

# April 2016

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### 1. Reclassification

The Reclassification Procedure Act of 23 July 2015 entered into force on 1 January 2016. At first sight, the labour code sets two prior conditions to this procedure: the employee must be bound by a contract of employment at the time that s/he files an application for reclassification and s/he must not have been declared disabled.

This act then provides two different ways for the reclassification procedure, either through the intervention of the occupational physician (Article L.326.9 of the Labour Code) or through Social Security Medical Inspectorate (Article 14 of the Social Security Code).

As regards this second procedure, the Social Security Medical Inspectorate proceeds, after 6 weeks of incapacity for work (over a reference period of sixteen weeks) to assess the employee's situation by means of a detailed medical report. The latter must be completed by the employee's attending physician and be sent to the Social Security Medical Inspectorate. In this case at hand, this entails extended incapacity due to long-term illness, disability or wear. If, on the basis of said report, the Social Security Medical Inspectorate considers that the person concerned may suffer from incapacity at his or her last position, the reclassification procedure may be initiated, provided that the company has at least 25 employees. Thus, in accordance

with the employee, the Social Security Medical Inspectorate refers the matter to the competent Joint Commission and occupational physician and informs the employer accordingly.

**Important elucidation concerning the employee who has been at his or her last position for less than 3 years:** In order to benefit from internal reclassification henceforth, such an employee must be in possession of a **certificate of fitness** for his or her position drawn up by the competent occupational physician when said employee was hired. The aim is to avoid internal reclassification requests in the first 3 years as of the hiring of the employee. Two things are essential to that end:

- First, the occupational physician must consider all the risks and requirements of the employee's position when the latter is hired. This entails a precise description of the position (related risks and activities) as well as a prior complete inventory of risk positions.
- Secondly, the utmost cooperation on the part of the employee is indispensable. The latter must be fully transparent about his or her state of health and any medical problems.

## 2. Draft tax reform

The government of Luxembourg announced the new tax provisions it wants to introduce as of 1 January 2017. They are in draft form for the time being, with the vote in the chamber of deputies pending. The main changes that will have an impact on wages and the taxation of natural persons are given below.

### **Abolition of the balanced budget tax**

The balanced budget tax of 0.5% introduced in 2015 will be abolished on 1 January 2017.

### **New tax brackets**

New tax brackets will be created for taxpayers ranked under Class 1:

- 41% for revenues between €150,000 and €200,000 per year;
- 42% for revenues of over €200,000 per year.

### **Option for individual taxation for a married couple**

As of 1 January 2018, resident or non-resident married couples may opt for individual taxation.

### **Increase of the deduction limit for contributions paid to supplementary pension funds**

Employees under 40, who pay into a supplementary pension fund may deduct their personal contributions up to a maximum of €3,200 (formerly €1,200).

### **CO2 emission rate taken into account in calculating the Car Benefit in Kind**

The benefit in kind, taxable on the monthly salary, for a company car fixed annually at 1.5% of the value of the new vehicle (inclusive of VAT) will be adjusted

downward or upward (from 0.5% to 1.8%) according to the CO2 emissions and type of vehicle engine.

### 3. Drop of contribution rates and update on indexing

The accident insurance contribution rate was fixed at 1% on 1 January 2016 instead of 1.10% previously.

Similarly, there is a change in the mutual insurance rates since 1 January 2016:

- Class 1: 0.46% against 0.51% in 2015
- Class 2: 1.21% against 1.32% in 2015
- Class 3: 1.85% against 1.94% in 2015
- Class 4: 2.93% against 3.04% in 2015

The first quarter of 2016 has been closed and, as in 2015, there will have been no salary indexation. Due to the quasi non-existent inflation, it is highly unlikely that an indexation will occur through the year. The last STATEC forecasts indicated a possible indexation at the end of 2016 – beginning of 2017.

### 4. Circular on stock options

On 28 December, inland revenue published a new circular on the tax system applicable to stock option plans.

As of 1 January 2016, employers who had envisaged offering a stock option plan to their employees must inform the competent official at the RTS (tax on salaries) office at least 2 months before the implementation of the plan, together with the list of employees concerned. Inland revenue seems to want to increase checks on a benefit that is already very fiscally advantageous.

For plans put in place before 1 January 2016, whose options have not yet been allocated to employees, employers must inform the competent official at the RTS office as promptly as possible.

Nevertheless, as this circular is very general, Securex recommends providing the *Administration des contributions directes* [Luxembourg Inland Revenue], in both cases, with:

- a copy of the option plan
- the list of beneficiary employees.

## 5. Director's fees and VAT

On 9 February 2016, the director of VAT (Luxembourg Registry- *Administration de l'Enregistrement et des Domaines* ) indicated that the remuneration of self-employed executives was liable for VAT at a rate of 17%. According to the Registry, this rule is not new, but there is no official circular on the matter in fact.

The issue is complicated, because when talking about executive remuneration, we at times refer to “attendance fees” and at times to “Director's fees.”

Director's fees are subject to withholding at source at a flat-rate of 20%. The VAT Act provides that attendance fees are exempt from VAT. So either the VAT or the withholding at source must be applied, but not both together.

In practice, all remuneration was automatically qualified as a director's fees without any real analysis being carried out. The Administration has henceforth decided to apply VAT on director's fees.

This entails that the persons concerned must register with the VAT Administration and comply with the VAT rules (issuing invoices with VAT number, VAT returns, etc.).

It is necessary to wait for confirmation (by the Administration) of the entry into force of this provision first. In the meantime, the contract with each executive must be reviewed, for each case individually, to determine whether VAT has to be paid.

## 6. Deduction of parking expenses from net salaries

Except in the cases provided under Article 224-3 of the Labour Code, deductions cannot be made from the net salary. The 4 cases authorised by law are as follows:

*1. Fines incurred by the employee by virtue of this code, the law, his or her status, and the internal rules and procedures of an establishment duly posted;*

*2. Reparation of damage caused owing to the employee's fault;*

*3. Supplies to the employee:*

*a) tools or instruments necessary for work and the maintenance thereof;*

*b) materials or equipment necessary for the work that employees have to perform in accordance with accepted norms and under the terms of their engagement;*

*4. Advances in cash.*

This article falls under public policy, i.e. the employee may not waive this right. Therefore, any clause in a contract, amendment, internal procedure, policy, etc., even if signed and accepted by the employee, shall be null and will not be upheld by a court.

Faced with this, either the employer continues with the withholding and waits for claims by his employees (bearing in mind that there is a statute of limitation of 3 years) or changes his practice for the future and considers a benefit in kind when he puts a parking facility at the disposal of his employees.

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