



# Rules and Regulation – What's moving the German prepaid market

in partnership with the German Prepaid Association **PVD** Prepaid  
Verband  
Deutschland

**IMA Berlin**  
**15th of June 2023**

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ANNERTON

**VON BEUST & COLL.**  
HAMBURG · BERLIN · BRÜSSEL · KÖLN

# Tax Free Benefits in Kind

Bearbeitungsstand: 08.05.2019 7:59 Uhr

## Referentenentwurf

des Bundesministeriums der Finanzen

Entwurf eines Gesetzes zur weiteren steuerlichen Förderung der Elektromobilität und zur Änderung weiterer steuerlicher Vorschriften

6. § 8 wird wie folgt geändert:

a) Dem Absatz 1 werden folgende Sätze angefügt:

„Zu den Einnahmen in Geld gehören auch zweckgebundene Geldleistungen, nachträgliche Kostenerstattungen, Geldsurrogate und andere Vorteile, die auf einen Geldbetrag lauten sowie die Beiträge oder Zuwendungen, die dazu dienen, einen Arbeitnehmer oder diesem nahestehende Personen für den Fall der Krankheit, des Unfalls, der Invalidität, des Alters, des Todes oder gegen andere Risiken bei einem Dritten mit einem eigenen unmittelbaren Rechtsanspruch abzusichern. Satz 2 gilt nicht bei Gutscheinen, die zum Bezug von Waren oder Dienstleistungen vom Aussteller des Gutscheins berechtigen.“

- Draft Annual Tax Law 2019: Proposed to change the Income Tax Act (EStG) and to limit the 44 Euro benefits in kind tax exemption to vouchers that can only be redeemed with the issuer
- Reasoning: new case law of the Federal Fiscal Court (Bundesfinanzhof, BFH). In this ruling, the BFH dealt with the question of the tax treatment (non-cash or cash benefit) of employer subsidies for private supplementary health insurance for its employees. In the reasons for the decision, but not in the guiding principles (obiter dictum), the BFH dealt with the distinction between vouchers and “cash cards” (Geldkarten).

# Tax Free Benefits in Kind

- Text had been amended during the parliamentary procedure
- Adopted text made changes to §8 para 1 of the Income Tax Act and introduced a cross-reference to the supervisory law

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„Zu den Einnahmen in Geld gehören auch zweckgebundene Geldleistungen, nachträgliche Kostenerstattungen, Geldsurrogate und andere Vorteile, die auf einen Geldbetrag lauten. Satz 2 gilt nicht bei Gutscheinen und Geldkarten, die ausschließlich zum Bezug von Waren oder Dienstleistungen berechtigen und die Kriterien des § 2 Absatz 1 Nummer 10 des Zahlungsdiensteaufsichtsgesetzes erfüllen.“

- Benefits in kind have to fulfil the criteria of §2 para 1 Nr 10 of the Payment Services Supervision Act → Transposition of the Limited Network Exclusion of PSD2
- Benefits in kind must be granted in addition to the regular salary

# Tax Free Benefits in Kind

- Law did not lead to legal certainty. Different interpretations led to uncertainties. Ministry of Finance published a Circular in April 2020 to specify the rules
- Some open questions regarding the application of the new rules remained. Both on the part of the industry and on the part of the tax offices
- BMF Circular was adapted to address different issues that needed clarification. Latest version published in March 2021



Bundesministerium  
der Finanzen

BETREFF **Abgrenzung zwischen Geldleistung und Sachbezug;  
Anwendung der Regelungen des § 8 Absatz 1 Satz 2 und 3 und Absatz 2 Satz 11  
zweiter Halbsatz EStG**

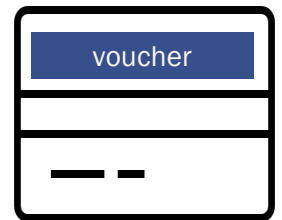
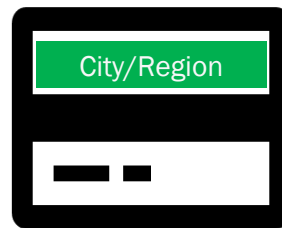
BEZUG **Erörterung in der Sitzung LSt I/2022 zu TOP 11**

GZ **IV C 5 - S 2334/19/10007 :007**

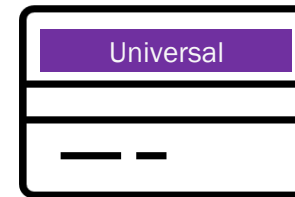
DOK **2022/0274667**  
(bei Antwort bitte GZ und DOK angeben)

# Tax Free Benefits in Kind

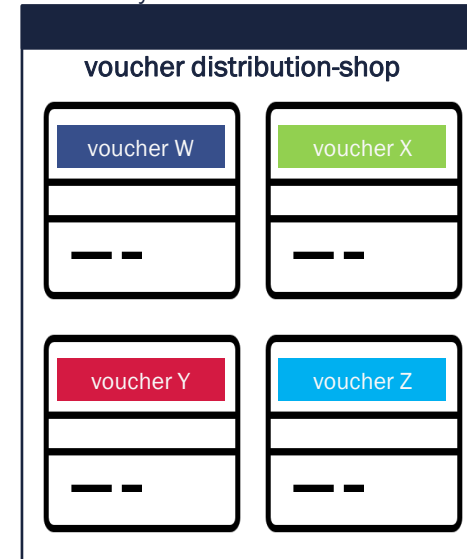
- Cockpit for tax free vouchers and debit cards according to the BMF Circular



single brand or  
limited range of products



Universal: a voucher that is exclusively or almost  
exclusively redeemable in other vouchers



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## Tax Free Benefits in Kind

- BMF Circular: No benefit in kind is a voucher or debit card in particular,
  - that can be redeemed in foreign currencies including crypto-currencies,
  - where the value of the voucher or debit card can be transferred to another voucher or debit card or to another brand (up to 1,00 Euro is harmless),
  - if the voucher or debit card has its own IBAN/bank account,
  - if the voucher or debit card enables a money transfer (e.g. like PayPal)



## Tax Free Benefits in Kind

- BMF Circular does not conclusively clarifies all questions.
- Is it harmful for the benefit in kind, if a voucher or debit card can be redeemed for another voucher or debit card?
- Is solely the merchant ID (of Mastercard or Visa) a sufficient technical restriction for the requirement of limited network?
- Is a universal voucher (exchange of a voucher exclusively or almost exclusively for other vouchers) a payroll-tax-exempted product? In practice, the tax authority shows the bias to refuse the benefit in kind in this case.
- Is the limitation to ZIP code districts sufficient for a limited network?
- Who must operate the internet store in case of an urban or regional limitation?
- Are combinations of tax benefits (in kind) within one product harmful for the tax exemption?

## Tax Free Benefits in Kind

- Travel and event cards/products: there are a lot of products with different legal structures. Thus, it must be carefully examined whether the product can be characterized as a benefit in kind
- Tax exemption allowance for benefits in kind is raised to 50 Euro per month as of January 1st, 2022
- Physical merchandise/promotion products are still benefits in kind and payroll tax exempted up to 10,00 Euro for each product. If the merchandise product consists of several products, the total value is decisive for the 10,00 Euro limit.
- Benefits in kind up to 10,000.00 Euro p.a. per individual can be solely taxed by the employer with a flat payroll tax rate of 30% (unchanged; sec. 37 b of the German income tax act)



## Tax Free Benefits in Kind

- No benefit in kind, but also a flat payroll tax rate of 25% applies for the employer (sec. 40 para. 2 Germ Income Tax Act):
  - Up to 156 Euro for the employee, 104 Euro for the partner in law and 52 Euro for each children for one recreation holiday p.a. (must be used for recreation purposes)
  - Any data processing devices such as laptop, internet access, if it is provided free of charge or discounted and in addition to the regular wage of the employees
- Public local transport ticket (sec. 3 no. 15 German income tax act) is income tax exempted whether the employer provides the ticket as benefit in kind or as a reimbursement
- All benefits must be granted in addition to the wages owed anyway and must not replace an increase of the wage (sec. 8 para. 4 German income tax act)

# E-Money Exemption

- Article 12 of the current Anti-Money Laundering Directive caters for the possibility to permit low-value, low-risk e-money products to be sold to and used by persons without requiring prior customer identification
- In a proposal for an Anti-Money Laundering Regulation, there was no such exemption possibility included
- In the legislative procedure, Parliament included references to retaining an e-money exemption'. Trilogue ongoing

*operation of limited transactions.*

3a. *By way of derogation from paragraph 1, based on an appropriate risk assessment which demonstrates a low risk, a supervisor ~~Member State~~ may allow obliged entities not to apply certain customer due diligence measures with respect to ~~specific payment instruments~~ electronic money that can be used only in a limited way, where all of the following risk-mitigating conditions are met:*

*a) the maximum amount stored does not exceed EUR 150;*

*b) the instruments can be used exclusively to purchase, ~~either in store or online,~~ goods or services in a single Member State, from the issuer, ~~either in the premises of the issuer or online,~~ or within a ~~limited~~ network of service providers under direct commercial agreement with a professional issuer. ~~The instruments should not be linked to a bank account, should not allow for balance top-ups and should not be exchangeable for cash.~~ (469, 475, 477, 478, 479)*

*Article 22: Regulatory technical standards on the information necessary for the performance of customer due diligence*

1. *By [2 years after the entry into force of this Regulation] AMLA shall develop draft regulatory technical standards and submit them to the Commission for adoption. Those draft regulatory technical standards shall specify:*
- (c) the type of exemptions that may apply to certain customer due diligence measures with respect to electronic money, on the basis of an appropriate risk assessment which demonstrates a low risk;*

# Outlook: New rules on payment services

- Revised PSD2 in summer to be presented by EU Commission. Possibility of changes to the Limited Network Exclusion
- Followed by legislative procedure. European Election in June 2024

Date of Commission meeting (dates tbc)	Possible items for oral procedure	President/VP Responsible	Other relevant events
28/06/2023	<p>Joint Communication on climate change, environmental degradation, and security and defence</p> <p>Single currency package</p> <ul style="list-style-type: none"><li>- Digital euro</li><li>- Regulation on the scope and effects of legal tender of euro banknotes and coins</li></ul> <p>Open finance and payments</p> <ul style="list-style-type: none"><li>- Open finance framework</li><li>- Revision of EU rules on payment services</li></ul>	<p>TIMMERMANS / BORRELL</p> <p>DOMBROVSKIS</p> <p>DOMBROVSKIS</p>	<p>29-30 June European Council</p> <p>Report of the European Fiscal Board on the euro area fiscal stance</p>

# Save the Date: Prepaid Kongress 2024 by PVD

prepaid.kongress <sup>#PK2024</sup>

## 9. PREPAID KONGRESS

*23. April 2024 / 09:15 – 17:30 Uhr*

*Prepaid-Produkte voraus! Regulatorik,  
Politik und Anwendungsfälle aus der  
Praxis*

PROGRAMM REFERENTEN TICKETS



Save the Date  
**23. April 2024**

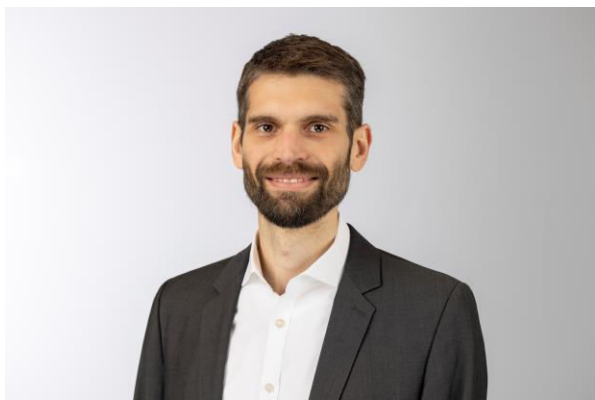
Trends, regulatorische Vorhaben der EU und aus Berlin, Best Practise, Impulsvorträge, Politik-Talk, Prepaid-Talks – alles rund um das Thema Prepaid. Inspirierende Einblicke in Erfolgskonzepte erfolgreicher Unternehmen, angeregte Diskussionen über aktuelle Prepaid-Themen, gesetzliche Vorhaben verständlich erklärt, das und mehr macht den Prepaid Kongress aus.

- Prepaid Kongress of the German Prepaid Association on 23rd April 2024
- Trends, regulation, best practice and more
- IMA member discount

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## Get in touch



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