

THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING



YEAR-END UPDATES FOR THE EMPLOYER

As the end of the year is approaching we have listed a number of important focus areas and changes for 2021 for the employer.

Work-related costs scheme

On 1 January 2015 the work-related costs scheme became mandatory for every employer. If the allowances, free benefits in kind and postings designated by you exceed the available discretionary scope, as an employer you will be required to pay the final levy of 80%.

You must specify and pay any final levy for 2020 no later than when filing the wage tax returns for February 2021 or the second 4-week period of 2021, which is submitted in March 2021.

The discretionary scope has been expanded once in 2020. The discretionary scope over the first € 400,000 of the taxable wage is 3% and the discretionary scope over the taxable wage in excess of this amount is 1.2%.

It is essential that you designate all allowances, benefits in kind and postings (with the exception of specific exemptions, as is the case for, among other things, travel allowances of € 0.19, training costs and the 30%-facility). Otherwise, you run the risk that the Tax and Customs Administration, in the absence of a designation, will take the view that the work-related costs scheme may not be applied and that all allowances, benefits in kind and postings must still be included in the employee's payslip as taxed wages.

Incidentally, the discretionary scope for 2021 has been slightly reduced. 1.7% over the first € 400,000 of the taxable wage and 1.18% over the excess.

Gifts to third parties

Gifts to non-employees are subject to different rules than gifts to your employees. For non-employees these gifts are taxed for income tax purposes. You may pay the income tax/national insurance contributions for these non-employees. You do this by means of the tax return form in the section 'final levy on public-law benefits and temporary bottlenecks of a serious nature'.

You may only apply this final levy to gifts to third parties that you also give to your employees at the same time and for the same occasion, or for promotional purposes. You must inform this non-employee that you are applying the final levy. You must keep a record of the non-employees that have received a gift.

The final levy is calculated as follows:

- 45% if the value of the gift does not exceed € 136 including VAT;
- 75% of the full value of the gift if the value of the gift exceeds € 136 including VAT.

Fixed tax-exempt travel allowance and corona crisis

Since the beginning of the corona crisis, many employees have been working from home. In 2020, there was no fiscal need to adjust the fixed tax-exempt travel allowance for these employees. However, as things stand now, in 2021 this travel allowance will have to be adjusted in accordance with the employee's actual commuting pattern.

Employees who joined the company after 12 March 2020 and who have been granted a fixed travel allowance, but who have been working from home, can also receive this travel allowance tax-exempt, in which case this allowance must be designated as work-related costs and charged to the discretionary scope (since the relaxed regulations in connection with corona did not apply to them).

If an employee has the option of exchanging his year-end bonus for a tax-exempt travel allowance, the Customs and Tax Administration requires examining whether this exchange was agreed before or after 12 March 2020. If this exchange has been agreed no later than 12 March 2020, the exchange may be carried out as in previous years. If the exchange is agreed after 12 March 2020, which will apply in the majority of cases, the exchange may only take place in respect of the days actually travelled.

Fixed tax-exempt expense allowance and corona crisis

The other fixed tax-exempt expense allowances did not require adjusting with respect to tax, even though those expenses were not incurred or were incurred to a lesser extent as a result of the corona crisis. If an employee receives a fixed expense allowance that covers, among other things, the cost of food when travelling or parking costs when travelling in a company car, this fixed allowance may continue to be paid tax-exempt.

It is likely that this approval will also lapse on 1 January 2021. Fixed tax-exempt allowances for these expenses can therefore, in principle, no longer be reimbursed tax-free to employees if the employees do not actually incur these expenses. This is different if the relevant expense allowances are designated and charged to the discretionary scope. It is therefore advisable to consider whether the fixed expense allowances of your employees should be adjusted as from 1 January 2021 in connection with working from home.

Foreign employees working from home

Since we have started working from home because of the corona crisis, there are employers who want to continue allowing working from home.

This may have consequences for workers living abroad. The starting point is that an employee is subject to (wage) tax and social security in the country where he is employed. If an employee is employed in 2 countries, he will in principle be required to pay (wage) tax in the countries where he performs his duties. If he performs his duties for at least 25% of his working time in his country of residence, he will be covered by social insurance there. For 2020, a policy decision has been adopted stipulating that employees who were fully employed in the Netherlands before the corona crisis, and who (also) started working from home as a result of the corona crisis, will be subject to the rules as if they were fully employed in the Netherlands.

From 2021 onwards, this will in all likelihood no longer be approved and the general rules as set out above will enter into force. If you currently have employees working from home because of the corona crisis, please contact us.

If you employ employees who decide to work from home more often after corona, please also contact us to discuss the related consequences.

Balanced Labour Market Act (WAB)

The Balanced Labour Market Act entered into force on 1 January 2020. This Act provides that you pay a low WW contribution for employees who have a written permanent employment contract with a fixed number of hours per week. In all other cases, you will pay the high WW contribution. If, at the end of the calendar year, it becomes apparent that the number of hours worked by the employee deviates by more than 30%, the high WW contribution must still be paid retroactively from 1 January 2020. However, it has been agreed that if an employee was required to work more (overtime) hours due to corona and therefore has deviated in excess of 30%, no high contribution will be required to be paid in 2020. This will also apply to 2021.

If you have employed an employee who is paid per hour (on-call employee) for one year, you will be obliged to offer this employee an employment contract for the average number of hours he has worked in the previous year. The employee is not obliged to accept this offer. It is recommended to record this in the employee's personnel file.

Life-course savings scheme

The life-course savings scheme was officially abolished in 2012. A transitional scheme applies to employees who had a life-course credit balance of € 3,000 or more at the end of 2011. Under the transitional scheme,

these employees can continue saving for the life-course savings. This transitional scheme lapses at the end of 2021. Employees can continue saving until the end of October 2021. With effect from 1 November 2021, all outstanding life-course leave balance shall expire and must be taxed based on their fair value. From 1 November 2021, the savings institutions will be designated as the notional withholding agents for handling the release of the savings.



30%-facility at the end of the transitional scheme and other items for consideration

30%-facility at the end of the transitional scheme

The transitional scheme for the 30%-facility is coming to an end. For employees who will have used the 30%-facility for 5 years by 1 January 2021, the 30%-facility will expire as per that date. In practical terms this means that the ruling with a starting date of 1 January 2015 or earlier will end on 1 January 2021. For all your employees with a 30%-facility starting date after 1 January 2015, the maximum duration is 5 years. Irrespective of the end date stated on the facility already granted.

30%-facility – Wage norm 2020

Once again, the end of the year is approaching and it may be interesting to check whether the 30%-facility has been maximised or has been applied for a higher percentage than possible. For a full year, the 2020 wage norm is € 38,347 for employees aged 30 and over. The reduced norm for 2020 is € 29,149. If the 30%-facility has been granted during the year 2020, the wage norm may be calculated on a pro rata basis. It has been agreed that if the wage falls below the norm as a result of additional birth leave, foster care leave, adoption leave, the wage the employee would have received if he had not taken additional birth leave, foster care leave, and adoption leave will still be used as a basis.

It is important to keep in mind that if the wage norm is not met, the 30%-facility cannot be applied. Not even in the future if the wage norm is met.

Brexit

The transitional period for Brexit will end on 31 December 2020. Although there is still little clarity at the moment as to what will await us on 1 January 2021, there are a number of things to be aware of.

Deal

If the EU and the UK reach a deal before the end of this year, there will be a transitional scheme providing for the continuation of immigration and social security status as it currently applies to existing situations. This will continue to apply until there is a change in the situation of employee(s).

No deal

It is important to remember that the agreements previously made between the EU and the United Kingdom will no longer apply from 1 January 2021. The various aspects of immigration and social security will need to be examined by country on the basis of national legislation in force. Please note that there may be, for example, double social security expenses. In addition, in the future, it will not be possible to fall back on previous agreements for new situations, even in a 'deal situation'. All international aspects will have to be re-analysed.

Severance payments for older employees (amendment 2021)

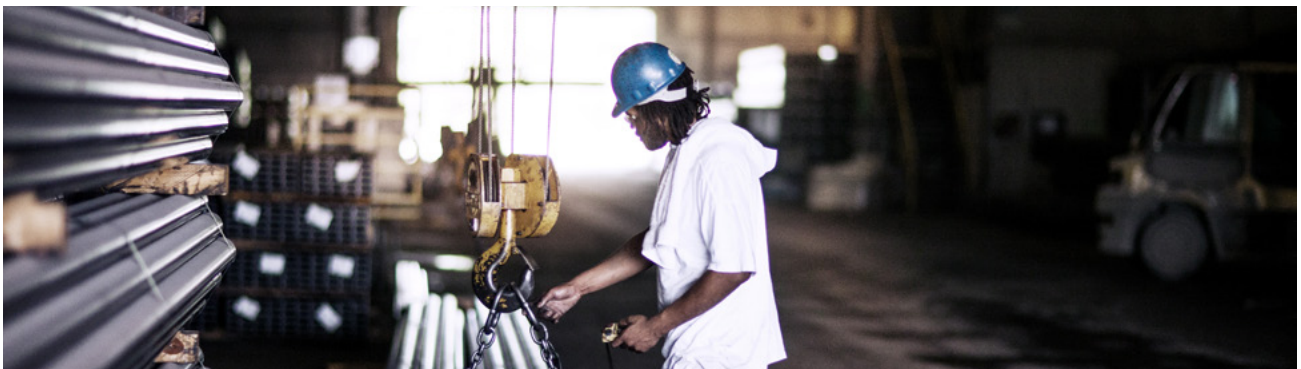
With effect from 2021, the scheme for severance payments for older employees, the Early Retirement Scheme (RVU), will be amended. Currently, an employer is required to pay a pseudo final levy of 52% once an employee receives a benefit that allows the employee to take early retirement. This is the case when dismissal is age-related and the benefit actually allows the employee to bridge the period between dismissal and the state pension (AOW) age (or earlier retirement date) or the benefit is a supplement to the pension.

The scheme amendment concerns a temporary relaxation for the period from 1 January 2021 to 31 December 2025. This relaxation means that, where the benefit is paid in the 36 months prior to the state pension age, a threshold exemption applies. Only if and insofar as the benefit, after deduction of the wage tax and national insurance contributions, exceeds the net amount of the AOW benefit (net AOW) will the RVU levy be due.

State of affairs hiring self-employed persons

There are currently no changes in the state of affairs with respect to hiring of self-employed persons. This means that the DBA Act continues to apply and that, in principle, the Tax and Customs Administration will not enforce it until at least 1 October 2021. Only in the case of a malicious act (when you 'deliberately allow a situation of obvious bogus self-employment to arise or continue to exist because you know – or could have known – that there is in fact an employment relationship') or when the Tax and Customs Administration has issued instructions following an audit that are not complied with, it may be enforced.

However, a pilot project will start on 11 January 2021 with the new web module which – in time – will replace the DBA Act. The intention is that clients will eventually be able to use this web module to determine in advance whether the self-employed person they hire can in fact be regarded as self-employed. With the planned elections to the Lower House of Parliament, the question is when new legislation will eventually replace the DBA Act.



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