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1. The Upcoming Tax Reform

A new step has been taken towards the tax reform 2017: the draft law was introduced in the Chamber of Deputies on 26 July 2016. It contains previously announced measures but also amendments that will have an impact on the salaries or taxation of natural persons.

End of the budget balancing tax

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

New tax rate

The tax rate applicable to individuals has been adjusted for the sake of social fairness. More modest households and the middle class will see their purchasing power strengthened. In a spirit of solidarity, those with higher income will be called upon to contribute more. Accordingly, two new tax brackets will be created:

For taxpayers in Class 1 and Class 1A:

- 41% for income between €150,000 and €200,004 per year;
- 42% for income higher than €200,004 per year.

For taxpayers in Class 2, the income is doubled.

| Tax rate | Class 1 and 1A | Class 2 |
|----------|-----------------------------------------------|--------------------------------------|
| 41% | Income between €150,000 and €200,004 per year | Income between €300,000 and €400,008 |
| 42% | Income higher than €200,004 per year | Income higher than €400,008 |

Progressive tax credit rate

The reform introduces a progressive tax credit rate based on the different gross wage brackets. The amounts will vary between €0 and €600. Tax credits will no longer be granted as of a gross salary of €80,000 per year.

| | |
|-------------------------------------------|-----------------------|
| Annual income between €936 and €11,265 | €300 to €600 per year |
| Annual income between €11,266 and €40,000 | €600 per year |
| Annual income between €40,001 and €79,999 | €600 to €0 per year |

Taking into account the CO2 emission rate when calculating the benefit in kind for company cars

The benefit in kind, taxable on the monthly salary, relating to company cars, currently fixed at 1.5% of the value of a new vehicle (inclusive of VAT), will be adjusted downwards or upwards (from 0.5% to 1.8%) according to the CO2 emission and the type of vehicle engine.

| Categories of CO2 emissions | Petrol engine (alone or hybrid) or compressed natural gas engine (CNG) | Diesel (alone or hybrid) | 100% electric or hydrogen engine |
|-----------------------------|------------------------------------------------------------------------|--------------------------|----------------------------------|
| 0 g/km | - | - | 0.50% |
| > 0-50 g/km | 0.80% | 1% | - |
| > 50-110 g/km | 1% | 1.20% | - |
| > 110-150 g/km | 1.30% | 1.50% | - |
| > 150 g/km | 1.70% | 1.80% | - |

For cars under a contract which does not expire on 1 January 2017, the benefit is calculated until the normal expiry of the term at the current rate of 1.5%.

Multiyear withholding tax card

The annual withholding tax card is to be replaced by multiyear cards. A new card will be issued only if a change in the taxpayer's tax situation presupposes a change in the tax parameters on the card.

This new system is being put in place under an electronic contract by and between the ACD and the employer, which will do away with the substantial volume of paper needed to print and send the withholding tax cards every year. It will also help simplify administrative red tape in the interest of the employee, the company and the ACD.

Lunch vouchers updated from €8.40 to €10.80

The benefit in kind for lunch vouchers is currently €2.80, on condition that the face value of the lunch voucher does not exceed €8.40. Put another way, the employee who receives a lunch voucher for a maximum value of €8.40 is not taxed if he contributes €2.80 in a personal capacity.

As of January 2017, the benefit in kind for lunch vouchers will go from €2.80 to €3.60, provided the face value of the lunch voucher does not exceed €10.80. By contributing €3.60, employees would not be taxed on a lunch voucher worth €10.80 maximum.

If the employer pays all the costs of lunch vouchers, the employee will be taxed at a rate of €3.60 per lunch voucher, if the face value of the voucher does not exceed €10.80. If it did exceed that maximum, the difference between the amount granted and €10.80 should be added to the benefit in kind of €3.60. In concrete terms, this means also that if the employer decided to maintain the face value of the lunch voucher at €8.40, the employee would see his tax charge increased from €2.80 to €3.60 if he does not contribute personally.

It should be noted that the employer remains free to fix the value of the lunch voucher he grants to his employees.

Individual taxation option for a married couple

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

Adaptation of taxation of married cross-border workers

As of 1 January 2018, the taxation of married non-resident workers will be modified to make it possible to issue the withholding tax card that takes into consideration the entire income of the household whilst exempting, of course, income which is taxed in the cross-border worker's state of residence. In the course of 2017, the ACD will contact non-resident married couples and verify their financial situation. This will entail registration in Tax class 1 by default for married cross-border workers who do not provide information on household income.

2. Change in the Method for Calculating the Benefit in Kind for Company Cars

As a result of the 2017 tax reform draft law, which is expected to be adopted by the end of the year, a new flat-rate method for assessing the benefit in kind for company cars based on the CO2 emission rate will enter into force on 1 January 2017.

The benefit in kind, taxable on the monthly salary, relating to company cars, currently fixed at 1.5% of the value of a new vehicle (inclusive of VAT), will be adjusted downwards or upwards (from 0.5% to 1.8%) according to the CO2 emission and the type of vehicle engine.

| Categories of CO2 emissions | Petrol engine (alone or hybrid) or compressed natural gas engine (CNG) | Diesel (alone or hybrid) | 100% electric or hydrogen engine |
|-----------------------------|------------------------------------------------------------------------|--------------------------|----------------------------------|
| 0 g/km | - | - | 0.50% |
| > 0-50 g/km | 0.80% | 1% | - |
| > 50-110 g/km | 1% | 1.20% | - |
| > 110-150 g/km | 1.30% | 1.50% | - |
| > 150 g/km | 1.70% | 1.80% | - |

For company cars under a contract which does not expire on 1 January 2017, the benefit is calculated until the normal expiry of the term at the current rate of 1.5%.

3. Lunch Voucher System Update

As part of the tax reform 2017, the government wishes to update the lunch voucher system.

The benefit in kind for lunch vouchers is currently €2.80, on condition that the face value of the lunch voucher does not exceed €8.40. Put another way, the employee who receives a lunch voucher for a maximum value of €8.40 is not taxed if he contributes €2.80 in a personal capacity.

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It should be noted that the employer remains free to fix the value of the lunch voucher he grants to his employees.

4. Proposed Legislation on the Organisation of Working Time

On 21 July 2016, a draft law on the organisation of working time was introduced in the Chamber of Deputies. It is expected to be adopted by the end of the year, as the current provisions relating to the reference period and the average weekly working time (Articles 211-6 to 211-10 of the Labour Code) are limited to 31 December 2016.

Changes concerning the reference period

The main aim of this draft law is to extend the legal reference period from one to four months. It is an option offered to the employer who may opt for a period of his choice not exceeding 4 months, depending on his own needs. Before taking this decision, the employer must observe the information and consultation procedure stipulated in Article 414-3 of the Labour Code, which provides explicitly that the employee representatives are tasked with “*giving their opinion on issues concerning working time.*” The decision thus taken must be notified to the *Inspection du travail et des mines* (ITM) [Inspectorate of Labour and Mines] in the month in which it enters into effect.

That said, the possibility of extending the reference period to 12 months by collective labour agreement is maintained.

If a work organisation plan is established, the reference period will be extended by granting additional days off.

| Reference period | Additional days off |
|-------------------------------------------------|---------------------|
| Between more than 1 month and 2 months maximum | 1.5 day |
| Between more than 2 months and 3 months maximum | 3 days |
| Between more than 3 months and 4 months maximum | 3.5 days |

These additional days off will apply only in companies which introduce a reference period of over 1 month, and only for reference periods accompanied by a work organisation plan.

For companies which decide to keep the reference period at 1 month as well as if a flexible time scheme replaces the work organisation plan, there will be no requirement of additional days off.

For each work organisation plan, the draft law also limits the overrun of the normal monthly working time to 12.5% or 10%.

| Reference period | Overrun limit |
|-------------------------------------------------|---------------|
| Between more than 1 month and 3 months maximum | 12.50% |
| Between more than 3 months and 4 months maximum | 10% |

Compared to the weekly average of 40 hours over a month, this comes to 45 hours (12.5%) and 44 hours (10%). Every hour worked beyond these weekly averages is automatically paid at the overtime rate (without any possibility of recovery within the reference period).

It should be noted that given the provisions concerning the reference period in the collective agreement, neither the additional days off nor the limits of 12.5% (or 10%) will apply.

Work organisation plan

The draft law maintains the work organisation plan, the legal period for which remains one month, except in cases where the reference period is less than one month. The reference period could be covered by several work organisation plans.

Nevertheless, as regards changes of the work organisation plan, the draft law does away with the possibility of companies invoking unforeseeable circumstances or cases of force majeure to change the working time during the application of the work organisation plan. From now on, the work organisation plan will be changed only by means of relevant notice of at least three days.

In case of litigation on the conformity of the work organisation plan, the latter shall be first submitted to the ITM, and if an agreement cannot be found between the parties, to the National Conciliation Office.

Flexible time scheme

The draft law does not entail major changes for the provisions concerning flexible time, which may replace the work organisation plan. Such a system can henceforth be introduced only with the consent of the employee representatives, and if there are none, with the consent of all employees (irrespective of their number in the company). The employer shall also be required to put in place a system to indicate the exact number of hours worked.

5. Postponement of Annual Leave

As the last quarter of the year approaches, it is worth recalling the rules that apply to the postponement of annual leave. In principle, annual paid leave must be granted and taken during the current year. Nevertheless, in certain cases and under certain conditions, it may be postponed beyond 31 December.

Read more on the possibilities for postponement of annual leave

Annual leave may be exceptionally postponed beyond 31 December of the current year in the following 4 cases:

- The proportional leave in the **first year in the employ of the employer** may be postponed until 31 December of the subsequent year. To that end, the employee must apply to his employer, who may not refuse such postponement. (Article L 233-9 section 2 of the Labour Code).
- Leave not taken at the end of the year because of the needs of the company or justified wishes of other employees can be postponed until 31 March of the subsequent year. (Art. L 233-10 of the Labour Code).
- Annual leave not yet taken by a pregnant employee at the start of her maternity leave may be postponed in principle until 31 March of the subsequent year (Article L332-3 of the Labour Code). The same applies to setting-in leave and parental leave.
- Following a decision of the Court of Justice of the European Union (CJEU; "Schultz vs. Hoff;" 20 January 2009), an employee who has been sick for a long period of time may no longer

lose his right to annual leave. Thus, if he cannot take his holidays in the course of the year in which they are due because of incapacity for work, the employee is entitled to a postponement of the holidays until the subsequent year.

Nevertheless, the employer is authorised to introduce a more flexible leave postponement system at all times (Example: unlimited postponement of leave from one year to the next; introduction of a time savings account, etc.).

When the employer indicates on the salary statements the postponement of hours of leave not taken from one year to the other, the postponement shall then be presumed to be unlimited. Holidays not taken can then be used until 31 December.

Conversely, the fact that the employer has granted a postponement of leave until 31 March of the subsequent year once, must not be misconstrued as company policy to postpone all leave not taken until the subsequent year.

6. What is the Current status of the Parental Leave Reform?

The draft law on the parental leave reform was duly introduced in the Chamber of Deputies on 15 January 2016. Since then, the legislative process has continued. Different bodies (including the Chamber of Employees, the Chamber of Commerce, and the Council of State) have given their opinion. At the end of July 2016, the Commission on the Family and Integration adopted amendments to the draft law initially introduced. The draft law should be presented and discussed in the public session in the Chamber of Deputies when parliament resumes so that the voting can be held in October 2016.

For more details on the parental leave reform, see January 2016 issue of Pinboard.

7. What about the Next Wage Indexation?

According to STATEC's latest update, it is likely now, more than ever, that the next indexation will take place in the fourth quarter of 2016, although the accumulated interest is now 2.22% (although 2.5% is normally required for the next indexation).

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