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SUBJECT Income tax assessment of business and professional activities in the
domestic apartment in accordance with Section 4 Paragraph 5 Sentence 1 Numbers 6b and 6c,
Section 9 Paragraph 5 Sentence 1 and Section 10
Paragraph 1 Number 7 Sentence 4 EStG; New regulation through the Annual Tax Act 2022 (JStG
2022) of December 16, 2022 (BGBl. I p. 2294, BStBl. I 2023 p. 7)

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(please state GZ and DOK when answering)

This letter is issued on the new regulation of Section 4 Paragraph 5 Sentence 1 Numbers 6b and 6c
EStG in the version of the Annual Tax Act 2022. The new regulation is to be applied to
activities carried out in the home after December 31, 2022 (Section 52 Paragraph 6 Sentence 12
EStG) . The BMF letter of October 6, 2017 (BStBl I p. 1320) continues to apply to the previously
applicable legal situation.

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The income tax consideration of business and professional activities in the home in accordance with Section 4 Paragraph 5 Sentence 1 Numbers 6b and 6c, Section 9 Paragraph 5 Sentence 1 and Section 10 Paragraph 1 Number 7 Sentence 4 EStG was established by the Annual Tax Act 2022 (JStG 2022) of New regulations on December 16, 2022 (BGBl. I p. 2294, BStBl. I 2023 p. 7). The new regulation is based on the previous understanding of the term. The terms of the home office and the center of the entire operational and professional activity within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6b EStG in the version of the JStG 2022 (loc. cit.) correspond to the previously applicable terms in accordance with the previously applicable legal situation. The terms are also used unchanged in this letter. After discussion with the highest financial authorities of the states, the following applies:

I. Deduction of expenses for a home office

1st principle

- 1 Expenses for a home office and the costs of equipment may generally not be deducted as operating expenses or income-related expenses (Section 4 Paragraph 5 Sentence 1 Number 6b Sentence 1 and Section 9 Paragraph 5 Sentence 1 EStG). However, the expenses can be deducted if the home office is the focus of the entire business and professional activity (Section 4 Paragraph 5 Sentence 1 Number 6b Sentence 2 EStG). If the home office is the focus of all business and professional activities, a flat rate can be paid instead of the actual expenses**

Page 3 an amount of €1,260 (annual flat rate) can be deducted for the financial or calendar year (right to choose - Section 4 Paragraph 5 Sentence 1 Number 6b Sentence 3 EStG). For each full calendar month in which the requirements for deducting expenses for the home office are not met, the annual flat rate of €1,260 is reduced by one twelfth (Section 4 Paragraph 5 Sentence 1 Number 6b Sentence 4 EStG, see Rn. 21) . The amount of €1,260 is a lump sum that covers the expenses for all operational and professional activities in the home office. The right to choose to deduct the annual flat rate instead of expenses can only be exercised uniformly for the entire financial or calendar year. Exercising the right to vote is possible until the tax assessment is incontestable. The annual flat rate is to be applied to each individual person. It cannot be used multiple times for different activities, but must be divided among the different activities if nec. Even if several home offices are used, the annual flat rate is only applicable once due to its personal nature (see Rn. 20). A deduction of the daily flat rate according to Section 4 Paragraph 5 Sentence 1 Number 6c EStG is not permitted in addition to the expenses for a home office or the (pro-rata) annual flat rate for the same period (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 3 EStG, cf . Rn. 39).

2. Scope of the legal regulation

2 The regulation of Section 4 Paragraph 5 Sentence 1 Number 6b and Section 9 Paragraph 5 Sentence 1 EStG covers the use of a home office to generate income from all types of income in Section 2 Paragraph 1 Sentence 1 Numbers 1 to 7 EStG.

3. Concept of home office

3 A home office is a room that, due to its location, function and furnishings, is integrated into the taxpayer's domestic sphere and is primarily used to carry out intellectual, written, administrative or organizational work (>BFH judgments of September 19, 2002 - VI R 70/01, BStBl II 2003 p. 139 and from October 16, 2002 - XI R 89/00, BStBl II 2003 p. 185) and is used exclusively or almost exclusively for operational and/or professional purposes (>BFH rulings from March 22, 2016 - VIII R 10/12, BStBl II p. 881, VIII R 24/12, BStBl II p. 884 and from September 8, 2016 - III R 62/11, BStBl II 2017 p. 163); a subordinate private shared use (< 10%) is harmless (>BFH decision of July 27, 2015 - GrS 1/14, BStBl II 2016 p. 265). It does not necessarily have to be office-related work; A home study can also be used for intellectual, artistic or literary activity. Integrated into the domestic sphere is a room used as a study

Page 4 Room regularly when it belongs to the tax person's private apartment or house.

belongs to those liable. This applies not only to the living spaces, but also to accessory rooms (>BFH judgments of February 26, 2003 - VI R 130/01, BStBl II 2004 p. 74 and of September 19, 2002 - VI R 70/01, BStBl II 2003 p. 139). A room can also, for example, be in the basement (>BFH ruling of November 11, 2014 - VIII R 3/12, BStBl II 2015 p. 382) or under the roof (attic) of the residential building in which the taxpayer's apartment is located, a home office could be, if the premises are connected as a common residential unit due to the immediate proximity to the taxpayer's private living quarters.

4 A room that is integrated into the domestic sphere and a not insignificant part of its area is also used privately (so-called "work corner") is not a domestic office (>BFH decision of July 27, 2015 - GrS 1/14, BStBl II 2016 p. 265). For this purpose, expenses or the annual flat rate cannot be deducted as operating expenses or advertising costs in accordance with Section 4 Paragraph 5 Sentence 1 Number 6b and Section 9 Paragraph 5 Sentence 1 EStG.

For the deduction of the daily flat rate in accordance with Section 4 Paragraph 5 Sentence 1 Number 6c EStG, see II.

5 On the other hand, a room located in the basement or attic of an apartment building, which is not part of the taxpayer's private apartment but has been rented additionally, can be an office outside the home (>BFH rulings of February 26, 2003 - VI R 160/99, BStBl II p. 515 and from August 18, 2005 - VI R 39/04, BStBl II 2006 p. 428). The decisive factor is whether there is an internal domestic connection between the study and the taxpayer's private life. The overall picture of the circumstances in each individual case is crucial. For the application of Section 4 Paragraph 5 Sentence 1 Number 6b, Section 9 Paragraph 5 Sentence 1 and Section 10 Paragraph 1 Number 7 Sentence 4 EStG, it is irrelevant whether the apartment to which the home office belongs is rented or whether it is owned by the taxpayer. Several rooms can also be viewed as a domestic study; It is necessary to separate the rooms from the rest of the living area.

6 Rooms that do not correspond to an office in terms of their equipment and function (e.g. operating rooms, storage rooms, exhibition rooms) are not subject to the deduction restriction in Section 4 Paragraph 5 Sentence 1 Number 6b and Section 9 Paragraph 5 Sentence 1 EStG if, due to their location, they are connected to the taxpayer's living space and are therefore integrated into his or her domestic sphere (>BFH judgments of August 28, 2003 - IV R 53/01, BStBl II 2004 p. 55 and of March 26, 2009 - VI R 15/07, BStBl II p. 598). Only minor private shared use is harmless to the deductibility of expenses (>BFH ruling of March 22, 2016 - VIII R 24/12, BStBl II p. 884).

Examples

Page 5 a) Basically, a home office is regularly present in the following cases:

- At a home office of a self-employed sales representative, a self-employed person translator or an independent journalist.
- When renting an immediately adjacent or immediately opposite one
Second home in an apartment building (>BFH rulings of February 26, 2003 - VI R 124/01 and VI R 125/01, BStBI II 2004 p. 69 and 72).
- In the home music room used exclusively for business purposes, a freelancer active concert pianist, where she gives music lessons.
- In the case of a room that is used for business purposes at the same time as an office workplace and as a warehouse, if, based on the overall picture of the circumstances, especially due to its equipment and function, this is a typical domestic office and the equipment and function as a warehouse takes a back seat to this (>BFH ruling dated November 22, 2006 - XR 1/05, BStBI II 2007 p. 304).
- In a room in which the taxpayer maintains a teleworking place and which corresponds to the type of home office (>BFH ruling of February 26, 2014 - VI R 40/12, BStBI II p. 568).
- For rooms used for business or professional purposes in an area exclusively used by the tax two-family house used by the taxpayer, if the taxpayer does not have to enter a traffic area that is accessible to the general public or used by third parties on the way between (>BFH ruling of January 15, 2013 - VIII R 7/10, BStBI II p. 374) .

b) No home office, but rooms used for business purposes are regularly located the following cases:

- A doctor's, tax advisor's or lawyer's office is adjacent to the single-family home or is located in the same building as the private apartment if these premises are open to intensive and permanent public traffic and, for example. B. in home doctor's practices are set up for patient visits and examinations (>BFH ruling of December 5, 2002 - IV R 7/01, BStBI II 2003 p. 463 on an emergency practice and negative demarcation in the BFH ruling of January 23, 2003 - IV R 71/00, BStBI II 2004 p. 43 on the expert work of a doctor). The mere fact that patients can only reach the treatment room via a corridor that is assigned to the private area does not constitute a deduction restriction in accordance with Section 4 Paragraph 5 Sentence 1 Number 6b EStG (>BFH judgment of January 29, 2020 - VIII R 11/ 17, BStBI II p. 445).
- In addition to the master baker's apartment, the bakery, the sales room, a lounge for the sales staff and the office where the accounting work is carried out are located in a commercial building. In this case, the office cannot be used as a home office due to its proximity to the other business premises evaluate.
- There is a work space in the basement, which - unlike e.g. B. an archive (>BFH ruling of September 19, 2002 - VI R 70/01, BStBI II 2003 p. 139) - does not fulfill any (partial) functions,

which are typically assigned to a home office, e.g. B. Warehouse for goods and promotional materials.

4. Affected Expenses

7 The expenses for a home office include in particular the expenses for furnishing the room, such as: B.

Wallpapers, carpets, window curtains, curtains and lamps (for furnishings that are also work equipment, cf.

Rn. 11), as well as the share of the total expenses for the apartment or building attributable to the home office for: - rent, - building depreciation, deductions for exceptional

technical or economic wear and tear, special depreciation, - interest on loans, those for the purchase, manufacture or repair of the building

or the condominium, - expenses for water and energy, - cleaning expenses, - property tax, garbage collection fees, chimney sweep fees, building insurance.

8 Renovation expenses that relate exclusively to the home office must be taken into account in full.

Expenses for the renovation of the so-called general areas (e.g. stairwell) or the entire building (e.g. renewal of the heating system, replacement of windows and doors, renovation of the roof) must be taken into account proportionately.

Renovation and conversion expenses that arise for a room that serves exclusively or to a lesser extent private residential purposes (e.g. rooms such as the kitchen, bathroom and hallway) are not considered general building expenses beyond the area of the home office to be taken into account (>BFH ruling of May 14, 2019 – VIII R 16/15, BStBl II p. 510).

The expenses for a garden renovation are to be allocated proportionately to the costs of the home office if damage to the garden was caused during repairs to the building. However, only those expenses that serve to restore the original condition can be attributed to the expenses for the home office (>BFH ruling of October 6, 2004 - VI R 27/01, BStBl II p. 1071).

9 The proportionate expenses for a home office are regular

based on the ratio of the area of the home office to the living area of the apartment (including the home office) calculated in accordance with Sections 42 to 44 of the Second Calculation Ordinance or the Living Area Ordinance. The living area of an apartment includes the floor area of the rooms that are used exclusively for this living space.

tion. However, the floor space of accessory rooms is not part of the living space.
men.

When it comes to a home office in the basement, it is crucial whether it is a main room that is part of the living space or a side room that is not part of the living space. Does a room serve its immediate function after living and

In terms of its structural properties (e.g. presence of windows), location (direct connection to the other living spaces) and furnishings (wall and floor coverings, heatability, furnishings), it meets the standard of a living room and not that of an accessory room comparable and actually suitable and intended for the permanent residence of people, it is not important for the legal assessment that the room is in the basement (>BFH ruling of November 11, 2014 - VIII R 3/12, BStBl II 2015 p. 382). If expenses for additional rooms used for business or professional purposes are included in the expense calculation, the deductible expenses must be divided according to the ratio of the entire area used for business or professional use (main and additional rooms used for business or professional purposes) to the total area of all rooms in the building.

10 Expenses for luxury items such as: B. Art objects that primarily serve to decorate the home office are among the non-deductible expenses according to Section 12 Number 1 EStG (>BFH judgment of October 30, 1990 - VIII R 42/87, BStBl II 1991 p. 340).

11 Expenses for work equipment (>BFH judgment of November 21, 1997 - VI R 4/97, BStBl II 1998 p. 351) as well as operational or professional expenses are not expenses within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6b EStG incurred expenses for telephone and internet. These are therefore not covered by Section 4 Paragraph 5 Sentence 1 Number 6b EStG even if the annual flat rate is deducted instead of the expenses for the home office.

5. Center of all operational and professional activities

12 A home office is the focus of the taxpayer's entire business and professional activity if, after assessing the overall picture of the circumstances and the characteristics of the activity, those actions are carried out and services are provided there that are relevant to the specific business or professional activity carried out are essential and formative. When taking an overall view to assess the focus of the entire business and professional activity, only those incomes that fundamentally require the taxpayer to be active in the respective assessment period are to be taken into account; Pension payments are therefore excluded from this consideration (>BFH ruling of November 11, 2014 - VIII R 3/12, BStBl II 2015 p. 382). The middle-point

Page 8 of all operational and professional activities within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6b sentence 2 EStG is determined by the content (qualitative) focus of the taxpayer's operational and professional activities.

13 The temporal (quantitative) extent of use of the home office is only of indicative importance in the context of this assessment; The predominance of work outside the home does not preclude an unlimited deduction of expenses for the home office from the outset (>BFH rulings of November 13, 2002 - VI R 82/01, BStBl II 2004 p. 62, VI R 104/ 01, BStBl II 2004 p. 65 and VI R 28/02, BStBl II 2004 p. 59). In cases in which the activity that defines the job profile takes place outside of the home office, even the majority of time spent using the home office cannot result in a shift in the focus of the entire business and professional activity. In these cases, there is no need to make any determinations about the amount of time in which a home office is used for operational or professional purposes (>BFH ruling of October 27, 2011 - VI R 71/10, BStBl II 2012 p. 234).

14 If a taxpayer only carries out one business or professional activity that is of equal quality in both the home office and the place of work outside the home, the focus of the entire business and professional activity is in the home office if the taxpayer has more than half of the working time is spent in the home office (>BFH ruling of May 23, 2006 - VI R 21/03, BStBl II p. 600).

**15 If a taxpayer carries out several business and professional activities in parallel, the individual activity does not need to be considered individually; Rather, all activities must be recorded in their entirety. The following case groups can be distinguished:
the:**

- If the work carried out in the home office forms the qualitative focus of all employment activities, then the focus of the overall activity also lies there.**
- If, on the other hand, the activities outside the home - in each case - form the qualitative difficulty point of individual activities or if these cannot be assigned to a focus, then the home office cannot be determined by the sum of the work carried out in it become the focus of the overall activity.**
- If the home office is the qualitative focus of only one individual activity, but not with regard to the other activities, it can generally be assumed that the home office is not the focus of the overall activity.**

Page 9 However, the taxpayer has the opportunity to demonstrate or prove based on the specific circumstances of the individual case that the overall activity can nevertheless be assigned to a single qualitative focus and that this lies in the home office. The focus is on the overall picture of the circumstances and on the traffic view, not on the taxpayer's ideas (>BFH judgments of October 13, 2003 - VI R 27/02, BStBl II 2004 p. 771 and of December 16, 2004 - IV R 19/03, BStBl II 2005 p. 212).

16 The home office and the place of work outside the home cannot equally be the "center" of a taxpayer's entire operational and professional activities within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6b Sentence 2 EStG (>BFH judgment of February 21, 2003 - VI R 14/02, BStBl II 2004 p. 68).

Examples in which the home office can form the center of all business and professional activity: • For a sales

manager who also works in the field to supervise employees and look after major customers, the home office can be the center of professional activity, if he provides the essential services for the job (e.g. organization of operational processes) (>BFH ruling of November 13, 2002 - VI R 104/01, BStBl II 2004 p. 65).

- For an engineer whose work is characterized by the development of theoretical, complex problem solutions in the home office, the home office can be the focus of the professional activity even if looking after customers in the field is also part of his tasks (>BFH -Judgment of November 13, 2002 - VI R 28/02, BStBl II 2004 p. 59).
- For a practice consultant who advises, supervises and supports medical practices on business management issues, the home office can form the center of all professional activity even if he spends a significant part of his working time in the field (> BFH judgment of April 29, 2003 - VI R 78/02, BStBl II 2004 p. 76).

Examples in which the home office is not the focus of the entire business and professional activity: • For a -

freelance or employed - sales representative, the focus of the activity lies outside the home office if, according to the overall picture of the circumstances, the activity is carried out by working in the field even if the activities carried out in the home office are essential for the fulfillment of operational or professional tasks (>BFH ruling of November 13, 2002 - VI R 82/01, BStBl II 2004 p. 62).

- A commercial employee of an industrial company is also self-employed as an employee for a wage tax assistance association. For the latter activity, he uses his home office as an “advice center” where he prepares tax returns, conducts consultations and processes legal appeals. For this secondary activity, the home office is the center of activity. However, due to the necessary overall consideration, the home office is not the center of his entire business and professional activities (>BFH judgment of September 23, 1999 - VI R 74/98, BStBl II 2000 p. 7).
- For a doctor who prepares reports on the classification of the need for care and examines her patients exclusively outside the home office and collects all the necessary findings there (on site), the qualitative focus is not in the home office, in which only work accompanying the activity - tasks are completed (>BFH judgment of January 23, 2003 - IV R 71/00, BStBl II 2004 p. 43).
- For an architect who, in addition to planning, is also entrusted with the execution of the buildings (construction supervision), this overall activity cannot be assigned to a specific focus of activity. In this case, the home office is not the focus of all operational and professional activities (>BFH judgment of June 26, 2003 - IV R 9/03, BStBl II 2004 p. 50).
- For teachers, the focus of their professional activity is usually not in the home office, because the defining characteristics of a teacher's job are teaching and these achievements are achieved in school or similar. (>BFH judgment of February 26, 2003 - VI R 125/01, BStBl II 2004 p. 72). Therefore, the expenses for the home office or the annual flat rate according to Section 4 Paragraph 5 Sentence 1 Number 6b and Section 9 Paragraph 5 Sentence 1 EStG are not deductible even if the majority of the working time is spent preparing for and following up on lessons and this activity is carried out in the home office. Even for a university teacher, the home office is generally not the focus of professional activity (>BFH ruling of October 27, 2011 - VI R 71/10, BStBl II 2012 p. 234).
- For a judge, the focus of his professional activity is in the court (>BFH ruling of December 8, 2011 - VI R 13/11, BStBl II 2012 p. 236).

6. Using the home office to generate various types of income

17 If a taxpayer carries out several business and professional activities side by side and the home office is the center of the entire business and professional activity, the expenses for the home office or the optional annual flat rate used are to be allocated to the activities carried out there in accordance with the scope of use . This is the focus of individual activities

Page 11 outside the home office, the deduction of the proportionate expenses or the annual flat rate is also permitted for these activities. There is no objection if the taxpayer foregoes apportioning the expenses or the annual flat rate between the various activities and allocates them to one activity.

18 A multiplication of the annual flat rate according to the number of people working at home Activities carried out in the room are excluded.

Example A uses the home office 60% for employment and 40% for secondary commercial activity. The center of all operational and professional activities lies in the home office. A foregoes determining the actual total expenses and instead deducts the annual flat rate. The deduction requirements apply for the entire calendar year. The annual flat rate of €1,260 is to be divided according to the usage ratio. The employment accounts for 60% of €1,260 = €756, which can be deducted as business expenses. The commercial secondary activity accounts for 40% of €1,260 = €504, which can be deducted as business expenses. For reasons of simplification, A can also deduct the annual flat rate in total for the non-self-employed activity or the commercial secondary activity.

7. Use of the home office by several taxpayers

19 Use by several people, such as: B. Spouses share a home office, the requirements of Section 4 Paragraph 5 Sentence 1 Number 6b Sentence 2 EStG must be checked in relation to the individual taxable person (>BFH judgments of December 15, 2016 - VI R 53/12, BStBl II 2017 p. 938 and VI R 86/13, BStBl II 2017 p. 941). If these requirements are met, everyone who uses the home office can deduct the expenses that they have borne or that are attributable to them using the shortened payment method because a third party fulfills the debt of the user.

When paying from a joint account, the property-related expenses (e.g. deduction for wear and tear, interest on debts) can be deducted by the user as operating expenses or advertising costs if they are owed by the user (>BFH ruling of December 6, 2017 - VI R 41/15, BStBl II 2018 p. 355). The same applies to rent payments for a jointly rented apartment (>BFH ruling of December 15, 2016 - VI R 86/13, BStBl II 2017 p. 941), regardless of whether it concerns spouses, life partners or non-marital partnerships. The usage-related expenses (e.g. for energy, water and cleaning) must be taken into account in full if they relate to the use of the home office.

Page 12 Example 1

A and B each use a home office together at 50% (time usage share). Only for A, the home office is the center of all business and professional activities. The total expenses amount to €4,000 and are borne according to the usage share.

A can deduct €2,000 as business expenses or advertising costs. B cannot deduct any expenses for a home office for the business or professional activity carried out in the home office. If the requirements of Section 4 Paragraph 5 Sentence 1 Number 6c EStG are met, B can deduct the daily flat rate of €6 per day as operating expenses or advertising costs.

Example 2

A and B use a home office together at 50% (temporal usage share) in the apartment rented by B. Only for A, the home office is the center of all business and professional activities. The total expenses are €3,000 for rent and €1,000 for usage-related expenses. They are paid from the joint account.

A can only deduct €500 (half of the usage-related expenses) or the annual flat rate as operating expenses or advertising costs.

The rental expenses are to be attributed to B as property-related expenses, since B owes the rent contractually. B cannot deduct any expenses for a home office for the business or professional activity carried out in the home office. If the requirements of Section 4 Paragraph 5 Sentence 1 Number 6c EStG are met, B can deduct the daily flat rate of €6 per day as operating expenses or advertising costs.

Variation on Example 2 The

rent is paid from A's account. Because A paid the rent himself, the property-related expenses of €1,500, based on his share of use of 50%, can also be deducted as operating expenses or advertising expenses.

20 The annual flat rate is to be applied to the individual. If this deduction is chosen, it will happen does not depend on how many people use the home office.

Example

A and B share a home office, which forms the center of all business and professional activity for both of them throughout the entire calendar year. You waive the calculation of the expenses incurred and can deduct the annual flat rate of €1,260 as operating expenses or advertising costs.

8. Not using the home office all year round as the center of all business and professional activities

21 If the usage conditions change within a financial or calendar year, only the expenses attributable to the period in which the home office is the focus of the entire business and professional activity can be deducted. Accordingly, the annual flat rate of €1,260 is reduced by one twelfth for each full calendar month in which the home office is not the focus of the entire business and professional activity. For the period in which the home office is not the focus of the entire business and professional activity, a deduction of the daily allowance may be possible in accordance with Section 4 Paragraph 5 Sentence 1 Number 6c EStG (see II.).

From

June 15th, example A has the center of all business and professional activities in the home office. A does not determine the actual total expenses.

Instead, A claims the annual flat rate. A can deduct the prorated annual flat rate for seven months (June to December), i.e. seven twelfths of €1,260 = €735.

For the period up to May 31st, A can deduct the daily flat rate if the deduction requirements are met.

22 Is the home office prepared for later use in which the central
If the point of the entire business and professional activity is in the home office and if the other deduction requirements are met, the expenses incurred must be taken into account accordingly (>BFH ruling of May 23, 2006 - VI R 21/03, BStBl II p. 600).

9. Use of a home office during times of non-employment

23 Expenses for a home office or the annual flat rate can be deducted in times of non-employment (e.g. unemployment, maternity leave, parental leave) in accordance with the rules on anticipated business expenses or business expenses if and to the extent that the taxpayer is entitled to deduct the expenses or the annual allowance. would also be entitled under the expected circumstances of the later operational or professional activity (>BFH judgment of December 2, 2005 - VI R 63/03, BStBl II 2006 p. 329).

10. Rental of a home office

24 Regarding the rental of office space to the employer, reference is made to the BMF letter dated April 18, 2019 (BStBl I p. 461) and for renting a home workspace to the client of a trader, reference is made to the BFH ruling of December 13, 2016 - XR 18/12 (BStBl II 2017 p. 450).

11. Special record keeping requirements

25 According to Section 4 Paragraph 7 EStG, expenses for a home office may only be taken into account when determining profit if they are specifically recorded. There are no concerns if the financing expenses that are proportional to the home office are determined by means of an estimate and a record is made based on the credit institution's annual statement after the end of the financial or calendar year. The same applies to consumption-related expenses such as: B. for water and energy. It is sufficient to record depreciation amounts once a year - shortly after the end of the calendar or financial year.

26 When deducting the annual flat rate, the special recording obligations in accordance with Section 4 apply Paragraph 7 EStG does not.

II. Deduction of the daily allowance

1st principle

27 The daily flat rate can be deducted for each calendar day on which the business or professional activity is carried out predominantly in the home and no first place of work outside the home is visited (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 1 EStG). In these cases, the deduction does not depend on whether the taxpayer has another job available. Working away from home on the same day is harmless if the taxpayer carries out his business or professional activity primarily at home on that day. "Predominantly" is a temporal determination. Afterwards, more than half of the actual daily working time must be carried out at home.

Example

1 The employed civil engineer B only travels to the construction site on one day (work away from home). B then does not carry out the office work at the employer's workplace (first job).

Page 15 location), but in the home. B can deduct both travel costs for the journey to the construction site and the daily allowance for this day if the work is predominantly carried out at home, i.e. the working time at home is more than half of the total working time for the day.

Example

2 V is an employed insurance broker. On one day, V first drives to a customer (one hour travel time) and advises him in his apartment (duration: two hours). V then drives home again (one hour drive). From there, V carries out further professional activities at home at his kitchen table (three hours). V has another workplace available in his employer's office (first place of work). V does not work primarily in his home. The travel time (a total of two hours there and back) and the consultation with the customer (two hours) together exceed the working time at home (three hours). V is not entitled to the daily allowance.

28 The daily flat rate is €6 per calendar day, up to a maximum of €1,260 in a financial or calendar year. It covers all expenses that the taxpayer incurs as a result of business or professional activities at home. This does not include expenses for work equipment (see Rn. 11).

29 The daily flat rate of €6 refers to the calendar day and increases even then not if various operational or professional activities are carried out on a calendar day, for which the deduction requirements are met. There is no objection if the taxpayer foregoes dividing the daily allowance between the various activities and allocates them altogether to one activity for which the conditions for deducting the daily allowance are met.

30 The calendar days on which the requirements for claiming the daily flat rate are met must be recorded by the taxpayer and substantiated in an appropriate form.

**2. There is no one else permanently responsible for the operational or professional activity
Workplace available**

**31 If there is no other permanent job available for the company or professional activity
If the taxpayer also works at home, a deduction of the daily allowance is also permitted if the activity is carried out away from home or at the first place of work on the same calendar day (§ 4 paragraph 5 sentence 1 number 6c sentence 2**

Page 16 EStG). In these cases, there is activity, but not a predominant activity.

in the home within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 1 EStG is required for the deduction of the daily flat rate.

Example

A is a teacher and teaches at school every day from 8:00 a.m. to 1:00 p.m. and in the afternoon from 3:00 p.m. to 6:00 p.m. he prepares and follows up lessons at home and corrects class work. There is no other workplace available at school for A to prepare for and follow up lessons. In addition to the travel allowance for travel to school (first place of work), A can also deduct the daily allowance for professional activity at home.

32 Another workplace within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 2 EStG is fundamentally

In addition, any workplace that is suitable for carrying out office work (>BFH ruling of August 7, 2003 - VI R 17/01, BStBl II 2004 p. 78). There are no further requirements regarding the nature of the workplace. In principle, the specific working conditions and circumstances, such as noise pollution or public traffic, are irrelevant (>BFH judgment of August 7, 2003 - VI R 162/00, BStBl II 2004 p. 83). The prerequisite is also not the existence of one's own, spatially closed work area or an individually assigned workstation, so that a workstation in an open-plan office or in the banking hall of a bank is another workstation within the meaning of the regulation (>BFH rulings of August 7, 2003 - VI R 17/01, BStBl II 2004 p. 78 and VI R 162/00, BStBl II 2004 p. 83). The provision of work equipment that is not available in the company or at the workplace provided by the employer is irrelevant. Whether another workplace is available must be assessed based on objective criteria. Subjective considerations by the taxpayer regarding the acceptability of the job are irrelevant.

33 Another workplace is available to the taxpayer if he or she can actually use it to the extent and in the manner specifically required. In principle, the workplace must be such that the taxpayer is not dependent on domestic activity (>BFH judgment of August 7, 2003 - VI R 17/01, BStBl II 2004 p. 78). Another workplace is also available if it is outside of normal working hours, e.g. B. is not accessible on weekends or during the holidays.

34 If a taxpayer only carries out one business or professional activity, another existing workplace must actually be able to be used for all areas of this employment. The taxpayer is dependent on activities at home even if he does a significant part of his business there.

Page 17 must carry out a professional or professional activity. However, it is not enough if he carries out work in his home that he could in principle also do at another workplace (>BFH ruling of August 7, 2003 - VI R 17/01, BStBl II 2004 p. 78) .

Examples (no other workstation available):

- **A teacher does not have a desk to prepare lessons at school.**

The respective classroom or teacher's room does not represent another workplace. • An employed or self-employed orchestra musician has no opportunity to practice in the concert hall. The home apartment is used for this. • No other workplace is available if the workplace provided to the taxpayer cannot be used due to a health risk (>BFH ruling of February 26, 2014 - VI R 11/12, BStBl II p. 674).

Examples (another existing workplace is not available to the extent and in the manner specifically required for all areas of employment): • An IT consultant performs on-call duty

in the home outside of regular working hours and cannot actually use the employer's workplace for this purpose (>BFH ruling of August 7, 2003 - VI R 41/98, BStBl II 2004 p. 80). • A primary school principal who is 50% exempt from teaching duties has an office of 11 square meters available for administrative work.

The duty room does not offer sufficient space to accommodate the items required for the preparation and follow-up of the lesson (>BFH ruling of August 7, 2003 - VI R 16/01, BStBl II 2004 p. 77).

35 Another workplace may not be available permanently (§ 4 paragraph 5 sentence 1 Number 6c sentence 2 EStG). When assessing the criterion of durability, a decision must be made based on a forecast for the expected duration of the respective activity and taking into account the circumstances of the individual case (e.g. facts, service or labor law agreements as well as instructions and agreements). another workplace is available. If the circumstances change (e.g. due to a change of job or changed service or labor law agreements), the facts must be reassessed from this point on and a new prognosis decision made. If the taxpayer does not regularly have another workplace available for days or weeks (e.g. pool workplace), a deduction of the daily flat rate is only permitted for days on which the taxpayer does not visit the (first) permanent establishment or first place of activity and spends most of his time working at home (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 1 EStG). It doesn't matter whether there is no other job available for the most part. In general, another workplace may not be available. If there is no other option for a period of at least one month

Page 18 If the workplace is available, there is no objection if for this period of time durability within the meaning of Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 2 EStG is assumed becomes.

Example

1 A is a teacher. The center of activity is at school (first place of work). A does the preparation and follow-up for lessons in his home office because A has no other workspace available at school for these activities. A can only deduct the expenses for work in his home office in the form of a daily flat rate (not the focus of his entire business and professional activity), but also for the days on which he worked before or after at school as his first place of work.

Example

2 B is an auditor. In the tax office (first place of work), B has a workstation in a shared office (desk sharing) available to him one day a week. B works either in the field, at home or at the first place of work. B does not have another job permanently available for his professional activity. B can deduct the daily allowance for calendar days on which B worked predominantly in his home and did not go to his first place of work.

36 If a taxpayer carries out several business or professional activities in parallel, the conditions for deducting the daily allowance must be checked on an activity-related basis. A daily flat rate can then be deducted if 1. the taxpayer worked predominantly in the home for the relevant activity and did not go to his first place of work (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 1 EStG) or 2. the taxpayer There is no other permanent job available in relation to the respective activity and the taxpayer carried out this activity in their home (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 2 EStG). The daily flat rate can only be deducted once per calendar day, even if you carry out several business or professional activities at home. For assignment to a type of income, see Rn. 29.

Example Z is a bus driver. In addition to his employment, Z works as a freelance writer; Z also generates income from rental and leasing. Z uses his home apartment for his self-employment and rental activities; Another workplace is not permanently available to Z for this purpose. Therefore, for every day on which Z carries out the writing activity and/or the activities caused by the rental

Page 19 of the home, a daily flat rate of 6 €, deduct a maximum of 1,260 € in the calendar year. The fact that Z is also employed on the same day is not detrimental to the deduction of the daily allowance for other activities. Z can allocate the daily flat rate proportionally to the income from freelance work and the income from renting and leasing or to one of these two types of income in full.

37 The taxpayer must specifically demonstrate that no other job is permanently available to him for the respective business or professional activity. The type of activity can provide clues for this. Additional evidence can be a corresponding certificate from the employer.

3. Double housekeeping

38 Can accommodation costs for a second home as part of a dual household management be deducted as business expenses in accordance with Section 4 Paragraph 5 Sentence 1 Number 6a EStG or as business expenses in accordance with Section 9 Paragraph 1 Sentence 3 Number 5 EStG or tax-free by the employer in accordance with Section 3 Number 13 or Number 16 EStG, a deduction of the daily flat rate is not permitted (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 3, Section 3c Paragraph 1). If, on the other hand, the business or professional activity is carried out at the location of one's own household, a deduction of the daily allowance is permitted provided that the other deduction requirements are met.

Example

H maintains a double household all year round for work reasons, so that H can deduct the necessary expenses for the second home at the location of his first place of work as advertising expenses. H works from home in his second home for 40 days and at his own home, the family residence, for 60 days. The accommodation costs at the location of the first place of work amount to a) €750 and b) €1,015 per month.

In case a), H can only deduct the daily allowance for the 60 days on which H predominantly worked in the family home. There is no deduction restriction for this. For the 40 days on which H worked in the home office of his household at the location of his first place of work, no daily flat rate may be deducted because the monthly accommodation costs of €750 are already included in full as business expenses in accordance with Section 9 Paragraph 1 Sentence 3 Number 5 EStG can be deducted.

In case b), H can also deduct the daily allowance for 40 days, as after deducting the accommodation costs for running the double household, a non-deductible expense remains. There is no further cap on the actual accommodation costs.

4. Relationship to the deduction of expenses for a home office or the annual flat rate

39 A deduction of the daily flat rate is not permitted for periods for which expenses or the annual flat rate for a home office are deducted in accordance with Section 4 Paragraph 5 Sentence 1 Number 6b EStG. If the deduction requirements according to Section 4 Paragraph 5 Sentence 1 Number 6b EStG are not met for a partial period, the deduction of the daily flat rate can be considered for this period (Section 4 Paragraph 5 Sentence 1 Number 6c Sentence 3 EStG).

5. Special record keeping requirements

40 When deducting the daily allowance, the special record-keeping obligations apply in accordance with Section 4 Paragraph 7 EStG does not.

III. Use of the home for training purposes

41 When determining the expenses for one's own vocational training in accordance with Section 10 Paragraph 1 Number 7 Sentence 4 EStG, the provisions of Section 4 Paragraph 5 Sentence 1 Numbers 6b and 6c EStG must be applied if the home is used for one's own initial vocational training or as part of a First degree course, which also provides initial training and does not take place as part of an employment relationship. However, initial training costs can only be deducted as special expenses up to a total of €6,000 (Section 10 Paragraph 1 Number 7 Sentence 1 EStG). If the home office is also used to generate income, numbers 17 and 18 must be applied accordingly when dividing expenses. If the daily allowance is deducted as operating expenses or business expenses for a business or professional activity in the home (Section 4 Paragraph 5 Sentence 1 Number 6c and Section 9 Paragraph 5 Sentence 1 EStG), no further deduction as special expenses is possible. For the allocation of the daily flat rate, paragraph 29 must be applied accordingly.

This document is being published in part one of the "Bundessteuerblatt". It is now available for a transitional period on the website of the Federal Ministry of Finance (<http://www.bundesfinanzministerium.de>).

