



## Global Employer Services Income Tax

### Update on proposed significant changes to partial exemptions of wage withholding tax

The draft bill on the reduction of labour costs (also referred to as the “mini tax shift”) ([Dutch](#) | [French](#)) was submitted to the Belgian parliament on 25 February 2022 (for background, see our [tax alert](#) of 25 February 2022). The mini tax shift would be achieved via a reduction in the special social security contribution payable by employees, to be financed by (i) amendments to payroll tax exemption regimes (imposing stricter qualifying criteria), (ii) a new flight tax, and (iii) an increase in excise duties on tobacco.

This alert focuses on the additional clarifications regarding the partial exemption of withholding tax for **night and shift work** that are included in the new version of the explanatory memorandum accompanying the draft bill.

Our comments are based on the **draft bill and explanatory memorandum of 1 March 2022** which may be subject to further changes during the legislative process. Only when the final bill (and explanatory memorandum) have been adopted by parliament and published in the official gazette will it be known with certainty which changes will become effective.

#### Clarifications included in the explanatory memorandum regarding the wage withholding tax exemption for night or shift work

- The explanatory memorandum suggests that a company may only qualify as a company in which shift work is performed if **all employees who perform shift work** (or work in a continuous labour system), **receive the shift premium**. The government wants to avoid situations where some employees undertaking shift work receive a shift premium while others do not.

- A **minimum substance requirement** with respect to the shift and night premiums will apply to benefit from the wage withholding tax incentive. A minimum premium must be paid of 2% for shift work and 12% for night work, calculated on the contractually agreed gross hourly wage.

According to the explanatory memorandum, the legislator does not intend to harmonise the shift and night premiums with the minimum substance requirement; employers would be able to pay more than the statutory minimum amount should they wish to do so.

It is also explicitly stated that employers can differentiate premiums between shifts (i.e., different premiums can be paid for a morning shift, late shift, weekend shift, etc.). However, **where an employer differentiates the shift premium among different shifts**, the situation needs to be considered **as a whole** to assess the validity of the shift premium.

The confirmation that it would be possible to retain or implement differentiated premiums is welcome but the requirement to assess shift premiums “considering the situation as a whole” generates additional complexity and uncertainty. For example, what would be the consequences of paying differentiated shift premiums where some premiums meet the minimum substance requirement but other premiums do not?

It is to be hoped that such issues of interpretation will be clarified during the legislative process to remove any uncertainty and avoid difficulties of application that the draft bill notably aims to eliminate.

- It is clarified that **if the shift system includes a night shift, it is sufficient only to pay a night premium for hours performed during the night.**

In this scenario, **the night premium is deemed to qualify as a shift premium for tax purposes**, so that for hours performed during the night, it is not required to grant an additional shift premium as well as the night premium. For shift work performed during the day, a shift premium must continue to be paid.

Deloitte Belgium will continue to share the latest developments as they occur and will organise regional seminars on the subject of “Payroll incentives: What’s in store for 2022?” One seminar is planned to be presented in Dutch in Ghent on 22 March 2022, with another planned to be presented in French in [Verviers on 24 March 2022](#) in collaboration with the CCI.

A Deloitte Academy webinar, to be presented in English, will be organised in the second half of April.

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## Contacts

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