

Budget Day 2019: changes to payroll taxes

On Budget Day, September 17, 2019, the Cabinet presented the 2020 Tax Plan package to the Lower House. In this memorandum we address the most significant changes proposed for payroll taxes and social security contributions. The proposals are intended to take effect on January 1, 2020, unless another date is explicitly stated. In addition, we will focus on some of the changes that have already been adopted.

1. Tax rates and tax credits in the 2020 Tax Plan

The implementation of the two-bracket regime will be accelerated. The change envisaged for January 1, 2021 will now be realized as of January 1, 2020. The top rate is 51.75% in 2019 and will be reduced to 49.50% with effect from January 1, 2020.

As of January 1, 2020, the tax rates for employees born on or after January 1, 1946 will be:

Taxable salary of more than	But not more than	Tax rate	National Insurance Contributions	Combined rate
	EUR 34,712	9.70%	27.65%	37.35%
EUR 34,712	EUR 68,507	37.35%	-	37.35%
EUR 68,507	-	49.50%	-	49.50%

The general tax credit

The maximum general tax credit will be increased by EUR 194 compared to 2019. Taking account of indexation, the maximum general tax credit will then be EUR 2,711 as of January 1, 2020. The amount of the general tax credit is dependent on a person's income. The higher the income, the lower the general tax credit. For incomes of EUR 68,507 and above, the general tax credit will be nil.

The labor tax credit

The maximum labor tax credit as of January 1, 2020 is EUR 3,819. The amount of the labor tax credit is dependent on a person's income. Up to employment income of EUR 34,989, the higher the income the greater the labor tax credit. The labor tax credit is gradually phased out for employment income of EUR 34,989 and above. For incomes of EUR 98,639 and above, the labor tax credit will be nil.

Income-related contributions for health insurance under the Health Insurance Act

As of January 1, 2020, the income-related contributions for health insurance under the Health Insurance Act payable by the employer will be reduced from 6.95% to 6.70%. The maximum contribution base for the Health Insurance Act is EUR 57,214 as of January 1, 2020.

2. Changes announced in the 2020 Tax Plan package

Changes to the work-related costs rules

The work-related costs rules (*werkkostenregeling*; WKR) are payroll tax rules for the treatment of reimbursements, provisions and items made available by the employer to the employee in the context of the employment. The WKR will change on five points:

1. Increase in the fixed exemption

At the moment, the fixed exemption is 1.2% of an employer's payroll for tax purposes (column 14 salary). The percentage of the fixed exemption in the WKR increases to 1.7% for the first EUR 400,000 of the payroll for tax purposes plus 1.2% of the remainder of the payroll for tax purposes. If the group rules are applied, the increased rate of 1.7% cannot be used for every withholding agent. In that case, the fixed exemption is calculated on the basis of the payroll for tax purposes of all group companies taken together, with the percentage of 1.7% only applying to the first EUR 400,000.

2. Specific exemption for statement of good conduct

There will be a specific exemption for the costs of a statement of good conduct (*Verklaring Omtrent het Gedrag*; VOG) or a comparable foreign statement.

3. More time for final settlement

Employers are given more time to determine, file and remit the final levy payable as a result of exceeding the fixed exemption. At the moment, the final settlement must be filed no later than with the payroll tax returns for the first period of the following calendar year. It becomes possible to file the final settlement at the latest with the payroll tax return for the second period of the following calendar year. For employers who file a monthly return, this extension means that the final levy can be included in the February return, which must be filed and paid in March.

4. Recognition of business-specific products

The basic rule is that salary in kind is recognized at the invoiced amount including VAT. If there is no invoice, the fair market value is decisive. An exception applies in the case of the provision of industry-specific products of the employer or a company affiliated to the employer. The industry-specific product is currently recognized at the amount that would be charged to a third party. This will be changed. From now on, the industry-specific product will be recognized at fair value. This is usually the consumer price.

5. Administrative penalties and sums of money within the scope of penalty orders issued by a public prosecutor

Pecuniary penalties paid or reimbursed by the employer for an employee cannot, in principle, be designated by law as part of the final levy and must therefore be taxed on the salary slip. This will also apply to administrative (foreign) penalties and sums of money within the scope of penalty orders issued by a public prosecutor or similar foreign forms of punishment.

Indexation of untaxed remuneration/provisions for volunteers

No payroll tax or social security contributions are withheld or remitted on reimbursements and provisions totaling a maximum of EUR 170 per month and EUR 1,700 per calendar year received by persons who work as volunteers. These amounts will be indexed annually as of January 1, 2020. For the annual amount, the indexation is rounded off to a multiple of EUR 100. The amounts will not increase every year due to rounding. The monthly amount is then calculated by dividing the annual amount by ten.

Electronic information exchange option regime

An option regime will be introduced with the choice of receiving messages from the Dutch tax authorities electronically or by regular mail. The right of option can actually only be introduced once the tax authorities have an operational option registration and processing facility and sufficient message flows have been digitized. The entry into force will take place by Royal Decree.

R&D remittance deduction

The evaluation of the Promotion of Research and Development Act (*Wet bevordering speur- en ontwikkelingswerk*; WBSO) revealed that the current application system for an R&D declaration is not sufficiently in line with the working methods of the users. As a result of the evaluation, it was proposed to increase the number of times that the R&D declaration can be applied for from three to four per year.

The application must currently be submitted at least one month prior to the period. On the basis of the legislative proposal, the deadline for submitting an application is set at the day prior to the period to which the application relates. For applications for a period starting on January 1 of a calendar year, it is proposed to set the deadline for submission at December 20 of the previous calendar year.

Finally, rules will be included in the Wages and Salaries Tax and National Insurance Contributions Reduced Remittances Act (*Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen*) making it excusable for an R&D declaration

submission deadline to be exceeded in certain cases. This is a codification of the practical implementation.

Definition of permanent establishment in the Payroll Tax Act

If an employer established abroad has a permanent establishment in the Netherlands, this foreign employer is deemed to be the withholding agent for payroll tax purposes. The definition of the terms 'permanent establishment' and 'permanent representative' for the purposes of payroll tax is brought into line with corporate income tax. For more information, please refer to the appendix (the section 'Revised definition of permanent establishment as response to multilateral instrument against international tax evasion' in our [general memorandum on the 2020 Tax Plan package](#)).

The concept of 'deemed permanent establishment' also exists for payroll tax purposes. For the time being, its definition remains unchanged.

In addition, the definition of the North Sea extraction area for the purposes of payroll tax is brought into line with the definition in corporate income tax.

Increase in the addition to income for private use of company electric cars

The addition to income for the private use of the company electric car is 4% of the list price up to EUR 50,000. If the list price exceeds EUR 50,000, a notional addition to income of 22% will be calculated over the excess. As part of the Climate Agreement agreed by the Cabinet on June 28, 2019, the reduced addition to income of 4% for company electric cars (zero-emission cars) will be increased as follows from 2020 for cars with a motor vehicle registration in the relevant years for a maximum period of sixty months:

Year	Addition	Maximum list price	Addition above maximum list price
2020	8%	EUR 45,000	22%
2021	12%	EUR 40,000	22%
2022	16%	EUR 40,000	22%
2023	16%	EUR 40,000	22%
2024	16%	EUR 40,000	22%
2025	17%	EUR 40,000	22%

From 2026 onwards, the same addition applies to a company electric car as to an ordinary company car.

The cap on the list price will not apply to hydrogen cars. With effect from January 1, 2021, this will also be extended to solar cell cars.

3. Previously adopted changes with effect from January 1, 2020

Fixed addition for company bicycles

The scheme whereby a company bicycle is also made available for private use will be simplified with effect from January 1, 2020. At the moment, the actual benefit of the private use of the bicycle must still be determined on a case-by-case basis. As employers perceive this to be administratively cumbersome, from 2020 a fixed addition will apply to the private use of the bicycle that is made available, as is also the case with company cars. For the bicycle that is made available, the fixed addition will be 7% of the value of the bicycle. The latter value is set at the recommended retail price of the bicycle published in the Netherlands by the manufacturer or importer. If no recommended retail price is available for the bicycle, the price of the most comparable bicycle should be used. If the employee is charged for the private use of the bicycle, this may be deducted from the addition to income, although the net result cannot be negative.

There is no legal definition of the term 'bicycle'. The legislator has determined that 'speed pedelecs' are also regarded as bicycles if they are partly powered by human effort and are equipped with an electric motor (legally they are mopeds).

In principle, the tax inspector must convincingly demonstrate that a bicycle has also been made available for private purposes. However, for the sake of simplicity, practicability and enforceability, a bicycle will in any case be considered to be available for private purposes if it is also available for commuting.

Change to sector classification

The Labor Market Improved Equilibrium Act (*Wet arbeidsmarkt in balans*; WAB) was adopted on May 28, 2019. This means that, as of January 1, 2020, the sectoral differentiation in the WW (Unemployment Benefit Act) contribution calculation will be replaced by differentiation according to the nature of the contract. The low contribution applies to fixed contracts and the high contribution applies to flexible contracts. For the time being, however, the sectoral differentiation will continue to apply to the ZW (sickness) and WGA (Return to Work of Partially Disabled Persons) contributions.

State pension age to rise at slower pace

The state pension age will rise at a slower pace. This means that the state pension age in the coming years will be as follows:

Year	State pension age	Concerns individuals born
2020	66 years and 4 months	after August 31, 1953 and before September 1, 1954
2021	66 years and 4 months	after August 31, 1954 and before September 1, 1955
2022	66 years and 7 months	after August 31, 1955 and before June 1, 1956
2023	66 years and 10 months	after May 31, 1956 and before March 1, 1957
2024	67 years	after February 28, 1957 and before January 1, 1958

As of 2025, the state pension age will be linked to changes in life expectancy.

Reduction of low income benefit (*lage-inkomensvoordeel*; LIV)

As of January 1, 2020, the youth LIV will be halved. In addition to this, as of January 1, 2020 the LIV top rate will be halved from a maximum of EUR 2,000 to a maximum of EUR 1,000 per annum. As of 2024, the youth LIV will be abolished.

Replacement of DBA Act and stricter enforcement as of January 1, 2020

The abolition of the Declaration of Independent Contractor Status (*Verklaring Arbeidsrelatie*; VAR) and the (implemented, but only partly enforced) Assessment of Employment Relationships Deregulation Act (*Wet deregulerend beoordeling arbeidsrelaties*; DBA Act) and the search for a replacement for the DBA Act continues unabated. The contours of an envisaged replacement for the DBA Act have now been drawn up. More is also known about how the Dutch Tax and Customs Administration intends to enforce the DBA Act. The enforcement moratorium will be extended until 2021 (but will however be stricter as of 2020).

Replacement of DBA Act

A. Minimum rate for self-employed persons without employees

The intention is to introduce a minimum rate of EUR 16 per hour (price level 2019) for all self-employed persons without employees (*zelfstandigen zonder personeel*; zzp-ers), to ensure that all self-employed persons earn enough to provide for the basic necessities of life. This is an alternative to the previously envisaged compulsory employment contract for self-employed persons at the bottom of the labor market. This obligation also applies to private principals.

Their responsibility is however lighter (the burden of proof rests with the commissioned party) than for business principals.

B. Opt-out by way of a self-employed person's statement

The intention is to introduce a 'self-employed person's statement' for self-employed persons at the top end of the market. Principals will then be released from certain risks if the person involved nevertheless qualifies as an 'employee' at a later stage. This release not only applies to payroll tax and contributions to employee insurance schemes, but also to the obligation to continue to pay wages and salaries in the case of illness, the payment of pension contributions and Collective Labor Agreement obligations. To use the self-employed person's statement, the assignment contract must include a statement to the effect that the parties do not intend to conclude an employment contract. The remuneration must also be at least EUR 75 per hour (price level 2019) and the contract should be entered into for a maximum of one year. The commissioned party must also be registered with the Chamber of Commerce.

C. Principal's statement and web module

With regard to all self-employed persons without a self-employed person's statement, the question that continues to be of importance is whether the person concerned is a 'real' self-employed person or is in fact an employee. A web module is being developed for this group. It will make it possible for principals to obtain a principal's statement if the answers to the questions show that there is no employer-employee relationship. The web module is currently being tested. The principal's statement is valid insofar as the web module was truthfully filled in and the work is carried out accordingly in practice.

Stricter enforcement as of January 1, 2020

The current enforcement moratorium (in short: only enforcement if there is a (deemed) employment relationship and in the case of deliberate and obvious pseudo self-employment) will be extended until January 1, 2021. As of January 1, 2020 there will be stricter enforcement. As of that date, the Dutch Tax and Customs Administration can also enforce the rules if principals do not (or fail to adequately) follow the instructions of the Dutch Tax and Customs Administration within a reasonable period.

The Act will take effect in 2021.

Reporting obligation EU service providers

Since June 18, 2016, the Posted Workers in the European Union (Working Conditions) Act (*Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie*; WagwEU) entered into force. This Act regulates the employment conditions to which employees of European companies are entitled if they temporarily work in the

Netherlands. Furthermore, the Act contains provisions that make it easier to monitor compliance.

One of the measures that make it easier to monitor compliance is the introduction of a reporting obligation. This means that foreign service providers that come to the Netherlands to perform a service must report this in advance. This reporting obligation also has consequences for the recipient of the service. They must check, no later than upon the commencement of the activities, that the report filed was accurate. In the case of inaccuracies or not having received a copy of the report, the recipient of the service must also report this. The Social Affairs and Employment (Miscellaneous Provisions) Bill 2020 (*Verzamelwet SZW 2020*) now states that the recipient of the service will have five days, starting from the commencement of the activities, to comply with the reporting obligation. If a service is not accurately reported or not reported on time, penalties may be imposed on both the service provider and the service recipient. The reporting obligation was expected to start applying in 2019. We understand that an information website is currently being developed and a functioning digital system with which service providers can file online reports. As far as is currently known, this reporting obligation and the monitoring obligation of the service provider will not yet take effect on January 1, 2020.

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The information contained in this memorandum is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Appendix

Revised definition of permanent establishment as response to multilateral instrument against international tax evasion

At the beginning of 2019 the Dutch Parliament adopted the bill approving the Multilateral Treaty for the implementation of tax treaty-related measures to prevent base erosion and profit shifting. This Multilateral Instrument (MLI) is one of the results of the OECD's BEPS project, which aims to combat tax evasion by multinationals through their use of base erosion and profit shifting.

One of the opportunities for tax evasion that the MLI focuses on is that of an artificial circumvention of the qualification of permanent establishment, one of the starting points for states to proceed with taxation. The government now proposes to bring the national definition of the term 'permanent establishment' as used for personal income tax, payroll tax and corporate income tax purposes in line with the definition in the applicable tax treaty. This will, for example, prevent the power to tax under a tax treaty, which results from the application of the MLI, not being able to be exercised, because it was not provided for in national legislation. For non-treaty situations, the most recent definition of 'permanent establishment' appearing in the OECD Model Convention will be used. As a result of the proposed changes, it is expected that a permanent establishment will be present in more situations.

For the sake of completeness, we would like to point out that countries can register which bilateral tax treaties they wish the MLI to apply to (covered tax treaties) with the OECD. The MLI offers the possibility of making certain reservations/electing certain options with regard to the various measures. The MLI only applies to a bilateral tax treaty if both treaty parties have reported the bilateral tax treaty to the OECD as a covered tax treaty and insofar as they have elected the same options. In addition, countries must have ratified the MLI and have also notified the OECD of this. More than 20 treaty partners of the Netherlands have now done this, including Canada, France, India, Japan, Luxembourg, Russia, the United Kingdom and Sweden, so that the MLI will already impact the tax treaties with, for example, these countries, as of January 1, 2020.