



# MEMENTO

## OF THE EMPLOYER 9



### TOPIC

The new NSSO target group reduction for young people and older workers in the Flemish Region ..... 02



### CASE LAW

Basic principle of social security contributions – When wages are paid by the employer ..... 15



# THE NEW NSSO TARGET GROUP REDUCTION FOR YOUNG PEOPLE AND OLDER WORKERS IN THE FLEMISH REGION

Following the 6th reform of the State, the Regions now have jurisdiction over the implementation of a number of NSSO target group reductions. Since 1 July 2016, the Flemish Region has had its own policy on target groups. In this article, we will be discussing the new NSSO target group reduction for young people and older workers.

**01**

## THE FLEMISH POLICY ON TARGET GROUPS

Since 1 July 2014, the organisation of the policy on target group reductions falls within the jurisdiction of the Regions, which are able to set the reductions of employers' social security contributions based on their own labour market policy.

Flanders amended its own target group policy (Decree of 10 June 2016 regulating certain aspects of sandwich training, *Belgian Official Gazette* of 17 August 2016 and Order of the Flemish Government of 10 June 2016 implementing the Decree of 4 March 2016 on the Flemish target group policy,

*Belgian Official Gazette* of 28 June 2016). The new policy entered into force on 1 July 2016.

The new Flemish target group reduction policy includes measures for three target groups:

- 1) "Young workers", with a target group reduction of employers' social security contributions (see Target group reduction for "young workers");
- 2) "Older workers", with a target group reduction of employers' social security contributions (see Target group reduction for "older workers");
- 3) "Workers with an employment impediment",



with the granting of a Flemish support bonus. The Flemish Region maintained this subsidy which is intended to compensate the loss of productivity for workers with an employment impediment. Existing arrangements are maintained, but the scope is extended to individuals with a psychosocial employment impediment.

The new Flemish target group reduction policy no longer incorporates the former federal target group reductions:

- the target group reduction for long-term job seekers, except for SINE jobs (as part of the "Social Inclusion Economy");
- the "restructuring" target group reduction.

These regionalised target group reductions will end on 31 December 2016 but specific transitional measures are provided for until 31 December 2018.

A number of target group reductions have remained provisionally unchanged:

- the federal target group reduction for "first hires";
- the federal target group reduction for "collective reduced working time arrangements and the four day work week";
- the federal target group reduction for "permanent workers with a full-time employment contract in the hospitality industry";
- the regionalized target group reduction for "guardians";
- the regionalized target group reduction for "domestic workers";
- the regionalized target group reduction for "foster parents";
- the regionalized target group reduction for "artists".

## 02

# TARGET GROUP REDUCTION FOR "YOUNG WORKERS"

In some cases, private and public employers are entitled to a target group reduction for "young workers".

The target group reduction is made up of two components:

- 1) The target group reduction for "apprentices";
- 2) The target group reduction for "unskilled and moderately-skilled youth".

### A. WHICH EMPLOYERS?

All private and public sector employers employing workers subject to social security are entitled to the target group reduction when they hire young workers. The target group reduction applies regardless of the number of workers employed by the employer.

Prior to regionalization, employers were required to meet the obligation on first employment agreements in order to be entitled to the target group reduction. Since 1 July 2016, fulfilment of the obligation on first employment agreements is no longer a condition for entitlement to the new Flemish target group reduction for young workers and the former federal reductions for young people who continue their employment. Since 1 July 2016, the latter category falls under a transitional scheme (see below: "Entry into force and transitional measures").

### B. WHICH WORKERS?

The target group reduction for "young workers" is made up of two measures. The first is the target group reduction for apprentices as part of sandwich training. The second applies to unskilled or moderately-skilled young workers.



At the end of the apprentice's sandwich training course, the employer may use the target group reduction for unskilled or moderately-skilled young workers.

### 1. APPRENTICES

The target group reduction applies to apprentices who fulfil the following conditions: being employed as part of a sandwich training course, working in the Flemish Region, being at least 15 years of age and being employed before their 25th birthday.

#### *Condition 1: Employment as part of a sandwich training course*

Employers are entitled to a "Young workers" target group reduction for two categories of workers:

- Apprentices referred to in Article 1bis of the Royal Decree of 28 November 1969 on social security. In practice, apprentices beginning a sandwich training course on 1 September 2016 and, as part thereof, a sandwich training agreement, will fulfil these conditions. The "workplace" component in the sandwich training course includes an average of at least 20 hours per week on an annual basis. (For more information on sandwich training courses, see *Memento of the Employer* of October 2016).
- Young people hired with a part-time employment contract as part of a sandwich training course. In practice, this target group reduction applies to apprentices beginning a sandwich training course on 1 September 2016 and of which the "workplace" component is below an average of 20 hours per week on an annual basis. As part of this sandwich training course, the apprentice shall enter into a part-time employment contract if the training is a course of part-time vocational secondary education not qualified as "duale" by the Flemish Government.

The target group reduction does not apply to young people who enter into a part-time employment contract with a company of the non-trading sector (social Maribel).

#### *Condition 2: Employment in the Flemish Region*

The apprentice must be employed in the Flemish Region. They must be linked to one of the company's business units located in the Flemish Region. This does not mean that the company's registered office must be located in the Flemish Region. Companies whose registered office is located abroad or in another Region are also entitled to the target group reduction.

#### *Condition 3: Age*

- **Minimum age:**  
The young person must have completed mandatory full-time education. Mandatory full-time education ends at the age of 15 if the young person has completed the first two years of secondary education. In all other cases, mandatory full-time education ends at the age of 16.
- **Maximum age:**  
The young person turns 25 during the academic year in question.

These age limits are not imposed by the Programme-Act (I) of 24 December 2002 but are derived from Flemish legislation on education. In theory, sandwich training courses are only available to young people who have completed mandatory full-time education and who have not yet reached the age of 25. They may also be followed at the latest until the end of the academic year during which the young person reaches the age of 25. The term "academic year" shall mean the period between 1 September of year X and 31 August of year X+1.

### 2. UNSKILLED OR MODERATELY-SKILLED YOUNG WORKERS

The target group reduction applies to young people who fulfil the following conditions: being unskilled or moderately-skilled, working in the Flemish Region, being at least 15 years of age and not having reached the age of 25 on the last day of the quarter in which they are hired. In addition, the quarterly reference wages may not exceed the wage ceiling set by the Flemish Government.

#### *Condition 1: Level of education*

The young person is unskilled or moderately-skilled on the date of their entry into service.

- unskilled = no secondary education completion certificate or no certificate of the 2nd year of the 3rd cycle of secondary education;
- moderately-skilled = at most, a secondary education completion certificate or a certificate of the 2nd year of the 3rd cycle of secondary education.

In order for the target group reduction to be granted, the level of studies must be certified in the young person's individual electronic record managed by the VDAB.

If this condition is fulfilled at the time of entry into service, the employer shall be entitled to the target group reduction for a period of eight quarters. However, they shall no longer be entitled to the



reduction if the young person obtains a diploma or degree resulting in them no longer being unskilled or moderately-skilled in the quarter after their entry into service. The employer shall continue to enjoy the target group reduction if the young person subsequently increases their level of qualification by following additional training.

The target group reduction does not apply to apprentices as part of a sandwich training course, even if they are employed under a part-time employment contract as part of a sandwich training course.

**Condition 2: Employment in the Flemish Region**

The apprentice must be employed in the Flemish Region and must be linked to one of the employer's business units located in the Flemish Region. This does not mean that the company's registered office must be located in the Flemish Region. Companies whose registered office is located abroad or in another Region are also entitled to this target group reduction.

**Condition 3: Age**

- Minimum age:  
The young person must have completed mandatory full-time education. Mandatory full-time education ends at the age of 15 if the young person has completed the first two years of secondary education. In all other cases, mandatory full-time

education ends at the age of 16.

- Maximum age:  
The young person may not have reached the age of 25 on the last day of the quarter in which they were hired. If this condition is fulfilled during the quarter in which they were hired, the employer shall be entitled to the target group reduction for a period of eight quarters.

**Condition 4: Wages**

The quarterly reference wage may not exceed the wage ceiling set by the Flemish Government. The wage ceiling is € 7,500 during the quarter of recruitment and the three following quarters, and € 8,100 for the following four quarters.

Wage ceilings are evaluated by the employer (see the overview below).

**C. AMOUNT AND DURATION OF THE TARGET GROUP REDUCTION**

**1. PRINCIPLES**

Employing young people belonging to one of the three categories entitles the employer to a fixed-sum quarterly reduction of the basic employer's social security contributions. The quarterly fixed sum is a maximum of € 1,000 (= G1 amount) or a maximum of € 1,150 (= G6 amount) per young person concerned.

**Overview of quarterly wage ceilings**

Young worker category	Quarter	Wage ceiling
Apprentice	Quarter of entry into service	€ 7,500 (1)
Unskilled young worker	Quarter 2 - Quarter 4	
Moderately-skilled young worker	Quarter 5 - Quarter 8	€ 8,100 (1)

(1) Wage ceilings are independent amounts. They are neither linked to the wage ceilings of the structural reduction nor automatically indexed.



## 2 OVERVIEW OF THE BASE AMOUNT AND DURATION OF THE TARGET GROUP REDUCTION FROM 1 JULY 2016

Young worker category	Base amount of the target group reduction	Duration of the target group reduction
Apprentice	G1 reduction: € 1,000 per quarter (1)	Total duration of the sandwich training course (2)
Unskilled young worker	G6 reduction: € 1,150 per quarter (1)	Quarter of entry into service Quarter 2 - quarter 8 (3)
Moderately-skilled young worker	G1 reduction: € 1,000 per quarter (1)	Quarter of entry into service Quarter 2 - quarter 8 (3)

(1) Maximum amount for a young person employed under a full-time employment contract during the quarter in question. In the event of part-time employment, the amount will have to be prorated.

(2) The sandwich training course may be followed at the latest until the end of the academic year during which the young person reached the age of 25.

(3) No age limit if the age condition is met during the quarter of entry into service.

### 3 PRO RATA CALCULATION OF THE TARGET GROUP REDUCTION

The quarterly amount of the target group reduction of € 1,000 or € 1,150 is granted when the young person has worked on a full-time quarterly basis. In the event of incomplete work periods, the amount of the reduction must be prorated per "worker employment line" as set out in the DmfA declaration (Multifunctional Declaration to the NSSO).

The pro rata calculation takes into account the work fraction (distinction to be made between employment declared exclusively in days and employment declared in days and hours) and a multiplication factor. This calculation method attenuates the strict pro rata calculation of the target group reduction.

### D. SPECIAL SITUATION AND SUCCESSIVE PERIODS OF EMPLOYMENT

The following pages are devoted to the consequences that a number of special situations can have on the entitlement to the target group reduction.

#### 1. EMPLOYMENT AS PART OF A SANDWICH TRAINING COURSE FOLLOWED BY EMPLOYMENT UNDER AN "ORDINARY" EMPLOYMENT CONTRACT

If the young person, at the end of a sandwich training course agreement or a part-time employment contract as part of a sandwich training course (in practice, usually a fixed-term contract) enters into service with the same company as a worker, the employer is

entitled to the target group reduction for unskilled or moderately-skilled young workers.

The situation in which the young person has entered into a part-time employment contract as part of a sandwich training course also entitles the employer to the target group reduction for unskilled or moderately-skilled young workers from the first quarter of the new employment relationship.

#### 2. SUCCESSIVE PERIODS OF EMPLOYMENT WITH THE SAME EMPLOYER UNDER AN "ORDINARY" EMPLOYMENT CONTRACT

*Successive periods of employment, the first having started before 1 July 2016 and the second from 1 July 2016.*

Upon each first entry into service from 1 July 2016, the employer is entitled to the target group reduction, even if the worker had previously entered into an employment contract with the same employer. At the time of this first appointment, previous period of employment with the employer are not taken into account.



**💡 EXAMPLE**

The young worker leaves their employer's service on 31/03/2016. The employer enjoyed the former federal target group reduction for young workers. On 1 July 2016, the young worker once again enters into the service of the same employer. The previous period of employment with the same employer is not taken into account in the granting of the target group reduction.

However, for the application of the Flemish target group reduction for the recruitment of unemployed older job seekers, the requirement that the previous period of employment took place before 1 July 2016 does not need to be fulfilled (see Target group reduction for "older workers").

**3. SUCCESSIVE PERIODS OF EMPLOYMENT FROM 1 JULY 2016**

For the purposes of the target group reduction, different periods of employment under an employment contract with the same employer are considered to be a single period of employment, except if there are at least four quarters between both periods. These must be the full four calendar quarters between the last quarter of the previous period of employment and the quarter of the new period of employment.

**💡 EXAMPLE**

The employer hires the young person on 1 October 2016. The young person leaves the company on 15 March 2017. On 1 April 2018, the young person once again enters into the service of the same employer. Four full quarters (2017/2, 2017/3, 2017/4 and 2018/1) separate these two periods of employment. The employer is entitled to a target group reduction for a period of eight quarters.

If the employer re-hires the young person during a period of four quarters after the end of the previous employment contract, the two periods are considered to be a single period of employment.

However, the interruption between the different periods of employment does not extend the duration of the target group reduction. The employer permanently loses their entitlement to the target group reduction for the period of interruption.

**💡 EXAMPLE**

The employer hires the young person on 1 October 2016. The young person leaves the company on 15 March 2017. On Thursday 15 March 2018, the young person once again enters into the service of the same employer. Three full quarters (2017/2, 2017/3, 2017/4) separate the two periods of employment. The employer is initially entitled to a target group reduction for a period of eight quarters. There are now only three quarters left. The employer has already enjoyed the target group reduction for a period of two quarters (2016/4 and 2017/1) as part of the previous period of employment, and the three quarters of interruption (2017/2, 2017/3 and 2017/4) do not extend the duration of the target group reduction.

This same exception is provided for in the Flemish target group reduction for the hiring of unemployed older job seekers.

**4. DIFFERENT EMPLOYERS AS PART OF AN "ORDINARY" EMPLOYMENT CONTRACT**

If an unskilled or moderately-skilled young person enters into several successive or simultaneous employment contracts with different employers, each hiring by a new employer is likely to give rise to an entitlement to a target group reduction for a period of eight quarters.

**E. POSSIBLE COMBINATIONS**

The Flemish target group reductions can be combined with the structural reduction and the social Maribel.

However, they cannot be combined with:

- the other Flemish target group reductions;
- the target group reductions of a Region other than Flanders;
- federal target group reductions;
- the reductions that fall outside the scope of the policy on target groups (and which, in principle, have remained federal).

The target group reduction for apprentices and the target group reduction for unskilled or moderately-skilled young workers cannot be combined. If the young person is employed as part of a sandwich training course, the employer is only entitled to the target group reduction for apprentices.



## F. COMBINED REDUCTIONS CAP

The sum of the structural reduction of employers' contributions and the target group reduction is capped. This ceiling is equal to the sum of the overall base employer's contribution and the wage restraint of the worker concerned.

## G. SPECIFIC FORMALITIES – UNSKILLED OR MODERATELY-SKILLED YOUNG WORKERS

In order for the target group reduction to be granted, the level of education must be certified in the young person's individual electronic record managed by the VDAB. On the last day of the first quarter of the target group reduction, the young person must have an electronic record with the VDAB.

The electronic record is called the "career portfolio". The career portfolio is automatically created for individuals who register as job seekers. Its use falls under the scope of guidance and training for job seekers. Job seekers do not need to be domiciled in the Flemish Region. Only the diplomas and certificates issued by an establishment of the Flemish Community will be automatically uploaded to the portfolio.

The portfolio obligation also applies for young people having entered into a part-time employment contract but who are still following a full-time education course (their occupation is therefore not part of a sandwich training course). In order for the employer to enjoy the reduction for unskilled workers (who do not hold a secondary education completion certificate), the young people must create a career portfolio with the VDAB.

The late closure of the career portfolio results in a reduction of the period for granting the reduction. The number of quarters of application (8 at most) is reduced by the number of quarters that have elapsed between the date of entry into service and the end of the quarter preceding the (late) creation of the electronic record. These quarters do not give rise to an entitlement to the reduction, but they are fictitiously deducted to determine the duration of application of the target group reduction.

## EXAMPLE

An employer hires a young worker on 1 August 2016.

In order for the target group reduction to apply to the third quarter of 2016 until the second quarter of 2018 included, the career portfolio must be in order on 30 September 2016.

If the career portfolio is only in order on 15 January 2017, the employer will only be entitled to the reduction from the first quarter of 2017 until the second quarter of 2018 included. The third and fourth quarters of 2016 do not give rise to an entitlement to the target group reduction, but they are taken into account in the calculation of the duration of application of the target group reduction.

## H. ENTRY INTO FORCE AND TRANSITIONAL MEASURES

The new Flemish target group reduction applies to all new hires from 1 July 2016 (except in the event of re-hiring within four quarters, see Special situation and successive periods of employment).

For young people who have entered into service by 30 June 2016 at the latest and that give rise to an entitlement to the federal "highly unskilled", "unskilled", "moderately-skilled" and "under 19" target group reductions, a transitional measure will apply until 31 December 2018. In the event of uninterrupted employment, the employer shall continue to enjoy the federal target group reduction until 31 December 2018 included.

For young people who have entered into service by 30 June 2016 at the latest and that give rise to an entitlement to the federal "under 19" target group reduction, the employer is entitled to the Flemish "unskilled or moderately-skilled young workers" target group reduction from 1 January of the year in which the young worker has their 19th birthday, even in the event of non-interruption of employment. (The federal "under 19" target group reduction is granted until the 4th quarter of the year during which the worker reaches the age of 18).



03

## "OLDER WORKERS" TARGET GROUP REDUCTION

Employers in the private trading sector and the public sector may, under certain conditions, enjoy the target group reduction for "older workers" from the age of 55.

The target group reduction for older workers is made up of two measures:

- 1) The target group reduction for hiring older workers, hereinafter referred to as the "unemployed older job seekers" target group reduction;
- 2) The target group reduction for employing older workers, hereinafter referred to as the "employed older workers" target group reduction.

### A. WHICH EMPLOYERS?

Private and public sector employers employing workers subject to the Act of 27 June 1969 on social security are entitled to the target group reduction when they employ older workers.

In order for the employer to enjoy the "older workers" target group reduction, the worker concerned must be subject to all social security schemes for employed workers.

Not all private sector employers are entitled to the "older workers" target group reduction. The employer must employ workers belonging to category 1 of the structural reduction of contributions. In practice, this means that employers of the non-trading sector falling under Joint Bargaining Committees No. 319, 327 (except social workshops), 329, 330 (except the dental prosthesis sub-committee), 331 and 332 are not entitled to the target group reduction. The target group reduction applies regardless of the number of workers employed by the employer.

### B. WHICH WORKERS?

The "older workers" target group reduction is made up of two measures. The first is the target group reduction for the hiring of unemployed older job seekers (hereinafter referred to as the "unemployed older job seekers reduction"). The second is the target group reduction for the employment of older workers (hereinafter referred to as the "older workers reduction").

In the event of the hiring of a job seeker who does not fulfil the conditions (of age) linked to the unemployed older job seekers reduction, the employer is eligible for the older workers reduction from the quarter of entry into service.

#### 1. HIRING AN UNEMPLOYED OLDER JOB SEEKER

The target group reduction applies to unemployed job seekers who fulfil the following conditions: being employed in a business unit located in the Flemish Region, being at least 55 years of age, and not having reached the legal pensionable age. In addition, the quarterly reference wages may not exceed the wage ceiling set by the Flemish Government.

##### *Condition 1: Being an unemployed job seeker at the time of the hiring*

Upon being hired, the older worker must be an unemployed job seeker. The newly-hired worker must fulfil two conditions:

- 1) The older worker must be registered as an unemployed job seeker with the VDAB (see Specific formalities - unemployed older job seekers), and
- 2) The older worker may not have been employed with the same employer in the four quarters preceding entry into service (see Special situation and successive periods of employment).



**Condition 2: Employment in the Flemish Region**

The older worker must be employed in the Flemish Region and must be linked to one of the employer's business units located in the Flemish Region. This does not mean that the company's registered office must be located in the Flemish Region. Employers whose registered office is located abroad, in the Walloon Region or in the Brussels-Capital Region are also entitled to this target group reduction.

**Condition 3: Age**

- **Minimum age:**  
The older worker must be at least 55 years old at the end of the quarter of application. If the worker is not 55 on the last day of the quarter of their entry into service, the employer shall not be entitled to the "unemployed older job seekers" reduction. When the worker reaches the age of 55, the employer may enjoy the "older workers" reduction.
- **Maximum age:**  
The older worker may not have reached the legal pensionable age on the last day of the quarter of

their entry into service.

In Belgium, the legal pensionable age is 65. In 2025, the legal pensionable age will be increased to 66, and to 67 in 2030.

If the age condition is fulfilled at the time of entry into service, the employer is entitled to the target group reduction for a period of eight quarters in total. If the older worker subsequently exceeds the legal pensionable age, the employer will continue to enjoy the target group reduction.

Employers who hire an older worker who has already reached the legal pensionable age may immediately enjoy the "older workers" reduction (no maximum age).

**Condition 4: Wages**

The quarterly reference wage may not exceed the wage ceiling set by the Flemish Government. The ceiling is set at € 13,400.

Wage ceilings are evaluated by the employer.

**Overview of the wage ceiling per quarter**

Older worker category	Quarter	Wage ceiling
Older unemployed job seekers	Quarter of entry into service Quarter 2 - Quarter 8	€ 13,400 (1)

(1) The wage ceiling is not linked to the wage ceilings of the structural reduction, nor is it automatically indexed.



## 2. REDUCTION FOR THE EMPLOYMENT OF OLDER WORKERS

This target group reduction applies to older workers who fulfil the following conditions: being employed in a business unit located in the Flemish Region and being at least 55 years of age. In addition, the quarterly reference wage may not exceed the wage ceiling set by the Flemish Government.

The "older workers" reduction is independent from the "unemployed older job seekers" reduction. The employer may first exhaust their entitlement to the "unemployed older job seekers" reduction in order to give rise to the entitlement to the "older workers" reduction. Even if the employer is not entitled to the "unemployed older job seekers" reduction (because the worker does not fulfil the age condition or is not a job seeker), it is entitled to the "older workers" reduction upon the worker's entry into service.

### Condition 1: Employment in the Flemish Region

The older worker must be employed in the Flemish Region and must be linked to one of the employer's business units located in the Flemish Region. This does not mean that the company's registered office must be located in the Flemish Region. Employers whose registered office is located abroad, in the

Walloon Region or in the Brussels-Capital Region are also entitled to this target group reduction.

### Condition 2: Age

- **Minimum age:**  
The older worker must be at least 55 years of age at the end of the quarter of their entry into service. If the worker has not reached the age of 55 on the last day of the quarter of their entry into service, the employer shall not be entitled to the "unemployed older job seekers" reduction. However, the employer is entitled to the "older workers" reduction when the worker reaches the age of 55.
- **No maximum age:**  
The employer is also entitled to the "older workers" reduction if the worker reached the legal pensionable age at the time of their hiring.

### Condition 3: Wages

The quarterly reference wage may not exceed the wage ceiling set by the Flemish Government. The ceiling is set at € 13,400.

Wage ceilings are evaluated by the employer.

### Overview of the wage ceiling per quarter

Older worker category	Quarter	Wage ceiling
Employed older worker	Quarter of entry into service	€ 13,400 (1)
	Quarter 2 - Quarter out of service	

(1) The wage ceiling is not linked to the wage ceilings of the structural reduction, nor is it automatically indexed.



## C. AMOUNT AND DURATION OF THE TARGET GROUP REDUCTION

### 1. PRINCIPLES

Employing older workers entitles the employer to a quarterly fixed-sum reduction of the base employer's social security contributions (RD of 16 May 2003, Art. 6 and 6/1, §1).

The quarterly fixed-sum is € 1,150 (= G6 amount) per employed older worker, and € 1,500 (= G8 amount) per unemployed older job seeker.

### 2. OVERVIEW OF THE BASE AMOUNT AND DURATION OF THE TARGET GROUP REDUCTION FROM 1 JULY 2016

Older worker category	Age bracket	Target group reduction base amount	Target group reduction duration
Unemployed older job seeker	≥55 (1)	G6 reduction:	Quarter of entry into service
	<60 (1)	€ 1,150 per quarter (3)	Quarter 2 - quarter 8 (4)
	≥60 (1) Until the legal pensionable age (1)	G8 reduction: € 1,500 per quarter (3)	Quarter of entry into service Quarter 2 - quarter 8 (4)
Employed older worker	≥55 (2)	G4 reduction:	All quarters in this age bracket
	<60 (2)	€ 600 per quarter (3)	
	≥60 (2) No maximum age	G6 reduction: € 1,150 per quarter (3)	Up to the quarter of dismissal/resignation included

(1) Age condition on the last day of the quarter of entry into service  
 (2) Age on the last day of the quarter of employment  
 (3) Maximum amount for an older worker employed under a full-time employment contract during the quarter concerned. In the event of part-time employment, the amount must be prorated.  
 (4) No age limit if the age condition is fulfilled during the quarter of entry into service.

### 3. PRO RATA CALCULATION OF THE TARGET GROUP REDUCTION

The quarterly amount of the target group reduction of € 600, € 1,150 or € 1,500 is granted when the older worker has worked full quarters of full-time work. In the event of incomplete periods of work, the amount of the reduction must be prorated per "worker employment line" as set out in the DmfA declaration (Multifunctional Declaration to the NSSO).

The pro rata calculation takes into account the work fraction (distinction to be made between employment declared exclusively in days or employment declared in days and hours) and a multiplication factor. This calculation method attenuates the application of a strict pro rata calculation of the target group reduction.

## D. SPECIAL SITUATION AND SUCCESSIVE PERIODS OF EMPLOYMENT

The following pages are devoted to the consequences that a number of special situations can have on the entitlement to the target group reduction.

### 1. SUCCESSIVE PERIODS OF EMPLOYMENT WITH THE SAME EMPLOYER – IMPACT ON THE HIRING REDUCTION FOR UNEMPLOYED OLDER JOB SEEKERS

In the event of successive periods of employment, the employment may only be entitled to a new hiring reduction as part of the second employment if the worker was not in service with them during the four preceding calendar quarters. If the worker was employed with the same employer in the previous



four calendar quarters, the employer shall not be eligible for the hiring reduction.

The fact that the previous period of employment took place before 1 July 2016 does not factor in. In this case also, the situation of employment during the four previous quarters is evaluated. However, this distinction is relevant for the Flemish "young people" target group reduction.

### EXAMPLE

An older worker was in the same employer's service throughout 2015. They leave the company on 31 December 2015 and are re-hired on 1 August 2016. The period between leaving the company and the new entry into service is not made up of four calendar quarters. The employer is therefore not entitled to the reduction for the hiring of "unemployed older job seekers".

Different periods of employment with a single employer as part of a single employment contract are considered, for the purposes of the "unemployed older job seekers" target group reduction, as a single period of employment, unless at least four quarters separate both periods. The quarters must be the four full calendar quarters between the last quarter of the previous period of employment and the quarter of the new entry into service.

However, the interruption between the different periods of employment does not extend the duration of the target group reduction. The employer permanently loses their entitlement to the target group reduction for the period of interruption.

The same exception applies to the Flemish reduction for "young people".

### EXAMPLE

An employer hires an older worker on 1 October 2016. They terminate the employment contract on 31 March 2017. Prior to this period of employment, the worker was registered with the VDAB as an unemployed job seeker. The employer was therefore entitled to the target group reduction during the two quarters of employment.

On 1 October 2017, the employer re-hires the older worker. Two full quarters (2017/2 and 2017/3) separate these two periods of employment.

The employer is initially entitled to a target group reduction for a period of eight quarters. Only four quarters now remain. The employer already enjoyed the target group reduction for a period of two quarters (2016/4 and 2017/1) under the previous period of employment, and the two quarters of interruption (2017/2 and 2017/3) do not extend the duration of the target group reduction.

Given that the periods of employment preceding and following an interruption of less than four quarters are considered as a single period of employment, the conditions and formalities must be fulfilled in the first period of employment.

### EXAMPLE

An employer hires an older worker who was not registered with the VDAB as being an unemployed job seeker. The contract is terminated on 31 March 2017.

On 1 October 2017, the employer re-hires the older worker. This time, the worker is registered with the VDAB as being a job seeker.

However, the employer is not entitled to the "unemployed older job seekers" reduction as registration with the VDAB had not been completed prior to the first period of employment.

## 2. SUCCESSIVE PERIODS OF EMPLOYMENT WITH THE SAME EMPLOYER – IMPACT ON THE "OLDER WORKERS" REDUCTION

Successive instances of entry into service and resignation/dismissal with the same employer do not affect the granting of the "older workers" reduction.

## E. POSSIBLE COMBINATIONS

The Flemish target group reductions for older workers can be combined with the structural reduction and the social Maribel.

However, they cannot be combined with:

- the other Flemish target group reductions;
- the target group reductions of a Region other than Flanders;
- the federal target group reductions;
- the reductions that fall outside the scope of the policy on target group (and which, in principle, have remained federal).



Therefore, the "older workers" target group reduction and the "unemployed older job seekers" target group reduction cannot be combined. However, successive application is possible: the employer may first be eligible for the "unemployed older job seekers" reduction and subsequently (after eight quarters starting from the worker's entry into service) enjoy the "older workers" reduction (until the worker leaves their employment).

### F. CEILING OF COMBINED REDUCTIONS

The sum of the structural reduction of employer's contributions and the target group reduction is capped. The ceiling is equal to the sum of the overall base employer's contributions and the wage restraint of the worker concerned.

### G. SPECIFIC FORMALITIES - UNEMPLOYED OLDER JOB SEEKERS

In order to give rise to an entitlement to the "unemployed older job seekers" reduction, the worker must be registered as an unemployed job seeker with the VDAB.

Registration as an unemployed job seeker must have been completed at the time of employment. Therefore, the worker may not give rise to the entitlement to the "unemployed older job seekers" reduction on the basis of a retroactive registration with the VDAB.

### H. ENTRY INTO FORCE WITHOUT TRANSITIONAL MEASURES

Starting on 1 July 2016, the former federal target group reductions were replaced by the new Flemish target group reductions for older workers. Although the age conditions and the amounts linked to the two reductions are different, no transitional measures have been planned.

This has a major financial impact. Some employers will enjoy a higher target group reduction while others will have lower target group reductions. The impact on the company will depend on the number of workers per age category.

#### Overview of the former federal target group reduction and the new Flemish target group reduction

Worker's age	Federal target group reduction (base amount until 30.06.2016)	Flemish target group reduction (base amount from 01.07.2016)	Difference between old and new reduction
54	€ 400	€ 0	€ 400 less
55	€ 400	€ 600	€ 200 more
56	€ 400	€ 600	€ 200 more
57	€ 400	€ 600	€ 200 more
58	€ 1,000	€ 600	€ 400 less
59	€ 1,000	€ 600	€ 400 less
60	€ 1,000	€ 1,150	€ 150 more
61	€ 1,000	€ 1,150	€ 150 more
62	€ 1,500	€ 1,150	€ 350 less
63	€ 1,500	€ 1,150	€ 350 less
64	€ 1,500	€ 1,150	€ 350 more
65+	€ 800	€ 1,150	€ 350 more

Els Poelman, Senior Legal Counsel  
Yves Stox, Senior Legal Counsel



## CASE LAW

## BASIC PRINCIPLE OF SOCIAL SECURITY CONTRIBUTIONS – WHEN WAGES ARE PAID BY THE EMPLOYER

All of the workers of a media group are provided with a free subscription to a magazine. The workers of the group's different subsidiaries are entitled to choose from among a selection of magazines. Is this a wage benefit like any other? Not exactly: the magazine to which the workers can subscribe is not published by their employer but rather by another subsidiary of the same group. Are social security contributions owed on this benefit? It all depends on the actual circumstances. Here is what emerged from a recent judgment handed down by the Supreme Court of Appeal (Supreme Court of Appeal, 10 October 2016, S.15.0118.N, available on [www.juridat.be](http://www.juridat.be)).

### A. SUMMARY OF THE FACTS

The various employers are all 100% subsidiaries of the same parent company. The subsidiaries are under joint management and conduct the same wage policy. The parent company's subscriptions department manages the subscriptions, all requests being made through the HR Department. This makes sense: the employment contracts state that the workers are entitled to free subscriptions.

### B. WHY WOULD SOCIAL SECURITY CONTRIBUTIONS NOT BE DUE?

The group's various companies argue that social security contributions do not need to be paid as the financial cost of the subscriptions is borne by the subsidiary that provides the free subscription. It is therefore not the employer who bears the cost of the subscription, but rather a different company, a third party.

The Supreme Court of Appeal refuted this argument. Even if the employer does not bear the financial bur-

den of the benefit, it *may* be a benefit for which social security contributions are owed. However, social security contributions are not always owed.

### C. WHEN EXACTLY ARE SOCIAL SECURITY CONTRIBUTIONS OWED?

Social security contributions are owed on the worker's gross wages. In this regard, reference is made to the concept of "remuneration" as defined in the Act of 12 April 1965 on the protection of workers' remuneration. It is (I) the wages in cash or the assessable cash benefits (II) to which the worker is entitled (III) as a result of his/her employment and (IV) paid by the employer, even when the benefits are not granted in consideration for work.

It is obvious that a free subscription may be assessed in cash, and that the group's workers are entitled to it as a result of their employment. All of the arrangements were set out in the employment contract. But this is not enough: the fourth condition must also be fulfilled: the benefit must be paid by the employer.

It is in this regard that the Supreme Court of Appeal clarified matters. Although the accounting records show that the financial burden of the benefit is borne by a third party and not by the employer, social security contributions are owed if the worker can turn to the employer to claim the benefit. This legal claim that the worker has in respect of the employer therefore suffices to ensure that social security contributions are owed.

Moreover, this is nothing new. The Supreme Court of Appeal had already ruled in the past that the legal burden was sufficient (e.g. Supreme Court of Appeal



18 February 2002 S.00.0142.N-S.00.0143.N and Supreme Court of Appeal 19 June 2000, S.99.0155.N, both judgments are available on [www.juridat.be](http://www.juridat.be)). However, doubts were sometimes expressed on this point. It turns out that such doubts are unfounded.

#### **D. ASSESSING THE LEGAL BURDEN. EACH FACT COUNTS**

Case law is sometimes too quick to act: if the workers had not been employed by the employer, they would not have been entitled to the benefit. The legal burden is therefore on the employer, it cannot be otherwise (e.g. Brussels Labour Court 30 December 2014, General cause list No. 13/8616/AZ and 13/11965/A, unpublished).

The NSSO has adopted a more nuanced approach. Social security contributions are owed when the employer "is the person to whom the worker must refer when they have not received the benefit (e.g. when a Belgian company receives from its parent company located abroad an amount to be distributed among its workers)" (administrative instructions, 3rd quarter 2016).

It is only with difficulty that the media group could argue this argument. The workers can easily prove their legal claim in respect of the employer since it is mentioned in the employment contract entered into with said employer.

**Yves Stox**, Senior Legal Counsel



## COLOPHON

Partena – Non-profit-making association – accredited Payroll Office for Employers by ministerial decree of 3 March 1949 under no. 300  
Registered office: 45, Rue des Chartreux, Brussels, 1000 | VAT BE 0409.536.968

Responsible editor: Alexandre Cleven. Editor in chief: Francis Verbrugge, fverbrugge@partena.be, tel. 02-549 32 23.  
Contributors: Els Poelman, Yves Stox, Philippe Van den Abbeele.

Subscriptions: Anne-Marie Delain, adelain@partena.be, tel. 02-549 32 57 - annual subscription: € 85 - price per issue: € 11 (VAT extra).  
Monthly, except in July and August. Reproduction of any part is only allowed with the written permission of the editor and on condition that the source is stated.  
The publishers pursue reliability of the published information but cannot accept responsibility for its accuracy.

38th year – Monthly review – General post office: Brussels X – Registration no.: P705107