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PROFIT PREMIUMS: A RENAISSANCE IN FINANCIAL PARTICIPATION FOR YOUR EMPLOYEES?

Have you ever thought about providing an attractive reward package by paying a share of your profits to your employees? From 1 January 2018, you'll be able to do exactly that, following a simple procedure and without your employees becoming shareholders. Your employees will not share in your company's capital, and they will not acquire any voting rights.

So, is this a new form of result-linked reward? In a way, yes. As part of the Summer Agreement, the government is looking to change the law on¹ employee profit participation. Profit-sharing schemes have never reached the intended level of success, and the government is hoping to change this without the need for a complete overhaul of the existing regulations.

Variable reward schemes come in a wide range of shapes and forms. Profit premiums will stand alongside cash bonuses, non-recurring result-linked bonuses (CBA 90), commission for sales representatives, bonus group insurance (2nd pillar)² and share option plans³.

The profit premium is included in the Programme Act of 25 December 2017.⁴

01

IN LINE WITH YOUR REWARD STRATEGY

The October issue of this magazine focused on cash bonuses and highlighted the importance of a strategic reward policy. When you're considering variable rewards, you may be tempted to choose the most beneficial system from a fiscal and parafiscal perspective. However, it may be best to think about your overall strategy first. What do you hope to achieve by granting variable rewards? Which employees do you intend to reward? Once you've answered those questions, you'll be able to determine which system works best from a fiscal and parafiscal point of view without having to compromise on what you're setting out to achieve.

WHICH OBJECTIVES?

If profit is the driving KPI⁵ at your company, profit premiums are a great way to motivate and reward your employees. Under a profit premium scheme, you'll pay a share of your profits – or all of your profits – to your employees. If you end a particular accounting year without making a profit, your employees will not receive any profit premium. You should bear in mind that you cannot set any conditional targets other than net profit for profit⁶ premiums.

If you'd like to set targets other than net profit, you should consider non-recurring result-linked bonuses



(CBA 90). These types of bonuses offer significantly more flexibility in the range of targets you can set: the options include cost reductions, an increase in EBITDA⁷ or an increase in turnover, for example. Non-recurring result-linked bonuses can also be awarded for non-economic targets, such as quality of service, customer retention or compliance with internal procedures.

WHICH EMPLOYEES?

Which employees do you intend to reward? All employees at your company, all employees in a certain department or all employees in a certain job role? Or would you prefer to reward individual targets? A profit premium scheme is a collective bonus

scheme. You can either grant the same profit premium to all employees (identical profit premium), or you can vary the amount of your profit premiums (categorised profit premiums). We'll take a closer look at how and for whom you can vary your profit premiums later on.

If you intend to focus on a specific employee category, profit premiums are not suitable. Instead, you should consider a non-recurring result-linked bonus scheme.

If you would like to motivate and reward employees on an individual basis, a cash bonus may be the best option. In that case, make sure you refer back to the October issue of this magazine.

02

PROFIT PREMIUMS AS A REPLACEMENT FOR PROFIT SHARING

The existing employee participation regulations covers two different situations:

- 1) Profit sharing: a company pays part of its profits to its employees in cash⁸;
- 2) Capital sharing: a company pays part of its profits in shares or units.⁹

The profit sharing regulations will be repealed and replaced by the new *profit premium*¹⁰ rules. The capital sharing regulations remain unaffected.¹¹

I. WHAT IS A PROFIT PREMIUM?

Under a profit premium scheme, employers allocate a share of their profits – or all of their profits – to their employees. A profit premium always takes the form of a cash bonus. Because of this, profit premiums are quite similar to normal cash bonuses. However, they provide greater benefits from a fiscal and parafiscal perspective, and the procedure to follow can be a little more complicated.

II. AREAS OF APPLICATION

A. WHICH EMPLOYERS?

All employers who pay corporate tax are eligible to pay profit premiums.¹² Not-for-profit organisations, public institutions not subject to corporate tax and government bodies are not covered by the new regulations.¹³ Groups of companies can also pay profit premiums.

B. WHICH EMPLOYEES?

The Employee Participation Act introduces its own definition of an "employee". Profit premiums may be granted to any person who performs paid work under the authority of another person,¹⁴ whether those parties are subject to an employment contract or not.¹⁵

The nature of the (employment) contract – fixed term, unlimited term or for a specific task – is irrelevant under the Act, and the same applies to the employee's status (manual or clerical).¹⁶

If an employer introduces profit premiums, it will also be obliged to pay them to persons equivalent to employees. As there is no need for an employment contract, people such as trainees on vocational schemes are also covered by the regulations.¹⁷



Students fall under the participation regulations too: a student contract is simply a normal employment contract made between a student and an employer, whereby the student undertakes to perform paid work under the authority of the employer. If a public institution (subject to corporate tax) implements a profit premium scheme, all employees will be entitled to a profit premium, regardless of whether they are employed on a civil service or contractual basis.¹⁸

The Employee Participation Act does not apply to the self-employed (e.g. service providers) and corporate staff (e.g. directors and managers),¹⁹ nor to civil servants who work for a public institution not subject to corporate tax.²⁰

III. ON WHICH TERMS ARE PROFIT PREMIUMS AWARDED?

A. NO OBLIGATION, BUT A STRICT FRAMEWORK

You are under no obligation to introduce profit premiums as an employer.²¹ If you do decide to do so, you won't just need to comply with specific procedures (more on which below) – you'll also be left with few options to customise the award of profit premiums to the needs of your own business.

B. PARTICIPATION AND AWARD CRITERIA

1. All employees

In principle, if an employer decides to introduce profit premiums, it will need to pay them to all employees.²²

2. Length-of-service provision

The options for flexibility in granting profit premiums are limited. The only option open to employers is the length-of-service provision, which is limited to just one year. If an employee is employed on the basis of consecutive contracts, his or her length of service must be added up over time.²³

It does however make sense to use this option. The best way to do so is to align the length-of-service provision with the accounting year (twelve consecutive calendar months).

3. Part-time employment contract – fixed-term employment contract

You cannot limit the granting of profit premiums to full-time employees on an unlimited-term employment contract. You can however reduce the profit premium amount in line with the number of hours worked.²⁴

You can exclude employees on an employment contract of less than a year from the profit premium scheme using the length-of-service provision. You should note, however, that you cannot treat employees on fixed-term contracts²⁵ any different from equivalent employees in permanent service. The law permits a length-of-service provision, but it does need to be justified objectively.²⁶

C. PROFIT PREMIUM AMOUNT

1. Based on own net profit

Profit premiums are determined based on profits; more specifically, the own net profit of an employer over a certain accounting year. Net profit is calculated by deducting taxes from pre-tax profit. The same net profit could also be paid to shareholders in the form of a dividend. If no profit is made in any specific accounting year, no profit premiums will be paid out.

2. Wage percentage or fixed amount

A profit premium is a sum of money paid as a specific amount or as a percentage of employees' salaries. As an employer, you are free to decide the amount of the profit premium or the wage percentage. You are not permitted to link the amount to other factors, such as the individual performance of an employee.

If you choose to pay a percentage of your employees' wages as a profit premium, you need to specify the calculation method. For example, you could define your employee's basic wages as the gross wages for December in the relevant accounting year, or as the most recently agreed monthly wages. There is nothing to stop you from taking other amounts, such as variable rewards, into account.

You have the option to use a more complex calculation method for categorised profit premiums. For example, you could use different percentages depending on the size of your profits. However, you must include your calculation method and thresholds in your profit premium plan (as discussed in greater detail below).

The size of your categorised profit premiums can also be linked to a number of objective criteria (again, more detail is given below). The latter will also have an impact on your calculation method.

3. A uniform approach: identical profit premiums

If you intend to pay the same amount to all employees, or if you intend to apply the same wage percentage for all employees, introducing profit premiums is easy. (More detail on the procedure for identical profit premiums is provided below.)



4. Different amounts: categorised profit premiums

You also have the option to apply different percentages or amounts. However, this makes it significantly more difficult to introduce profit premiums. (More detail on the procedure for categorised profit premiums is provided below.)

In addition, you cannot simply apply any criteria of your choice. The percentage or amount can be linked to any of the following six objective criteria:²⁷

- 1) length of service;
- 2) grade;
- 3) job role;
- 4) wage scale;
- 5) remuneration level;
- 6) training level.

You cannot add any other criteria at company level.

There are also limits on the extent to which the amount of profit premiums can vary: the use of the above objective criteria must not result in a variation in profit premiums greater than a ratio of 1:10.²⁸

5. Maximum profit premium amount

There is an upper limit on profit premium amounts: the total amount of all profit premiums you pay as an employer cannot exceed 30% of your total gross wage bill at the end of the relevant accounting year.²⁹

D. TERM AND REFERENCE PERIOD (CATEGORISED PROFIT PREMIUMS)

Terms and reference periods apply more or less exclusively to *categorised profit premiums*. A profit premium plan is only required for categorised profit premium schemes.

You are free to determine the term of your profit premium plan. This can be an unlimited term or a fixed term; for example, you could align the term with a single accounting year. If you choose to do so, you will need to run through the implementation procedure again for each new profit premium plan. It's best not to draw up a profit premium plan for a term longer than two calendar years. This is because employers must be bound at all times by a CBA that stipulates wage increases (more detail on this condition is given below). These CBAs are usually made on a biennial basis, as per the central agreement. The reference period should always match the

accounting year. At the end of the accounting year, the net profit amount over the reference period – and consequently, the profit premium amount – can be calculated.

E. IF EMPLOYMENT IS SUSPENDED

If an employment contract is suspended through circumstances outside of the employer's control (e.g. in the event of sickness or accident), the employee will retain his or her right to a profit premium for the duration of that suspension, regardless of its length. However, this does not apply if an employment contract is suspended at the request of the employee (e.g. in the event of time credit or parental leave). If employment is suspended voluntarily, the employee in question will be eligible for a pro rata profit premium.³⁰

F. IF AN EMPLOYMENT CONTRACT IS TERMINATED

If an employment contract is terminated during the course of an accounting year, the employee in question will be eligible for a pro rata profit premium. When the employer ends the employment contract for urgent reasons on the part of the employee, the employee will not be entitled to a profit premium.³¹

IV. WHAT ARE THE FISCAL AND PARAFISCAL RULES FOR PROFIT PREMIUMS?

A. EMPLOYEE: 7% WITHHOLDING TAX AND 13.07% SOLIDARITY CONTRIBUTION – EMPLOYER: 0%

Fiscally speaking, you'll need to withhold 7% in tax as an employer. This is a final withholding tax (exactly the same as per the current profit sharing regulations³²), meaning the employee no longer has to include the profit premium in his or her personal tax declaration.³³

In terms of social security, the usual social security contributions do not apply. As an employer, you are required to withhold a 13.07% solidarity contribution on behalf of the employee from the gross profit premium amount. (This is a solidarity contribution only, so the employee will not accrue any additional social security rights as a result.) You do not need to pay any employer social security contributions.

B. COMPARISON

The comparison below demonstrates that profit



premiums result in a lower cost to the employer than non-recurring result-linked bonuses (CBA 90). Once the ratio between the total cost for the

employer and the net result for the employee is taken into account, non-recurring result-linked bonuses have a slight edge over profit premiums.

	Profit premium	Cash bonus	CBA 90 bonus
Employer cost	645.00 EUR (estimated corporate tax rate: 29%)	625 EUR (estimated employer contribution: 25%)	665.00 EUR (special employer contribution: 33%)
Gross bonus amount	500.00 EUR	500.00 EUR	500.00 EUR
Social security contribution (13.07%)	65.35 EUR	65.35 EUR	65.35 EUR
Taxable amount	434.65 EUR ³⁴	434.65 EUR	434.65 EUR
Taxes	30.43 EUR (7%)	217.33 EUR (estimated rate: 50%)	/ (tax exempt)
Net	404.22 EUR	217.32 EUR	434.65 EUR
Cost/Net	± 1.6	± 2.9	± 1.5

V. HOLIDAY ALLOWANCE

You do not need to pay any holiday allowance on profit premiums, as they are subject to a solidarity contribution instead of the usual social security contributions.³⁵

VI. HOW TO INTRODUCE PROFIT PREMIUMS

The procedure for introducing profit premiums depends on whether you have opted for an identical premium scheme or a categorised premium scheme.

Profit premiums may be implemented at either company/employer level or group level.

A. AT COMPANY LEVEL

When introducing profit premiums at company level, the first thing to do is decide what type of profit premiums you intend to pay.

1. If you are looking to pay the same amount or the same wage percentage to all employees, the Summer Agreement allows you to follow the greatly simplified *identical profit premium* procedure.
2. If you want to vary the amount of your profit premiums depending on length of service, grade

or remuneration level, you should follow the *categorised profit premium* procedure. In this case, you need to implement a profit premium plan via a CBA or accession deed. This is a complex procedure, and the Summer Agreement does not provide any simplification of the rules. In effect, you'll be paying a price for the little bit of extra flexibility you get.

1. Identical profit premiums: decision by the general meeting

An general meeting can approve a profit premium scheme by simple majority.³⁶ In practice, the general meeting will often be unable to take such a decision immediately after the end of the accounting year (the reference period), because companies have up to six months after the end of the accounting year to present their accounts to the general meeting for approval.³⁷

The minutes of the general meeting should contain the following information:³⁸

- the profit premium amount, or
- the wage percentage and the wage calculation method;
- the award rules if a length-of-service provision is set;

- the pro rata calculation method in the event of suspension or termination.

Finally, the employer should inform its employees in writing (e.g. by e-mail or via the intranet)³⁹ about its decision to grant profit premiums.⁴⁰

The granting of profit premiums in one year does not mean you are obliged to grant profit premiums the next year.⁴¹ Unilateral approval by the general meeting has no implications whatsoever for employment contracts. In any case, it's always a good idea to include a discretionary pay clause in your employment contracts (more detail can be found in our October issue).⁴¹

2. Categorised profit premiums:

CBA or accession deed

If your employees have trade union representation, your profit premium plan should be introduced by means of a special company CBA. If there is no trade union representation at your business, you've got a choice between an accession deed or a special company CBA.⁴²

a. Special company CBA

Your profit premium scheme can be introduced by means of a special CBA. This CBA is special for two reasons:

1. firstly, it is a separate CBA that does not form part of any broader company CBA (which may contain other wage and employment terms).
2. The profit premium CBA should only contain those terms and conditions that are to be legally included in your profit premium plan.

Secondly, the profit premium CBA does not need to be agreed with all represented trade unions: a single one will suffice.

Your profit premium plan must specify the following mandatory elements:⁴³

1. Any length-of-service provision (maximum one year) and its calculation;
2. Whether accession is compulsory or not;
3. The payment method (profit premiums are always paid in cash);
4. Any objective criteria;
5. The calculation method and thresholds for the granting of the profit premium (for example, your plan may specify that a certain level of profit has to be realised);
6. The pro rata calculation method in the event of suspension or termination.

7. The term and termination method;
8. The non-applicability of Article 23 of the CBA Act (to prevent individual employment contracts being changed tacitly by the company CBA when the latter is no longer in force);
9. The identity of the person bearing any management costs;
10. A confirmation that the implementation of the plan does not go hand in hand with a reduction of FTE employment.

b. Accession deed – special procedure

The procedure for introducing a profit premium plan by means of an accession deed bears many similarities with the procedure for drawing up and changing employment regulations in a company without a works council. Your profit premium plan should specify the same core elements as with implementation via a company CBA.⁴⁴ We've summarised the different steps to be taken below:⁴⁵

1. You should share a draft of your accession deed (including the profit premium plan) with your employees (either in writing or by publication on a notice board);
2. Your employees will then have 15 days to leave any comments in a special register.
3. Once this term has passed, you should send your draft and the comments register to the labour inspector;
4. If no comments were registered, the plan will take effect on the 15th day following the date of first notice;⁴⁶
5. If your employees did leave comments, a conciliatory procedure will start.

c. Informing employee representatives

When introducing a profit premium plan, you should inform the works council about the relationship between the profit premium, employment evolution and your employment policies.⁴⁷ If there is no works council at your company, you should inform the health and safety committee, or in the absence of that, you should inform any trade union representatives.

B. AT GROUP LEVEL

For a group or companies, there are two options. Each employer can award profit premiums independently from the group, or the group itself can pay profit premiums.

There is one condition: the various companies in the group must be connected through mutual controlling power, or as members of a consortium.⁴⁸



The employers involved must also be subject to the Belgian social security regulations.⁴⁹

The award of profit premiums at group level should apply to all companies within the group, and the amount of the profit premium should be based on the consolidated net profit of the entire group.⁵⁰

VII. TERMS OF APPLICATION

A. ANTI-ABUSE PROVISIONS: PROFIT PREMIUMS CANNOT REPLACE EXISTING WAGE ELEMENTS

You cannot replace existing wage elements, bonuses or other current benefits (such as year-end bonuses or individual bonuses⁵¹) with profit premiums, even if you honour all other terms.⁵² If you do use the profit premium to replace any other pay element, it will be subject to the usual social security contributions, as well as withholding tax.

B. YOU MUST BE BOUND BY A CBA THAT DICTATES WAGE TERMS (CATEGORISED PROFIT PREMIUMS)

You may only introduce *categorised profit premiums* if you are already bound by a CBA that dictates wage terms during the reference period.⁵³ This CBA – which can be either sector-wide or company-specific – must grant wage increases that exceed

the index and any pay scale increases.⁵⁴ However, your CBA should not exhaust the full wage margins agreed under the biennial central agreement.

This way, profit premiums can be considered an additional benefit, the award of which is not linked to the normal wage negotiations within a sector or company.

C. WAGE STANDARD

Identical or categorised profit premiums are not considered in the calculation of wage cost development in your company.⁵⁵ (See also “Revision of the wage standard” in our December 2016 issue.)

VIII. EFFECTIVE DATE

The new profit premium system should take effect from 1 January 2018. This means you don't have to wait until the end of the next accounting year: you can award profit premiums immediately, based on profit during the accounting year that ended on 30 September 2017.⁵⁶ The quicker you present your annual accounts to your general meeting for approval, the quicker you can start allowing your employees to share in your profits.



IX. SUMMARY

	Identical profit premiums	Categorised profit premiums
Introduction	At the employer's initiative	At the employer's initiative
	Decision of the general meeting by simple majority	Implementation of a profit premium plan via a company CBA or an accession deed (companies without trade union representation)
	The minutes must include a number of compulsory clauses	The profit premium plan must include a number of compulsory clauses
	Employees should be informed about the decision in writing	Accession agreement: draft to be published with option to leave comments
Amount	Max. 30% of the gross wage bill for the relevant accounting year	Max. 30% of the gross wage bill for the relevant accounting year
	All employees are awarded the same amount, or the same percentage of their wages	A different amount or percentage is awarded to different categories of employee
	Premium may be awarded pro rata in the event of voluntary suspension or termination of the employment contract (except if suspended or terminated for urgent reasons by the employer).	Premium may be awarded pro rata in the event of voluntary suspension or termination of the employment contract (except if suspended or terminated for urgent reasons by the employer).

Yves Stox, Senior Legal Counsel



- 1 The Act of 22 May 2001 on employee participation in the capital and profits of companies.
- 2 Contributions to bonus group insurance are not determined in relation to gross wages, but instead in relation to the achievement of one or more objectively determined targets. The achievement of those targets results in a payment towards group insurance: either a fixed amount, or a fixed percentage in relation to gross wages or the turnover of your company, for example.
- 3 Act of 26 March 1999 on the 1998 Belgian action plan for employment, containing also various provisions, Articles 41-49.
- 4 Programme Act of 25 December 2017, Belgian Official Gazette 29 December 2017, art. 45-54 (amendment Employee Participation Act).
- 5 Key performance indicator.
- 6 Net profit is calculated by deducting taxes from pre-tax profit.
- 7 EBITDA stands for Earnings Before Interest, Taxes, Depreciation and Amortization.
- 8 Employee Participation Act, Article 2, 16°.
- 9 Employee Participation Act, Article 2, 17°.
- 10 Employee Participation Act, new Article 7/1°.
- 11 The Employee Participation Act provides an option to set up a cooperative participation company with the object of owning and managing employee shareholdings (Employee Participation Act, Article 12-17). At SMEs, employee participation may take the form of an investment savings plan (Employee Participation Act, Article 18-21). This allows employees to put their allocated profits at the disposal of the company as part of a non-subordinated loan. Both of these systems will remain an option.
- 12 Employee Participation Act, Article 2, 1°. Profit premiums may be used by any company, institution, association or establishment subject to corporate tax pursuant to Title 3, Chapter 1 of the Income Tax Code 1992, or subject to taxation of non-residents in application of Article 227, 2° of the same Code.
- 13 Explanatory Memo, Chamber of Representatives 2000-2001, document no. 1043/001, 16.
- 14 The option to exercise authority is sufficient in the eyes of the Act.
- 15 Employee Participation Act, Article 5, in conjunction with the Companies Code, Article 2, 2°.
- 16 Explanatory Memo, Chamber of Representatives 2000-2001, document no. 1043/001, 16.
- 17 Recommendation of the Council of State, Chamber of Representatives 2000-2001, document no. 1043/001, 96.
- 18 Explanatory Memo, Chamber of Representatives 2000-2001, document no. 1043/001, 16.
- 19 Employee Participation Act, new article 7/1°.
- 20 Explanatory Memo, Chamber of Representatives 2000-2001, document no. 1043/001, 16.
- 21 Explanatory Memo, Chamber of Representatives 2017-2018, document no. 2476/001, 15.
- 22 When it comes to categorised profit premiums, the law explicitly stipulates that all employees must be given the opportunity to participate in the profit premium plan (Employee Participation Act, new Article 11/8, in conjunction with Article 5, §1).
- 23 Employee Participation Act, new Article 11/6, §2 and new Article 11/8, in conjunction with Article 5, §2.
- 24 Part-time employees cannot be treated any differently to full-time employees in terms of wages and employment conditions, but the law does permit for their rights to be adjusted on a pro rata basis with the number of hours worked (Act of 5 March 2002 on the principle of non-discrimination against part-time employees, Article 4). This means wage terms may be adjusted on a pro rata basis with a part-time employee's hours.
- 25 Employees on a fixed-term employment contract, employees on an employment contract for a clearly defined task or employees on an employment contract with a fixed end date.
- 26 Article 4 of the Act of 5 June 2002 on the non-discrimination principle for the benefit of employees on a fixed-term employment contract; Article 1 bis of Collective Bargaining Agreement no. 35 of 27 February 1981 on the specific provisions of employment law regarding part-time work.
- 27 Royal Decree of 19 March 2002 to implement Articles 9 and 10, § 2 of the Act of 22 May 2001 on employee participation in the capital and profits of companies, Article 1, §1.
- 28 Royal Decree of 19 March 2002 to implement Articles 9 and 10, § 2 of the Act of 22 May 2001 on employee participation in the capital and profits of companies, Article 1, §2.
- 29 Employee Participation Act, new Article 11/4 and new Article 11/8.
- 30 Employee Participation Act, new Article 11/5 (identical profit premium) and new Article 11/8, in conjunction with Article 9, §1, 8° (categorised profit premium).
- 31 Employee Participation Act, new Article 11/5 (identical profit premium) and new Article 11/8, in conjunction with Article 9, §1, 8° (categorised profit premium).
- 32 The current tax rate for profit sharing schemes is 25%.
- 33 At SMEs, employee participation may take the form of an investment savings plan This means profit premiums are not effectively paid out, but rather placed at the disposal of the company by employees (see footnote no.11). Employees are paid an annual interest as compensation. Premiums are eventually paid out after a period of 2 to 5 years. In this event, the withholding tax rate stands at 15%.
- 34 On the assumption that the 13.07% solidarity contribution may be deducted from the taxable base amount. This is currently the case under the profit sharing regulations (Code of Taxes
- 35 Annual Leave Act Implementation Decree, Article 38 bis.
- 36 Employee Participation Act, new Article 11/6, §1.
- 37 Companies Code, Article 92.
- 38 Employee Participation Act, new Article 11/6, §2.
- 39 Explanatory Memo, Chamber of Representatives 2017-2018, document no. 2476/001, 16.
- 40 Employee Participation Act, new Article 11/7.
- 41 Employee Participation Act, new Article 11/5 (the non-applicability of Article 23 of the CBA Act); Explanatory Memo, Chamber of Representatives 2017-2018, document no. 2476/001, 15.
- 42 Employee Participation Act, new Article 11/8, in conjunction with Article 3, §1 and §4.
- 43 Employee Participation Act, Article 9, §1.
- 44 Employee Participation Act, Article 3, §6.
- 45 Employee Participation Act, Article 4.
- 46 Employee Participation Act, Article 4, §6.
- 47 Employee Participation Act, Article 7, §1.
- 48 Employee Participation Act, Article 5, in conjunction with the Companies Code, Article 11.
- 49 This will be the case if the company employs workers in Belgium, or if its employees are connected to a place of business in Belgium. Royal Decree of 21 December 2001 to implement Article 8, § 4 of the Act of 22 May 2001 on employee participation in the capital and profits of companies, Article 1.
- 50 Royal Decree of 21 December 2001 to implement Article 6, § 2 of the Act of 22 May 2001 on employee participation in the capital and profits of companies, Article 1, §2.
- 51 Explanatory Memo, Chamber of Representatives 2000-2001, document no. 1043/001, 35.
- 52 Employee Participation Act, new Article 11/4 and Article 7, §2.
- 53 Employee Participation Act, Article 6, §1.
- 54 Explanatory Memo, Chamber of Representatives 2000-2001, document no. 1043/001, 35.
- 55 Act of 26 July 1996 on the promotion of employment and on the preventative safeguarding of competitiveness, Article 10, 3°.
- 56 Programme Act, Article 41.



NSSO – PERSONAL OFFICE ALLOWANCE: €124.45/MONTH

In the May issue of this magazine we included a step-by-step plan for the granting of a flat-rate allowance for expenses exempted from social contributions. It is important to look at each case on an individual basis. Which personnel categories will be granted such an allowance? What expense categories can a flat-rate allowance include?

One of these categories is the personal office allowance or the telework/homework allowance. This allowance primarily includes the following expenses: heating and electricity costs, stationery costs, maintenance costs, etc.

PRINCIPLE

The personal office allowance can be awarded to the employees who execute part of their work at home on a structural and regular basis. This means that they must equip a room where they can perform their work.

For employees who have a work place in the offices of their employer, this standard amount is only allowed by the Belgian National Social Security Office (NSSO) if it is clear from the employee's position that he or she regularly works from home.

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Yves Stox, Senior Legal Counsel

For the employees who fall under the working time regulations, this flat-rate amount shall not be allowed by the NSSO when the employee performs the maximum legal working time that applies to him almost exclusively on a working place organized by the employer.

AMOUNT AS FROM 1 OCTOBER 2017

The threshold amount allowed by the NSSO as a reimbursement of costs and not subject to social security contributions, will be raised from €122.01 to €124.45/month as from 1 October 2017. So you can raise the amount of the allowance but you are not obliged to.

As an alternative for this standard amount you can grant tele(home)workers an allowance up to 10% of the gross wage related to the work performed at home. The rules for this scheme have not changed.

Source: Administrative guidelines for the employers - NSSO - Q4/2017.



NON-RECURRING PERFORMANCE-RELATED BENEFITS (CBA NO. 90): 2018 INDEXED CAPS 2018

The caps set by the NSSO (social security) and tax authorities on non-recurring company performance-related benefits will be indexed on 01 January 2018.

GENERAL RULE

The industry agreement for 2007-2008 between management and labour established a bonus system commonly known as "CBA 90" or "non-recurring performance-related benefits".

The system allows workers to be paid a social security- and tax-concessionary bonus under certain conditions.

SOCIAL SECURITY CAP 2017: €3,313

The indexed social security cap amounts to **€3,313 in 2018** (limit 2017: €3,255).

A bonus awarded under CBA 90 is not classed as pay liable to social security contributions if it does not exceed the social security limit set per worker per calendar year.

A 13.07% solidarity levy will, however, be deducted from the amount paid to the worker; while the employer will have to pay a special employer's levy of 33% on the bonus.

If the effective awarded bonus exceeds the cap, the excess amounts will be liable to ordinary social security contributions.

TAX CAP 2017: €2,880

The indexed tax cap amounts to **€2,880 in 2018** (subject to confirmation by the administration – limit 2017: €2,830).

The bonus awarded under collective bargaining agreement No. 90 is exempt from personal income tax if it does not exceed the indexed tax limit set per worker per calendar year. If the tax cap is not exceeded, no withholding tax will have to be deducted at source from the bonus awarded.

Peggy Criel, Legal Counsel



NEWS

WAGE THRESHOLDS WITH REGARD TO EMPLOYMENT CONTRACTS FOR 2018

On 1 January 2018, the annual wage thresholds¹ for the application of certain provisions of the Employment Contract Act of 3.7.1978

will be subject to adaptation following the annual indexation.

Legal provisions employment contracts	Annual wage thresholds ¹ in force in:	
	2017	2018
Non-competition clause <ul style="list-style-type: none"> • clause prohibited if wages are equal to: • clause authorised for positions laid down in the CBA (collective bargaining agreement), if wages are: • clause authorised except for positions prohibited by CBA, if wages are equal to: 	€ 33,472 and – between + € 33,472 and € 66,944 + € 66,944	€ 34.180 and – between + € 34.180 and € 68.361 + € 68.361
Arbitration clause <ul style="list-style-type: none"> • clause prohibited if wages are equal to: • clause authorised if wages are equal to: 	€ 66,944 and – + € 66,944	€ 68.361 and – + € 68.361
Education clause <ul style="list-style-type: none"> • clause prohibited if wages are equal to: • clause authorised if wages are equal to: 	€ 33,472 and – + € 33,472	€ 34.180 and – + € 34.180

Catherine Legardien, Legal Counsel

¹ Annual wage is understood to mean the monthly gross wages, recalculated over a year (= monthly gross wage x 12). To this are added the double holiday pay, the end-of-year bonus and all the benefits that are obtained under the contract.

The amounts paid during the 12 last months preceding the point in time to determine the wage threshold must be taken into account if wages are variable.



COLOFON

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