SPECIAL PAYROLL SERVICES

January 2018

In this publication, we provide an overview of the most important personnel and salary changes for 2018 so that you can stay completely up to date.

The most important changes regard:

Although this newsletter was prepared with the utmost care, RMS accepts no liability for any incomplete or incorrect information stated herein. This publication is exclusively intended to communicate news. We advise you to contact your RSM consultant to obtain information about the most current status of the legislation.

Do you have questions regarding this newsletter? Please do not hesitate to get in touch with us.
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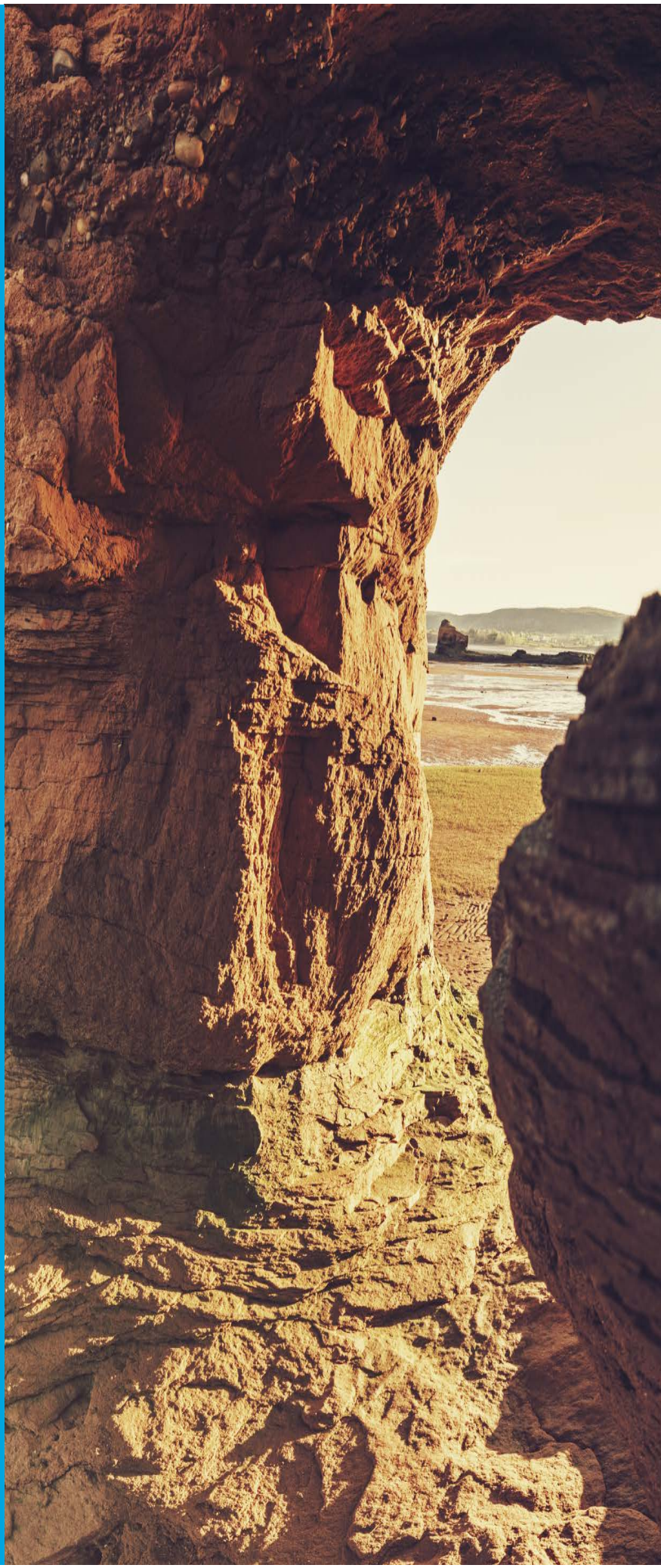


1. SALARY COSTS (INCENTIVE ALLOWANCES) ACT

The Salary Costs (Incentive Allowances) Act consist of two components: 1) the incentive allowance for employers providing employment to low-income workers and 2) the wage cost benefit. The incentive allowance for employers providing employment to low-income workers ('LIV') was introduced on 1 January 2017. The wage cost benefit ('LKV') and the youth LIV will be introduced at the start of 2018.

INCENTIVE ALLOWANCE FOR EMPLOYERS PROVIDING EMPLOYMENT TO LOW-INCOME WORKERS

The incentive allowance for employers providing employment to low-income workers ('LIV') was introduced on 1 January 2017. Employees who satisfy the conditions qualify for the LIV as from 1 January 2017.

LIV conditions

The following conditions apply in order to qualify for the LIV:

- The employee earns a determined average hourly wage (based on at least 100% and at most 125% of the statutory minimum wage).
- The employee is covered by employee insurance schemes.
- The employee holds a substantial job (at least 1,248 paid hours per calendar year).
- The employee has not yet reached state retirement age.

Amounts LIV 2017

The LIV is a fixed amount per paid hour with a fixed amount as annual maximum per employee:

AVERAGE HOURLY WAGE 2017*	LIV PER EMPLOYEE PER HOUR	MAX. LIV PER EMPLOYEE PER YEAR
≥ € 9.66 ≤ € 10.63	€ 1.01 per uur	€ 2,000
> € 10.63 ≤ € 12.08	€ 0.51 per uur	€ 1,000

* The figures for 2018 were not yet known when the Wages Special was published.

The average hourly wage is calculated by dividing the annual wage by the total number of paid hours.

All income components are taken into account when determining the annual wage. This means that allowances for overtime or special hours are included and may have an impact on the average hourly wage. Final levy components are not taken into account. In principle illness does not have an impact on the entitlement to LIV, because it concerns paid hours and not hours worked. The wage for the purposes of wage tax/national insurance contributions is assumed in order to assess whether the employee falls within the boundaries of the LIV. Withholding the pension contribution may mean that the wage for the purposes of wage tax/national insurance contributions is lower than the statutory minimum wage. This means that the entitlement to LIV may lapse.

Paid Hours

Paid hours are hours for which a wage is paid. This includes:

- Contract hours, which means hours that have been agreed with the employee. This also includes hours that were not worked, but were paid in full. For example, in case of leave or illness.
- The additional hours paid that are worked by an employee, such as overtime paid out. This also includes leave hours that were not taken, but were paid in full.

What hours are not paid hours?

The following hours are not paid hours:

- Hours not worked and not paid, such as unpaid leave;
- Hours worked but not paid, such as reduction in working hours or unpaid overtime;
- Distributions paid by you as self-insurer.

LIV application

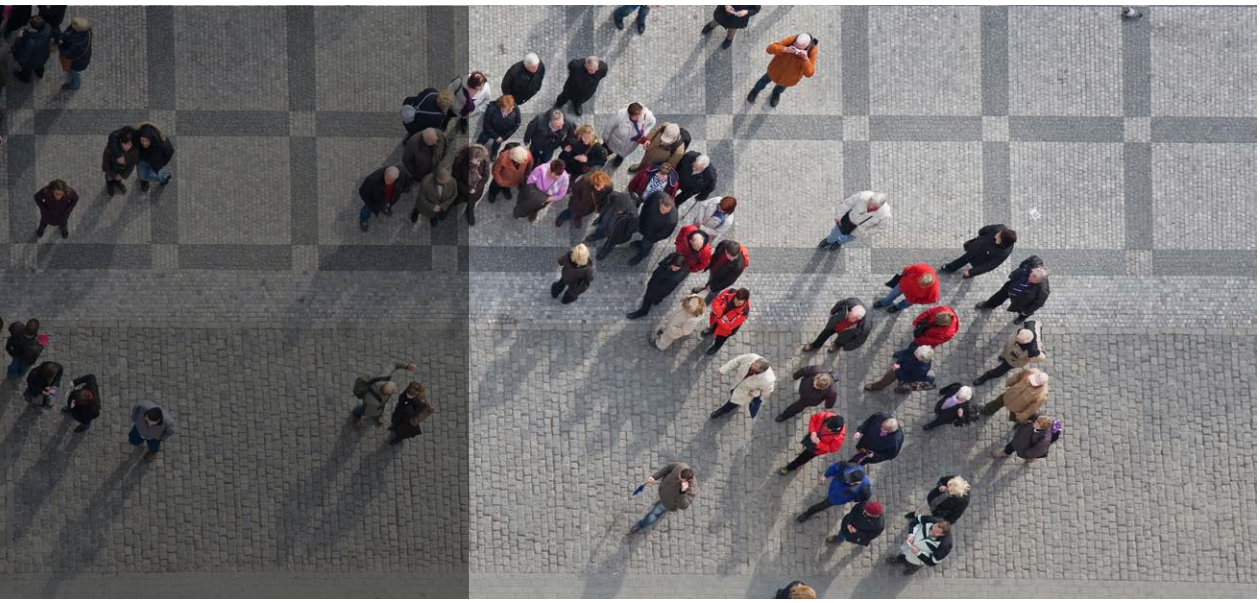
The LIV does not have to be applied for separately by the employer. The Employee Insurance Agency (UWV) assesses on the basis of the policy administration in respect of which employees the employer is entitled to the LIV and bases itself on the withholding taxes returns submitted by the employer to the Tax and Customs Administration.

The correctness of the withholding tax returns is therefore very important. Any errors can only be corrected until May 2018. A possible entitlement to LIV can no longer be claimed thereafter. The assessment of the LIV takes place per employer. In the event the employee is paid under different sub numbers, the paid hours and the annual wage must be added up. The LIV is transferred into the account number belonging to the lowest sub number.

Payment

The LIV is paid automatically if it is apparent from the payroll tax forms that an employer is entitled thereto. This works as follows:

1. The employer receives a provisional calculation of the LIV from the Tax and Customs Administration before 15 March. This calculation is based on returns and corrections for 2017 up to and including 31 January 2018.
2. You can send corrections for 2017 up to and including 1 May 2018. These are still included in the definitive calculation; corrections submitted after 1 May are not.
3. The Tax and Customs Administration sends a decision including the definitive calculation of the LIV to the employer. This takes place before 1 August 2018 on the basis of the information that is known. This decision is liable to objection.
4. The amounts are paid within 6 weeks after the date of the decision.



Important!
In case of implementation problems, the Minister of Social Affairs and Employment has the option of extending the abovementioned dates in 2018 by at most two months.

Important!
The abovementioned payment of youth LIV takes place for the first time in 2019 because these benefits do not commence until 2018 and the average hourly wage and the number of paid hours can only be determined after the fact.

WAGE COST BENEFIT

As from 2018, employers who employ older benefit recipients, disabled workers or persons who are part of the target group jobs agreement and those with learning difficulties, are entitled to what are known as wage cost benefits ('LKV's'). These LKV's replace the premium discounts we have known thus far. As from 2018, the LKV will consist of a fixed amount per paid hour subject to a maximum amount per year. Similarly to the current premium discounts, entitlement to LKV is at most three years. A period of one year applies only to the LKV for reassigned occupationally-disabled employee.

Four wage cost benefits

LKV	AMOUNT PER PAID HOUR	MAX. AMOUNT PER YEAR	DURATION
Older employee	€ 3.05	€ 6,000	3 years
Occupationally-disabled employee	€ 3.05	€ 6,000	3 years
Target group jobs agreement and those with learning difficulties	€ 1.01	€ 2,000	3 years
Reassignment occupationally disabled employee	€ 3.05	€ 6,000	1 year

LKV conditions

If the conditions are satisfied at the start of the employment, the employer has the right to submit an application for an allowance for a period of three years. A period of one year instead of three years applies for the 'LKV for reassignment occupationally-disabled employee'.

The following conditions apply in order to qualify for the LKV:

- The employee holds a target group declaration.
- The employee was not employed by the employer at any time in the period of six months prior to the date of employment with the employer (the anti-revolving door provision).
- The employee has not yet reached state retirement age.
- The employee does not perform work as referred to in Section 2 of the Sheltered Employment Act or Section 10b, third subsection, of the Participation Act.
- The employee is covered by employee insurance schemes.

In addition, additional conditions elaborated below apply per type of the LKV.

LKV older employee

The employee was entitled to benefits under the Unemployment Insurance Act (WW), Invalidity Insurance Act (WAO), Work and Income (Capacity for Work) Act (WIA), Invalidity Insurance (Young Disabled Persons) Act or the Invalidity Insurance (Self-Employed Persons) Act, in the month prior to employment. The employee is aged 56 or over at the moment employment commences.

A difference with the previous premium discount for older employees is that the LKV does not apply to those who were entitled to benefits under the Surviving Dependants Act (ANW), redundancy pay or benefit under the General Pensions (Holders of Political Office) Act prior to the start of employment.

LKV occupationally-disabled employee

- The employee is occupationally disabled.
- The target group includes inter alia employees who were entitled to WIA benefits in the month before commencing employment.

LKV target group jobs agreement

- The employee is occupationally disabled.
- The target group includes inter alia employees who were entitled to Wajong employment support or Wajong benefits or held an indication as referred to in the Sheltered Employment Act in the month before commencing employment.

LKV hreassignment occupationally-disabled employee

- Employees who resume all or part of their work in their own position or in another position with their own employer after having been entitled to WIA benefits.

Target group declaration
The employee applies for a target group declaration from UWV or the municipality. The target group declaration is provided exclusively to the employee. However, the employee can also authorise the employer to apply for and receive the declaration on behalf of the employee.

The target group declaration must be applied for within three months after employment commences. After this term has ended the target group declaration is no longer issued and the employer can no longer claim the LKV including with respect to future periods of the employment.

Employers who hold a target group declaration can only apply for the LKV by stating the LKV indication in the payroll tax form. No LKV is granted without an indication in the payroll tax form. The employer retains the target group declaration in its records.

YOUTH LIV

The Youth LIV is a new, annual allowance for employers in connection with the increase of the minimum youth wage. This means additional wage costs for employers. That is why employers receive the Youth LIV as from 1 January 2018 for employees who satisfy the conditions.

Youth LIV conditions
Employers are entitled to Youth LIV for every employee who satisfies these three conditions:

- The employee is covered by employee insurance schemes.
- The employee receives an average hourly wage that is in line with the statutory minimum youth wage for his age.
- The employee was aged 18, 19, 20 or 21 on 31 December of the previous year.

The average hourly wage is the wage from employment for one year divided by the number of paid hours during that year.

Amounts Youth LIV
Is an employer entitled to the Youth LIV? If so, the employer receives an amount per paid hour. The amount per hour differs per age. The exact benefit depends on both the number of paid hours and the age of the employee.

AGE ON 31-12-2017	YOUTH LIV PER EMPLOYEE PER PAID HOUR	MAX. YOUTH LIV PER EMPLOYEE PER YEAR
18	€ 0.23	€ 478.40
19	€ 0.28	€ 582.40
20	€ 1.02	€ 2,121.60
21	€ 1.58	€ 3,286.40

In 2018, Youth LIV is 1.5 times higher than in 2019. The reason is that the minimum youth wage was increased on 1 July 2017, while the Youth LIV was not introduced until 1 January 2018.

The requirement of at least 1,248 paid hours of the LIV does not apply to the Youth LIV.

Important!
Employers who use bbl (basic vocational learning pathway) students may also qualify for Youth LIV. Employers receive this allowance if they pay bbl students in accordance with the statutory minimum youth wage in line with his age. Employers are also allowed to pay bbl students less than the statutory minimum youth wage. There is no entitlement to Youth LIV if they do so.

Important!
Employers who include incorrect information in the payroll tax form while it is important for the implementation of this act that this information is correct, may receive an administrative fine of at most €1,319 per detail per employee per year.

Important!
The possibility of claiming a discount as yet after the fact if employers had forgotten to do so existed for premium discounts. This does not apply to wage cost benefits! Wage cost benefits cannot be claimed after the fact if the requirements are not satisfied on time. Timely identification of the possibilities is therefore very important.

2. THE ASSESSMENT OF EMPLOYMENT RELATIONSHIPS (DEREGULATION) ACT (DBA) TO BE RESTRUCTURED

The new government wishes to get rid of the DBA Act. This act that was introduced in 2016 to replace the Declaration of Independent Contractor Status (VAR) creates too much uncertainty and unrest among self-employed workers without employees (ZZP) and their clients. Instead, a new act will be introduced that gives clients and actual ZZPs certainty that there is no employment relationship. Tax enforcement of the DBA Act remains suspended in the meantime.

FROM DBA TO A NEW ACT

The new government has announced this plan for a new 'ZZP act' in the Coalition Agreement that was presented on Tuesday 10 October 2017. This means that the plan still has to be elaborated into a legislative proposal. The general features are already known, however. The government envisions three categories of self-employed workers without employees:

- Self-employed persons who work for a low rate combined with a contract with a term exceeding three months or combined with the performance of regular work. Such cases always involve an employment contract. A low rate lies somewhere between €15 and €18 per hour.
- Self-employed persons who work for a high rate of more than €75 per hour combined with a contract with a term shorter than one year or combined with non-performance of regular work. The government provides for an opt-out in these cases. ZZPs and their clients will then agree that no payroll tax is withheld.
- Self-employed persons who receive in excess of the low hourly rate. The government wishes to introduce an 'employer declaration' for this group. In this declaration, clients are required to answer several clear questions concerning the employment relationship with self-

employed workers without employees. If the outcome is that there is no employment relationship, clients have certainty that they do not have to withhold and pay payroll tax and national insurance contributions. The questions must of course have been answered truthfully.

A schematic representation of the new plans has been provided below:

RATE	ZZP	EMPLOYEE
€ 15 – € 18	No regular activities	longer than 3 months
> € 18	Employer declaration	
> € 75 (opt-out possibility)	at most 1 year	no regular business activities

ENFORCEMENT SUSPENDED

It will take some time before the new act can be introduced. The new government indicates in the Coalition Agreement that the Tax and Customs Administration will not enforce the DBA Act until that time. This means that the Tax and Customs Administration will not impose additional assessments, fines or obligations to correct if it is established after the fact there is an employment relationship between the ZZP and the client. Enforcement only takes place in case of malicious intent. Non-enforcement of the DBA Act will be phased out gradually following introduction of the new act. This will allow everyone sufficient time to get used to the new rules.

Important!
Enforcement only concerns the tax aspects and NOT aspects related to employment law. Keep this in mind and consider that consequences under employment law can have a major impact.

Important!
The former government suspended enforcement of the DBA Act at least until 1 July 2018. The new government now intends to suspend enforcement until a later date. A formal decision to do so still has to be made, however.

3. PENSIONS

RETIREMENT AGE INCREASED

On 1 January 2018, the standard retirement age was increased from 67 to 68 as a result of the increased life expectancy of the Dutch population. This age for calculation purposes is used to calculate the maximum annual pension accrual allowed under tax law. This could have consequences for the amount of the pension contribution and for the amount of the pension benefit.

SELF-ADMINISTERED PENSIONS PHASED OUT: WHAT CHOICE WILL YOU MAKE?

It has no longer been possible to accrue pension within your own company since 1 July 2017. Self-administered pension was abolished. A transitional regime of at the moment still two years (2018 and 2019), in which you have to decide what you wish to do with your existing pension provision in the company, applies to anyone who has accrued self-administered pension. You have three possibilities: commutation, conversion and leaving it where it is. Your partner has to agree depending on your choice and you are obliged to inform the Tax and Customs Administration.

Important!
You have to decide which option to choose. Obtain sound advice in this connection, because all three possibilities have their own advantages and disadvantages.

Possibility 1: commutation with tax credit

You can commute the self-administered pension you have accrued in a tax-efficient manner with a tax credit. For this purpose, your pension rights are reduced by the value for reporting purposes on the basis of the (balance sheet) value for tax purposes, without tax consequences. Such a reduction means that you relinquish part of your pension rights, namely the difference between the value for reporting purposes and the value for tax purposes of those rights.

You can then fully commute the reduced pension rights in a tax-efficient manner as a lump sum and with a tax credit. This discount applies for a period of three years and is granted at most for the (balance sheet) value for tax purposes of the pension liability on 31 December 2015. No discount is granted on value increases that occur after that date.

Important!
Commutation is no longer allowed after 2019. If you do so, you will pay considerable income tax and contributions under the Healthcare Insurance Act on this amount. You will then also owe 20% revisionary interest.

Tax credit

A tax credit of 25% applies in 2018. So income tax and national insurance contributions are payable in respect of 75% of the balance sheet value for tax purposes on 31 December 2015. Value increases that occur after that date are fully taxed. The tax credit amounts to 19.5% in 2019. You also do not owe revisionary interest.

Tip: Obtain sound advice on commutation. The tax credit makes this seem extra attractive, but that is not always the case. What is more, you still have to pay a considerable amount in taxes directly and that money is perhaps not always available. Commutation is not always possible if this is the case.

Important!
If you converted a part of the pension insured externally to self-administered pension on time (request for return before 1 July 2017), this part can also be commuted in 2018 or 2019. The tax credit does not apply to this part, however.

Tip: Self-administered pension that has already commenced (you have already received pension benefits from your company) can also be commuted with a tax credit. As your pension has already commenced, the (balance sheet) value for tax purposes will often be lower at the moment of reduction than the value for tax purposes at the end of 2015. The tax credit is calculated for you on that lower (balance sheet) value for tax purposes.

Important!
Do you also have a right of entitlement to periodic payments in the company in addition to pension? That right of entitlement to periodic payments could create a problem during commutation. Seek sound advice in this connection.

Your partner in case of commutation
Your current or former partner has to agree to the commutation of your pension. The reason is that it also has consequences for his or her pension rights. Your partner therefore also has to be advised in this connection. It is preferred (and it is perhaps mandatory in view of the accountant's duty of care) that this is done by another advisor than your own accountant or tax consultant. Solid agreements are necessary in order to prevent any future problems!

A possible compensation may be part of the meeting especially if you are married after making a prenuptial agreement. After all, your partner loses his or her rights to part of the accrued self-administered old-age pension (partner's pension) in case of commutation. Moreover, there might be a (taxed) gift if your partner is not compensated or insufficiently compensated for relinquishing his/her rights. Whether compensation should be provided and how much depends on your personal situation. It is impossible to provide standard rules in this regard.

Tip: the fact that there is no longer any self-administered pension following commutation means that there is no longer any partner's pension either. What this means in the event you should die is an important question.

You are required to notify the Tax and Customs Administration of your current or former partner's consent to the commutation. This should be done in a special form that can be downloaded from the website of the Tax and Customs Administration and which you have to sign together

Obligation to provide information
You have to use this special information form to submit the following information to the Tax and Customs Administration within one month after commutation of the accrued self-administered pension or the conversion of self-administered pension into an old-age provision (see below):

- your personal data (such as your name and citizen service number) concerning yourself and any
- current or former partner
- details of the company in which the self-administered pension has been placed
- the choice you have made: commutation or conversion of the pension right for tax purposes
- the date of commutation or conversion
- the balance sheet value for tax purposes of the pension right at three different moments: 1 January 2015, 31 December 2015 and at the moment of commutation or conversion
- the balance sheet value for reporting purposes of your pension right on the date of commutation or conversion
- in case of conversion into an old-age provision, whether you made arrangements with your partner concerning the division of this old-age provision in case of divorce.

Commutation without payment
If you opted to commute your self-administered pension, such commutation will be taxed. You do benefit from a tax credit. You can agree with the company that you do not receive the commutation amount immediately upon commutation, but at a later moment.

That deferred payment does not have an impact on the moment at which the company has to withhold income tax and national insurance contributions on the commutation amount and pay it to the Tax and Customs Administration. The reason is that the moment of commutation rather than the moment of payment applies in this connection. If commutation of self-administered pension takes place in December 2017 for example, income tax and national insurance contributions must be withheld from the commutation amount at that moment. The company therefore has to include the payable income tax and national insurance contributions in the withholding tax return for the payroll period December 2017 and pay it. The fact that the company does not pay the commutation amount to you until 2020 for example does not have an impact on this.

Option 2: conversion into an old-age liability
You can convert your accrued self-administered pension into an old-age liability. In this case as well, your pension rights are first reduced by the value for reporting purposes on the basis of (balance sheet) value for tax purposes, without tax consequences. This reduced pension right is then converted into an old-age savings obligation. This conversion can be performed until 31 December 2019 at the latest.

This option allows you to keep the money and your old-age entitlement within the company. No further accrual is possible following conversion into the old-age liability. The old-age liability does have to accrue annual interest against the prescribed market rate until the retirement date.

Important!
The old-age liability is a savings scheme within your own company. The return on savings is very low at the moment. This means that your old-age liability will not grow very fast on the basis of the annual interest accrual. It is therefore uncertain how much 'pension' your company will be able to pay to you later.

When you reach the retirement date, you will receive old-age benefits for a period of twenty years from the company. Tax is not levied until that payment phase. If the benefits commence before state pension age is reached (at most five years before that age), the twenty-year period must be extended by those additional years.

Tip: it is possible to commute the old-age liability as yet. If you do so in 2018 or 2019, you will be able to benefit from the tax credit. After 2019, you will owe income tax and revisionary interest on the full old-age liability in case of commutation.

Tip: Self-administered pension that has already commenced (you have already received pension benefits from your company) can also be converted into an old-age liability.

Deposit
You can also use the old-age liability to purchase an annuity from a banking institution or an insurance company. This conversion of an old-age liability into an annuity can be done at any moment until you reach state pension age. The old-age liability may be used to purchase an annuity for up to at most two months after reaching state pension age. It is also possible to purchase an annuity as yet from a banking institution or an insurance company after the old-age liability has commenced. You may do so for up to at most five years after reaching state pension age.

Tip: If you use all or part of your old-age liability to purchase an annuity, you will have more options as regards the term of payment than the fixed twenty years that apply in case of an old-age liability. Different payment periods apply depending on the form of annuity you choose and that offers you a little more room for manoeuvre..

Similarly to the possibility of commutation, the procedure for converting self-administered pension into an old-age liability is the same for your partner. Your current or former partner will have to agree to the conversion. The partner must be informed properly in this connection in order to protect his or her rights. Compensation for your partner for the loss of his or her rights to part of the accrued self-administered old-age pension (partner's pension) may be relevant.

Consent to the conversion into an old-age liability must also be notified to the Tax and Customs Administration. This should be done using the special information form you use to notify your choice for commutation or conversion (see above) and that you sign together with your current or former partner.

Important!
You have to submit this completed and signed form to the Tax and Customs Administration within one month after conversion of self-administered pension into an old-age liability. Otherwise you will risk a 'gross' pension right.

Indexation charges
The matter of indexation may become relevant if your pension liability has been placed in a separate company (external self-administered pension). Costs and charges related to future indexation capitalised on the balance sheet for tax purposes must be handled as follows. If the self-administered pension is commuted in a tax-efficient manner, these indexation costs and charges may be deducted from the profit as a lump sum at the moment of commutation. If the self-administered pension is converted into an old-age liability, the capitalised indexation costs and charges may be deducted in equal, annual parts.

Option 3: not altering the self-administered pension
You may also decide not to take any action or, in other words, continue your self-administered pension. The rules from before April 2017 continue to apply in this case. However, further accrual of the self-administered pension is no longer possible as from 1 July 2017. The annual, actuarial interest accrual by pension rights already accrued is mandatory and annual indexation may also be required depending on the pension commitment.

The difference between the value for reporting purposes and the value for tax purposes of your pension rights continues to exist. Your company will pay the pension reservation to you on the pension commencement date as laid down in the pension agreement between yourself and the company.

Important!
Be extra careful when making dividend distributions if you maintain your self-administered pension. The reason being that a dividend distribution is only possible if there is and remains sufficient capital in your company to cover the pension. In order to determine this, you must assume the value for reporting purposes rather than the value of the pension liability for tax purposes as included in the balance sheet.

In conclusion
The transitional regime lapses as from 2020. You have to make your choice with respect to your current self-administered pension: commutation, conversion or leaving it, before that time. You will have to think about the future years as further pension accrual within the company is no longer possible as from 1 July 2017. What does your care-free old age look like from a financial perspective? You can decide to continue pension accrual with an insurance company or a retirement annuity might be an option for you. You may have created a substantial 'buffer' within your company for sufficient dividend payments after you retire. Obtain sound advice no matter what your decision will be.

4. ACOMPANY CAR: CHANGE TO THE ADDITION TO INCOME FOR PERSONAL USE

ADDITION FOR THE PRIVATE USE OF A COMPANY CAR 2018

Do you drive a car that is part of your business assets in your private capacity? If so, you have to add an amount to the profit in connection with this private use unless you are able to demonstrate that you did not drive more than 500 kilometres in your private capacity.

The addition is a percentage of the list value of the car. In 2018, there are 2 rates for the addition concerning cars that were registered after 1 January 2017: 4% and 22%. The addition depends on the car's CO2 emissions. In 2018, the 4% rate only applies to cars without CO2 emissions.

The table below applies to cars that were registered for the first time in 2018.

CO_2-EMISSIONS (GR/KM)	ADDITION
0	4%
More than 0	22%

In 2018, the normal percentage is 22% (similarly to 2017). Was your car registered for the first time before 2017 and did the 25% addition apply to that car? If so, the 25% addition continues to apply.

How long does the reduced percentage apply?
Does the reduced addition percentage (4%) apply to you in 2018? This percentage applied for a period of 60 months. This period commences on the 1st day of the month following the month in which a registration number was issued for the first time. The 60-month period therefore commences on 1 April if a car is registered on 7 March.

The percentage is determined again immediately after the 60-month period ends on the basis of the rules that apply at that time.

Reduced percentages and cars that were registered before 2017
Transitional law pertaining to the addition for private use of cars that were first authorised for use on the public highway ('DET') before 1 January 2017 is not simple, inter alia as a result of the exceptions to exceptions that apply within transitional law. Your advisor will be able to provide you with further information.

Important!
In principle, the addition that applied at the moment of initial registration applies for a period of 60 month to cars with a DET from before 2017. An addition of 25% applies after those 60 months!

Addition for cars without CO2 emissions
Cars without CO2 emissions continue to be facilitated at the same level up to and including 2020. The addition that applies to new cars of this category remains 4% during this period. In 2019, the government does limit the reduced addition percentage for zero emissions vehicles to the part of the list price up to and including €50,000 (also referred to as the Tesla tax). This limitation does not apply to zero emissions vehicles with a hydrogen fuel cell.

ADDITION DIFFERENCE COMPANY CAR IS NOT DISCRIMINATORY

The fact that the 22% addition rate only applies to new cars and not to existing company cars is not discriminatory according to the District Court of The Hague. The principle of equality and the right of quiet enjoyment of property have not been breached.

5. VARIOUS WAGE TAXES AND SOCIAL INSURANCE CONTRIBUTIONS

MINIMUM WAGE SLIGHTLY HIGHER AS FROM 1 JANUARY 2018.

The gross amounts of the statutory minimum wage and the minimum youth wage as from 1 January 2018 are known. These amounts are adjusted every six months. There is a slight increase when compared to 1 July 2017.

The gross amounts of the minimum adult wage and the minimum youth wage are adjusted each time on 1 January and 1 July in line with the average contractual pay development in the Netherlands. As from 1 January 2018, the gross minimum wage for employees aged 22 and up in case of fulltime employee is as follows:

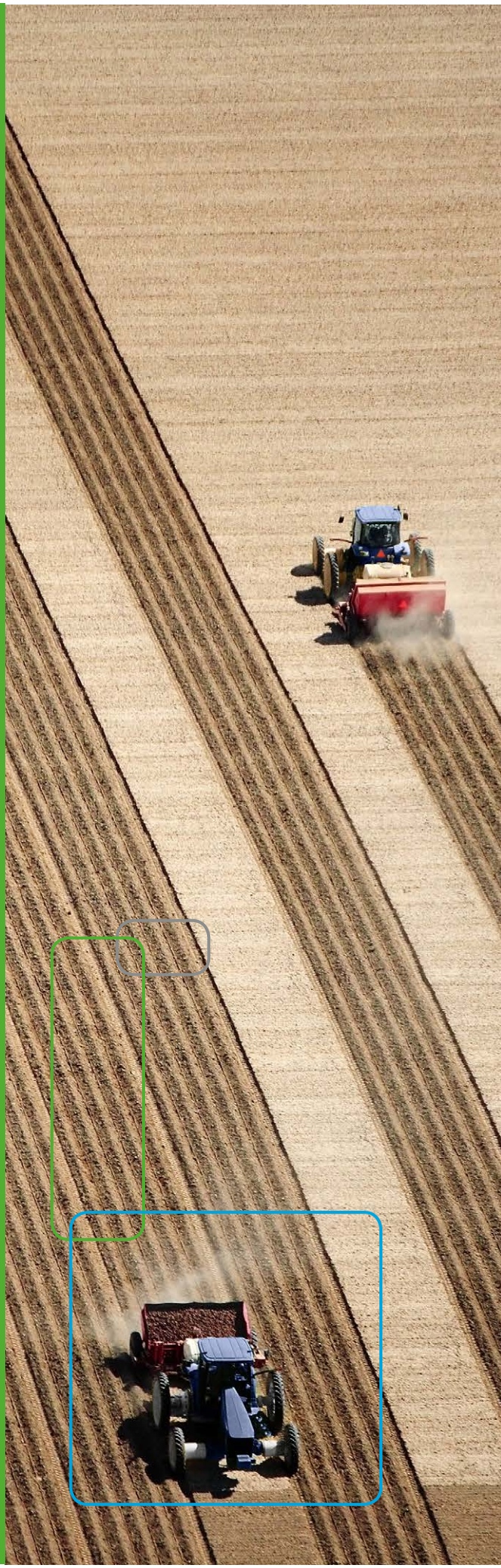
- €1,578.00 per month (July 2017: €1,565.40)
- €364.15 per week (July 2017: €361.25)
- €72.83 per day (July 2017: €72.25)

Important!
The age limit of the minimum adult wage was reduced from 23 to 22 on 1 July 2017.

The minimum youth wages for employees aged 15 up to and including 21 also increase slightly again. For example, as from 1 January 2018 the wage of an employee aged 21 increases from €1,330.60 to €1,341.30 per month and that of an employee aged 18 from €743.55 to €749.55 per month.

Important!
Alternative graduated scales apply for employees aged 18 up to and including 20 who are employed within the context of a basic vocational learning pathway (bbl). For example, as from 1 January 2018 the minimum youth wage for a bbl student aged 18 amounts to €718.00 per month.

Obligations
The statutory minimum wage applies as the minimum remuneration for your employees. Make sure that you do not underpay your employees. Otherwise you will risk significant fines. Payment by transfer of at least the net statutory minimum wage has been obligatory since 1 January 2016. You are also required to state the applicable minimum wage on the payslip at all times. And finally, as from 1 January 2017 you are no longer allowed to withhold amounts from or settle amounts against the minimum wage. The prohibition of withholding does not apply among other things to statutory withholdings, accommodation costs and health insurance costs. You are still allowed to withheld such costs from the minimum wage subject to conditions and the necessary limitations.



Customary wage director and major shareholder

The fixed amount in the customary wage scheme for the director and major shareholder ('dga') and his partner amounts to €45,000 for 2018 (the same as in 2017). Dga's can set the customary wage in 2018 lower than €45,000 subject to conditions. The reason is that a rebuttal scheme applies to the main rule that the wage of the dga is the highest of the following amounts:

- 75% of the wage from the most comparable position;
- the highest wage of the other employees of the company or companies affiliated with it (bodies);
- €45,000.

Important!
In order to set the wage below €45,000, you will have to demonstrate that the wage from the most comparable position is lower than €45,000. The customary wage is at least €45,000 if you are unable to do so.

Customary wage for innovative start-ups

Is your company considered to be a start-up for the purpose of the application of the research and development (R&D) tax rebate? If so, you will have the right to set your customary wage at the statutory minimum wage. You are allowed to apply this start-up scheme for at most three years.

Low sectoral contribution in case of contracts for an indefinite period and annual hours standard

It is regulated by decree effective as from 1 January 2018 that an employer pays the low sectoral contribution on an employee's wage if the following applies:

- there is a written employment contract for an indefinite period, and
- the extent of the work for the year is determined in advance (annual hours standard), and
- the contract provides that the right to wages is spread evenly over the year.

This means that the activities do not have to be performed spread evenly over the year.

Important!
A contract for a definite period including an annual hours standard consequently does not satisfy the conditions.

Important!
The conditions are no longer satisfied in case of unpaid leave during the year. This means that the higher sectoral contribution must be applied.

Important!
It is the case for the abovementioned five sectors that the low sectoral contribution also applies to contracts for a definite period with a term of at least 12 months or longer. An annual hours standard must then not apply in this connection.

It was emphasised again in the same decree that the extent of the work to be performed must be laid down unequivocally. This means that a zero hours contract does not comply. It is also indicated in the decree that the high premium is due in case of a min-max contract. It will become clear whether the matters included in the decree will be taken over by the courts. It is unclear at this time whether this comment only impacts the period after 1 January 2018.

Pseudo final levy and option rights

In case an employee is granted an excessive severance payment, the employer will be confronted with a pseudo final levy of 75% of the severance payment. Whether an excessive severance payment applies is determined on the basis of the indicative salary. The regulation applies if the indicative salary exceeds €540,000 and the severance payment exceeds €540,000 and is higher than the indicative salary.

Certain share option rights that were acquired in the calendar year before the employee left employment are not taken into account in the determination of the amount of the severance payment as a result of an exception.

The Supreme Court ruled in 2016 that the exception also applies to share option rights that were not yet unconditional before the calendar year preceding the calendar year in which the employment relationship with the employee was terminated. The pseudo final levy on excessive severance payments can therefore be prevented by working with conditional option rights.

An amendment to the Wages and Salaries Tax Act 1964 now ensures that as from 1 January 2018 conditional share option rights that were granted to an employee before the end of the year preceding the calendar year in which he left employment and that became unconditional in the year before leaving employment are nevertheless taken into account for the pseudo final levy. This means that the ruling from the Supreme Court can no longer be used.

Limitation of tax credits for non-resident taxpayers

Non-resident taxpayers are entitled, subject to conditions, to the same advantages as resident taxpayers where it concerns the tax component of the tax credit. Non-resident taxpayers do have to be resident in an EU or EEA Member State and their income must be subject to payroll or income tax in the Netherlands for at least 90%.
In the event non-resident taxpayers do not satisfy the income criteria, they were entitled to the tax component of the work-related tax credit. Non-resident taxpayers who do not qualify were not entitled to the tax component of the tax credit in the income tax. This distinction was not made in the payroll tax, which meant that excessive tax credit was claimed.

That is why as from 2019 you are allowed to take only the tax component of the work-related credit (employed person's tax credit among other things) into account in the payroll tax for all non-resident taxpayers (both qualifying and non-qualifying). If your employee is a qualifying non-resident taxpayer, he will be able to apply the tax component of the general tax credit, the young disabled person's tax credit, elderly person's tax credit and the single elderly person's tax credit via the income tax.

Contributions for the Return to Work (Partially Disabled Persons) Regulations (WGA) and the Sickness Benefits Act (ZW) for 2018 known

Are you covered for the WGA and ZW employer insurance schemes with UWV? The average contributions for these disability and sickness benefits insurance schemes increase slightly in 2018.

WGA and ZW contributions

UWV recently announced the differentiated WGA and ZW contributions (Return to Work Fund) for 2018. This shows a slight increase of both contributions. The average WGA premium increases from 0.74% in 2017 to 0.75% in 2018. The average contribution paid by an employer to UWV in connection with the Sickness Benefits Act increases to 0.41% in 2018 (2017: 0.35%).

The contribution depends in many cases on the sector in which you as employer are active and the average wage bill. A special calculation tool enables you to calculate how much you have to pay in contributions in 2018.

> **Important!**
> The calculation tool is not intended for self-insurers because they do not pay a differentiated Return to Work Fund ('Whk') contribution.

You received a decision from the Tax and Customs Administration at the end of 2017, which included the differentiated WGA and ZW contributions for 2018.

Check whether the data included in the decision are correct and object on time if necessary. An objection is submitted on time if it is received by the Tax and Customs Administration at most 6 weeks after the date of the decision. Request from the Tax and Customs Administration the inflow tables of the benefits of the employees allocated to you within the context of the Whk decision. This will allow you to check whether the benefits concerning these employees were allocated to you correctly or not.

Additional administration in case the term of unemployment benefits is extended

It has recently become possible for parties to opt for a private extension of the term of benefits in case of unemployment for the third WW year when concluding their CLA. The choice made by the negotiating parties does mean additional administrative activities for the employer.

Separate tax return
Contributions are withheld from the employee's gross wage. The withholding must also be stated on the payslip. Moreover, a separate return must be submitted with the PAWW implementing organisation and the contributions must be paid separately.

Supplement
The supplement makes it possible to reach a maximum unemployment benefits period of 38 months.

What happens in case of unemployment?
Stichting PAWW ensures that the employee receives supplementary PAWW unemployment benefits after the unemployment benefits have ended, provided he is entitled thereto according to his CLA.

Return and payment
The employer is obliged to submit a return concerning the PAWW contribution and payment of the contribution every month or every four weeks on the basis of its payroll records. The frequency of the PAWW contribution return is the same as that of the Tax and Customs Administration.

> **Important!**
> You have to submit the return via the website of SPAWW. The employer is required to take over here the totals that are stated in the overview of the payroll records.

Adjustment of administration
The employer's administration may have to be adjusted so that the employer is able to provide the correct information for the purpose of the collection and payment of the premium. The implementing organisation of Stichting PAWW can help you set up the salary and financial administration. Providing calculation rules to developers of salary software forms the first step in this connection.

Additional possibility of switching as regards WGA self-insurer status

Did you wish to remain self-insurer under the WGA, but was self-insurer status nevertheless terminated as from 1 January 2017 against your wishes and through no fault of yours? The government meets you halfway with a remedial scheme. You will have the possibility of switching back from public insurance to self-insurer status under the WGA on 1 July 2018.

Self-insurer status under the WGA
The excess concerns the overall WGA charges (i.e. for both permanent employees and flex workers) as from 1 January 2017. This change meant that existing self-insurers under the WGA who wished to remain so in 2017 as well had to submit a new guarantee from the bank or insurer. That guarantee had to be received by the Tax and Customs Administration on 31 December 2016 at the latest. That process did not take place entirely free of problems. In several cases, the insurers mistakenly issued no guarantee to the Tax and Customs Administration or they issued it too late. As a result, you as well as several other employers may have entered the public insurance again as from 1 January 2017 without wanting to do so.

Remedial scheme
Similarly to any other switch, you were bound by a minimum return period of three years. Self-insurer status only becomes possible again after that period. This is unreasonable if you did indicate that you intended to stay a self-insurer under the WGA as from 1 January 2017, but the Tax and Customs Administration did not receive the guarantee or received it too late through no fault of yours. That is why you are able to make use of a remedial scheme, which allows you to switch to self-insurer status under the WGA sooner, namely on 1 July 2018. This does mean that you must have submitted your application for self-insurer status to the Tax and Customs Administration at least 13 weeks before 1 July 2018.

The following conditions apply if you wish to be able to apply the remedial scheme:

- you were self-insurer under the WGA on 31 December 2016, and
- you are able to demonstrate that in 2016 you indicated to your insurer, bank or intermediary on time that you wish to remain self-insurer as from 1 January 2017, and
- the fact that the guarantee that enables you to remain a self-insurer under the WGA in 2017 was not submitted to the Tax and Customs Administration by 31 December 2016 at the latest is not attributable to you.

Important!
Insurers will draw up a list of employers who indicated 'on time' that they wish to remain self-insurer for the entire WGA risk as from 1 January 2017. The Tax and Customs Administration can check and apply this list in order to allow employers to become self-insurers again as from 1 July 2018.

Longer term for reporting sick for self-insurerss

The terms for reporting sick and submission of recovery notifications to UWV by employers who are self-insurers under the Sickness Benefits Act have been extended effective as from 1 January 2018.

If you are a self-insurer under the Sickness Benefits Act, the same terms for reporting sick and submission of recovery notifications applied to you as those that apply to employers who are not self-insurers. Those terms are fairly short because UWV has to start paying sickness benefits in connection with a report. However, as a self-insurer you are personally responsible for payment of sickness benefits and you determine the entitlement, amount and duration thereof. This means that UWV has a far more limited role at self-insurer employers than at employers who are not self-insurers.

Important!
UWV has a more supervisory role at employers who are self-insurers as the agency does hold ultimate responsibility for the implementation of the Sickness Benefits Act. If the self-insurer did not perform its duty or did not perform it properly, UWV will take over payment of the sickness benefits for the account of the self-insurer.

Extension of the term for reporting sick
In view of UWV's more limited role in the initial phase of the sickness absence process, the government wishes to extend the term for self-insurers for submitting sickness reports to six weeks after the date employment is terminated. This legislative proposal was adopted on 28 November 2017.

Important!
In case of residual effect, the first day of illness of the former employee occurs within four weeks after employment was terminated. The term for reporting sick of six weeks then commences from the first day of illness.

The expanded term for reporting sick also provides you with the opportunity of reporting sick and submitting a notification of recovery at the same time if recovery occurs within six weeks. However, a notification of recovery may not be made before the employee is reporting sick. If the sickness report and the recovery are reported separately, the notification of recovery will be subject to a term of two days after the current or former employee notified you of his recovery.

Simplification of the Research and Development (Promotion) Act (WBSO) on the way

The Tax Plans for 2018 include a simplification of the WBSO. As an innovative employer you will be able to forward R&D hours realised and costs and expenses incurred to the Netherlands Enterprise Agency (RVO.nl) more easily in 2019.

Mandatory notification
The proposed simplification is an administrative easing of the tax and premium burden. If you applied the WBSO (Research and Development (Promotion) Act), you are required to forward the hours spent on research and development (R&D) and the costs and expenses incurred (if you opted for 'actual costs and expenses') to RVO.nl within three calendar months after the end of the year of the application. At this time you still have to make this mandatory notification under the WBSO by means of an R&D declaration, but that is going to change. In future, it will be possible to make this notification for all R&D declarations issued during a calendar year jointly.

The mandatory notification remains as it is as regards the R&D declarations received in 2017. This means that you have to forward the hours spent (and any costs and expenses) per R&D declaration before 1 April 2018.

Important!
If you are an independent entrepreneur, you only have to make a notification if you spent less than 500 hours on R&D during a year.

6. GDPR PRIVACY RULES

The General Data Protection Regulation (GDPR) will enter into effect on 25 May 2018. The GDPR will replace the Personal Data Protection Act (Wbp), which will lapse on the same date. The GDPR entails new obligations and responsibilities. All companies and organisations that work with personal data must prepare for this GDPR, which includes small SMEs and ZZPs.

Once the GDPR has entered into effect, you as an organisation will have more obligations when processing personal data. The reason is that the GDPR places greater emphasis on your responsibility as an organisation to demonstrate that you comply with the law. This is referred to as accountability.

Accountability
Accountability means that you must be able to demonstrate that you have implemented the right organisational and technical measures to comply with the GDPR. However, at the same time the GDPR offers you as an organisation more instruments that help you comply with the law. Such as model provisions for forwarding personal data.

As an organisation you can already take steps to be ready for the GDPR when the time comes. Check already whether you need to adjust your current processes, services and goods in certain areas in order to comply with the GDPR. The Dutch Data Protection Authority (Dutch DPA) has listed the ten main steps for your convenience.

New privacy rights
In addition to strengthening existing rights, the GDPR provides people with several additional rights, such as the right to inspect and the right to data portability.

Right to inspect
People have the right to ask an organisation whether it has laid down their personal data. They do not have to provide a reason in this connection. If someone asks for inspection, the organisation is required to inform that person in a clear and understandable manner whether the organisation uses his personal data and, if so:

- what data are involved;
- what purpose the data are used for;
- to whom the organisation may have provided the data;
- the origin of these data if the origin is known.

Incidentally, the right to inspect only concerns someone's own data.

Right to data portability
This means that in future people will have the right (subject to certain conditions) to receive their personal data from the organisation in a standard format. This will allow them to forward their data easily to another provider of the same type of service. They even have the right to demand that the organisation forwards their personal data directly to the new service provider if this is possible from a technical perspective.

Outsourced data processing
If you have outsourced the data processing to a processor, you are obliged to asses to what extent the agreement complies with the requirements imposed by the GDPR on an agreement with the processor. It is important that changes are made on time.

The processor's agreement must deal with the following among other things:

1. A general description of the nature and purpose of the processing, the type of personal data and your rights and obligations.
2. Instructions regarding the processing.
3. Duty of confidentiality for staff employed by or active for the processor.
4. Security: appropriate technical and organisational measures.
5. Subprocessors: not without consent.
6. Privacy rights: the right to inspect, correct, be forgotten and data portability.
7. Other obligations: reporting data leaks, performing data protection impact assessments and data minimisation.
8. Removing data: retention no longer than is necessary.
9. Audits: cooperate.

Retention period
The assumption of the GDPR is that data must not be retained for longer than is necessary for the purpose of the processing. A term is not mentioned in this connection as this may differ from case to case. Specific retention periods are mentioned in other laws.
Under the GDPR, the following must be arranged at least with respect to the retention period:

- You determine in advance how long you will store the personal data. If this is not possible, you determine in any event the criteria for determining the retention period. You lay the retention period or the criteria down in retention policy.
- The retention periods must be laid down, in a register of processing for example.
- You inform the data subjects (the persons whose data you process) of the retention periods. Via a privacy statement on your website for example.

Longer retention period
In certain situations the data may, subject to conditions, be stored longer than is necessary for the original purpose of the processing. This includes data that are important among other things for scientific or historic research, for statistical purposes or for the public interest.

> **Important!**
> The processor removes the data after the processing services have ended. Or he returns them to you if you so wish. He also removes copies. This can only be otherwise if the processor is obliged by law to retain the data.

7. LABOUR LAW AND MISCELLANEOUS ISSUES

Amendments to the Minimum Wage and Minimum Holiday Allowance Act

In 2018, the Minimum Wage and Minimum Holiday Allowance Act (WML) will be amended as regards payment of the minimum wage in case of overtime (additional work) and piece rate.

Minimum wage in case of overtime (additional work)
As from 1 January 2018, you will be obliged to pay on average at least the minimum wage for overtime. If your employee performs work for more hours than the customary number of working hours, he should earn on average at least minimum wage for these additional hours. This is also the case if your employee works part-time and works additional hours.

Are there exceptions?
Additional hours may be compensated in paid time off if this is provided for in the CLA and this compensation has been agreed in writing with the employee. Written agreement with the employee will be sufficient until 31 December 2018 so as to grant the social partners sufficient time to include this possibility in the CLA. The employee must take these hours at the latest before 1 July of the next calendar year or they must be paid to the employee. The hours you have not yet compensated must be paid out when the employment is terminated. In case of compensation in additional hours of paid time off, the employer must keep a record of when the additional hours were accrued and when they were compensated in paid time off. The manner in which you do so is entirely up to you.

Minimum wage in case of piece rate
Employees must earn on average at least minimum wage for each hour worked in case you pay them a piece rate. This must be evident from your records. It is therefore important that you also register the number of hours employees are working.

Exceptions?
Deviations from the rules that apply to piece rate are possible with respect to certain activities within a sector. It concerns activities whereby employers are unable to conduct sufficient supervision of the activities performed by an employee and the employee has a certain degree of freedom to structure the activities himself. In order to be able to determine a remuneration for these activities, an application may be submitted to the Minister of Social Affairs and Employment via the Labour Foundation to exempt these specific activities. If the activities are designated, you will have the right to pay on the basis of that determined sectoral rate piece standard.

Minimum wage for contractors
The statutory minimum wage that applies for employees also applies as from 2018 to contractors who perform paid work on the basis of a contract. This concerns specifically what are known as recipients of income from other activities.

> **Important!**
> Register the number of hours a contractor works for you as well as the related remuneration.
>
> **Tip:** Check the contract with your contractors and amend the contract if necessary.

Exception?
The minimum wage does not apply to contractors who work in the independent conduct of a profession or business.

Holiday allowance in respect of overtime wage as from 2018

The WML previously included an exception that overtime was not part of the wage definition. This meant that no holiday allowance (also referred to as: holiday pay) was due in respect of overtime. This changed as from 2018.

This means that as from 1 January 2018 wages paid as overtime must also be increased by 8% holiday allowance.

> **Important!**
> No exception applies to hours worked in 2017 or before. If these hours are not paid until 2018, 8% holiday allowance must be paid in respect thereof as well.
>
> **Tip:** If you do not wish to pay a holiday allowance in respect of overtime before 1 January 2018, you are required to have employees take these hours (this is also allowed after 1 January 2018). If in the end these employees do not take these hours or do not take them on time, payment must be made as yet including holiday allowance.

Exception?
Deviations from the provisions of the statutory minimum holiday allowance are possible in certain circumstances. It may be agreed in the CLA for example that there is no

entitlement to holiday allowance or only to a lower amount. This means that deviating agreements can be made in the CLA, for example that there is no or a reduced entitlement to holiday allowance in respect of the overtime allowance, provided these meet the thresholds included in Section 16 of the WML. For example, pursuant to that Section the sum of the wage and the holiday allowance must be at least 108% of the minimum wage. This means that an employee at minimum wage level is entitled in any event to a holiday allowance of 8% of his wage (including overtime).

No CLA
If an employer is not bound by a CLA, he will be obliged to pay holiday allowance on the overtime allowance and this means that he cannot apply the possible deviation in the CLA. However, the employer could adjust his arrangement (in consultation with the Works Council and the employees) in such a manner that the holiday allowance is included in the overtime allowance. It is recommended, however, to split this up on the payslip. Assume the allowance was 25%, you would have to split this into 17% overtime allowance and 8% holiday allowance.

> **Tip:** An employer may agree in writing with an employee whose agreed wage is more than triple the statutory minimum wage that as regards the excess the employee is not entitled to holiday allowance or is entitled to a lower amount in holiday allowance.

TRANSITION ALLOWANCE IN CASE OF DISMISSAL INCREASED AS FROM 2018

As from 1 July 2015, you as an employer owe a transition allowance if a permanent or temporary employee has been employed by you for at least two years and his employment contract was terminated at your initiative. You also owe the transition allowance if you dismiss a sick employee after having continued to pay his salary for two years.

Maximum allowance
The amount of the transition allowance depends on the number of years the employee was employed and the monthly salary. In 2017, the allowance was at most €77,000 gross or an annual salary if this is higher. The maximum amount of €77,000 was increased to €79,000 effective as from 1 January 2018.

The new government also announced that it wishes to change this transition allowance in several areas. The Coalition Agreement provides for example that the transition allowance is accrued as from the start of the employment. There is also an intention to change the accrual of the allowance after 10 years of employment. Employers may receive compensation for the transition allowance that must be paid to employees with long-term disability.

Age distinction when recruiting employees no longer allowed as from 1 January 2018
Employers were allowed from 1 January 2014 up to and including 31 December 2017 to draw up job application texts that specifically asked for young persons between the ages of 18 and 27. The (temporary) exception was intended to combat youth unemployment. The measure initially applied until 31 December 2016, but was extended by one year. Incidentally, the job application texts were also allowed to ask specifically for persons over the age of 50.

However, as from 1 January 2018 it is no longer allowed to make such age distinctions when recruiting employees. Making a distinction on the basis of age for specific target groups is then considered to be age discrimination against other target groups.

For more detailed information and questions, please contact your advisor within one of the RSM-offices:

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