

GMS Flash Alert

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Germany - COVID-19: Tax and Social Security Relief Measures and Considerations

The World Health Organization (WHO) classifies the spread of the coronavirus as a pandemic – this is currently a challenge for us all. Employers and their employees (and families) are being affected by the coronavirus and COVID-19 in various ways and at various times and they are facing an unprecedented set of challenges and issues.

The federal government in Germany has launched a broad-based package of measures to cushion the effects of the coronavirus and COVID-19 on employers and workers.¹ In addition to making the regulations on compensation for short-time work more flexible and extending liquidity assistance for affected companies (in the form of simplified access to loans and guarantees), tax liquidity assistance is also being provided.

WHY THIS MATTERS

This package of measures ushered in by the German government offers tax reductions, waivers, and deadline delays for certain tax payments and compliance obligations and, as such, generally gives taxpayers some very welcome breathing room to preserve their cash-flow and take additional time to organise their tax affairs in these trying times.

Examples of some of the reliefs being made available to taxpayers:

- If the employment of a European Union (EU) frontier worker is now carried out temporarily – wholly or partly – at home, there are no changes in the assessment of their social security under German social insurance law.
- If the current situation leads to a temporary change in the distribution of working time of a multi-state worker working across several states, there is no need to redefine the applicable social security legislation.

- “Short-time” work (and so, short-time work compensation) can be claimed by a company on behalf of its employees if only 10 percent of the employees of a company are affected by the loss of working. Previously, at least one-third of the employees had to be affected.

German Authorities Provide Comments, New Policies, Adjusted Rules to Help Taxpayers and Employers Meet COVID-19 Challenges

German authorities have commented on certain issues arising from the spread of the coronavirus and the consequences for companies and their employees in terms of labour, social security and income tax law.²

Extension of Deadline for Filing Personal Income Tax Returns 2018

There is currently no uniform national extension. The German state of Hessen is granting a general deadline extension for all cases assisted by a tax provider until 31 May 2020 (original deadline was 28 February 2020) . Individual deadline extension applications are not necessary in these cases.

The assessment of late filing penalties is also suspended in these cases. Late filing penalties already assessed can be waived upon application. The states of Saxony, Saxony-Anhalt, Rhineland-Palatinate, and Thuringia have released information that an extension of the return filing deadline can be granted upon request. Discussion of doing something similar, nationally, is currently being coordinated on a national level in Germany.

Social Security Law Issues in Cross-Border Situations

In many companies, working from home (“home working”) has become the new norm at present, and the question arises as to what effects a temporary change of place of employment has in terms of social security tax obligations. The central representation of interests of the statutory health and nursing care insurance funds in Germany (GKV-Spitzenverband/DVKA) has commented on this and has clarified that the coronavirus crisis should not have an impact on which country’s social security law will be applicable.³

Individuals who work in Germany and live in another EU member state (so-called “**frontier workers**”) are subject to German social security legislation. If the employment of these individuals is now carried out at home – wholly or partly – on a temporary basis due to the coronavirus crisis, there are no changes in the assessment under German social insurance law: membership in the German social security system is maintained. This should apply equally to individuals who live in Germany and are employed in another member state.

In the case of individuals who are normally employed in more than one EU member state for one employer (so-called “**multi-state workers**”), affiliation to the social insurance scheme depends on the amount of work performed in the member state of residence. If a substantial part of the individual’s employment (at least 25 percent of his working time) is carried out in the member state of residence, the legislation of that state applies to all of his employment. If the current situation leads to a temporary change in the distribution of working time, there is no need to redetermine which country’s social security legislation is applicable.

Currently, many secondments are being postponed, and secondments already in progress are being interrupted. In such cases, **the A1 certificates** and other “Certificates of Coverage” issued shall remain valid if the interruption is not expected to last longer than two months, and the end of the foreign assignment is not delayed overall. Otherwise, a new certificate of coverage must be applied for.

Deferring Social Security Contributions

According to a circular of the GKV-Spitzenverband/DVKA issued 24 March 2020, to support companies affected by the coronavirus crisis, social security contributions will be deferred at the request of the employer (initially) for the months March to May 2020, without interest being imposed and without the provision of a “guarantee”.⁴ Likewise, no late payment surcharges or reminder fees will be levied. A credible statement by the employer that the company has suffered considerable financial damage as a result of the pandemic – for example in the form of significant losses in turnover – should generally be sufficient.

However, employers are urged to first make use of the relief opportunities created by the “Act on the temporary crisis-related improvement of the regulations for short-time work compensation” (*Gesetz zur befristeten krisenbedingten Verbesserung der Regelungen für das Kurzarbeitergeld*) and the “Federal Government Regulation on the facilitation of short-time work” (*Verordnung über Erleichterungen der Kurzarbeit*) (see below).

Deferring Wage Tax Withholdings

Up to now, deferrals of wage tax withholding have been excluded from the tax policy measures of the federal and state governments. This is mainly due to the fact that the employee and not the employer is the “debtor” of the wage tax. In addition, the wage tax follows the “inflow principle”: it is to be withheld and paid only if wages are paid. If this is the case, the wage tax is calculated individually and in consideration of the employees’ ability to pay.

KPMG NOTE

We at the KPMG International member firm in Germany therefore currently consider a deferral of wage tax to be legally valid only in cases of lump-sum wage tax, for example as the result of an external wage tax audit. However, for the legal representatives of a company, this means that, at least for the time being, liability is established in cases where wages are paid out despite liquidity bottlenecks that prevent payment of the wage tax. Therefore, this option should be considered carefully, as it involves the personal liability of the management.

According to current information, the Federal Ministry of Finance is to issue a letter which will postpone the payment and registration deadlines for wage taxes being postponed to 10 April 2020.⁵

Short-Time Work / Short-Time Allowance

With the effects of the coronavirus pandemic permeating the German market, employers can take advantage of opportunities to reduce personnel costs and secure liquidity. The use of short-time work compensation in particular can help here. Among the measures adopted to mitigate the consequences, the regulations on short-time working have been made more flexible and adapted to the new requirements and situation.⁶ The following applies accordingly:

- A company can apply for short-time work if 10 percent of its employees are affected by a loss of working hours. Previously, at least one-third of the employees had to be affected.
- In the event of short-time work, social security contributions are fully reimbursed by the Federal Employment Agency.
- Short-time allowance is also possible for employees in temporary employment (*Zeitarbeit*).

- Normally, the payment of short-time work compensation is also limited to 12 months – now it can be extended to 24 months.

What basic conditions must be fulfilled in order to be able to receive short-time work compensation?

1. *Step 1: Introduction of short-time working*

The order to do short-time work requires a separate legal basis in the form of a corresponding regulation in a collective bargaining agreement, in a company agreement, or in the respective employment contract. If such a regulation does not exist, a corresponding agreement can be subsequently concluded with employees on an individual basis in addition to their employment contracts.

2. *Step 2: Notification of the loss of working hours to the responsible employment agency*

On the basis of the underlying agreement (collective bargaining agreement, company agreement, or employment contract), the employer must report the loss of working hours in the second step to the competent employment agency (the employment agency in whose district the business is located). If the requirements are met, the agency will confirm the loss of working hours. The decisive prerequisite for the payment of reduced hours compensation is that a “significant loss of working hours” exists. Such a substantial loss of working hours exists if it is due to external circumstances the company cannot influence. Coronavirus-related circumstances that would meet this definition include official closure orders and lack of supply of raw materials or other supplies. Furthermore, the loss of working hours must also be unavoidable, i.e., the company must have done everything in its power to prevent it. This includes, for example, granting vacation or reducing time credits. Finally, the loss of working hours must also be temporary, i.e., a return to full-time work must be expected.

3. *Step: Applying for short-time work compensation at the responsible employment agency*

After notification by the employer, the competent employment agency should then decide, without delay, whether the conditions for payment of short-time work compensation are met, and issue a corresponding notice. After the agency has issued this decision, the employer can calculate the short-time allowance and pay it out to the employees. The employer will typically advance the short-time allowance, which is then reimbursed by the relevant employment agency. The cut-off period for this application ends three months after the end of the month that includes the days that the short-time allowance applies to. In the case of longer periods of short-time work, the benefit application must therefore be submitted monthly.

FOOTNOTES:

- 1 See, for example, *BMF-Schreiben zu den steuerlichen Maßnahmen zur Berücksichtigung der Auswirkungen des Coronavirus* at: https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Weitere_Steuerthemen/Abgabenordnung/2020-03-19-steuerliche-massnahmen-zur-beruecksichtigung-der-auswirkungen-des-coronavirus.html .
- 2 There are several publications put out at the national level any many more on the state level (Ländererlasse).
- 3 RS 2020/167 vom 17.03.2020 (not yet published on the GKV Website (to come)).
- 4 See (in German) “Corona-Virus: Maßnahmen zur finanziellen Unterstützung von Arbeitgebern bei der Zahlung von Sozialversicherungsbeiträgen”: https://www.gkv-spitzenverband.de/media/dokumente/krankenversicherung_1/grundprinzipien_1/finanzierung/beitragsbemessung/20200325_Hintergrund_Beitragstundung.pdf .

FOOTNOTES (cont'd):

5 Representatives of the KPMG International member firm in Germany have learnt this through discussions with officials at the Federal Ministry of Finance.

6 See *Gesetz zur befristeten krisenbedingten Verbesserung der Regelungen für das Kurzarbeitergeld* at: https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Meldungen/2020/kurzarbeit-wird-erleichtert-gesetzentwurf-de-bundestags.pdf?__blob=publicationFile&v=5 .

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