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Fifth Act on the Promotion of Employee Capital Formation (Fünftes Vermögensbildungsgesetz - 5. VermBG)

5. VermBG

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Footnote

(+++ Text reference validity from: 1.1.1982
+++ (+++ For application see § 17 +++)
+++ The G is contained in the Act referred to in Art. 3 of the Unification Treaty.
according to annex I chap. VIII Sachg. L Sect. III No. 1 EinigVtr iVm
Art. 1 G v. 23.9.1990 II 885, 1070 to be applied from 1 January 1991.
Measures no longer applicable pursuant to Art. 1 No. 6 letter h G v.
21.1.2013 I 91 mWv 29.1.2013. +++)

§ 18 (F. 1975-01-15): Authorization executed by Dec. 30.9.1982 I 1369

§ 1 Personal scope

(1) The accumulation of assets by employees through agreed capital-forming benefits provided by employers shall be encouraged in accordance with the provisions of this Act.

(2) Employees within the meaning of this Act are blue- and white-collar workers, including those employed for the purpose of vocational training. Employees are also deemed to be those employed in homework.

(3) The provisions of this Act shall not apply

1. for capital-forming benefits of legal entities to members of the body appointed to legally represent the legal entity,
2. for capital-forming benefits paid by groups of persons to the persons appointed by law, the articles of association or the partnership agreement to represent the group of persons.

(4) The following provisions of this Act shall apply mutatis mutandis to civil servants, judges, professional soldiers and temporary soldiers.

§ 2 Capital-forming benefits, forms of investment

(1) Capital-forming benefits are cash benefits that the employer invests for the employee

1. as savings contributions of the employee on the basis of a savings contract on securities or other property interests (§ 4)
 - a) to acquire shares issued by the employer or admitted to the regulated market of a German stock exchange or included in the regulated unofficial market,
 - b) for the acquisition of convertible bonds issued by the employer or admitted to the regulated market of a German stock exchange or included in over-the-counter trading, as well as of participating bonds issued by the employer, but for the acquisition of registered bonds issued by the employer only if, at the employer's expense, the employee's claims under the bond are guaranteed by a credit institution

or are secured by an insurance company under private law and the credit institution or insurance company is authorized to conduct business within the scope of this Act,

- c) for the acquisition of units in UCITS investment funds and in open-ended public AIFs established as investment funds pursuant to sections 218 and 219 of the German Capital Investment Code (Kapitalanlagegesetzbuch) as well as units in open-ended EU investment funds and open-ended foreign AIFs established pursuant to the Kapitalanlagegesetzbuch (German Investment Code) may be distributed if, according to the annual report for the fiscal year before last, which corresponds to the calendar year of the conclusion of the contract within the meaning of § 4 or § 5 preceding, the value of the shares in this investment fund does not fall below 60 percent of the value of this investment fund; for newly launched investment funds, the first annual report or the first semi-annual report after the launch of the investment fund shall be authoritative for the first and second financial year,
 - d) (omitted)
 - e) (omitted)
 - f) to acquire profit participation certificates issued by the employer as securities or admitted to the regulated market of a German stock exchange or included in over-the-counter trading and issued by companies with their registered office and management within the scope of this Act that are not credit institutions, if the profit participation certificates confer the right to participate in the profits of a company and the employee is not to be regarded as a co-entrepreneur within the meaning of Section 15 (1) sentence 1 no. 2 of the German Income Tax Act,
 - g) for the establishment or acquisition of a credit balance with a cooperative having its registered office and management within the area of application of this Act; if the cooperative is not the employer, the investment of capital-forming benefits shall require that the cooperative is either a credit institution or a building or housing cooperative within the meaning of Section 2 (2). 1 No. 2 of the Housing Construction Premium Act, which at the time of the establishment or acquisition of the business assets has been entered in the register of cooperatives for at least three years without any material change in its business purpose and has not been dissolved, or has its registered office and management in the territory referred to in Article 3 of the Unification Treaty and either existed there on July 1, 1990 as a workers' housing cooperative, non-profit housing cooperative or other housing cooperative or acquired a not insignificant portion of apartments from the stock of such a construction or housing cooperative,
 - h) to take over a capital contribution or to acquire a share in a limited liability company with its registered office and management within the scope of this Act, if the company is the employer's enterprise,
 - i) to establish or acquire a participation as a silent partner within the meaning of Section 230 of the German Commercial Code in the employer's company with its registered office and management in the scope of this Act if the employee is not to be regarded as a co-entrepreneur within the meaning of Section 15 (1) No. 2 of the Income Tax Act,
 - k) to establish or acquire a loan claim against the employer if, at the employer's expense, the employee's claims under the loan agreement are guaranteed by a credit institution or secured by an insurance company under private law and the credit institution or insurance company is authorized to conduct business within the scope of this Act,
 - l) for the establishment or acquisition of a profit participation right in the employer's company with its registered office and management within the scope of this Act, if the right to the profits of this company, the employee is not to be regarded as a co-entrepreneur within the meaning of Section 15 (1) no. 2 of the German Income Tax Act and no profit participation certificate within the meaning of letter f is issued in respect of the profit participation right,
2. as expenses incurred by the employee on the basis of a securities purchase agreement (§ 5),
 3. as expenses incurred by the employee on the basis of a participation agreement (§ 6) or a participation purchase agreement (§ 7),
 4. as expenses of the employee under the provisions of the Housing Construction Premium Act; the requirements for the granting of a premium under the Housing Construction Premium Act need not be met; the investment of capital-forming benefits as expenses under section 2(1)(2) of the Housing Construction Premium Act for the first acquisition of shares in construction and

housing cooperatives requires that the requirements of the second half of paragraph 1(g) are met,

5. as expenses of the employee
 - a) for the construction, acquisition, extension or expansion of a residential building or condominium located in Germany,
 - b) for the acquisition of a permanent right of residence within the meaning of the German Condominium Act (Wohnungseigentumsgesetz) in an apartment located in Germany,
 - c) for the acquisition of a plot of land located in the country for the purpose of housing construction or
 - d) to fulfill obligations entered into in connection with the projects referred to in subparagraphs (a) through (c),unless the investment is based on a concept prefabricated by a third party under which the employee can invest capital-forming benefits together with more than 15 other employees; the subsidization of expenses under letters a to c requires that they be used directly for the projects specified therein,
6. as savings contributions of the employee on the basis of a savings contract (§ 8),
7. as contributions made by the employee on the basis of an endowment insurance contract (§ 9),
8. as expenses incurred by an employee who has terminated membership in a cooperative or limited liability company in accordance with section 18(2) or (3) in order to meet obligations arising from membership which continue or arise after December 31, 1994.

(2) Shares, convertible bonds, participating bonds or profit participation certificates of a company which is affiliated with the employer's company as the controlling company within the meaning of Section 18 (1) of the German Stock Corporation Act are shares, convertible bonds, profit participation bonds or profit participation certificates within the meaning of subsection 1 no. 1 letters a, b or f issued by the employer. A credit balance with a cooperative with its registered office and management within the scope of this Act which is affiliated with the employer's enterprise as the controlling enterprise within the meaning of Section 18 (1) of the German Stock Corporation Act (AktG) shall be equivalent to a business assets within the meaning of subsection 1, no. 1, letter g with a cooperative which is the employer's enterprise. A capital contribution or a share in a limited liability company with its registered office and management within the scope of this Act which, within the meaning of Section 18 (1) of the Stock Corporation Act as the controlling enterprise is connected with the employer's enterprise shall be deemed equivalent to a capital contribution or a share within the meaning of subsection (1) no. 1 letter h in a company which is the employer's enterprise. A participation as a silent partner in an enterprise with its registered office and management within the scope of this Act which is affiliated with the employer's enterprise as a controlling enterprise within the meaning of Section 18 (1) of the German Stock Corporation Act or which has a shareholding in the employer's enterprise under company law on the basis of a contract with the employer shall be equivalent to a participation as a silent partner within the meaning of subsection 1 no. 1 letter i equal. A loan claim against a company with its registered office and management within the scope of this Act which is affiliated with the employer's company as the controlling company within the meaning of Section 18 (1) of the German Stock Corporation Act, or a profit participation right in such a company, shall be deemed equivalent to a loan claim or a profit participation right within the meaning of subsection 1 no. 1 letter k or l.

(3) The investment of capital-forming benefits in profit participation bonds within the meaning of paragraph 1 no. 1 letter b and paragraph 2 sentence 1, in which a profit-independent minimum interest rate is promised in addition to the profit-dependent interest rate, requires that

1. the issuer declares in the profit participation bond that the non-profit minimum interest rate will normally not exceed half of the total interest rate, or
2. the minimum return, irrespective of profits, at the time of issue of the participating bond does not exceed half of the issue yield of fixed-interest securities shown in the monthly reports of the Deutsche Bundesbank for the fourth last calendar month preceding the calendar month of issue.

(4) The investment of capital-forming benefits in profit participation certificates and profit participation rights within the meaning of subsection 1 no. 1 letters f and l and subsection 2 sentences 1 and 5 requires that a repayment at the nominal value of is not promised; if, in addition to the right to profits, a minimum return independent of profits is promised, paragraph 3 shall apply mutatis mutandis.

(5) The investment of capital-forming benefits in accordance with subsection 1 no. 1 letters f, i to l, subsection 2 sentences 1, 4 and 5 and subsection 4 in a cooperative with its registered office and management within the scope of this Act shall not be precluded by section 19 and a determination by the Articles of Association in accordance with section 20 of the Cooperatives Act.

(5a) Prior to the investment of capital-forming benefits in the employer's own company, the employer shall, in cooperation with the employee, take precautions to safeguard the invested capital-forming benefits in the event of the employer's insolvency occurring during the vesting period. The Federal Ministry of Labor and Social Affairs shall report to the legislative bodies by June 30, 2002 on the arrangements made pursuant to sentence 1.

(6) Capital-forming benefits are taxable income within the meaning of the Income Tax Act and income, earnings or remuneration (remuneration for work) within the meaning of social insurance and the Third Book of the Social Code. If the salary remaining after deduction of the capital-forming benefit is not sufficient to cover the taxes, social security contributions and contributions to the Federal Employment Agency to be withheld, the employee shall pay the employer the amount required to cover this.

(7) Capital-forming benefits are part of wages or salary under labor law. The entitlement to capital-forming benefits is not transferable.

Footnote

(+++ § 2 para. 1 no. 1 F. 2013-12-18: For application see § 17 para. 15 sentence 1 +++)
(+++ § 2 par. 1 no. 5 F. 2011-12-07: For application see § 17 par. 12 F. 2011-12-07 +++)

§ 3 Capital-forming benefits for dependents, transfer by employer, Labeling, confirmation and notification requirements

(1) Capital-forming benefits can also be invested

1. in favor of the employee's spouse or life partner who is not permanently separated,
2. for the benefit of children referred to in Section 32(1) of the Income Tax Act who had not reached the age of 17 at the beginning of the relevant calendar year or who were born alive in that calendar year, or
3. for the benefit of the employee's parents or one of the employee's parents if the employee, as a child, meets the requirements of number 2.

This shall not apply to the investment of capital-forming benefits on the basis of contracts pursuant to sections 5 to 7.

(2) The employer shall transfer the capital-forming benefits for the employee directly to the company or institution where they are to be invested. In doing so, the employer shall identify the capital-forming benefits to the enterprise or institution. The enterprise or institution shall identify the capital-forming benefits invested in accordance with § 2, paragraph 1, nos. 1 to 5, paragraphs 2 to 4, and the manner in which they are invested. If a capital-forming benefit cannot meet or no longer meets the requirements of § 2 paras. 1 to 4, the enterprise or institution shall notify the employer thereof in writing without delay. Sentences 1 to 4 shall not apply to the investment of capital-forming benefits on the basis of contracts under sections 5, 6(1) and 7(1) with the employer.

(3) For an investment chosen by the employee in accordance with Section 2, Paragraph 1, No. 5, the employer shall, at the employee's request, transfer the capital-forming benefits to the employee if the employee has provided the employer with written confirmation from his creditor that the investment meets the requirements of Section 2, Paragraph 1, No. 5; Paragraph 2 shall not apply in this case. The employer shall not be required to verify the accuracy of the confirmation.

(4) (omitted)

Footnote

(+++ Section 3 (1) sentence 1 no. 1 F. 2013-06-26: For application see § 17 para. 13 sentence 1 F. 2013-06-26 +++)

§ 4 Savings contract for securities or other property interests

(1) A savings contract for securities or other asset participations within the meaning of Section 2(1) No. 1 is a savings contract with a credit institution or a capital management company in which the employee undertakes to pay as savings contributions for the acquisition of securities within the meaning of Section 2(1) No. 1 letters a to f, subsection 2, first sentence, subsections 3 and 4, or for the establishment or acquisition of rights within the meaning of section 2, subsection 1, no. 1 letters g to l, subsection 2, sentences 2 to 5, and subsection 4, once or for a period of six years since

The employee is entitled to have capital-forming benefits paid in on an ongoing basis or to have other amounts paid in.

(2) The promotion of capital-forming benefits invested on the basis of a contract pursuant to paragraph 1 shall be subject to the following conditions

1. the benefits of a calendar year, subject to paragraph 3, are used at the latest by the end of the following calendar year to acquire the securities or to establish or acquire the rights and are fixed until used, and
2. the securities acquired with the benefits are fixed immediately after their acquisition until the expiry of a period of seven years (vesting period) and the securities or the rights created or acquired with the benefits are not disposed of by repayment, assignment, lending or in any other way until the expiry of the vesting period.

The lock-up period applies to all capital-forming benefits invested on the basis of the contract and begins on January 1 of the calendar year in which the contract was concluded. The date of conclusion of the contract is deemed to be the date on which the capital-forming benefit, or the first capital-forming benefit in the case of contracts for ongoing payments, is received by the credit institution or the capital management company.

(3) Capital-forming benefits that have not been used by the expiry of the time limit under paragraph 2 no. 1 shall be deemed to have been used in good time if they do not exceed a total of 150 euros at the end of a calendar year and are used or fixed by the expiry of the time limit under paragraph 2.

(4) By way of derogation from paragraph 2, an early disposal is harmless if

1. the employee or his or her spouse or life partner who is not permanently separated from him or her has died or become completely incapacitated for work after conclusion of the contract,
2. the employee has married or entered into a civil partnership after conclusion of the contract but before the early disposal and, at the time of the early disposal, at least two years have passed since the beginning of the vesting period,
3. the employee has become unemployed after conclusion of the contract and the unemployment has existed continuously for at least one year and still exists at the time of the early disposal,
4. the employee uses the proceeds within the following three months directly for his own further training or for that of his spouse or life partner who is not permanently separated from him and the measure is carried out outside the enterprise to which he or the spouse or life partner belongs and knowledge and skills are imparted which serve professional advancement and go beyond job-related adjustment further training; for capital-forming benefits which the employer pays for the employee in accordance with Section 2 (1) No. 1 letter a, b, f to l and which establish rights in the employer's enterprise, this shall only apply with the consent of the employer; in the case of investments treated as equivalent pursuant to Section 2 (2), this shall only apply with the consent of the enterprise which is affiliated with the employer's enterprise as the controlling enterprise within the meaning of Section 18 (1) of the German Stock Corporation Act,
5. after conclusion of the contract, the employee has taken up gainful employment, which must be reported to the municipality in accordance with Section 138 (1) of the Tax Code, while giving up gainful employment, or
6. specified securities are sold and the proceeds are reused by the end of the calendar month following the calendar month of the sale to acquire securities specified in paragraph 1; the proceeds not reused by the end of the calendar month following the sale shall be deemed to have been reused in a timely manner if they do not exceed a total of 150 euros at the end of a calendar month.

(5) It is also irrelevant if the rights and obligations of the credit institution or the capital management company under the savings agreement are replaced by another credit institution or another capital management company by way of a legal transaction during the term of the agreement.

(6) If neither capital-forming benefits nor other amounts are paid into a contract for capital-forming benefits to be paid in on an ongoing basis in a calendar year following the calendar year in which the contract was concluded, the contract is interrupted and cannot be continued. The same applies if at least all payments made in a calendar year are repaid or the repayment claims under the contract are assigned or pledged.

Footnote

(+++ § 4 par. 4 no. 1 and 2 F. 2013-06-26: For application see § 17 para. 13 sentence 2 F. 2013-06-26 +++)
(+++ § 4 para. 4 no. 4 F. 2013-12-18: For application see § 17 para. 15 sentence 2 F. 2013-12-18 +++)

§ 5 Securities Purchase Agreement

(1) A securities purchase agreement within the meaning of Section 2(1)(2) is a purchase agreement between the employee and the employer for the acquisition by the employee of securities within the meaning of Section 2(1)(1)(a) to (f), (2) first sentence, (3) and (4) with the agreement to offset the purchase price owed by the employee against capital-forming benefits or to pay it with other amounts.

(2) The promotion of capital-forming benefits invested on the basis of a contract pursuant to paragraph 1 shall be subject to the following conditions

1. the securities are acquired with the benefits of a calendar year at the latest by the end of the following calendar year and
2. the securities acquired with the benefits are fixed immediately after their acquisition until the expiry of a period of six years (lock-up period) and the securities are not disposed of by repayment, assignment, lending or in any other way until the expiry of the lock-up period; the lock-up period shall commence on January 1 of the calendar year in which the security was acquired; section 4 (4) nos. 1 to 5 shall apply mutatis mutandis.

§ 6 Participation agreement

(1) A participation agreement within the meaning of Section 2(1)(3) is an agreement between the employee and the employer on the establishment of rights within the meaning of Section 2(1)(1)(g) to (l) and (4) for the employee in the employer's enterprise with an agreement to set off the sum of money owed by the employee for the establishment against capital-forming benefits or to pay it with other amounts.

(2) A participation agreement within the meaning of Section 2 (1) No. 3 is also an agreement between the employee and

1. an enterprise which is affiliated with the employer's enterprise in accordance with section 2(2) sentences 2 to 5 or has an interest in such enterprise in accordance with section 2(2) sentence 4, on the creation of rights within the meaning of section 2(1) no. 1 letters g to l, (2) sentences 2 to 5 and (4) for the employee in such enterprise, or
2. of a cooperative with its registered office and management within the scope of this Act, which is a credit institution or a building or housing cooperative meeting the requirements of Section 2 (1) no. 1 letter g second half-sentence, on the establishment of a credit balance for the employee with this cooperative

with the agreement to have the sum of money owed by the employee for the establishment of the rights or the business credit paid with capital-forming benefits or paid with other amounts.

(3) The promotion of capital-forming benefits invested on the basis of a contract pursuant to paragraph 1 or 2 shall be subject to the following conditions

1. the rights are established with the benefits of a calendar year at the latest by the end of the following calendar year and
2. the rights conferred by the benefits are not disposed of by way of repayment, assignment, loan or otherwise until the expiry of a period of six years (vesting period); the vesting period shall commence on January 1 of the calendar year in which the right was conferred; Section 4 (4) nos. 1 to 5 shall apply mutatis mutandis.

§ 7 Participation purchase agreement

(1) A participation purchase agreement within the meaning of section 2(1)(3) is a purchase agreement between the employee and the employer for the acquisition by the employee of rights within the meaning of section 2(1)(1)(g) to (l), (2) sentences 2 to 5 and (4) with the agreement to set off the purchase price owed by the employee against capital-forming benefits or to pay it with other amounts.

(2) A participation purchase agreement within the meaning of section 2(1)(3) shall also be a purchase agreement between the employee and a limited liability company, which is affiliated with the employer's enterprise pursuant to section 2(2)(3), for the acquisition of a share within the meaning of section 2(1)(1) letter h in this company by the employee with the agreement to have the purchase price owed by the employee paid with capital-forming benefits or paid with other amounts.

(3) Section 6(3) shall apply mutatis mutandis to the promotion of capital-forming benefits invested on the basis of a contract under subsection (1) or (2).

§ 8 Savings contract

(1) A savings agreement within the meaning of Section 2(1)(6) is a savings agreement between the employee and a credit institution in which the agreements referred to in paragraphs 2 to 5, but at least the agreements referred to in paragraphs 2 and 3, are made.

(2) The employee is obliged,

1. to have capital-forming benefits paid in as savings contributions or to have other amounts paid in on an ongoing basis, but at least once per calendar year, for a period of six years since the contract was concluded, and
2. to deposit the paid-in capital-forming benefits with the credit institution until the expiry of a period of seven years (lock-up period) and neither to assign nor to lend the repayment claims arising from the contract.

The time of conclusion of the contract and the beginning of the blocking period shall be determined in accordance with the provisions of Section 4 (2) sentences 2 and 3.

(3) Notwithstanding the agreement referred to in subsection 2, sentence 1, no. 2, the employee shall be entitled to early disposal if one of the conditions referred to in section 4, subsection 4, nos. 1 to 5 is met.

(4) Notwithstanding the agreement referred to in subsection 2, sentence 1, no. 2, the employee shall also be entitled, before the end of the vesting period, to acquire with paid-in capital-forming benefits

1. Securities within the meaning of Section 2 (1) no. 1 letters a to f, (2) sentence 1, (3) and (4),
2. Bonds issued by the Federal Republic, the Länder, the municipalities, other corporations under public law, the employer, a company affiliated with the employer's company as the controlling company within the meaning of Section 18 (1) of the German Stock Corporation Act (AktG), or issued by a credit institution with its registered office and management within the scope of this Act, but registered bonds of the employer only if, at the employer's expense the employee's claims under the bond are guaranteed by a credit institution or secured by an insurance company under private law and the credit institution or insurance company is authorized to conduct business within the scope of this Act,
3. profit participation certificates issued as securities by a credit institution with its registered office and management within the scope of this Act which is not the employer, if the right to the profits of the credit institution is associated with the profit participation certificates, the employee is not to be regarded as a co-entrepreneur within the meaning of Section 15 (1) No. 2 of the Income Tax Act and the requirements of Section 2 (4) are met,
4. Bond receivables that are recorded in a federal or state debt register,
5. units in an investment fund issued by capital management companies within the meaning of the Kapitalanlagegesetzbuch (German Investment Code) and not falling within the scope of § 2 (1) no. 1 letter c, or
6. Units in open-ended EU investment funds and foreign AIFs that may be marketed under the German Investment Code.

Until the expiry of the blocking period, the employee shall be obliged to deposit the securities acquired in accordance with sentence 1 with the credit institution with which the savings agreement has been concluded and not to dispose of the securities; this obligation shall not apply if one of the conditions specified in Section 4 para. 4 nos. 1 to 5 is met.

(5) Notwithstanding the agreement referred to in paragraph 2, sentence 1, number 2, the employee shall also be entitled to demand the transfer of paid-in capital-forming benefits to a baupar contract concluded by him or his spouse or life partner who is not permanently separated before the expiry of the retention period, if neither the payment of the baupar sum has been commenced nor the amounts transferred have been repaid in whole or in part prior to the expiry of the blocking period, nor claims under the baupar contract have been assigned or pledged, or if such early disposal is permitted pursuant to section 2(3) sentence 2 numbers 1 and 2 of the Housing Construction Premium Act (Wohnungsbau-Prämiengesetz) in the version promulgated on 30. October 1997 (BGBl. I p. 2678), as last amended by Article 7 of the Act of April 5, 2011 (BGBl. I p. 554) has been amended, as amended from time to time, is harmless. Sentence 1 applies to home savings contracts concluded before January 1, 2009 and after December 31, 2008.

Footnote

(+++ Section 8 (5) sentence 1 F. 2013-06-26: For application see § 17 para. 13 sentence 2 F. 2013-06-26 +++)

§ 9 Endowment insurance contract

(1) An endowment insurance contract within the meaning of Section 2 (1) No. 7 is a contract for endowment insurance on survival and death in return for regular premiums, which is concluded for a period of at least twelve years and is concluded with the agreements referred to in paragraphs 2 to 5 between the employee and an insurance company authorized to do business within the scope of this Act.

(2) The employee is obliged to have capital-forming benefits paid in as insurance contributions or to pay in other amounts.

(3) The insurance premiums do not include any shares for additional benefits such as for accident, disability or illness.

(4) The insurance contract provides that, already from the beginning of the contract, a non-reducible portion of at least 50 percent of the premium paid is refunded as a surrender value (§ 169 of the Insurance Contract Act) or is used as the basis for calculating the premium-free insurance benefit (§ 165 of the Insurance Contract Act).

(5) The profit shares are used

1. to increase the insurance benefit or
2. at the employee's request, for offsetting against contributions due if the employee has become unemployed after conclusion of the contract and the unemployment has been continuous for at least one year and still exists at the time of offsetting.

§ 10 Agreement on additional capital-forming benefits

(1) Capital-forming benefits may be agreed in contracts with employees, in works agreements, in collective agreements or in binding determinations (Section 19 of the Home Work Act).

(2) to (4) (omitted)

(5) The employer may offset against collectively agreed capital-forming benefits the company social benefits which have already been provided to the employee in the calendar year as capital-forming benefits.

§ 11 Capital investment of parts of wages and salaries

(1) Upon written request of the employee, the employer shall conclude an agreement on the capital formation of parts of the employee's wages.

(2) Capital-invested portions of wages and salaries are also capital-invested benefits within the meaning of this Act.

(3) The employer shall be obliged to conclude an agreement pursuant to paragraph 1, according to which the parts of the salary shall not be invested and transferred together with other capital-forming benefits for the employee, only if the employee requests the investment of parts of the salary in monthly amounts of at least 13 euros, or in quarterly amounts of at least 39 euros, or only once in a calendar year in an amount of at least 39 euros. In the case of investment in monthly amounts during the calendar year, the employee may change the type of capital-forming investment and the company or institution with which it is to be made only with the employer's consent.

(4) The employer may determine a date in the calendar year on which the employees of the establishment or part of the establishment may demand the one-time investment of parts of the wages pursuant to paragraph 3. The determination of this date shall be subject to the co-determination of the works council or the competent staff representative body; the procedure prescribed for co-determination in social matters shall be observed. The date determined in accordance with sentence 1 shall be announced to the employees again in each calendar year in an appropriate form. On a date other than that determined in accordance with sentence 1, the employee may request a one-time investment in accordance with paragraph 3 only

1. of parts of the wages earned in the last wage payment period of the calendar year, or
2. of parts of special benefits paid in connection with Christmas or the end of the year.

(5) Once in each calendar year, the employee may request the employer in writing to terminate, limit or extend the agreement on capital formation of parts of wages. In case of cancellation, the employer shall not be obliged to conclude a new agreement on capital accumulation of parts of wages in the same calendar year.

(6) Collective agreements or works agreements may deviate from paragraphs 3 to 5.

§ 12 Free choice of the plant

Capital-forming benefits shall only be subsidized in accordance with the provisions of this Act if the employee is free to choose the type of capital-forming investment and the company or institution with which it is to be made. However, the fact that a collective agreement restricts the investment to the forms specified in § 2(1)(1) to (5) and (2) to (4) shall not preclude the provision of a subsidy. An investment in the employer's enterprise in accordance with Section 2(1)(1)(g) to (l) and (4) shall be permissible only with the employer's consent.

§ 13 Entitlement to employee savings allowance

(1) The employee shall be entitled to an employee savings allowance pursuant to paragraph 2 if he or she consents to data transmission to the enterprise, the institution or the creditor referred to in § 3 paragraph 3 pursuant to has consented in accordance with Section 15 (1) sentences 2 and 3 and his income does not exceed the following limits:

1. in the case of capital-forming benefits invested in accordance with section 2(1) nos. 1 to 3, (2) to (4), the income limit of EUR 20,000 or, in the case of joint assessment in accordance with section 26b of the Income Tax Act, EUR 40,000, or
2. in the case of capital-forming benefits invested in accordance with section 2(1) nos. 4 and 5, the income limit of EUR 17,900 or, in the case of joint assessment in accordance with section 26b of the Income Tax Act, EUR 35,800.

The taxable income pursuant to Section 2 (5) of the German Income Tax Act in the calendar year in which the capital-forming benefits were invested is decisive.

(2) The employee savings allowance amounts to 20 percent of the capital-forming benefits invested in accordance with Section 2 (1) numbers 1 to 3, (2) to (4), provided they do not exceed 400 euros in a calendar year, and 9 percent of the capital-forming benefits invested in accordance with Section 2 (1) numbers 4 and 5, provided they do not exceed 470 euros in a calendar year.

(3) The employee savings allowance is neither considered taxable income within the meaning of the Income Tax Act nor income, earnings or remuneration (remuneration for work) within the meaning of the

social insurance and the Third Book of the Social Security Code; it is not considered a component of wages or salary under labor law. The entitlement to employee savings allowance is not transferable.

(4) The entitlement to the employee savings allowance arises at the end of the calendar year in which the capital-forming benefits were invested.

(5) Entitlement to the employee savings allowance shall cease retroactively if the deadlines specified in sections 4 to 7 or, in the case of an investment pursuant to section 2(1) no. 4, the requirements specified in section 2(1) nos. 3 and 4 and subsection (3) sentence 1 of the Housing Construction Premium Act are not met. Sentence 1 shall apply to home savings contracts concluded before January 1, 2009 and after December 31, 2008. The entitlement shall not lapse if the lock-up period is not complied with because

1. the employee has accepted the exchange or settlement offer of an issuer of securities or securities have been presented to the issuer for redemption following a draw or termination by the issuer,
2. the securities or rights within the meaning of section 2 (1) no. 1, (2) to (4) acquired or created with the capital-forming benefits have become worthless without the employee's involvement, or
3. the employee on capital-forming benefits invested in accordance with section 2(1) no. 4 in accordance with the § 4 (4) No. 4 in the amount of at least 30 euros.

Footnote

(+++ Sec. 13 F. 2013-06-26: For application, see Sec. 17 (14) F. 2013-06-26 +++)

§ Section 14 Determination of the Employee Savings Allowance, Application of the Tax Code, Authorization to issue ordinances, legal recourse

(1) The administration of the employee savings allowance is the responsibility of the tax offices. The employee savings allowance is paid from the income in wage tax.

(2) The provisions of the Fiscal Code applicable to tax refunds shall apply mutatis mutandis to the employee savings allowance. This does not apply to Section 163 of the Fiscal Code.

(3) The penal provisions of sections 370(1) to (4), 371, 375(1) and (2) shall apply to the employee savings allowance. 1 and section 376 and the provisions on fines in sections 378, 379 (1) and (4) and sections 383 and 384 of the German Fiscal Code shall apply mutatis mutandis. Sections 385 to 408 of the Fiscal Code shall apply mutatis mutandis to criminal proceedings for an offence under sentence 1 and for aiding and abetting a person who has committed such an offence, and sections 409 to 412 of the Fiscal Code shall apply mutatis mutandis to fine proceedings for an administrative offence under sentence 1.

(4) The employee savings allowance is determined upon application by the tax office responsible for taxing the employee according to income. The employee must submit the application using the officially prescribed form. The employee savings allowance is due

- a) with the expiry of the lock-up period prescribed for the form of investment under this Act,
- b) upon expiry of the lock-up and repayment periods specified in the Housing Construction Premium Act or in the Ordinance Implementing the Housing Construction Premium Act. In the case of home savings contracts, the lock-up and repayment periods specified in the first sentence of section 2(3) of the Housing Construction Premium Act apply, irrespective of whether the contract was concluded before January 1, 2009 or after December 31, 2008,
- c) with allocation of the building savings contract or
- d) in the cases of innocuous disposition.

(5) A notice of refusal to assess an employee savings allowance shall be revoked and the employee savings allowance shall be assessed retroactively if the income tax notice is amended after the notice of refusal was issued and it is thereby determined for the first time that the income limits of the § 13 (1) are fallen short of. In this case, the period for determining the employee savings allowance shall not end before the expiry of one year after notification of the amended tax assessment. Sentence 2 shall apply mutatis mutandis if the amended income tax assessment was not preceded by a notice of refusal to assess an employee savings allowance.

(6) If there is an entitlement to an employee savings allowance for expenses that constitute capital-forming benefits and the employee has applied for a housing construction premium for this in derogation of Section 1 sentence 2 number 1 of the Housing Construction Premium Act, the period for determining the employee savings allowance shall not end before the expiry of one year after notification of the change in the premium entitlement.

(7) The Federal Government shall be authorized, by ordinance with the consent of the Bundesrat, to regulate in more detail the procedure for determining and paying the employee savings allowance to the extent necessary to simplify the procedure. In doing so, it may also be stipulated that the employer, the enterprise, the institution or the creditor referred to in Section 3 (3) shall cooperate in the application and that the employee savings allowance shall be transferred to them for the benefit of the employee.

(8) In disputes under public law concerning the administrative acts of the tax authorities issued on the basis of this Act, recourse shall be had to the fiscal courts.

Footnote

(+++ § 14 par. 4 F 2013-06-26: For application see § 17 par. 14 F 2013-06-26 +++)

§ Sec. 15 Electronic capital formation certificate, ordinance authorizations, liability, Call information, external audit

(1) The enterprise, institution or creditor referred to in Section 3(3) shall transmit the following information to the tax authority responsible for taxing the employee on income in accordance with Section 93c of the Fiscal Code in addition to the data referred to in Section 93c(1) of the Fiscal Code (electronic capital formation certificate) if the employee has consented to the data transmission vis-à-vis the body required to notify the employee:

1. the respective annual amount of the capital-forming benefits invested in accordance with Section 2 (1) nos. 1 to 5, (2) to (4) and the manner in which they are invested,
2. the calendar year to which these capital-forming benefits are to be allocated, and
3. either the end of the lock-up period prescribed for the type of investment under this Act or, in the case of an investment under section 2(1)(4), the end of the lock-up and repayment periods specified in the Housing Construction Premium Act or in the Ordinance on the Implementation of the Housing Construction Premium Act. In the case of home loan and savings contracts, the lock-up and repayment periods specified in the first sentence of section 2(3) of the Housing Construction Premium Act shall be
Certify repayment deadlines regardless of whether the contract was entered into before January 1, 2009 or after December 31, 2008.

The consent pursuant to sentence 1 must be given no later than the end of the second calendar year following the calendar year in which the capital-forming benefits are invested. In doing so, the employee must inform the party required to notify of the identification number. If the consent is given after the end of the calendar year in which the capital-forming benefits were invested, the data must be submitted by the end of the following calendar quarter.

(1a) In the cases referred to in subsection (1), the tax authority responsible for taxing the entity subject to notification on the basis of income shall be responsible for applying section 72a(4) and section 93c(4) sentence 1 of the Tax Code. The data communicated pursuant to subsection 1 may be retrieved and used by the tax authority responsible pursuant to sentence 1 for the purpose of applying section 93c(4) sentence 1 of the Fiscal Code from the tax authorities responsible for taxing employees according to income.

(2) The Federal Government is authorized to enact by ordinance, with the consent of the Bundesrat, further provisions concerning

1. Recording and reporting obligations of the employer and the company or institution where the capital-forming benefits are invested, and
2. the determination of securities and the manner of such determination, to the extent necessary to prevent the employee savings allowance from being improperly paid, denied, not reclaimed, or not withheld.

(3) If the employer, the enterprise, the institution or the creditor referred to in Section 3(3) have breached their obligations under this Act or under a statutory order issued on the basis of this Act,

they shall be liable for the employee savings allowance that was wrongly paid, not reclaimed or not retained due to their breach of duty.

(4) The tax office responsible for taxation on the income of the persons referred to in paragraph 3 shall, at their request, provide information on how the provisions on capital-forming benefits, which are invested in accordance with Section 2(1)(1) to (5) and (2) to (4), apply in the individual case.

(5) The tax office responsible for the external wage tax audit may conduct an external audit of the persons named in paragraph 3 in order to determine whether they have fulfilled their obligations under this Act or under a statutory order issued on the basis of this Act, insofar as these are connected with the investment of capital-forming benefits in accordance with section 2(1) nos. 1 to 5, (2) to (4). Sections 195 to 203a of the German Fiscal Code shall apply mutatis mutandis.

Footnote

(+++ Sec. 15 F. 2013-06-26: For application, see Sec. 17 (14) F. 2013-06-26 +++)

§ 16 Berlin clause

(no object)

§ 17 Rules of application

(1) The foregoing provisions of this Act shall apply, subject to the following paragraphs, to capital formation benefits invested after December 31, 1993.

(2) Unless otherwise stipulated in subsection 5, section 17 of the Fifth Capital Accumulation Act in the version promulgated on January 19, 1989 (BGBl. I p. 137) - Fifth Capital Accumulation Act 1989 - shall apply to capital accumulation benefits invested before January 1, 1994, taking into account the amendment made by Article 2 No. 1 of the Act of December 13, 1990 (BGBl. I p. 2749).

(3) For capital-forming benefits invested in 1994 on the basis of a contract concluded before January 1, 1994

1. pursuant to section 4(1) or section 5(1) of the Fifth Capital Formation Act 1989 for the acquisition of shares or convertible bonds which are not shares or convertible bonds within the meaning of section 2(1)(1)(a) or (b), (2) sentence 1 above, or
2. under section 6(2) of the Fifth Capital Accumulation Act 1989 on the establishment of a credit balance with a cooperative which is not a cooperative within the meaning of the preceding section 2(1)(1)(g), (2), second sentence, or
3. pursuant to Section 6(2) or Section 7(2) of the Fifth Capital Formation Act 1989 on the assumption of a capital contribution or on the acquisition of a share in a limited liability company which is not a company within the meaning of the preceding Section 2(1)(1)(h), (2)(3) sentence,

sections 2, 4, 6 and 7 of the Fifth Capital Accumulation Act 1989 shall apply instead of the above sections.

(4) For capital-forming benefits invested after December 31, 1993, on the basis of a contract within the meaning of section 17(5) sentence 1 of the Fifth Capital Formation Act 1989, section 17(5) and (6) of the Fifth Capital Formation Act of 1989.

(5) Section 4(2) to (5), section 5(2), section 6(3) and section 7(3) of the Fifth Capital Formation Act 1989 on time limits for the use of capital-forming benefits and on blocking periods after December 31, 1993 shall no longer apply to capital-forming benefits invested before January 1, 1994 on the basis of a contract within the meaning of subsection 3. Section 7(3) of the Fifth Capital Accumulation Act in the version promulgated on February 19, 1987 (BGBl. I p. 630) concerning the blocking period after December 31, 1993 shall no longer apply to capital accumulation benefits invested before January 1, 1990 on the basis of a contract within the meaning of section 17(2) of the Fifth Capital Accumulation Act 1989 concerning the establishment of one or more shareholdings as a silent partner.

(6) Section 13 (1) and (2) of this Act in the version published on March 4, 1994 (BGBl. I p. 406) shall apply to capital formation benefits invested before January 1, 1999.

(7) § Section 13 (1) sentence 1 and (2) in the version of Article 2 of the Act of March 7, 2009 (BGBl. I p. 451) shall apply for the first time to capital-forming benefits invested after December 31, 2008.

(8) § Section 8 (5), Section 13 (5) sentences 1 and 2, Section 14 (4) sentence 4 letter b and Section 15 (1) no. 3 in the version of Article 7 of the Act of July 29, 2008 (BGBl. I p. 1509) shall apply for the first time to capital-forming benefits invested after December 31, 2008.

(9) § Section 4 (4) no. 4 and Section 13 (5) sentence 3 no. 3 in the version of Article 1 of the Act of December 8, 2008 (BGBl. I p. 2373) shall apply for the first time to dispositions after December 31, 2008.

(10) § Section 14 (4) sentence 2 in the version of Article 12 of the Act of July 16, 2009 (BGBl. I p. 1959) shall apply for the first time to capital-forming benefits invested after December 31, 2006.
and in cases where a final decision on an application for an employee savings allowance has not yet been made on July 22, 2009.

(11) § Section 13 (1) sentence 2 in the version of Article 10 of the Act of December 8, 2010 (BGBl. I p. 1768) shall apply for the first time to capital-forming benefits invested after December 31, 2008.

(12) § Section 2 (1) no. 5 in the version of Article 13 of the Act of December 7, 2011 (BGBl. I p. 2592) shall apply for the first time to capital-forming benefits invested after December 31, 2011.

(13) § Section 3 (1) sentence 1 number 1 in the version of Article 18 of the Act of June 26, 2013 (BGBl. I p. 1809) shall apply for the first time to capital-forming benefits invested after December 31, 2012. § Section 4 (4) numbers 1, 2 and 4 and Section 8 (5) sentence 1 in the version of Article 18 of the Act of June 26, 2013 (BGBl. I p. 1809) shall apply for the first time to dispositions made after December 31, 2012.

(14) The Federal Ministry of Finance shall notify the date of first-time application of Sections 13 and 14(4) and Section 15 in the version of Article 18 of the Act of 26 June 2013 (BGBl. I p. 1809) by letter to be published in the Federal Tax Gazette. Until that date, Sections 13 and 14(4) and Section 15 as amended by Article 13 of the Act of December 7, 2011 (BGBl. I p. 2592) shall continue to apply.

(15) § Section 2 (1) no. 1 in the version of Article 5 of the Act of December 18, 2013 (BGBl. I p. 4318) shall apply for the first time to capital-forming benefits invested after December 31, 2013. § Section 4 (4) no. 4 in the version of Article 5 of the Act of December 18, 2013 (BGBl. I p. 4318) shall apply for the first time to dispositions made after December 31, 2013.

(16) For the purpose of settling contracts concluded before May 25, 2018 under the conditions set forth in Section 15 (1) Sentence 4 in the version applicable on June 30, 2013, the company, the institution or the creditor referred to in Section 3 (3) shall be obliged to transmit the data in accordance with Section 15 (1) Sentence 1, unless the employee has objected to the data transmission in writing.

§ Section 18 Termination of an investment contract concluded before 1994 and of membership in a cooperative or limited liability company

(1) If the employee has undertaken in a contract within the meaning of section 17(3) to have capital-forming benefits transferred or other amounts paid even after December 31, 1994, he may terminate the contract in writing by September 30, 1994, with effect as of December 31, 1994, with the effect that capital-forming benefits or other amounts are no longer payable on the basis of this contract after December 31, 1994.

(2) If the employee has become a member of a cooperative in connection with the conclusion of a contract within the meaning of Section 17(3)(2), he may terminate the membership in writing by September 30, 1994, with effect from December 31, 1994, after which date the obligation, to make payments on a share and to pay an entrance fee shall not apply. Further rights of the employee under the Articles of Association of the Cooperative shall remain unaffected. The employee who has left the cooperative may demand payment of the settlement credit balance, and the cooperative may demand payment of a share of any shortfall as of January 1, 1998, which is due to the employee who has left the cooperative.

(3) If the employee has become a partner in a limited liability company in connection with the conclusion of a contract within the meaning of Section 17 (3) No. 3, he may terminate the membership in writing by September 30, 1994, with effect from December 31, 1994. Further rights of the employee under the partnership agreement shall remain unaffected. The employee entitled to resign may demand from the Company as compensation the market value of his share in the business; the market value at the time of receipt of the notice of termination shall be decisive. The employee may only demand the severance payment if the Company can pay it without violating Section 30 (1) of the Act on Limited Liability Companies. If the Company has paid the severance payment, the employee shall no longer be entitled to any rights from his share in the Company. If the company is unable to pay the severance payment in accordance with sentence 4 by December 31, 1996, it shall be dissolved at the request of the employee entitled to resign. § Section 61 (1), (2) sentence 1 and (3) of the Law on Limited Liability Companies shall apply mutatis mutandis.

(4) If services are not provided as a result of termination under paragraphs 1, 2 or 3, the employee shall not be responsible for this.

(5) If the employee has given notice of termination of a contract within the meaning of Section 17 (3) No. 2 in accordance with subsection (1) or of membership in a cooperative in accordance with subsection (2), both notices of termination shall be deemed to have been given if the employee has not expressly excluded this. The same shall apply if the employee has terminated a contract within the meaning of Section 17 (3) No. 3 in accordance with subsection (1) or membership of a limited liability company in accordance with subsection (3).

(6) If the employee does not exercise his right of termination under paragraph 1, the obligation to have capital-forming benefits transferred shall be deemed to be an obligation to pay other amounts in the corresponding amount after December 31, 1994.