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Taxation of energy price allowance paid to employees constitutional

According to a recent decision of the Supreme 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 price 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. The EUR 300 one-off lump sum payment aimed to help offset rising energy costs was paid out in September 2022 via employers.

The tax office treated the payment as taxable wages for income tax purposes. The plaintiff objected, arguing that the taxation was unconstitutional. The plaintiff claimed that the energy price allowance was not taxable employment 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“. **The Münster Tax Court** rejected the appeal and held, that the legislator has fundamentally and with constitutive effect classified the energy price allowance in Section 119 (1) Sentence 1 in conjunction with Section 19 (1) Sentence 1 Number 1 ITA as income from employment.

The Supreme Tax Court agreed and confirmed the lower court’s view. The energy price allowance was a voluntary government subsidy. To ensure socially equitable compensation for the additional costs associated with energy prices, the energy price allowance was subject to the individual tax rate and thus granted as a “net subsidy.” In the opinion of the Supreme Tax Court, this does not violate the general principle of equality under the Basic Law.

The Supreme Tax Court was not convinced by the plaintiff’s specific complaint regarding unequal treatment compared to marginal part-time workers (low-paid employees) to whom the energy price allowance was paid as a “gross subsidy” without being taxed. The different treatment was justified, the court said, because this group of individuals typically consists of beneficiaries from the low-wage sector and are therefore particularly needy.

The legislator is also at liberty to provide voluntary government benefits outside the scope of the state’s tax under the Income Tax Act. This applies, in any case, if the legislator wishes to tax such benefits contingent on income (income-related basis) for social policy reasons.

Note: The judgment is of precedence for taxpayers and the tax authorities, and the final decision has been eagerly awaited in light of thousands of appeals pending before tax offices nationwide.

Source: Supreme Tax Court, judgment of 11 June 2026 (VI R 15/24) published on 10 September 2026.

Keywords

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