



## Global Employer Services Reward & Mobility Alert

### Significant amendments to partial exemptions of wage withholding tax proposed

A pre-draft bill on the reduction of labour costs (also referred to as the “mini tax shift”) was approved by Belgium’s Council of Ministers on 4 February 2022 and sent to the Council of State. 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 that would impose stricter qualifying criteria, (ii) a new flight tax, and (iii) an increase in excise duties on tobacco.

This alert focuses on the proposed amendments to the payroll incentive measures (the partial exemption of withholding tax) which are the most significant for employers. The commentary is based on the pre-draft version of the bill as at 4 February 2022 which may be subject to change during the legislative process. The final text of the bill as adopted by parliament and published in the official gazette must be awaited to know definitively the applicable measures.

The upcoming changes will require employers to re-examine their practices in connection with the various incentive measures and, amongst other, adjust their HR systems (such as reporting and payroll) and update their company agreements, work regulations, or employment contracts. Deloitte Belgium’s multidisciplinary team of professionals specialising in tax, social security, labour law, and HR systems can support businesses to identify the adjustments required as a consequence of the new expected regulations, design an action plan, and assist with a secured implementation within a short timeframe.

**Stricter conditions for the wage tax partial exemption for shift or night work**

In recent years, the wage tax exemption for shift or night shift work has become the most significant payroll tax incentive measure in terms of its cost, noted in the 2019 Belgian Court of Audit's report as requiring expenditure of over EUR 1.4 billion in 2017 (the latest year covered by the report). In the report, the Court of Audit found that the government had lost effective control of the system, due both to abuse of the relief and the overall complexity of the measure.

According to the draft explanatory memorandum to the pre-draft bill, the main objectives of the proposed changes in the bill can be summarized as:

- Transposing some of the recommendations from the Court of Audit's 2019 report, e.g., implementing a stable and comprehensible legislative framework, clarifying the concept of shiftwork, and tackling challenges in terms of the audit of temporary work agencies;
- Strengthening the legal framework in order to promote a secured application;
- Achieving the pre-established budgetary objective through specific modifications of the measures while maintaining the scope, target groups, and exemption percentages;
- Ensuring better alignment of these measures with European state aid regulations.

The pre-draft bill proposes the following changes to apply as from the wage paid or attributed as of 1 April 2022, unless otherwise stated:

- The benefit of the measures would be conditional on the granting of a **shift or night premium of at least 2% or 12%, respectively, of the contractually agreed gross hourly wage** that the worker would earn by providing the same services outside the framework of shift work or night work.

The requirement for a minimum amount of shift or night premium is intended to prevent the introduction of new, minimalist shift or night premiums purely for tax purposes, which are not the result of social consultation or the employer's desire to compensate for shift or night work.

Employers who previously have obtained a tax ruling confirming that (i) the premium they are paying is a valid shift or night premium within the meaning of the tax law and (ii) the anti-abuse provision does not apply, probably will have to request an update to the ruling in view of this new requirement. Employers whose current shift or night premiums are not expressed as a percentage of the hourly wage but as a fixed daily or monthly amount may also consider applying for a tax ruling to obtain confirmation that they satisfy the new requirement.

- As from 1 April 2024, the required minimum shift or night premium would have to be **formalised in either a collective bargaining agreement that applies to the company, work regulations, or an employment contract.**

This requirement is intended to provide an objective basis for proving that the premium actually has been paid or granted and to establish an equivalent level for all employers who make use of this measure.

- A **strict distinction between** the rules and definitions applicable to **shift work** and those applicable to **night work** would be introduced by including two separate paragraphs in the law.

The distinction would be necessitated by the fact that different minimum premium requirements would apply for shift and night premiums and also would allow for better monitoring in the form of a spending review, which was one of the recommendations from the Court of Audit's report.

- The "**one-third rule**" (i.e., the requirement for an employee to have performed shift or night work for at least one-third of their working time during the relevant month to be eligible for the measure) would be tightened as follows:
  - A **separate assessment** would be required for shift work and night work; shift and night work could not be combined to assess whether the conditions of the one-third rule were met.
  - The calculation of the one-third rule would need to be performed on **an hourly basis**; calculation on a daily basis would no longer be allowed. This would align with the decision of the Court of Appeal of Mons of 21 October 2020 and subsequent updates to the Belgian tax authorities' administrative guidelines. For previous coverage, see our [tax alert of 25 November 2021](#).
  - A new requirement would be introduced that, in addition to the hours being performed within the framework of shift work or night work, a **shift or night premium** would need to be paid for those hours to be taken into account for the assessment of the one-third rule.
  - When calculating the one-third rule, the numerator of the fraction may include "suspensions in the performance of the employment contract with continued paid salary." In accordance with the provisions of the pre-draft bill this would apply only "*if it can be shown that the concerned worker, in accordance with his or her working arrangements, would have worked in shifts and would also have received a shift premium for this.*"

These changes may have significant practical consequences and result in fewer employees being eligible for the shift or night work wage tax incentive. For example, employees may rotate shifts during the month (e.g., morning shift, afternoon shift, night shift) and receive shift premium only in consideration of specific shifts (e.g., the afternoon shift and the night shift but not the morning shift). In such a scenario, the hours worked in the morning shift would no longer be taken into account for the assessment of the one-third rule, even though these hours are performed in shifts and the employee has earned a shift premium at some point during the month (i.e., while working the afternoon or night shift). As a consequence, some employees who previously met the one-third rule may be excluded if the employer fails to grant a premium for all shifts.

- The definition of shift work would remain unchanged. However, the current administrative **tolerance** with respect to a limited **break of 15 minutes between two successive shifts** would be explicitly provided for in the legislation.

Similarly, where companies organise a system of continuous work with at least four shifts (resulting in an entitlement to a 2.2% increase in the

exemption to 25%), a maximum 15 minute break between two successive shifts would be acceptable.

- **Further limitations on the combination of different payroll incentives:** The pre-draft law explicitly foresees that the wage tax exemptions for employees in the inland navigation sector or employees completing building works may not be combined with the wage tax exemption for shift or night work.
- The Court of Audit found many problems in the use of the exemption by temporary work agencies. Therefore, as from 1 October 2022, it is proposed that **temporary work agencies** could utilise the exemption for shift or night work only if they had obtained their **client's upfront consent**. Such agencies would be able to apply the wage tax incentive where they could prove that all the requirements were satisfied.

#### Procedural aspects

- When filing a "negative" withholding tax return, the employer would not only have to provide evidence that the employees for whom the exemption is requested "performed shift work," but also that they "received a shift premium in consideration of the hours worked in shift" that meet the minimum requirement.
- The statute of limitation currently is five years as from 1 January of the year during which the withholding tax is paid. This five-year limitation period allows employers to claim a refund of excessive withholding tax paid in the last five years where they omitted in those years to apply the partial exemption to which they were legally entitled.

As from 1 April 2022, it is proposed to reduce the **statute of limitation for refund claims** of withholding tax (based on articles 275/1 to 275/12 of the Belgian Income Tax Code) to **three years following the tax year** to align with the tax authorities' investigation period.

In addition, the tax authorities' **investigation and assessment period** would be **extended by up to six months for refund claims for overpaid withholding tax**.

- As from 1 April 2022, a **tax increase** (ranging from 10% to 200%) for **incorrect reporting** in the second withholding tax return (the **negative withholding tax return**) is proposed. The basis for calculating the increase would be the amount of the incorrectly reported partial withholding tax exemption.
- A more extensive **mandate** would be provided to the **king** to be able to **amend the applicable reporting obligations**. The king would be required to define such changes via royal decree. The draft explanatory memorandum alludes to an additional annual reporting obligation, requiring more detailed information to be disclosed that the tax authorities currently may obtain only via a formal request for information. The additional and more extensive reporting obligations would apply as from income year 2023.

#### Other amendments to payroll incentive measures

Other proposed amendments to payroll incentive measures that are not specific to the wage tax incentive for shift or night work include:

- Stricter conditions for onsite **building works**: Under the proposals, employers would only be able to claim the wage tax exemption for

employees working in shifts to complete building works onsite if they had fulfilled their notification obligations to the National Social Security Office (RSZ), unless exempt.

- The **combination of the research and development (R&D) payroll tax exemption with the tax credit** for R&D.
- **For the various payroll tax incentives:** The pre-draft law clarifies that the **exemption** basis would be **restricted** to the wage **withholding tax** that must be **legally withheld** by the employer. Any excess withholding (referred to as “fiscal voluntarism”), would formally be excluded.
- A definition of statutory overtime would be included in the law regarding the wage **withholding tax incentive for overtime**.
- Refinement of the payroll tax exemption for **merchant shipping, dredging, and towage** by introducing a broader definition of “seagoing vessel.”

Deloitte Belgium will be sharing the latest developments as they happen and will also be organising 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.

---

## Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Fredericq Jacquet, [frjacquet@deloitte.com](mailto:frjacquet@deloitte.com), + 32 2 600 65 29
- Liesbeth Rogiers, [lrogiers@deloitte.com](mailto:lrogiers@deloitte.com), + 32 2 600 69 55
- Elien Lauwers, [elilauwers@deloitte.com](mailto:elilauwers@deloitte.com), + 32 2 301 82 43

For general inquiries, please contact:  
[bedeloittetax@deloitte.com](mailto:bedeloittetax@deloitte.com), + 32 2 600 60 00

Be sure to visit us at our website: [Deloitte Global Employer Services](#)

---

Stay tuned with the latest developments:

[Tax News and Insights](#) | [Deloitte Academy](#) | [Deloitte Belgium Tax](#)

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

Deloitte provides industry leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175 plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s more than 345,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com)

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2022 Deloitte Belgium

[Subscribe](#) | [Unsubscribe](#)