

Dear customers and business partners,

We are pleased to provide you with the January 2022 edition of our newsletter, which informs you about recent changes in tax law, finance, accounting and auditing. Furthermore, it is always worthwhile visiting our homepage, where we continuously publish professional service news and provide you with additional helpful information ([www.brag.ch](http://www.brag.ch)).

### Private use of a business vehicle: New flat rate as of 1 January 2022

As of 1 January 2022, the flat rate for the taxation of the private use of business vehicles will be increased from 0.8 % to 0.9 %.

### VAT and vouchers: this is important to note

In a recent case, the Federal Administrative Court distinguished vouchers of a provider of outdoor activities with regard to VAT as follows.

- Vouchers: these vouchers are for a certain amount of money and are not taxable when sold. These vouchers are only taxable at the time they are redeemed at the relevant tax rate for the service paid for with them.
- Service vouchers: these vouchers describe in detail the service to be provided. The type of service and the place of performance are listed and the buyer is granted a consumable economic value. The court classifies these vouchers as advance payments for certain services, which means that they are taxable at the time of invoicing or receipt.

If a specific service is described in a voucher, but the voucher and the general terms and conditions expressly state that another service from the service provider's product range up to a certain value can be purchased instead of the service mentioned, then according to the practice of the tax administration, this is not an advance payment, but a voucher of value, which is not taxable at the time of sale, but only when redeemed. (Source: BGE A\_2587/2020 of 10.8.2021)

### Video evidence admissible for observance of deadline for letter posting

A lawyer dropped a complaint into the letterbox at 10.50 pm on the last day of a ten-day deadline for his client. He filmed the posting and informed the court the next day that the postmark on the envelope could bear the date of the following day and that he would therefore submit a video recording as proof that the complaint had been filed on time, which he did by means of a USB stick.

The Cantonal Court, however, did not consider the complaint, which was postmarked the following day, because it had missed the deadline. It argued that the video recording did not constitute effective proof that the application had been filed on time.

However, the Federal Supreme Court ruled in favour of the lawyer. According to the Swiss Code of Criminal Procedure, a deadline is deemed to have been met if, among other things,

the submission is handed over to Swiss Post by the last day of the deadline (by midnight). Contrary to the opinion of the Cantonal Court, the video recording can serve as evidence for the timely delivery to the post office.

If there is no evidence of a forgery, such film recordings are considered genuine. Of course, the video recording must contain all elements necessary for proof:

- the date and time of the deposit of the entry
- the identification of the envelope containing the complaint.

Viewing a video of evidence causes additional effort and costs by the court can be charged to the sender. (Source: BGE 6B\_1247/2020 dated 7 Oct. 2021)

### **No child deduction if studies are interrupted**

The tax authorities did not allow the child deduction for the daughter of a taxpayer in the tax return. The reason given was that an interruption in studies must not be of a major nature and must be for objective reasons. "Objective reasons" means that the interruption must be geared to the education and must be purposeful. An internship increases the chances on the labour market and is therefore considered an "objective reason". Travelling, on the other hand, is not. (Source: Administrative Appeals Commission St. Gallen of 18.3.2021)

### **Low threshold for commercial property trading**

The Zurich Administrative Court judged the following situation to be commercial property trading:

A metal worker, working as a sole proprietorship, bought a property together with a bricklayer, also working as a sole proprietorship, which they jointly renovated and rented out. Twelve years later, the metalworker sold his shares in the property to the bricklayer.

The court judged this sale to be commercial property trading.

Just the establishment of a simple company - as in this case - can be an indication of property trading. The fact that both owners are active in the construction business and have carried out considerable renovation work themselves indicates that the property was in the business assets of their single entities. (Source: Administrative Court ZH, 22.7.2020)

Kind regards,

Your BRAG / Contrast Team