Payroll Tax in 2017
Payroll tax in 2017

Tax, social security law and employment conditions for national and international employers and employees

Although the greatest care has been taken in the editing of this brochure it is always possible that over the course of time certain information may become outdated or is no longer accurate. Our LLPs therefore cannot be held liable for the consequences of action or inaction on the basis of anything in this publication.

The information in this brochure is based on the current legislation in December 2016, including the relevant bills presented to Parliament on Budget Day 2016 and adopted by the Lower and Upper Houses of Parliament. At the time of preparing this brochure not all the implementing rules had been announced. The information relating to such legislation is therefore subject to these rules being made public. Further provisions could also be included in ministerial implementation rules. Case law may also change the interpretation of such legislation.
This brochure provides an overview of the most important developments in the field of payroll tax and employment conditions for 2017 as far as these were known in December 2016.

We have addressed here the various topics which you as finance director, HR director or executive, payroll administrator or financial controller may be faced with. There is far more we could say about each individual topic. For the sake of readability, however, we have provided concise summaries. You are welcome to contact us if you would like further details.

There are a number of key topics to which we would particularly like to draw to your attention.

**Key point 1: hiring self-employed people and freelancers**

In May 2016 the Assessment of Employment Relationships (Deregulation) Act (DBA) entered into force. This legislation abolished the VAR (Statement of Employment Relationship). In the months since this legislation was introduced it has been surrounded by a great deal of public and political controversy. For the time being the Act is still in force but the State Secretary for Finance, Eric Wiebes, has announced that under certain conditions he will refrain from enforcing the legislation or imposing fines, in any event, until 1 January 2018. But you will still need to take this new legislation into account. This is because the State Secretary’s announcement concerns the tax and social security aspects but not the employment law aspects.

**Key point 2: company cars**

The nominal addition percentages for new company cars change in 2017. All the more reason in this age of staff mobility to take a close look at your car fleet and check that the nominal addition percentages have been correctly entered in your payroll accounting system and are still correct in the new year. The problem of making the transition from one year to the next, what happens when someone switches to another vehicle: it has all become so much more complicated. Do you still have a clear overview?
Key point 3: the work-related costs scheme

We have all by now got used to the work-related costs scheme. During the first few years the scheme was optional, but since 2015 every employer has been required to apply the new scheme. Every employer must decide in advance which costs will be designated as work-related costs or as specific exemptions. If the tax-free budget of 1.2% of the taxable wage bill is exceeded, in January of the following year an 80% final levy must be remitted on the amount in excess of this budget.

Is there anything new to report? Are there new considerations? Definitely! In Section 2 we share our practical experiences, the first court decisions and some positions adopted by the Dutch tax authorities.

In Section 7 we report on some international matters and Section 8 is devoted to some employment law items.

We hope that the information provided in this brochure will again be useful to you this year. In 2017 the People Advisory Services practice group of EY Belastingadviseurs LLP will, as always, be happy to support you in taking decisions and making choices concerning your employment conditions policy, and in implementing measures to ensure that you remain ‘in control’ of your payroll tax situation. Anticipating potential risks in time will help you to avoid unpleasant financial surprises later on.
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1. The Assessment of Employment Relationships (Deregulation) Act (DBA)

1.1 | No VAR anymore, what now?

The Assessment of Employment Relationships (Deregulation) Act (DBA) entered into force on 1 May 2016. The purpose of this Act is to bring bogus self-employment to an end, at least that’s what the political establishment has claimed. It is believed that a large number of self-employed people are not really self-employed and should actually be regarded as an employee for tax and social security purposes.

In brief, the Act amounts to no more than the abolition of the VAR statement that we have been familiar with for many years. Since 1 May 2016, based on the facts and circumstances, the client must again decide whether or not the relationship with a contractor could be deemed as an employment relationship for tax purposes. If so, then the employer must withhold and remit payroll tax on all payments made. The Dutch tax authorities has published model agreements in which the relationship would not constitute one of employment, however the way of working must then fully adhere to the agreement.

Even if there is no actual employment, the relationship could still be deemed as fictitious employment. These are specific situations which are designated in the legislation as circumstances where payroll tax is payable. This covers artists, situations where individuals are considered to be equivalent to those in a position of employment (working for longer than a month more than two days a week on at least 40% of the minimum wage) and contractors. It is possible to exclude some fictitious employees from the agreement (specifically individuals who may be regarded as equivalent to those employed and home workers).

Therefore legal certainty has been removed for the client who now has to make the assessment of whether or not there is a withholding requirement. Important: for the period until 1 May 2016 you must still keep a valid VAR statement in your accounting records! A valid VAR for 2014 also provides indemnification for 2015 and 2016.

1.2 | Transition arrangements

As shown by examples elsewhere in this Memorandum, not all employers can easily make this assessment. Therefore with the introduction of this new legislation, transition arrangements were put in place at the same time. Until 1 May 2016 no tax audits would be conducted and no corrections imposed on clients and contractors who had incorrectly interpreted the law. These transition arrangements naturally do not apply to those who deliberately contravene the legislation. On 18 November 2016 the State Secretary for Finance announced that these transition arrangements would be extended until 1 January 2018.

The State Secretary has now announced another exception during the transition period. The transition arrangements will not apply if the client has acted with malicious intent. He defines malicious intent as follows:
'This is purely about exceptional cases where clients operate in a context of intent, fraud or deception. This could include situations involving deceit, forgery, or collusion, or situations which lead to unfair competition, economic or social disruption or where there is the risk of exploitation. ‘

What should you now do in the period until 1 January 2018?

In principle, no enforcement will be carried out by the Dutch tax authorities in the period up until 1 January 2018. Can you wait until then before taking action? We recommend that you start to think about certain matters:

- The employment law aspects of the relationship with the client are not covered by the tax-related transition arrangements. The legislation on the transition arrangements makes reference only to the relationship with the Dutch tax authorities. A contractor could always claim protection under employment law (e.g. protection from dismissal, continued payment of salary when sick) at a later date.
- There are also other parties who may have an interest in the assessment of whether or not the relationship is one of employment. Pension funds, or a CAO (collective labour agreement) fund, for example.
- And how about the contractor who suddenly appears at the Employee Insurance Administration Agency (UWV) to claim unemployment benefit? Or a work disability benefit? And what if the client is an own-risk bearer for these employee insurances? Then the question of whether the client is responsible for paying these benefits could suddenly become relevant.
- The drawback is that the legislation has already been enacted, only its enforcement has been postponed. If another piece of legislation is drafted, or an amendment, then it will have to undergo the entire legislative process again. This could go on for some time.

Clearly, of course, you are not of malicious intent when it comes to observing the legislation on freelancers, contractors and the self-employed. But this does not mean that you should do nothing. Make an overview of all your contracts with self-employed people – where necessary, enter into a model agreement as published by the Dutch tax authorities – and await the political developments in 2017. Further to an expert report it is currently being considered whether the tax and civil law definition of the term ‘employment’ are in need of modernization. We will, of course, keep you informed of all future developments.

1.3 | The tax situation and relationship of authority

What are the characteristics of employment precisely? How can we assess whether the relationship is one of employment for tax purposes? The wage tax legislation derives its definition of employment from employment law and this definition covers the following three elements:

- the employee is required to carry out the work personally, and
- the employer is required to pay wages in exchange for the labour, and
- there is a relationship of authority between the employer and the employee.

The first two provisions are generally relatively easy to assess, but the matter of the ‘relationship of authority’ leads to the most discussion. There will always be some form of authority,
all forms of cooperation require practical agreements. But where does the boundary lie between a ‘client’s instruction’ and an ‘employer’s instruction’? This is a crucial question. In very general terms: a contractor’s assignment will be focused mainly on the end result, while an employee is mostly required to contribute effort. Performing work under the same conditions as permanent staff may also indicate the existence of an employment relationship. The Dutch tax authorities has attempted to provide a solution to this with model agreements.

In practice, it will not be just one detail which leads to the existence of an employment relationship. It is often several elements which, when taken together, give rise to the relationship of authority. This does not mean that if one element is present that this always means there is, or is not, a relationship of authority involved. The more elements there are involved, the more likely it is that there is a relationship of authority. Here are some examples:

- The freelancer previously performed the same work for the client as an employee of the client.
- The freelancer is not registered with the Chamber of Commerce as a sole trader or business owner and also does not issue invoices with VAT (BTW). In other words, the self-employed person does not act like an independent business owner.
- The freelancer is paid an hourly rate and not on the basis of a fixed amount per assignment.
- The freelancer is not responsible for the end result of the work provided, his or her contributed effort is sufficient.
- The freelancer bears no business risk, there is no risk of non-payment of the invoice.
- The freelancer uses tools, materials and equipment (such as a mobile phone, laptop) provided by the client.
- The client provides a company car for the freelancer’s use.
- Along with any other such arrangements.

1.4 | The intermediary situation

In intermediary situations — where you hire a freelancer through an intermediary — the legislation states that the entity providing the intermediary service has a withholding requirement under the condition that the seconded person works under the management and supervision of a third party, the client. This withholding requirement does NOT apply in the following two situations:

1. the freelancer — seconded person — is self-employed (has an own business); OR
2. the freelancer — seconded person — does NOT work under the management and supervision of the client.

An important point to consider here is that the hiring party could end up faced with a vicarious liability if the agency providing the intermediary service fails to observe its withholding requirement.
1.5 Consequences for supervisory directors and officers

It was stated in the legislation that, despite the fact that there is no relationship of authority, the relationship with a supervisory director or officer is deemed to be one of notional employment. Therefore the organisation concerned should withhold and remit payroll tax on any payment made to a supervisory director. This notional employment applied in relation to wage tax, national insurances, and the income-related healthcare contribution but not to the employee insurance contributions. The legislation includes two exceptions to this:

- The supervisory director holds a valid VAR (Statement of employment relationship). This VAR statement met the previously indicated conditions, and specifically stated that it concerned supervisory activities. The VAR was abolished on 1 May 2016 and therefore this exception no longer applies.

- A supervisory director makes use of what is known as the ‘passed-on wages rule’ from the wage tax legislation. This means that the supervisory director undertakes his or her role in another capacity, and is required to pass on the supervisory director’s fee to another employer. In this event the paying entity does not have to withhold wage tax, provided that the Dutch tax authorities has issued a statement of approval for this.

The fictitious employment of supervisory directors and officers lapses from the 1 January 2017. There is now no longer any withholding requirement on fees paid to supervisory directors or officers. In advance of this amendment to the legislation the State Secretary for Finance had already given approval that withholdings from fees did not have to be made from 1 May 2016.

From 1 January 2017 therefore no more payroll tax withholding and remittance will be required on supervisory directors’ and officers’ fees. However, the law does provide for an ‘opt in’ scheme. If the parties so wish, the fee can still be included in the payroll accounting. This applies only for wage tax and national insurance contributions, however, not for employee insurances or the income-related healthcare contribution.

If this option is applied, if the fee paid by the employer counts towards the work-related costs scheme. This means that the payment will be included in the calculation of tax-free work-related cost budget but that the supervisory director can also make use of the specific exemptions, etc. This can be advantageous: certain costs can be reimbursed tax free under the wage tax regime which are not deductible from the income tax return. An example is the tax free 30% facility for extraterritorial cost.

A foreign supervisory director may be eligible for the 30% facility for incoming staff. This facility can only be applied in the payroll tax and not through the income tax return. By opting to be subject to wage tax withholding, it may be possible to apply this useful facility.
1.6 | Strategic considerations when contracting the services of third parties

Beside the tax, social security and employment law aspects, there are other aspects involved when hiring the services of independents and freelancers. Further to the new legislation many companies have started to look more closely at the reasons for entering into such agreements. These are often no longer really clear. Now is a good time to consider the policy aspects of such engagements.

What are the real costs to your business? Before you start, carefully weigh up the costs of having a flexible shell. There is a prevailing idea that a freelancer is cheaper because you don’t have to pay employee insurance contributions or pension contributions. Neither is it necessary for a transition allowance to be paid when the contract comes to an end. The client does not have to continue to pay wages when the hired freelancer is sick, there are no overtime payments, and no holiday pay, etc. But is it really cheaper? Does all of this weigh up against the higher fee which the client has to pay? Try making a full calculation of all the costs.

• What is the indirect monetary value of the freelancer?
  The direct costs are more easily measurable. But how much are the indirect costs? We are referring here to the knowledge and experience which the freelancer has built up in the organisation. We see in practice that the freelancer has often worked for the organisation for a long time. The organisation invests in the freelancer, this costs money. And as he or she builds up knowledge then that knowledge is lost if he or she leaves. There is a good chance of this knowledge being lost because the typical feature of a freelancer is that they don’t stay for long, right? We often see that organisations depend on the knowledge and experience of independents and fail to take into account that they are temporary in nature. Another different type of drawback is the following. Someone who does not really want to be closely involved with your organisation will also not contribute to the knowledge development of your organisation. This could also represent a cost to the organisation. How can we express these two elements in monetary terms? It is not easy, but is nevertheless an important point which you should include in your calculations.

• Commitment. Nothing adds more value to an organisation than a committed employee. The more committed they are, the harder they work, and the more input and added value he or she brings to the organisation. An employer often offers employment benefits to staff to encourage this commitment (e.g. a bonus for achieving a certain target). How committed is the freelancer? Take a close look at the role actually played by the freelancer in your organisation. Because we have not given much thought to it in recent years, it seems that many freelancers play a vital role in the organisation but that little or no thought has been given to how committed they are. This element too is difficult to express in monetary terms.

• Responsibility. Another item which is often neglected is the insurance and responsibility aspects, on both sides. What happens, for example, if the freelancer makes an error in his or her work for your clients? Or in your own organisation? Do you have insurance cover for this, who is responsible for this? Have you checked your insurance policies for this? What we often see is that the freelancer has become so integrated into the organisation that the client has never even thought about it. And this is, of course, a possible indication that the relationship may actually be one of employment. Conversely, what if something happens to the contractor on the work floor, who is responsible in such an event? Have you also thought about that? Both elements brings costs which in practice are generally not included in the calculation. It would certainly be worthwhile to investigate.
2. The company car in 2017

2.1 | What changes from 1 January 2017?
The Memorandum on Vehicles 2.0 changes the tax treatment of cars from 1 January 2017. These mostly relate to changes in the nominal addition for private use, the road tax and the Motor Vehicle Purchase Tax (BPM) legislation. You will, of course, primarily be interested in the nominal addition rules. The nominal addition will be considerably simplified from 1 January 2017 with only two rates, i.e. the 22% rate and the 4% rate for cars with no CO2 emissions.

The most important other changes may be summarized as follows:

- the road tax (MRB) for ordinary passenger cars will be cut by 2% on average;
- more road tax (MRB) will be payable for old polluting diesel cars;
- the motor vehicle purchase tax (BPM) will be reduced until 2020 by 14.7% in total;
- from 2017 the general nominal addition for company cars will be reduced from 25% to 22%;
- zero emission vehicles – fully electric or hydrogen-powered – will retain their tax advantages (no BPM, no MRB, low nominal addition), but from 2019 the low nominal addition of 4% will only apply up to a list price of €50,000. The high nominal addition rate of 22% will apply to the amount in excess. Often referred to as the Tesla tax

The table below shows the rates for new cars from 2016 until the end of 2019 and beyond.

<table>
<thead>
<tr>
<th>Year (electric vehicle)</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019 and beyond</th>
</tr>
</thead>
<tbody>
<tr>
<td>EV (electric vehicle)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zero emissions</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Zero emissions up to a list price of €50,000</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Zero emissions on that part of the list price in excess of €50,000 (unless hydrogen powered)</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>22%</td>
</tr>
<tr>
<td>Petrol/LNG/diesel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emissions from 1–50 g</td>
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<td>22%</td>
<td>22%</td>
<td>22%</td>
</tr>
<tr>
<td>Emissions from 51–106 g</td>
<td>21%</td>
<td>22%</td>
<td>22%</td>
<td>22%</td>
</tr>
<tr>
<td>Emissions of more than 106 g</td>
<td>25%</td>
<td>22%</td>
<td>22%</td>
<td>22%</td>
</tr>
</tbody>
</table>
2.2 | What do I need to take into account in the payroll accounting?

From 1 January 2017 the highest nominal additional percentage will be 22%. This applies for a period of 60 months for vehicles with a ‘First Registration Date’ (in Dutch: Datum Eerste Toelating, DET) from 2017 which is calculated from the first day of the month following the date of first registration. The DET is the date on which the vehicle was first taken into use and was issued with a number plate in the Netherlands or anywhere else in the world.

If the nominal additional percentage for a car which is already in use increases from the start of a new calendar year, the old levy percentage will continue to apply. The current percentages will therefore only apply to new vehicles taken into use.

For cars with a date of first registration before 1 January 2017 the 25% rate applies for the entire life of the vehicle.

2.3 | Debatable points

The distinction made in the rates for the ‘most polluting’ cars has generated much discussion. As indicated, a rate of 25% applies to a vehicle with a first registration date before 1 January 2017, and those with a DET later than this will be subject to a rate of 22%. This leaves open the question of whether this leads to the unlawful unequal treatment of people driving a vehicle bought after 1 January 2017 that has the same CO2 emissions.

2.4 | Case law in 2016

Every year there are many rulings made concerning the application (or otherwise) of the nominal addition for private use of a company car.

Joint ownership leads to lower nominal addition

A judgment on 13 January 2016 made by The Hague Court of Appeal concerned the joint ownership of a car: the vehicle was 75% owned by the company while the director of the company, who was also the only employee and sole shareholder of the business, held 25% ownership of the car. The District Court had ruled that a nominal addition should be made because the company had not demonstrated that the car had been driven less than 500 km per year for private purposes by the director. The Appeal Court ruled that the nominal addition only had to be made to that part owned by the company, i.e. to 75% of the list price.

Different cars

In a ruling on 19 April 2016 by the Amsterdam Court of Appeal, the employer had provided a car with 25% nominal addition followed by a car with a 0% nominal addition. For the first vehicle the employee had maintained a trip log which showed that he had not used the car for private purposes. From the time that the employee had been given the new car with 0% nominal addition, he had no longer maintained a trip log. The Amsterdam Appeal Court ruled that the nominal addition should be applied for both cars unless both cars together had not been driven more than 500 km for private purposes in a calendar year. In other words, a trip log should have been maintained for both cars. That one vehicle had a 0% nominal addition did not alter this fact, in the Court’s view.

2.5 | Payroll accounting

The nominal addition percentages and CO2 emission data for cars have regularly changed over the last few years. In the payroll accounting it is therefore important to check what year a car was taken into use, what percentage applies and what the CO2 emissions are, etc. The accounting surrounding the nominal additional has not got any simpler. Errors or miscalculations can lead to supplementary assessments.
3. An update on the work-related costs scheme in 2017

3.1 | The first court decision on the customary criterion until 2015

Since the introduction of the work-related costs scheme the employer has been free to designate a wage element as a work-related cost (maximum remittance 80%) or pay it as normal gross salary on the payslip (maximum levy 108.3%). The legislator wanted to prevent abuse of this freedom of choice (a benefit of 28.3% through ‘rate swapping’). Therefore until 31 December 2015 the law stated that the amount of the allowance or employment benefit should be customary for the wage benefit to be designated as a work-related cost. There has been considerable discussion of this over the last few years and the legislation was therefore amended from 1 January 2016.

Up until December 2015 the ‘old’ customary criterion therefore applied. How far did this go? Can you designate a bonus as a work-related cost? Yes, said the website of the Dutch tax authorities. The Payroll Tax Handbook of the Dutch tax authorities however set a limit on this. Amounts of no more than €2,400 would always be viewed as customary, but the Dutch tax authorities would question higher amounts than this. See also the case presented to the North Holland District Court.

Court decision

An employer had a share scheme. Employees were given free shares. The employer designated these shares as salary. When the company switched to the work-related costs scheme in 2012 these shares where then designated as a work-related cost. The Dutch tax authorities took the position that because the value of the share scheme far exceeded the amount of €2,400 per employee, designating it as a work-related cost was not customary and that the wage benefit should be deemed as normal salary. The District Court ruled otherwise. The fact that the value is ‘considerable’ is insufficient grounds not to be able to designate the shares as a work-related cost. The awarding of shares was customary in this organisation. The Dutch tax authorities had not provided sufficient evidence that granting this was not customary.

What does this court decision mean for you?
For the period up until the end of 2015 this means that, for this moment, large amounts and employment benefits which were customary in your organisation could be designated as work-related costs. It should be noted, however, that the Dutch tax authorities has lodged an appeal!
3.2 | The customary criterion from 1 January 2016

The customary criterion has been tightened up since 1 January 2016. Now not only must the amount of the benefit be customary but it also has to be customary that the employer pays the taxes on the wage benefit. It must be customary that the employee receives the allowance or employment benefit as a net payment without paying tax on it. One example is the traditional Christmas gift or box. As a rule it is not customary that the employer pays the payroll tax on normal salary, holiday pay, large bonuses or similar (the employer normally withholds the taxes on these wage benefits). These wage elements therefore can no longer be designated as work-related costs.

3.3 | The necessity criterion

The necessity criterion was introduced for the exemption of tools, computers and mobile communication devices. If the equipment is necessary to be able to properly fulfil the terms of the employment contract, then this exemption applies. The Dutch tax authorities generally assumes that the necessity criterion is met if the employer pays for the tools and equipment. Some tips:

- If someone leaves the organisation, changes job within the organisation or if the equipment is no longer necessary for any other reason, the equipment should be returned to the employer or the employee must pay the residual value.
- If an employer allows the full or partial cost of the item to be exchanged for gross wage elements (e.g. under a cafeteria, exchange or multiple choice scheme) then the law states that there can no longer be any necessity.
- If several devices are provided (e.g. a telephone, tablet, laptop, home phone, etc.) this can eventually lead to the question of to what extent does the necessity criterion still apply? The more devices, the less need. Providing two devices of the same kind will never be necessary.

In practice the Dutch tax authorities still applies a limit of what is reasonable. It is assumed that allowances and employment benefits worth up to €2,400 per employee per year are customary and therefore may be designated as a work-related cost. Larger amounts than this will raise questions.
3.4 | The designation of work-related costs
You can only make use of the specific exemptions and the tax-free budget of 1.2% if you designate the allowances and other employment benefits as work-related costs. You must make your decision known no later than when your personnel receive the benefit.

A designation as a work-related cost means that the employee receives the allowance or benefit concerned as a net amount and that the employer bears the cost of any liable payroll tax where there is no specific exemption or tax-free budget left. How this designation should be made precisely, is still not entirely clear. But it must be apparent from your accounting records. The Dutch tax authorities is in favour of a specific designation being made.

We recommend that you draw up an internal guideline which shows what decision you have made concerning an allowance, employment benefit or workplace facility to avoid discussion with the Dutch tax authorities after the fact! This decision could be laid down in a policy plan or made clear by how your accounting system has been set up.

What could happen if you have not specifically designated such a cost? Then the benefit could be deemed as individually taxable salary subject to the normal payroll tax (maximum grossed up table rate of 108.3%).

3.5 | The work-related costs scheme and international employment
Do you also have international staff on your payroll? Then you will be faced with special circumstances in the context of the work-related costs scheme. Since April 2016 the Dutch tax authorities has offered more flexibility in the calculation method when it comes to dealing with international situations in the payroll accounting and the application of the work-related costs scheme.

Initially the Dutch tax authorities adopted the standpoint that all foreign-taxed salary should be included in the payroll accounting when calculating the tax-free budget of 1.2%, even if under international treaties such salary would not be taxed in the Netherlands. Following which all the work-related costs associated with these salaries also had to be included. If the tax-free budget was exceeded the employer was granted an exemption on that part of the salaries that would ultimately be taxed abroad. In practice this proportional method could turn out to be favourable or not, depending on the amount of the foreign work-related costs and the salaries subject to tax abroad. This method can be fairly laborious, not to mention whether it is even permitted by law.

Since 1 April 2016 the Dutch tax authorities has given employers a choice: they can opt to leave aside the foreign taxed salaries and the foreign taxed work-related costs when calculating the work-related costs (in the Netherlands). The foreign taxed salaries are not included when calculating the tax-free work-related cost budget, however, the work-related costs are also not included.

Which method is most advantageous will vary from one employer to another.
3.6 | Practical examples

The principles of the work-related costs scheme will be clear to most employers, but experience has shown that this is not always the case concerning its application. Therefore here are some examples.

Parties and meetings

The legislation is clear: a business meeting is a specific exemption, a party or team building event at an external location is either fully taxable salary or a work-related cost. But how often is an event mixed in nature? The training day with drinks afterwards, or a business trip with a fun activity in the evening. The overall content of the programme will be decisive. If it is predominantly business-related in nature, then an exemption will apply for the entire activity. If the ‘entertainment aspect’ is an important part of the programme then you will have to split the costs. Part of the cost will then be taxable salary or a work-related cost and the rest exempt. Where should the dividing line be drawn? This will be determined by what is reasonable and fair. Activities at the place of work still have a zero valuation.

Certificate of good conduct (VOG)

For many jobs the employer requests a ‘Certificate of Good Conduct’ (VOG), before the employee starts work. It is customary that the employer reimburses the cost of this. From the legislative history it appears that this allowance is a (taxable) work-related cost.

Parking

If in addition to the tax-free travel allowance of €0.19 you also reimburse your employee’s parking expenses (either for business trips or commuting), the parking allowance constitutes taxable salary that may be designated as a work-related cost. If the employee parks somewhere which is designated as the workplace from the tax point of view, i.e. you are also responsible (at least in part) for the health and safety aspects of that parking place – then a zero valuation applies. Parking expenses are not work-related costs for company car drivers.
4. The revised Salary Costs (Incentive Allowances) Act

4.1 | Low income benefit 2017
The low-income benefit (LIV) is a wage cost allowance for employers who employ people on a relatively low salary. The low-income benefit is intended to make it more attractive for employers to employ or retain people earning between 100% and 125% of the statutory minimum wage. A distinction is made between two groups of employees entitled to this benefit.

- Employees earning between 100% and 110% of the statutory minimum wage. The subsidy paid for this group of people is €1.01 per hour up to a maximum of €2,000.
- Employees earning between 110% and 125% of the statutory minimum wage. The subsidy paid for this group of people is €0.51 per hour up to a maximum of €1,000.

The low-income benefit is only for employees who worked for the same employer for at least 1,248 hours in the year concerned. The LIV subsidy ends as soon as the employee reaches pensionable age (for the State old-age pension, AOW).

4.2 | Wage cost allowance 2018
The wage cost allowance (LKV) is paid for employing older people entitled to unemployment benefit and people with an occupational disability. In addition to the LIV 2017, from 1 January 2018 employers may also receive a wage cost allowance (LKV) if they take on an employee who is:

- at least 56 years old; or
- has an occupational disability; or
- belongs to the target group covered by the employment targets and quotas agreement.

Contrary to the present contribution discount – the situation here is that with the wage cost allowance the employer receives a fixed amount per hour for a maximum period of three years. As with the low-income benefit (LIV), the amount is based on the number of hours worked.

The subsidy paid for these employees amounts to €3.05 per hour up to a maximum of €6,000. When someone with an occupational disability is reassigned, the employer will be entitled to the subsidy for one year. A different amount is paid for the group covered by the employment targets and quotas agreement. In this case the wage cost allowance (LKV) amounts to €1.01 per hour up to a maximum of €2,000. For the LKV too, the employee must not have reached pensionable age (AOW). The employer must also hold a ‘target group statement’ (doelgroepverklaring).
4.3 | Minimum youth wage benefit
Young people (aged 18-21 years) are generally paid less than the statutory minimum wage for adults. Instead they receive a wage at minimum youth wage level. In principle, employers are not eligible for the low-income benefit (LIV) for these employees. However, to encourage employers to take on young people a subsidy for this has been created in the form of a minimum youth wage benefit.

A different amount is paid per age category. To be eligible for compensation the youngsters must earn a certain percentage of the statutory minimum wage for adults (on the basis of a 40-hour working week).

The lower limit for this is set by the minimum wage which applies to the relevant age. The upper limit is set by the minimum hourly wage for the age group that is a year older (based on a normal working week of 36 hours).

The minimum youth wage benefit will come into force on 1 January 2018 after the minimum youth wage increases from 1 July 2017.

4.4 | Special considerations
The Dutch tax authorities automatically pays the amount due to the employer on the basis of the data held by the Employee Insurance Administration Agency (UWV). The employer does not have to submit an application to receive this subsidy. Because the low-income benefit is calculated on the basis of information already held by the Dutch tax authorities, the LIV is paid after the end of the calendar year.

Employers receive a list from the Employee Insurance Administration Agency (UWV) of the employees concerned and the amount of the subsidy that will be paid before 15 March after the end of the calendar year concerned. Employers then have until 1 May thereafter to correct any errors by means of a correction notice. No later than 1 August the employer will receive a statement (against which an objection may be lodged) showing the final amount of the subsidy.
5. The WGA-permanent and WGA-flexible (staff) insurance contributions in 2017

5.1 | The hybrid market in 2017 and expected market developments

From 1 January 2017 the WGA-permanent and the WGA-flexible will merge. The purpose of this new legislation is to adjust the Work and Income (Capacity for Work) Act (WIA), the Social Insurance (Funding) Act (WFSV) and the Return to Work (Partially Disabled Persons) Regulation (WGA), to create a more mixed system in the market. The intention is to create a better balance in the market between the public administration (of occupation disability benefits) and private insurers. But how will this affect you?

The Employee Insurance Administration Agency (UWV) expects the number of employers becoming own-risk bearers to stabilize. In 2016 there was a decline in the number of employers opting to become an own-risk bearer. Until 2016 you could only become an own-risk bearer for the contribution component of the WGA-permanent. Now you can become an own-risk bearer for the entire WGA contribution. The UWV does not expect the market share to decline further but rather to stabilize.

5.2 | How will your contribution calculation be affected?

The consequences in terms of how the employee insurance contributions are calculated will differ between large employers and smaller employers.

Small employers
For small employers the WGA contribution (both the WGA-permanent and the WGA-flexible) will be sector-determined. They already pay a fixed contribution and will not see much change in that. The amount of the contribution depends on the number of people in their sector with a work disability.

Medium-sized and large employers
This group of employers will notice the effects of the change. How the contribution is set for this group depends on the actual number of people in the company who are unfit for work. Based on an initial analysis it would appear that 80% of these companies will see a contribution change of 0.04 percentage points or less. Approximately 1% of medium-sized and large employers will see a contribution change of 0.5 percentage points or more. These changes will affect employers with a wage bill amounting to around 500 times the average wage liable for insurance contributions (€31,900 in 2016). We see this effect mainly among employers who have a high WGA-flexible risk because they have a large flexible shell.
5.3 | WGA own-risk bearer

For you we have a couple of tips:

- If you switch from the UWV to a private insurer you no longer pay a differentiated contribution (WGA-premie), only the basic WAO/WIA contribution.
- You can become an own-risk bearer for the WGA annually, starting on either 1 January or 1 July.
- You must apply to the Dutch tax authorities at least 13 weeks before the intended start date, i.e. before 1 October or 1 April. You also need to be able to provide a letter of guarantee.
- You were not a WGA own-risk bearer in the three years prior to your application.
- You bear a maximum ten-year risk for the payment of benefit to employees who became subject to the WGA on or after 1 January 2007.
- Along with the re-integration responsibility that the employer has for ten years for the employee who is unfit for work, as an ‘independent administrative body’ the employer also gains the right to impose sanctions on the employee who is unfit for work if he or she refuses to cooperate with the re-integration process. This authority to impose sanctions normally rests with the UWV. Employees must therefore have the same opportunity to object, appeal and make a higher appeal as if they would when the UWV imposes a similar sanction.
- All employers who became an own-risk bearer after 1 July 2015, irrespective of the size of the employer, will no longer be faced with the burden of those employees who became unfit for work before the period of becoming an own-risk bearer for the WGA (i.e. the pre-existing risk).
- NB: the conditions to be eligible to be an own-risk bearer have been tightened up. You must not have been an own-risk bearer in the three years before the intended start date of becoming an own-risk bearer.

NB: there are huge differences in the premiums charged by insurance companies in the private sector. Some market research could save you a great deal of money!
5.4 | Recent developments in the private sector market

If you conclude a private policy in the market you become dependent on what the insurers have to offer. We see a few trends and developments taking place in the market.

• From 2017 most insurers offering a policy to be an own-risk bearer for the WGA include the strict condition that the employer must also be an own-risk bearer for sickness benefit (ZW) for flexible staff.

• As an own-risk bearer an employer bears the risk for the payment of WGA (disability) benefits for up to ten years.

• Based on research by various insurers, the average duration of a WGA benefit paid by the Employee Insurance Administration Agency (UWV) and by private insurers is normally four years. Insurers consider this to be an important consideration when deciding whether or not to become an own-risk bearer for the WGA.

• A complicating factor is that insurers have become extremely cautious in assessing applications. This is because insurers have to quote for the first time for a premium for flexible labour and in past years have suffered considerable losses as a result of a risk miscalculation.

• When asked for a quotation insurers ask for a lot of information from employers, such as age, date of birth, the salary (without taking the maximum amount subject to contributions into account), as well as information on the number of people who over the past ten years have become eligible for a work disability benefit.

• It is reported that the insurance premiums in the quotations for 2017 provided by private insurers show a bandwidth ranging from 0.45% to around 2.00% based on the social security contribution wage bill of the employer.

• An important factor when deciding whether or not to become an own-risk bearer for the WGA is gaining control over when a disability benefit is to be paid and no longer being dependent on the UWV for the management and supervision of this. In all honesty, however, there are in fact only two classes of work disability in the WGA which offer any real prospect of cost savings. It turns out in practice that little or no impact in terms of real savings on benefit payments may be expected in 35% to 65% of WGA work disability categories when an own-risk bearer has control over the medical and occupational supervision of such cases.

• Finally, although no less importantly, the total package and budget for re-integration efforts and services (which you as an own-risk bearer re-insure through a commercial insurer) serve as an important instrument for controlling the risks of people becoming unfit for work and therefore eligible for disability benefit. Base your decision therefore not just on an assumed financial benefit in the short term, but also consider this from as broad a perspective as possible.
6. What can DGAs expect in 2017?

The Director/Major Shareholder (DGA) can also expect a few changes in 2017.

6.1 | Customary salary, how does that work precisely?

A DGA with a shareholding of at least 5% — a substantial interest — who performs work for his or her company, must draw a certain minimum salary from that company. The salary of a DGA will amount to at least the highest amount of:

- 75% of the salary of the most similar role in employment; OR
- 100% of the highest salary of other employees/non substantial interest holders employed by the company or by allied companies (where there is a connection through a shareholding of at least 33.33%); OR
- €45,000 per calendar year (44,000 in 2016).

The rule which yields the largest amount determines the amount of the customary salary. The first item in particular often leads to discussion. What is the salary paid for the most similar role in employment? It is not always easy to establish the salary that would normally apply to the job, also taking into account the sector, education, knowledge and experience of the DGA concerned.

Tip:
It is recommended to have a benchmark study carried out to establish the customary salary of the DGA.

Here are some points to consider when setting customary salary:

- salary is the taxable salary paid in money and received in kind, such as nominal addition to income for a company car;
- final levy elements designated as work-related costs only count towards the salary where they are individual;
- the customary salary rule does not apply to a salary of less than €5,000 (burden of proof rests with substantial interest holder);
- a smaller customary salary may be possible where this would constitute a threat to the continuity of the business or for part-time work (burden of proof rests with substantial interest holder).

Besides above the three salary standards, a fourth standard has evolved in case law, referred to as the trimming method. The starting point here for determining the customary salary is the turnover from which costs and taxes are deducted, together with a risk and profit supplement. However the trimming method cannot be applied where a salary from a similar employed position is known.
6.2. | Customary salary and the start-up: new in 2017
The customary salary rule does not take into account whether a company is financially capable of actually paying that salary. Remitting payroll tax on salary that has not been earned represents a major obstacle for start-ups. From 1 January 2017 a temporary relaxation of this rule has been granted for starters. This easing of the rule will apply until 2022.
From 1 January 2017 the customary salary for starters may be set at the statutory minimum wage (instead of the minimum amount of €45,000). This is subject to the condition that the start-up holds an R&D statement (Research and Development) for starters. This will be the case if in one or more of the five preceding calendar years the company was not a withholding agent (employer) and during that period an R&D statement was issued for no more than two calendar years. Please note that, to use this possibility, one has to apply for a special declaration.
What we see in practice however is that agreements are made in advance with the Dutch tax authorities in these types of situations. In other cases too than just for start-ups with an R&D statement, agreements can be made with the Dutch tax authorities about the amount of the customary salary.

6.3 | The DGA’s mandatory insurance requirement for employee insurances
The mandatory insurance requirement for the DGA continues to be an area of concern. The ‘Rules on the appointment of a Director/Major shareholder’ state when a statutory director/shareholder is required to have employee insurance cover. If the shareholding of the substantial interest holder changes, the substantial interest holder becomes a director or steps down as a director, other shareholders join or the statutes of the company are changed, these changes must be reviewed in the context of the ‘Rules on the appointment of a Director/Major shareholder’. Such circumstances may affect the employee insurance requirement.

When restructuring, selling or buying shares, making company appointments, changing voting rights, always check the insurance requirement! Every new situation brings new assessment moments.
6.4 | What to do about a self-administered DGA pension?

The self-administered DGA pension has been abolished from 2017. This means that the higher commercial saving facility will be reduced to a lower tax-facilitated pension facility with no drawbacks. It is possible to redeem the pension with a tax discount. In which event the effective tax rate in 2017 is reduced to 34% (discount becomes less every year) with no penalty interest being payable. If it is decided not to redeem then the pension facility can be converted into a self-administered savings variant. In all cases no further self-administered pension accrual may take place.

Please note: the mentioned changes regarding the self-administered DGA pension have been postponed by the Dutch Parliament just before making this memo. The changes will not become law as from 1 January 2017. We expect them to enter into force in the course of 2017, with some changes.
7. International affairs

7.1 | The Netherlands-Germany Tax Treaty
There has been a new tax treaty between the Netherlands and Germany since 2016. During 2016 it was possible to elect to apply the old tax treaty for one more year. But from 1 January 2017 the new treaty applies to everyone.

A compensation scheme has been provided in the tax treaty for certain groups of taxpayers who are adversely affected by the new treaty. Employees living in the Netherlands who work in Germany (temporarily or otherwise) and whose salary is taxable there, are entitled under the new tax treaty to a certain level of compensation from the Dutch government if the German tax is more than the Dutch tax and national insurance contributions which would be payable if working in the Netherlands. The purpose of this compensation scheme is that a cross-border worker can claim any tax deductions due in the Netherlands – for example, the mortgage interest for an own home and the personal tax credits. In June 2016 both countries concluded an additional agreement which sets out the compensation scheme in more detail.

In calculating the tax and contributions payable in both situations of tax liability in Germany and in the Netherlands, the German social security contributions have been left aside. According to the supplementary agreement, these contributions cannot be compared with Dutch national insurance contributions. This means that there will probably be no compensation for this. Other than in the Treaty with Belgium, the person concerned could possibly opt for the deferral facility and in the future perhaps still be able to claim at least part of this tax deduction.

In a situation of temporary secondment to Germany while maintaining Dutch insurance cover – under an A1 certificate – the compensation scheme could be advantageous.

7.2 | The latest news on the 30% facility
Just before Budget Day it was rumoured that the 30% facility would change in 2017, e.g. with the tax-free expense allowance capped at an income of €181,000 (the Prime Minister’s salary). No changes were presented, however.

7.2.1 | Status of the proceedings concerning the 150 km criterion and the period in which the 30% facility may be applied
The question was whether the new 150 km criterion impeded the free movement of labour and was therefore contrary to EU law. After the European Court of Justice had answered preliminary questions on this matter, the Supreme Court denied the application. Employees from the border region in question, i.e. cross-border workers, are therefore excluded from the 30% facility.

The second legal issue concerned the period in which the 30% facility may be applied. Periods of previous residence or secondment are deducted from the maximum duration of the 30% facility, which is eight years. Up until 2011 only previous periods were deducted which fell within a reference period of ten (or sometimes 15) years prior to the latest secondment to the Netherlands. From 1 January 2012, however, all previous periods falling within a preceding period of 25 years are deducted. The Supreme Court ruled that these deducted periods, as well as the extension of the reference period to 25 years, do not contravene international treaties.
7.2.2 | Continued payment of salary during inactivity

Salary which continues to be paid during a period of temporary inactivity, amounting to no more than 104 weeks, is deemed as salary relating to present employment. The 30% facility may be applied to this. What was not entirely clear was whether this still applied where the inactivity was permanent, for example, immediately before an employment contract is terminated. A court has confirmed that this salary too, represents salary related to current employment.

However the 30% facility could not be applied during this period because one of the other conditions of the 30% facility is that the employee must work and therefore this condition was no longer met. In the court’s view the 30% facility could not be applied to the salary during the period of permanent inactivity because the employee was in fact no longer doing any work.
7.3 | Transferring the withholding requirement

Under certain conditions a Dutch group member can take over the withholding requirement for Dutch payroll tax and insurance contributions for personnel who are employed by a foreign group member. From 2017 this rule on transferring the withholding requirement has been eased.

Under the present rules the foreign employer is the withholding employer in the Netherlands in situations where the foreign company has a real or notional permanent establishment or an appointed representative in the Netherlands, or if the foreign company voluntarily undertakes payroll accounting in the Netherlands.

Up until now the rule on transferring this withholding requirement could only be formally applied to a limited extent, i.e. in a situation where a foreign group member mediates in the secondment of an employee to the Netherlands. Because maintaining a Dutch payroll accounting system involves relatively high costs, and to simplify the arrangements, it has now been agreed that the condition that there must be mediation involved in the secondment of personnel to the Netherlands, will lapse. Under the new scheme therefore, any foreign group member can have the withholding requirement in the Netherlands taken over by the Dutch group member. The amendment to the legislation is in line with current practice in which the Dutch tax authorities already takes a flexible approach to such requests.

To be able to apply the transfer rule it is still necessary for the group members concerned to submit a joint request. In practice, the transfer scheme is useful mainly in the context of applying for the 30% facility to provide the tax-free allowance for extra-territorial costs for incoming expats. We recommend that such transfer requests are submitted in plenty of time. This avoids any discussion about whether the 30% facility can be applied by the Dutch group member.
7.4 | New social security treaty with China

The social security treaty between the Netherlands and China was signed on 12 September 2016. This treaty entered into force in the course of 2017.

Under the new social security treaty Dutch staff seconded to China can maintain their social security cover in the Netherlands for the state pension (AOW) and unemployment insurance (WW). Conversely, this means that Chinese companies in the Netherlands will not have to pay double contributions for their personnel seconded to the Netherlands. They can continue to have social security cover in China for their state pension and unemployment benefits. The treaty therefore covers only part of the employee insurances, and does not include work disability insurance, health insurance or other insurance contributions which may apply in the Netherlands or China.

The benefit of this treaty is that as far as these insurances are concerned employees are insured only in the home state. To be eligible for this benefit the employer must obtain a ‘Certificate of Coverage’ (CoC) from the social security authorities. Under the new treaty the procedure when seconding someone to China is as follows:

- the employer submits an application for the CoC to the Social Security Insurance Bank (SVB);
- when the CoC is issued, the Chinese company must submit this document to the competent Chinese social security authorities.

This process must be completed within six months of the start of the secondment. No retroactive effect will be possible if the six month period is exceeded. Family members who will not be working can also have social security cover under the same CoC. In principle, the CoC is issued for a maximum period of five years. In exceptional situations a longer period may be agreed further to approval by the social security authorities.

There are transition arrangements available for employees who have already been posted abroad. The details of the transition arrangements had not yet been announced at the time of preparing this Memorandum.
8. What you need to know about the changes to employment law in 2017

8.1 | An update of the Labour Market Fraud (Bogus Schemes) Act (WAS)

The Labour Market Fraud (Bogus Schemes) Act (WAS) was introduced to tackle employment schemes that are intended to evade the legislation on pay and compliance with collective labour agreements (CAOs). Such schemes have appeared in the news with some regularity in recent years. Examples include the hiring of Polish workers in the Netherlands in the building sector through a Polish employment agency under Polish employment terms to avoid having to pay the Dutch minimum wage. In other instances employees did not receive part of their minimum wage because employers failed to provide a proper and clear payslip or sometimes paid the wage (or part of it) in cash, so that it remained unclear what the employee was still entitled to. The WAS legislation institutes measures to combat such practices and is therefore important to every client who directly or indirectly hires foreign or other labour through third parties (via assignment, placement, secondment or payrolling, as well as the contracting or subcontracting of work).

Under the WAS an employee can hold every culpable client along the chain liable if less salary was paid than the statutory minimum wage or the higher CAO wage.

Non-culpability

A liable client or hiring party can exculpate themselves by invoking non-culpability. This can be done by demonstrating what its role was in awarding the contract and what was done when it nevertheless became clear that there was a situation of underpayment. If sufficient measures were taken, in principle, non-culpability will be granted.

The Social Affairs and Employment Inspectorate (SZW Inspectorate) may impose a fine or a penalty if these rules are not observed. The SZW Inspectorate also publishes the names of every company it has visited. This list includes companies evading the rules as well as the inspected companies that do comply with the rules. In addition, employers’ and employees’ organisations exchange information with the SZW Inspectorate if it is suspected that an employer is not observing the CAO agreements.
8.2 | Payslip specification and payment of minimum wage

The employer was already required with every wage payment to show on the payslip what the employee’s salary is, together with a specification of how the salary is arrived at and what withholdings have been made. The WAS legislation lays down that cost allowances must also be specified on the payslip. An allowance for expenses must be specified on the payslip if this amount was not agreed in addition to salary but forms part of the contractual salary. A description such as ‘general allowance for expenses’ is insufficient, because it is not clear what the allowance is intended for. To summarize, the employer must be able to show that the statutory minimum wage (or its nett equivalent) has been paid to the employee for the work performed.

NB:

The Minimum Wage and Minimum Holiday Allowance Act (WML) states that the payslip must include a specification of the salary or this must be apparent from other documents. If the payslip is not sufficiently specified, the employer has the option under the WML legislation of providing information which contains the mandatory specification by means of other documents. In this way the employer can still make it clear how the salary paid by the employer has been arrived at and what may have been withheld from it. If the stipulated information for the payslip cannot be determined from these documents, a fine can be imposed. The Dutch Civil Code (Burgerlijk Wetboek), however, states that a specified payslip is mandatory (and thus not other documents). Under the Dutch Civil Code, civil proceedings may be brought by or on behalf of the an employer if the payslip does not meet the requirements of the Civil Code.
Under the WAS it is forbidden to pay the statutory minimum wage in cash. What an employee earns in excess of the minimum wage may be paid by the employer in cash. The employee can further authorize the employer to pay the full amount of the salary to another bank account than his or her own bank account. Finally, from 2017 cost deductions will no longer be permitted if as a result of the deduction less than the nett equivalent of the statutory minimum wage is to be paid. Deductions may be made from the salary in excess of this amount and from the minimum holiday pay entitlement. It is therefore important that the salary paid to an employee does not fall below the threshold of the statutory minimum wage (or its nett equivalent). An exception is provided for withholdings for the cost of accommodation for the employee (maximum 25%) and for health insurance contributions. The employer must have written authorization from the employee to make these withholdings.

8.3 | Another tip
A bill has been submitted which will extend the WAS vicarious liability to road transport agreements and agreements to provide such transport. This legislation entered into force on 1 January 2017. The WAS vicarious liability also applies to road haulage and forwarding activities. The legislation does not apply to passenger transport.
8.4 | The WagwEU and your obligations

The Posted Workers in the EU (Working Conditions) Act (WagwEU) entered into force on 18 June 2016. This legislation lays down the minimum employment conditions which an employee seconded from another EU member state to the Netherlands is entitled to and which thus should be provided by the foreign employer. Briefly, the WagwEU Act is important for people who are sent to work in the Netherlands and their foreign employer is the service provider. But there is also an obligation to be met by the Dutch service recipient.

The WagwEU applies in the following situations of providing a transnational service:

- **contracting work:** providing a worker to the Dutch (or other) service recipient, who is paid by and under the management and supervision of the foreign service provider, to perform work in another member state than the state in which that person normally undertakes work, in the context of an agreement between the service provider and the service recipient;
- **secondment within a group:** providing personnel from a foreign branch to a group member of that company in the Netherlands;
- **temporary agency work:** an employee provided by the foreign service provider for a fee to the Dutch (or other) service recipient to perform work under the management and supervision of the Dutch (or other) service recipient.

The legislation therefore applies to the following employees/self-employed people:

- people working in the Netherlands under the management and supervision of a foreign employer;
- staff who in the context of a corporate entity are seconded by a foreign group member to work in the Netherlands for a Dutch group member;
- personnel who are provided by foreign staffing agencies to work in the Netherlands under the authority of the service recipient;
- Independents/self-employed people who in the context of practising a profession or running a business undertake work in another member state (i.e. the Netherlands) than the state in which they normally work. This applies both to self-employed people who operate as a service provider in relation to the Dutch service recipient, as well as self-employed people who have accepted work from a from a foreign service provider on behalf of a Dutch service recipient.

Countries must be able to check that the requirements of the WagwEU legislation have been met. For the purposes of better enforcement of the WagwEU the following obligations must be met to ensure that such personnel are provided with the essential basic employment conditions:

- **Information requirement:** the foreign service provider/self-employed contractor is required to provide such information to the SZW Inspectorate as may be necessary to enforce the WagwEU, if so requested by the Inspectorate. This could include information about the activities to be performed in the Netherlands, the period, etc.
- **Documentation requirement:** the foreign service provider is required to ensure that certain documents, such as payslips, employment contracts, A1 certificates and agreed working hours are available at the place of work (or provided directly in electronic form). The self-employed person is required to ensure that during the period in which he or she undertakes work, documents are available at the workplace from which it is possible to determine his or her identity, the identity of the service recipient and the identity of the entity responsible for payment of the salary;
- **Contact:** the foreign service provider is required to appoint a
contact person in the Netherlands who may be approached by the SZW Inspectorate and who serves as the point of contact.

- Reporting requirement (from 2018): the foreign service provider/freelancer must report (by e-mail) before the work starts where and when and with whom the work will be done in the Netherlands. The following information should be provided: his or her identity, the identity of the service recipient and of the seconded employee; the contact person; the identity of the person responsible for payment of the salary/fee; the nature and expected duration of the work; the workplace address; and the contribution to be paid for the relevant social security schemes;

- Verification requirement (from 2018): prior to the work starting, the foreign service provider/self-employed contractor will provide the Dutch (or other) service recipient with a written or electronic copy of the report submitted to the authorities. The service recipient in the Netherlands should check that the report has been submitted and is correct. In the event of changes, a new report should be submitted (and checked).

The first three requirements came into effect from 18 June 2016. The intention is that the reporting and verification requirement will become effective on 1 January 2018. A fine of €12,000 per offence may be imposed for infringement of the provisions of the WagwEU.

8.5 | The minimum youth wage

NB:
From 1 July 2017 the minimum wage age will be lowered in two steps from 23 to 21 years of age. For young people aged 18 to 20 the minimum youth age will increase. Employers will receive compensation for this increase in the minimum youth wage. See section 4: the revised Salary Costs (Incentive Allowances) Act.
9. Other Items

9.1 | For public and semi-public sector employers: the WNT in 2017

The Senior Officials in the Public and Semi-Public Sector (Standards for Remuneration) Act (WNT) will continue to occupy public and semi-public sector employers in 2017. The WNT sets out which institutions are covered by this legislation, who is subject to its provisions and the maximum salary that may be paid.

The following amendments to the legislation are expected in 2017:

- WNT Executives’ Pay (Standards) (widened scope) Act: there is a plan to include all the staff of a public or semi-public body within the scope of the WNT legislation, not just senior officials.
- Executives’ Pay (Standards) Assessment Act: will widen the definition of ‘affiliated legal entity’.

This legislation is likely to come into force in 2018.

The remuneration of a Senior Official in the Public and Semi-Public sector is maximised. They aren’t allowed to earn more than a Minister in the Dutch Parliament. The general maximum remuneration is in 2017:

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<thead>
<tr>
<th></th>
<th>2017</th>
<th>2016</th>
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<tr>
<td>Senior Official in employment relationship, per year</td>
<td>€ 181,000</td>
<td>€ 179,000</td>
</tr>
<tr>
<td>Senior Official, not working in employment relationship</td>
<td></td>
<td></td>
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<tr>
<td>- First period of 6 months, per month</td>
<td>€ 24,500</td>
<td>€ 24,000</td>
</tr>
<tr>
<td>- Second period of 6 months, per month</td>
<td>€ 18,500</td>
<td>€ 18,000</td>
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<td>Nevertheless, not more than</td>
<td></td>
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<td>- 176 per hour</td>
<td>€ 176 per hour</td>
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</table>

Some industries in the Public and Semi-Public Sector do have separate maximum amounts. The WNT-transition arrangements may allow temporarily higher remuneration. The transition arrangements allow, in general, higher remunerations during a period of four years. After this period, the remuneration has to be phased out to the lower allowed amount during a period of three years.

9.2 | Further increase in the pensionable age for the State old-age pension (AOW)

The pensionable age for the State old-age pension (AOW) rose on 1 January 2017 to 65 years and nine months. With annual increases the pensionable age for the AOW will become 67 years of age by 2021. It has in the meantime been announced...
that from 1 January 2022 the age at which entitlement to a State old-age pension begins will be increased to 67 years and three months. The age has been increased again because life-expectancy is risen.

9.3 | The 52% punitive levy with early retirement is still a serious concern!

If an employee is offered a scheme by the employer which enables him or her to stop working and whose salary would allow them (at least in part) to bridge the period until reaching pensionable age, this may be readily characterised as an early retirement scheme (RVU). Early retirement schemes of this sort are subject to a 52% penalty imposed on the employer. Only in situations involving reorganisation, dismissal in connection with poor functioning, or similar, will this punitive levy not be payable.

The Dutch tax authorities takes the view that where a company reorganisation includes a voluntary redundancy scheme, there will also be a forbidden early retirement scheme if more older employees than average take advantage of it. This position has since been rejected by a court. If you are considering a company reorganisation – with or without a voluntary redundancy scheme – do take the precaution of seeking expert advice in good time. The risk of a punitive levy of 52% on (part of) the reorganisation costs is too great.

9.4 | The hidden danger of the abolition of annual wage data request!

If, after the end of the calendar year, tax remittance data from the employer is missing or incorrect, the Dutch tax authorities can request this information via an annual wage data request. The State Secretary for Finance has abolished the annual wage data request from 1 January 2017, also to reduce the administrative burden. Any corrections to salary can now only be made through correction notices.

And that is where the hidden danger lies! Until now we could have asked for a supplementary assessment, particularly in situations where this was less important for the policy administration (of the UWV), but this option has now been entirely removed from the legislation. It would therefore appear, on the one hand, to be a reduction in the administrative burden but, on the other hand, what it does in practice is to eliminate the room to arrive at a practical solution when supplementary assessments are issued. The State Secretary indicated to the Upper House that he does not intend making any further changes in this area.
Appendix
Figures for 2017

01 Payroll and income tax percentages for 2017
02 Social security contributions 2017
03 Tax credits 2017
04 Valuation criteria for the work-related costs scheme in 2017
05 Final levy and other special rates in the payroll tax
06 Other figures
1. Payroll and income tax percentages for 2017

Table 1.1 relates to people who have not yet reached pensionable age (65 years and nine months in 2017) while table 1.2 applies to people who have reached this age. For comparison we have included the figures for 2016.

**Table 1.1 Tax rates for people who have not yet reached pensionable age (AOW)**

<table>
<thead>
<tr>
<th>Taxable income of more than</th>
<th>but less than</th>
<th>Tax rate</th>
<th>National insurance contribution rate</th>
<th>Total rate</th>
<th>Tax levied on total amount of the tax bands</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>€</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>€</td>
</tr>
<tr>
<td>-</td>
<td>19,982</td>
<td>8.90</td>
<td>27.65</td>
<td>36.55</td>
<td>7,303</td>
</tr>
<tr>
<td>19,982</td>
<td>33,791</td>
<td>13.15</td>
<td>27.65</td>
<td>40.80</td>
<td>12,937</td>
</tr>
<tr>
<td>33,791</td>
<td>67,072</td>
<td>40.80</td>
<td>40.80</td>
<td>81.60</td>
<td>26,515</td>
</tr>
<tr>
<td>67,072</td>
<td></td>
<td>52.00</td>
<td>52.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2016

<table>
<thead>
<tr>
<th>Taxable income of more than</th>
<th>but less than</th>
<th>Tax rate</th>
<th>National insurance contribution rate</th>
<th>Total rate</th>
<th>Tax levied on total amount of the tax bands</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>€</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>€</td>
</tr>
<tr>
<td>-</td>
<td>19,922</td>
<td>8.40</td>
<td>28.15</td>
<td>36.55</td>
<td>7,281</td>
</tr>
<tr>
<td>19,922</td>
<td>33,715</td>
<td>12.25</td>
<td>28.15</td>
<td>40.40</td>
<td>12,853</td>
</tr>
<tr>
<td>33,715</td>
<td>66,421</td>
<td>40.40</td>
<td>40.40</td>
<td>80.80</td>
<td>26,066</td>
</tr>
<tr>
<td>66,421</td>
<td></td>
<td>52.00</td>
<td>52.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 1.2 Tax rates for people who have reached pensionable age (AOW) (born in 1946 or later*)**

<table>
<thead>
<tr>
<th>Taxable income of more than</th>
<th>but less than</th>
<th>Tax rate</th>
<th>National insurance contribution rate</th>
<th>Total rate</th>
<th>Tax levied on total amount of the tax bands</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>€</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>€</td>
</tr>
<tr>
<td>-</td>
<td>19,982</td>
<td>8.90</td>
<td>9.75</td>
<td>18.65</td>
<td>3,726</td>
</tr>
<tr>
<td>19,982</td>
<td>33,791</td>
<td>13.15</td>
<td>9.75</td>
<td>22.90</td>
<td>6,888</td>
</tr>
<tr>
<td>33,791</td>
<td>67,072</td>
<td>40.80</td>
<td>40.80</td>
<td>81.60</td>
<td>24,192</td>
</tr>
<tr>
<td>67,072</td>
<td></td>
<td>52.00</td>
<td>52.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2016

<table>
<thead>
<tr>
<th>Taxable income of more than</th>
<th>but less than</th>
<th>Tax rate</th>
<th>National insurance contribution rate</th>
<th>Total rate</th>
<th>Tax levied on total amount of the tax bands</th>
</tr>
</thead>
<tbody>
<tr>
<td>€</td>
<td>€</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>€</td>
</tr>
<tr>
<td>-</td>
<td>19,922</td>
<td>8.40</td>
<td>10.25</td>
<td>18.65</td>
<td>3,715</td>
</tr>
<tr>
<td>19,922</td>
<td>33,715</td>
<td>12.25</td>
<td>10.25</td>
<td>22.50</td>
<td>6,888</td>
</tr>
<tr>
<td>33,715</td>
<td>66,421</td>
<td>40.40</td>
<td>40.40</td>
<td>80.80</td>
<td>20,031</td>
</tr>
<tr>
<td>66,421</td>
<td></td>
<td>52.00</td>
<td>52.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* A slightly different second tax band threshold applies to people born in 1945 or earlier. The rates are otherwise the same.*
## 2. Social security contributions 2017

**Table 2.1 Contribution percentages for employee insurances in 2017**

<table>
<thead>
<tr>
<th>Contribution</th>
<th>Employer</th>
<th>Employee</th>
<th>Total</th>
<th>Maximum wage subject to contributions in 2017</th>
<th>Maximum wage subject to contributions in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>€</td>
<td>€</td>
</tr>
<tr>
<td>State old-age pension (General Old Age Pensions Act, AOW)</td>
<td>-</td>
<td>17.90</td>
<td>17.90</td>
<td>33,791</td>
<td>33,715</td>
</tr>
<tr>
<td>Surviving Dependents Act (ANW)</td>
<td>-</td>
<td>0.10</td>
<td>0.10</td>
<td>33,791</td>
<td>33,715</td>
</tr>
<tr>
<td>Long-term Care Act (WLZ)</td>
<td>-</td>
<td>9.65</td>
<td>9.65</td>
<td>33,791</td>
<td>33,715</td>
</tr>
<tr>
<td>Total national insurance contributions</td>
<td>-</td>
<td>27.65</td>
<td>27.65</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Basic contribution WAO (Occupational Disability (Insurance) Act /WIA (Work and Income (Fitness for Work) Act)</td>
<td>6.16</td>
<td>-</td>
<td>6.16</td>
<td>53,701</td>
<td>52,763</td>
</tr>
<tr>
<td>Mandatory employers' contribution for child care</td>
<td>0.50</td>
<td>-</td>
<td>0.50</td>
<td>53,701</td>
<td>52,763</td>
</tr>
<tr>
<td>Work resumption fund contributions (average)</td>
<td>1.10</td>
<td>-</td>
<td>1.10</td>
<td>53,701</td>
<td>52,763</td>
</tr>
<tr>
<td>Unemployment insurance contribution (WW)</td>
<td>2.64</td>
<td>-</td>
<td>2.64</td>
<td>53,701</td>
<td>52,763</td>
</tr>
<tr>
<td>Sector fund contribution (average)</td>
<td>1.45</td>
<td>-</td>
<td>1.45</td>
<td>53,701</td>
<td>52,763</td>
</tr>
<tr>
<td>Implementation Fund for Government Agencies (UFO)</td>
<td>0.78</td>
<td>-</td>
<td>0.78</td>
<td>53,701</td>
<td>52,763</td>
</tr>
</tbody>
</table>

**Table 2.2 Healthcare insurance contributions (ZVW) 2016**

<table>
<thead>
<tr>
<th>Contribution</th>
<th>Maximum wage subject to contributions in 2017</th>
<th>Contributions in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>€</td>
</tr>
<tr>
<td>Income-related contribution (employers’ mandatory contribution)</td>
<td>6.65%</td>
<td>53,701</td>
</tr>
<tr>
<td>Employee’s income-related contribution (without employers’ mandatory contribution)</td>
<td>5.40%</td>
<td>53,701</td>
</tr>
</tbody>
</table>
There will be seven different types of tax credit in 2017, four of which have been included in the payroll tax tables:

- General tax credit
- Employed person’s tax credit
- Elderly person’s tax credit
- Single elderly person’s tax credit
- Earned income tax credit

There are two types of tax credits which you have to calculate and apply yourself:

- Young disabled person’s tax credit
- Life-course leave tax credit (no further accrual after 2011)

### Table 3.1 Tax credits in 2016

<table>
<thead>
<tr>
<th>Tax credit</th>
<th>Younger than pensionable age (€)</th>
<th>Pensionable age (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General tax credit (income related)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• maximum</td>
<td>2,254</td>
<td>2,242</td>
</tr>
<tr>
<td>• minimum</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Employed person’s tax credit (income related)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• maximum</td>
<td>3,223</td>
<td>3,103</td>
</tr>
<tr>
<td>• minimum</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Earned income tax credit (income related)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• maximum</td>
<td>1,119</td>
<td>1,119</td>
</tr>
<tr>
<td>• minimum</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elderly person’s tax credit (low incomes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,292</td>
<td>1,187</td>
</tr>
<tr>
<td>Elderly person’s tax credit (high incomes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>71</td>
<td>70</td>
</tr>
<tr>
<td>Single elderly person’s tax credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>438</td>
<td>436</td>
</tr>
<tr>
<td>Young disabled person’s tax credit</td>
<td>722</td>
<td>719</td>
</tr>
<tr>
<td>Temporary tax credit for those with early retirement and pre-pension entitlement, maximum</td>
<td>Lapsed</td>
<td>Lapsed</td>
</tr>
<tr>
<td>Life-course savings scheme tax credit (per year of participation until end 2011)</td>
<td>210</td>
<td>209</td>
</tr>
</tbody>
</table>
4. **Valuation criteria for the work-related costs scheme in 2017**

The standard amounts for the work-related costs scheme have not changed for 2017. The following standard amounts will apply in 2017:

- specific exemption for commuting and business travel: maximum €0.19 per kilometre.
- meals at the workplace where there is no attendant business interest: €3.30 (€3.25 in 2016) per free meal. No distinction is made regarding the type of meal (i.e. lunch or dinner, warm or cold). Refreshments provided at the workplace have a zero valuation;
- certain forms of accommodation and lodging: €5.50 (€5.45 in 2016) per day;
- allowance for refurbishment in the event of a business move: maximum €7,750. There is also a specific exemption for the actual cost of moving the inventory and equipment;
- volunteer scheme: maximum €150 per month and €1,500 per year.
- Company products (personnel discounts): 20% of the commercial value with a maximum of €500 per year.

No standard has been set for the benefit of an interest-free or low interest personnel loan – including to finance an own home. The benefit of interest-free or low interest personnel loans is set at the commercial value, i.e. the difference between the interest paid compared with the market rate for the loan concerned. The benefit of an interest-free loan for the purchase of a bicycle, an electric bicycle or an electric scooter is tax free.

### Table 3.2 Overview of reduction in employed person’s tax credit 2016-2017

<table>
<thead>
<tr>
<th>Income (in euros)</th>
<th>2016 is</th>
<th>2016 was</th>
<th>2017 will be</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>400</td>
<td>364</td>
<td>361</td>
</tr>
<tr>
<td>20,000</td>
<td>3,103</td>
<td>3,238</td>
<td>3,192</td>
</tr>
<tr>
<td>30,000</td>
<td>3,013</td>
<td>3,269</td>
<td>3,223</td>
</tr>
<tr>
<td>40,000</td>
<td>2,864</td>
<td>3,051</td>
<td>2,951</td>
</tr>
<tr>
<td>50,000</td>
<td>2,464</td>
<td>2,691</td>
<td>2,591</td>
</tr>
<tr>
<td>60,000</td>
<td>2,064</td>
<td>2,331</td>
<td>2,231</td>
</tr>
<tr>
<td>70,000</td>
<td>1,664</td>
<td>1,971</td>
<td>1,871</td>
</tr>
<tr>
<td>80,000</td>
<td>1,264</td>
<td>1,611</td>
<td>1,511</td>
</tr>
<tr>
<td>90,000</td>
<td>864</td>
<td>1,251</td>
<td>1,151</td>
</tr>
<tr>
<td>100,000</td>
<td>464</td>
<td>891</td>
<td>791</td>
</tr>
<tr>
<td>110,000</td>
<td>64</td>
<td>531</td>
<td>431</td>
</tr>
<tr>
<td>120,000</td>
<td>0</td>
<td>171</td>
<td>71</td>
</tr>
<tr>
<td>130,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
### Final levy and other special rates in the payroll tax

**Table 5.1 Final levy rates**

<table>
<thead>
<tr>
<th>Final levy rates (%)</th>
<th>2017</th>
<th>2017</th>
<th>2016</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Grossed up</td>
<td>Standard</td>
<td>Grossed up</td>
<td>Standard</td>
</tr>
<tr>
<td>Contractors, home workers, sex workers and similar occupations</td>
<td>9.80</td>
<td>9.00</td>
<td>9.80</td>
<td>9.00</td>
</tr>
<tr>
<td>with tax credit</td>
<td>56.20</td>
<td>36.00</td>
<td>56.20</td>
<td>36.00</td>
</tr>
<tr>
<td>without tax credit</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anonymous employees</td>
<td>108.30</td>
<td>52.00</td>
<td>108.30</td>
<td>52.00</td>
</tr>
<tr>
<td>Non-anonymous employees, younger than pensionable age, dependent on annual salary</td>
<td>57.60</td>
<td>36.55</td>
<td>57.60</td>
<td>36.55</td>
</tr>
<tr>
<td></td>
<td>68.90</td>
<td>40.80</td>
<td>67.70</td>
<td>40.40</td>
</tr>
<tr>
<td></td>
<td>68.90</td>
<td>40.80</td>
<td>67.70</td>
<td>40.40</td>
</tr>
<tr>
<td></td>
<td>108.30</td>
<td>52.00</td>
<td>108.30</td>
<td>52.00</td>
</tr>
<tr>
<td>Non-anonymous employees of pensionable age, dependent on annual salary</td>
<td>22.90</td>
<td>18.65</td>
<td>29.90</td>
<td>18.65</td>
</tr>
<tr>
<td></td>
<td>29.70</td>
<td>22.90</td>
<td>29.00</td>
<td>22.50</td>
</tr>
<tr>
<td></td>
<td>68.90</td>
<td>40.80</td>
<td>67.70</td>
<td>40.40</td>
</tr>
<tr>
<td></td>
<td>108.30</td>
<td>52.00</td>
<td>108.30</td>
<td>52.00</td>
</tr>
<tr>
<td>Anonymous employees</td>
<td>108.30</td>
<td>52.00</td>
<td>108.30</td>
<td>52.00</td>
</tr>
<tr>
<td>Continuous shared use of a delivery van by two or more employees</td>
<td>€ 300 per year</td>
<td>€300 per year</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table 5.2 Pseudo-final levy rates

<table>
<thead>
<tr>
<th>Pseudo-final levies (%)</th>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early retirement schemes (RVU)</td>
<td>52%</td>
<td>52%</td>
</tr>
<tr>
<td>Excessive severance packages</td>
<td>75%</td>
<td>75%</td>
</tr>
</tbody>
</table>

### Table 5.3 Different rates for special groups of employees

<table>
<thead>
<tr>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artists and professional athletes</td>
<td></td>
</tr>
<tr>
<td>• resident in the Netherlands</td>
<td>36.55%</td>
</tr>
<tr>
<td>• resident in a treaty country</td>
<td>20.00%</td>
</tr>
<tr>
<td>• resident in a non-treaty country</td>
<td>20.00%</td>
</tr>
<tr>
<td>Contractors, home workers, sex workers and similar occupations</td>
<td></td>
</tr>
<tr>
<td>• with tax credit</td>
<td>9.00%</td>
</tr>
<tr>
<td>• without tax credit</td>
<td>36.00%</td>
</tr>
</tbody>
</table>

### 6. Other figures

<table>
<thead>
<tr>
<th>2017</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum customary salary for shareholders with a substantial interest</td>
<td>€45,000</td>
</tr>
<tr>
<td>Minimum customary salary for starters</td>
<td>Statutory minimum wage (approx. €20,000)</td>
</tr>
<tr>
<td>Pseudo-final levy for severance packages in excess of</td>
<td>€540,000</td>
</tr>
</tbody>
</table>

**Income thresholds for 30% facility**

Certain salary standards (i.e. taxable salary) apply for incoming employees with scarce specific expertise.
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