

## Work-related costs rules

## PEOPLE SERVICES

This memorandum outlines the main features of the work-related costs rules and is based on legislation applying as of January 1, 2018.

### Summary

Under the work-related costs rules, all reimbursements and provisions paid to employees and former employees as well as any items made available to them are treated as salary. However, these payments and items are not treated as salary if they do not aid the performance of the work activities, for example, funeral wreaths, or fruit baskets sent to sick employees, or if the employee receives no personal benefit from them.

The employer can choose to designate, as part of the final levy, the reimbursements and provisions paid and the items made available, with the exception of the company car made available to the employee, monetary penalties (such as traffic fines), a home and a personal loan for the own home, in which case the designated benefit will no longer have to be taxed by way of the employee's payroll slip. The employer will subsequently have to determine whether payroll tax on the designated benefits must be remitted by way of the final levy, for which a fixed exemption of 1.2% of the payroll for tax purposes applies; the employer does not have to pay any final levy up to this amount.

This memorandum provides a step-by-step guide to the work-related costs rules, setting out how the employer should deal with reimbursements, provisions, items made available and the final levy.

Briefly put, the following steps must be taken:

1. Establish whether the reimbursements and provisions paid to employees and former employees and items made available to them must be treated as taxable salary.
2. Determine which reimbursements, provisions and items made available you wish to designate as part of the final levy under the work-related costs rules. Any reimbursements, provisions, and items made available that are not designated as part of the final levy must appear as taxable salary on the payroll slips.

3. Apply the following special rules to the benefits designated as part of the final levy:
  - specific exemptions (do not affect the 1.2% fixed exemption);
  - zero values (do not affect the 1.2% fixed exemption);
  - fixed values (do affect the 1.2% fixed exemption).
4. Determine whether the amount for reimbursements, provisions and items made available pursuant to the above three special rules does not exceed the fixed exemption of 1.2% of the payroll for tax purposes.

If the threshold of 1.2% of the payroll for tax purposes is exceeded, then the employer must remit payroll tax of 80% on the excess by way of the final levy.

### A step-by-step guide to the work-related costs rules

**Step 1: establish whether reimbursements and provisions paid to employees and former employees or items made available to them are regarded as salary**

Under the work-related costs rules, all reimbursements and provisions paid to employees and former employees, as well as any items made available to them are treated as salary. Exceptions are payments relating to items given as a means of expressing sympathy or empathy with the employee, or which are given on the basis of a personal relationship rather than in the capacity of the employer-employee relationship, for example, funeral wreaths, fruit baskets for sick employees, or a gift not exceeding EUR 25 (including VAT), if the employee can expect to receive a gift from others in respect of the event in question, and payments that do not entail a personal benefit for the employee. Reimbursement of out-of-pocket expenses is also not salary.

The following are out-of-pocket expenses:

1. expenses incurred by the employee for purchased items that are to belong to the employer;
2. expenses incurred for items that already belong to the employer;
3. expenses specifically related to the employer's business operations and not to the performance of the employee.

Please note that expenses relating to the company car or external representation qualify as out-of-pocket expenses. A fixed allowance for out-of-pocket expenses may be paid, although this is subject to conditions.

### [Step 2: the designation of reimbursements, provisions and items made available as part of the final levy by the employer](#)

In principle, all reimbursements, provisions and items made available to employees must appear as taxable salary on employee payroll slips. The employer can choose to designate, as part of the final levy, the reimbursements and provisions paid and the items made available, with the exception of the benefit derived from the private use of the company car, monetary fines (such as traffic fines), the use of a home and interest and expense benefits related to a personal loan for the employee's own home. If so designated, they will be included in the fixed exemption of 1.2% and will not be regarded as part of the employee's taxable salary. These designated elements will not be regarded as salary and are not subject to employee insurance contributions and income-related contributions to health insurance under the Healthcare Insurance Act.

Please note that the scale of the designated reimbursements and provisions must not substantially deviate (30%) from what is considered usual in similar circumstances. This is to avoid spurious use of the fixed exemption. In practice, the Dutch tax authorities apply a suitability threshold of EUR 2,400 per employee per annum when assessing the standard practice criterion.

### [Step 3: exemptions and the tax value of the reimbursements, provisions and items made available that have been designated as part of the final levy](#)

#### **Reimbursements and provisions specifically exempted**

A specific exemption, subject to conditions, applies to the following reimbursements and provisions designated by the employer as being part of the final levy:

- employment-related transport costs, including commuting expenses: the actual costs of public transport, taxi, plane, ship, or own transport for which EUR 0.19 per kilometer is reimbursed (payment of a fixed allowance for commuting is

- possible);
- employment-related temporary accommodation costs: overnight stays, meals, and suchlike (please note the '20-day criterion' for itinerant employees);
- meals of a more than incidental business nature: for example, meals relating to overtime and evening openings, and meals on aircraft, ships, and oil rigs;
- the cost of training programs, courses, conferences, seminars, and professional literature and registration in a professional register, whether mandatory or not;
- outplacement;
- extra-territorial costs;
- in case of employment-related relocation: the cost of transporting household effects plus EUR 7.750;
- tools, computers, mobile telecommunication devices and similar equipment, which in the reasonable opinion of the employer are necessary for the proper performance of the job, provided the employee is obliged to return the item or pay the residual value when, in the reasonable opinion of the employer, it is no longer necessary for the proper performance of the job. The exemption does not apply if the item results from an exchange of gross salary ("cafeteria rules"). If the employee performs activities in the capacity of director or supervisory board member, the employer must make a reasonable case that the relevant item is usual for this employee;
- provisions and facilities that are the direct result of the working conditions policy adopted by the employer under the Working Conditions Decree, both at the workplace (including the home workplace) and outside the workplace;
- equipment that can also be used outside the workplace and whose business use by the employee is at least 90%.
- industry-specific products of the employer or a company related to the employer up to an amount not exceeding 20% of the fair market value of these products, but no more than EUR 500 per employee per calendar year.

The specific exemptions also apply if the reimbursement is paid as a fixed allowance based on a review of the actual costs incurred by the employee, or the Dutch tax authorities have given their approval to the substantiation provided of the fixed allowance.

#### **Tax value of the other designated reimbursements, provisions and items made available**

In principle, the other reimbursements, provisions and items made available which the employer has designated as part of the final levy must be valued at their fair market value (including VAT). If supplied by a third party the value will generally be the invoiced amount including VAT. However, the following exceptions apply:

- special fixed values apply to the following workplace provisions and facilities:

- the value of meals at the workplace which are only of an incidental business nature, regardless of whether this involves breakfast, lunch, or an evening meal, has been set at EUR 3.35. This fixed value also applies to meals for itinerant employees who do not meet the 20-day criterion;
- the value of workplace accommodation (away from home accommodation for the employee, such as accommodation for itinerant employees if they no longer meet the 20-day criterion) has been set at EUR 5.55 per day;
- the value of live-in workplace accommodation has been set at EUR 5.55 per day;
- the value of childcare (i.e. childcare for which an entitlement to a childcare allowance exists, has been set at the number of childcare hours x the hourly price set by the government.

Personal contributions by the employee are deducted from the fixed amounts, but the balance is not reduced below zero.

A zero value applies to the following provisions and facilities:

- facilities and provisions that are generally not used anywhere other than the workplace (design and layout workplace, bicycle shed, parking place on company property, and the making available of materials used at the workplace);
- food and drink consumed at the workplace, but not meal-related;
- workplace and live-in workplace accommodation, in case the employee does not reside at the workplace and the employee cannot reasonably refuse such accommodation (for example: accommodation on board a ship or oil rig);
- the provision of work clothing: clothing that can only, or primarily, be worn at the workplace, such as uniforms or overalls, or clothing that is left at the workplace, or clothing with a logo of at least 70 cm<sup>2</sup>;
- public transport passes or off-peak passes made available to employees, provided they are also used for business purposes;
- the interest benefit derived from a loan for the purchase of a bicycle, electric bicycle, or electric scooter.

#### Step 4: designation as final levy; if so, how much final levy must be remitted?

In light of the above (specific exemptions, zero value, fixed value), the employer must calculate the exact amount of the reimbursements, provisions and items made available which have been designated as part of the final levy.

The employer may deduct 1.2% of the payroll for tax purposes<sup>1</sup> (column 14 of the payroll records<sup>1</sup>) from this amount. The remainder must be included in the final levy at a rate of 80%. The final levy payable must be paid by the employer and can be deducted as an expense from the profit.

### Other comments

#### Calendar year versus financial year

The work-related costs rules are applied to each calendar year, even if a split financial year is maintained.

#### When does the employer have to remit the final levy?

The employer must report and remit the 80% final levy payable together with the tax return or remittance for the first period of the following calendar year. This is normally the January tax return that is prepared in February. If the withholding obligation for payroll tax and social security contributions ends during the course of the calendar year, the reporting and remittance of the 80% final levy must take place together with the tax return for the period in which the withholding obligation ended. The outstanding final levy may, however, already be remitted during the course of the calendar year.

#### Group rules

In principle, every employer independently applies the work-related costs rules but it is possible to make use of the group rules, which means that fixed exemptions, reimbursements and provisions within the group are added together. Within the group, no split of reimbursements and provisions therefore has to be made if the employees of one group company receive the same kind of reimbursements and provisions as employees of another group company, for example a staff party.

If the combined fixed exemption is exceeded, the 80% final levy must be reported and remitted by the group company with the largest payroll subject to payroll tax. Under the work-related costs rules all group companies are jointly and severally liable for the full amount of tax payable by the group.

The work-related costs rules have their own definition of 'group'. For the application of the work-related costs rules, a group is present if all participating employers operate as a group during the entire calendar year and one of the following situations applies:

- the employer holds at least a 95% interest in another employer,
- the other employer holds at least a 95% interest in the employer,
- or a third party holds at least a 95% interest in both the employer and the other employer.

<sup>1</sup> When calculating the exemption, the employer must remove salary from previous employment from the tax base if this amounts to more than 10% of the total taxable payroll.

Group companies that become part of the group or leave the group during a calendar year are not covered by the group rules.

Foundations (stichtingen) that are financially, organizationally and economically linked in such a way that they form an entity can apply the group rules. In that case, the articles of incorporation must lay down that:

- (a) the management board of one of the foundations appoints the board members of the other foundations or issues a binding list of candidates with regard to the appointment of the board members and
- (b) upon settlement of the bankruptcy or cessation of a foundation, the assets of that foundation will be transferred to the other foundations.

The employers within a group can opt to apply the group rules no later than the moment of payment referred to in the previous section. Opting for application of the group rules means they will apply to all group companies that meet the 95% criterion during the full calendar year. Administrative requirements must be complied with in order to apply the group rules.

## Contact

If you would like more information please contact your designated advisor at Meijburg & Co who will refer you to an advisor specialized in the work-related costs rules.

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