

Dear customers and business partners,

We are pleased to provide you with the December 2021 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)).

### The publicity of tax data

Many taxpayers believe that no one but the tax authorities have access to their tax data. This is the case in some cantons, while others are relatively relaxed about tax data.

The Swiss Tax Conference has published an overview showing who can request access in which canton.

In the cantons of Bern and Zurich, for example, an applicant can claim an economic interest and thus obtain the person's last legally assessed tax factors such as income and assets. An economic interest can be, for example:

- an application for a mortgage with a bank
- an application for insurance
- an application for a tenancy interest
- a divorce convention
- and more.

The taxpayer is subsequently informed of the disclosure by being sent a copy of the written information.

In the cantons concerned, the taxpayer can have his tax data blocked and thus prohibit the disclosure of the data to private persons and organisations. This blocking does not apply to administrative and judicial authorities and must be addressed in writing to the tax administration of the place of residence. (Source: *Publicity of the Tax Registers SSK*)

### Differentiation between tax-free capital gains and taxable income

The Federal Supreme Court had to decide what counts as tax-free capital gains and what is taxable income.

In doing so, it distinguished as follows:

- taxable income: all recurring and non-recurring income such as wages, compensation for special services, commissions, bonuses, severance payments, allowances or non-cash benefits from employee shareholdings are taxable income.
- tax-free capital gains: profit arising from the management of private assets or from a random opportunity. If, on the other hand, an activity is aimed at making a profit, it is considered to be self-employment and is taxed. (Source: *BGE 2C\_ 731/2017 of 12.11.2018*)

## Gratuity or bonus?

If the amount of a bonus depends on the superior's assessment of the employee's performance and is subject to subjective factors, it is a gratuity.

In the present case, the Federal Supreme Court ruled that the employee's goals to develop the skills of his team members were subject to subjective discretion. Objective criteria such as profit or turnover do not allow for subjective discretion and are better suited to determine a bonus. (Source: BGE 4A\_327/2019 of 1.5.2021)

## From 2022, foreign fines will be tax deductible in exceptional cases

On 1 January 2022, the new federal law on the tax treatment of financial sanctions will come into force. The law regulates how fines, financial penalties and administrative sanctions are to be handled for tax purposes.

Such sanctions are not tax deductible in Switzerland. This means that they do not represent a business-related expense and may not be booked as an expense. It makes sense to have a separate account such as "Non-tax-deductible expenses". As a result, this account must be offset in the financial statements, i.e. the commercial balance sheet differs from the tax balance sheet.

Bribes to private individuals are now not tax deductible.

On the other hand, foreign financial sanctions with a punitive purpose are to be tax deductible in exceptional cases if they violate Swiss public law or if a company can credibly demonstrate that it has taken all reasonable steps to act in accordance with the law. (Source: Federal Tax Administration)

## Proof of expenses by means of receipts

The St. Gallen Administrative Court once again confirmed that the receipts for costs that want to be deducted for tax purposes must contain the following information:

- Receipt text
- Amount of booking
- Issuer of receipt
- Date of issue

Expenses that do not meet these criteria do not stand up to the tax authorities and the court and cannot be claimed as tax-reducing. If a receipt is missing, a replacement receipt can be issued.

### **Residence for tax purposes must be proven by the tax authority**

For the establishment of a new residence, two characteristics must be fulfilled:

- an objective, external characteristic such as residence as such, and
- a subjective, internal characteristic, the intention to remain permanently.

The internal intention is less relevant than the objective intention.

The determination of the residence for tax purposes is tax-justifying and must therefore be proven by the tax authority. The taxpayer must cooperate in the provision of information and provide information on the circumstances. (Source: BGE 2C\_881/2020 of 3.6.21)

### **Are clothes tax deductible?**

Expenses for clothes that a taxpayer buys due to his/her professional position and that can also be used privately are not deductible professional expenses. The factual connection with the self-employed gainful activity is too insufficient. (Source: Administrative Appeals Commission SG, 17.6.21)

Kind regards,

Your BRAG / Contrast Team