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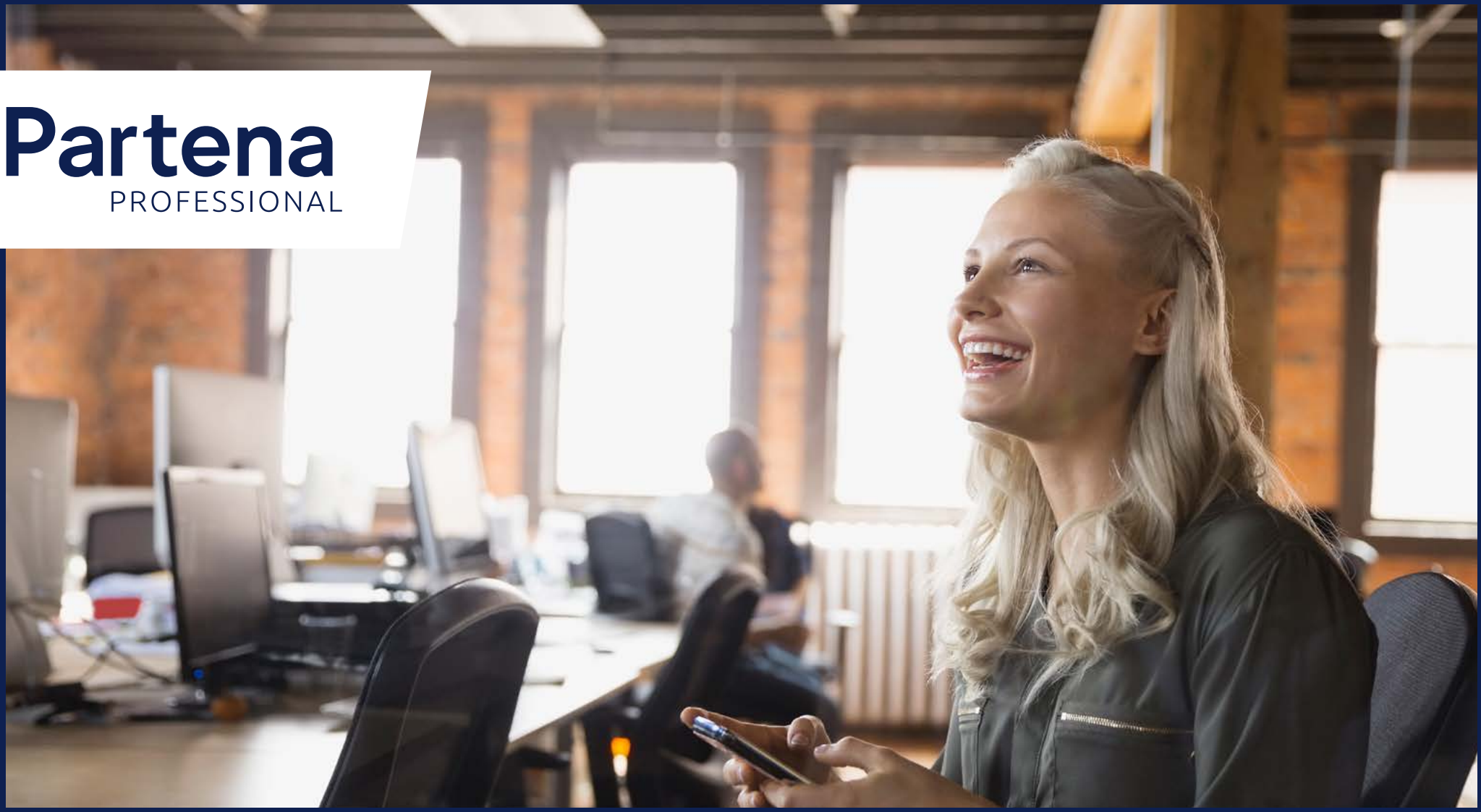

MEMENTO OF THE EMPLOYER

MONTHLY REVIEW OF PARTENA PROFESSIONAL ON SOCIAL AND TAX REGULATION | NR 01 | JANUARY 2019

COLOPHON

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40th year – Monthly review

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What does 2019 have in store for you?

2019 promises to be an exciting year. Shall minority government Michel II still be able to realise the labour deal?

2019 is also the year in which we reach the third and provisionally final phase of the tax shift. In practice, the cost for you as employer will hardly fall.

We therefore focus on a number of other measures that have already been taken. We have mainly selected measures that you can take yourself. We conclude with a list of a number of points for attention that you (also) need to bear in mind in 2019.

Bonus

A. The salary bonus CLA 90

1. New forms

The salary bonus has a relatively strict procedure. The employer must file the deed of accession and the CLA with the registry of the General Directorate for Collective Labour Relations of FPS ELSD.

The document templates play a central role in this. They change slightly.

- This mainly concerns the period of validity of the salary bonus plan: the date of coming into force and end date are neatly differentiated.
- Also new is the statement that the company has not moved over to a procedure of information and consultation with regard to the collec-tive dismissal with the closure of the company. Since 1 January 2018, an employer in this case could not award a salary bonus CLA 90 that is favourable with regard to tax and social security contributions.

All CLAs and deeds of accession signed as from 1 January 2019 must be drawn up in accordance with the new template.

2. An electronic procedure

As from 2019, the procedure can also be performed electronically. The exact date when is not yet known. You can imagine that a great deal of IT development is involved. Consider, for example, the electronic signature with the eID.

In an initial phase, as employer, you will be able to choose: a paper or electronic procedure. Over time, the paper templates will disappear.

3. New thresholds

The indexed social security threshold is **€ 3,383** in 2019.

If the actual bonus awarded exceeds the threshold, then the portion above the threshold shall be subjected to the normal social security contributions. At first glance, this is not so detrimental. The salary bonus is subjected to a solidarity contribution of 13.07% (owed by the employee) and a special employer contribution of 33%. In practice, normal employer contributions will often be lower than this special contribution.

The indexed tax threshold amounts to **€ 2,941** in 2019 (= € 3,383 minus the solidarity contribution of 13.07% or € 442).

The bonus awarded in the context of CLA no. 90 is exempted from personal income tax insofar as the tax threshold per calendar year and per employee is not exceeded. This means that no income withholding tax on the bonus is withheld as long as the tax threshold is respected. Taxation is thus the main reason why you would want to comply with the thresholds.

Getting started

- Good planning remains important. If the reference period of the wage bonus plan runs from January to December 2019, the plan must be submitted to the FPS ELSD no later than 30 April 2019.
- Use **the new document templates as from 1 January 2019**.
  For a salary bonus plan signed in 2018, the old template can still be applied, even if the salary bonus is submitted in 2019.
- Check and double check. HAVE you received no comments about your bonus plan on previous occasions? Bear in mind that the check by FPS Work will become more effective in the future. Give adequate attention to the format.

B. The profit premium

Since 1 January 2018, the employee profit-sharing bonus has been given a new look. An employer can allocate part of its profits to its employees in a relatively simple way.

Since 1 January 2019, the profit bonus calculation rules have been clarified and adjusted. The clarification and adjustments relate in particular to the pro rata calculation in respect of part-time work, recruitment, suspension and termination of the employment contract. The formulation of the employee participation act previously provided for only one explicit pro rata calculation, i.e. in the event of a voluntary suspension or the termination of the employment contract (except for compelling reasons).

Getting started
You can use our document templates yourself. They are available on LegalSmart.

International

A. A foreign parent company awards a benefit to the employer of the Belgian subsidiary: current news

The Belgian National Social Security Office (RSZ) has modified its interpretation of the calculation basis for social security contributions. In its administrative instructions of September 2018, the RSZ broadened the interpretation of the concept of 'wage'.

Foreign companies offering benefits to employees of their Belgian branch shall be confronted with rising wage costs due to this broader interpretation of the concept of wage. Currently no legislative amendment is being prepared. Nevertheless, one can question the legal basis for this new position taken by the RSZ.

The interpretation applies to all types of benefits, including share-based remuneration.

1. Calculation basis for social security contributions: "wage", a complex definition

Belgian social security contributions are calculated on the basis of the employee's wage. The following is regarded as wage:

1. any benefit or any other monetary remuneration;
2. to which the employee is entitled pursuant to his or her employment;
3. at the expense of the employer.

The employer shall not withhold and pay any social security contributions if any of the elements mentioned above is not fulfilled.

2. The successive positions of the RSZ

A benefit is at the expense of the employer when the legal employer bears the financial cost of the benefit. This may be the case when the employer itself pays the benefit, but also when another enterprise charges the financial cost of the benefit to the actual employer.

With regard to the element 'at the employer's expense', the RSZ has previously stated that social security contributions are owed when the (Belgian) legal employer bears either the financial cost (also when this is passed on by another enterprise) or is the point of contact to which the employee must turn in order to demand the benefit when it is not awarded (by the parent company established abroad).

The RSZ broadens its interpretation by stating that any benefit is subjected to social security contributions when the claim of the employee is the result of

- either the work performed within the context of the employment contract concluded with the employer
- or is related to the position that the employee holds with the employer.

3. No transitional measure
The RSZ does not seem to allow for any transitional measure. The new position could be applied retroactively, but for the time being the RSZ has not issued any instructions regarding this.

This is all the more important for enterprises that have received formal confirmation from the RSZ that the RSZ, after careful examination of all the facts and circumstances, has come to the conclusion that a specific remuneration plan does not give rise to social security contributions.

We therefore believe that, even if the RSZ no longer goes back on its new position, this new position must not be applied to benefits awarded before the third quarter of 2018 and that the RSZ must comply with the formal confirmations to individual enterprises for the future.

4. Next steps
Companies should review their share-based remuneration plans to see how they are qualified under Belgian law.

The benefit of share options awarded and accepted within a period of 60 days as from 1 January 1999 is exempt from social security contributions, except when the options are offered with a discount or the risk is covered by the employer.

Due to the broader interpretation of the basis for calculating social security contributions, companies should carefully reconsider their position in the light of the following elements:

1. Social security contributions will be payable when the cost is borne by the Belgian subsidiary / employer.
2. Even if such a charging mechanism does not exist, the RSZ will claim social security contributions if:
   - Either the award relates to the professional activities of the employees concerned;
   - Or the benefits relate to the position or function of the employee with the employer.

Example

An American holding implements a 'phantom stock plan' worldwide, also for the senior management of the Belgian branch. Via this plan, certain employees enjoy the benefits from the shareholding without actually having been given company shares. After a particular period, the cash value of the notional share is distributed among the participating employees.
Since the employees are not entitled to physical shares or share options, but receive a cash benefit when all conditions are met, Belgian social security contributions are levied when the three elements of the calculation basis are fulfilled.
If no financial transfer mechanism exists then Belgian social security contributions are due, even if the Belgian employer only plays an administrative role (e.g. with regard to the personal income tax return) and does not take any final decision about the selection of eligible employees, while only the American holding decides what amount will be distributed collectively and individually.

5. Holiday pay

Enterprises must not only take the employer contributions into account (25% basic contribution). As a rule, holiday pay is also owed. The single and double holiday pay on a variable wage amounts to 15.67%.
No holiday pay is owed in very specific situations.

6. Upcoming changes in the income withholding tax

The Belgian Government provides for a broadening of the income withholding tax obligation to include benefits awarded by a foreign company to employees of, for example, its Belgian subsidiary.[1]
This measure shall enter into force on 1 March 2019. A transitional period will be running as from 1 January 2019.

Getting started

- Companies should review their share-based remuneration plans to see how they are qualified under Belgian law.
  The benefit of share options awarded and accepted within a period of 60 days as from 1 January 1999 is exempt from social security contributions, except when the options are offered with a discount or the risk is covered by the employer.
- Due to the broader interpretation of the basis for calculating social security contributions, companies should carefully reconsider their position in the light of the following elements:
  Social security contributions are payable when the cost is borne by the Belgian subsidiary / employer. Even if such a charging mechanism does not exist, the RSZ will claim social security contributions if:
  - Either the award relates to the professional activities of the employees concerned (e.g. the benefit relates to the individual performance of the employee);
  - Or the benefits relate to the position or function of the employee with the employer (e.g. award condition that excludes certain categories of employees).

B. The value of the A1 form

The EU member state in which social security contributions have to be paid is crucial in a cross-border employment situation. European designation rules determine the member state in which social security contributions must be deducted and paid. In the event of secondment, only the sending country shall be competent. The worker who works in two or more member states will only be subject to contributions in one EU member state. The A1 form acts as proof. Another EU member state may not demand contributions. That is the binding value of the A1 form.

In 2012, Belgium had introduced an anti-abuse provision to allow the social inspectorate to question this binding nature of the A1 form. Even though an A1 form could be submitted, the social inspectorate could still claim social security contributions. This anti-abuse provision was heavily attacked. The Court of Justice was in no way in favour of it and Belgium was condemned.[2] Belgium is withdrawing this anti-abuse provision by means of the "Act containing various provisions about social matters".[3]

However, fraudsters do not get a free rein. The Court of Justice ruled that a judge can exclude an A1 form in the event of fraud.[4] The binding nature of the A1 form is not absolute. An EU member state may ignore the A1 form and collect social security contributions if it appears during

the application procedure that the employer deliberately misrepresented the facts or deliberately withheld relevant information.

Nevertheless, the A1 form remains necessary. The inspectorates must not only substantiate the deliberate misrepresentation or omitted evidence. According to the Court of Justice, the employer must also be given the opportunity to demonstrate before a court that there is no fraud.

Getting started

- The binding nature of the A1 form is not undermined. It is thus still important to request the A1 form.
- Prepare yourself properly and estimate the future employment situa-tion realistically. In which countries is the employee going to work? A secondment seems perhaps to be a simultaneous employment? What relationship will the employee have with the recipient company? Perhaps
- a local employment contract is more in line with reality than a secondment.
- Also make the employee aware of the impact of particular choices on his or her private life. Even odd jobs, no matter how innocent, or relocations can be traumatic.
- As the number of international employees increases, it becomes more important to check randomly whether the A1 form corres-ponds with the actual employment situation.

C. Labour migration

As from 1 January 2019, labour migration to Belgium and Flanders shall change radically. Belgium is starting with the new "single permit" procedure (the combined permit). Flanders is going one step further and introducing new conditions for migrant workers. In doing so, Flanders wants to attract foreign talent and fill occupations which have a structural shortage.

1. One procedure and one document: residence and work

You would like to employ someone from outside the European Economic Area in Belgium? Then you must ask yourself two questions in advance. Is this employee allowed to live in Belgium? Is the employee entitled to work in Belgium? The residence permit answered the first question, the work permit and the employment permit the second.

The "single permit" covers both elements: residence and work. It is an electronic residence permit and includes both permission to stay and permission to work.

New work permits are therefore no longer issued, except if the stay and employment in Belgium have a planned duration of less than 90 days. In that case, the old procedure remains in force, which means a residence document and a work permit B.

The application is submitted in one region, but the single permit always applies to the whole of Belgium. The single permit must be applied for from the competent region and is issued by the Immigration Office (federal government). The migrant worker submits the application via his or her employer to the competent region. As a rule, this is the

region in which the employee generally works. Each region determines the conditions and rules for the submission of the application.

Getting started

- Planning, the first time. The new procedure requires more planning on your side. Documents must be submitted right from the start of the procedure. The old procedure started with the request for a work permit, after which came the visa application. The visa requires documents that are sometimes more difficult to obtain, for example the foreign proof of good character.
- Planning, a second time. Governments must also change their ways. The new procedure and interaction can be difficult to adapt to in the beginning. Bear this in mind. One bright spot: The decision to grant the single permit must be taken within four months of the notification to the employer that the application is complete. If no decision is taken within this maximum period, the single permit is deemed to have been granted.
- Do not forget the Limosa. From a legal point of view, the Limosa reporting obligation is not part of Belgian labour migration legislation. But, indirectly, it is also a labour immigration obligation. The Limosa declaration must be submitted to the RSZ before the commencement of the employee's activities in Belgium.

2. Flanders: labour migration 2.0

As from 1 January 2019, new regulations for people with a medium level of education will provide easier access to the labour market. More specifically, no labour market investigation is required. However, the function must be on a bottleneck list of occupations for which there is a structural shortage. This is an updated list that is reviewed every two years depending on the needs of the labour market. Employees with a medium level of education who have an occupation that is on the list take up a job with the Belgian employer. That means that the (sectoral) scales apply.

Which jobs are on the list of bottlenecks?

Below the 20 occupations for which there is a professional shortage are listed in five categories:

Driving of vehicles and machines

1. articulated truck driver
2. truck driver with trailer
3. truck driver with fixed vehicle
4. building site equipment driver
5. crane driver

Maintenance of vehicles and machines

6. maintenance mechanics
7. maintenance mechanics for commercial vehicles or trucks
8. vehicle technician
9. technician for construction site, agricultural and lifting machines

Installation, assembly and maintenance of electrical, electronic and sanitary installations

10. panel builder
11. industrial electro-technical installer, industrial installations technician, industrial automation designer or industrial automation technician
12. data communications network installer
13. maintenance electrician, electronic installations technician, control and quality electrical and electronics technician
14. heating installation maintenance technician or central heating installation fitter
15. pipe fitter
16. residential electro-technical installer
17. sanitary installation installer

Food

18. chef
19. butcher

Care

20. care provider

For the highly qualified functions, the wage thresholds are in line with the wages actually applicable in the labour market. Moreover, a lower wage threshold is envisaged predominantly for young people (up to the age of 30): they must earn at least 80% of the average gross annual wage. The average gross annual wage for 2019 is € 41,868. Highly qualified employees may be seconded by their foreign employer or join a Belgian employer.

For people with a high level of education and managers, the duration of the permission to work is extended from 12 months to 3 years.

Migrant workers can get access to the labour market for an indefinite period after they have worked in Belgium for 4 years.

Getting started

- Review your employment policy. For which jobs will it be difficult to find suitable employees in the future? Remote work is perhaps the hype of the future and it may work for IT functions, but not for all jobs or in all circumstances. Certainly not for technical jobs... These new rules are more flexible and may help you find the right workforce abroad and recruit them in Belgium.
- Take the cost price into account. You must offer a local employment contract to middle-qualified employees (professions where there is a bottleneck). That means two things. Firstly, you will have to pay them according to the scales applicable in your sector. Secondly, as a rule they will also be subject to social security contributions.

Mobility

Mobility remains a hot topic in 2019. The mobility allowance (cash for car) is a year old - all in all a modest success - and the mobility budget is evolving.

One new obligation may come as a surprise to you: the company car certificate.

A. The company car certificate

The introduction of the mobility allowance in 2018 means that there is now a new obligation if you provide a company car or pay a mobility allowance to your employees. At the end of the employment contract, you must supply these employees with a company car certificate.
The company car certificate has been mandatory since 6 January 2019.

1. Why?
The intention is that the employee can take the mobility allowance with him/her if he/she changes employer. This registration right also applies for the conversion of the company car from a previous employer into a mobility allowance with a new employer. The company car certificate must make this possible.

2. Since when?
Since 6 January 2019, every employer needs to provide a company car certificate when the employment contract ends.

3. For which employees?
You only have to provide the company car certificate for your employees to whom you actually made a company car available or to whom you paid a mobility allowance.

4. For how long?
The company car certificate may have a short life span. The Chamber approved a bill that amends the legislation regarding mobility allowances. Consequently, the company car certificate loses its usefulness.

Getting started
Use the Partena Professional document template for this.

B. The mobility budget: as from 1 March 2019

The mobility budget is planned for 1 March 2019. This measure will exist in addition to the mobility allowance (cash for car). It is not an obligation. As an employer, you decide whether or not to introduce the system within your company.

1. How much is the mobility budget
The mobility budget is calculated for each individual employee, based on the total annual cost of the company car. (total cost of ownership). Thus it concerns much more than just the value of the vehicle itself - it also includes the (para)fiscal charges and the actual costs of, for example, financing and fuel. Thus this cost varies from vehicle to vehicle, from employee to employee, and from company to company.

The mobility allowance is also calculated for each individual employee based on the list price of the company car (plus a fixed amount for the fuel card).

2. By which employers, for which employees?
The employer must have already been providing company cars to one or more of its employees for at least 36 months. Special provisions are in place for young companies.

The individual employee must have had a company car at his/her disposal for at least 12 months during the last 36 months and in the 3 months prior to the awarding of the mobility budget. The mobility budget also applies to employees eligible for a company car, i.e. employees who are in a job category for which, in accordance with the company car policy of the employer, a company car is provided.

3. Three budget pillars
With the mobility budget, as well as a smaller vehicle - that is after all the starting point - employees can purchase alternative and sustainable means of transport, such as a season ticket for public transport, a bicycle, a shared car or accommodation costs to facilitate living closer to work. The money that remains over is paid out. There are thus three budget pillars. Each budget pillar is treated differently from a fiscal and social security contributions point of view. In this way, the government wants to steer employee mobility.

- For the **1st pillar** (the employee chooses a less polluting car), the current tax and social security contributions treatment of company cars continue to apply.
- The **2nd pillar** concerns various sustainable means of transport. These alternatives are strongly encouraged. No social security contributions or taxes are due on the amounts spent with regard to the 2nd pillar.
- If a balance remains at the end of the year, it is paid out in cash to the employee. Because the government's intention is to encourage the 2nd pillar, the **3rd pillar** will be subjected to a special contribution of 38.07%.

Getting started
Prepare for the mobility budget with an accounting exercise. Determine per employee the total cost of ownership of the car that you make available. This will enable you to make a quick start on 1 March 2019.

Pension

A. Supplementary pensions

1. Immediate affiliation and acquisition of reserves
As from 1 January 2019, any affiliation age limit and qualification period within supplementary pension schemes is abolished.

This means two things:

1. Employees who belong to a category of staff for which a pension commitment has been established must join on commencement of employment.
2. Employees immediately acquire supplementary pension rights.

The Belgian Supplementary Pensions Act previously stipulated that the pension scheme may provide that:

- Employees join the pension scheme at the age of 25 and not before;
- The reserves that the employer finances are acquired only after one year. Those who left the company earlier lost these pension reserves. (Reserves financed by the employees were and remain acquired in any case.)

2. No transfer of small reserves to new pension institution
Affiliated employees no longer have the option of transferring the acquired reserves to another pension institution if, at the time of leaving employment, the acquired reserves are less than or equal to € 150 (to be indexed), unless this is otherwise provided for in the pension scheme or the pension agreement.

If this choice is not offered, the notification procedure on leaving employment must not be followed and the acquired reserves are retained in the pension institution. Death cover is not mandatory for them, unless the pension scheme provides automatic death cover for dormant accounts.

Getting started

- Check whether you have passed on all new employees, including those who were already employed before 1 January 2019 and belong to a category of staff for whom a pension commitment has been established, to the pension institution (insurer or pension fund).
- As of 1 January 2019, all employees (who fulfil the affiliation conditions) accrue acquired rights regardless of their age or period of affiliation. Thus modify any conflicting provisions in the pension scheme.
- Review the rules in the pension scheme regarding leaving employment and modify the HR communication to employees.

B. The private supplementary pension for employees (VAPW): as from 27 March 2019[5]

The private supplementary pension for employees (VAPW) was already announced in the **Summer Agreement of 2017**. You can read more about it in the **October issue**.

The private supplementary pension is intended to be a solution for employees who do not build up an adequate supplementary pension or do not build up one at all. The private supplementary pension allows them to do so at their own initiative. The employee is free to make a choice. Employees are however given a tax incentive.

As an employer, you may not finance any pension contributions yourself. You are however responsible for the practical side of things and must withhold the pension contributions and pass them on to the pension institution. For you that is not optional.

Outplacement

A. Not available for the labour market: no right to outplacement

Since 31 December 2018, the employer should no longer offer outplacement assistance to redundant workers who must not be available for the labour market within the context of the special regulation for outplacement, even if they have already requested it explicitly.

1. Outplacement for which employees?

The employer who dismisses an employee who at the time of dismissal is **at least 45 years old**, must offer outplacement assistance, provided that the employee at that time meets the following three criteria:

- Has not been dismissed for compelling reasons;
- Is not entitled to a period of notice (or a corresponding allowance) of at least 30 weeks; The employee who is dismissed with a period of notice (or a corresponding allowance) of at least 30 weeks is entitled to outplacement assistance under the general arrangement.
- Has at least one year of continuous service with the employer at the time of dismissal.

2. In the past: When is outplacement not required, except at the request of the employee?

The employer was not obliged to offer outplacement assistance in the following two cases, except at the explicit request of the employee:

1 When the employee has a working time arrangement with an average working time equating to less than half full-time employment;

2 When the employee, if he or she should be entitled to full unemployment benefit after the end of the period of notice or the period covered by severance pay, should not be available for the general labour market.

3. Relaxation since 31 December 2018

The employer is not obliged to offer outplacement assistance to employees who must not be available for the general labour market (category 2 above), even when they explicitly request it. As an employer, you must however offer outplacement to employees with less than half full-time employment who request it (category 1 above).

B. Flanders: Sanction with outplacement

Since 1 January 2019, Flanders has had its own sanction rules in place in the event that the employer does not meet its obligations under the special outplacement arrangement applicable for the dismissal of an employee aged 45 and older. The Walloon Region and the Brussels-Capital Region have been applying their own sanctions since 1 January 2016.

This new regulation is part of the 6th state reform in which the regions were given the authority to establish rules on this subject. It applies on condition that the dismissed employee, against whom the employer has not complied with its obligations regarding outplacement, is employed in a business unit established in the Flemish Region.

The employee who is dismissed with a period of notice (or a corresponding allowance) of at least 30 weeks is entitled to outplacement assistance under the general arrangement. For the time being, no sanctions

are envisaged if the employer does not comply with its obligations to offer outplacement within the framework of this general arrangement.

1. The outplacement offer
The employer who dismisses an employee who, at the time of dismissal, is at least 45 years of age, must offer the employee outplacement assistance (for the three conditions, see above). The employer must make this offer of outplacement in writing and within 15 days of the actual termination of the agreement.

2. The employee sends a notice of default
If the employer does not offer outplacement within 15 days, the employee - within one month (or 9 months in the event of termination without a period of notice) of the expiry of this term - must send the employer a **written notice of default**.

3. The employee informs the VDAB
If the employer does not respond to this notice of default then the employee, employed in a business unit established in the Flemish Region, must notify the VDAB of his or her desire to receive outplacement assistance at the expense of the Flemish government.

The employee must send his or her request to the VDAB within 12 months of the notice of the default of the employer.

To demonstrate that the employee satisfies the conditions for outplacement, he/she must also include the following documents with the request:

- A copy of the letter of dismissal received from the employer;
- Proof that the employee has given his/her employer notice of default within the appropriate period.

4. What does the VDAB do?
The VDAB checks whether the employee satisfies the conditions for receiving outplacement.

The VDAB then contacts the employer. The employer must explain to the VDAB why the employee would not be eligible for outplacement. The employer has one month to answer the request of the VDAB.

If the VDAB is not convinced by this explanation or the employer does not respond, then the employer can be sanctioned. The VDAB itself can then offer the employee outplacement.

5. Sanctions for the employer

The employer who has not complied with its obligations regarding outplacement is obliged to pay a contribution to the Flemish Region. The amount of this contribution is set at € 1,800 (€ 1,500 + € 300 to cover administrative and financial costs).

Allowance for end-of-career jobs: relaxation of the RSZ exemption

Since 1 January 2019, you are not liable for RSZ contributions on the premium that you award to employees of at least 58 years of age to ease their workload. For a soft end-of-career job, there is no payout from the government, only from the employer.

1. Easing of the workload

The easing of the workload must be done within the context of:

- A measure for the changeover of shift and night work into day work;
- A measure to ease the workload;
- The transition from full-time to a minimum of 4/5 employment if the employee is at least 60 years old.

2. Little success in 2019

The allowance for end-of-career jobs has not been a success. The allowance is predominantly determined by a sector CLA or a company CLA, or through an amendment to the employment regulations. CLAs were only concluded within the metal sector (joint committees no. 111 and 209). Nevertheless, the new RSZ exemption applies for all economic sectors.

3. Relaxation of the conditions

The condition that the allowance must be established in a collective labour agreement or the labour regulations has been relaxed. Now you can also award an allowance for end-of-career jobs by concluding a written agreement with the individual employees.

We set out the conditions below:

- The allowance is determined by a sector CLA or a company CLA, an amendment to the employment regulations or in an individual written agreement.
- The employee retains an actual employment of at least 4/5^{ths} after the relaxing of the workload.
- This CLA, the employment regulations or the individual agreement is part of the employment plan (at least if that employer falls within the scope of this collective labour agreement no. 104).
- The CLA, the employment regulations or the individual agreement explicitly specifies to whom the allowance is awarded.
- The employer or the Welfare fund pays the premium.
- The employee is at least 60 years old if the measure relates exclusively to a transition from full-time to 4/5^{ths} employment.
- The amount of the allowance does not exceed the employee's loss of earnings.
- This allowance is indexed according to the indexation mechanism applicable within the company.

Getting started

- Review the end-of-career planning within your company.
- Someone who is 60 or older can work for 4/5ths in this scheme. It can also be used from the age of 58 for shift workers or those working nights or on split shifts, or for switching to lighter work.
- The end-of-career job is not a right of the employee. You must reach agreement and record the arrangements in an appendix to the employment contract.

Good resolutions

- Develop your bonus plan for 2019. Are you looking for inspiration? Then take a look at our **webinar "Motivating and rewarding employees"**.
- The next social elections will take place in 2020. It is best to start planning and making preparations now. You must organise social elections if your company has at least 50 employees (committee for prevention and protection) / 100 employees (works council).
- You can apply the training clause more often than before. The wage threshold (€ 34,819 in 2019) has not applied to occupations with a structural labour shortage since 10 November 2018. This list of occupations has been compiled by the regional employment services (VDAB, FOREm, Actiris). It includes, for example, specialised technicians. **You can find the lists of occupations here**.
- Modify the confidentiality clause in your employment contract (template). You can immediately start to use **our template documents** available via LegalSmart.
- At the start of the calendar year, a new quota of voluntary overtime starts (100 hours per calendar year, in some sectors 360 hours). You must not grant time off in lieu for those hours, but pay overtime. It is sufficient that you and the employee conclude an appendix to the employment contract. This remains valid for six months and can be repeatedly renewed.
- Consider making use of regular and occasional teleworking (from home) within your company. You provide more flexibility for your employees and create the opportunity to put together an efficient remuneration package. You may award a home working allowance.
- Consider allocating a bicycle allowance. As a rule, a bicycle allowance is not compulsory (unless the social partners make other agreements within your sector). Why a bicycle allowance? The bicycle allowance - a maximum of € 0.23 (2019) per kilometre - is a fully exempt benefit. No social security contributions and withholding tax are due on it. The bicycle allowance can be combined with a company bicycle.
- What policy do you pursue regarding expenses reimbursement? Are you consistent and do you allocate the same amount to all employees of the same category? Think about a home working allowance, car washing and parking expenses. Do not overdo any general allowance for representation expenses.
- The risk of fictitious self-employment is still present. Review your collaboration agreements with freelancers. Are you succeeding in following a coherent policy?

Peggy Criel
Cathérine Legardien
Yves Stox

1 Legally, the companies must be mutually linked, which depends in particular on the mutual control competences or the existence of a consortium.
2 Court of Justice, 11 July 2018, C-356/15, European Commission t. Belgium.
3 The law was adopted by the Chamber on 22 November 2018, but has not yet been published in the Belgian Official Gazette.
4 Court of Justice, 6 February 2018, C-359/16, Altun.
5 The act establishing a private supplementary pension for employees (...) was published in the Belgian Official Gazette on 27 December 2018. The measure enters into force 3 months after publication. Thus on 27 March 2019

News

The available margin for wage development. What is the impact on pay?

Every two years, the Belgian Central Economic Council (CRB)[1] publishes a report about the margin available for wage cost development. For the period 2019-2020, the available margin was initially set at 0.8%. A final calculation set the margin at 1.1%. By comparison, the margin for 2017-2018 was also 1.1%.

To arrive at this percentage, the CRB looks, on the one hand, at the outlook of the development of wage costs in neighbouring countries and the automatic wage indexation in Belgium. On the other hand, it looks at the possible wage gap between Belgium and three reference countries (Germany, the Netherlands and France).

The CRB's report is not an end point, but the start for the wage-setting for 2019-2020. The framework for this is laid down in the inter-professional agreement. The National Labour Council (NAR), in turn, anchors the maximum percentage in a collective labour agreement (CLA) which is then declared generally binding. Per joint committee, the social partners will then start work to establish the concrete implementation in sector CLAs.

Inter-professional agreement

With this margin of 1.1%, the Group of 10 will then start working on finalising the wage norm in the biennial inter-professional agreement (IPA). The wage norm determines how much wage costs may increase in the period from 1 January 2019 up to and including 31 December 2020.

It is important to note that the margin established by the CRB is a maximum margin for the wage cost development. Thus negotiations between the social partners cannot lead to a decision to apply a higher percentage. They can only confirm the 1.1% or award a lower percentage (although the latter is unlikely).

Note

Wage scale increases on the basis of seniority, normal promotions or individual category changes to which your employees are entitled and the guaranteed index increases may be in addition to the wage norm.

Other benefits (e.g. the awarding of an innovation bonus) can also be awarded on top of the wage norm. More information about this can be found in the employer's reminder of December 2016 (**The thresholds of the wage norm shifted?**). Are you looking for practical guidance and advice? Contact Partena Professional via **legalpartners@partena.be**.

The IPA contains more than just the wage norm. In addition, the social partners may also agree on other commitments. For example, the 2017-2018 IPA also included agreements concerning:

- SWT and end-of-career jobs;
- Innovation premium and public transport third-party payer agreement;
- Measures regarding the end of the employment contract (outplacement and medical early retirement pension);
- Measures relating to risk groups;
- Distribution of the cover for the prosperity adjustment;
- Approach for specific social challenges: burnout, administrative simplification, future-oriented labour organisation, digitisation and sharing economy, mobility budget, restructuring, youth employment, promoting recruitment and employment, measures within the context of the manual-clerical workers dossier and reform of the equal representation landscape.

Sector negotiations

The provisions of the IPA form the framework for the negotiations of the agreements at sector level. Every 2 years, the social partners (employee and employer representatives) of each joint committee conclude their sector agreement. These negotiations start when the IPA is concluded. The sectors will then negotiate and further detail the wage norm in their sector agreements. As soon as the sector concludes its sector agreements, we will of course inform you about this via our **sectoral information**.

At company level

Do not start working on the basis of this 1.1% yourself, it is best to wait for the results of the negotiations in your sector.

Already awarding wage increases or other benefits now could also mean that you should also award the benefits of the sector. These then come on top of the benefits that you have chosen. Furthermore, you also risk a sanction if you exceed the wage norm in this case.

No inter-professional agreement?

The trade unions could initially not accept the proposed 0.8% and withdrew from the wage negotiation. They demand a review of the wage norm act. To emphasise this, they announced a national strike on 13 February.

Involve the government?

What if the Group of 10 does not reach an agreement? If the social partners do not reach an agreement within two months of the date of the report from the CRB, the government takes over.

The government will then bring together the social partners for consultation and to make a mediation proposal. If the social partners still cannot reach agreement, the federal government can set the wage norm. This was also the case in 2016.

Leen Lafourt

1 Both employee and employer organisations are represented in the CRB. The Council issues opinions about the economic backdrop or about other socio-economic issues, in particular about promoting employment.

Can the government set the wage norm?

If the social partners do not reach an agreement on the wage norm, then the government gets involved. But can the Michel II government set the wage norm? Is the government not in "caretaker mode"?

We asked Professor Stefan Sottiaux, Professor of Public Law at KULeuven, to explain matters. "The Belgian Federal Government resigned on 21 December 2018. This means that the competences of the Michel II government are limited to that of caretaker."

The government is responsible for implementing the legislation. The government that sets the wage norm itself in a Royal Decree is an example of this. Professor Sottiaux says that this competence is limited as soon as the King has accepted the resignation of the government. "The competences of the government are then restricted because Parliament cannot fully control. Parliament's ultimate sanction is to force the government to resign. That big stick is no longer there."

That does not mean that the government cannot take any decisions at all. "Caretakership reconciles two principles: political control and the continuity of the governance." But what then is possible? Professor Sottiaux explains that the government may take administrative actions such as the appointment of an official, or issuing of a Royal Decree in three situations: 1° urgent matters, 2° matters of day-to-day administration, 3° other matters that constitute the settlement of earlier decisions made before the resignation of the government.

Which category then applies to the Royal Decree that would set the wage norm? According to Professor Sottiaux, it is not a matter of day-to-day administration. Nor is it a settlement of a previous policy choice. Then just the first category remains: matters that cannot wait. But beware. "That means that the Royal Decree really is urgent. If it should not come about, would the country or specific individuals be seriously damaged. These are, of course, vague criteria." Professor Sottiaux must admit however that the longer a situation continues, the more urgent it becomes.

Nevertheless, this is not the first time this situation has occurred. The Leterme II government resigned on 26 April 2010. It would still take until 6 December 2011 before a new government could be formed: that was Di Rupo I. Nonetheless, a Royal Decree of 28 March 2011 set the maximum margin for wage cost development for the years 2011 and 2012 at 0.3%.

Yet Professor Sottiaux warns: "Even if another caretaker government previously took this decision, it does not offer any legal certainty for the future. The Royal Decree can be contested before the Council of State or a judge can exclude it if he or she is of the opinion that it does not fall into one of the three categories." Does he have another tip for a caretaker government that wants to set the wage norm? "If the government wants to play it safe, the best option would be to ask Parliament for its support in advance. This can be done relatively easily with a resolution."

Yves Stox

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