



Global Employer Services

Individual tax

Updates on professional withholding tax developments for employers

The new withholding obligation with respect to foreign benefits, introduced at the end of 2018, is one of the most recent and high profile measures regarding professional withholding tax. Coverage is provided by the previous Tax Alerts of [4 February 2019](#) and [22 March 2019](#).

What follows is a look at other recent measures and clarifications regarding professional withholding tax.

New FAQ regarding the wage tax incentive for Night and Shift work (art. 275/5 ITC)

The tax authorities have issued a circular letter on 27 May 2019 ([Dutch](#) | [French](#)), clarifying the practical interpretation and application of the tax withholding exemption for night and shift work through 17 'Frequently asked questions' (FAQ).

It provides several useful clarifications and confirmations:

- Workers that are not part of a shift schedule team (i.e. operate in a 9 to 5 schedule) can be ignored when assessing the maximum schedule overlap requirement for shift workers eligible for the tax measure (FAQ 4).
- Workers supporting or coordinating a team may also be eligible for the wage tax incentive (FAQ 6).
- Separate reporting of the shift premium on the pay slip is not required. However, the shift premium amount must be

quantifiable and identifiable (if not specified separately on the pay slip) (FAQ 9)

- Care allowance ('on stand-by' services) is not considered as a team bonus because it is not paid for work completed during a shift schedule (FAQ 10)

Extended application scope of wage tax incentive for Inland navigation sector (art. 275/5, §4 ITC)

The wage withholding tax exemption's scope is extended to shift work within the inland navigation sector ("*systeemvaart*" / "*navigation en système*"). Within this sector, a unique shift work system is applied through which the worker has the same number of rest days as working days, remaining continuously on board during the working days. As standard conditions of shift work were not fulfilled, the tax exemption measure's initial application could not be made.

The new measure extending the tax exemption scope, and for which specific conditions exist, entered into force for remuneration paid as of 1 January 2019. The tax exemption amounts to 22.8% of total taxable remuneration, the same as for the standard tax exemption regime for night and shift work.

This wage tax incentive cannot be granted if the total amount of aid (combined with other aid subject to EU Regulation 1407/2013 on *de minimis*) would already reach the EUR 200,000 cap for the current and two preceding taxable periods.

Considering the cap, any employer aiming to benefit from this wage tax incentive must first comply with a mandatory reporting obligation in relation to the incentive already obtained.

A summary of key formalities and applicability are described in the Royal Decree of 3 April 2019 ([Dutch](#) | [French](#)). Unfortunately, this Royal Decree does not yet provide for the mandatory reporting form. Hence, this measure cannot be applied yet.

Extended application scope for wage tax incentive in Real Estate construction sector (art. 275/5, §5 ITC)

The law of 26 March 2018 introduces a specific partial withholding tax exemption for shift workers completing building works. The tax authorities' recent circular letter clarifies this new measure ([Dutch](#) | [French](#)).

The tax incentive currently amounts to 6% of shift workers' taxable remuneration for income year 2019 and will increase to 18% of taxable remuneration as of 1 January 2020.

The taxable remuneration to be taken into account for this measure purely corresponds to shift workers' taxable salary and excludes premiums (other than shift premium), vacation pay, year-end premium and back pay.

- The concept of "*company where teamwork is carried out*" gains a broader interpretation for companies in the building works sector, as compared to the applicable notion for companies active in other sectors. The prohibition of excessive work schedule overlap between successive teams does not apply in the construction sector. Moreover, eligibility only requires one or more teams (each comprising at least two workers) to perform the same or additional real estate based work on the same site.
- Eligible employers for this measure are those whose workers are completing building works within a team while being paid a "shift premium". Notably, workers earning a gross hourly wage of at least EUR 13.75 are deemed to be receiving a "shift premium".

The minimum gross hourly wage has been clarified through the law of 4 April 2019:

- The EUR 13.75 gross remuneration is to be understood as the amount *before* the deduction of mandatory employee social security contributions;
- All workers belonging to the team must earn the minimum gross hourly wage, or none of the team workers would be eligible for the wage tax incentive (even those whose gross remuneration meets the minimum threshold).
- The concept of "*building work*" covers regular construction activities such as the building, rebuilding and renovation of a piece of real estate or property, but also activities related to these regular construction activities. For example, activities such as the installation of alarm systems, air-conditioning, sanitary equipment, window shutters and carpeting are also within scope.

This measure allows a salary cost reduction for employers in the real estate construction sector.

Concerned employers are encouraged to review their current compensation policy to maximise this tax incentive.

Deloitte can assist in reviewing whether requirements for benefiting from this tax incentive are satisfied, or in applying for an advance tax decision ("ruling") from the authorities to obtain a higher level of certainty. Deloitte can also help employers in quantifying the tax incentive, implementing the measure and regularising past pay periods.

Tax exemption for overtime: increased limit (art. 275/1 ITC)

The amount of tax-efficient overtime that can be paid to employees is temporarily increased from 130 to 180 hours for tax years 2020 and 2021. The existing 360-hour increase for the hospitality sector (hotel and catering) is maintained, as is the permanent 180-hour increase for the construction sector.

Following the increased overtime limit, employers are partially exempt from transferring the wage withholding tax on

remuneration (including overtime payments) for employees working 180 hours of overtime, since 1 March 2019.

The wage exemption amounts to:

- 24.75% of gross remuneration on which the overtime payment calculation is based
- 32.19% of gross remuneration on which the overtime payment calculation is based (provided the overtime payment amounts to 20%)
- 41.25% of gross remuneration on which the overtime payment calculation is based (provided the overtime payment amounts to 50% or 100%)

This increased overtime limit for the favourable tax regime does not modify the current possibilities and limits set by labour law in terms of overtime, which remain applicable. The following [newsflash published by the law firm Laga](#) provides further information regarding the recent employment law development regarding overtime.

Withholding tax exemption for investments in “support areas”: reporting obligation for temporary work agencies (art. 275/8 and 275/9 ITC)

Since 2 April 2015, companies can benefit from a partial withholding tax exemption when they invest in “support areas”, and when such investments subsequently generate new jobs.

A “support-area” is an area determined by the Minister of Finance, upon the Regions’ proposal, for a period of up to six years. Such an area must contain at least one company affected by collective dismissal.

Temporary work agencies can also benefit from a partial exemption (25%) of professional withholding tax on salary paid to employees hired to work in designated “support areas”.

The law of 30 July 2018 introduced, amongst others, a requirement for temporary employment agencies to notify the tax authorities in order to benefit from this measure.

Agencies must use the notification form available on the tax authorities’ website ([Dutch](#) | [French](#)), as outlined by the Royal decree of [13 April 2019](#).

Contacts

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