

2021 payroll: Overview of all relevant tax changes and reforms

Dear readers,

The year 2021 has brought a large number of tax changes and reforms for payroll accounting: On the one hand, the Annual Tax Act 2020, which will largely apply from January 1, 2021, will lead to a large number of adjustments, particularly in the area of payroll tax. On the other hand, wage tax regulations which would have expired at the end of 2020 have been extended or adjusted with regard to the Corona pandemic.

In order to help you keep track of the changes, we have compiled the most important payroll accounting related changes in this publication, including a short digression in connection with the changes in travel expense tax law.

Enjoy reading! In case of any questions, please do not hesitate to contact us at any time.

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A. Short-time allowance

1. Grants to short-time allowance continue to be tax-exempt

As a result of the Corona pandemic, the German government decided to extend the special regulations on short-time allowance until the end of 2021. This means that the possibility of tax-free grants to short-time allowance by the employer, which was initially limited to the end of 2020, is now possible until the end of 2021 (Art. 3 No. 28a EStG (German Income Tax Act)). The tax exemption applies to wage payment periods ending after February 29, 2020 and before January 1, 2022.

2. Higher short-time allowance

From the fourth month of receipt, there is a higher short-time allowance of 70 percent, for parents 77 percent, and of 80 percent from the seventh month of receipt, for parents 87 percent, provided the difference between target and actual pay in the respective month of application is at least 50 percent. This increase applies until December 2021 and is only possible if short-time allowance was paid for the first time in March 2021 at the latest.

Although supplementary grants and short-time allowances are tax-exempt, they increase the tax rate for the remaining taxable income (so-called progression proviso). Depending on their individual income situation, employees receiving short-time allowance may have to expect additional income tax payments.

3. Reimbursement of social security contributions in case of short-time work

The full reimbursement of social security contributions during short-time work is extended until June 30, 2021. From July 1, 2021, to December 31, 2021, 50 percent of social security contributions will be reimbursed if short-time work was started by June 30, 2021.

B. Remuneration in kind

1. Delimitation of cash salary and remuneration in kind

Remuneration in kind may be subject to a lower (possibly flat-rate) payroll tax or may be exempt from tax and social security contributions, for example, if the exemption limit for remuneration in kind is applied. Therefore, the question of what qualifies as remuneration in kind and what as cash remuneration is significant. With the Annual Tax Act 2019, the legislator has severely restricted the application of remuneration in kind with effect from January 1, 2020 (Art. 8 Sec. 1 sentences 2 and 3 EStG). For example, since January 1, 2020, merchandise vouchers or gift cards that can be redeemed at a large number of acceptance points (keyword Amazon voucher) are no longer considered remuneration in kind but are cash wages. If you grant your employees vouchers or cash cards as non-cash benefits, e.g., monthly up to the amount of the exemption

limit for remuneration in kind of currently EUR 44, please check whether this is still possible against the background of the new legal regulation. A comprehensive draft implementation letter from the German Federal Ministry of Finance (“BMF”) on this new regulation has been circulating between the BMF and the associations since summer 2020.

2. Higher exemption limit for remuneration in kind

The monthly exemption limit for remuneration in kind will be increased from previously EUR 44 to EUR 50 (Art. 8 Sec. 2 Sentence 11 EStG), however, not until **January 1, 2022**.

3. New remuneration in kind

The monthly amount for meals was increased for lunch or dinner from previously EUR 3.40 to EUR 3.47 as of January 1, 2021, and for breakfast from EUR 1.80 to EUR 1.83.

The monthly free accommodation amount is EUR 237.00.

When providing an apartment to employees, the typical local rent forms the basis for the non-cash benefit resulting from the provision. If such a local rent cannot be determined or is difficult to determine, fixed prices per square meter apply (Art. 2 Sec. 4 SvEV (German social insurance remuneration ordinance)). In 2021, such price per square meter will be EUR 4.16 per month for the free or reduced-price provision of an apartment.

The value of the remuneration in kind for the free or reduced-price provision of a simply furnished apartment is EUR 3.40 (per square meter per month).

4. Group clause for the valuation discount for rental benefits

If the employer provides the employee with an apartment free of charge or at a reduced price, such provision is a taxable non-cash benefit. Under certain conditions, a valuation discount of one third of the typical local rent value can be applied to the typical local rent. Previously, this valuation discount has only applied to rental benefits for the provision of an apartment which has been rented or is owned by the employer. This valuation discount has now been extended to the provision of apartments by companies affiliated with the employer (Art. 15 AktG (German Stock Corporation Act)).

5. Tax exemption for outplacement services

Consulting services for the professional reorientation of employees upon termination of their employment are tax-exempt (so-called outplacement services). This now applies by law both to services provided by the employer and to consulting services provided by a third party at the employer's instigation (Art. 3 No. 19 EStG). The condition for tax exemption is that the services must not have the character of a reward.

6. Additionality requirement for tax breaks in case of benefits in kind

Many benefits in kind granted by employers to their employees are only eligible for tax relief if they are granted in addition to the generally owed wages. This applies, for example, to subsidies for kindergarten fees or vouchers and cash cards, which are still considered non-cash benefits due to their restrictions.

When, from the legislator's and the tax authorities' point of view, a benefit is deemed to be additional to the generally owed remuneration has now been clearly regulated by law (cf. Art. 8 Sec. 4 EStG).

This additionality requirement is also an essential prerequisite for the Corona bonus' tax exemption of up to EUR 1,500 (see below).

C. Corona measures

1. Stay of execution, deferral of and extension for payroll tax payments

Employers affected by the Corona crisis can apply for relief from enforcement until March 31, 2021 at the latest. In such case, the tax office will refrain from enforcing tax payments in arrears or becoming due by March 31, 2021 (including payroll tax) until June 30, 2021 at the latest. In connection herewith, late payment fines due between March 19, 2020 and June 30, 2021 may be waived upon application.

A deferral of payroll taxes is still not possible.

Upon application, extensions for the filing of payroll tax returns may be granted for up to two months. This applies if the employer or the payroll office is prevented from filing the returns in due time through no fault of its own due to the Corona crisis.

2. Payment period for special Corona payments

Employers can pay employees a Corona bonus of up to EUR 1,500 free of tax and social security contributions or grant non-cash benefits up to this amount. This requires for the bonus to be paid

- in addition to the generally owed wages (cf. Art. 8 Sec. 4 EStG and B.6), and
- in order to mitigate the additional burdens on the employee caused by the Corona crisis

(Art. 3 No. 11a EStG).

This option was originally limited to payments until December 31, 2020 but has now been extended to payments until June 30, 2021. The amount of up to EUR 1,500 can only be utilized once per employment relationship across calendar years.

3. Home office allowance

In 2020 and 2021, employees can deduct up to EUR 5 as income-related expenses for each calendar day on which they worked exclusively from home during the Corona pandemic. The allowance is limited to a maximum amount of EUR 600 per year (Art 4 Sec. 5 Sentence 1 No. 6b Sentence 4 EStG). For days on which such allowance is claimed, taxpayers cannot claim the commuting allowance for journeys from home to the primary place of work as, naturally, such journeys did not take place on such days. However, if tickets for local public transport were purchased in the expectation of being able to travel to the office, the costs for these tickets are also deductible as income-related expenses for the days on which the employee claims the home office allowance.

The home office allowance can also be applied if the tax requirements for a home office are not met.

4. Refund of extraordinary childcare services

In addition to the generally owed wages, the employer can pay the employee a tax-free amount of up to EUR 600 per calendar year for extraordinary childcare services. An additional need for childcare is assumed if the employee works at extraordinary working hours due to the Corona crisis or if the regular childcare services have ceased due to the closure of schools and care facilities (e.g., daycare centers, after-school care centers, company kindergartens) which have been ordered in order to contain the Corona crisis.

5. Cross-border commuters

Employees who used to commute regularly from their place of residence to another country may increasingly be required to work from home due to official recommendations or orders, instructions from the employer or the closing of borders. This can have tax consequences, for example, if the underlying Income Tax Treaty stipulates that exceeding a certain number of days on which the actual country of employment is not visited leads to a changed right of taxation. Germany has therefore concluded agreements with numerous neighboring states, according to which the home office days to be provided due to Corona do not generally change the intended allocation of taxation rights (e.g., France, Switzerland, Luxembourg, Poland, Austria). However, there are special regulations and further preconditions for each country. Details can be found in the bilateral consultation agreements.

D. Other legislative changes related to payroll accounting

1. Work in Great Britain after the Brexit

The UK's withdrawal from the European Union also has consequences for foreign employees working in the UK in the future with regard to social security. Following the withdrawal, the UK will no longer be subject to the European coordination of social security systems in accordance with Regulation (EC) 883/2004 and 987/2009. Nevertheless, the social security of foreign employees working in the UK for the first time as of January 1, 2021 will remain coordinated. This is regulated in the Trade and Cooperation Agreement between the EU and the United Kingdom. Such coordination law covers health, pension, unemployment and accident insurance, but no longer long-term care insurance. The basic principle, according to which employees are insured in the state in which they physically perform their employment, continues to apply. As before, exceptions apply to employees assigned to Great Britain for a limited period of up to 24 months and to employees working in Germany and Great Britain. However, these exceptions are no longer mandatory for EU member states and must now be adopted individually by each EU member state.

Further exceptions allowing to remain in one or another social security system under certain conditions are now no longer provided for.

Insofar as circumstances already have a cross-border nexus with the United Kingdom prior to January 1, 2021 and beyond, the social security regulations will continue to apply in accordance with the withdrawal agreement between the European Union and the United Kingdom.

2. Increase of commuting allowance

In 2020, the allowance for travels between home and the first place of work will remain at EUR 0.30 up to the 20th kilometer. However, from January 1, 2021, such allowance will be increased to EUR 0.35 per kilometer from the 21st kilometer and to EUR 0.38 per kilometer from January 1, 2024 to December 31, 2026.

The commuting allowance can be deducted as income-related expenses in the income tax return. Alternatively, the employer can reimburse the commuting allowance in the payroll as a lump sum subject to payroll tax. The lump-sum reimbursement triggers exemption from social security contributions.

Please note: If you pay your employees lump-sum payroll-taxed allowances for travels between home and the first place of work, please note that the increase in the commuting allowance from the 21st kilometer also applies to these allowances which can therefore be increased accordingly.

3. Increase of allowances for trainers and honorary offices

As of 2021, the lump-sum allowance for trainers (*Übungsleiterpauschale*) will be EUR 3,000 per year (until 2020 it amounted to EUR 2,400 per year).

The allowance for honorary offices is increased from previously EUR 720 to EUR 840 (Art. 3 No. 26 EStG). Income up to this amount remains tax-exempt.

4. Solidarity surcharge no longer applicable

The solidarity surcharge of previously 5.5% on income tax will no longer apply from January 2021 for taxpayers with a taxable income of up to EUR 62,127 per year, or up to EUR 124,254 in case of joint assessment. The solidarity surcharge will continue to be payable on investment income in connection with the flat rate withholding tax.

5. Increase of basic exemption

The basic exemption will be increased to EUR 9,744. From January 1, 2022, a further increase to EUR 9,984 is planned. For taxpayers subject to unlimited tax liability in Germany, taxes are generally only due on income exceeding these amounts.

6. Child allowance

As of January 2021, the child allowance will be increased by EUR 15: for the first and second child to EUR 219, for the third child to EUR 225 and from the fourth child to EUR 250. The childcare allowance (*Kinderbetreuungsfreibetrag*) will be increased to EUR 8,388, i.e. by EUR 144 per parent.

7. Tax treatment of travel expenses and travel expense reimbursements for business and work-related trips abroad as of January 1, 2021

In a letter dated December 3, 2020, the German Federal Ministry of Finance published the new lump-sum allowances for additional meal expenses and overnight expenses for business and work-related business trips abroad. This letter contains the flat-rate additional meal expenses for work abroad that can be reimbursed tax-free or deducted as income-related expenses in 2021.

The additional meal expenses for business trips in Germany remained unchanged in 2021 at EUR 14 and EUR 28, respectively.

For circumstances with a cross-border nexus before January 1, 2021, the previous EU coordination law, in particular the provisions pursuant to Regulations (EC) Nos. 883/2004 and 987/2009, will continue to apply.

8. New income thresholds and calculation parameters in social insurance 2021

2021 income thresholds	Monthly	Annually
Health and long-term care insurance	EUR 4.837,50	EUR 58.050,00
Pension and unemployment insurance (former West German states)	EUR 7.100,00	EUR 85.200,00
Pension and unemployment insurance (former East German states)	EUR 6.700,00	EUR 80.400,00

2021 general annual earnings limit	2021 "special" annual earnings limit
monthly EUR 5.362,50	monthly EUR 4.837,50
annually EUR 64.350,00	annually EUR 58.050,00

2021 contribution rates	Total contribution rate	Employer's contribution rate	Employee's contribution rate
Health insurance			
General	14,6 %	7,3 % + ½ % additional contribution for the respective health insurance fund	7,3 % + ½ % additional contribution for the respective health insurance fund
Reduced	14,0 %	7,0 % + ½ % additional contribution for the respective health insurance fund	7,0 % + ½ % additional contribution for the respective health insurance fund
Average additional contribution	1,3 %	0,65 %	0,65 %
Long-term care insurance	3,05 %	1,525 %	1,525 %
Long-term care insurance for the childless	3,3 %	1,525 %	1,775 %
Pension insurance	18,6 %	9,3 %	9,3 %
Unemployment insurance	2,4 %	1,2 %	1,2 %

Particularities in connection with 2021 long-term care insurance	Total contribution rate	Employer's contribution rate	Employee's contribution rate
Federal state of Saxony	3,05 %	1,025 %	2,025 %
Federal state of Saxony for the childless	3,3 %	1,025 %	2,275 %
Eligible for government allowance	1,525 %	0,7625 %	0,7625 %
Eligible for government allowance for the childless	1,775 %	0,7625 %	1,0125 %

Particularities for privately insured persons 2021	Total amount	Employer contribution
Health insurance privately insured	Individually	EUR 384,58 (EUR 353,14 + EUR 31,44 additional contribution) (EUR 4.837,50 × 7,3 % + 0,65 % additional contribution)
Privately insured with no additional sickness allowance	Individually	EUR 370,07 (EUR 338,63 + EUR 31,44 additional contribution) (EUR 4.837,50 × 7,0 % + 0,65 % additional contribution)
Long-term care insurance	EUR 147,54 (=EUR 4.837,50 × 3,05 %)	EUR 73,77 (= EUR 4.837,50 × 1,525 %)
Long-term care insurance Saxony	EUR 147,54 (=EUR 4.837,50 × 3,05 %)	EUR 49,58 (= EUR 4.837,50 × 1,025 %)

Contributions to statutory pension insurance, occupational pension schemes, agricultural pension funds and Rürup pensions, including the employer's contribution, are tax-deductible up to a total amount of EUR 25,787 (married couples: EUR 51,574) per year. Of this maximum amount, 92 percent have a tax-reducing effect, i.e. a maximum amount of EUR 23,724 (married couples: EUR 47,448).

The contribution rate for insolvency benefits increases to 0.12 percent.

9. Minimum wage

During its meeting on June 30, 2020, the Minimum Wage Commission unanimously resolved to adjust the statutory minimum wage level in four stages: An increase to EUR 9.50 on January 1,

2021, and to EUR 9.60 on July 1, 2021, as well as to EUR 9.82 on January 1, 2022, and to EUR 10.45 on July 1, 2022. Please note: The minimum wage also applies to mini jobbers!

10. Digression: Revised tax treatment of employees' travel expenses

On November 25, 2020, the German Federal Ministry of Finance ("BMF") issued a new BMF letter on the tax treatment of employee travel expenses. Such BFM letter replaces the letter dated October 24, 2014 (BStBl I p. 1412).

This was supplemented on December 3, 2020 by a BMF letter on the tax treatment of travel expenses and travel expense reimbursements for business and work-related trips abroad as of January 1, 2021. On December 28, 2020, the BMF published its letter on the payroll tax treatment of free or reduced-price meals for employees as of the 2021 calendar year.

In the following, we would like to give you an overview of what we consider to be the most important changes:

10.1 Classification by the employer by means of determination pursuant to service or labor law

An employer's classification of an employee's primary place of work pursuant to service or labor law can also be made outside the service or employment contract. The classification does not have to be documented. The employer's classification can also result from: Regulations in the employment contract, collective bargaining agreement, protocol notes, orders under service law, deployment plans, travel guidelines, travel expense reports, the recognition of a non-cash benefit for the use of a company car for travel between home and the primary place of work or organizational charts submitted by the employer as evidence of the classification.

10.2 Primary place of work in case of full-time studies or full-time educational measures

The duration of a full-time educational measure is irrelevant for an educational institution's classification as the primary place of work. A minimum duration of the educational measure is not required. An educational institution is therefore also considered to be the primary place of work if it is visited by the taxpayer within the scope of an only short-term educational measure. This must be assumed if the taxpayer visits the educational institution due to the regularly limited educational measure not only occasionally, but with a certain sustainability, i.e. continuously and repeatedly (permanently).

10.3 Simplification of recognition, for tax purpose, of meals provided by the employer during an external activity

During a taxable external activity, the employer may provide the employee with a meal (breakfast, lunch, dinner) of up to EUR 60 including beverages and VAT without this constituting a taxable non-cash benefit. This requires that the employee could claim a per diem meal allowance for this meal. This price limit of EUR 60.00 now applies regardless of whether the meal is provided in Germany or abroad.

10.4 Reduction in connection with the provision of meals

A snack provided by the employer, for example, sandwiches, cakes and fruit, can also be considered as a meal resulting in a reduction of the per diem meal allowance. The small bags of potato chips, salty snacks, chocolate wafers, granola bars provided, for example, during flights, or comparable snacks and bakery products provided on other occasions do not meet the criteria for a meal. They do not result in a reduction of the per diem allowance.

Whether or not the meal provided by the employer is actually consumed by the employee is irrelevant for the reduction of the per diem meal allowance. The provision of a meal by the employer does not require for the employee to actually consume the meal. It is also irrelevant why the employee does not consume a meal provided to him by his employer.

Within the three-month period, the provision of meal vouchers by the employer in the course of the employee's work abroad does not constitute a meal provided by the employer, but merely a reduction in the cost of the meal arranged and paid for by the employee. After the expiry of the three-month period, the meal vouchers (meal vouchers, restaurant vouchers) issued to these employees are to be valued at the official non-cash remuneration value.

10.5 Keeping two households

A main residence is located at the location of the primary place of work if the taxpayer can reach his primary place of work from this residence every day in a reasonable time and manner. A travel time of up to one hour each way, based on individual transport connections and travel times, can generally be considered reasonable. Whether the household is located at the location of the primary place of work or not, for example, if it is located within the same political municipality, city or in its immediate vicinity, can be easily determined by the criterion of the shortest road connection between the main residence and the primary place of work. If the distance between the main residence and the primary place of work is more than 50 km, it can be assumed that the main residence is located outside the location of the primary place of work.

A secondary residence or accommodation in the vicinity of the primary place of work for work-related reasons, which can lead to double housekeeping, is equivalent to a secondary residence at the location of the primary place of work. For simplification reasons, it can be assumed that the secondary residence is still located at the location of the primary place of work if the shortest road connection between the secondary residence or accommodation and the primary place of employment does not exceed 50 km. If the secondary residence is more than 50 km away from the location of the first place of work, it must be checked whether the primary place of work can still be reached every day from the secondary residence or accommodation in a reasonable time and manner. A travel time of up to one hour each way, based on individual transport connections and travel times, is considered reasonable.

10.6 Work-related keeping of two households

Moving into the secondary residence or accommodation must be required for professional reasons. This is in particular the case if the relocation considerably shortens the travel distance or travel time between the main residence and the primary place of work. For simplification reasons, one can assume for the moving into a secondary residence or accommodation to be

due to professional reasons if the shortest road connection from the secondary residence or accommodation to the primary place of work is less than half of the shortest road connection between the main residence (center of vital interests) and the primary place of work or if the travel time to the primary place of work is halved for each route. If the requirements of this simplification rule are not met, the existence of a double household for work-related reasons must be demonstrated in another way on the basis of the specific circumstances of the individual case.

The maximum amount of EUR 1,000 per month for the costs of double housekeeping, which can be deducted as work-related expenses or reimbursed tax-free by the employer, includes all expenses incurred and borne by the employee, such as rent, operating costs, costs of ongoing cleaning and maintenance of the secondary residence or accommodation, taxes for the secondary residence, radio license fees, rent and lease for car parking spaces, expenses for special use (such as gardens), but not expenses for household goods, furnishings or work equipment with which the second home is equipped. Expenses for the secondary residence's necessary furnishings and equipment, if these are not excessive, can be taken into account as other necessary additional expenses for double housekeeping. If the total acquisition costs for the secondary residence's furnishing and equipment (excluding work equipment) do not exceed an amount of EUR 5,000 including VAT, one can assume, for simplification reasons, that these are necessary additional expenses for double housekeeping. If the rent exceeds the maximum amount and the rental agreement does not contain a breakdown of the rent for the provision of the apartment and the furnishings and equipment, the rent is to be apportioned by way of estimate.

Employees must generally declare the existence of double housekeeping and the financial participation in the housekeeping at the place of their own household in their income tax return. In case of employees who share a household with their spouse or partner, financial participation in the costs of housekeeping at the place of the employee's own household can be assumed without corresponding proof.

10.7 Tax-exempt refund of accommodation costs by the employer

For every overnight stay in Germany, the employer may refund the verified accommodation costs or, without proof, a flat rate of EUR 20.00 free of tax. For overnight stays during a professional activity abroad, the verified accommodation costs and, without proof, the flat rate amount announced by BMF (German Federal Ministry of Finance) letter can be refunded free of tax.

If an employee spends the night in a motor vehicle of his employer or in a vehicle of a third party commissioned by the employer during his work away from home, the necessary additional expenses can be taken into account as of January 1, 2020 uniformly in the calendar year with a lump sum of EUR 8 for each calendar day on which the employee could claim a per diem meal allowance. The lump sum can also be claimed by accompanying employees who also spend the night in the vehicle if the employer does not provide any further reimbursements for overnight expenses or if the employee does not deduct any further overnight expenses as income-related expenses.

The Baker Tilly team will be happy to advise you on these and all other tax-related issues.

We look forward to hearing from you.



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