**Final letter on equalisation of pensions**

**Preliminary remark**

The "*Kaffeerunde Versorgungsausgleich*" was launched by lawyer Jörn Hauß at the beginning of 2022. Since then, it has met regularly on the 1st and 3rd Wednesday of the month as an exclusively online exchange platform. All professions involved in pension equalisation, i.e. lawyers, judges, pension consultants, actuaries and employees of pension providers, are involved. This list is not exhaustive and is to be understood conceptually as plural. It naturally also includes the participating colleagues. If you are interested in participating, please send an e-mail to: [hauss@anwaelte-du.de](mailto:hauss@anwaelte-du.de)

The idea of developing a "final letter on pension equalisation" arose during the coffee round, which offers important assistance to clients who are often overwhelmed by the consequences of a VA and enables authorised representatives to support their clients in this regard.

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You are cordially invited to participate in the further development of the document. Please send your suggestions to the e-mail address given above

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# Statutory pension insurance DRV

1. As a result of the decision on pension equalisation, pension entitlements acquired during the marriage were transferred from the statutory pension insurance scheme (DRV). The amount of this transfer is expressed in the decision in earnings points (EP). Each earning point currently has a pension value of 38.92 € (as of 7/2024).
2. The value of the EP is generally increased every year on 1 July. An annual increase in the pension of around 2.6% is assumed in the medium term. This is stated in the [German government's pension insurance report](https://www.bmas.de/SharedDocs/Downloads/DE/Rente/rentenversicherungsbericht-2023.pdf?__blob=publicationFile&v=3) (p. 54) 2023.
3. The DRV usually implements the court's decision on pension equalisation within 2 months of it becoming legally binding. The pension provider will then inform you of the change to your pension level. If you have not received any notification after three months, it is advisable to write to the DRV to remind them of your insurance number. If possible, enclose a copy of the final court judgement. If you do not agree with the implementation of the court judgement by the DRV, the social courts will be responsible for any resulting disputes.
4. You can compensate for the loss of your pension caused by the pension equalisation **by paying contributions into the DRV**. For every euro of pension loss, you must expect to pay a contribution of around 224 euros (as at 2024). You can easily top up your contribution account in the statutory pension insurance scheme in full or in part until you reach the standard retirement age [(§ 187 SGB VI](https://www.gesetze-im-internet.de/sgb_6/__187.html)). Between the ages of 40 and 65, paying contributions into the DRV is almost always more favourable than setting up private pension schemes. **Top-up payments can** be claimed **as special expenses for tax purposes** in accordance with [§ 10 Para. 1 No. 2 and Para. 3 EStG](https://www.gesetze-im-internet.de/estg/__10.html). In order to achieve an optimal distribution of top-up payments, specialist tax advice is strongly recommended due to the maximum amount limit for these special expenses.
5. It is possible that the value of the marital pension **may change** (usually increase) **after the marriage as** a result of legislative measures. In this case, you should check whether it is sensible and possible to amend the decision on pension equalisation. You should therefore seek legal or pension counselling about a year before you retire. However, clarify beforehand whether they have the necessary knowledge of pension equalisation and, if necessary, provide a copy of the decision on pension equalisation.
6. **If you are liable to pay maintenance to your divorced spouse and** become or are a **pension recipient**, the reduction in your pension due to pension equalisation can be suspended under certain circumstances ([§ 33 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__33.html)). In this case, you should seek legal advice and assistance, as the family court has to decide on the suspension of the reduction.
7. If you use a **special age limit** of the DRV to retire before reaching the standard retirement age or receive a **reduced earning capacity pension and** you are not or not yet entitled to any benefits from a pension transferred to you in the pension equalisation under an occupational pension scheme or the civil servants' pension scheme, you can apply to your pension provider to suspend the reduction of your pension ([§ 35 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__35.html)).
8. If you have lost more earnings points in the pension equalisation than you have gained, you should have it checked when **the divorced spouse dies** whether the pension equalisation can be adjusted in your favour. An adjustment is possible if the deceased person entitled to equalisation has not received benefits from the pension transferred to them for more than 36 months ([§ 37 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__37.html)). You can also apply to the DRV for suspension of the reduction in your pension due to pension equalisation without specialist help.

# Civil service pension scheme

1. A pension in the **civil servant's pension scheme** was established or transferred **in your favour** as a result of the decision on the pension equalisation from the marital pension acquisition **in the civil servant**'**s pension scheme**. In the case of an **external division** of a civil servant's pension , pension entitlements were equalised in your favour by crediting earnings points (see marginal number1 ) in the DRV.
2. You will receive a message from the pension provider within about two months of the date on which the law comes into force with more detailed information on the effects of the pension equalisation on your pension. If you have any questions, you are welcome to contact me or another organisation familiar with pension issues (DRV, pension consultants).
3. The pension entitlements credited to you through the pension equalisation in the civil servants' pension scheme or statutory pension insurance participate in the regular pension increases. An annual increase of approx. 2.6 % can be assumed for civil servants' pensions and statutory pension insurance. You should contact the pension provider around three months before you plan to retire and submit a pension application.
4. You will also receive the entitlements you have accrued from the civil servant's pension in the event of an early retirement pension or reduced earning capacity. They will either be the subject of the DRV pension decision (if a transfer was made there) or you must assert your claims against the civil servant's pension provider (if the entitlement was established there). The basis for this is the [BVersTG](https://www.gesetze-im-internet.de/bverstg/index.html).
5. **Your civil servant's pension will be reduced in favour of your divorced spouse.** The reduction corresponds to the equalisation amount and will be taken into account in future pension increases. The civil servant's pension is expected to increase by around 2.6% per year. The deduction from your pension due to pension equalisation will increase by the same amount. The divorced spouse will not participate in salary increases due to promotion.
6. **If you become incapacitated for work or retire before reaching the standard retirement age (application age limit)**, the proportion of your pension for the period of marriage may change retrospectively. In most cases, this will increase it. In this case, you should obtain **new information** from your employer **about the proportion of your pension attributable to the period of marriage**, enclosing the decision on pension equalisation. If the proportion of the period of marriage has increased compared to the court decision on pension equalisation, you should do nothing. However, if the proportion of the period of marriage has decreased by at least 5 %, it may be possible to amend the pension equalisation. In this case, you should seek the help of a lawyer and pension consultant familiar with pension equalisation to check whether it is possible and sensible to amend the decision on pension equalisation. You can find a database of suitable pension consultants here
7. If you, as a person not subject to social insurance contributions, have been granted pension rights in the DRV as a result of the pension equalisation, you cannot draw any benefits from this before reaching the standard retirement age. In this case, you can submit an application to the employer in accordance with [§ 35 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__35.html). The pension reduction can then be suspended up to a maximum of the amount of the pension transferred to the DRV until you receive retirement benefits from the DRV. You can submit this application yourself without any problems or formalities.
8. **If you are liable to pay maintenance to your divorced spouse and** become or are **a pension recipient**, the reduction in your pension due to pension equalisation can be suspended under certain circumstances ([§ 33 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__33.html)). In this case, you should seek legal advice and assistance, as the family court must decide on the suspension of the reduction.
9. You have the option of **replenishing** a pension **loss** caused by pension equalisation by making a payment to the pension provider ([§ 58 BeamtVG](https://www.gesetze-im-internet.de/beamtvg/__58.html)). For every euro of pension loss, you must expect to pay a contribution of around 224 euros. You can easily top up your pension account in full or in part until you reach the standard retirement age. Between the ages of 40 and 65, it is always more favourable to fill the pension gap with capital payments than to set up private pension plans. If you wish to make use of this option, you should enquire with your employer. Such **top-up payments are** tax-deductible **as income-related expenses**, including any external financing costs (BMF, BStBl 1981 I 567; [BFH of 8 March 2006 IX R 107/00](https://datenbank.nwb.de/Dokument/192913/)). Filling the pension gap can therefore be highly attractive - even in instalments if necessary.
10. If you use a **special age limit** to retire before reaching the standard retirement age or become **unable to work and** you are not or not yet entitled to any benefits from a pension transferred to you in the pension equalisation from an occupational pension scheme or the DRV , you can apply to your pension provider to suspend the reduction of your pension ([§ 35 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__35.html)).
11. If you have lost civil servant pensions in the pension equalisation, you should have it checked **when the divorced spouse dies** whether the pension equalisation can be adjusted in your favour ([§ 37 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__37.html)). This may be the case if the deceased person entitled to equalisation did not receive benefits from the pension transferred to them for more than 36 months.

# Professional pension scheme

1. **The pension accrued during the marriage in the occupational pension scheme** was offset by the fact that a pension was established in the occupational pension scheme in favour of the person entitled to equalisation. The pension provider will inform the divorced spouses within 2 - 3 months of the establishment or reduction of the pension.
2. If **a pension** has been **established in your favour**, please bear in mind that disability and surviving dependants' cover usually does not apply when pensions are divided internally. If necessary, you can take out private insurance to cover these risks.
3. The administrative courts have jurisdiction **in the event of disputes regarding the amount of the pension.**
4. You should submit **a pension application** to the pension provider around three months before you intend to retire**.**
5. Many professional pension providers offer the person subject to equalisation the option of making a lump-sum payment to **cover all or part of the pension shortfall** caused by the pension equalisation. If you intend to do this, you should carefully examine the profitability of such a payment or have it examined. The amount of the "contribution payment" usually looks attractive (between €160 and €200, depending on the pension and age). However, as occupational pension schemes usually lag well behind the DRV in terms of dynamics (increase in benefits), filling the pension gap is usually not a good deal. Alternatively, a voluntary contribution to the DRV can be considered. If you have any questions about this, please contact a specialised lawyer or pension consultant
6. **Top-up payments can** be claimed **as special expenses for tax purposes** in accordance with [Section 10 (1) No. 2 and (3) EStG](https://www.gesetze-im-internet.de/estg/__10.html). Due to the maximum amount limit for these special expenses, specialist tax advice is strongly recommended in order to achieve an optimal distribution of top-up payments.
7. **If you are liable to pay maintenance to your divorced spouse and** become or are a **pension recipient**, the reduction in your pension due to pension equalisation can be suspended under certain circumstances ([§ 33 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__33.html)). In this case, you should seek legal advice and assistance, as the family court must decide on the suspension of the reduction.
8. If you have lost entitlements from the occupational pension scheme in the pension equalisation, you should have it checked when **the other spouse dies** whether the pension equalisation can be adjusted in your favour. This is the case if the deceased person entitled to equalisation did not receive benefits from the pension transferred to them for more than 36 months ([§ 37 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__37.html)).

# Company pension scheme

1. The entitlements acquired in the occupational pension scheme during the marriage have been divided by the pension equalisation decision. As a result, the person subject to equalisation loses half of the pension entitlement acquired during the marriage. The pension provider will provide information on the amount of the pension reduction **after** it takes effect
2. **In the case of "internal division"** of the pension, the person entitled to equalisation receives their own entitlement in the occupational pension scheme based on the capital or (more rarely) pension value determined by the court. The pension provider informs the divorced spouses about the amount of the pension that can be expected for the person entitled to equalisation and the reduction in pension for the person obliged to equalise after the decision becomes final , usually without the divorced spouses having to take the initiative. If this is not the case, both divorced spouses **have a right to information from the pension provider** ([§ 4a BetrAVG](https://www.gesetze-im-internet.de/betravg/__4a.html)).
3. **If you have concerns about the amount of the pension justification and the pension deduction**, you should seek advice from a pension consultant, lawyer or actuary. If no clarification can be obtained, the **labour courts** would be responsible.
4. Please bear in mind that disability and surviving dependants' cover is usually not included in the internal division of the company pension scheme. If necessary, you can cover these risks with private insurance.
5. **In the case of "external division"** of the company pension scheme , the court decision in favour of the person entitled to equalisation establishes a pension with the target pension provider chosen by the person entitled to equalisation (usually the DRV) from the equalisation value determined by the court (plus any interest ordered by the court or provided for in the division order). In these cases, the target pension provider must take care of the collection of the equalisation capital itself. It will inform you about the establishment or increase of the pension after it becomes legally effective. **If this does not happen within three months**, please contact the pension provider.
6. If a company pension has been compensated **externally to the DRV**, this not only strengthens old-age, but also survivors' and invalidity cover, provided that the person entitled to compensation is themselves employed and subject to social insurance contributions
7. Regardless of whether a company pension scheme has been shared internally or externally, you should remember to apply to the pension provider for benefits in advance of retirement. The pension provider is not obliged to remind you to **apply for a pension**. Sometimes the form of benefit (pension, instalments, lump sum) also needs to be decided.

# Private utility companies

1. **The entitlements acquired during the marriage in a private pension scheme have been divided by the pension equalisation decision**. As a result, the person subject to equalisation loses half of the pension entitlement acquired during the marriage. The pension provider will provide information on the amount of the pension reduction and the amount of the pension accrual in the event of internal division of the pension ([§ 6 et seq. VVG](https://www.gesetze-im-internet.de/vvg_2008/__6a.html)).
2. **In the case of internal division of a private pension**, the entitlement is established in favour of the person entitled to equalisation by the court decision on pension equalisation. **It is** therefore **not necessary to conclude a "new contract"**. If you, as the person entitled to equalisation, are sent a new insurance contract by the pension provider with a request to sign it, you should be careful because the conclusion of a new contract can often result in a loss of more than of the pension to which you are entitled.
3. As a rule, the insurer **does not provide disability and survivors' insurance** in the case of internal division. Their omission is compensated by a supplement to the retirement pension. If necessary, you would have to insure these risks privately.
4. Private pension providers often grant the person entitled to equalisation the option of a **lump-sum settlement or the repurchase of the pension**. In these cases, it must always be checked whether this option should be utilised and whether the lump sum should be paid into the DRV as a voluntary contribution. However, tax issues and the possible cancellation of state subsidies must also be taken into account. To be on the safe side, a [pension counsellor](https://www.rentenberater.de/fuer-buerger/rentenberater-suche/) should be consulted about this option.
5. Please remember to **apply for a pension when** you reach the contractual retirement age.
6. **In the case of external division of a private pension**, the court decision in favour of the person entitled to equalisation establishes a pension with the target pension provider chosen by the person entitled to equalisation (usually the DRV) from the equalisation value determined by the court (plus interest, if applicable). In such cases, the target pension provider must take care of collecting the equalisation capital itself. It will inform you about the establishment or increase of the pension after it **becomes legally effective.** If this does not happen within three months, please contact the pension provider.
7. Regardless of whether a private pension has been shared internally or externally, you should remember to **apply for a pension when** you reach retirement age.

# Pension equalisation "after the divorce", pension equalisation under the law of obligations

1. Not all pensions could be equalised in the court's decision on pension equalisation. In this respect, the court reserved the right to "**pension equalisation after the divorce**" or "**pension equalisation under the law of obligations**".
2. This part of the pension equalisation is only due when the divorced spouses simultaneously receive a pension **and must be claimed by the person entitled to equalisation from the person obliged to equalise. To do this, it is sufficient to demonstrably request the divorced spouse who is obliged to equalise to pay the equalisation pension under the law of obligations; it is not initially necessary to quantify the claim.**
3. It may therefore be advisable for the person entitled to equalisation to apply for their own pension prematurely and with pension deductions in order to share in the other spouse's pension entitlement.
4. **The amount of the equalisation claim under the law of obligations to which the person entitled to equalisation is entitled is** not conclusively determined by the court decision on pension equalisation. Rather, the person entitled to equalisation participates in post-marital pension increases.
5. The person subject to equalisation can deduct **social insurance contributions** from the pension to be equalised as a deduction from the equalisation pension, but may have to deduct a proportionate [share of the tax-free amount in accordance with § 226 Para. 2 SGB V.](https://www.gesetze-im-internet.de/sgb_5/__226.html)
6. The **taxes due** on the pension to be equalised are not deductible because the person obliged to equalise can deduct the equalisation pension to be paid to the divorced spouse as a special expense in accordance with [Section 10 (1a) No. 4 EStG](https://www.gesetze-im-internet.de/estg/__10.html). The divorced spouse entitled to equalisation must pay tax on the equalisation pension in accordance [with Section 22 No. 1a EStG](https://www.gesetze-im-internet.de/estg/__22.html). If the person subject to equalisation has to pay tax on the pension to be equalised abroad, the taxes due on the equalisation pension must be taken into account.
7. If the decision on pension equalisation was made in accordance with the pension equalisation law applicable until 31 August 2009, any partial equalisation made in the decision (if applicable, pro rata if there are several pensions to be equalised under the law of obligations) must be taken into account.
8. Determining the equalisation pension is not always easy. Particularly in the case of higher claims, help should be sought from lawyers and pension consultants.
9. The claim to equalisation under the law of obligations can also be asserted out of court and be the subject of a settlement agreement between the divorcing spouses without any formal requirements.
10. Pensions that are to be settled under the law of obligations also regularly increase their benefits. Once a payment amount has been determined, it must therefore be regularly adjusted. The person entitled to equalisation must **claim** this **adjustment from the divorced spouse**.
11. **If the person subject to equalisation dies**, the person entitled to equalisation may be able to assert the claim to the equalisation pension against the pension provider of the pension (see [§ 25 f. VersAusglG](https://www.gesetze-im-internet.de/versausglg/__25.html)). This does not work if the pension to be equalised does not include a survivor's pension. Even if the person entitled to equalisation is remarried or the pension is a foreign pension without an entitlement to **a divorced survivor's pension**, this claim usually fails. In these cases in particular, it is urgently necessary to check the settlement of the pension entitlement (see next paragraph). If the divorced spouse of a person subject to compulsory equalisation asserts the claim against the pension provider for extended compulsory pension equalisation and the pension provider has paid the survivor's pension in full to the widower or widow, the pension provider is exempt from making payments to the divorced person until the month following the date on which this decision becomes final [(§ 30 VersAusglG](https://www.gesetze-im-internet.de/versausglg/__30.html)). The divorced spouse can make a claim against the widow or widower for the period from the assertion of the claim until the final judgement on the pension overpayment for reasons of enrichment law. The social security contributions paid by the surviving spouse on the benefits must be taken into account because they cannot be refunded. Taxes paid on the pension benefit can generally be refunded in accordance with [§ 173 AO](https://www.gesetze-im-internet.de/ao_1977/__173.html). Whether the surviving dependant is obliged to submit a corresponding application has not yet been clearly clarified. In any case, the surviving spouse may be able to invoke disenrichment ([Section 818 III BGB](https://www.gesetze-im-internet.de/bgb/__818.html)) against the divorced spouse as long as he or she does not learn of the assertion of the divorced spouse's claim against the pension provider.
12. It is always advisable to examine the possibility of **settling an equalisation claim under the law of obligations** ([§ 23 f. VersAusglG](https://www.gesetze-im-internet.de/versausglg/__23.html)). Such a settlement can be claimed at any time and - unless the divorced spouses agree otherwise - must be paid to a pension provider with whom a pension is to be established in favour of the person entitled to equalisation. This can often result in higher pension income than the pension to be equalised. The amount of a settlement payment should be determined - especially in the case of high-value pensions - by knowledgeable lawyers, pension consultants or actuaries. As a rule, the DRV is the "right" choice as the target pension scheme because it offers the highest return. It is possible to pay the settlement amount into the DRV as a contribution until a full old-age pension is granted and the standard retirement age is reached (§ 187 SGB VI). In certain cases, it may be advisable to apply for only a **partial pension** of 99.9% (§ 42 SGB VI) in order to be able to pay contributions into the DRV pension scheme even after reaching the standard retirement age.
13. **The settlement can also be claimed for tax purposes** (§§ 10 Para. 1a No. 3, 22 No. 1a EStG). This can make it easier for the person subject to equalisation to finance the settlement.