

2023 Payroll Special

The 2023 Payroll Special is a handy reference work for you as an employer or HR professional.

It contains up-to-date figures for the minimum wage, contribution percentages for employee insurance schemes, the income-related healthcare insurance contribution, unemployment insurance contributions and employed person's tax credits, the low-income allowance and wage expense allowance, and the customary salary for directors/major shareholders (DGAs), amongst other things.

In this edition you will also find information relating to company cars, the homeworking allowance, the work-related expenses scheme and the transition payment.

Please note:

We are keen to ensure we provide up-to-date information. As we are writing, however, new measures may be announced by the government. The overview in this special is based on the information available as at 5 p.m. on 9 January 2023.

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1 Payroll tax and national insurance contributions – miscellaneous

1.1 Changes to income tax

The basic rate of income tax has been cut to 36.93% in 2023 (37.07% in 2022). This rate applies to income up to € 73,031. People in work and benefit recipients will both benefit from this reduction.

Table 1. Box 1 tax rates in 2023 for people without a state pension

Taxable income	Rate for 2023
€ 0 to € 73,031	36.93%
€ 73,032 or more	49.50%

General tax credit

The maximum general tax credit is increasing from € 2,888 in 2022 to € 3,070 in 2023. From an income of € 22,660 (2022: € 21,317) the general tax credit is reduced by 6.095% (2022: 6.007%). From an income of € 73,031 (2022: € 69,398) this tax credit is zero.

Employed person’s tax credit

The employed person’s tax credit has been raised in 2023 for incomes between € 37,697 and € 115,301. In 2023 the maximum employed person’s tax credit amounts to € 5,052, compared to € 4,260 in 2022. The rate by which it is reduced for higher incomes is increasing from 5.86% in 2022 to 6.51% in 2023. The rise in this tax credit will also benefit the purchasing power of people on lower incomes in particular.

1.2 Statutory minimum wage

The statutory minimum wage has increased by as much as 10.15% with effect from 1 January 2023. This means the monthly minimum wage amounts to € 1,934.20. The minimum wage applies to employees aged 21 and above and is adjusted in line with wages under collective labour agreements on 1 January and 1 July each year. It is applicable to a full working week. How many hours per week this amounts to differs from sector to sector. It can be 40 hours, although some sectors employ a shorter working week of 38 or 36 hours, for example. The intention is to introduce a statutory minimum hourly wage from 1 January 2024, based on a 36-hour working week.

Minimum youth wages also rising

The minimum youth wages are a fixed percentage derived from the minimum wage and are therefore also increasing by 10.15%. Details of the statutory minimum wage that applies from 1 January 2023 for each age group are presented in the table below.

Age	Scale	Per month	Per week	Per day
21 and above	100%	€ 1,934.40	€ 446.40	€ 89.28
20	80%	€ 1,547.50	€ 357.10	€ 71.42
19	60%	€ 1,160.65	€ 267.85	€ 53.57
18	50%	€ 967.20	€ 223.20	€ 44.64
17	39.5%	€ 764.10	€ 176.35	€ 35.27
16	34.5%	€ 667.35	€ 154.00	€ 30.80
15	30%	€ 580.30	€ 133.90	€ 26.78

Work-based learning pathway (BBL)

For apprentices who are following the work-based learning pathway (BBL) and are aged between 15 and 17 or 21 or older the same amounts apply as are applicable to other young workers. However, different statutory minimum youth wages apply to BBL apprentices in the 18-20 age group. The details for each age group are presented in the table below.

Age	Scale for BBL	Per month	Per week	Per day
20	61.50%	€ 1,189.65	€ 274.55	€ 54.91
19	52.50%	€ 1,015.55	€ 234.35	€ 46.87
18	45.50%	€ 880.15	€ 203.10	€ 40.62

1.3 Contributions for employee insurance schemes in 2023

In 2023 national insurance contributions (under the General Old Age Pensions Act (AOW), Surviving Dependants Act (Anw) and Long-Term Care Act (Wlz)) are unchanged from the 2022 level. Some contributions for employee insurance schemes (surcharge under the Childcare Provisions Act (Wko) and contribution to the Implementing Fund for the Government (Ufo)) are also being kept at the 2022 level in 2023, while others have been slightly reduced (General Unemployment Fund (AWf)) or increased (Invalidity Insurance Fund (Aof)). However, the maximum wage assessable for contributions has been set at a significantly higher level for 2023 than 2022 (€ 66,956 in 2023 compared to € 59,706 in 2022).

From 1 January 2023 you must apply the following contributions when completing the payroll tax return for your employees.

Contributions		2022	2023
AOW	General Old Age Pensions Act	17.90%	17.90%
Anw	Surviving Dependants Act	0.10%	0.10%
Wlz	Long-Term Care Act	9.65%	9.65%
AWf low	General Unemployment Fund	2.70%	2.64%
AWf high	General Unemployment Fund	7.70%	7.64%
Ufo	Implementing Fund for the Government	0.68%	0.68%
Wko surcharge	Surcharge under Childcare Provisions Act	0.50%	0.50%
Aof low	Invalidity Insurance Fund	5.49%	5.82%
Aof high	Invalidity Insurance Fund	7.05%	7.11%

Invalidity Insurance Fund and Return to Work Fund contribution

The Invalidity Insurance Fund (Aof) contribution and the contribution for the Return to Work Fund (Whk) are differentiated contributions.

In the case of the Aof contribution a distinction is made between a low contribution in 2023 for small employers with an assessable 2021 wage bill not exceeding € 905,000 and a high contribution in 2023 for medium-sized and large employers with an assessable 2021 wage bill of more than € 905,000.

For the Whk contribution a distinction is also made between small employers (assessable 2021 wage bill not exceeding € 905,000), medium-sized employers (assessable 2021 wage bill of more than € 905,000 but not exceeding € 3,620,000) and large employers (assessable 2021 wage bill of more than € 3,620,000).

Whk contributions are determined on a sector-by-sector basis for small employers, while for large employers they are determined individually depending on the risk of incapacity for work within the company. For medium-sized employers Whk contributions are calculated as a weighted average of an individually set percentage and a sectoral percentage.

Maximum wage assessable for contributions in 2023

The maximum wage assessable for contributions is increasing substantially in 2023 and will amount to € 66,956 on an annual basis, compared to € 59,706 in 2022. As an employer you do not pay contributions to employee insurance schemes on the portion of the wage above the maximum assessable wage. However, due to the increase in the maximum assessable wage in 2023 you will pay more in such contributions compared to 2022 for employees whose wage exceeds € 59,706 (the maximum assessable wage in 2022). This maximum assessable wage is also used when calculating the income-related healthcare insurance contribution.

1.4 Percentages for income-related healthcare insurance contribution in 2023

The percentages for the income-related contribution under the Healthcare Insurance Act (Zvw) are 0.07% lower in 2023 than in 2022.

Employees

As a result of the reduction, in 2023 employers will owe a contribution of 6.68% of the assessable wage for their employees instead of 6.75% in 2022.

Self-employed persons and directors/major shareholders

In the case of self-employed persons and directors/major shareholders (DGAs) the healthcare insurance contribution will amount to 5.43% for 2023 (5.5% in 2022).

The above changes are also shown in the table below.

Contribution	2022	2023
Employer levy under Zvw	6.75%	6.68%
Employee contribution under Zvw	5.5%	5.43%

Maximum assessable income going up

A maximum assessable income also applies under the Zvw. In 2023 this maximum is increasing from € 59,706 (2022) to € 66,956. The healthcare insurance contribution is payable on income up to this maximum level. This means that in 2023 employers will pay a maximum of € 442.51 more in healthcare insurance contributions for their employees than they did in 2022, in spite of the lower percentages.

1.5 Practical learning subsidy scheme

The subsidy is an allowance for the costs that employers incur for supporting an apprentice, participant or student. The current scheme was due to run until the end of the 2021/2022 academic year. However, the Ministry of Education, Culture and Science has decided to extend it by a further year, which means you can also apply for a practical learning subsidy for the 2022/2023 academic year. In 2023 it will be possible to submit applications from Friday 2 June 2023 to Friday 15 September 2023 at 5 p.m.

The ministry's decision on whether to extend the scheme any further will be based in part on the results of the evaluation (this was scheduled for 2022, but has not yet been published at the time of issuing this newsletter).

Approved work placement companies at upper secondary vocational level (MBO) in the agricultural, hospitality and recreation sectors receive an additional supplement on top of the practical learning subsidy. This supplement is available for five years (up to the end of 2024). It is not yet known whether the practical learning subsidy will be extended after the 2022/2023 academic year, nor how the supplement will be made available for the academic years after 2022/2023.

1.6 SLIM subsidy scheme in 2023

In 2023 SMEs will again be able to receive a subsidy for certain types of training, via the Learning and Development at SMEs Incentive Scheme (SLIM). The first application period runs from 1 March to 30 March 2023 and the second from 1 September to 28 September 2023. The application period for alliances of SMEs and large companies within the agricultural, hospitality and recreation sectors runs from 1 July to 27 July 2023.

The level of the subsidy, as a percentage of eligible costs, depends on factors including the size of the company and the nature of the projects. Broadly speaking, the subsidy is as follows:

	Subsidy as a percentage of eligible costs	Minimum eligible costs	Maximum subsidy
Small business	80%	€ 5,000	€ 25,000
Medium-sized business	60%	€ 5,000	€ 25,000
Large business	60%	€ 5,000	€ 200,000
Alliances	60%	€ 210,000	€ 500,000

In 2023 the subsidy ceilings are the same as in 2022 and amount to € 15 million for the period from 1 March to 30 March and € 14.2 million for the period from 1 September to 28 September. For the subsidies intended for alliances and large companies the ceilings are € 17.5 million and € 1.2 million respectively for the period from 1 July to 27 July.

Please note:

The SBI code from the CBS (Statistics Netherlands) must be used to demonstrate that a company operates in the agricultural, hospitality or recreation sector.

Which SMEs are eligible?

A company is regarded as an SME for the purposes of the SLIM subsidy if it employs fewer than 250 people and has an annual turnover not exceeding € 50 million and/or an annual balance sheet total not exceeding € 43 million.

1.7 Additional reduction in tax burden for SMEs: R&D tax credit (WBSO)

From 2023 to 2027 the government is making an additional € 500 million per year available to reduce the tax burden for SMEs.

The WBSO is a tax credit against payroll costs for research and development and is intended to promote innovation. Companies with employees can also obtain an additional deduction based on other costs and expenses associated with the R&D project, such as the purchase of materials.

In 2023, as in 2022, the credit will amount to 32% of innovation costs up to € 350,000 (40% for technology start-ups), and 16% above this figure.

Indexation of WBSO

The package intended to reduce the tax burden on SMEs also includes an indexation of the WBSO.

This indexation relates to the total WBSO budget. For 2023 a budget of € 1,437 million is available.

The purpose of the indexation is to raise the budget in line with the actual wage and price increases that push up R&D payroll costs, to avoid budget overruns as much as possible.

1.8 Customary salary

When a director/major shareholder (DGA) determines the level of his/her salary, the highest of the following amounts must be taken as a basis:

- the salary for the most comparable position;
- the highest salary received by the other employees of the company or affiliated companies (legal entities);
- € 51,000 (2022: € 48,000).

Abolition of efficiency margin

As of 2023 the 25% efficiency margin, which allowed a DGA to take 75% of the salary for the most comparable position as a basis in 2022, is being abolished. From 2023 onwards 100% of the salary for the most comparable position must be taken as the reference amount.

Transitional arrangements

Have you made an agreement with the Tax and Customs Administration on the level of your customary salary and made use of the efficiency margin? If so, this agreement will continue to apply. However, the applicable amount will be 100% rather than 75% of the salary you have agreed on for the most comparable position. The DGA's customary salary in 2023 will therefore be the 100% salary.

Please note:

To set the salary at a level lower than € 51,000, you need to plausibly demonstrate that the salary received for the most comparable position is lower than € 51,000. If you are unable to do so, the customary salary will amount to a minimum of € 51,000.

Tip:

The customary salary of a director/major shareholder is taxed in box 1 and this rate quickly rises to 49.5%. It is therefore usually beneficial to keep your actual salary in cash as low as possible. Taxed and untaxed expense allowances can be deducted from it. However, these must be clearly attributable to the director/major shareholder. Your salary can also be reduced by the amount of the addition to taxable income for private use of a company car. These salary components are all part of your customary salary and thus make it possible to set your actual salary in cash at a lower level.

Lower customary salary for innovative start-ups

This statutory exception has been abolished with effect from 2023. If you took advantage of it for the first time in 2021 or 2022, you can continue to do so for the maximum period of three years (transitional arrangements). However, you must continue to meet the conditions for the whole period.

Consultation possible

The Tax and Customs Administration has indicated that a salary that is lower than the customary salary is possible under certain circumstances, for example if a company is suffering structural losses and in the case of start-ups. The basic premise here is that the salary must be no lower than the statutory minimum wage, although there may be objective reasons for taking a salary lower than the statutory minimum wage as a basis. In the event of doubt it is possible to contact the Tax and Customs Administration.

1.9 eHerkenning compensation payment

Employers who submit their payroll tax return themselves are now only able to do so via the new portal of the Tax and Customs Administration. They are required to use eHerkenning for this purpose, which means they incur costs. A compensation scheme has been introduced to support organisations.

For the period from 1 October 2022 to 30 September 2023 it is possible to apply for compensation until 30 September 2023. RVO will pay the compensation of € 24.20 including VAT directly to the entrepreneur who has incurred costs to acquire the eH3 login tool of the Tax and Customs Administration. The amount of the compensation is based on the lowest price on the market. It is possible to apply for the compensation online via RVO.nl.

1.10 Temporary relaxation of early retirement levy

Since 1 January 2021 a temporary threshold-based exemption has been in place for early retirement schemes. This means that as an employer you will be exempt, temporarily and subject to certain conditions, from the 52% early retirement levy provided that the payments made under the early retirement scheme remain below the amount of the threshold-based exemption.

The intention of this temporary relaxation is to allow employers to support older employees who could not have anticipated the increase in the state-pension age and cannot continue working up to state-pension age for health reasons.

The conditions that apply to the exemption are as follows:

- The payment under the early retirement scheme is granted in (at the most) the 36 months immediately preceding the date on which the employee reaches state-pension age.
- The amount of the exemption is calculated each month.
- The early retirement exemption applies to the period of no more than 36 months immediately preceding state-pension age. If the payment starts less than 36 months before state-pension age, the exemption applies only for the remaining months.
- The employee reaches an age that is (no more than) 36 months before state-pension age by 31 December 2025 at the latest.
- The early retirement exemption does not exceed an amount that, after deduction of payroll tax and national insurance contributions, is equal to the net state-pension



payment for single persons that applies on 1 January of the year in which payment is made.

If, as an employer, you make a payment under an early retirement scheme prior to the 36-month period immediately preceding the date on which the employee reaches state-pension age, you will owe the regular early retirement levy of 52%. You will also owe this regular levy on the portion of the amount above the threshold for the early retirement exemption.

Example:

In this example an exemption of € 2,037 per month is taken as a basis. An employee reaches state-pension age on 20 June 2025. On 1 July 2023 the employee receives a one-off early retirement payment from the employer. The period between receipt of this payment and the employee reaching state-pension age is 35 months and 19 days. This period can be rounded up to whole months, meaning that 36 months are taken into account for the purposes of the exemption. The exemption amounts to € 73,332 (36 months times € 2,037).

The early retirement exemption applies over the period from 1 January 2021 to 31 December 2025. On the basis of the transitional arrangements, a grace period applies under the conditions described below for 2026 to 2028. If an early retirement scheme has been agreed in writing by 31 December 2025 at the latest and the employee has reached an age that is (no more than) 36 months before state-pension age, on the basis of the transitional arrangements further payments can be made under this scheme from 2026 to 2028 while benefiting from the early retirement exemption.

You should use code 53 ('Payment within the context of early retirement') for a payment under an early retirement scheme. You use this code regardless of whether the exemption from the pseudo final levy applies. The green special remuneration table is and remains applicable to the regular levy.

Agreements with social partners

Social partners may make agreements on early retirement for specific groups of workers. This may be linked to the strenuous nature of the work, combined with the increase in the state-pension age. If such arrangements exist within a sector and you meet the conditions, the payment made by the employer is reimbursed by the social partners.

Please note:

The social partners may also transfer the payment directly to your employee, which means you do not have to do this yourself.

1.11 Correction of applied anonymous rate

You must apply the anonymous rate if your employee has failed to provide his/her full or correct details, such as his/her name, address or citizen service number (BSN). If you receive the full/correct details from your employee during the course of the year, you then apply the regular rate from that point on. Up to the end of 2022 it was not permitted to correct an earlier deduction that had been based on the anonymous rate. The employee could offset this deduction later via his/her income tax return, which could then result in the employee receiving a refund.

From 2023 an earlier deduction of payroll tax/national insurance contributions at the anonymous rate can now be corrected after you receive the full/correct details. This must be done in the same year, however. Corrections must be sent for the returns submitted earlier that year.

Example:

Employee A joins your company on 1 April. He does not provide you with a BSN. You therefore apply the anonymous rate of 52%. His gross monthly salary is € 1,000. From April to August you deduct € 520 per month. At the beginning of September the employee gives you his BSN. From the next salary payment onwards you apply the appropriate table, based on the payment frequency of the employee's pay. In the case of a monthly salary of € 1,000 the deduction is € 8 (indicative example). You can submit corrections for the periods April to August. These should be submitted with the return for September. For these five returns the corrections mean that you can offset € 520 - € 8 = € 512 with your return for September. You settle this amount of (5 x € 512 =) € 2,560 with your employee on a net basis. After all, viewed retrospectively, you have made a deduction that is lower by this amount.

1.12 Objection against additional payroll tax assessment

In an additional payroll tax assessment the Tax and Customs Administration determines the amount of tax or contributions to be paid, but often also other matters too, such as tax interest and penalties. From 2023 you no longer have to lodge an objection separately against all these different elements: an objection against one element will be considered an objection against them all. The same will apply if you wish to appeal against the decision on your objection.

1.13 Time limit for charging interest in event of additional payroll tax assessments

If you ask the Tax and Customs Administration to impose an additional payroll tax assessment or if you send a correction report that results in an additional assessment, in certain situations you will be charged tax interest. From 2023 the Tax and Customs Administration will charge the tax interest for no more than ten weeks after receiving your request, even if it takes longer than this to deal with it.

1.14 Untaxed volunteer's allowance increasing to € 1,900 in 2023

On 1 January 2023 the level of the maximum untaxed volunteer's allowance increased to € 1,900 per year.

Annual indexation

You can grant volunteers who perform voluntary work within your organisation an allowance that will not be taxed by the tax authorities. This maximum untaxed volunteer's allowance is indexed annually.

Higher allowance?

No tax or contributions are payable on volunteer's allowances up to € 1,900. Do you pay a volunteer a higher allowance? If so, this is only untaxed if you pay the allowance to refund the costs the volunteer has incurred to carry out the voluntary work.

Conditions applicable to volunteer's allowance

To take advantage of the tax rules applicable to an untaxed volunteer's allowance, you have to meet a number of conditions:

- your organisation:
 - is not liable for corporation tax or is exempt from it
 - is a sports association or sports foundation
 - is a public benefit organisation (ANBI); and
- the volunteer is not in your employment; and
- the volunteer does not perform the work as part of his/her profession; and
- the allowance the volunteer receives for the work is not a sum that reflects the scope of the work or the time taken to perform it.

1.15 Deduction of healthcare insurance premium from minimum wage in 2023

As an employer you can transfer the nominal healthcare insurance premium directly to the health insurer on an employee's behalf. In 2023 a maximum of € 1,649 can be deducted from the minimum wage for this purpose. The group-insurance discount on health insurance policies has been abolished with effect from 2023.

At least minimum wage to be paid to employee

As an employer you are not permitted to make deductions from the employee's wage if he/she would be left with less than the minimum wage. At least the statutory minimum wage must be paid to your employee. An exception applies if your employee has granted you written authorisation to make payments to the health insurer on his/her behalf relating to the nominal premium (premium payable for a health insurance policy) and the excess reinsurance premium (premium payable for insurance to cover the mandatory excess).

Maximum deduction from minimum wage

A maximum applies to the amount you can deduct from the minimum wage as an employer. In accordance with the 2023 Estimated Average Nominal Premium Regulation, the nominal premium amounts to € 1,649 per year (2023). Each month you are allowed to deduct up to 1/12th of the average nominal premium from the minimum wage to pay the health insurer. This corresponds to a rounded amount of € 137.42 per month.

Nominal healthcare insurance premium versus income-related healthcare insurance contribution

The nominal healthcare insurance premium is not the same as the income-related healthcare insurance contribution. As the employer, you deduct the latter from the employee's wage.

2 Transport

2.1 Company car

In 2023 there will be no changes to the addition to taxable income for new cars with CO₂ emissions of more than 0 grams per kilometre. As in previous years, this will remain at 22%. There will, however, be changes to the addition to taxable income for electric cars.

Increase in addition to taxable income for electric cars

In 2023 the addition for a fully electric car amounts to 16% for the portion of the list price up to € 30,000. This percentage applied on the portion of the list price up to € 35,000 in 2022. In the case of a car that costs more than € 30,000, an addition of 22% applies to the excess amount.

The impact of the increase in 2023 is explained below with the help of an example.

Example:

An employee has an electric car with a list price of € 90,000. The addition on the first € 30,000 of the list price is 16%, with 22% applying to the remaining € 60,000, or € 18,000 per year. In 2022 the same employee would have paid a 16% addition on € 35,000 and 22% on the remaining € 55,000, or € 17,700 per year. This is a difference of € 300 per year.

Further increase in addition to taxable income

The addition to taxable income for electric cars will remain the same in 2024 and will then rise again in 2025 (see table below). From 2026 onwards the regular addition of 22% will apply to an electric car. This will be applied to the full list price.

Year	Discount percentage	Addition after applying discount	List price
2023	6%	16%	€ 30,000
2024	6%	16%	€ 30,000
2025	5%	17%	€ 30,000
2026 onwards	0%	22%	N/A

Please note:

The addition is fixed for 60 months from the first month after that in which the car is first registered.

After the 60-month period has ended an annual assessment will be performed to determine whether a discount applies to a fully electric car based on the legislation in force at that time.

Exception for hydrogen-powered cars

The cap, which means the discounted addition percentage of 16% does not apply to the portion of the list price above € 30,000 (2023), will not apply to hydrogen- or solar-powered cars.

Consequences for cars dating from 2018

For cars dating from 2018 the 60-month period will expire in the course of 2023. This means that cars that were first registered in 2018 may be subject to a new addition to taxable income in 2023 (if the car was not registered until December 2018, this will not apply until 1 January 2024).

2.2 Reduction of CO₂ emissions from work-related personal mobility

The 'draft decree on the reduction of CO₂ emissions from work-related personal mobility' stems from the climate agreement. Its aim is to cut CO₂ emissions by one megatonne by 2030. It requires employers to report annually to the government on the total business kilometres and commuting kilometres travelled by employees and the type of fuel used for these journeys. If it becomes clear that insufficient progress is being made, a compulsory standard will be introduced for emissions linked to business kilometres. This will not apply to commuting.

These regulations are expected to enter into force on 1 July 2023, which means employers will only have to provide data on personal mobility for the second half of 2023.

Please note:

This obligation only applies to employers who employ at least 100 staff.

2.3 Company bicycle

If an employer makes a bicycle available to an employee and this can also be used for private purposes, each year 7% of the recommended retail price must be regarded as salary and taxed. This also applies if the employer leases the bicycle and makes it available or if the employee leases the bicycle him/herself and all the costs are reimbursed.

'Making available'

The bicycle scheme only applies in cases where a bicycle is 'made available'. This means that the bicycle remains the property of the employer (or leasing company in the case of a leased bicycle) and the employee is only permitted to use it. At the end of the employment relationship the bicycle therefore has to be handed back or acquired by the employee.

Acquisition price

If the employee acquires the bicycle after a certain time, the employer may take the price paid at the time of purchase less depreciation of 20% per year as the acquisition price. This means that, after five years, the employee can acquire the bicycle free of charge and the addition to taxable income will also then no longer apply.

Apply 'cafeteria scheme'?

You can also place the bicycle under a so-called 'cafeteria scheme', which allows the employee to exchange it for gross salary. If you wish, the addition to taxable income can therefore be allocated to the work-related expenses scheme. This may result in an additional benefit for you as an employer, as you will then not have to pay any contributions to employee insurance schemes on this amount.

Payments to third parties

Payments to third parties are not deducted from the addition to taxable income, but can be reimbursed free of tax. The same applies to any electricity charges if the employee charges up an electric bike at home.

Accessories

Accessories that are reimbursed by the employer or supplied as a benefit in kind are exempt from tax if they relate to a bicycle that has been made available. Such accessories may include an extra lock or the reimbursement of repair costs, for example. Accessories will also not result in a higher addition to taxable income.

**Insurance**

The above also applies to bicycle insurance. The Tax and Customs Administration assumes that such insurance is an 'intermediate cost' (cost incurred in advance by the employee and reimbursed by the employer), as the bicycle remains the employer's property.

Rainwear

The Tax and Customs Administration has indicated that, in principle, the reimbursement, supply as a benefit in kind or making available of rainwear is taxable and that you can avoid this by allocating the rainwear to the work-related expenses scheme.

Tip:

You can also avoid tax by making rainwear available on which a company logo covering an area of at least 70 cm² has been printed, as the rainwear will then be regarded as workwear.

3 Work-related expenses scheme

The work-related expenses scheme allows employers to grant their employees all kinds of allowances and benefits in kind free of tax. If the employer remains within the ‘fixed budget’ in a particular year, the employer also pays no tax. If this fixed budget is exceeded, the employer has to pay 80% tax via the final levy. The standard-practice test has to be taken into account.

3.1 Fixed budget in 2023 rising to 3% on taxable wage bill up to € 400,000

As of 1 January 2023 the fixed budget under the work-related expenses scheme will be set at 3% on the portion of the wage bill up to € 400,000. Above this level a rate of 1.18% will apply. This increase will apply for 2023 only. In 2024 the fixed budget will drop back to the previously proposed rate of 1.92% on the wage bill up to € 400,000.

Conditions applicable to fixed budget

To take advantage of the fixed budget, you must designate the allowances in advance as salary for final levy purposes under the fixed budget. In addition, they must not deviate by more than 30% from what is customary in comparable circumstances (the standard-practice test).

Tip:

The assessment for the standard-practice test can be complicated. As a concession, the Tax and Customs Administration considers all allowances not exceeding € 2,400 per person per year to be customary. However, even up to this amount the use of the scheme must be considered to be reasonable. For example, it is not permitted to use the budget of € 2,400 if this will result in your employee’s wage falling below the statutory minimum wage.

Please note:

If the group scheme is applied, the fixed budget is set at 3% on the first € 400,000 of the group’s total wage bill and at 1.18% on the excess amount. The fixed budget of each part of the group cannot be taken as a basis. The group scheme is therefore only advantageous if not every company within the group is using the whole of its fixed budget. After all, the unused portion can then be used by another group company.

Tip:

Check first whether the group scheme would be beneficial for you. You do not need to make a definitive decision until the second return period of 2024.

3.2 Specific exemption for homeworking expenses

Since 2022 it has been possible to grant your employees an untaxed allowance for homeworking expenses. The allowance that you can pay to homeworkers free of tax in 2023 is € 2.15 per day (2022: € 2 per day). This amount is exempt and is also not charged to the fixed budget under the work-related expenses scheme.

Fixed homeworking allowance

If you want to grant a fixed homeworking allowance, you need to make agreements with your employee on the number of days on which he/she will work from home. These agreements form the basis for determining the fixed untaxed allowance for travel and homeworking expenses. If, for example, you and your employee agree that he/she will work from home on

two days a week and in the office on three days a week, you can grant him/her a fixed allowance for both homeworking and commuting expenses on the basis of this ratio. A fixed allowance for homeworking and travel expenses can be granted subject to application of the so-called 214-day scheme (see section 3.3).

Tip:

Draw up a homeworking scheme if you want to make it possible for people in certain jobs or job groups to work from home.

This should include points relating to homeworking, but also information on how inspections will be carried out, for example. Consider the following points:

- The jobs or job groups in which employees will be permitted to work from home, in view of the nature of the role.
- The number of days that an employee can work from home.
- The possibility of contacting the employee and when this should be possible.
- How the workplace inspection will take place.
- How good working conditions will be maintained and how the employer and employee should handle this.

3.3 Travel allowance

In 2023 the exempted travel allowance for employees who use their own transport has increased to € 0.21 per kilometre. It will increase further to € 0.22 per kilometre in 2024.

Employees can only receive a travel allowance for days when they actually travel to a regular place of work. This allowance can be paid on the basis of the kilometres actually travelled, but you also have the option of granting a fixed allowance subject to application of the 214-day scheme.

214-day scheme

A fixed homeworking and/or travel allowance based on 214 working days must be recalculated if the employee generally travels to a regular workplace or works from home on four days, three days, two days or one day per week.

4 Salary Costs (Incentive Allowances) Act

In 2023 the Salary Costs (Incentive Allowances) Act will also consist of three parts:

1. The low-income allowance (LIV)
2. The youth low-income allowance (youth LIV)
3. The wage expense allowance (LKV)

4.1 Payment of incentive allowances

The LIV, youth LIV and LKV for 2022 will be paid automatically in 2023 if it is apparent from the payroll tax returns that an employer is entitled to them. This will take place as follows:

1. The employer will receive a provisional calculation of the LIV, youth LIV and LKV from the Tax and Customs Administration before 15 March 2023. This calculation will be based on the returns and corrections for 2022 that have been submitted up to 31 January 2023.
2. You can submit corrections for 2022 until 1 May 2023. These will then be taken into account in the definitive calculation. Although corrections received after 1 May 2023 will be accepted, they will no longer be taken into account for calculating the various incentive allowances.
3. The Tax and Customs Administration will send a decision containing the definitive calculation of the LIV, youth LIV and LKV to the employer. This will take place before 1 August 2023 on the basis of the information known. It is possible to lodge an objection against this decision.
4. The amounts will be paid out within six weeks of the date of the decision. This will be 12 September 2023 at the latest.

Please note:

For 2022 the LIV per employee per hour was initially due to be set at € 0.49. This was increased to € 0.78 in connection with the rise in the statutory minimum wage. The maximum amount per year was also raised from € 960 to € 1,520 for 2022 for the same reason. These increases will be taken into account in the automatic payment made in the second half of 2023.

4.2 The low-income allowance in 2023

The increase in the low-income allowance (LIV) in connection with the increase in the statutory minimum wage applies to 2022 only. The amounts that will apply in 2023 are as follows:

	LIV per employee per hour	Maximum LIV per employee per year
2023	€ 0.49	€ 960

The 2023 LIV will be awarded if the employee has an applicable average hourly wage (based on a minimum of 100% and a maximum of 125% of the statutory minimum wage). The average hourly wage for 2023 must be equal to or more than € 12.04, but may not exceed € 15.06.

Tip:

You can influence the hourly wage of your employees yourself to make sure you benefit as much as possible from the LIV. For example, you could grant employees who are just above the hourly wage threshold an expense allowance under the work-related expenses scheme in exchange for a slightly lower wage. Naturally, you can only do this within the limits of what is possible under the applicable tax and other legislation.

Conditions applicable to the LIV

The conditions you must meet to be eligible for the LIV are unchanged in 2023:

- The employee satisfies the average hourly wage requirement (based on a minimum of 100% and a maximum of 125% of the statutory minimum wage).
- The employee is insured under the employee insurance schemes.
- The job in question can be regarded as substantial (at least 1,248 paid hours per calendar year).
- The employee has not yet reached state-pension age.

Please note:

2024 (2025 payments) is likely to be the last year in which the LIV is available. The government is preparing a legislative proposal that includes a plan to abolish the LIV from 1 January 2025.

4.3 The youth low-income allowance in 2023

The youth low-income allowance (youth LIV) is an annual incentive allowance for employers linked to the increase in the minimum youth wage resulting from a reduction in the age at which a person is entitled to the adult minimum wage. 2023 (2024 payments) is the last year in which the youth LIV is available. The youth LIV will be withdrawn from 1 January 2024.

Youth LIV amounts for 2023

If an employee falls within the hourly wage thresholds and meets the other conditions, an employer is entitled to the youth LIV for the employee in question. The exact level of the allowance depends both on the number of paid hours and the employee’s age.

Age on 31 December 2022	Youth LIV per hour in 2023	Maximum youth LIV per employee in 2023
20	€ 0.30	€ 613.60
19	€ 0.08	€ 166.40
18	€ 0.07	€ 135.20

Please note:

An employer who makes use of apprentices as part of the work-based learning pathway (BBL) can also be eligible for the youth LIV. The employer will receive this incentive allowance if it pays the apprentice on the basis of the statutory minimum youth wage appropriate for his/her age. The employer may pay the apprentice less than the statutory minimum youth wage, but in this case is not entitled to the youth LIV.

Conditions applicable to the youth LIV

An employer is entitled to the youth LIV for each employee who meets these three conditions:

1. The employee is insured under the employee insurance schemes.

2. The employee has an average hourly wage that complies with the statutory minimum youth wage for his/her age.
3. The employee was 18, 19 or 20 years old on 31 December of the previous year.

The average hourly wage is the wage received from employment over a year, divided by the number of paid hours during that year.

4.4 Wage expense allowances in 2023

Employers who take on older benefit recipients, persons with an occupational disability and persons who fall within the target group of the job arrangement for persons with an occupational disability and the target group of persons with an interrupted education due to illness or disability (*scholingsbelemmerden*) are entitled to so-called wage expense allowances (LKVs). The conditions applicable to these will remain the same in 2023.

Amounts for 2023

LKV	Amount per paid hour	Maximum amount per year	Duration
Older employee	€ 3.05	€ 6,000	3 years
Employee with an occupational disability	€ 3.05	€ 6,000	3 years
Persons within target group of job arrangement and persons with interrupted education	€ 1.01	€ 2,000	3 years
Redeployment of employee with occupational disability	€ 3.05	€ 6,000	1 year

The government is preparing a legislative proposal in which it is suggesting a number of changes to the system used for wage expense allowances (LKVs) from 1 January 2025:

- In the case of the wage expense allowances for older employees, employees with an occupational disability and redeployment of employees with an occupational disability, a new employer will be able to receive a wage expense allowance for an employee who has previously obtained a target group declaration that has not yet expired.
- The conditions applicable to the wage expense allowance for the redeployment of employees with an occupational disability are being changed to make it easier for employers to claim this allowance.

4.5 Salary Costs (Incentive Allowances) Act and transfers of undertakings

In the event of a transfer of an undertaking, the Tax and Customs Administration's position is that a wage expense allowance lapses and is not transferred to the acquiring employer. In 2022 the Arnhem-Leeuwarden Court of Appeal ruled in a case brought before it that in such a situation a wage expense allowance should in fact be included in the transfer to the acquiring employer. The case concerned the expiry of the target group declaration. The court ruled that this declaration remains valid, as it is applied for and obtained by or on behalf of the employee, and not by or on behalf of an employer. All rights and obligations are transferred, including the wage expense allowance. An appeal in cassation has been lodged, which means the ruling is not yet final. However, in 2022 check the wage expense allowance



box in your payroll tax return to ensure you do not miss out on any entitlements. If your provisional calculation for 2023 is incorrect, submit an objection promptly.

In the case of the LIV, the courts have already taken a similar position on two previous occasions, ruling that the employee's paid hours accrued at the transferring employer should also count at the acquiring employer. Check the provisional calculation from the UWV in 2023 and, if necessary, submit an objection to avoid losing any entitlements.

5 International

5.1 Cross-border workers

As a result of the coronavirus crisis, it is not uncommon for employees to be working or to have carried out work in a country other than their normal country of employment. In accordance with the general rules, in such cases the country where tax and/or national insurance contributions are normally payable may change. Up to 1 July 2022, various countries had agreed, against the background of the coronavirus crisis, that the obligation to pay tax or contributions would not be transferred.

This agreement has now expired as far as the obligation to pay tax is concerned. In the case of contributions the arrangement has been extended until 1 July 2023. The social security obligation for this group of employees will therefore not change before that date.

5.2 Ukrainian employees on the payroll

In recent months many employers have taken on Ukrainian employees. Below we set out the most important aspects to be taken into account for this target group.

General

When recruiting foreign workers, employers need to comply with certain laws and regulations. Under the Temporary Protection Directive, Ukrainian refugees are able to stay in the European Union until at least 4 March 2024 without having to apply for asylum. This period may be extended in several stages up to a maximum of three years.

The website of the Immigration and Naturalisation Service (IND) indicates precisely to whom the Temporary Protection Directive applies (<https://ind.nl/nl/oekraïne/richtlijn-tijdelijke-bescherming-oekraïne#voorwaarden-richtlijn-tijdelijke-bescherming>).

The general rule is that asylum seekers are not permitted to work for the first six months after their arrival. An exception has been made to this rule for Ukrainians.

If a Ukrainian is registered with the municipality, the IND will provide proof of residence. This takes the form of a sticker in the person's passport or a separate piece of paper; in some cases a pass (O-document) is issued. You can see what the sticker looks like and what information is on it by following this link (<https://ind.nl/nl/documenten/06-2022-wat-betekent-dat-voor-u0.pdf>).

Since 1 November 2022 this proof of residence, allowing the Ukrainian national to demonstrate that he/she has permission to be in the Netherlands, has been required to be able to work.

Work permit

Since 1 April 2022, with retroactive effect from 4 March 2022, employers have no longer needed to apply for a work permit for Ukrainians. Certain conditions apply, however:

- Refugees from Ukraine are only permitted to work in an employed capacity.
- Employers must register the new employee with the UWV no later than two working days before the new employee's first day of work. When registering an employee you must provide information on his/her activities, working hours and place of work. See the following link: <https://www.uwv.nl/werkgevers/formulieren/melden-tewerkstelling-van-een-tijdelijk-beschermde-werknemer-uit-oekraïne.aspx>

- The Ukrainian refugee must demonstrate by means of a sticker or O-document issued by the IND that he/she falls under the Temporary Protection Directive.

Please note:

Failure to register or register on time constitutes a breach of the Foreign Nationals (Employment) Act.

The work permit exemption applies to individuals with Ukrainian nationality who were residing in Ukraine on 23 February 2022, fled Ukraine on or after 27 November 2021 or can demonstrate that they were already residing in the Netherlands before 27 November 2021. Family members (spouses, unmarried under-age children and other close family members) of the persons referred to above also qualify for the exemption.

Self-employed persons

If a customer wishes to place work with a Ukrainian refugee who is working in a self-employed capacity, the latter must hold a residence permit as a self-employed person or the customer must be in possession of a work permit.

Temporary workers

In the case of a temporary worker, the employment agency registers the worker with the UWV. The exemption for Ukrainian temporary workers is subject to the same conditions as the exemption for Ukrainians working in an employed capacity.

Trainees

Refugees from Ukraine may undertake a work placement as part of their training if they fall under the Temporary Protection Directive. The trainee does not need to be registered with the UWV. However, the employer must agree on a work experience contract with the trainee and the educational institution.

Employment contract

An employer can take on a Ukrainian national on the basis of an employment contract. This employee will have the same rights as a Dutch employee (minimum wage, holiday, safe working environment, etc.). It is also advisable to draw up the employment contract in a language that the Ukrainian understands. After all, the employee must have a clear idea of what he/she can expect and what is expected of him/her.

Citizen service number (BSN)

To be able to work in the Netherlands, workers from Ukraine also need a citizen service number. They will receive this when they register with the municipality in which they are residing.

Bank account number

Employers are not allowed to pay the minimum wage owed on the basis of the Minimum Wage Act in cash. A bank account is therefore required.

If the employee still has his/her own bank account in Ukraine and is able to access it, the wage may also be paid to that account number. The employee may also contact a Dutch bank with a view to opening an account.

Refugees who are not yet able to open a current account, because, for example, they do not yet have suitable proof of identity, qualify for a temporary prepaid debit card from the

municipality in which they are residing. The municipality can use this card to provide a living allowance to the individual concerned. A cardholder can then use this allowance to pay for everyday necessities and make other payments in the Netherlands, for example.

Proof of identity

As is the case for other employees, it is necessary to establish the individual's identity and the employer must therefore check whether the passport, identity card or travel document is genuine and valid. The characteristics of Ukrainian documents can be found at <https://www.edisontd.nl/>.

Health insurance

A Ukrainian employee is also required to take out a health insurance policy if he/she will be working in the Netherlands. This is, of course, subject to the condition that he/she falls under the compulsory insurance obligation in the Netherlands.

Payroll tax/contributions

As, in virtually all cases, the Ukrainian nationals will be working in the Netherlands only, they will be liable to pay national insurance contributions and contributions to employee insurance schemes in the Netherlands.

The tax credits (in particular the employed person's tax credit and general tax credit) consist of a national insurance component and a tax component.

National insurance component of tax credits

Ukrainians who are working and compulsorily insured in the Netherlands are at least entitled to the national insurance component of tax credits.

Tax component of tax credits

The situation is rather more complex when it comes to the tax component of tax credits.

Since 2019, in the area of payroll tax, a distinction has been made between three groups for the purposes of applying the tax component of tax credits (the general and the employed person's tax credits):

1. Residents of the Netherlands
2. EU and EEA residents
3. Others

1

Residents of the Netherlands are entitled to the tax component of tax credits when payroll taxes are deducted (if the conditions are met).

2

EU and EEA residents are only entitled to the employed person's tax credit when payroll taxes are deducted. If they earn more than 90% of their income in the Netherlands, they are also entitled to the general tax credit. In this case this must be obtained through an income tax return or a provisional refund.

3

In the case of other persons no tax credits may be applied when payroll taxes are deducted. However, if these employees earn 90% or more of their income in the Netherlands, they can

still obtain the tax credits through an income tax return, although this involves a greater effort.

The employer must calculate the payroll taxes to be deducted and therefore also determine the group to which an employee belongs.

Please note:

The employer has to do this for every employee and therefore also for Ukrainian nationals.

Ukrainians who are currently in the Netherlands belong to group 3 or 1. After all, Ukraine is not part of the EU or EEA. The employer therefore has to determine a Ukrainian's place of residence. Is it in the Netherlands or elsewhere? But how do you actually determine a person's place of residence?

This is established on the basis of facts and circumstances, which can therefore differ from one employee to another. Aspects that are taken into account in the assessment include:

- Where is the family residing?
- Where is work performed?
- Where does a person maintain a home?
- Where is a person registered in the municipal database?
- Are gas, water and electricity consumed and paid for at the home address?
- Where does a person have a bank account and where does he/she make payments/use a debit card?
- Where is the bank based?
- How long has a person been living, working and residing in the Netherlands (and/or the other country)?
- Where is a person's social life and where do his/her family and friends reside?
- Where does he/she have memberships, subscriptions and insurance, and where is he/she treated for illness, etc.?
- What are the employee's intentions?

This assessment to determine the place of residence is particularly difficult for Ukrainians. They are in the Netherlands not by choice, but out of necessity, and the question is whether they will be able to return and, if so, when. Furthermore, at present their residency status is only valid until 4 March 2024.

As the assessment to determine the place of residence is complex under normal circumstances, and particularly so in this case, at the beginning of April 2022 the Tax and Customs Administration was asked for its position. As yet it has not issued a response. To date, then, the assessment has been left to the employer and employee.

When determining the employee's place of residence for tax purposes, the withholding entity must rely on all facts and circumstances known to it, including the employee's declaration regarding his/her place of residence. If the place of residence has been determined in all reasonableness, the Tax and Customs Administration will not impose an additional assessment on the withholding entity if the inspector reaches a different opinion regarding the place of residence for tax purposes. If the employer determines, in all reasonableness and based on all the information known to it, that the Netherlands is the place of residence, there will be no subsequent additional assessment. This means, however, that the employer

must try to gather the relevant facts and circumstances and therefore also obtain information from the employee.

Please note:

To avoid the risk of an additional assessment, it is very important to keep good (written) records and include these in your payroll accounts.

Please note:

If a Ukrainian is considered to be a resident of the Netherlands, this may also have tax-related consequences (income tax) for other income components and/or assets.

Please note:

If the place of residence is not in the Netherlands, but the temporary address in the Netherlands is entered in the payroll accounts, the anonymous rate must be applied.

Employers who want to obtain certainty can opt for group 3. The disadvantage in this case, however, is that the employee's net pay will be lower. The employee can try to obtain the tax credits later via his/her income tax return, although this is likely to be difficult in many cases.

RefugeeWork

The platform RefugeeWork (www.refugeework.nl) has been launched with the aim of bringing together employers and job seekers with a refugee background. This is an online job platform that publishes vacancies in eleven languages and provides information on statutory schemes for employers and topics such as cultural differences. RefugeeWork advertises entry-level jobs, career advancement roles, work-study programmes and work placements. The platform was launched at IKEA, which has developed a successful programme allowing job seekers with a refugee background to acquire work experience to increase the opportunities available to them on the labour market.

5.3 Standard amounts for highly skilled migrants in 2023

Employers who want to apply the highly skilled migrants scheme for a foreign employee may only do so if this employee receives a certain minimum gross salary every month. From 1 January 2023 the monthly salary requirements are as follows:

- highly skilled migrants under the age of 30: € 3,672
- highly skilled migrants from the age of 30: € 5,008
- highly skilled migrants who enter employment in the Netherlands within three years of completing an approved bachelor's, master's or postdoctoral course: € 2,631
- holder of an EU Blue Card: € 5,867

The amounts all exclude the holiday allowance to which the employee is entitled. The new salary criterion also has to be met if an existing residence permit is extended after 1 January 2023.

What counts towards the salary criterion?

The Immigration and Naturalisation Service (IND) counts expense allowances and fixed bonuses (such as thirteenth-month pay) towards this. The following conditions apply here:

- the allowances and bonuses are included in the contract; and

- the allowances and bonuses are transferred every month to a bank account in the name of the highly skilled migrant or the holder of an EU Blue Card.

The following salary components are not counted:

1. holiday allowance;
2. the value of benefits in kind;
3. irregular salary components that are not certain to be paid out. These may include: overtime payments, gratuities and payments from funds.

Work permit not required

For highly skilled migrants it is not necessary for employers to obtain a combined residence and work permit (GVVA) or work permit (TWV). The same applies to employees with an EU Blue Card. In this case, however, there is an additional requirement that the employee has completed a course of study at a Dutch university or university of applied sciences or an equivalent course of study abroad. In addition, the monthly salary of employees with an EU Blue Card must amount to at least € 5,867 (excluding holiday allowance) in 2023.

Becoming a recognised sponsor

A highly skilled migrant is a foreign worker from outside the EU who is employed by your organisation on account of his/her technical or scientific knowledge. To bring a highly skilled migrant to the Netherlands, your organisation must be designated as a recognised sponsor by the Immigration and Naturalisation Service. The employer then has a specific obligation to provide information and keep records, as well as a duty of care, is entered in the public register of recognised sponsors and is able to apply for residence permits for the highly skilled migrant.

5.4 Standard amounts for 30% scheme in 2023

Under certain circumstances, foreign workers who come to the Netherlands to work on a temporary basis qualify for the 30% scheme. This scheme allows the employer to pay the employee a tax-free allowance to cover the additional costs of his/her stay in the Netherlands (extraterritorial costs). The allowance is capped at 30% of his/her salary, including the allowance.

The following conditions apply to qualify for the 30% scheme:

1. the individual in question has come to the Netherlands to work; and
2. the employee has specific expertise that is scarce or not available at all on the Dutch labour market. This is referred to as the scarcity and expertise requirement. The legislator has introduced a salary standard for this specific expertise; and
3. in more than 16 of the 24 months preceding his/her first working day in the Netherlands the employee lived more than 150 km from the Dutch border.

An employee is considered to satisfy the condition relating to specific expertise if his/her pay is above a set salary standard. This salary standard is indexed annually. For 2023 the salary standard has been set at a taxable annual salary of € 41,954 (2022: € 39,467). This salary standard of € 41,954 excludes the final-levy components and therefore excludes the 30% allowance. In most cases the scarcity of the expertise is no longer subject to specific checks, but it is checked if, for example, all workers with certain expertise meet the salary standard.

No salary standard applies to scientists or employees who are doctors training to become a specialist. In the case of incoming employees who are under the age of 30 and have obtained a master's degree a salary standard of € 31,891 applies in 2023 (2022: € 30,001). The master's degree must be comparable with a master's degree from a Dutch university.

Make sure your employees comply with the new indexed amounts each year.

Cap for 30% scheme in 2024

If you opt to apply the 30% scheme from 2024 onwards, there will be a cap on the amount of specifically exempted reimbursements. This cap will be set at 30% of the standard laid down in the Standardisation of Top Incomes Act (WNT standard). For 2023 the WNT standard is € 223,000. This amount is indexed annually. The maximum untaxed reimbursement therefore amounts to 30% of € 223,000, or € 66,900. These amounts apply on an annual basis. If an employee comes to the Netherlands or returns to the foreign country during the course of the year, this cap is applied pro rata.

Transitional arrangements

The cap will not take effect until 2026 if you applied the 30% scheme to an employee's salary for the last pay period of 2022.

5.5 Annual choice between application of 30% scheme and reimbursement of actual extraterritorial costs

A new development in 2023 is that the employer now has to choose annually between applying the 30% scheme and reimbursing the actual extraterritorial costs. You make this choice in the first pay period of the calendar year in which you are reimbursing extraterritorial costs. The choice then applies for the whole calendar year. If the decision by the Tax and Customs Administration authorising use of the 30% scheme expires in the course of the calendar year, any choice to apply the 30% scheme also ends at that time. In most cases extraterritorial costs can no longer be reimbursed free of tax once the five-year period has expired.

Date on which choice takes effect upon new application

If the application is made within four months of the start of employment, a different choice can be made each month within this four-month period. In month 5 you then make the choice that will apply for the rest of the calendar year.

If the application is made later than four months after the start of employment, for the first four months it is only possible to reimburse the actual extraterritorial costs. A choice is then made for the rest of the calendar year from the date of the decision authorising use of the scheme.

Please note:

You cannot change your choice retrospectively if it becomes clear that you will not comply with the standard in a particular year. In such a case you lose access to the 30% scheme for the entire year.

6 Employment law and social security law – miscellaneous

6.1 Changes to employment law

As a consequence of the Act Implementing the EU Directive on Transparent and Predictable Working Conditions, since 1 August 2022 employers have been required to offer employees greater certainty and clarity in a number of areas. There are also various other points to consider, which are presented below.

Training

The Act states that the employer must allow the employee to follow any training necessary to carry out his/her role and, if this can reasonably be demanded, any training necessary to continue the employment contract if the employee's role becomes redundant or he/she is no longer able to carry it out. It is therefore no longer permitted to agree on a study-costs clause for certain training courses (a clause under which the employer could recover training costs from the employee under certain circumstances). This stipulation applies to:

- training that relates to a role for which the employee was hired; and
- training that is compulsory under the law or a collective labour agreement.

If one of these two conditions is met, the training must be offered free of charge, the study time must be regarded as work time and the training must take place within the employee's regular working hours as much as possible. One example of training required by law is training that is compulsory on the basis of the Working Conditions Act.

Statutory provisions on secondary activities

The Act will include special provisions relating to secondary activities. Given the right to free choice of employment, the employer cannot ban the employee from working for another employer outside of his/her rostered hours. A ban is only justified if there are objective reasons for imposing one.

Objective reasons are understood to include:

- Health and safety
- Protection of confidentiality and company information
- Integrity of public services
- Avoidance of conflicts of interest

An objective reason must therefore be put forward if an employer wishes to rely on a clause prohibiting secondary activities. This also applies to secondary activities agreed on prior to 1 August 2022. Such objective reasons do not have to be included in the employment contract. They only have to be put forward as substantiation in the event that the employer wishes to rely on a clause prohibiting secondary activities.

Employer's obligation to provide information

To protect the employee, after he/she has entered employment an employer must issue him/her with a written or electronic statement containing at least the following information:

- a. names and addresses of the parties;
- b. the location(s) where the work will be carried out; if there is no regular place of work, an indication that work may be carried out in differing locations;

- c. the employee's role or the nature of his/her work;
- d. the date of commencement of employment;
- e. the duration of the employment contract, if it has been entered into for a fixed term;
- f. the holiday entitlement or the manner in which the entitlement is calculated, as well as the entitlement to other forms of leave;
- g. the length of the notice periods to be observed by the parties or the method used to calculate these periods, as well as the procedure and requirements that apply to termination by the employer and employee;
- h. the salary and payment period and – if this depends on the work to be performed – the work to be carried out per day, the price per unit and the time involved in performing the work, as well as the initial amount of the salary, the individual components, and the payment method and frequency;
- i. the usual working hours;
- j. participation by the employee in a pension scheme, if applicable;
- k. if the employee will be working outside the Netherlands for longer than four weeks: the duration, accommodation, social security arrangements, currency used for payment, any allowances and the means of transport for returning to the Netherlands;
- l. a collective labour agreement that applies to the employment relationship, if applicable;
- m. whether it is a question of a temporary employment contract;
- n. whether the employment contract has been entered into for an indefinite period;
- o. whether it is a question of an on-call contract;
- p. in the event of a temporary employment contract, the identity of the hirer;
- q. the duration of and conditions that apply to the probationary period;
- r. if applicable, the right to training offered by the employer;
- s. the identity of social security institutions (in the Netherlands this is the UWV, except in the case of possible supplementary insurance).

With regard to point i, a distinction must be made between predictable and unpredictable employment conditions. The following must be provided in the case of predictable employment conditions:

- the normal working hours per day/week;
- the arrangements for work performed outside normal working hours;
- the remuneration for work performed outside normal working hours;
- arrangements relating to changes to shifts.

If the employment conditions are unpredictable, the following information must be provided:

- the principle that working hours are variable;
- the number of guaranteed paid hours;
- the remuneration for work on top of guaranteed hours;
- days and hours when the employee can be required to work (reference days/hours);
- notice periods for calling the employee to work.

The relevant information must be provided:

- within one week for the information referred to under points a to e, h, i and q;
- within one month for the information referred to under points f, g, j, l to o, r and s;
- before departure for the information referred to under point k.

In the case of the information referred to under points f to i, k and q to s it is sufficient to refer to the collective labour agreement, if an applicable collective labour agreement covers this aspect.

Change to Flexible Working Act (Wfw)

The Wfw regulates employees' rights in relation to changing the length of the working week, working hours and place of work. An employee can ask the employer in writing to change these, provided that a number of conditions are met:

- The employee must have been in employment for at least 26 weeks.
- The request must be submitted in writing at least 2 months before the date on which he/she wants the change to take effect.
- The employer must respond in writing no later than 1 month before the date on which the employee wants the change to take effect. In the absence of a response the request is considered to have been approved.

Change to length of working week and working hours; compelling company or business interests

In principle, the employer is required to agree to a request to change the length of the working week/working hours. Such a request may only be refused on the basis of compelling company or business interests that have been clearly described. These include serious problems relating to safety, for example.

Change to place of work; employer decides/must consider request

A lighter regime applies to the rejection of requests to change the place of work. The employee only has the right to submit a request and the employer has to consider it. However, if the request is rejected, the employer must set out the reasons why. The following changes will result from the introduction of the Work Where You Want Act.

Interests weighed up if request is made to work from home

Under the Work Where You Want Act, an employer only has to agree to a request to work from home if, in view of all the circumstances that apply in the case in question, he/she deems that, in accordance with standards of reasonableness and fairness, his/her interests are outweighed by those of the employee.

This means that, if an employee asks to work from home, an employer has to weigh up all relevant interests. These therefore include the employee's interest in being able to work from home and the employer's interest in not wanting him/her to do so (if that interest exists). This weighing-up of interests can result in the employee's request being rejected.

What interests may come into the equation on the employer's side? The legislator has stated as follows in this regard: 'Elements that could play a role include – as set out in the explanatory memorandum – social cohesion, cooperation within teams and significant administrative or financial burdens for the employer. This is not an exhaustive list.' (Parliamentary Papers II, 2021-2022, 35714, no. 16).

And what interests may be relevant on the employee's side? It is conceivable that issues such as informal care could be significant. Limiting 'very long travel times' is also mentioned in the legislative history as an interest of the employee. In addition, increased productivity or the employee's mental health may be put forward as underlying interests that support the request.

It is also important to remember that the assessment and weighing-up of interests are initially a matter for the employer him/herself, although he/she must carry out this process with due care. This means, for example, that further information should be requested if clear reasons have not been given to support a request to work from home.

It also means, however, that an employer has a fair amount of discretion when it comes to the assessment. According to the legislator, it is explicitly not the intention for a court to step into the employer's shoes, should a dispute on the matter result in legal proceedings: 'In the event of a dispute, the court can assess whether the employer weighed up the interests in a legally correct manner. This is a judicial assessment centred on reasonableness and fairness.' (Parliamentary Papers II, 2021-2022, 35714, no. 16). This appears to suggest that the court will carry out a kind of reasonableness test.

Tailored approach important

This Act therefore does not create an unconditional right to change the place of work and calls for a tailored approach. The Social and Economic Council of the Netherlands (SER) encourages employers to create policy based on the principles that usually apply within the company. Under what circumstances and for what roles is working from home possible and to what extent? For what roles and activities is it not possible to work from home? In this way the employer can apply the standards of reasonableness and fairness to each individual case.

Conclusion

The Work Where You Want Act does not entirely live up to its name. After all, this Act does not create an unconditional right for an employee to change his/her place of work. In contrast to the rules that apply to a request to change the length of the working week or working hours, under the new Act the employer still has broader powers to reject the request than was originally intended.

Address other than home or work address; employer still decides

If the employee does not wish to work from home or from the employer's work address, but instead from another address, he/she may also submit a request to this effect to the employer. In this case, the employer is under no obligation to agree to the request. An employer only has to 'consider' the request (as is already the case now).

Exception for small employers

These arrangements do not apply to employers with fewer than ten employees. That is because, for a small employer, changing the place of work will more often have far-reaching or profound implications for his/her operations.

Please note:

The Work Where You Want Act has not yet been passed by the Upper House of the Dutch Parliament.

6.2 Transition payment

An employee is entitled to a transition payment if he/she is made redundant at the employer's initiative. The level of the transition payment depends on the employee's salary and the number of years of service. In 2023 the maximum transition payment is € 89,000 (2022: € 86,000), or a year's salary if higher.

Tip:

As an employer, you may be able to obtain compensation from the UWV for the transition payment. Follow this link to find out the conditions that apply:

<https://www.uwv.nl/werkgevers/werkgever-en-ontslag/compensatie-transitievergoeding/>

6.3 Unemployment insurance contribution (General Unemployment Fund (Awf) contribution)

The level of the unemployment insurance contribution depends on whether the person concerned has a permanent or flexible employment contract. The government hopes that this measure will encourage the use of permanent employment contracts and make them more attractive for employers.

When does the low unemployment insurance contribution apply?

The low unemployment insurance contribution is payable in the case of written contracts for an indefinite period in which the scope of the work is clearly defined. This low contribution is also due for employees under the age of 21 who have been paid for a maximum of 48 hours (per four-week return period) or 52 hours (per return period of a calendar month). In addition, the low contribution applies to apprentices following a work-based learning pathway (BBL) and to employees whose employer is paying an employee insurance benefit in the form of an employer's payment or as a self-insurer.

An employment contract that includes different scopes of work no longer qualifies as an on-call contract. Take an employment contract stating that the employee will work for 20 hours per week during the winter months and 40 hours per week during the summer months, for example. If this contract has been entered into for an indefinite period, a low unemployment insurance contribution still applies.

Please note:

From 2023 the high unemployment insurance contribution applies to a BBL contract with a temporary employment clause.

Please note:

If the employment contract is terminated within two months of the start of the employment relationship, the employer is required to pay the high unemployment insurance contribution with retroactive effect. Whether the employee claims unemployment benefit is irrelevant.

Higher contribution to General Unemployment Fund (Awf) if overtime exceeds 30%

This requirement was suspended for a two-year period. With effect from 2022 an employer has had to pay the high Awf contribution with retroactive effect if:

- the overtime worked by an employee in a calendar year exceeds 30% of his/her contracted hours, and
- he/she has a permanent employment contract for fewer than 35 hours a week on average.

Please note:

This assessment can only take place after the return for December or the 13th four-week period has been filed. The Tax and Customs Administration has indicated that corrections must be submitted in January or February 2023.

Temporary increase in hours

Since 1 January 2022 a second employment contract has no longer been deemed to apply in the event of a temporary increase in hours, unless the employer and employee have explicitly agreed this or the job or employment conditions have changed. In 2023 it is therefore also possible to apply the low AWf contribution in the event of a temporary increase in hours.

Tip:

Employers who have applied the high AWf contribution for a certain time since 2020, as they have temporarily expanded an employment contract for an indefinite period or concluded a second employment contract, can correct the high AWf contribution with retroactive effect.

6.4 Partially paid parental leave

Since August 2022 employees have been entitled to partially paid parental leave. During the child's first year the parents are entitled to nine weeks of paid parental leave. This is a payment under the Work and Care Act (Wazo payment), which they apply for through their employer. The parental leave also applies if parents had a child before the Act was introduced, provided that this child is less than 1 year old. The parents must also be working (be an employee) at that time and must not yet have taken the full parental leave entitlement (26 times their working hours per week). In the case of adopted or foster children the entitlement to paid parental leave applies during the first year after the child has been taken into the family (the child must be less than 8 years old).

If the employee leaves the company without having taken his/her full paid parental leave entitlement, he/she retains the right to take this leave at a new employer. The previous employer must issue a declaration showing the remaining leave entitlement.

During the parental leave the employee continues to receive a partial salary payment at a level of 70% of the daily wage.

Tip:

Since 2 August 2022 it has also been possible for directors/major shareholders, home helpers and private domestic helpers to take advantage of paid parental leave. In these cases the minimum wage is taken as a basis, due to the lack of information on these individuals in the UWV's policy records.

Paid parental leave in payroll tax return

During additional partner leave and paid parental leave your employee receives a payment from the UWV.

You need to include this payment in your payroll tax return. On Forum Salaris, an online forum offered by the Tax and Customs Administration, you will find a guide that explains how to do this. It also explains how to process an employer's supplement to the above payment.

Apply white table

All payments that you make to your employee that fall under the Work and Care Act must be included in your payroll tax return in the same way. You should apply the white table in these

cases. After all, while the employee remains in your employment the payment is classified as wages from current employment. The low unemployment insurance contribution and the high contribution to the Invalidity Insurance Fund (Aof) always apply to the payment.

From 1 January 2025 salary and payment belong to separate income relationships

At the moment you can still allocate the payment to the same income relationship (IKV) as the employee's ordinary salary in your payroll tax return. From 1 January 2025 the employer's payment will have to be allocated to a separate income relationship. The guide also explains how you do this.

Please note:

You need an account to be able to access the Tax and Custom Administration's guide on Forum Salaris.

6.5 Assessment of Employment Relationships (Deregulation) Act

On 16 December 2022 a progress letter was published on the subject of working with and as a self-employed person. The growth in the number of self-employed persons over many years has had positive impacts, but there are also downsides. Self-employed entrepreneurs must continue to have the freedom and space they need to do business within the applicable rules. A number of measures have been announced to restore the balance and make working with and as a self-employed person more future-proof.

1. Levelling the playing field in terms of contract forms for employees and self-employed persons.
In 2023 the financial incentive to carry out work on a self-employed basis rather than as an employee has been reduced by cutting the self-employed person's allowance at a faster rate and phasing out the tax-deferred retirement reserve.
2. Clarifying the rules on when a person is working as an employee and when it is possible to work in a self-employed capacity.
The assessment of whether a relationship of authority applies currently involves a substantive test that examines the extent to which supervision can be carried out and instructions can be issued. This criterion will be worked out in more detail in law. Another important consideration within this context is whether the activities have been organisationally embedded within the client's company and whether the relationship involves any independent entrepreneurship. These elements will be fleshed out further over the coming period.
3. Reinforcing and improving enforcement and preparing for the lifting of the moratorium on enforcement from 1 January 2025.
With a view to achieving the above, the Tax and Customs Administration will be working actively with stakeholders to ensure, as far as possible, that the market knows which rules apply and can work with them.

6.6 Legislative proposal to make company doctor's opinion decisive when reintegration report is assessed

The intention of this legislative proposal is to ensure the company doctor's opinion on the employee's workload capacity is decisive in future when the UWV assesses the reintegration report (RIV).

The insurer's medical advisor will no longer assess this opinion from the company doctor. His/her role will therefore also change. This should lead to greater certainty for employers. As a consequence of this measure, the assessment of the reintegration report will be based solely on an assessment of the report by an occupational health and safety expert. The UWV's occupational health and safety expert will assess whether the employer and employee have complied with their reintegration obligations and made sufficient efforts that are in keeping with the company doctor's opinion on the employee's workload capacity.

Please note:

The legislative proposal will be debated in the first quarter of 2023. It will not be possible to introduce the planned law any earlier than 1 July 2023.

The possibility for employers and employees to apply to the UWV for an expert opinion during the 104-week period will be retained, as will the possibility for the employee to request a second opinion at the employer's expense from another company doctor contracted by the employer. It will still be possible for the UWV to impose a penalty due to insufficient reintegration efforts on the part of the employer, although this will no longer be based on a medical difference of opinion between the insurer's medical advisor and the company doctor – a change that will greatly please many employers.

6.7 Alternative regime for persons of state-pension age adjusted

The Act on Continued Employment After State-Pension Age (in effect since 1 January 2016) provides for a lighter employment-law regime for employed persons of state-pension age. The previous government announced that the Act would be subject to an assessment, following which the continued payment of salary to persons of state-pension age in the event of sickness may be reduced from thirteen weeks to six weeks.

The assessment of the Act has now been completed and a study has revealed that no parties are being demonstrably squeezed out of the labour market. Consequently, the previous government announced that the transitional arrangements would be ending. This is not expected to happen any earlier than 1 January 2023. To date, however, the timing has not yet been confirmed.

Due to the withdrawal of the transitional arrangements, the period of thirteen weeks is being reduced to six weeks for:

- the continued payment of salary in the event of sickness;
- the prohibition of termination of employment in the event of sickness;
- the reintegration obligation in the event of dismissal due to sickness.

6.8 STAP budget

On 1 March 2022 the STAP budget (STimulering ArbeidsmarktPositie, a learning and development budget intended to enhance a person's labour market position) was introduced. The STAP budget will give everyone aged between 18 and state-pension age and who has a link to the Dutch labour market the opportunity to take advantage of training to support their own development and long-term employability. By developing a public learning and development budget, a future-proof scheme can be put in place that will make it possible to respond to developments on the labour market. The STAP budget forms part of the

government's Lifelong Development measures. The UWV will be responsible for implementing the scheme and is developing a digital portal.

Anyone wanting to claim the STAP budget can only do so if he/she has no other way of funding the desired training. For this purpose the UWV will examine the criteria that existing educational institutions employ to qualify for a subsidy for different types of education. Many young people under the age of 30 will often still be able to take advantage of study grants and will therefore not be entitled to the STAP budget.

An individual can apply for the STAP budget to finance a training activity that he/she wishes to follow. The budget amounts to a maximum of € 1,000 per year. Only one application per year can be submitted. The application period for 2023 opens on Tuesday 28 February 2023.

The training activities that are eligible for a subsidy are included in a training register. The Education Executive Agency ('DUO') is acting as administrator and technical manager of the training register. Payment will be made to the training provider once the person concerned has submitted proof of registration with an accredited STAP provider.

It has become apparent that courses that are not geared towards enhancing a person's labour market position have been included in the STAP training register. In addition, the approach and training offering of some training providers do not comply with the subsidy conditions. For this reason, the quality accreditation bodies that admit training providers to the scheme (NRTO and CEDEO) will soon be applying more rigorous checks to determine whether these providers' courses are meeting the STAP requirements. These checks will be worked out in more detail in consultation with the accreditation bodies concerned, who are also taking responsibility in this regard.

6.9 Written notice a mandatory requirement

The Supreme Court has ruled that employers have to pay compensation in lieu of notification if they have failed to give notice in writing that a fixed-term contract is not being renewed, even if it has been established that such notice was given verbally.

In its judgment the Supreme Court held that the provisions on the obligation to give notice are part of mandatory law. These provisions are intended to put employees on fixed-term employment contracts in a stronger position by ensuring that their employer makes clear to them in good time, by means of written notice, whether or not their employment contract will be continued. The legislator deliberately opted to require employers who fail to comply with the obligation to give written notice to pay compensation. It can be inferred from the above that the compensation is partly intended to serve as an incentive to comply with the written notice obligation. Accordingly, it can be assumed that the compensation is always payable in the event of failure to comply with the requirement to use the written form: "even if it was otherwise clear to the employee that the employment contract would not be continued or the employee did not suffer any disadvantage from failure to comply with the requirement to give notice in writing."

6.10 Unilateral amendment of employment conditions

An employment contract can include a so-called unilateral amendment clause. This means that the employer stipulates explicitly in writing that he/she reserves the right to amend the employment contract unilaterally if his/her interest in doing so is sufficiently important that it

outweighs the interests of the employee. In such a case it is therefore necessary to weigh up these interests.

Lack of unilateral amendment clause

If, as an employer, you have not agreed on a unilateral amendment clause in writing with the employee, if you wish to enforce a change you need to rely on the general principle of acting in a manner befitting a good employer and employee. In the *Stoof/Mammoet* judgment the Supreme Court, the Netherlands' highest court, ruled that this principle can require an employee to accept a change if:

1. there has been a change in circumstances; and
2. the employer makes a reasonable proposal regarding the change; and
3. the employee cannot reasonably refuse this proposal.

It was, however, assumed that the unilateral amendment clause was specifically intended for collective changes, while the principle of acting in a manner befitting a good employer and employee related more to individual changes. Recently, the Supreme Court provided clarification on this point and stipulated that the criteria set out in the *Stoof/Mammoet* judgment can also be invoked to enforce collective changes. You can therefore rely on them even if you have failed to agree on a unilateral amendment clause.

The Supreme Court also stipulated that it is not the case that an employee can only refuse an employer's proposal relating to a change if this proposal is unacceptable in accordance with standards of reasonableness and fairness. A less rigorous standard applies to this assessment. The standard of unacceptability is too strict. It is a question of whether the employee can reasonably refuse the employer's proposal.

7 Coronavirus news

7.1 Deferment of payments

As a result of the coronavirus pandemic, many entrepreneurs did not pay their payroll tax, VAT and/or company pension fund contributions by the payment deadline for the period that has now expired and obtained an exceptional deferment of payments.

All taxes with a payment deadline on or after 1 April 2022 must now be paid on time once again. It is important to file your returns and pay the tax you owe promptly with effect from 1 April 2022. If you do so, you will be entitled to take advantage of a generous payment scheme.

There is also a generous payment scheme for the repayment of any accrued debts. These must be repaid within a five-year period starting from 1 October 2022 (by 1 October 2027). However, it is important that the entrepreneurs concerned continue to file their returns promptly and pay the tax due for current periods on time.

Relaxation of payment scheme for debts accrued during coronavirus crisis can now be applied for digitally

Under certain conditions, entrepreneurs who are having problems repaying the tax debts they accrued during the coronavirus crisis can request a relaxation of the payment scheme. Since November 2022 it has been possible to submit these requests digitally.

The options available for deferring the payment scheme are as follows:

- a payment holiday of no more than six months; or
- the possibility of repaying the debt on a quarterly rather than monthly basis; or
- an extension of the payment scheme from five to seven years.

7.2 Late payment interest

As a result of the coronavirus crisis, the rate of late payment interest was temporarily reduced to 0.01%. This low percentage is being increased incrementally. On 1 January 2023 it was raised to 3% and will increase further to 4% on 1 January 2024.

To avoid having to pay late payment interest, companies can always repay (part of) their tax debt earlier, of course.

7.3 G-account

If an employer works with an employment agency or subcontractor, part of the payment will often be deposited in a g-account. In this way the employer is indemnified against any taxes that the employment agency or contractor does not pay. Such an arrangement is usually less attractive for the employment agency and contractor, as it is harder for them to access their money.

The advice is to continue making these payments into the g-account. If the company the employer is working with can no longer pay its payroll taxes, the risk then remains limited. The rules on withdrawing funds from the g-account have been relaxed, which means there is less of a disadvantage for the employment agency or contractor. These relaxed g-account rules are linked to the exceptional deferment of payments due to the coronavirus crisis. They



therefore only apply to amounts for which an exceptional deferment of payments has been granted. The relaxation applies up to the end of the exceptional deferment, including the payment scheme, i.e. until 1 October 2027 at the latest.

7.4 NOW scheme

As a consequence of the coronavirus crisis, you may have been eligible to apply for a payroll subsidy under the NOW scheme (Temporary Emergency Bridging Measure for Sustained Employment). This scheme has now completely closed. That means you can no longer make an application under the NOW scheme.

Did you apply under the NOW scheme in one or more periods from October 2020? If so, you need to determine the definitive subsidy. Make sure you do this on time.

Did your application relate to the 3rd period (October-December 2020), 4th period (January-March 2021), 5th period (April-June 2021) and/or 6th period (July-September 2021) of the NOW scheme? For all these periods the service point for applying for the definitive calculation is open until 22 February 2023.

Did your application relate to the 7th period (November-December 2021) and/or 8th period (January-March 2022) of the NOW scheme? In these cases the service point for applying for the definitive calculation is open until 2 June 2023.

Disclaimer

Although we have compiled this newsletter with the utmost care, we cannot accept any liability for omissions or inaccuracies. Due to the broad and general nature of the newsletter, it is not intended to provide all the information needed to make financial decisions.

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