

Employment Tax

BMF letter on the amendment of the wage tax deduction for compensation for loss of earnings according to § 56 Infection Protection Act (IfSG) grants non-objection regulation!

After the OFD Frankfurt had already commented in June 2021 with a leaflet on the tax treatment of compensation under section 56 (1) IfSG, the Federal Ministry of Finance (BMF) has now also followed suit with a letter dated 25 January 2023 (IV C 5 - S 2342/20/10008 :003) and granted an important non-objection rule.

Overview

At the beginning, the BMF letter gives a general overview of § 56 IfSG. According to this, compensation can be paid to employees who have to go into quarantine or are subject to a ban on activities as a result of an order from the public health authority as persons suspected of being ill or infected. The same applies to employees who supervise their children or disabled persons themselves due to the temporary closure of facilities for the care of children, schools or facilities for people with disabilities. Compensation shall not be paid if the worker is simultaneously unfit for work due to illness. The regulations of the Continuation of Remuneration Act take precedence.

In the case of employees, the compensation shall be paid at least for the duration of the employment relationship, but in principle for no longer than six weeks.

In principle, the federal state whose health authority has pronounced the "quarantine" remains the debtor of the IfSG compensation. The employer, however, has to pay the compensation to his employee, but - and this is often overlooked - does not have any decision-making authority on the compensation itself. The employer is only the disbursing agency for the employees and must apply for reimbursement of the compensation payments himself. In the meantime, this can be done online for many federal states via "ifsg-online.de".

For the employee, the compensation, even if it is paid out by the employer, is tax-free according to § 3 no. 25 EStG. However, it is subject to the progression proviso according to § 32b EStG. The employer must record the compensation in the payroll account and certify it in the electronic (eLStB) or the special wage tax certificate (bes. LStB).

Change in the deduction of income tax

The second part (marginal no. 5 ff) is introduced by the BMF with the basic statement that makes the BMF letter necessary in the first place:

"Often the compensation authority comes to a different conclusion than the employer when calculating the amount of reimbursement."

Then the BMF explains below how the corresponding correction is to be made according to the general tax regulations:

If a change in the deduction of wage tax is still permissible, the employer is obliged to refund wage tax levied in excess with the next wage payment or to withhold wage tax not yet levied with the next wage payment (§ 41c paragraph 1 EStG).

In this context, the BMF clarifies that deviations of the compensation authority from the employer's original calculation that subsequently become known do not in themselves justify an amendment of the wage tax certificate. In this respect, it is not a mere correction of a data set that was initially transmitted incorrectly, for which an amendment of the wage tax certificate would still be possible after 28 February.

Insofar as a change of the wage tax deduction is ruled out, the BMF provides the following solutions for the different factual variants:

Variant 1: Payment of initially taxed IfSG compensation by the employer, however, the employer subsequently receives a refund from the compensation authority according to § 56 IfSG. In this case, the employer is usually not subject to any obligation to notify the employer tax office. The employee can therefore only assert his claim for reimbursement of the excess wage tax withheld by the employer as part of his income tax assessment.

Variant 2: The employer initially assumes that a payment to the employee as compensation for loss of earnings under the IfSG is tax-free. However, the application for reimbursement is later rejected by the compensation authority or a lower amount than applied for is reimbursed. In this case, the extent of the tax exemption is limited to the amount reimbursed by the compensation authority. The BMF regards payments by the employer that exceed this recognised amount as wages, with the consequence that the employer has not withheld the wage tax in accordance with the regulations.

A repayment by the employee of the excess compensation for loss of earnings shall reduce the benefits to be certified under number 15 of the wage tax certificate for the calendar year of the repayment. If the amount to be recovered exceeds the value to be entered there, the excess amount shall be certified with a minus sign under number 15 of the wage tax certificate.

Insofar as the employer waives or is prevented from reclaiming an overpayment of compensation for loss of earnings to the employee, the employer shall immediately notify the tax office of the place of business in writing in accordance with section 41c, paragraph 3 EStG. The correction shall then be made within the framework of the income tax assessment or via a wage tax claim against the employee.

The BMF makes a first concession in paragraph 13 by referring to the tax-free corona and inflation compensation allowances (§ 3 no. 11a to 11c EStG). For current circumstances, however, only the so-called inflation compensation premium (§ 3 no. 11c EStG) can be considered. A "redesignation" of the original IfSG compensation into an inflation compensation premium is probably expressly permissible here.

However, the non-objection rule at the end of the BMF letter (marginal note 14) provides real relief for employers.

If the difference between the compensation for loss of earnings paid and the reimbursement granted to the employer does not exceed 200.00 euros per quarantine case, it is not objected if the employer does not file a notification according to § 41 c paragraph 4 EStG. In this respect, the employer is also not liable for the wage tax not withheld in accordance with the regulations!

In these cases, there is no correction of the incorrect tax exemption in the employee's income tax assessment. A subsequent claim for the undercharged wage tax from the employee is not made.

Recommendation for action

If you have any questions about the refund procedure and the correction of the compensation payment, please do not hesitate to contact us. The contact persons of the PwC employment tax team look forward to exchanging ideas with you.

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Editorial

If you have any questions, comments or remarks about the newsletter, please do not hesitate to contact our editorial team. We are looking forward to your feedback.

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