

By PwC Deutschland | 25 June 2024

Update: Flat-rate energy price allowance subject to income tax

According to a recent decision of the Münster Tax Court the energy price allowance paid to employees in 2022 is taxable as income from employment. Section 119 para. 1 sentence 1 Income Tax Act, as contested by the plaintiffs, is not unconstitutional.

Background

For eligible taxpayers with income from employment the flat-rate energy allowance must be taken as taxable income from employment in accordance with Section 19 (1) sentence 1 no. 1 Income Tax Act (ITA) for the 2022 assessment period. This does not apply to wages being taxed on a flat-rate basis pursuant to Section 40a ITA. The EUR 300 one-off lump sum payment to help offset rising energy costs was paid out in September 2022 via the employers.

The plaintiff initially argued that the energy price allowance was not taxable income as it was a „state subsidy“ that had no correlation to his employment relationship. His employer had merely acted as an agent for payment of the „subsidy“.

Decision of the Münster Tax Court

The tax court rejected the appeal and held, that the legislator has fundamentally and with constitutive effect classified the energy price allowance in Section 119 para. 1 sentence 1 ITA as income from employment. Thus, the legislator has acted within the scope of the powers to which he is authorized and also complied with the regulatory discretion available without being arbitrary. It is therefore no longer necessary to establish a direct connection with the employee's own work performance.

The contested regulation is also constitutional. The federal legislator was responsible for the taxation of the flat-rate energy price allowance in accordance with the concurrent power to legislate in Art. 105 (2) sentence 1 Basic Law (*Grundgesetz*), since he is in consequence entitled to a share in the total volume of income taxes collected. Nor does it follow from the constitution that the state may only tax "income received in the market" (i. e. defined as „total pre-tax income obtained from economic activities, including wages and salaries, investment income, and small business profits“).

In the opinion of the tax court, the plaintiff's view that the rules on the energy price allowance are contrary to the tax system or do not fit into the existing tax system, in particular the seven taxable income categories mentioned in Section 2 (1) ITA, does not indicate a violation of the constitution. The legislator's scope of discretion also extends to freely structuring the definition of income subject to tax and determining the scope of the types of income.

The tax court has permitted an appeal to the Supreme Tax Court. The proceeding is regarded as a precedent by both taxpayers and the tax authorities. Thousands of appeals are still pending at tax offices nationwide regarding the taxation of the energy price allowance.

Update (25 June 2024)

In the meantime, an appeal has been filed by the plaintiff and is currently pending before the Supreme Tax Court - case ref. VI R 15/24.

Reference:

Münster Tax Court, decision 14 K 1425/23 E of 17 April 2024; press release of 2 May 2024.

Keywords

energy tax, income from employment