on or after August 1, 2022. But if an employee with an older contract requests it, you must supplement his or her employment contract within one month - in some cases within seven days - with a transcript in the new, more detailed form. If model employment contracts are used in the company, these should be checked immediately and adapted if necessary.

## IV. Tips and advice for all taxpayers

### Relief for all taxpayers

#### 27 Tax Relief Act 2022

The Tax Relief Act 2022, which came into force on May 28, 2022, brings further relief for all taxpayers.

### Energy price flat rate

The energy price flat rate (EPP) amounts to a one-off €300. All persons with unlimited tax liability in Germany

who have earned **income** in **2022** are eligible. This includes employees as well as self-employed persons. Pensioners and civil servant pensioners do not receive the EPP.

Instead of the EPP, pensioners are to receive a **one-time payment of €300** via the pension insurance on 01.12.2022. A one-off payment of €200 is envisaged for students and students of technical colleges.

Employees were paid the EPP by the employer in September 2022 with the payroll. In the case of quarterly payroll tax reporting, the employer could pay out the EPP in October 2022 and waive the payment in the case of annual reporting.

**Note:** In the latter case, employees will receive the lump sum as part of their 2022 income tax assessment.

In the case of taxpayers with income from profits, for whom the advance income tax payment was also determined for the third quarter of 2022, the tax office will re-determine this determination reduced by the EPP. The EPP is **subject to income tax** both for employees and for income from profits.

### Child bonus

Families will receive a **one-time bonus of €100** from the family benefits office for **each child, in** addition to child benefits, if they were entitled to child benefits at any time in 2022 (and not just for the month of July 2022).

The payments have been made as of July 2022. The bonus will be offset against the child allowance as part of the favorable tax assessment in the 2022 income tax return.

### Higher basic allowance

The basic personal income tax allowance will be **increased** from €9,984 **to €10,347 with** retroactive effect from January 1, 2022. In the case of jointly taxed persons, the amounts will be doubled. This will already be taken into account retroactively in the case of wage settlements; in the case of income from profits, the reduction will then take effect as part of the income tax assessment. **As of 01.01.2023, an increase of €285 to €10,632 is planned.** In 2024, a further increase of €300 to €10,932 is planned (the amounts are doubled for jointly assessed persons).

## 28 Inflation compensation law on the way

All citizens are burdened by the still high inflation. On September 14, 2022, the German Cabinet approved a draft law to compensate for inflation, which is intended to relieve the burden on citizens through tax measures, particularly in the income tax rate and child benefits.

### Changes to the top tax rate

In the case of the income tax rate, the maximum rates at which the top tax rate applies are to be raised. In concrete terms, this means that the **top tax rate of 42%** will not apply **until €61,972 in 2023** instead of €58,597 as at present. In 2024, it will start at €63,515.

All the above-mentioned values are doubled accordingly in the case of joint assessment. However, the rate limits for the so-called "wealth tax" of 45% will remain unchanged. This starts at an income of €277,826; double this amount applies in the case of joint assessment.

### Increases in child benefit and child allowance

The child allowance is to be increased for each parent. It will start with a **retroactive increase in 2022** from €2,730 to **€2,810**, followed by an increase to **€2,880 in 2023** and finally an increase to €2,994 in 2024.

For the child benefit, an increase is to be made in one step for the year 2023. The detailed amounts are shown in the following overview. In total, there will be increases of **up to €18** per month.

Number of children	so far	as of 01.01.2023
1. child	219 €	237 €
2. child	219 €	237 €
3rd child	225 €	237 €
4. child and others	250 €	250 €

In addition, the **maximum amount** for payments to dependents is to be **raised** from €9,984 at present to **€10,347** from 2022. As the maximum amount is based on the basic allowance, future adjustments from 2022 onwards are to be made by automatic adjustment to the basic allowance.

### Reduced tax rate on gas supplies

The sales tax rate for the supply of gas via the natural gas network is to be **temporarily reduced** from 19% **to 7%**. **The** supply of gas via other distribution channels, such as tankers, cartridges or tanks, will not be taxed at a reduced rate.

### Interest on arrears and refunds

## 29 New regulation of the tax interest rate

Previously, the tax office's tax claims and the taxpayer's refund claims were subject to an annual interest rate of 6%. In 2021, the Federal Constitutional Court declared this interest rate to be inadmissible from 2014 due to the

development of interest rates. The previous rate should continue to apply for interest periods up to and including 2018. New regulations will now apply from 2019.

For interest periods beginning on or after Jan. 1, 2019, the **interest rate** will be **retroactively** reduced to 0.15% per month, or **1.8% per year**. It should be noted that there is still a 15-month interest-free period, calculated from the date on which the tax arose.

**Example:** The income tax liability (or also a refund) 2020 arises at the end of 31.12.2020. Interest can only be assessed 15 months later, i.e. from April 2022.

The new regulation applies to **all interest-bearing tax types**, e.g. corporate income tax, personal income tax, trade tax as well as sales tax. The interest rate is to be reviewed every two years.

### No subsequent recovery of refunds

In principle, the tax office cannot claim back interest on refunds retrospectively; protection of legitimate expectations applies here. In the past, it was already possible to file an application for suspension of enforcement of interest on arrears until a new ruling was issued. This meant that interest on arrears could also be reclaimed retrospectively. For these cases, reduced interest notices are now issued, which only provide for interest of 0.15% per month instead of 0.5% per month.

If the assessed interest on arrears had been paid in full and has not become final, the tax offices will make corresponding differential refunds between the old and new interest rates in favor of the taxpayers.

## Claim care expenses for tax purposes

### 30 Deduction of expenses for outpatient care

In a case decided by the BFH on 12.04.2022, it was a matter of costs for outpatient day care that a daughter had taken over for her mother.

Accordingly, the following applies: The tax reduction for household-related services can also be claimed by taxpayers who incur expenses for the outpatient **nursing and care of a third party**. Consequently, children can deduct the costs of outpatient care for their parents if they have borne the costs. **This also applies** if the nursing and care services are **not** exercised or provided in the taxpayer's **own household**, but in the household of the person being nursed or cared for.

In order to claim the tax reduction for nursing and care services provided on an outpatient basis, it is neither a

prerequisite that the taxpayer receives an invoice for the expenses nor that a credit institution is involved in the payment process.

**Note:** It is decisive who concluded the care contract. The costs are only deductible if the payer, usually the daughter or son, is contractually obligated to do so, i.e. makes the payment in response to his or her own debt. If, on the other hand, the payment is made to the debt of the person being cared for, i.e. father or mother, because the latter has concluded the care contract, this is a third-party expense that is insignificant for tax purposes.

## Improvement of pension taxation

### 31 Tax exemption of the basic pension supplement

The JStG 2022 also brings innovations for pensioners. The amount of the pension paid on the basis of the basic pension supplement is to be exempt from tax. This would mean that the basic pension **supplement** would then be available in **full for** tax purposes and contribute undiminished to securing subsistence. This could then provide relief for pensioners who have to pay taxes on their payments. The regulation is to apply **retroactively from 2021**.

Until now, the tax-reducing deduction of pension expenses was limited. In the future, this is to be fully deductible, which may well lead to tax relief. This is intended to prevent the threat of de facto double taxation of pensions in the payout phase in later years. The regulation is to apply from 2023.

## Tax deduction for donations

### 32 Support for those affected by the Ukraine war

Due to the Ukraine crisis, Germany is confronted with a large number of refugees. In addition, there is a widespread desire to also provide humanitarian support to the population in the war zone through donations. The BMF has issued a **list of FAQs** on the **tax deductibility** of such aid.

Donations made to organizations based directly in Ukraine are not deductible under German law, as Ukraine is not a member of the EU or the European Economic Area. Donations made to German tax-exempt organizations working in Ukraine or helping refugees arriving in Germany are deductible. Donations in cash or in kind made directly to affected persons without the intermediation of a charitable organization are not deductible.

## Donations to aid organizations within the EU

Donations to aid organizations within the EU but outside Germany are only deductible if the organization would also be a beneficiary under German law or if the activities of this beneficiary can also contribute to the reputation of the Federal Republic of Germany. Providing evidence may not be easy if the recipient has not already prepared appropriate receipts.

## Submission of tax returns

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### 33 Extended deadlines

The Fourth Corona Tax Assistance Act extended the filing deadlines for tax returns (income tax, corporate income tax, business tax, sales tax). The extensions apply to the assessment periods 2020 to 2024.

The following filing deadlines apply to tax **returns** filed by **tax advisors**:

- Year 2020: until 31.08.2022
- Year 2021: until 31.08.2023
- Year 2022: until 31.07.2024
- Year 2023: until 31.05.2025
- Year 2024: until 30.04.2026

For **taxpayers** who **file** their **tax returns themselves**, the filing deadlines have also been extended, but with shorter timeframes:

- Year 2020: until 31.10.2021
- Year 2021: until 31.10.2022
- Year 2022: until 30.09.2023
- Year 2023: until 31.08.2024

Special deadlines apply in each case for income from agriculture and forestry. Under the Inflation Adjustment Act, there is also to be an exemption from the obligation to file an income tax return for taxpayers with low incomes who would only be liable to pay tax on account of the reimbursement of contributions to health and long-term care insurance.

With kind regards