



INFLATION

ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT

INFLATION COMPENSATION BONUS

From 26 October 2022, employers will be able to grant their employees tax-free allowances of up to 3,000.00 EUR. This is the so-called inflation-compensated compensatory premium. Below you will find 25 questions and 25 answers on the subject of the inflation compensation premium.

1. UNTIL WHEN CAN THE INFLATION COMPENSATION PREMIUM BE PAID?

The preferential period for the inflation compensation premium runs until 31.12.2024. Until then, employers can in principle pay the contributions tax-free. The so-called inflow principle applies (DB 2022, also Hick for 2766).

2. DOES THE STATE SUBSIDISE INFLATION COMPENSATION PREMIUMS?

Strictly speaking, this is not the case. However, benefits provided by the employer are exempt from tax and social security up to an amount of 3,000.00 EUR. The state "subsidizes" premiums.

3. DOES THE INFLATION COMPENSATION PREMIUM HAVE TO BE PAID IN ONE LUMP SUM?

No, the amount of 3,000.00 EUR can be freely divided, i.e. easily paid in several installments. For example, the employer can pay € 200.00 up to € 3,000.00 per month. In this example, this would be 15 partial amounts (15 x 200 = 3,000).

4. ARE EMPLOYEES ENTITLED TO AN INFLATION COMPENSATION PREMIUM?

No, they are not. It is a voluntary employer benefit. In principle, employees have no legal right for the payment of inflation insurance premiums. However, this may differ with regard to the so-called principle of equal treatment (see question 5 below).

5. DO EMPLOYERS HAVE TO PAY THE SAME INFLATION COMPENSATION CONTRIBUTION TO ALL EMPLOYEES?

No, employers are not obliged to do so. This differs only in the context of the so-called principle of equal treatment. This can lead to employers paying different amounts for objective reasons and not paying insurance premiums at all for some employees. In particular, employers can differentiate according to the income level of individual employees and only grant supplements to employees up to a certain income and not to others.

It becomes more difficult here when employers differentiate according to criteria that are fundamentally suitable to justify a different treatment of individual employees, such as measures according to the work performed by each employee. This raises the question of whether different payments of inflation compensation premiums are objectively can be justified. It seems questionable because the tax-free premium, as the name of the premium suggests, is primarily intended to cover the cost of living that has risen as a result of inflation.

6. HOW SHOULD THE EMPLOYER MAKE IT CLEAR IN THE PAYROLL THAT HE WANTS TO PAY THE INFLATION COMPENSATION PREMIUM?

It is sufficient if, when paying the insurance premium, the employer makes it clear, that the payment is related to the price increase.

7. CAN TRAINEES ALSO RECEIVE AN INFLATION COMPENSATION PREMIUM?

Yes, trainees can also receive an inflation compensation premium.

8. CAN THE INFLATION COMPENSATION PREMIUM ALSO BE PAID TO marginally EMPLOYED PERSONS, WORKING PENSIONERS AND WORKING STUDENTS?

Yes, a payout is also possible in this case.

9. CAN WORKING FAMILY MEMBERS (HUSBAND, WIFE, ETC.) ALSO BE ELIGIBLE FOR PREMIUMS?

Yes, but particular attention must be paid to compliance with the principle of equal treatment (see question 5 above).

10. CAN THE INFLATION COMPENSATION PREMIUM BE GRANTED IN KIND?

Yes, that is to be assumed. For example, an employer can give an employee one or more vouchers with a total value of up to 3,000.00 EUR.





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11. CAN AN INFLATION COMPENSATION PREMIUM REPLACE ANOTHER BENEFIT PAYABLE BY THE EMPLOYER?

No, it should not happen under any circumstances. The payment is considered as additional benefit and must be shown as such on your payslip (see question 6 above). For example, a bonus may not be paid instead of an unpaid Christmas bonus, the 13th salary or holiday pay.

This can be particularly problematic if your employer has previously declared your 13th salary or Christmas bonus as a "discretionary employer benefit". Here it must be examined very carefully whether the employee is actually not entitled to such employer benefits. In this case, the inflation-compensated premium should not be a substitute! In this context, it is often worthwhile to compare employment contracts and, if necessary, collective agreements.

See also § 8 sec. 4 EStG and again question 12 below.

8(4) of the EStG provides:

'For the purposes of this Law, benefits provided by the employer or at the instigation of a third party (remuneration in kind or subsidies) for employment shall be provided in addition to the wages already due only if:

1. the benefit is not deducted from the entitlement to wages,
2. the entitlement to wages is not reduced in favour of the benefit,
3. it does not grant the benefit for use or purpose in lieu of an already agreed future increase in wages, and
4. in the event of discontinuation of the benefit, wages are not increased. Under the conditions of sentence 1, a service provided in addition to the wage owed in any case is to be assumed even if the employee is entitled to this under an employment contract or on the basis of another legal basis under employment or service law (such as individual contract, works agreement, collective agreement, law)."

12. WITH REGARD TO QUESTION 11, WHAT APPLIES WITH REGARD TO ANY "VOLUNTARY" BENEFITS GRANTED BY THE EMPLOYER IN THE PAST AND THE LEGAL INSTITUTION OF COMPANY PRACTICE?

Inflation premium payments must be made "on top" by the employer and, as explained (see question 11), cannot replace wages already paid. Ask to what extent the employee has an enforceable right to certain payments. In this context, the legal system of business practices, which is important from the point of view of labour law, must also be taken into account. What is subject to the exercise of an undertaking for the benefit of an employee cannot be replaced by the payment of an inflation compensation premium. If, for example, an employer has been paying the 13th salary without reservation for years without a clear provision in the employment contract, the inflation-compensated premium does not replace it. The same applies, of course, to benefits in kind provided by the employer.

13. WHO ACTUALLY CONTROLS THE APPROPRIATE GRANTING OF INFLATION COMPENSATION PREMIUMS?

There are many aspects to consider. In addition to financial control, auditors will carry out regular social security audits to closely check whether payments have been granted "on top".

14. CAN AN EMPLOYER USE AN INFLATION-COMPENSATED PREMIUM IN ADVERTISING TO TRY TO RECRUIT AN EMPLOYEE FROM ANOTHER COMPANY?

Yes, this is usually allowed. The fact that it is a 'bill of exchange' does not preclude recognition as an inflation compensation premium.

15. CAN AN EMPLOYEE RECEIVE SEVERAL INFLATION COMPENSATION PREMIUMS?

Yes, this is possible. For example, if an employee changes employers in 2023, he can receive bonuses from both his "old" employer and his "new" employer. See also question 17.





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16. CAN THE SO-CALLED CORONA CARE BONUS AND THE INFLATION COMPENSATION PREMIUM BE COMBINED WITH EACH OTHER?

Probably. Care premiums and inflation protection premiums pursue different objectives. In total, a combination would make a possible total amount of EUR 7,500.00.

17. CAN THE INFLATION COMPENSATION PREMIUM BE PAID MORE THAN ONCE IN THE CASE OF SEVERAL EMPLOYERS?

Premiums can be paid for any employment relationship. If an employee has several employers, an inflation-adjusted premium may be granted within the framework of each employment relationship. The situation is different if the employee has several employment relationships with the same employer (e.g. in spring and autumn 2023 as part of so-called seasonal work) - see question 15.

18. WHAT APPLIES TO THE INFLATION COMPENSATION PREMIUM OF THE GMBH MANAGING DIRECTOR?

They may also receive a bonus. But it should be distinguished:

- If the managing director of the GmbH is a "really" independent managing director, he will usually be able to pay the contributions without any problems.
- If the managing director of the GmbH is also a shareholder of the GmbH, the payment is made to face the "comparison with others". Otherwise, you run the risk of distributing hidden profits.

19. WHAT APPLIES TO THE INFLATION COMPENSATION PREMIUM IN THE EVENT OF A TRANSFER OF A BUSINESS (§ 613A BGB)?

In the event of a transfer of business within the meaning of § 613a BGB, the employment relationship itself continues and passes from the seller to the buyer (see above § 613a para. 1 sentence 1 BGB). This means that the employee can only receive a bonus up to an amount of EUR 3,000.00, regardless of whether it is paid in whole or in part by the seller and/or buyer.

20. IS THE INFLATION COMPENSATION PREMIUM ATTACHABLE?

This question is currently unanswered. There is some evidence that the premium is attachable. Unfortunately, the law does not yet answer this question.

From a practical point of view, too, there could be some arguments in favour of paying any premium paid to the attaching creditor: If, contrary to the assumption expressed here, the premium is nevertheless unattachable, the money is more likely to be repaid by the creditor than by the employee affected by the seizure.

21. WHERE IS THE INFLATION COMPENSATION PREMIUM ACTUALLY REGULATED BY LAW?

The inflation compensation premium is regulated by law in § 3 No. 11 c) EStG.

22. CAN A GROUP PARENT COMPANY ALSO PAY AN INFLATION COMPENSATION PREMIUM TO EMPLOYEES OF ITS SUBSIDIARIES?

No, the law does not provide for so-called group privileges (DB 2022, also Hick in 2766)

23. CAN THE INFLATION COMPENSATION PREMIUM ALSO BE PAID TO EMPLOYEES WHO ARE WORKING ON SHORT-ALLOWANCE WORK AT THE TIME OF PAYMENT?

Absolutely.

24. CAN I PAY EMPLOYEES ON PARENTAL LEAVE INFLATION-ADJUSTED CONTRIBUTIONS?

Again, there is an employment relationship, so probably yes.

25. CAN I PAY INFLATION PROTECTION PREMIUMS TO EMPLOYEES WHO CAN PROVE THAT THEY ARE NOT FINANCIALLY NEEDY?

Yes, this is not a problem.

