

Budget Day 2023: changes to payroll taxes and labor market developments

On Budget Day, September 19, 2023, the caretaker government presented the 2024 Tax Plan package to the Lower House of Parliament. In this memorandum we address the most significant changes proposed for payroll tax and social security contributions. The proposals are intended to take effect on January 1, 2024, unless another date is explicitly stated. We also focus on some of the changes that have already been adopted and on several labor market developments.

1. Tax rates and tax credits in the 2024 Tax Plan

As of January 1, 2024 the tax rate in the first bracket will be increased by 0.04%. The top rate of 49.50% applying in 2023 will remain unchanged in 2024.

The rates for employees who have not yet reached the statutory retirement age in 2024 (2024: 67 years) will be as follows:

Taxable salary of more than	But not more than	Tax rate	National insurance contributions	Combined rate
	EUR 38,139	9.32%	27.65%	36.97%
EUR 38,139	EUR 75,624	36.97%	-	36.97%
EUR 75,624	-	49.50%	-	49.50%

The general tax credit

The maximum general tax credit will be increased by EUR 304 to EUR 3,374 compared to 2023. The amount of the general tax credit is dependent on a person's income in Box 1. The general tax credit is gradually reduced for income of EUR 24,904 and above.

The labor tax credit

As of January 1, 2024 the maximum labor tax credit will be EUR 5,553. The amount of the labor tax credit is dependent on a person's income from current employment. Up to employment income of EUR 39,898: the higher the income, the higher the labor tax credit. The labor tax credit is gradually reduced for employment income of EUR 39,898 and above.¹

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

As of January 1, 2024, the income-related contributions for health insurance under the Health Insurance Act payable by employers will be reduced from 6.68% to 6.57%. As of January 1, 2024, the maximum contribution base for the purposes of the Health Insurance Act will be EUR 71,624.

¹ The point at which the labor tax credit starts to decrease is linked to the statutory minimum wage and is only definite once this has been determined in November 2023.

2. Tax changes announced in the 2024 Tax Plan package

The 2024 Tax Plan package contains several proposed changes for payroll tax and social security contributions purposes. If these are approved, the schemes and rules will be as follows.

Further increase to untaxed travel allowance

The untaxed travel allowance is already a specific exemption under the work-related costs rules, which means that employers can reimburse employees tax-free for their business kilometers (this is a set amount; in 2023: EUR 0.21 per kilometer).

As of January 1, 2024 the maximum untaxed travel allowance will be increased to EUR 0.23 per business kilometer. That is higher than the change approved in the 2023 Tax Plan (increase to EUR 0.22).

Simplification of public transport exemption

Payroll tax legislation currently contains two exemptions for the public transport season pass and/or the off-peak pass (hereinafter: public transport pass):

1. The employer makes a public transport pass available to employees, which they can also use for business travel.
2. The employer reimburses the employee for the costs of a public transport pass or a public transport pass is provided to the employee.

Each exemption has its own conditions. In the present situation, if the public transport pass is reimbursed, the reimbursement needs to be checked to ensure that it is not higher than the actual costs for business use. This is now going to change. A public transport pass can always be reimbursed, provided or made available to employees tax-free, provided the employee uses the public transport pass ('to whatever extent') for business travel; commuting in any case falls under this.

For the specific exemption, it is essential that the employer can convincingly demonstrate there is business use. If that is the case, the employer no longer has to keep a log of private and business use.

Increase of maximum salary subject to social security contributions for employee insurance schemes

A maximum salary subject to social security contributions applies to employer contributions to employee insurance schemes. This means that contributions for employee insurance schemes are no longer payable on income above that maximum. For 2023 that maximum was EUR 66,956 per annum. As of 2024 this maximum will be increased to EUR 71,624. For employees who earn (at least) the maximum salary subject to social security contributions, this increase means that the employer has to pay more employee insurance scheme contributions on a tax base of EUR 5,000.

Electronic application R&D withholding agents

The Electronic Administrative Communications (Modernization) Act regulates that citizens and businesses must do all their business with the government electronically. Citizens and businesses do however retain the right to communicate with the government by regular mail. The General Administrative Law Act gives citizens and businesses the option to choose either the paper or digital route. However, it has been laid down in the Wages and Salaries Tax and National Insurance Contributions (Reduced Remittances) Act that the application process must proceed electronically. To ensure this obligation is retained, it has been explicitly stated that it is possible to deviate from the general rules in the General Administrative Law Act.

Reparation of lucrative interest legislation

Lucrative interest legislation regulates the taxation of property rights that are (also) acquired as remuneration for work. If property rights qualify as a lucrative interest, they are taxed in accordance with the regime for 'results from other activities' (or in accordance with the Box 2 regime if it is structured as a substantial interest, is held indirectly and the redistribution obligation has been met).

On April 14, 2023 the Dutch Supreme Court ruled that for the application of the 10% criterion in Section 3.92b(4) Personal Income Tax Act 2001 (the 'catch all' clause) only loans have to be taken into account if and insofar as these can be regarded as informal capital for the purposes of tax law (being a participating loan, sham loan or a loan with no expectation of repayment). Consequently, situations where use is made of, for example, a shareholder loan that cannot be regarded as informal capital but does also contribute to the remuneration of work, no longer fall under a lucrative interest. On June 26, 2023 the Deputy Minister of Finance explained that the Supreme Court judgment has led to undesired consequences when implemented in practice and for the government's finances.

In assessing whether there is a lucrative interest, a loan that does not qualify as informal capital will now also count if the loan also contributes to remunerating the holder of the interest. What then is a loan that also contributes to remunerating the holder of the interest? This is a loan provided under terms and conditions such that these fulfill the same function in economic terms as cumulative preference share capital and thus also contribute to the remuneration of the taxpayer. This will very often be the case with loans, because the repayment obligation for the lender, in principle, takes precedence over the claims of the shareholders. Although these types of loans can be provided by shareholders or group companies, the legislation appears to encompass all loans that fulfill the same function as cumulative preference share capital. The loan counts as a separate share class.

This change will have retroactive effect to June 26, 2023, the date of the letter sent to the Lower House of Parliament, in which the Deputy Minister announced this.

3. Previously adopted tax changes with effect from 2024

Tightening of addition to income for solar electric cars

Currently, there is a discount on the addition to income for new zero-emission company cars. In 2023 and 2024 this discount is 6% and in 2025 5%. The discount will end after 2025 and the addition to income for zero-emission cars will increase.

The discount is applied up to a maximum list price of EUR 30,000. This cap does not apply to zero-emission cars with an engine that can be powered by hydrogen and cars with inbuilt solar panels.

By tightening the rules the caretaker government has ensured that only low-emission cars with a relatively large surface area of solar panels are eligible for the uncapped discount on the addition to income. The new narrowed definition of a solar electric car only applies to new company cars registered after January 1, 2024.

Temporary increase work-related costs rules to end

Employers can use the fixed exemption in the work-related costs rules to give employees untaxed reimbursements and provisions. In 2023 the fixed exemption is calculated as follows:

- 3% on the first EUR 400,000 of the payroll for tax purposes;
- 1.18% on the payroll for tax purposes above EUR 400,000 (thus the excess).

As stated in the 2023 Tax Plan, this temporary increase in the fixed exemption will end as of 2024. This means that the fixed exemption will be 1.92% of the payroll for tax purposes up to EUR 400,000. The fixed exemption in the second bracket for the payroll above that amount will remain at 1.18% in 2024.

Limitation of 30% ruling or option to reimburse actual costs incurred

Employees with specific expertise who have been recruited from outside the Netherlands and who meet certain conditions can apply the 30% ruling for a maximum period of five years. A decision from the Dutch tax authorities is required for this. By applying the 30% ruling, a maximum of 30% of the salary can be paid tax-free. This is intended to compensate for any additional expenses foreign employees incur when coming to work in the Netherlands (extraterritorial expenses such as travel and accommodation expenses). This effectively reduces the marginal tax rate from 49.5% to 34.65% (in 2023). Currently, the 30% ruling can be applied to the entire salary from current employment. Employers can also opt to reimburse tax-free the actual extraterritorial expenses incurred.

As stated in the 2023 Tax Plan, the 30% ruling for incoming employees will be limited to the public service pay cap for senior executives contained in the Senior Executives in the Public and Semi-Public Sector (Standards for Remuneration) Act. This means that the 30% ruling can only be applied to salary from current employment up to the public service pay cap (2023: EUR 223,000). In 2024, the maximum amount for the purposes of the 30% ruling will be EUR 66,900.

Transitional rules

If the 30% ruling is still being applied in the last salary period of 2022, the cap will apply as of January 1, 2026 (and thus not as of January 1, 2024).

Option to have actual costs reimbursed (applies as of January 1, 2023)

The 2023 Tax Plan explicitly stated that each calendar year employers must choose between:

1. reimbursing the actual extraterritorial expenses incurred on the basis of expense claims;
2. applying the 30% ruling.

The choice is made by applying the chosen option in the payroll. It is thus not necessary to specifically report this to the Dutch tax authorities.

As it can take some time for the Dutch tax authorities to issue a decision on the 30% ruling, an exception applies to the situation where an application for such a decision is filed within four months of the incoming employee having commenced their employment in the Netherlands. The choice for the calendar year in which this four-month period ends does not have to be made until the first payroll period after the end of those four months. That choice will then apply for the rest of the calendar year.

4. Miscellaneous - announced tax changes that are not part of the 2024 Tax Plan

Tax credit for posted public servants

In contrast to the personal income tax regime, the payroll tax regime has so far never had a deemed residence rule for posted public servants. This will change as of January 1, 2024. The Deputy Minister of Finance has given approval for reducing the payroll tax payable for posted public servants, their partners and children younger than 27 who are deemed to live in the Netherlands, by the tax credit (irrespective of where the posted public servant actually lives). The Deputy Minister has thus created a fiction for payroll tax purposes similar to the one already used for personal income purposes, for Dutch citizens employed by the State of the Netherlands who are posted abroad. As a result of that fiction, that person will also be treated as a domestic taxpayer for payroll tax purposes and thus is entitled to tax credits, despite the fact that they actually live abroad.

Rectification of mistake regarding available fixed exemption in the work-related costs rules

Employers can use the fixed exemption in the work-related costs rules to give employees untaxed reimbursements and provisions as part of their employment. In the 2023 Tax Plan the percentage in the first bracket for calculating the fixed exemption of the work-related costs rules on the first EUR 400,000 of the payroll for tax purposes was increased from 1.7% to 3% as of January 1, 2023 and decreased from 3% to 1.92% as of January 1, 2024. In making these changes, the maximum amount of the available fixed exemption after applying the first bracket (EUR 12,000 in 2023) had

mistakenly not been adjusted. This is now being rectified with retroactive effect to January 1, 2023. The fixed exemption in the second bracket for the payroll above that amount will remain at 1.18% in 2024.

Withdrawal of approval free substitution model agreement

As a result of the judgment in the Deliveroo case, the Dutch tax authorities will withdraw the approval for model agreements based on free substitution on January 1, 2024. This concerns the general free substitution model agreement as well as model agreements for sectors and professions, and individual model agreements based on free substitution. Under these agreements, the work-based relationship between the contracting and the contracted party does not qualify as (deemed) employment and the self-employed person is free to be substituted.

Only if a sector organization or an individual contracting or contracted party has submitted the free substitution model agreement to the Dutch tax authorities, will the Dutch tax authorities send these parties a letter no later than October 1, 2023. In all other cases, no notification will be sent by the Dutch tax authorities.

The following is important if contracting and contracted parties use the free substitution model agreement as the basis for their work-based relationship:

- The employment relationship should be assessed to see whether it could qualify as (deemed) employment.
- The employment relationship should be changed before January 1, 2024.
- Regular checks should be carried out to see how the activities are performed in practice.

At present, the current legislation on self-employed persons is not being enforced and will not be enforced until January 1, 2025 at the latest (the enforcement moratorium) in anticipation of new legislation. The Dutch tax authorities announced more about this in its Employment Enforcement Plan dated March 24, 2023.

The Dutch tax authorities will not impose any supplementary tax assessments or obligations to correct until the end of the enforcement moratorium, unless there is malicious intent or if their instructions are not (promptly) followed up. A three-month period is often given for this. The Dutch tax authorities refer to malicious intent if 'a situation that is obviously pseudo self-employment was deliberately allowed to arise or continue, because the contracting party knows – or could have known – that there is actually an employment relationship'. However, during the enforcement moratorium the Dutch tax authorities will perform on-site inspections and audits. Additional personnel have been made available for this.

5. Other labor market developments

Social security framework agreement homeworkers

Since the COVID pandemic, working from home has become part of the normal routine of employees and employers. To avoid (forced) working from home impacting the social security position of home workers, a 'no impact policy' applied. In short, this meant that working from home had no impact on the social security position of an employee living in a different country to the one where the employer is established. After all, the EU Regulation 883/2004, which coordinates social security systems within the European Union, has as general rule for employees who work in two or more Member States that they are insured for social security purposes in their country of residence if they spend a significant amount of time working there (being more than 25% of their total working hours in the EU/EEA/Switzerland).

Teleworkers

The 'no impact policy' was extended several times and ended on June 30, 2023. The European Commission has therefore reached agreement on a framework agreement that makes working from home possible for up to 50% of the total working hours, without the employee having to be insured for social security purposes in their country of residence. This agreement took effect on July 1, 2023. However, this agreement has not yet been signed by all the relevant countries. This means that for employees working in those countries, the general rules of the EU Regulation apply.

The framework agreement applies to teleworkers (including home workers). These are employees who live in country A but work for an employer in country B. The agreement gives these employees (and employers) an 'opting-in' option so that the employee can remain insured for social security purposes in the employer's country of establishment if the employee works 25%-49.9% of their time from home and spends the remaining hours working in the country where the employer is established.

A1 certificate

Given there is opting-in, employers are obliged to apply for A1 certificates for the relevant employees (strict deadlines apply). The applications must be filed with the social security authority in the country where the employer is established.

Labor law and permanent establishment

When staff start to work from home on a more permanent basis in a cross-border situation it is also important to assess whether there are points that need to be considered in respect of the applicable labor law. The implications and/or obligations arising from the labor law of the country of employment or country of residence may vary greatly for both the employee and the employer. If an employee works from home, this may also lead to a permanent establishment for corporate income tax purposes and/or a payroll obligation for the employer in the country from which work is performed.

Reporting obligation work-related mobility of persons

As of 2024, employers with at least 100 employees will be obliged to report on their employees' business travel and commuting. This is also referred to as the work-related mobility of persons reporting obligation. Employers that have this obligation have until June 30, 2025 to report the required data for 2024. This data is sent to the environment agency. The reporting obligation is a consequence of the Climate Agreement in which agreements were made about reducing CO₂ emissions.

Minimum Hourly Wage (Introduction) Act

As of January 1, 2024 a statutory minimum hourly wage will be introduced and employers will be obliged to pay employees at least the statutory minimum hourly wage. The fixed minimum monthly, weekly and daily wage will disappear.

Act on Future of Pensions

In 2019 the government and employers' and employees' organizations agreed a broad package of measures for the Pension Agreement. These measures were elaborated on in the bill on the Future of Pensions Act, which the Minister for Poverty Policy, Participation and Pensions, Ms. Schouten, presented to the Lower House of Parliament on March 30, 2022. Pensions will become more flexible and more in line with economic developments. Participants in pension plans can also expect more transparency about these pension plans and there will be a shift to personal pension capital. Everyone will start accruing a pension via a contribution scheme. The focus will be on the pension contribution, which will be the same for all age groups.

The bill on the Future of Pensions Act was adopted by the Lower House of Parliament on December 22, 2022 and by the Upper House on May 30, 2023. The Act took effect on July 1, 2023. A transitional stage that runs until 2028 started on that date (one additional year compared to the original proposal) during which employers and employees can make agreements about changing their pension plans and pension administrators must implement these agreements.

Flexible Workforce Security (Improvement) Act

From July 10, 2023 through to September 4, 2023 the Ministry of Social Affairs and Employment held an internet consultation on the bill on the Flexible Workforce Security (Improvement) Act. This bill includes the following measures:

1. The avoidance of revolving door arrangements. This means that an employee is entitled to an open-ended contract after three years or after three consecutive temporary contracts with the same employer; also referred to colloquially in Dutch as the 'chain provision', i.e. provisions relating to the way in which the collective agreement counts consecutive periods in order to establish whether there is successive employment. Currently, it is possible to take a 'break' of six months, which invalidates the chain provision. The bill removes this break, as a result of which employers have to offer employees an open-ended contract after three years or three temporary contracts.
2. The ending of zero-hours contracts. There will be open-ended and temporary basic contracts with a minimum number of hours for which workers must at the

very least be rostered. In addition, a standard will be set for additional availability, whereby there is no obligation for an employee to come to work outside that availability.

3. The improvement of the position of temporary agency workers. This means that temporary agency workers and employees at the insourcing company must at least earn the same for the same work ('equal pay for equal work') and be treated the same.

A bill amended in response to the internet consultation has not yet been published.

Changes to revised situation contribution differentiation Unemployment Insurance Act

As of January 1, 2020 the contributions paid under the Unemployment Insurance Act are differentiated according to the type of employment contract (open-ended or flexible contracts). The low unemployment insurance contribution (also known as Contributions to the General Unemployment Fund; in 2023: 2.64%) is payable by employers if there is an open-ended employment contract. The high unemployment insurance contribution (2023: 7.46%) is payable if there is a fixed-term employment contract.

As part of the labor market package, the method used for unemployment insurance contributions will be changed. Currently, employers have to pay the high rate if the overtime worked by an employee exceeds 30% compared to the hours in their contract. However, there is an exception to this rule for employees with contracts for more than 35 hours per week. This lower limit will be reduced to 30 hours per week.

The measure is expected to take effect as of January 1, 2024.

EU pay transparency directive enters into force

The EU Pay Transparency Directive entered into force on June 6, 2023. This Directive contains measures for pay transparency (pay information for job seekers, pay information of employees who perform the same work or work of an equal value and reporting obligations on the gender pay gap for companies with more than 100 employees). Member States must transpose this Directive into national law within three years.

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September 20, 2023

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