

Newsletter: **The De Croo Government's end-of-year laws**

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Dear reader,

With our first newsletter of the new year, we wish to present to you the most important HR-related novelties, announced by the De Croo I Government in December for 2021.

With regard to taxation, this mainly concerns: the exemption of the payment of the withholding tax for the training of workers and the extension of the validity period of some benefits in the form of vouchers and overtime at employers belonging to crucial sectors.

Finally, we discuss the extension of birth leave.

Given the constantly evolving coronavirus crisis and the measures this brings about, we will soon provide an update to our FAQs about the impact of those measures on your company.

In the meantime we are – as always – ready to help you with any HR-related legal questions you may have.

We hope you enjoy the read!

1 Fiscal novelties

Of the various tax measures of the end of the year legislation, covering all fiscal areas (indexation of fiscal expenditures, tax deduction, family taxation, support measures taken by the regions, communities, provinces and municipalities, Tax Shelter, resources from student work, etc.), there are several that specifically affect HR taxation. Here, we explain these to you.

1.1 Exemption of the payment of withholding tax for the training of workers

The Programme Act (I) firstly introduces a new exemption from the payment of withholding. This measure provides that employers within the private sector are exempted from the obligation to pay a part of the withholding tax due on employees' taxable remuneration to the Treasury, provided that t:

- these workers have been employed by the employer for at least 6 months; and
- these workers have followed a minimum of 10 days' training during an uninterrupted period of 30 calendar days. The minimum duration of 10 days applies to full-time workers in accordance with the regulations applicable to the company concerned. This minimum duration is reduced proportionally depending on the work schedule of the worker concerned. For the calculation of the duration of the training, one day of training is considered to correspond to 7.6 hours of training;
- the training meets the following conditions:
 - o it corresponds to the definitions provided for in Article 9 of the law of 5 March 2017 on workable and agile work;
 - o it is not mandatory by a statutory or regulatory provision or by a collective bargaining agreement;
 - o it constitutes a business expense for the employer.

However, the following exceptions apply to the requirement to have followed a minimum of 10 days' training (for full-time workers) during an uninterrupted period of 30 calendar days:

- if the employer is a company that performs shift or night work, that pays or grants a shift premium and that has the obligation to pay withholding tax on that premium, the minimum duration of 10 days during an uninterrupted period of 30 calendar days is replaced by a minimum duration of 10 days during an uninterrupted period of 60 calendar days for the worker who receives a shift premium during that period of 60 days;
- if the employer is classified as a small company on the basis of the Code of Companies or is a natural person who fulfils the same criteria, the minimum duration of 10 days during an uninterrupted period of 30 calendar days is replaced by a minimum duration of 5 days during an uninterrupted period of 75 calendar days.

The Programme Act (I) also provides the following modalities:

- the number of uninterrupted periods of 30, 60 or 75 calendar days, as mentioned above, in which eligible training has been followed is limited to ten periods for the same worker working at the same employer;
- informal training within the meaning of Article 9 of the law of 5 March 2017 on workable and agile work may not exceed 10% of the minimum duration of 10 days during an uninterrupted period of 30 calendar days or 60 calendar days, or 20% of the minimum duration of 5 days during an uninterrupted period of 75 calendar days;
- events suspending the execution of the employment contract (e.g., sick leave, maternity leave, strike) do not interrupt the period of 30 calendar days, 60 calendar days or the period

of 75 calendar days, but they extend these periods by the same number of days as the duration of the suspension.

The part of the withholding tax that does not have to be paid corresponds to 11.75% of the total remuneration of the eligible workers, which is taxed only to the amount of EUR 3,500 per worker. This cap, which is not subject to indexation, applies to workers working full time according to the legislation applicable to the company concerned. It is reduced in proportion to the working arrangement applicable to the worker concerned.

“Taxable remuneration” means ordinary remuneration and benefits in kind, with the exception of holiday pay, end-of-year premium, outstanding remuneration and income not subject to withholding tax or exempted by treaty.

The detailed rules and modalities regarding the way in which, when one submits the withholding tax declaration, proof is to be provided that the conditions are met in order to benefit from this new exemption from paying withholding tax, will be determined by royal decree.

This measure entered into force on 1 January 2021.

1.2 Extension of the validity period of luncheon vouchers, eco vouchers, and sports and culture vouchers as a result of the COVID-19 pandemic

Concerning human resources taxation, the Law on temporary support measures due to the COVID-19 pandemic provides that, the tax exemption for luncheon vouchers, eco vouchers and sports and culture vouchers, is maintained to the degree that:

1. the validity period of electronic luncheon vouchers that expires between 1 March and 30 June 2020 and between 1 November 2020 and 31 March 2021 is extended by 6 months;
2. the validity period of sports and culture vouchers that expires on 30 September 2020 is extended until 31 September 2021;
3. the validity period of eco vouchers that expires between 1 March and 30 June 2020 and between 1 November 2020 and 31 March 2021 is extended by 6 months.

The validity periods of luncheon vouchers and eco vouchers that expire between May and June 2020, which is extended by 6 months, may be extended by another 6 months.

In other words, the extension of the validity period of luncheon vouchers, eco vouchers and sports and culture vouchers can, to the extent that the above-mentioned modalities are fulfilled depending on the nature of the vouchers, be done tax-free.

1.3 Overtime at employers belonging to critical sectors

The Law on temporary support measures due to the COVID-19 pandemic also provides for a tax exemption of the remuneration for 120 voluntary overtime hours during each of the following periods:

- 1 October 2020 until 31 December 2020;
- 1 January 2021 until 31 March 2021.

If the taxpayer has performed additional voluntary overtime hours in 2020 and/or 2021 and not all of the remuneration for those overtime hours performed in 2020, or in 2021 respectively, is paid or granted in the same taxable period, the exemption shall first be applied to the remuneration for the additional

voluntary overtime hours paid or granted in 2020 or 2021 respectively and, subsequently to the remuneration for those overtime hours paid or granted in each of the following taxable periods.

If, in a taxable period, remuneration is paid or granted for more than the number of additional voluntary overtime hours exempted for that taxable period, the exemption shall be applied pro rata to the remuneration for the additional voluntary overtime hours performed in 2020 and 2021 respectively.

The tax reduction for employees on remunerations resulting from the performance of overtime that gives rise to an overtime bonus and the exemption for the employer from paying the withholding tax on such remunerations, shall not apply to the overtime that qualifies for the exemption referred to in the first paragraph.

The remunerations referred to in the first paragraph are indicated on the calculation note attached to the recipient's personal income tax return form.

2 Extension of the birth leave

Employees who are employed within the framework of an employment contract have the right to be absent from their work during a certain number of days in the event of the birth of a child whose parenthood is established in respect of them (this right may also be granted to employees other than those who have an established relationship, under certain conditions).

Until 31 December 2020, this right existed for a period of ten days, to be chosen by the employee within four months from the day of birth.

However, as of 1 January 2021, this right is extended to fifteen days.

This birth leave will be further extended to twenty days for births taking place as from 1 January 2023.

This extension of birth leave will normally not entail any additional burden on companies in terms of remuneration, as only the first three days will be paid by the employer (the other days will be paid by the insurance company).

For public sector employers, the above-mentioned extension of birth leave only applies to staff employed within the framework of an employment contract. As regards statutory workers, it is up to each governmental employer, if necessary, to provide for a comparable extension in their own statutes. At the federal level, a Royal Decree of 17 December 2020 introduces for statutory workers an extension of birth leave similar to the one explained above.

Brussels

Boulevard du Souverain 280
1160 Brussels
T 02 761 46 00

Liège

Parc d'affaires Zénobe Gramme
Square des Conduites d'Eau 7
Bat. H - 2nd floor
4020 Liège
T 04 229 80 11

Antwerp

City Link
Posthofbrug 12
2600 Antwerp
T 03 285 97 80

Ghent

Ferdinand Lousbergkaai 103
box 4-5
9000 Gent
T 09 261 50 00

Kortrijk

Ring Bedrijvenpark
Brugsesteenweg 255
8500 Kortrijk
T 056 26 08 60

Hasselt

Kuringersteenweg 172
3500 Hasselt
T 011 24 79 10

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