

# P&O Newsflash

## Current

Changes at the turn of the year

Issue 1, January 2023

In 2023 various amendments in laws in the field of wage tax and social security will come into force. A selection of essential regulations is briefly presented below.

## Employment Tax

**The following presentation discusses various changes in the law as well as the new Wage Tax Guidelines 2023. Current fiscal court case law is not the subject of the article.**

### Domestic workplace and home office flat rate

**At the turn of the year, the Annual Tax Act 2022 (JStG 2022), which was approved by the Bundesrat (upper house of the German parliament) on 16.12.2022, introduces changes with regard to the tax treatment of home offices and the home office lump sum.**

From 2023, an annual lump sum of EUR 1,260 will be granted for a domestic workplace, as far as the workplace forms the center of the entire business or professional activity. Employees will then no longer have to provide individual proof of the costs. The annual lump sum of EUR 1,260 is to be taken into account on a monthly and individual basis, i. e. it is reduced by one-twelfth for each full calendar month in which the requirements are not met. If the actual costs exceed the annual lump sum, the actual costs can still be taken into account.

In the past, a maximum amount of EUR 1,250 could be deducted if no other workplace was available. Furthermore, the deduction of the actual costs was only possible if the domestic workplace formed the center of the entire business and professional activity. From 2023, the requirement that no other workplace is available in

order to be able to claim the costs for a domestic workplace will therefore no longer apply.

If the activity is only carried out on a daily basis at home because the taxpayer has another workplace available on the other days, the expenses can only be deducted via the home office lump sum. This was introduced in the course of the Corona pandemic and was initially limited to the years 2020 - 2022. However, the Annual Tax Act 2022 will remove the limitation on the lump-sum allowance starting in 2023, so that employees will be able to deduct a maximum annual amount of EUR 1,260. With a future daily allowance of EUR 6 per day, the maximum amount will be reached if employees carry out their work at their home workplace on 210 days a year. Previously, 120 home office days were granted for tax purposes via the flat rate of EUR 600.

It should be noted that the home office lump sum is included in the income-related expenses lump sum and is not granted in addition. Furthermore, if taxpayers carry out several business or professional activities, both the per diem allowance and the maximum amount must be divided among the various activities, i.e. the deduction amounts are not granted per activity.

### **Lump-sum taxation for short-term employees**

For short-term employees who are subject to lump-sum taxation in accordance with Section 40a of the German Income Tax Act (EStG), the wage limit will increase from €120 to €150 per day as a result of the JStG 2022 (Section 40a (1) no. 1 EStG). This will apply from 01.01.2023.

### **Inflation Compensation Bonus**

In its meeting on 07.10.2022, the Bundesrat also approved the granting of the inflation compensation premium within the framework of the Act on the Temporary Reduction of the Sales Tax Rate on Gas Supplies via the Gas Network. It is regulated in Section 3 No. 11 c of the German Income Tax Act (EStG) and will be briefly explained below. For further details, please see our Newsflashes issue 9 from October 2022 and 10 from November 2022.

Employers can grant temporary benefits to mitigate inflation up to an amount of EUR 3,000 to their employees free of tax and social security contributions. This is a tax exemption amount. The inflation compensation bonus can be granted as a cash allowance or a non-cash benefit (e. g. vouchers). The employer can pay out the inflation compensation bonus as a single payment or in several installments up to a total amount of EUR 3,000.

The granting of the inflation compensation premium is limited to the period from 26.10.2022 to 31.12.2024. It is important to note that it must be granted as an inflation compensation bonus. It should be sufficient for this purpose if the employer includes the benefit, for example, with a corresponding note in the payroll.

Furthermore, it is up to the employer to decide whether or not to allow the bonus payment. This also applies to whether he wishes to exhaust the maximum cap of EUR 3,000 or make smaller single payments.

The inflation compensation premium must be granted in addition to the wages owed anyway. The requirement of additionality under Section 8 (4) EStG must be complied with. Therefore, employer benefits that have not (yet) been granted in

previous calendar years or that have so far been granted on a voluntary basis are primarily to be considered in this sense so that the tax and contribution exemption of the inflation compensation bonus can take effect.

### **Lump sum for income-related expenses, basic tax-free allowance, child tax-free allowance, child benefit**

The lump sum for income-related expenses will be increased from EUR 1,200 to EUR 1,230 from 2023. The basic allowance will be increased to EUR 10,908 from 2023 and to EUR 11,604 from 2024. The child allowance will be increased to EUR 3,012 per parent from 2023 and to EUR 3,192 from 2024. Child benefit will be increased to EUR 250 for each child from 2023.

## **New wage tax guidelines 2023**

**In 2023, various changes within the wage tax guidelines will come into force. Insofar as these are merely of a clarifying nature, they can also be applied by the tax authorities for previous years. A selection of essential regulations is briefly presented below.**

### **Tax exemption for secondary professional activities (R 3.26)**

In the past, an activity was considered to be a secondary activity if, in relation to the calendar year, it did not take up more than one third of the working time of a comparable full-time activity. It has now been added that the regular weekly working time may not exceed 14 hours. Furthermore, losses or income-related expense surpluses from voluntary work can be deducted if the activity was carried out with the intention of generating income.

If several activities qualifying under Section 3 No. 26 EStG are carried out successively or simultaneously, the tax-exempt annual amount may be divided as desired among the various service/contract relationships.

### **Tool use money (R 3.30)**

The list of items that do not qualify as tools under Section 3 No. 30 EStG is expanded in particular to include telecommunications equipment and accessories for data processing and telecommunications equipment.

### **Child accommodation and care for children not of school age (R 3.33)**

If third parties provide accommodation or care, this benefit is not tax-exempt under Section 3 No. 33 EStG but may be tax-exempt under certain conditions under Section 3 No. 34a EStG up to a maximum of EUR 600 per year.

### **Employer contributions to private health and long-term care insurance (R 3.62)**

In order for employer contributions to private health insurance or private compulsory long-term care insurance to remain tax-free, the employee must submit an insurance certificate confirming that the requirements of Section 257 (2a) of the German Social Security Code (SGB V) and Section 61 of the German Social Security Code (SGB XI) are met. In addition, the contractual benefits must be benefits within the meaning of SGB V and SGB XI.

### **Tax exemption of additional allowances for work on Sundays, public holidays or at night (R 3b)**

In connection with additional allowances for work on Sundays, public holidays and at night, the term "place of work" was defined in more detail. The place of work is the place where the employee works (particularly relevant for the assessment of public holidays).

### **Limit for non-monetary compensation (R 8.1 (3))**

Benefits that are valued in accordance with Section 8 (2) Sentence 1 EStG and taxed at a flat rate in accordance with Sections 37b and 40 EStG or tax-free, are not taken into account when examining the exemption limit for benefits in kind. In this context, the non-cash benefit exemption limit for vouchers and cash cards within the meaning of Section 8 (1) Sentence 3 EStG only applies if these are granted in addition to the wages owed (note: since 01.01.2022, the transitional regulation of the tax authorities has expired, so that vouchers, in order to be considered as remuneration in kind, must meet the requirements of the ZAG (Payment Services Supervision Act)).

Whether the monthly non-cash benefit exemption limit is exceeded is calculated on the basis of the benefit received and to be valued in accordance with Section 8 (2) Sentence 1 EStG and, if applicable, reduced by the valuation discount in accordance with Section 8 (2) Sentence 12 EStG.

For the provision of a season ticket, monthly travel allowance or job ticket that is valid for a longer period of time, the non-cash benefit exemption limit is applicable, unless the tax exemption pursuant to Section 3 No. 15 EStG applies.

(Note: For the demarcation between cash benefits and non-cash benefits, in particular also with clarification of questions of doubt regarding Internet stores as points of acceptance and individual questions regarding various vouchers, we refer to the BMF letter dated 15.03.2022 (IV C5 - S 2334/19/10007 :007, BStBl 2022 I p. 242).

### **Provision of housing (R 8.1 para. 6 and 6a)**

In principle, the rental value customary in the locality is decisive for the valuation of the rental benefits of a dwelling. In the new version of the income tax guidelines, explanations of the comparative rent when applying a rent index have been included. In addition, the new Para. 6a explains the valuation discount in the case of the provision of an apartment in accordance with Sec. 8 (2) Sentence 12 EStG.

### **Provision of meal vouchers (R 8.1 para. 7)**

If the employee receives workday meal allowances in the form of meal vouchers (digital or paper), it is up to the employer to check the submitted itemized receipts manually or to use an electronic procedure.

### **Application of the 0.03 % rule for company cars (R 8.1 (9) No. 1)**

The only alternative to the 0.03% rule is the 0.002% rule, which the tax authorities now want to allow as an individual valuation. This is to be applied if the employee makes fewer than 180 trips per year between home and the first place of work. If the individual valuation cannot be applied because more than 180 trips are made, the 0.03% rule will continue to apply, even if the vehicle is not actually used for a full month. However, in our opinion this regulation contradicts the case law of the

Federal Fiscal Court since an actual trip to work is missing and the taxpayer cannot claim a commuting allowance.

*Note:* For details on private car use, please refer to the BMF letters dated 03.03.2022 (IV C 5 - S 2334/21/10004 :001, BStBl 2022 I p. 232) and 18.11.2021 (IV C 5 - S 2351/20/10001 :002, BStBl 2021 I p. 2315).

#### **Additional payments for off-duty vehicle use (R 8.1 (9) No. 4 and 4a)**

If an employee uses a vehicle provided for business purposes outside of work and makes a (one-time) payment for it, this payment is to be distributed evenly over the period for which it is made and taken into account in a manner that reduces the benefit.

If there is no contractual agreement on the additional payment period, the tax authorities do not object to the employee's (one-time) payment if the payment is offset against the private use value for the respective vehicle down to EUR 0 not only in the year of payment but also in the subsequent calendar years. If, on the other hand, there is a contractual agreement, the benefits are to be distributed evenly over the period for which it is made and taken into account in a manner that reduces the benefit. The decisive factor for the assessment is the agreed additional payment period, not the actual period of use.

If the employee receives subsidy repayments, these constitute taxable wages insofar as the subsidies have previously reduced the private use value from the company car provision.

#### **Expenses for relocation (R 9.9)**

If the place of residence is changed for professional reasons, the actual moving expenses can generally be deducted as income-related expenses. Provided that the limit set by the German Moving Expenses Act (BUKG) and the German Regulation on the reimbursement of moving expenses for foreign moves (AUV) is complied with, it is not necessary to examine whether the moving expenses are income-related expenses. This principle now also explicitly applies to cross-border moves by the employee.

If the relocation expenses turn out to be higher than the highest allowance for relocation expenses under the BUKG and the AUV, it must be examined individually whether and to what extent the expenses are income-related expenses or non-deductible costs of living.

#### **Visits by the spouse in the case of double household management (R 9.11)**

The new version of the guidelines clarifies that income-related expenses are also incurred for visits of the household member(s) if an employee is prevented from traveling home to his or her family for work-related reasons.

#### **Amenities (R 19.6)**

In the new regulation of R 19.6, the term "dependents" is limited to relatives living in the employee's household.

### **Applicable income tax table in case of temporary employment in Germany (R 39b. 5 para. 2)**

In the past, in cases where an employment relationship in Germany did not exist throughout a full month, working days on which the employee did not receive taxable wages in Germany were also included in the wage tax calculations. As a result, the so-called monthly table was applied, and no partial pay period was created.

With the new regulation from 2023, this calculation of wage tax, which is more favorable for the employee, will change to the disadvantage of the employee. Thus, the tax authorities assume a partial wage payment period in these cases, so that the daily wage tax table applies. In our opinion the application of this new tax administration guideline should be challenged since it is not in line with the current tax law. If you need help to figure out the best approach we are glad to support you.

### **Permanent annual wage tax equalization (R 39b. 8)**

If the wage tax was determined in previous years based on the permanent annual wage tax equalization and if the conditions for this no longer exist for subsequent wage payment periods, the annual wage tax equalizations carried out in the previous wage payment periods remain unaffected.

Furthermore, the tax office at the place of business may also in future allow a permanent annual wage tax equalization for short-term employees with tax class VI and without an allowance according to Section 39a EStG upon request.

### **Wage tax deduction by third parties without individual wage tax characteristics (R 39c)**

Following the modification, the third party must transmit an electronic wage tax statement to the competent tax authorities instead of the special wage tax statement.

### **Calculation basis of the flat-rate wage tax (R 40b.1)**

Following the implementation of the case law of the Federal Fiscal Court, profit distributions to the employer or a set-off of the tariff contribution against surplus shares do not constitute repayments of wages and do not reduce the basis of calculation of the flat-rate wage tax.

### **Multiplication regulation (R 40b. 1)**

In future, the rule on the multiplication of the lump sum limit can be applied without any time limit if the payment of contributions is in fact connected with the termination of the employment relationship.

### **Recourse to the employer (R 42d. 1)**

In principle, negligence of the employee only influences whether a claim can be made in the exercise of discretion.

If a net wage agreement exists, the tax authorities act without discretionary error if they claim against the employer primarily as a liable debtor, since the employee has a claim against the employer under labor law for exemption from the wage tax deduction amounts.

## **Information request (R 42e)**

Due to a comprehensive letter from the German Federal Ministry of Finance (BMF, letter dated 12.12.2017, IV C 5- S 238814), this regulation is now deleted.

## **Travel Expenses lump sums for trips abroad**

**According to the German Federal Ministry of Finance (BMF, letter dated 23.11.2022, IV C 5 - S 2353/19/10010 :004; DOK 2022/1154868), new per diems and flat rates for meals will apply to business trips outside of Germany as of 01.01.2023.**

### **Revision of the non-monetary remuneration values for meals**

For the year 2023, the non-monetary remuneration values for a breakfast are EUR 2.00 and for a lunch or dinner EUR 3.80. In the case of full meals (breakfast, lunch and dinner), the meals are to be recognized at the value of EUR 9.60.

### **Moving Allowances**

The lump sum amount for other relocation expenses from 01.04.2022 has not changed at the turn of the year. The lump sums of the BMF letter dated 21.07.2021 (BMF IV C 5 - S 2353/20/10004 :002) continue to apply.

### **Foreign Activity Decree**

In the event of an inflow of wages as of 01.01.2023 concerning employee income from activities abroad, provided that no double taxation agreement exists, for its associated tax treatment, the new foreign activity decree in accordance with the BMF letter dated 10.06.2022 (BMF IV C 5 - S 2293/19/10012 :001; DOK 2022/0079983 - BStBl. I p. 997) should be reviewed.

According to this provision, the salary received by the employee on the basis of a current employment relationship for a favored activity abroad is not taxed in Germany if the registered office, the management, the permanent establishment or a permanent representative of the employer is located in a member state of the European Union (EU) or a state to which the Agreement on the European Economic Area (EEA) applies.

However, this provision does not apply if the salary is paid directly or indirectly from domestic public funds, or if the taxpayer cannot prove that the salary is subject to a tax equivalent to German income tax at an average rate of at least 10% in the state in which the activity is performed.

# Social Security Law

**The following presentation discusses various changes in the law. Current social court case law is not the subject of the article.**

## The electronic certificate of incapacity for work (eAU)

**The yellow paper printout is becoming history. The digital forwarding of the certificate of incapacity for work from the health insurers to the employers will now be mandatory from 01.01.2023.**

Before the eAU, employers were still informed of their employees' incapacity to work with a yellow paper printout. The new procedure relieves the burden on both employers and employees.

In the future, employees will no longer have to submit a doctor's certificate, but will instead report sick to the employer. The employer can then retrieve a digital certificate of incapacity for work from the respective health insurance fund using the payroll program or via sv.net.

## The new midijob limit

**The earnings limit for midjobbers will be raised again. From 01.01.2023 the limit in the transitional range will be 2,000.00 euros.**

Since October 2022, the transitional range was from 520.01 euros up to 1,600.00 euros. Now, as of the new year, it will be between 520.01 euros and 2,000.00 euros, so that midjobbers will be allowed to earn more in the future.

## No more supplementary income limit for early retirees

**In 2023, the additional earnings limit for early retirement pensions will no longer apply. The supplementary earnings options for reduced earning capacity pensions will also be expanded.**

With the new 8<sup>th</sup> SGB IV Amendment Act, early retirees will no longer have to fear a reduction in their pension and will be allowed to earn as much additional income as they wish. This is intended to make the transition from working life to retirement as flexible as possible. In 2023, the additional earnings limit for partial disability pensions will be around 35,650 euros, and around 17,820 euros for full disability pensions.

# Digitization of reporting procedures - what has changed in 2023

**As of 01.01.2023, it will be mandatory to submit documents electronically for the following procedures:**

## **euBP**

Participation in euBP is mandatory for employers as of 01.01.2023. If one of the regular company audits is due, the requested documents must be submitted digitally to the auditor in advance. Employers can apply to be exempted from the obligation to participate in the euBP. However, there must be important reasons for this. The pension insurance audit service is responsible for the application. The exemption is valid until the end of 2026 at the latest.

## **BA-BEA**

Employers must now electronically transmit employment certificates, eu employment certificates and secondary income certificates on (former) employees to the German Federal Employment Agency.

## **eAU**

From 01.01.2023, the digital AU notification will completely replace the "yellow" bill. From now on, employees only have to inform their employers informally about their absence. An official sick note can be retrieved from the health insurance company using your payroll accounting program or via sv.net.

# Updates in artists' social security scheme for artists

**The artists' social security contribution will increase to 5.0 percent in 2023.**

The artists' social contribution is used to finance the artists' social security scheme and represents the "quasi-employer's share". Companies that regularly commission artists or publicists are liable for the contribution. It is irrelevant whether the contractor himself is insured in the artists' social insurance. The Künstlersozialgabeverordnung (Artists' Social Security Contribution Ordinance) set a new contribution rate in 2023 - this has remained unchanged at 4.2 percent since 2018 and is set annually by the Federal Ministry of Labor. From 2023, it will be raised to 5.0 percent.

Another new feature is that newcomers to the profession now have an extended option to apply for exemption from compulsory insurance in the statutory health and long-term care insurance system when they take up self-employed artistic or journalistic work for the first time.

The expiring Corona regulations for non-artistic activities will also be replaced by a regulation that will allow additional earnings on a permanent basis in the future. The connecting factor is the focus of the activity.

# The new social security calculation parameters for 2023

**The contribution assessment for statutory pension and health insurance have again been adjusted in line with income trends for 2023, and the social insurance contribution rates will also be adjusted.**

The compulsory insurance limit in statutory health insurance will increase to 66,600 euros per year; the contribution assessment limit will rise to 59,850 euros per year in the future.

The contribution assessment for contributions to general pension insurance will rise to 7,100 euros per month (in 2022: 6,750 euros) for East and 7,300 euros per month (in 2022: 7,050 euros) for West.

In the miners' pension insurance (east), it will rise to 8,700 euros a month (in 2022: 8,350 euros). The income threshold (West) will increase to 8,950 euros per month (in 2022: 8,650 euros).

The average additional contribution for statutory health insurance increases to 1.6% (in 2022: 1.3%). In unemployment insurance, the contribution rate will rise to 2.6% (in 2022: 2.4%). The insolvency benefit contribution for employers falls to 0.06% (in 2022: 0.09%). Likewise, the income limit for family-insured dependents increases to 485 euros/month (in 2022: 470 euros/month).

The average pension insurance salary for determining the earning points in the respective calendar year is provisionally set at 43,142 euros per year (2022: 38,901 euros).

Computational variable	West	East
Contribution assessment ceiling in the general pension insurance scheme	7,300 euros per month	7,100 euros per month
Contribution assessment ceiling in the miners' pension insurance scheme	8,950 euros per month	8,700 euros per month
Compulsory insurance limit in the statutory health insurance	66,600 euros per year (5,550 euros per month)	
Contribution assessment ceiling in the statutory health insurance	59,850 euros per year (4,987.50 euros per month)	
Contribution assessment ceiling in unemployment insurance	7,300 euros per month	7,100 euros per month
Provisional average remuneration for 2022 in the pension insurance system	43,142 per year	
Reference value in social insurance	3,395 euros per month	3,290 euros per month

These adjustments to the contribution assessment limits also have employment tax implications, e.g. on the amount of tax-exempt contributions under Section 3 No. 63 of the German Income Tax Act (EStG).

We will be happy to answer any questions that may arise from these changes for your employer's practice. Our wage tax and social security experts look forward to speaking with you.

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## Editorial

If you have any questions, comments or remarks about the newsletter, please do not hesitate to contact our editorial team. We look forward to your feedback.

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