KPMG Meijburg & Co
Tax & Legal

Budget Day 2020: changes to payroll taxes

On Budget Day, September 15, 2020, the government presented the 2021 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, 2021, 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 2021 Tax Plan
As of January 1, 2021, the rate for the first tax bracket will be reduced by 0.25%. The top rate of 49.50% applicable in 2020 will remain unchanged in 2021.

As of January 1, 2021, 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	9.45%	27.65%	37.10%
EUR 34,712	EUR 68,507	37.10%	-	37.10%
EUR 68,507	-	49.50%	-	49.50%

The general tax credit
The maximum general tax credit will be increased by EUR 126 compared to 2020. Taking account of indexation, the maximum general tax credit will then be EUR 2,837 as of January 1, 2021. The amount of the general tax credit is dependent on a person's income. The general tax credit is phased out for income of EUR 21,043 and above. 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, 2021 is EUR 4,205. The amount of the labor tax credit is dependent on a person's income. Up to employment income of EUR 35,652, the higher the income the greater labor tax credit. The labor tax credit is gradually phased out for employment income of EUR 35,652 and above. For incomes of EUR 105,735 and above, the labor tax credit will be nil.

Income-related contributions for health insurance under the Health Insurance Act
As of January 1, 2021, the income-related contributions for health insurance under the Health Insurance Act payable by the employer will be increased from 6.70% to 7.00%. The maximum contribution base for the Health Insurance Act is EUR 58,311 as of January 1, 2021.

2. Changes announced in the 2021 Tax Plan package

Changes to the work-related costs rules
Employers can use the fixed exemption in the work-related costs rules to give employees untaxed reimbursements and provisions. Since January 1, 2020, the fixed exemption per employer amounts to 1.7% of the taxable employee payroll up to and including EUR 400,000 plus 1.2% of the remainder of that payroll.

1. Codification temporary increase of fixed exemption 2020
In connection with the corona crisis, a policy decision was taken earlier this year to increase the fixed exemption from 1.7% to 3% in 2020 (i.e. thus once-only). This expansion offers employers who have the financial scope the possibility to give their employees additional reimbursements and/or provisions. The 2021 Tax Plan codifies the abovementioned approval.

2. Decrease in the fixed exemption
The percentage of fixed exemption for the part of the payroll above EUR 400,000 will be reduced from 1.2% to 1.18% as of 2021. The freed-up resources will be used to finance the specific exemption applying to certain educational expenses discussed below. In contrast to the increase described above, the aforementioned decrease in the fixed exemption is not a temporary measure.

3. *Expansion of specific exemption educational expenses*
For qualifying employee educational expenses, a specific exemption is included in the Payroll Tax Act (*Wet op de loonbelasting*). Under the current provision, an employer cannot make use of this specific exemption for a former employee. The current corona crisis has further increased the importance of education. The 2021 Tax Plan proposes that the specific exemption for educational expenses should also apply to former employees.

The expansion relates to reimbursements and provisions with regard to a training program or course undertaken with a view to obtaining income. Reimbursements and provisions for maintaining and improving knowledge and skills are not covered by the expanded specific exemption.

Increase in the addition to income for private use of company electric cars
Until January 1, 2020 the addition to income for the private use of the company electric car was 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 government on June 28, 2019, the reduced addition to income of 4% for company electric cars (zero-emission cars) will gradually 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
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 does not apply to hydrogen cars. As of January 1, 2021 this will also be extended to solar cars. A solar car is defined by law as an electric car with integrated solar panels. The conditions are that the energy required for propulsion is stored in a battery that does not contain lead and that the panels have a capacity of at least 1 kilowatt peak.

Tax treatment Subsidy arrangement COVID-19 bonus healthcare professionals for non-employees and employees

By virtue of the Subsidy arrangement COVID-19 bonus healthcare professionals, a net bonus of EUR 1,000 is paid to healthcare professionals who have been confronted with the consequences of the coronavirus outbreak in their work. The government has decided that the healthcare bonus may not have any consequences for personal income tax and national insurance contributions. Furthermore, the bonus must not affect income relevant to income-dependent schemes, such as allowances.

It is therefore proposed to introduce a final levy of 75% for the net healthcare bonus of EUR 1,000 that healthcare professionals who are not employees, such as self-employed persons and externally insourced personnel, receive. This is the same as the existing payroll tax legislation in the case of provisions in excess of EUR 136 to non-employees. The final levy must be paid by the healthcare institution that will be compensated for this by the government. Healthcare institutions must therefore keep separate accounts and records for non-employees showing to whom the healthcare bonus was paid and must notify the healthcare professionals in writing that the final levy has been paid on the healthcare bonus. The bonus does not then constitute taxable income for non-employees.

Healthcare institutions can apply for the subsidy arrangement from the Ministry of Health, Welfare and Sport. They will then receive the healthcare bonus and compensation for the final levy payable. The aim is to open the application desk to healthcare institutions in October 2020.
For employees, the healthcare bonus can be designated as part of the final levy and deducted from the fixed exemption. The amount of the subsidy to be received from the State will take account of the fixed exemption being exceeded if the healthcare bonus has been designated as part of the final levy.

Temporary emergency bridging measure for flexible workers (TOFA)
With retroactive effect to January 1, 2020, the Payroll Tax Act includes a provision under which the TOFA compensation is regarded as salary from former employment. The Dutch Employee Insurance Agency (UWV) will be designated as the withholding agent for this. It is also proposed that the UWV should be allowed to apply the tax credits to these benefits, even if no request had been made to do so. If a benefit has (recently) been received from the UWV and a request has been made not to apply any tax credits to it, the tax credits will not be applied.

Transitional rules for special leave
As of January 1, 2012, the special leave scheme (*levensloopregeling*) has, in principle, been canceled and is included in the Payroll Tax Act transitional rules, which end on December 31, 2021. Special leave entitlements not yet taken into account as salary at that time will then be taxed at the fair market value in 2021. According to current insights, these transitional rules lead to practical objections with respect to the filing of payroll tax returns and the Box 3 tax on the value of the special leave entitlement.

Because many (former) employers lack relevant information for the correct withholding and remittance of payroll tax and social security contributions on the salary under the special leave scheme, it is often not possible to file an accurate and timely payroll tax return. In order to solve this problem, it is proposed to designate the institution implementing the special leave scheme as the withholding agent. After all, that institution does possess the necessary information for the correct withholding and remittance of payroll tax in order to file an accurate and timely payroll tax return.

Another practical objection is the tax for Box 3 as of January 1, 2022. As a result of a deemed realization on December 31, 2021, the recovery of the payroll tax and social security contributions due will only take place after January 1, 2022, as a result of which the Box 3 tax for 2022 will effectively be based on the value of the special leave entitlement *before* payroll taxes and social security contributions have been withheld. To prevent this, the deemed moment when the entitlement is made available to the employee has been changed to November 1, 2021. The payroll tax and social security contributions due can consequently be withheld from the special leave entitlement without any impact for Box 3.

Through to October 31, 2021 it is possible to withdraw the value of the special leave entitlement as normal. In that case, the value of the special leave entitlement will be included as part of the salary from current employment. At the time of the deemed realization, the value of the special leave entitlement will also be included in the salary from current employment, unless the employee has reached the age of 61 at the beginning of the calendar year. For these employees, the entitlement will be regarded as salary from former employment. When paying the special leave entitlement, the special remuneration table applies.

Research and development (R&D) remittance reduction
The tax plan includes three changes relating to the research and development (R&D) remittance reduction.

1. *Rate increase first bracket and rate for start-ups*
   To stimulate innovation, it is proposed to increase the first bracket of the R&D remittance reduction for start-ups and non-start ups from 32% to 40%. In addition, it is proposed to increase the rate for start-ups from 40% to 50%.

2. The evaluation of the Promotion of Research and Development Act (*Wet bevordering speur- en ontwikkelingswerk*) (period 2011-2017) has produced a recommendation that businesses should continually be reminded that they can enter into preliminary consultation with the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*; RVO). This is in order to gain a better insight into which costs and expenses are eligible for the R&D remittance reduction and how they can organize their administration accordingly. By making better use of preliminary consultation, the aim is to reduce the administrative burden on businesses.

3. *Clarification of remittance reduction*
   The research and development (R&D) remittance reduction will be clarified with regard to public research institutions. Since 2016, public research institutions are not regarded as 'R&D withholding agents' and are therefore excluded from the R&D remittance reduction. It is proposed to delete the words 'not for profit' from the definition of the term 'public research institution' in the Wages and Salaries Tax and National Insurance Contributions Reduced Remittances Act (*Wet vermindering afdracht loonbelasting en premie voor de volksverzekeringen*; WVA). In practice, these words have proved to be ambiguous. This ambiguity is related to a not-for-profit public research institution possibly being subject to corporate income tax. Deleting the words 'not-for-profit' is not expected to limit the current group of users.

3. Previously adopted changes with effect from 2020

Reporting obligation EU service providers
On March 1, 2020 the reporting obligation under the Posted Workers in the European Union (Working Conditions) Act (*Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie*; WAGWEU) was introduced. This specifically means that employers and service providers established in the EU/EEA and Switzerland must report foreign workers *before* their temporary employment in the Netherlands via the online registration system. In addition, the Dutch contracting party/service recipient is obliged to check the content of the notification. Only after these two steps have been taken will the reporting obligation be fulfilled.

During the first six months, the Inspectorate SZW enforced the WAGWEU reporting obligation, but did not impose any penalties for non-compliance.

This transition period ended on September 1, 2020 and penalties will be imposed on both the foreign employer and the Dutch contracting party if they do not fully comply with the conditions of the WAGWEU.

A penalty varying between EUR 1,500 and EUR 4,500 will be imposed if a foreign worker is not reported (on time). The penalty amount is dependent on the total number of employees for whom the penalty is imposed. Dutch contracting parties can also receive a penalty of EUR 1,500 if they fail to check a notification or fail to do so on time.

More information can be found in our previous memorandum about this.

Mandatory Disclosure Rules, DAC6

As of January 1, 2021, it will be mandatory in the Netherlands to report certain cross-border arrangements with hallmarks that may indicate aggressive tax planning; the Mandatory Disclosure Rules or DAC6.

In principle, DAC6 imposes an obligation on intermediaries (e.g. tax advisors) to report certain cross-border arrangements to the tax authorities. In certain circumstances the reporting obligation can (also) rest on the taxpayer or one of its group companies. It is therefore important to have insight into and control over DAC6 obligations in the various EU Member States, not least because significant penalties for non-compliance with DAC6 can be imposed on both intermediaries and taxpayers. In the Netherlands, a pecuniary penalty of a maximum of the sixth category (in 2020: EUR 870,000) may be imposed if the fact that the reporting obligation was not complied with, was not complied with on time, or was not accurately or fully complied with, is due to the gross negligence or deliberate actions of the intermediary or the taxpayer.

In the Netherlands, with effect from January 1, 2021, reportable cross-border arrangements must be reported within 30 days of them being made available for implementation, being ready for implementation or the first step in their implementation was taken (whichever occurs first). However, as the DAC6 EU Directive entered into force on June 25, 2018, there are also two further periods for which retrospective reporting is required:

- reportable arrangements of which the first step of the implementation was taken between June 25, 2018 and July 1, 2020: these must be reported to the tax authorities no later than February 28, 2021;
- reportable arrangements of which the first step of the implementation was taken between July 1, 2020 and December 31, 2020: these must be reported to the tax authorities no later than January 31, 2021.

Whether a cross-border arrangement must be reported is determined on the basis of certain hallmarks. For some hallmarks, there is only a reporting obligation if the main benefit test is also met. That is the case if it can be convincingly demonstrated that the most important benefit or one of the most important benefits, given all the relevant facts and circumstances, is obtaining a tax benefit.

The scope of DAC6 is particularly broad and comprehensive. Although the background of DAC6 is to combat tax avoidance and evasion and to increase transparency at EU level, it also touches on many situations which at first sight do not appear to be aggressive tax planning arrangements. This may potentially also include international workers. It is in this context that we have prepared this brochure, which briefly summarizes the impact of DAC6 on payroll tax and social security contributions.

4. Announced tax changes that are not (yet) part of the 2021 Tax Plan

Memorandum of Amendment: Job-related investment allowance
The government will use the Job-related investment allowance (*Baangerelateerde Investeringskorting*; BIK) to encourage businesses to invest. If businesses make an investment, for example the acquisition of new equipment, they will receive a credit that they can set off via their payroll tax return. The BIK is not yet part of the 2021 Tax Plan, but will be included by way of a Memorandum of Amendment.

Changes to taxation date for share option rights of start-ups and scale-ups
For payroll taxes, the taxation date for share option rights is the date on which the options are exercised. In the amendments to the 2021 Tax Plan announced in May 2020, it was proposed to shift the taxation date for share option rights for start-ups and scale-ups to the date when the employee sells the shares acquired with the option.

After consultation, however, it appeared that the start-up and scale-up sector is too diversified to be able to introduce such a general rule. That is why the aim is to offer a bill for internet consultation in February 2021 with an envisaged effective date of January 1, 2022.

Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill
On September 3, 2020 the Lump Sum Payment, Early Retirement Scheme and Leave Savings Scheme Bill (*Wetsvoorstel bedrag ineens, RVU en verlofsparen*) was presented to the Lower House of Parliament. This bill is part of the Pension Agreement. In this bill the government elaborates on three of the agreements made: more freedom of choice in the use of the pension (lump-sum payment), more options for early retirement (easing of the early retirement levy; *RVU-heffing*) and more scope to utilize the tax relief for saving leave for the purposes of early retirement (leave savings scheme). More information can be found in our previous memorandum about this.

Contribution differentiation Occupational disability insurance fund (Aof)
After the unemployment insurance contribution differentiation, contribution differentiation will also be introduced for the Occupational disability insurance fund (*Arbeidsongeschiktheidsfonds*; Aof) on January 1, 2022. Medium-sized and large employers will pay a higher contribution, while small employers will pay a lower contribution. The difference between the high and low contribution will be about 1.1%. In this case, it is not the intention to stimulate certain behavior by employers. The main purpose of the differentiation is to financially support small employers in the costs of continued salary payments and reintegration.

The contribution will, however, be reduced from 2021. The indication is a contribution percentage of 5.55% (2020: 6.77% plus 0.5% childcare allowance surcharge). The final percentage will be announced later this year by the Minister of Social Affairs and Employment.

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