

Child benefit in cross-border cases (European Union, European Economic Area and Switzerland)

Application of supranational law

This leaflet is intended to provide you with an overview of the particular aspects that arise in cross-border cases. General information on the subject of child benefit can be found in the "Child Benefit" leaflet.

1. General

In cross-border cases relating to child benefit the provisions of European law are considered to take precedence over national legislation.

Therefore, in relation to the granting of child benefit as per tax legislation in accordance with the Income Tax Act and child benefit as per social legislation in accordance with the Federal Child Benefit Act the relevant Regulations (EC) 883/2004 and 987/2009 on the coordination of social security systems should be referred to in cross-border cases.

Example: The Müller family lives with its new-born child, Max, in Germany. Mr Müller works in Austria and commutes daily to work. Mrs Müller is a housewife. In principle there is an entitlement to child benefit in both Germany and Austria.

Mr Müller in agreement with his wife wishes to apply for child benefit for Max.

Because of the cross-border aspect here, Regulations (EC) 883/2004 and 987/2009 should be taken into account in addition to the Income Tax Act.

2. Why are Regulations (EC) 883/2004 and 987/2009 necessary?

As cross-border cases relating to child benefit usually involve entitlements to child benefit in more than one Member State, so-called "concurrent entitlements" arise.

In order to resolve these concurrent entitlements Regulations (EC) 883/2004 and 987/2009 determine which legal provisions apply to the persons affected and which Member State is responsible for the granting of family benefits to the persons affected. This prevents a situation whereby a person is subject to the legal provisions of more than one Member State at the same time and is therefore in receipt of multiple benefits for the same purpose. Essentially a person can only be subject to the legal provisions of one Member State.

Regardless of the coordinating provisions in European law an entitlement can exist only according to national law whereby although the Member State is not responsible according to European regulations, the eligibility criteria according to national law have been met.

Example (continued): As there is in principle an entitlement to child benefit for Max in both Germany and Austria, using the coordinating provisions in European law a decision must be made about which Member State is responsible for the payment of child benefit.

3. In which cases do Regulations (EC) 883/2004 and 987/2009 apply?

Regulations (EC) 883/2004 and 987/2009 came into force with effect from 1 May 2010 in all Member States of the European Union. They also came into force in respect of Switzerland with effect from 1 April 2012 and also from 1 June 2012 in respect of Member States of the European Economic Area (Iceland, Liechtenstein and Norway). Previously the coordination of family benefits was carried out in accordance with Regulations (EEC) 1408/71 and 574/72.

Persons covered by these regulations are nationals of Member States, their family members as well as surviving family members and recognised refugees or stateless persons resident in the area where these regulations are applicable, and in principle any third-country nationals as well, who lawfully reside in one of the Member States.

Example (continued): Regulations (EC) 883/2004 and 987/2009 apply as Mr and Mrs Müller are nationals of the European Union who live in Germany and, because Mr Müller's place of work is in Austria, there exists a relationship with another Member State of the European Union.

4. Which legislation applies in the event of supranational cases?

Regulations (EC) 883/2004 and 987/2009 determine, among other things, which national legislation applies to the persons concerned.

If you are employed or self-employed, according to the relevant provisions of the Regulations you are in principle subject to the legislation of the Member State in which you carry out your employment or self-employment. In addition, a break in employment due to unemployment is also considered to be equivalent to employment/self-employment provided that benefits for unemployment are granted in accordance with the legislation of the relevant Member State.

Furthermore there are also special rules for certain categories of persons. For example, a posted employee (e.g. an employee posted by his German company Germany to France in order to carry out a particular task) generally continues to be subject to the legislation of the Sending State.

Otherwise a person is subject to the legislation of the Member State in which he/she resides.

Example (continued): Because he is in employment in Austria Mr Müller is subject to Austrian legislation. Because her place of residence is in Germany, Mrs Müller is subject to German legislation.

5. How are concurrent entitlements resolved?

Where in respect of a child there exists an entitlement to family benefits in two or more Member States of the European Union, European Economic Area or Switzerland, and therefore entitlements to family benefits overlap, these concurrent entitlements will be resolved with reference to the prioritisation rule in Regulation (EC) 883/2004. This prioritisation rule determines the priority or lower priority of the Member State responsible for the payment of family benefits.

The prioritisation rules are applied by reference to employment, pension or place of residence. They are described as follows:

1) If child benefit is to be granted by more than one Member State for different reasons:

- Priority of responsibility lies with the Member State in which employment or self-employment is carried out.
- If no employment or self-employment is carried out, responsibility lies with Member State according to whose legislation a pension is claimed.
Pensioners include all recipients of old-age pensions, pensions relating to reduced ability to work and death benefits paid from a statutory pension scheme as well as recipients of an injury-related pension or survivor's pension paid from a statutory accident insurance scheme. The definition of pensioner also includes retired civil servants and their equivalents who are entitled to related benefits under civil service or military service regulations.

Examples:

- The mother is employed in Member State A. The father receives a pension from Member State B. Both parents live in Member State C. Because of the mother's employment, Member State A has priority of responsibility.
- Both parents were previously self-employed in Member State A and are not in receipt of any statutory pension. They live in Member State B. As country of residence, Member State B has responsibility.

2) If child benefit is to be granted by more than one Member State for the same reason, the Member State in which the child lives always has priority of responsibility.

Examples:

- The mother is employed in Member State A. The father is employed in Member State B. The child lives in Member State A which therefore has priority of responsibility.
- The mother is in receipt of a pension from Member State A. The father is in receipt of a pension from Member State B. The child lives in Member State B which therefore has priority of responsibility.

The Member State which has priority of responsibility according to the prioritisation rules must grant the full amount of child benefit. In contrast, the entitlement to child benefit in the Member State with lower priority is suspended in respect of the amount that is provided according to the legislation of the Member State with priority of responsibility.

Therefore the differential supplement for child benefit in Germany (as a Member State with lower priority of responsibility) can only be considered when the child benefit to be granted in the other Member State is lower than the child benefit to be granted in Germany. If the benefits provided in the other Member State are higher, then the payment of German child benefit is not applicable.

Exception:

If the father of the child lives in Member State A and the mother of the child lives in Member State B and neither parent is employed or in receipt of a pension, i.e. there are clear circumstances in relation to the place of residence, the Member State responsible is that in which the child lives - in this example, Member State B. However in such circumstances the other Member State does not grant any differential supplements.

Example (continued): Child benefit can in principle be granted in both Germany and Austria but for different reasons (employment/place of residence) – i.e. concurrent entitlements exist. As employment is solely in Austria, priority is assigned to the granting of Austrian family benefits. Germany only has lower priority of responsibility for the granting of child benefit. Therefore if applicable, German child benefit is granted in respect of the amount of differential supplements relating to the Austrian child benefit.

6. Who receives child benefit?

Regulation (EC) 883/2004 does not determine to whom family benefits in Member States with priority or lower priority are to be paid in the event of a number of persons being eligible for benefits. This is determined solely by the national law of each Member State.

According to German legislation child benefit is paid to the parent in whose household the child resides. If the child resides in the household of both parents, parents who are not permanently separated can decide by a declaration of entitlement between themselves who should receive child benefit. If the child lives in a household other than a parent's, child benefits shall be paid to the parent who regularly pays the child (the higher amount of) a cash allowance.

According to the coordinating provisions in European law the above mentioned German legal regulations on the decision as to which parent is paid child benefit are to be applied on the assumption that both parents live in Germany.

Example:

- The mother lives with the child in France and is not employed. She is also not in receipt of a pension. The father lives and is employed in Germany.

As the father is employed in Germany, priority is assigned to the payment of German child benefit. As the child lives in the household of the mother, the German child benefit is payable to the mother living in France.

Example (continued): As the child lives in the parents' shared household, a declaration of entitlement is necessary. The parents have declared Mr Müller to be the beneficiary. If applicable, German child benefit (in addition to the Austrian child benefit) is payable to Mr Müller in respect of the amount of differential supplements.

7. What documentation do you have to provide?

An application for child benefit must always be made in writing and signed. In cross-border cases please use the "Application for child benefit" form (KG 1), the "Appendix: Child" form and "Appendix: Other Country" (KG 51) form which also provides for an employer statement. If the person making the application is self-employed, appropriate documentation is to be provided (e.g. copy of business registration, tax assessment) in addition.

If you are in receipt of a German pension or related German benefit, please use the "Appendix: Other Country for pensioners and orphans living abroad" form (KG 51R).

In the case of children over the age of 18, please provide additional documents that prove the relevant factual information to be considered. For this please refer to the explanations in Section 11 of the "Child Benefit" leaflet.

On the basis of the information provided in your application for child benefit the Family Benefits Office (*Familienkasse*) will alternatively decide which, if any, documents or forms you are required to provide in addition for the specific case.

The most important forms can also be found online at **www.familienkasse.de**. These can be downloaded as a document and filled out at your computer and printed.

The application can also be submitted to the foreign agency responsible for family benefits in the place of residence of the applicant. If an application is submitted to the foreign agency responsible, the agency will forward the application to the responsible Family Benefits Office.

Example (continued): As part of the application Mr Müller submits a KG 51 application form signed by both parents as well as an employer statement. If as part of the consideration of the application, the Family Benefits Office is of the view that further documentation is required, this is to be requested from Mr Müller.

8. How is information exchanged between the agencies responsible for family benefits?

In cross-border cases relating to child benefit the Family Benefits Office must when reviewing cases involving concurrent entitlements reach an agreement with the foreign agency responsible for family benefits in relation to the priority or lower priority of responsibility. Agencies are therefore required to exchange information for this purpose.

This process is set out in Regulations (EC) 883/2004 and 987/2009 and is carried out solely at agency level (by institutions responsible for family benefits).

Example (continued): As part of its review of the application the Family Benefits Office approaches the Austrian agency responsible for family benefits and informs it of Mr Müller's application in order that the Austrian agency can also carry out a review.

Following an exchange of any necessary information both agencies conclude that Austria has priority of responsibility due to the employment carried out there and Germany has only a lower priority of responsibility in respect of the granting of family benefits.

9. What do you have to notify the Family Benefits Office of?

If you have applied for child benefit, in accordance with Section 68 Paragraph 1 of the German Income Tax Act and Section 60 Paragraph 1 of the First Book of the German Social Code you are required to immediately notify your Family Benefits Office of all changes in your circumstances and those of your children. Notification provided to other agencies (e.g. local authority or council (*Gemeindeverwaltung*), residents' registration office (*Einwohnermeldeamt*) or tax office (*Finanzamt*)) is not sufficient.

You must also notify the Family Benefits Office of any changes if information relevant to the decision on your application has not previously been forwarded by you but by your child to the Family Benefits office or if a decision has not yet been made on your application. This also applies to any changes which only come to your attention following the end of the receipt of child benefit and which can retrospectively affect your entitlement to child benefit.

In cross-border cases the Family Benefits Office must in particular be immediately informed when

- You or another beneficiary take up or cease employment/self-employment,
- You or another beneficiary are posted by your employer to work in another country,
- You or another beneficiary are in receipt of a pension or if receipt of such a benefit ceases,
- You or another beneficiary or a child move your place of residence abroad or to Germany,
- You or a child leave your present household.

Please further refer to the guidelines on the duty to cooperate outlined in Section 2 of the “Child Benefit” leaflet.

Example (continued): The Müller family moves to Austria, Mr Müller must immediately notify the Family Benefits Office of this as this change in circumstances is relevant to the entitlement to child benefit. Therefore there is no longer an entitlement to German child benefit.

10. What else do you need to be aware of?

The Family Benefits Office regularly checks (at least once a year) whether all conditions required for the payment of child benefit are still being met. For this purpose a questionnaire is sent out. This must be completed promptly and returned together with the required documentation. This does not change the requirement to **immediately** notify the Family Benefits Office of any change in circumstances that is relevant to the entitlement to child benefit.

11. Is it possible to challenge a decision?

If you do not agree with a decision of the Family Benefits office, you may submit an appeal (against a decision made in accordance with tax legislation) or an objection (against a decision made in accordance with social legislation) within the period allowed for challenging a decision. This must be submitted in writing or declared for recording to the Family Benefits Office responsible. In order to comply with the period allowed for challenging a decision, the application to challenge a decision may also be submitted to the agency responsible for the granting of family benefits in the other Member State. If the application to challenge a decision is not successful, the Family Benefits Office will issue a determination against which legal action can be taken.

12. Which Family Benefits Office is responsible for you?

In principle the Family Benefits Office responsible is the one in whose district (*Bezirk*) you live or you usually reside. However in cross-border cases in which supranational legislation is to be applied in the case of the applicant or one of the parents, there are Family Benefits Offices with special responsibilities. These are listed in the following table:

Country	Contact details of responsible Family Benefits Office
Belgium Bulgaria Luxembourg Netherlands Hungary	Bundesagentur für Arbeit Familienkasse Rheinland-Pfalz – Saarland 55149 Mainz GERMANY Fax: +49 (681) 944 910 5324 Email: Familienkasse-Rheinland-Pfalz-Saarland@arbeitsagentur.de
France Switzerland Czech Republic Orphans or children who do not know the place of residence of their parents and who reside in Germany	Bundesagentur für Arbeit Familienkasse Baden-Württemberg West 76088 Karlsruhe GERMANY Fax: (for France) +49 (781) 9393 697 Fax: (for Switzerland) +49 (7621) 178 260 585 Email: Familienkasse-Baden-Wuerttemberg-West@arbeitsagentur.de
Austria Croatia	Bundesagentur für Arbeit Familienkasse Bayern Süd 93013 Regensburg GERMANY Fax: +49 (851) 508 617 Email: Familienkasse-Bayern-Sued@arbeitsagentur.de
Poland	Bundesagentur für Arbeit Familienkasse Sachsen 09092 Chemnitz GERMANY Fax: +49 (3591) 661 878 Email: Familienkasse-Sachsen@arbeitsagentur.de
All other EU/EEA Member States Orphans or children who do not know the place of residence of their parents and who reside in an EU/EEA Member State or Switzerland	Bundesagentur für Arbeit Familienkasse Bayern Nord 90316 Nürnberg GERMANY Fax: +49 (911) 529 3997 Email: Familienkasse-Bayern-Nord@arbeitsagentur.de

Please note that if appropriate another Family Benefits Office may be responsible for making a decision on your entitlement to a child allowance. If your place of residence or usual residence is located in Germany, this will be carried out by the Family Benefits Office in the district (*Bezirk*) in which you live.

Example (continued): As there is a supranational relationship with Austria, the Family Benefits Office Bayern Süd (Bavaria-South) is responsible for processing Mr Müller's application for child benefit.