Partena PROFESSIONAL

MEMENTO OF THE EMPLOYER

MONTHLY REVIEW OF PARTENA PROFESSIONAL ON SOCIAL AND TAX REGULATION | NR 02 | FEBRUARY 2019

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

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Monthly, except in July and August.

40th year – Monthly review

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CONTENT

Topics

News

Topics

The government cannot single-handedly sort out the problem of mobility

A rainy Monday with 270 kilometres of traffic jams. The "Flemish diamond" - Brussels, Ghent, Antwerp and Leuven - is at a standstill. A sad record was set on that day: 22 October 2018. In 2018, the average length of traffic jams on a typical working day was 161 kilometres. The cause? Company cars have been firmly singled out.

The salary car as a status car

Company cars are actually a component of salary, which is why we prefer to talk about "salary cars". Traditionally, salary cars are given to people in at least a middle management position, but large companies are also increasingly providing them to production employees, for example.

Cars as a component of salary is the result of decisions that go back to the Dehaene I government. In 1994-1996, Jean-Luc Dehaene announced a wage moderation policy: Belgian salaries could not increase more than in neighbouring countries. Limiting the increase in wage costs was supposed to increase the competitiveness of Belgian companies. At the same time, the Maastricht criteria (1992) for the introduction of the euro had to be met. Belgium therefore had to undertake fiscal consolidation. Thus, the charges on labour gradually increased. At the time, company cars did not constitute an ordinary salary either, so there were no additional social and tax charges, which made them attractive for employers wishing to reward their employees individually.

The salary standard combined with the reduction in charges on cars explains why salary cars are more than just an element of remuneration. Indeed, employees receive a car instead of a salary increase. This is how salary cars also become status cars.

Is an environmental tax shift on the horizon?

Today, the EU is encouraging Belgium to reform itself by undertaking an "environmental tax shift". In 2016, the European Commission stated that Belgium must reduce its greenhouse gas emissions and tackle the favourable treatment of salary cars and fuel cards. These cars combined with fuel cards contribute to pollution and congestion in Europe. At the same time, Belgium must remain competitive in terms of wage costs. An alternative is needed. For the Michel I government, the aim is to combine the mobility allowance (cash for car) and the new mobility budget.

Fuel cards have been overlooked

It is a fact that both measures primarily place an emphasis on the car. The cash for car measure allows an employee to return his or her vehicle and the mobility budget measure allows an employee to exchange, if he or she wishes, the status car for a smaller model.

The fuel card plays only a minor role. In any case, the cash for car is particularly attractive for employees who make little use of their cars and, thus, their fuel cards. The mobility budget primarily focuses on the total cost of the car, and therefore only indirectly on fossil fuel consumption.

Cash for car: a success?

Has the cash for car regulation been a success? Judge for yourself: 215 employers offer this option; 320 employees have exchanged their cars for money (source: De Standaard 1 March 2019). At the present time, the cash for car measure is particularly advantageous for employees who make very little use of their salary car. The catalogue price of the car is the basis for calculating the amount of the mobility allowance. This catalogue price is reduced by 20% if the employer does not cover fuel costs. Otherwise, if it offers a fuel card, for example, this percentage increases to 24%. Those who make intensive use of their cars, resulting in high fuel costs, are therefore in no hurry to switch to it. In short: the cash for car measure does not have the effect of reducing the number of cars on the road; it actually encourages people to get them out of the garage.

Mobility budget and cash for car: comparison

A table makes it possible to quickly highlight the major differences between the new mobility budget and the cash for car measure. Each of these points is discussed in more detail below.

Cash for car	Mobility budget
Catalogue value x 6/7 x 20% or 24% (fuel)	Total cost of ownership
Cash	■ Pillar 1. Electric car or car with CO_2 emissions of ≤ 105 g/km in 2019, ≤ 100 g/km in 2020, ≤ 95 g/km in 2021 ■ Pillar 2. Sustainable means of transport: bicycles/motorcycles, public transport, organised collective transport, sharing solutions, accommodation costs (5 km), bicycle allowance, company bicycle ■ Pillar 3. Cash
CO_2 emissions of the company car **Taxable benefit = catalogue value x 6/7 x 4% (min. EUR 1,340 in 2019)**	■ Pillar 1. CO_2 emissions and taxable benefit of the company car ■ Pillar 2. Exemption ■ Pillar 3. Special social security contribution of the employee: 38.07%

The cash for car measure is based on the catalogue value of the car and the mobility budget is based on the total cost of ownership.
While the mobility allowance is always fixed, with a limited impact of the fuel card, the mobility budget generally differs from one employee to another. Determining the amount of the total cost of ownership is an accounting exercise. It includes the monthly leasing amount, fuel costs, insurance, taxation and parafiscal taxes. The more a worker uses his or her salary car, the higher the fuel costs for the employer, and the higher the mobility budget is.

In the case of cash for car, the amount that employees receive - the mobility allowance - is always paid in cash. The mobility budget allows workers to pay for - apart from a smaller car, which is still the basis of the measure - alternative and sustainable means of transport for themselves such as a public transport season ticket, a bicycle, a shared car or accommodation costs to be closer to their workplace. The difference is paid to the employee. There are therefore three budget pillars.
Each budget pillar is treated differently from a fiscal and social perspective. The government intends to manage labour mobility in this way.

- As regards the first pillar (the employee chooses a less polluting car), the current tax and social treatment of company cars continues to apply.
- The second pillar concerns the different sustainable means of transport. These alternatives are strongly encouraged. The amounts spent in the second pillar are simply not subject to social security contributions or taxed.
- If a balance remains at the end of the year, it is paid in cash to the employee. This payment takes place once a year. Since the government's intention is to promote the second pillar, the third pillar will be subject to a special social security contribution of 38.07%. This is the sum of the social security contributions due for employees and employers. Note however: only the employee is liable for the special contribution of 38.07%.

As regards the cash for car measure, the amount does not change. Once the mobility allowance has been set, the catalogue value no longer changes. However, it is indexed each year on 1 January. With regard to the mobility budget, it seems logical that the total cost of ownership no longer changes once the amount is set. An employer may decide to carry out indexing, although this is not mandatory. In the event of a change of position, the amount may be increased or decreased, both for the cash for car measure and for the mobility budget.

Giving up the status car. Emergence of the green car?

Opting for the mobility budget therefore means giving up the status car. The mobility budget also doesn't reduce the number of salary cars, although, in theory, an employee can give up his or her company car and opt only for other means of transport. The cash for car measure reduces the number of unused cars.

Furthermore, how environmentally-friendly is this new car? The mobility budget focuses on CO_2 emissions. An Audi A3 diesel meets the CO_2 criterion for 2019. This will also be the case for an Opel Corsa diesel in 2021. There is no consideration of fine particulate emissions whatsoever. This is therefore only partially in line with Europe's aspirations for an environmental tax shift aimed at reducing the number of cars and promoting a better quality environment.

Quantified example

Let us take a quantified example to achieve a good understanding. Let us actually calculate the cash for car and the mobility allowance.

	Company car	Cash for car	Mobility budget
Employer			
Total cost of the car	€9,924	€8,505.91 (1)	€5,124
Total cost of the bike			€1,430
Cash		€7,837.71	€3,370
Employee			
Personal income tax (2)	€1,485.90	€670	€670
Parafiscal taxes			€1,282.96
Net		€7,167.71	€2,087.04

(1) Solidarity contribution included: €668.20 - (2) Personal income tax: 50%

An employee has a BMW 2 Series Gran Tourer (diesel, with fuel card) as a company car. The catalogue value of this vehicle is €38,100. We estimate the total cost of ownership at €9,924, solidarity contribution included, based on average use. You can do the calculation yourself using this **tool**. The tax burden on the employee amounts to €1,485.90 (we do not take into account the tax exemption for commuting linked to the deduction of flat-rate professional expenses.)

An employee who returns this BMW 2 Series as part of the cash for car measure receives a mobility allowance of €7,837.71. The employer must, however, continue to pay the solidarity contribution. The tax burden of the mobility allowance is lower than that of the company car. The employee receives a net sum of €7,167.71 that he or she can spend as he or she wishes.

An employee who exchanges this BMW 2 Series for a Volkswagen up! electric car with a catalogue value of €24,800 has a mobility budget of €4,800. Part of this mobility budget is spent on a leased bicycle, i.e. €120 per month (insurance and maintenance package included). The difference is paid in cash, i.e. €3,370 gross or €2,087.04 net (after deduction of the special social security contribution of 38.07%). In this financial year, the total cost to the employer does not change.

Choice

The mobility budget and the mobility allowance (cash for car) are not an obligation, for the employer or the employee. It is up to the employer to decide whether or not to introduce the system in its company, subject however to the employee's consent.

Have you in the past agreed to reduce your salary in order to receive a company car

Many employees have at some point agreed to reduce their gross salary somewhat "in exchange" for a company car. Can they now exchange this company car for a mobility budget or mobility allowance (cash for car)? For these employees, this would mean indirectly giving up the gross salary in order to receive alternative fiscal and parafiscal compensation. These employees cannot therefore benefit from the mobility budget or the cash for car measure.

Combination with an allowance for commuting

In principle, the mobility budget and the cash for car measure may not be combined with the tax exemption and the social security exemption for commuting allowances (with the exception of the tax exemption of €410) or with the exemption for the bicycle allowance and/or the provision of a company bicycle by the employer.

In addition, an employee who benefits from a mobility budget or a mobility allowance (cash for car) may no longer claim allowances for commuting to and from his or her employer.

The tax exemption and the social security exemption are nevertheless maintained if the employee had previously received both a company car and a travel allowance during the three months preceding the application for the mobility allowance or the cash for car measure.

Get to work

A. How much does your total cost of ownership come to?
Prepare the mobility budget by carrying out an accounting calculation exercise. Determine the total cost of ownership of the car that you provide to each of your employees.

B. Agreements and other
Let us start with some good news: the company car certificate, mandatory since January 2019, will be scrapped.

The cash for car measure and the mobility budget require the drawing up of three documents: a programme, an application form and an agreement.

For the mobility budget, you also need an IT tool. The goal is for employees to be able to consult the status of their mobility budget at all times. This includes in particular the amount of the mobility budget after deduction of the company car (pillar 1), the sustainable means of transport (pillar 2) that have already been financed, detailed information concerning the allocation of expenses according to the choices made, the financing dates for sustainable means of transport, the date of validity of the mobility budget, and adjustments to the mobility budget in the event of a change of position. These data must also be retained for seven years.

Yves Stox
Senior Legal Counsel

News

My employee is taking a time credit or thematic leave: what is the impact on his or her working time?

In its information sheet E56, the Belgian National Employment Office (NEO) reiterates the rules applicable to employees on career breaks in the broad sense (time credit and thematic leave) and limits the possibilities of employing an employee on a career break beyond the agreed hours. The NEO has also announced enhanced monitoring of these rules.

Rules specific to part-time employees

When one of your employees takes a time credit or receives part-time thematic leave, his or her working pattern is adjusted. He or she is now in a part-time working pattern. All legislation specific to part-time employees now applies to this employee.

Unlike permanent full-time employees, this employee must therefore have a **written** employment contract. In addition, the employment contract must contain the employee's working pattern and hours.

When the employee already has a written contract, it will be necessary to conclude an **amendment** with him or her.

A copy or extract of this employment contract containing the employee's identity, the working pattern, the working hours and his or her signature must be **kept**, either physically or electronically where the employment regulations can be consulted.

As for all part-time employees, the following rules must be followed:

- It is necessary to keep a record of the **derogations** to the fixed or variable working hours posted and keep it for 5 years. However, you are exempt from this formality if you have a time monitoring system.
- For employees with variable working hours, the individual working hours must be communicated by posting a written notice dated at least five working days in advance (unless sector exemption). This **notice** must be kept for 1 year. This notice must be located where the employment regulations can be consulted and must be kept for at least 1 year.

Rules specific to employees on a career break

A. The NEO's previous position

Previously, the NEO accepted that additional hours and overtime could be worked provided that they were not systematic, that the employee had given his or her agreement when they were worked on his or her usual rest day and that they were recovered.

B. The NEO's current position

The NEO now limits the possibilities for exceeding working hours.

C. Overtime prohibited

The NEO is changing its position and now considers that a career break scheme is **incompatible** with the working of overtime. By way of reminder, overtime is the hours worked over the normal daily and weekly working time (9 hours per day and 40 hours per week or shorter working time provided for by a CLA).

Example

A part-time employee has fixed working hours of 8 hours on Mondays, Tuesdays and Wednesdays. One Monday, he works 11 hours. 2 hours are **overtime** worked over 9 hours.

Important!

The NEO also reiterates that the **voluntary overtime** worked without reason and with the employee's agreement is **incompatible** with a career break scheme.

Indeed, this allows employees who wish to do so to work more while the various career break schemes aim to achieve a better work-life balance.

D. Limited additional hours

The NEO currently limits the possibilities of having employees on a career break work additional hours. By way of reminder, additional hours are hours worked over the agreed or posted hours but below the daily and weekly limits (9 hours/day and 40 hours/week).

Example

The working hours of a part-time employee are as follows:
8 hours on Mondays, Tuesdays and Fridays, and 4 hours on Wednesdays.

On Wednesday 13 March, he worked 8 hours. He worked 4 additional hours but no overtime.

The following conditions have been maintained:

- the working of additional hours **may not** be **systematic**;
- the employee must give his or her **agreement** to work on a **usual rest day**;
- additional hours must be **recovered** during the reference period, and at least before the end of the career break.

In addition, the NEO adds that these additional hours **may not** give rise to the payment of **extra pay**. This additional condition limits the possibilities for working additional hours.

When do additional hours give an entitlement to the payment of extra pay?

Part-time employees may work additional hours. These hours, unlike overtime, do not automatically give entitlement to extra pay.

Indeed, a credit of additional hours does not give entitlement to extra pay. When this credit has been exhausted, additional hours, even though worked below 9 hours/day and 40 hours/week, are subject to extra pay.

For an employee in a **fixed working pattern**, the credit of additional hours without extra pay is **12 hours** per month. Employees in a fixed working pattern are employees whose working hours are fixed or whose weekly or cyclical working time is fixed (but variable working hours).

Example

an employee works 4 hours from Monday to Friday (fixed working hours) or an employee works 20 hours each week divided according to the working hours posted (fixed working pattern and variable hours) or an employee works 25 hours in week A and 15 hours in week B (cycle).

If one of these employees on a career break works more than 12 additional hours in one month, extra pay will be due even if these hours are subsequently recovered.

For an employee in a **variable working pattern**, the credit of additional hours without extra pay is **3 hours 14 minutes** per week within the reference period, with a maximum of **168 hours**. Employees in a variable working pattern are employees whose working hours vary from one week to the next and are communicated in advance.

Example

An employee must work an average of 22 hours per week over a period of 4 weeks. His hours are communicated to him one week in advance by posting. He therefore has a credit of additional hours without extra pay of 12 hours and 56 minutes.

Additional hours are hours worked over the posted working hours but also over the average working week.

Hours posted and worked:

- Week 1: 28 hours - 6 additional hours.
- Week 2: 16 hours.
- Week 3: 30 hours - 8 additional hours.
- Week 4: 14 hours.

Although the average working week of 22 hours was respected, this employee worked 14 additional hours. The time credit is exceeded by 1 hour and 4 minutes and will therefore be subject to extra pay.

E. Consequences of non-compliance with the principles in the case of overtime and additional hours

If the NEO finds, following a check, that an employee is working overtime or additional hours during his or her career break that do not meet the conditions set out above, it will recover the career break allowances already paid.

F. What about flexible working hours?

A part-time employee with fixed working hours may be employed within the framework of flexible working hours. This is also the case when he or she is on a career break.

By way of reminder, the conditions for the application (core hours, flexible hours, etc.) of these **flexible working hours** must be established in the employment regulations and in the part-time employee's employment contract.

Example

An employee works 20 hours per week with flexible working hours. He can arrive between 7 a.m. and 9 a.m. and end the day between 11 a.m. and 1 p.m. He is employed from Monday to Friday. He must ensure that he complies with his average working week (20 hours) over the reference period.

How to comply with these instructions?

The legislation on part-time working is complicated. Combined with career breaks, it truly becomes very complex. Our Legal Partners can review with you the working hours and working patterns of employees on career breaks. In this way, you will comply with the NEO's instructions and will not fear future checks.

Laurence Philippe
Catherine Legardien

Source: Information sheet E56 of the NEO, "Respect du régime de travail pendant une interruption de carrière / crédit-temps" (Compliance with working patterns during a career break / time credit).

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