Wages Special 2019

This Wages Special 2019 is a practical reference for you as an employer, HR employee or HR consultant.

This publication sets out the latest key figures, including minimum wage, premium percentages for employee insurance, income-related contributions for Zvw, the Unemployment Act (WW) sector premium and labour rebates, and customary wage for DGAs (Director/Shareholders).

Also, the Special offers the latest key figures and information regarding addition to income for company cars, company bicycles, the volunteering scheme, WBSO and the transition allowance.

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1 Various withholding taxes and social insurance contributions

1.1 Changes to income tax

Changes to the income tax will become effective as per 1 January 2019. In the first place, the income tax rates in box 1 will be reduced for incomes over €20,142 as per 1 January 2019. As from 2021, two tax brackets will be eliminated, leaving just two tax brackets.

2019 rate change
The rate of the first bracket applied to income up to €20,142 is raised by 0.1 percentage point from 36.55% to 36.65%. The rate of the second and third brackets applied to income between €20,142 and €68,507 is significantly reduced from 40.85% to 38.1%. The current tax rate on income above €68,507 is 51.95%. This will be reduced to 51.75% next year.

Tax percentage in box 1

	Income max €20,142	Income max €34,404	Income max €68,507	Income > €68,507
2018	36.55	40.85	40.85	51.95
	Income max €20,384	**Income max €34,300**	**Income max €68,507**	**Income > €68,507**
2019	36.65	38.10	38.10	51.75

Please note!
The change to two tax brackets in box 1 applies to persons not yet entitled to AOW state pension. Other rates apply to persons entitled to AOW state pension. The three brackets will continue to apply to this group.

Top rate applied at a lower limit
The rates are annually indexed for inflation and other factors. Up to 2024, this will not apply to the entry level of the top rate. This is frozen at the current level of €68,507. This means that tax payers will reach the top rate sooner. The expectation is that about 7% of all tax payers pay the top rate. Without this freeze, this would have been limited to 5.5%.

1.2 Minimum wage up slightly in 2019

The statutory minimum wage will be raised by 1.34% as per 1 January 2019. This takes the minimum monthly wage to €1,615.80. The minimum wage applies to employees age 22 and up. The minimum wage applies to a full working week. The contractual weekly working hours vary for each sector. Generally, this is 40 hours per week, although some sectors apply a shorter working week. This is why no fixed minimum hourly wage exists.

Minimum youth wages also increase
The minimum wage for young employees is derived from the minimum wage, which is why this also increases by 1.34%. For an employee age 21, this amounts to 85% of the minimum wage. The table below sets out the applicable statutory minimum wage for each age bracket as per 1 January 2019.

Age	Sliding scale	Per month	Per week	Per day
age 22 and over	100%	€1,615.80	€372.90	€74.58
age 21	85%	€1,373.45	€316.95	€63.39
age 20	70%	€1,131.05	€261.05	€52.21
age 19	55%	€888.70	€205.10	€41.02
age 18	47.50%	€767.50	€177.15	€35.43
age 17	39.50%	€638.25	€147.30	€29.46

age 16	34.50%	€557.45	€128.65	€25.73
age 15	30%	€484.75	€111.85	€22.37

Trade and crafts apprenticeships
A lower minimum wage for young workers applies to employees between ages 18 and 20 working in the context of trade and crafts apprenticeships (TCA). For example, an employee age 19 is entitled to 52.5% of the statutory minimum wage, rather than 55%. The table below sets out the percentages for each age.

Age	Sliding scale TCA	Per month	Per week	Per day
age 20	61.50%	€993.70	€229.35	€45.87
age 19	52.50%	€848.30	€195.75	€39.15
age 18	45.50%	€735.20	€169.65	€33.93

Decrease age limit
The age limit for minimum wage will be decreased from age 22 to age 21 as from 1 July 2019. Employees age 21 are then entitled to 100% of the minimum wage. This means that the sliding scale and the statutory minimum wage will be applied as from that date. On 1 July 2017, this age was decreased from age 23 to age 22. Employers receive a compensation from the Tax and Customs Administration for this decrease in the form of the so-called Youth LIV.

Liabilities
The statutory minimum wage applies as the minimum wage for your employees. This may be different if a CLA applies. Please ensure that you do not underpay your employees, as this is a punishable offence carrying high penalties.

Please note!
Since 1 January 2016, a mandatory bank payment of at least the net statutory minimum wage applies. The applicable minimum wage is also a mandatory note on the pay slips.

Please note!
Since 1 January 2017, you may no longer deduct or settle amounts from the minimum wage. This withholding prohibition does not apply to statutory withholding amounts, housing costs and the cost of healthcare insurance. You may still withhold such costs from the minimum wage subject to certain conditions and limitations.

1.3 2019 premium rates employee insurance

The new rates for the 2019 employee insurance premiums have been determined. The Unemployment Act (WW) sector premiums will be significantly reduced in 2019. The average 2018 premium rate was 1.28%. In 2019 the average will be 0.77%. On the other hand, the Awf and Aof premiums will increase. The AOW, Anw, Ufo and Whk premiums will not change. The same applies to the allowance for childcare expenses. The average premium for sector funds will significantly decrease. Please find an overview of these premiums in the table below.

Premium	2018	2019
WW - Unemployment Act	1.28	0.77%
AOW retirement pension fund	17.90%	17.90%
Anw surviving dependants fund	0.10%	0.10%
Awf general unemployment fund	2.85%	3.60%
Ufo government administration fund	0.78%	0.78%
Sfn/Ufo Uniform increase allowance childcare expenses	0.50%	0.50%
Aof occupational disability fund	6.27%	6.46%
Whk Return to work fund	1.22%	1.24%

Maximum premium wage 2019
The maximum premium wage is increased. The maximum premium wage is the maximum wage on which you are charged a premium for employee insurance. For 2019, this amounts to €55,927. In 2018, this amounted to €54,614.

1.4 Premium rates income-related contribution Zvw 2019

Both the employer and employee contributions for Zvw will be slightly raised as per 1 January 2019 compared with 2018. The table below sets out the differences compared with 2018.

Premium	2018	2019
Zvw employer contribution	6.90%	6.95%
Zvw employee contribution	5.65%	5.70%

The Zvw maximum premium wage will also be raised to €55,927 in 2019.

1.5 Developments WW sector premium

The WW premium charged to an employer currently depends in some part on the employer's sector. Some changes were implemented in 2018. As from 2020, the WW premium's sector factor may be eliminated, to be replaced by a fixed high and low premium.

Changes 2018
In 2018 the government decided that the sector allocation cannot be changed with retroactive effect at the employer's request. If the change is at the request of the Tax and Customs Administration, for example because a higher WW premium would be due, the sector can still be changed with retroactive effect.

It is no longer possible for employers to have a split sector allocation, as this was another instrument to minimise WW premiums.

Revision of sector definitions 2020
The measures anticipate the announced revision of sector definitions. The Bill 'Balanced Labour market' will eliminate the WW premium differences between the sectors starting in 2020. The sector definitions will remain effective for the other premiums.

Please note!
This Bill has not been passed by the House of Representatives.

The sectoral WW premium will be replaced by a high and low Awf premium. The lower premium is intended for permanent employment contracts; a higher WW premium is levied on temporary employment contracts. The difference between the high and low premiums is expected to be a permanent 5-percentage-point difference. This difference must make it more appealing for employers to offer permanent employment contracts.

Exceptions
The proposal also includes exceptions that ensure application of the high premium in spite of having a permanent employment contract.

- If a permanent employee's employment contract is terminated for whichever reason, irrespective of the party initiating termination
  (please note: this does not need to concern an unemployment situation).
- If the payrolled hours of a permanent employee in a calendar year are over 30% higher than contractually agreed.

- If the permanent employee receives an unemployment benefit within one year of the start date of the employment contract due to loss of income.
- If the permanent employer receives an unemployment benefit and the employer's WW premium was revised based on a previous situation within the past year.

1.6 Income tax credit for foreign employees

From 1 January 2019, only Dutch residents are entitled to the taxed portion of the general tax credit and the labour rebate. Non-residents are no longer entitled from that date onwards, subject to some exceptions.

1.6.1 Taxed portion labour rebate

An exception is made for foreign or Dutch employees residing in member states of the European Union, the EEA (Norway, Iceland and Liechtenstein), Switzerland and the BES islands (Bonaire, Sint Eustatius and Saba in the Dutch Antilles). The above groups of employees retain their right to the taxed portion of the labour rebate.

In order to apply this exception, you determine the tax residence of your employee. This is defined by facts and circumstances. The main factor is the place that your employee has permanent, personal ties with. For example, this can be the place where his/her family lives and where most of his/her social life and friends are. In case of doubt, request a statement of residence from your employee. You are expected to determine the residence based on reasonable assumption. The exception cannot be applied if it is clear that the employee is not a citizen of the above group of countries or if it is not possible to determine the employee's residence.

1.6.2 Taxed portion general tax credit

Any right to the general tax credit or other discounts can no longer be available via wage tax for employees from the above countries. If they wish to claim such rights, they can submit an income tax statement in the Netherlands after the end of the year.

Whether foreign employees are entitled to the general tax credit depends on the question if they can be classed as a qualifying employee. The answer is yes if:

- they live in an EU or EEA country, Switzerland or the BES islands (Bonaire, Sint Eustatius and Saba in the Dutch Antilles); and
- 90% or more of their income is taxed in the Netherlands (an exception applies to some, for example Belgian citizens; see paragraph 5.6.5).

1.6.3 Three white tables

Due to this change to the tax credit, three white wage tax tables apply as from 1 January 2019:

1. Table for employees who are residents in the Netherlands.
2. Table for employees who are residents in an EU or EEA country, Switzerland or the BES islands (Bonaire, Sint Eustatius and Saba in the Dutch Antilles).
3. Table for employees resident in a country other than listed in 1 or 2.

	Right to taxed portion labour rebate	Right to taxed portion other rebates
Residents of group 1 countries	Yes, in income tax	Yes, in income tax
Employees within Group 2, but not qualified	Yes, in income tax	No, a special arrangement applies to Belgian citizens (see paragraph 5.6.5)
Employees within Group 2, and qualified	Yes, in income tax	Yes, via income tax statement
Employees within Group 3	No	No

1.6.4 Residence and anonymous rate

You have an obligation to identify your employees. If this was not fully or correctly completed, the so-called anonymous rate of 52% applies.

For any foreign or Dutch employees who are not Dutch resident tax payers but are temporary or permanent residents, the payroll accounting systems sometimes record the temporary or permanent Dutch address. From 1 January 2019, the foreign addresses of such employees must be recorded in the payroll accounts. If you fail to do so as an employer, the anonymous rate must be applied for such residents.

1.6.5 Exception for employees from Belgium, Suriname, Aruba and the Dutch Antilles

It is more complicated for this group of employees. Persons residing in an EU/EEA country and performing their current labour in the Netherlands are always entitled to application of labour rebate, continued work bonus and income-related combination rebate, without having to qualify as a foreign tax payer. Based on practical considerations, the employer also granted such rebates to residents of Surinam, the Dutch Antilles and Aruba who perform current labour in the Netherlands.

Residents of Belgium, Surinam, the Dutch Antilles and Aruba are entitled to the taxed portion of the income tax credit pursuant to specific non-discrimination clauses.

The Tax and Customs Administration prefers such employees to claim the taxed portion of the tax credit via the preliminary 2019 income tax return. The tax authorities already have this option programmed in the tax software, and does not expect employers to apply this tax credit. For this reason, employers should not take the taxed portion of such tax credits into account for such employees in order to prevent double tax credits. However, the Tax and Customs Administration have announced they will not correct it in the payroll tax returns if you apply the tax credit for Belgian employees.

Please note!
If you apply the tax credit and the employee also requests a preliminary tax bill, your Belgian employee will be requested to refund the taxed portion of the tax credits received double in his/her final tax bill.

1.7 30% scheme

The maximum validity of the 30% scheme is reduced by three years as per 1 January 2019: from eight to five years. New applications will be granted for a maximum of five years from this year onward. Existing participants will also be subject to a three-year reduction.

Conditions for the 30% scheme
In summary, this scheme means that an employer may pay out 30% of the salary of the employee exempt of taxation as a compensation for the extra costs of the foreign employee subject to having been issued an approval statement for the 30% scheme by the Tax and Customs Administration accordingly. Instead, the employer may compensate the actual costs, in which case the employee is not entitled to the 30% scheme.

Application of this scheme is subject to certain conditions. The employee must have a specific expertise. The employee must also have lived outside the Netherlands for more than 16 months before his/her first working day in the Netherlands. The place of residence should be at least 150 km away from the Dutch borders.

Employment contract
Compliance with the above conditions is determined at the time of concluding the employment contract according to the Supreme Court. This condition (see Supreme Court ruling) means that changes to the situation (such as relocation) after concluding the agreement but before the actual start of performing work are not relevant.

Transition right
Although transition right did not initially apply for existing cases, the government created space for transition rights for existing cases after the dividend tax was upheld. This transition right is set out as follows:

- For employees granted approval with end dates in 2019 and 2020, the 30% scheme ends on the original date.
- For employees granted approval with end dates in 2021, 2022 or 2023, the end date will be set on 31 December 2020.
- For employees granted approval with end dates in or after 2024, the end date is brought forward by three years.

The table below sets out the implications of the transition right clearly:

End date on approval statement	Change to validity period
In 2019 or 2020	No change
In 2021, 2022, 2023	Validity period now ends on 31 December 2020
In or after 2024	Validity period is reduced by three years

1.8 Allowance for foreign business travel up

The untaxed allowances for foreign business travel of employees were raised as per 1 October 2018. The maximum amounts are different for each country, city and region, and can be found in the Foreign Travel Decision. The allowances for domestic business travel have remained unchanged to date. Although these decisions were intended to be applied to civil servants on business travel, these can also be applied to employees if similar to civil servants on business travel in terms of their business expenses.

Fixed limits
An employee travelling abroad for the employer organisation is entitled to a fixed allowance for travel and lodging costs, which is untaxed subject to certain conditions. No invoices or receipts are required. If you pay out an amount exceeding the above maximum limits, the excess above the maximum must be classed as taxable wage or wages subject to tax deduction at source in the expense allowance scheme.

Expenses plausible?
All expenses that are not plausible must be taxed. All expense allowances must be classed as wage, to be either taxed or included in the expense allowance scheme. If the cost of lodging is not plausible, you may grant a €11.34 allowance in accordance with the Travel Decree. However, this concerns a taxable allowance.

Tip!
Do you want to adhere to the Domestic or International Travel Decree? Please present your situation to the Tax and Customs Administration to ensure that your employees are similar to civil servants on business travel in terms of expenses.

1.9 Practice-based learning subsidy scheme extended to 2023

The Practice-based learning subsidy scheme was granted a final extension until 2023. In 2018, the Minister still announced cutting the scheme. There was major uncertainty about continuing the scheme even through 2019. The final decision ended all uncertainty. After budget negotiations, the agreement is that the subsidy scheme will be continued into 2023 at least. The subsidy ceilings will be announced on an annual basis.

The decision of the Minister of OCW (Education, Culture and Wellbeing) on a final extension of the Practice-based learning subsidy scheme until 2023 offers more certainty to the certified apprenticeship companies training senior secondary vocational education and training students in their company for several years. The implications for schools and students are also positive. The private sector has a growing need of well-trained employees, and continuing the subsidy scheme supports the TCA path for training trade and crafts apprentices.

Extension of the scheme
The intended budget cuts were dropped, and the Cabinet even expanded the target group: the subsidy for practice-based learning will also become available to higher professional education students for part-time courses or dual studies in the healthcare and wellbeing sector. This choice was made due to the current personnel shortage in this sector.

1.10 WBSO rate up in 2019

The percentage of the second WBSO bracket was increased from 14% to 16% as per 1 January 2019. By not abolishing dividend tax, an extra budget of €76 million has become structurally available for the Research & Development Incentive Act. The expansion of this tax scheme for innovation projects will be introduced one year ahead of the previous planning. The Cabinet wanted to implement an increase in the rates from 2020 onwards. This increase will now be implemented as from 2019.

1.11 Volunteering scheme 2019

Volunteers are a major factor in today's society. For this reason, the tax exemption for volunteers will be raised by €200 per year as from 2019. This implies that a volunteer may receive a maximum amount of €170 per month exempt of taxation for services performed as from 1 January 2019. This is capped at €1,700 per year. These amounts are raised for the first time since 2006.

Terms and Conditions
The condition that application of the volunteering scheme is limited to not-for-profit organisations remains unchanged. Regular for-profit companies are excluded from the scheme. This implies that the organisation should:

- be a Public Benefit Organisation (ANBI - PBO);
- a sports organisation or sports association;
- a company not liable for corporate income tax.

The volunteer may not also be employed in the organisation where he/she volunteers. Additionally, the volunteer fee received should not be proportional to the nature of the work and the time involved.

Please note!
Employment can be prevented by making use of a standard contract for volunteering. The work must be performed in accordance with the agreement.

Please note!
If the maximum limits are exceeded, the volunteering scheme is no longer applicable. This means that the work may be classed as employment, depending on the facts and circumstances. If this is the case, payroll tax must be withheld.

Tip!
If you perform work as a volunteer for a PBO (Public Benefit Organisation), you may be eligible for a volunteer fee. If you waive this fee, then in some cases, this amount can be entered as a donation in your income tax statement.

1.12 Company bicycle

The current tax rules to determine the value of the private benefit of a bicycle made available by the company are in reality experienced as an obstruction when making a bicycle available. As from 1 January 2020, the intention is to determine the value of the private benefit of a company bicycle using a fixed amount. A fixed tax addition rate of 7% per year of the recommended retail price (i.e. the original value of the new bicycle) is applied. This is the price of the bicycle based on the public list price of the manufacturer or importer for selling to consumers. The recommended retail price provides a uniform starting point to determine the value of the private benefit.

There is no differentiated rate between different types, such as city bikes, electric city bikes, cargo bikes and so-called speed pedelecs (bikes with electric engines and a moped licence).

For employees who may use the company bicycle for private purposes and/or for commuting, a tax addition will be applied, as commuting mileage is classed as private use. The employer is permitted to request an employee contribution for private use of the bicycle. This employee contribution may be deducted from the tax addition.

1.13 VAT application on temporary workers has changed

The decision on the VAT application regarding temporary agency workers has been updated and the changes became effective on 29 December 2018.

Specific details clarify when making temporary agency workers available is eligible for VAT exemption, or when approval is granted for not charging VAT. Application of such approval is subject to the condition that the temporary agency is able to invoke the exemption set out in Section 11, first subsection under f of the 1968 Value-Added Tax Act.

Furthermore, situations are set out where exemptions may be granted for making temporary agency workers available in the context of an exempted performance or main performance.

For more information, please see: Decree of 14 December 2018.

1.14 Wkr margin

Benefits and allowances for your personnel, for example bonuses, can be untaxed if you include this in the expense allowance scheme. It is important in this context to make maximum use of the so-called tax-free margin of the expense allowance scheme. This is not always the case at all.

Expense Allowance Scheme
According to the expense allowance scheme, you may spend 1.2% of the total payroll to untaxed benefits and allowances. This is referred to as the tax-free margin or discretionary margin. This would include items such as a staff party or a Christmas hamper. If you exceed the limit of 1.2%, the

employer is charged an 80% final levy. Another possibility is to class the benefit or allowance as part of the wage. In that case, the employee pays tax on the relevant amount.

Using the tax-free margin
It is important to ensure maximum use of the tax-free margin in your remuneration systems. After all, any amounts in the tax-free margin are fully exempt of taxation. This means tax-free for both the employer and the employee.

Customary benefit criterion
In principle, you are free to provide untaxed bonuses, as long as you do not exceed the tax-free margin. However, this is subject to the condition that the allowance should be customary. The tax authorities will not be fussy about untaxed benefits and allowances up to an amount of €2,400 per employee per year, assuming that the relevant benefits and allowances are customary.

1.15 Training deduction 2019

The Coalition Agreement sets out that the tax deduction for training and education will be replaced by an individual learning fund. The training deduction would be eliminated for that reason; however, this measure will still continue through the end of 2019. The Cabinet chooses to first negotiate the terms of introducing an alternative.

Deduction for training expenses
A deduction is currently available for a number of training expenses. This concerns fees for training, education and exams and for mandatory class materials and personal protection equipment.

Threshold and ceiling
The rule has a threshold and ceiling, and not all training expenses incurred will be eligible for deduction. For example, the cost of commuting to and from courses is not deductible. This means that the first
€250 of expenses cannot be deducted and that all expenses exceeding €15,000 are not eligible for deduction if these relate to a study outside the standard study period (see the website of the Tax and Customs Administration).

No alternative
There will be no alternative for the deduction in 2019. An alternative must fulfil the objective of a life-long learning policy. Agreements will be made accordingly with relevant parties.

Deductible from profit?
Training expenses that relate to keeping your employees' expertise up to date can be charged to the profit in the corporate income tax. If your employee expands his/her professional expertise, you may make use of the training deduction.

Please note!
It is often better to charge the training expenses to the profit, as this is not subject to a threshold, ceiling and/or limitations. However, the SME profit exemption applies, which implies that just 86% of the expenses can be deducted.

Tip!
As a DGA of a limited liability company, you may have training costs for expanding and for updating your knowledge charged to the company untaxed. This is subject to the requirement that the training must be designed to enhance your income.

2 GDPR

On 25 May 2018, the General Data Protection Regulation (GDPR) has become fully applicable. The GDPR replaces the Wbp (Private Data Protection Act), which was abolished as per the same date.

The GDPR introduces a number of new obligations and responsibilities. All companies and organisations that process private data must comply with the provisions of the GDPR - also smaller SMEs and self-employed contractors and professionals. The Private Data Authority is in charge of monitoring the application of the GDPR.

2.1 Employees' rights to personnel data

Employers have a record of the private data of their employees. These employees have a right to disclosure of their personnel file according to the General Data Protection Regulation (GDPR), and at their request, a copy of the documents it contains.

Court decision
Some time ago, an employee took his case to court because his employer refused to provide the employee's personnel data. The reason for refusal was that the employee was familiar with the data requested.

Conflict
However, the details in the personnel file were needed due to an ongoing labour conflict. In this context, the employer had docked his pay. Parties had agreed to resolve the issue based on mediation. The employer's opinion was that the employee was or could be assumed to be familiar with the documents requested. This concerned details regarding sick leave, among others.

Please note!
The fact that the employee is or should be familiar with the required personnel data is not a reason for the employer to refuse disclosure. The Court decided in favour of the employee, also regarding the claim for payment of docked salary.

Costs
A fee may be charged for providing copies. This amount may not exceed a reasonable fee for administrative costs.

Exceptions to disclosure
Legislation sets out very limited exceptions to mandatory disclosure of personnel details. Exceptions are related to national or public security, for example.

2.2 Request permission before using pictures!

Do you use pictures of your employees or customers for your company website or newsletters? Then you must require their explicit permission in accordance with the provisions of the General Data Protection Regulation. What are the conditions of such permission?

Permission
Permission is a key theme in the General Data Protection Regulation (GDPR). This legislation imposes various requirements to the use of (explicit) permission. An example of a requirement is that your organisation must be able to demonstrate that the person concerned granted permission for processing his/her private data (who, when, how). Both technical and organisational adjustments may be needed to demonstrate such permission.

Permission conditions
If the person concerned is asked for permission, the following conditions must be fulfilled:

- determine in advance whether permission is the correct legal basis for processing the data;
- the permission should be obtained in a clear manner; the person concerned is requested for a positive action regarding giving permission (i.e. opt-in); this implies that ticking boxes (i.e. default reply) is not adequate;

- if the person concerned is age 16 or younger, you require the permission from a legal representative or guardian (parents);
- there must be a privacy statement or privacy policy providing all relevant information for data processing;
- if approval is requested for various purposes at the same time, separate permission must be requested for each purpose (for example for different forms of cookies on websites);
- ensuring that the persons concerned know that they have the right to refuse permission without any negative consequences. Permission can never be conditional to a certain service. For example, this may be an issue in labour relations with your employees. Certainly in labour relations, in view of the employees' dependence, this raises the question whether the permission is a sound basis for processing. It is better to consider a different basis.

These conditions apply to all processing based on the permission basis.

Revoking permission
A person concerned may decide at any time to revoke his/her permission for using private data. This should be possible in the same straight-forward way as granting permission. Withdrawing permission does not undo previous processing of private data. This implies that permission cannot be revoked with retroactive effect.

The processing activities based on this permission must therefore be suspended (also with potential data processing providers and sub-providers, such as payroll administration providers). The relevant private data must be removed in that case, unless required for a different processing purpose.

Use pictures
Pictures that show identifiable individuals are also classed as private data. In principle, a legal basis must be provided for using the pictures. In most cases, a person concerned must give permission for using his/her picture. This means that the conditions set out above regarding permission apply unabridged. It is good to be aware of this as a company when using pictures of persons such as employees or customers.

Newsletter
It can be practical if, for example, your organisation describes in a procedure for employees that pictures may be taken at various occasions. Such pictures may be used for specific purposes, such as the company website, a newsletter or other media. Based on the procedure, you subsequently request explicit permission from your employees before using the images and you register the request for permission and approval (please refer to the conditions set out above). You can also arrange this similarly for one-off events for your customers or guests, for example.

Using pictures from other websites
In principle, making use of pictures or other private data of other websites for your own corporate internet publications is not permitted. The fact that these data are already on the internet does not imply that your company is permitted to use them. The data are used in a different context and for a different purpose. This means you need to request explicit permission for the new purpose. An exception applies to household and personal use, as the GDPR does not apply for that purpose. This is subject to the condition of publishing the data privately, visible only to a limited circle of persons.

Pictures of children
For pictures of children under age 16, the parents or legal representatives should be requested for permission to publish pictures or other private data, for example on social media or corporate or other websites. The user must be able to demonstrate that the required permission was obtained.

3 Labour law and miscellaneous

3.1 New rules for compensation of minimum wage overtime

As from 1 January 2019, employers may no longer make arrangements with individual employees regarding overtime (this includes extra hours and overtime hours) based on time in lieu. As from 2019, this is permitted only if this is set out in a CLA and agreed in writing. This applies only if the employee is paid the minimum wage or less on the hours worked.

More than the minimum?
For employees with a higher wage, this does not apply; you may still make time in lieu arrangements. Please note that the employee receives at least the minimum wage on all hours worked combined in the regular payment period. Employees earning less than the minimum wage due to time in lieu must be paid out in money as from 2019.
In zero-hour contracts, a time in lieu arrangement is not at all permitted.

Using before 1 July
If a CLA sets out a scheme for time in lieu to compensate overtime, such time in lieu must be used by 1 July of the following year. If not, the employer must pay the remaining amount.

3.2 Maximum transition allowance higher in 2019

The maximum transition allowance was increased to €81,000 on 1 January 2019, which is a €2,000 increase compared with 2018. An employee may receive more only if his/her annual salary exceeds €81,000.

Increase transition allowance based on development of contract wages
The Minister of Social Affairs and Employment annually adjusts the amount of the maximum transition allowance based on the contract wages agreed between employer and employee organisations. The increase for next year is estimated at 2.9%. The maximum transition allowance rounds off to €81,000 and the allowance applies to contracts expiring on or after 1 January 2019.

Exceeding the maximum allowance?
You may apply a higher transition allowance only if the employee's annual salary is higher. In that case, the maximum transition allowance is the wage over 12 months. In turn, this depends on the number of service years of the employee and the amount of the monthly salary.

New legislation
An employee is entitled to a transition allowance if the employment contract is terminated after 24 months. According to the WAB (Balanced Labour Market Bill), an employee is entitled to a transition allowance from the first day of employment. This Bill is intended to become effective as per 1 January 2020.

3.3 Change criteria bridging scheme transition allowance

Small employers (< 25 employees) may make use of the bridging scheme transition allowance in the event of very challenging financial situations, subject to strict conditions. This scheme implies that employers only need to consider the years from May 2013 when calculating the transition allowance. Up to 1 January 2019, challenging financial situations were classed as situations where:

1. the employer company's net result on the financial year prior to the financial year during which the procedure for termination of the employment contract started and the two previous financial years was below zero;

2. the value of the employer company's equity was negative at the end of the financial year prior to the financial year during which the procedure for termination of the employment contract started; and

3. the value of the employer's company's current assets was lower than the current liabilities due within one year at the end of the financial year prior to the financial year during which the procedure for termination of the employment contract started.

All three conditions must be fulfilled. The criteria became less strict as per 1 January 2019. The first condition is currently based on an average negative result on the three prior financial years combined. The second condition effective as from 1 January 2019 is that the equity at the end of the prior financial year can be a maximum of 15% of the employer's company's total equity. The third condition remains unchanged.

Please note!
If the procedure for termination of the employment contract started before 1 January 2019, the previous, stricter conditions still apply.

3.4 Transition allowance and facility?

In a letter of 17 December 2018, Minister Koolmees set out the reason why in principle, no tax provision may be created for the transition allowance.

In order to create a provision, the tax rules and jurisprudence set out that as at balance sheet date, there must be reasonable certainty that the expense in the form of a transition allowance will actually occur in the future. Entitlement to a transition allowance does not arise until the date of the employer initiating the termination of employment. This is not always clear at balance sheet date. This may change in any future restructuring.

Please note!
The Minister will specify this issue in a policy decree in the spring of 2019.

3.5 From 2020 onwards, compensation for transition allowance during sick leave

From 2020 onwards, employers will be granted compensation for the transition allowance to be paid upon termination of employment of employees on long-term sick leave.

After the House of Representatives, the Senate also approved the bill regarding compensation of transition allowances during sick leave. Both the House of Representatives and the Senate feel it is justified to have a compensation for a transition allowance if long-term sick leave preceded the termination of employment. The transition allowance must also be paid in such cases.

Amount of compensation
The compensation payable by UWV (Employee Insurance Administration Agency) to the employer is not necessarily equal to the transition allowance paid out to the employee by the employer. Initially, this should concern an allowance paid after a sick leave period of at least 104 weeks. No right of compensation is granted on the accrued transition allowance over a period when the employer suspended the employment contract. In this context, the lowest amount of the double cost incurred by the employer is paid out, i.e. either continued payment of wages or the transition allowance. It is possible that the continued payment of wages was a fairly low amount due to a low wage, and the transition allowance was higher due to a high number of service years.

Application for Employee Insurance Agency
This implies that UWV may grant compensation with retroactive effect. UWV will check the applications. For this purpose, UWV requires information from the employer. The employer should submit the following documents with the application:

- a copy of the employment contract;
- proof of termination of the contract due to sick leave;
- proof of continued payment of wages (payslips);
- proof of the amount of the transition allowance;
- proof of payment for such allowances.

Compensation for any employer
The Coalition Agreement sets out that the scheme was designed for small businesses. The government decided that larger employers were also allowed to make use of the scheme. Any employer may make use of the scheme provided that the requirements are fulfilled. This makes the scheme more affordable, as the employer is charged a higher premium for the General Unemployment Fund.

Start date
You may request compensation from UWV from 1 April 2020, within six months of payment of the full transition allowance. Employers may claim compensation with retroactive effect for transition allowances paid after 1 July 2015. This is possible from 1 April 2020 through 30 September 2020. These dates were determined in consultation with UWV. UWV indicated that their organisation needs time to prepare this measure.

3.6 Transition allowance also applies for reduced contractual working hours

If the employment contract has continued for at least two years and was terminated at the employer's initiative, the employer must pay out a transition allowance. The Supreme Court recently issued a decision, ruling that in some cases, a transition allowance is also due if the employment contract is not terminated in full, i.e. if the contractual working hours are reduced.

A 55% employment contract
This concerned a teacher with a full-time employment contract that was fully terminated after two years of sick leave, and subsequently reappointed based on an employment contract for 55% of the regular contractual working hours. The teacher requested payment of the full transition allowance due to full termination of her employment contract, or payment of a partial transition allowance for the portion of the employment contract that was terminated.

The Supreme Court ruled that the legislation does not set out rules for a partial transition allowance if the contractual working hours are reduced, but that in special cases, the person would be entitled to a partial transition allowance.

What qualifies as a special case?
A special case based on a claim for partial transition allowance is defined as when an employer is forced by circumstances to proceed with substantial and structural reduction of the employee's contractual working hours. Substantial reduction is classed as a decrease of contractual working hours by at least 20%, and it is structural if the reduction can reasonably be expected to be permanent.

The conditions forcing the employer to implement substantial and structural reduction include necessary partial redundancy due to economic or business conditions, or due to permanent partial occupational disability of the employee. The employees should not be held liable for circumstances that resulted in reduced contractual working hours.

Partial transition allowance
Please remember that an employee who has been with the company longer than two years and loses a substantial portion of contractual working hours due to circumstances for which the employee is not responsible is entitled to a partial transition allowance, pro-rated for the wage that he/she was entitled to originally.

Tip!
As from 1 April 2020, employers may become eligible for a compensation scheme for the transition allowance in the event of termination of employment after long-term occupational disability. This scheme will apply to all employers. The compensation will amount to a maximum of the transition allowance or the wages paid out over the period of long-term occupational disability if lower.

3.7 Significant reform of legislation regarding termination of employment

The Cabinet has agreed on rigorous reform of labour law. This resulted in the Balanced Labour Market Bill. This bill makes the provisions regarding termination of employment less strict, and offers an option of a longer temporary contract and a longer trial period. The rules regarding the transition allowance after termination of employment are also revised.

Coalition Agreement
The plans are part of the Coalition Agreement. The Cabinet also agrees on the specifics of these measures. The changes are subject to parliamentary approval.

Provisions regarding termination of employment less strict
The less strict provisions ruling termination of employment mean that reasonable grounds, which individually would not be sufficient grounds for dismissal, can be combined to have sufficient grounds for dismissal. This concerns a so-called ‘accumulation of grounds’.

Transition allowance
The Balanced Labour Market Bill sets out that the transition allowance is accrued from the start of the employment contract rather than after two years, as is the case now. On the other hand, the transition allowance no longer increases for an employment contract covering ten years or longer. If dissolution is granted based on the aforementioned accumulation of grounds, the transition allowance can be increased by a maximum of 50% by the Court.

Longer temporary contract
Employers have the option of offering a permanent employment contract after three years, rather than the current period of two years. This is designed as an incentive to hire more employees based on a permanent employment contract.

Longer trial period
The trial period is also subject to change. Currently, the maximum trial period is two months for an employment contract of two years or longer, or a permanent employment contract. This is extended to five months for a first contract if the employer offers a permanent employment contract. For a first contract for more than two years, the trial period may amount to a maximum of three months.

3.8 More partner leave for childbirth

Partners will be entitled to a longer leave period when a child is born as from 2019. Maternity leave/paternity leave (currently two days) is renamed to childbirth leave in 2019, amounting to once the agreed weekly contractual working hours. The cost of such extra leave is fully charged to the employer.

Extra leave from 1 July 2020
As from 1 July 2020, partners will be entitled to an even longer leave period when a child is born. This concerns a total of five extra weeks, which implies that the total childbirth leave is a maximum of six weeks.

Benefit
During the five weeks of extra leave, the partner is entitled to an UWV benefit amounting to 70% of the (maximum) daily wage. An employer may supplement this benefit on a voluntary basis.

Please note!
The new legislation does not apply to ZZP contractors.

When to take up leave?
The week of childbirth leave can be taken up in the first four weeks after childbirth. The extra five weeks of leave can be taken up to six months after childbirth. The employee is in principle free to decide when to take up the extra time, but this may be rescheduled in the event of significant business interests.

Extension of adoption and foster care leave
The period of adoption and foster care leave was extended as from 1 January 2019. This period is now four weeks, and is extended to six weeks.

3.9 What changed in the Termination of Employment Implementation Rules?

The Termination of Employment Implementation Rules were updated as per 1 August 2018. The Termination of Employment Implementation Rules are a specification of the statutory rules for dismissal via UWV (Employee Insurance Administration Agency). This concerns updates and additions to the Termination of Employment Implementation Rules for redundancy and dismissal due to long-term occupational disability. As the employer, you can apply these statutory implementation rules if you want more clarity regarding the way UWV assesses an application for dismissal.

The main changes are:

In the event of redundancy:

- Your compliance with obligations set out in the WOR Act (Works Councils Act) if you are an employer without a Works Council or employee representative;
- A further explanation of how to deal with international situations, redundancy and proportional representation;
- A further explanation of in-placement and out-placement of employees;
- How to deal with payroll employees as an employer;
- A new Chapter on the Reporting Mass Redundancy Act.

In the event of termination of employment after long-term occupational disability:

- An explanation of situations concerning the WIA, including overdue applications and the appeals procedure;
- A further explanation of in-placement and out-placement of employees;
- How UWV (Employee Insurance Administration Agency) assesses the reasonable ground for termination of employment of a payroll employee after long-term occupational disability.

Tip!
The documents are available from UWV's website:
- Redundancy
- Termination of employment due to long-term occupational disability

3.10 Continued payment of wage during sick leave

The Coalition Agreement sets out proposals to mitigate the bottlenecks concerning continued payment of wages during sick leave. In a letter of 20 December 2018, Minister Koolmees indicated that he was able to make agreements with employers regarding a feasible package of measures. The package would be a better fit for the needs of smaller employers, but large and medium-sized businesses would also benefit.

This would concern the following measures:

- introduction of an SME sick leave unburdening insurance as per 1 January 2020;
- continued payment of wage rebate on premiums for the cost of continued payment of wages as per 2021;
- medical advice company doctor to be leading as from 1 January 2021;
- improvement transparency continued payment of wages during sick leave;
- reinforcing the employer's role in the second track to increase the grip on reintegration.

The eventual purpose is to give employers an incentive to hire more permanent employees.

Latest by the summer recess, the Minister will provide more information on this subject.

3.11 Employees with occupational limitations continue to be entitled to a minimum wage

The plan to pay people with occupational limitations below the minimum wage is off the agenda. The measure was designed to make it easier for people with an impairment to find a job. The government is reviewing to see other options.

Subsidy via municipal authorities
An employer hiring a person with an impairment is currently eligible for a subsidy paid by the municipal authorities. This way, the minimum wage can always be paid.

Tip!
As an employer, you may also be eligible for adjusting the workplace for an employee with an occupational impairment.

Amount of subsidy
The subsidy for the income amounts to a maximum of 70% of the minimum wage and depends on the employee's labour factor. The subsidy has no time limit.

Tip!
For employees with an occupational limitation, employers are also entitled to a payroll benefit subject to certain conditions. This amounts to a maximum of €6,000 per year and is available for a maximum of three years.

4 Salary Costs (Incentive Allowances) Act

The Wtl (Salary Costs (Incentive Allowances) Act) consists of three components: 1) the low-income benefit, 2) the youth low-income benefit and 3) the payroll benefit. The low-income benefit (LIV) was introduced as per 1 January 2017. As per 2018, the payroll benefit (LKV) and the youth LIV were introduced.

Please note!
Regarding premium discounts, there was still an option to claim a rebate retrospectively if this had been omitted. This does not apply to the payroll benefits! If the employer does not fulfil the requirements in due time, retrospective application for the payroll benefits is not accepted. Timely detecting when to apply is therefore crucial.

4.1 Paying out allowances

The LIV, youth LIV and LKV on 2018 are automatically paid out in 2019 if the payroll tax returns show that the employer is eligible. This process is as follows:

1. Before 15 March, the Tax and Customs Administration sends the employer a preliminary calculation of LIV, youth LIV and LKV. The calculation is based on the returns and corrections on 2018 submitted through 31 January 2019.
2. You may submit corrections on 2018 until 1 May 2019. These will still be considered in the final calculation. Corrections received after 1 May are accepted, but will not be factored in the calculations of the various allowances.
3. The Tax and Customs Administration sends the employer a decision presenting the final calculation of the LIV, youth LIV and LKV. This is completed by 1 August 2019, based on the data in the system. This employer may submit an objection or appeal against this decision.
4. The amounts are paid out within six weeks of the date of the decision. This will be latest by 12 September 2019.

4.2 The low-income benefit in 2019

The limits for hourly wage regarding the low-income benefit (LIV) were determined for the year 2019. The limits were adjusted due to the increase in the minimum wage as per 1 January 2019.

4.2.1 LIV conditions

Eligibility for LIV is subject to the following conditions:

- The employee fulfils a certain average hourly wage (based on at least 100% and a maximum of 125% of the statutory minimum wage).
- The employee has social insurance.
- This concerns a substantial job (at least 1,248 payrolled hours per calendar year).
- The employee has not yet reached the statutory retirement age for AOW state pension.

4.2.2 2019 LIV amounts

In 2019 the high allowance will be granted to the employer for employees with an hourly wage of at least €10.05 and maximum €11.07. In 2019 the low allowance will be granted to the employer for employees with an hourly wage of at least €11.07 and maximum €12.58. The amount of the hourly allowance has not changed compared with 2018.

Average hourly wage 2019	LIV per employee per hour	Maximum LIV per employee per year
≥ €10.05 ≤ €11.07	€1.01	€2,000 per year
> €11.07 ≤ €12.58	€0.51	€1,000 per year

Tip!
You can influence the hourly wage of your employees independently to ensure maximum benefit of the LIV. For example by paying employees just over the hourly wage limit an expense allowance in the expense allowance scheme in exchange for a slightly lower wage. Naturally, this is only an option in compliance with the applicable statutory tax efficiency options.

4.3 Youth low-income benefit 2019

The youth LIV is an annual allowance granted to employers pertaining to increasing the minimum wage for young workers. This means additional payroll costs for employers. This is why employers will receive the youth LIV for employees fulfilling the conditions as from 1 January 2018.

4.3.1 Youth LIV conditions

An employer is entitled to the youth LIV for each employee fulfilling the following these three conditions:

- The employee has social insurance.
- The employee has an average hourly wage that is in line with the statutory minimum wage young workers for his/her age.
- The employee was aged 18, 19, 20 or 21 on 31 December of the previous year.

The average hourly wage is the wage from employment during one year, divided by the number of payrolled hours in the relevant year.

4.3.2 2019 limits to hourly wage

The hourly wage for the various age brackets will be set out in the calculation rules of 1 July 2019. These hourly wage limits are derived from the statutory minimum wage over the entire calendar year and are not announced until after the publication of the minimum wage for the second half of 2019.

4.3.3 2019 youth LIV amounts

If an employer falls within the hourly wage limits to be set and fulfils the other conditions, an employer is entitled to youth LIV for an employee. The exact amount of the benefit depends on both the number of payrolled hours and the employee's age.

Age as at 31 December 2018	Youth LIV per hour in 2019	Maximum youth LIV per employee in 2019
age 21	€0.91	€1,892.80
age 20	€0.59	€1,227.20
age 19	€0.16	€332.80
age 18	€0.13	€270.40

Please note!
An employer making use of BBL (work-based pathway) students may also be eligible for the youth LIV. The employer receives this allowance if paying the BBL student in accordance with the statutory minimum wage for young workers in line with his/her age. The employer may also pay the BBL student below the statutory minimum wage for young workers, but in that case the employer is not entitled to youth LIV.

Please note!
If the employer included incorrect information in the payroll tax return, an administrative fine may be imposed up to €1,319 per detail per employee per year, because correct information is crucial for the implementation of this Act.

4.4 Payroll benefits in 2019

As from 2018, employers who employ older persons entitled to benefits, workers with an impairment or partial occupational disability, and employees that fall within the scope of the target group of the Jobs and Jobs Quota (Work Disabled Persons) Act will be entitled to what are known as payroll benefits (LKVs). The relevant conditions remained the same in 2019, excepting regarding an edit of the definition of calendar month.

SRA

4.4.1 Conditions payroll benefits

If the conditions are fulfilled upon the start of the employment, the employer may submit a request for an LKV allowance within three years. For 'LKV reassigned occupationally impaired employees', a period of one year applies, rather than three years.

Eligibility for LKV is subject to the following conditions:

- The employee has a target group declaration.
- The employee was not employed by the employer at any time during the six months prior to the effective date of employment (the anti-revolving door provision) (exception for re-placement of occupationally impaired employee).
- The employee has not yet reached the statutory retirement age for AOW state pension.
- The employee does not perform any labour as set out in Section 2 of the Sheltered Employment Act, or Section 10b, third subsection, of the Participation Act.
- The employee has social insurance.

Additionally, for each type of LKV, additional conditions apply. If your employee fulfils all conditions, he/she can apply for a target group declaration.

Please note!
The application for the target group declaration must be submitted within three months of the start of the employment contract. Make sure you apply in due time.

Use this target group declaration to apply for LKV (payroll benefit) in your payroll tax return. The 2019 conditions for being allocated this target group declaration will remain unchanged compared with the 2018 conditions.

4.4.2 Calendar month

In the past, the target group declaration was sometimes not issued because the application did not fulfil the condition that the employee was entitled to a benefit or labour support in the calendar month prior to starting employment. However, generally, the employee for whom the target group declaration was requested was entitled to a benefit or labour support directly prior to the start of employment.

Example
A job seeker age 56 receives an unemployment benefit on 1 February 2018. On 12 February 2018, this job seeker is employed by an organisation. The employer requests a target group declaration. In the calendar month prior to the employment date (i.e. January), the job seeker was not entitled to a benefit. Therefore, the application is not accepted.

As from 1 January 2019, the word 'calendar month' is changed to 'month'. The employee is in the Jobs and Jobs Quota (Work Disabled Persons) Act target group and fulfils the condition that he/she was entitled to a benefit or labour support on the first day of employment. At the request of the Ministry of Social Affairs and Employment, UWV (Employee Insurance Administration Agency) assessed all applications based on the updated condition as from 1 October 2018.

4.4.3 2019 amounts

LKV (payroll benefit)	Amount per hour paid	Maximum amount per year	Term
Older employee	€3.05	€6,000	3 years
Employees with an impairment or occupational limitations	€3.05	€6,000	3 years
Target group Jobs and Jobs Quota (Work Disabled Persons) Act	€1.01	€2,000	3 years
Reassigning occupationally impaired employee	€3.05	€6,000	1 year

4.4.4 Maximum duration LKV Jobs and Jobs Quota (Work Disabled Persons) Act 2020

As from 2020, the effective period of the payroll benefit for the Jobs and Jobs Quota (Work Disabled Persons) Act target group will be changed. From 2020 onwards, this payroll benefit can be applied permanently for an employee as long as he/she fulfils the conditions.

Nothing is currently known about this change at this time. This is why we do not yet know how this scheme works for cases that would expire after or shortly before 1 January 2019 according to the old rules.

4.5 Wtl and trainees

The payroll benefit and the low-income benefit and youth low-income benefit can in principle also be applied to trainees.

Trainees are eligible for the youth LIV or LIV if they are in a fictive or actual employment relation and fulfil the conditions of LIV. This also applies if they are only insured for ZW (Sickness Benefits Act). However, chances are that they do not fulfil the conditions that apply relating to average hourly wage.

Trainees are also eligible for the payroll benefit. This is the case if they receive a trainee allowance from the employer that is subject to withholding payroll tax and if they are insured for the Sickness Benefits Act. This means they are defined as employees. It is also possible to request a target group declaration.

Please note!
Trainees must comply with the requirement of applying for a target group declaration within three months. This period starts on the first day of the traineeship. If trainees are offered a full employment contract after a traineeship, for example after six months, they are not entitled to request a target group declaration. The three-month term has then expired. This employee is also not entitled to a payroll benefit.

5 DBA (Deregulation of Assessment of Independent Contractor Status) Act

The Cabinet aims to replace the DBA (Deregulation of Assessment of Independent Contractor Status) Act. This was announced in the Cabinet's Coalition Agreement of October 2017. This Act results in too much unrest and uncertainty among ZZP contractors and their clients.

5.1 Postponement replacement of DBA Act

The successor legislation to the DBA Act should provide more clarity to both clients and contractors regarding the definition of employment relation, i.e. when payroll tax and social insurance premiums should be withheld. Replacing this Act is not without its challenges. As a result, the new Act is not expected to become effective until 2021 at the earliest, according to officials Koolmees and Snel. A few changes are already known about the new Act.

Client Confirmation via online module
The new Act allows determining that the relation is not defined as employment based on an online module. This module issues a 'Client Confirmation', providing certainty about not withholding payroll tax and social insurance premiums. If the online module cannot conclude that the relation is not classed as employment, no Client Confirmation is issued. In that case, clients could still have a preliminary consultation with the Tax and Customs Administration. The online module is scheduled for completion in late 2019.

Hierarchy criterion
A key condition for employment is having a hierarchical relation. However, this criterion is far from clear. An extensive Note will be included in the 2019 Payroll Tax Manual, setting out indications and counter-indications for hierarchical relations. The assessment of a hierarchical relation should consider all facts and circumstances in cohesion. The need for updating the definition of hierarchical relation is currently under review.

Tip!
Please refer to the website of the National Government for more information about indications and counter-indications.

Employment contract at low rate
In order to prevent pseudo independence and competition on employee benefits, the Cabinet is also developing legislation setting out that self-employed professionals should be paid an hourly rate of at least €15 and €18. However, chances are that this is not in compliance with European legislation. This is why the Cabinet is reviewing alternatives that comply with the European rules. The legislation for lower-paid self-employed professionals will probably become effective as per 2021.

Opt-out
In consultation with their clients, higher-paid self-employed professionals can choose to make use of the opt-out scheme in the new legislation, where no employment contract is agreed in writing. If the relation is subsequently classed as an employment contract, the professional is not entitled to any benefits. This legislation is also scheduled to become effective as per 2021.

Implementation
Implementation of the Deregulation of Assessment of Independent Contractor Status Act has been suspended until at least 1 January 2020, with the exception of malintent scenarios. This concerns situations where parties clearly have an employment relation. The end date of suspension of implementation will not be announced until it is clear that all intended measures are effective.

6 DGA (Director and Major Shareholder): customary wage and self-administered pension

6.1 Customary wage of DGA

The fixed amount in the customary wage scheme for the DGA and his/her partner amounts to €45,000 for 2019 (same as in 2018). Subject to certain conditions, DGAs can set the customary wage below €45,000 in 2019. The reason is that there is a rebuttal scheme concerning the main rule that the wage of a DGA amounts to the highest of the following amounts:

- 75% of the wage from the most comparable position;
- the highest wage of the other employees of the private limited company or the affiliated companies (bodies);
- €45,000.

Please note!
In order to be able to set the wage below €45,000, you have to demonstrate that the wage from the most comparable employment is less than €45,000. The customary wage amounts at least to €45,000 if you are unable to do so.

Customary wage scheme for innovative start-ups
Is your BV classed as a start-up for the application of the R&D wage withholding tax facilities? In that event, you may set your customary wage as equivalent to the statutory minimum wage. You may apply this start-up scheme for a maximum of three years. Subsequently, the main rule applies.

The Payroll Tax Manual sets out the criteria to be classed as a start-up as follows:

- You have an R&D declaration in a calendar year.
- You are entitled to the increased start-up percentage in a calendar year.
- You do not exceed the 'de-minimis ceiling' for state support under the European Treaty. This can be demonstrated with a 'De-minimis support declaration'.

If you have an R&D declaration and you are entitled to the increased start-up percentage for part of the calendar year, then the scheme will still apply to the full calendar year.

6.2 More time for mandatory form commutation DGA pension

Accrual of a pension for the DGA as a self-administered pension (PEB in Dutch) is no longer permitted. Any pension accrued within the company can be commuted or converted into a retirement facility.
This is subject to the condition of providing a disclosure form to the tax authorities. The decision was to extend the submission term, subject to conditions.

Commutation with tax rebate
In 2019, a tax rebate can still be applied for commutation of the pension accrued in the company. This concerns a 19.5% tax rebate in 2019. In addition to this rebate, no revision interest is charged on the commutation or conversion.

Renewal term
In reality, the term for submitting the disclosure form has proven too short. This term is currently one month after the commutation or conversion of the accrued pension.
The decision was to extend the submission term, subject to conditions. If the disclosure form is submitted to the tax authorities within one year of commutation or conversion, this is still in time.

Terms and Conditions
The other conditions concerning commutation or conversion must be fulfilled, including the co-signature of the partner. In the case of commutation, the declaration must be submitted and paid in accordance with statutory provisions.

Extra extension
If the signature of the partner or ex-partner is required and is not included on the form submitted, the tax payer has six weeks to restore compliance. This also applies in the above-mentioned cases of term extension.

The approval has a retroactive effect up to 1 April 2017.

Please note!
If the DGA has a prenuptial agreement, first check if a settlement agreement and/or a compensation agreement must be concluded.

6.3 Pension of DGA

DGAs have not been permitted to accrue a self-administered pension since July 2017. What are the alternatives? The most favourable options are set out below.

1. Savings or investments?
A self-evident alternative for the DGA who is no longer permitted to accrue a self-administered pension is to accrue savings or investments. The disadvantage of savings is the low interest rate, resulting in virtually no return on the capital accrued. The disadvantage of investments is the uncertainty. Spreading the investments over defensive funds can mitigate that disadvantage. Another disadvantage of investments is that no exemptions are granted in box 3 of the tax return. This was the case for self-administered pensions.

2. Capital for your own company
Alternatively, you can invest your pension contribution in your own company. Depending on the interest you are currently paying for bank loans, this may be a favourable option. The disadvantage is that you lose your 'pension' if your company goes bankrupt.

3. Repaying your own home
If you have a mortgaged home, repaying your mortgage can be a great compensation for accruing pension. Please remember that penalty-free repayment of the mortgage is often restricted to a small portion of the principal. If you repay more, the bank generally charges a fee for early repayment due to missed interest income for the bank. An advantage is that repayment does not result in a higher tax in box 3.

Please note!
Repayment of mortgages will become more favourable in the next few years, because the deductible mortgage rate will gradually be decreased to the 37% base rate.

4. Purchasing annuity
If you have a pension shortfall, you may consider buying an annuity. The premiums you pay are deductible subject to conditions and the annuity is not added to box 3.

5. Buying a home and rental income
Buying a home and renting it to the children has become increasingly popular in the past years, and may serve as an alternative to accruing a pension. The advantage is that just part of the value of the home is added to box 3. Also, any capital gains of the home are not taxed.

6.4 Retirement facility in the company; reserve amount permitted?

Subject to certain conditions, a substantial interest in a company can be silently transferred to the heirs upon death. Please find below the rules that apply to the valuation of any pension in the company.

Transferring is postponing taxation
When transferring the significant interest, heirs do not need to pay tax immediately on the value of the substantial interest. This is required only on the date the heirs sell the shares. This implies this concerns only a postponement of the tax claim.

What are corporate assets?
The answer to the question which rules apply to the measurement of any pension capital in the company is important, as the transfer rule regarding substantial interest applies to the corporate equity. The investment capital should amount to no more than 5% of the corporate equity.

Value of pension entitlement
The Supreme Court recently received a case concerning the value of a pension capital held by a company.

Commercial measurement
The commercial measurement of the pension was valued at €58,000. However, the company had 9.5 times this amount in reserves on the balance sheet. The Court in Den Bosch found this acceptable, but the Supreme Court did not. The Supreme Court judged that this is more than was required to hedge the retirement facility.

Another Court must now decide on the permitted amount of reserves. The Supreme Court has already indicated that this does not concern the commercial measurement because a buffer should be taken into account in case of worst-case scenarios.

Please note!
Since 1 July 2017, self-administered pension accrual is no longer permitted. The DGA has until 2019 to choose an option for the self-administered pension already accrued.

Tip!
Ask for sound advice when handing over your company, also concerning measurement of the value of your company and your pension reserve.

7 Tax addition to income for car

7.1 2019 tax addition rates

In 2019, nothing will change to the tax addition to your income for new cars with a CO2 emission level of over 0 grams per kilometre. The addition rate is still 22%. The tax addition for the more expensive electric car will change, the so-called Tesla tax. The tax addition will change in the course of 2019 for all cars, electric and non-electric, with initial registration in 2014.

Tesla tax
The addition to taxable income for the fully electric car stands at 4% on the portion of the catalogue price up to €50,000. For a car with a catalogue value over €50,000, a 22% tax addition is charged on the excess amount. This applies only to electric cars with an initial registration date (DET) on or after 1 January 2019. The example below sets out the result of this tax.

Example:
An employee has an electric car with a catalogue price of €90,000. Upon initial registration in 2018, this employee paid a 4% tax addition to his income on the full catalogue price, which amounts to €3,600 per year. Based on the new rules, upon initial registration in 2019, he will pay 4% on €50,000 and 22% on the remaining €40,000, i.e. €10,800 per year. This amounts to a difference of €7,200 per year.

Please note!
The tax addition is in principle fixed for 60 months, applicable from the first month after the month of the car's initial registration.

In principle, the 2019 tax addition rates therefore have not changed compared with 2018. The tax addition for a new car, i.e. also for electric cars, is currently fixed until expiration of the full 60-month period. This implies that for electric cars with initial registration in 2018, the 4% tax addition to the income is applied on the full catalogue price for 60 months.

Exception for cars on hydrogen cells (and solar energy)
The change that the high tax addition is applied to the catalogue value above the first €50,000 does not apply to cars running on hydrogen cells. These retain a 4% tax addition on the entire catalogue value in 2019. The reason is that the government wants to give an incentive to buy this technology.

The Cabinet recently indicated reviewing a similar exception for cars running fully on solar energy. The outcome will probably be announced around mid 2019, with potential plans about car taxation from 2021 onwards.

Summary:

CO_2 emissions	**Tax addition**
0 (on battery)	4% up to €50,000, **excess** 22%
0 (on hydrogen)	4% unlimited
More than 0	22%

Consequences for cars from 2014
For cars from 2014, the 60-month period will expire in the course of 2019. This means that cars with initial registration in 2014 may be subject to the new tax addition in the course of 2019. If the initial registration of the car took place in December 2014, this is not until 1 January 2020.

Electric cars incur an extra tax addition of 7% up to
€50,000 and 25% on the remaining amount. Cars with CO2 emissions in any case are subject to the 25% tax addition after expiration of the 60-month period. Also see the table below.

CO_2 emissions	**Addition to income after 60 months**
0 (on battery)	7% up to €50,000, **excess** 25%
0 (on hydrogen)	7% unlimited
More than 0	25%