**Special Wages 2018**

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# Salary Costs (Incentive Allowances) Act

The Wtl (Salary Costs (Incentive Allowances) Act) (Wet tegemoetkomingen loondomein) consists of two components: 1) the low-income benefit, and 2) 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.

## Low-income benefit

The low-income benefit (LIV) was introduced as per 1 January 2017. All employees fulfilling the conditions are eligible for the LIV benefit as per 1 January 2017.

### 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.

### 2017 LIV amounts

The LIV will consist of a fixed amount per payrolled hour, subject to a fixed maximum amount per year per employee:

|  |  |  |
| --- | --- | --- |
| **Average hourly wage 2017\*** | **LIV per employee per hour** | **Maximum LIV****per employee per year** |
| ≥ € 9.66 ≤ € 10.63 | € 1.01 | € 2,000 per year |
| ˃ € 10.63 ≤ € 12.08 | € 0.51 | € 1,000 per year |

*\* Upon publication of the Wages Special, the 2018 amounts had not yet been disclosed.*

The average hourly wage is calculated by dividing the annual wage by the total number of payrolled hours.

To determine the annual wage, all income components count. This implies that any overtime allowances or special hours are also counted and may affect the average hourly wage. Final levy components are not included. In principle, sick leave does not affect the entitlement to LIV, as this is based on payrolled hours rather than hours worked. The assessment if an employee is within the scope of the LIV is based on the taxable wages. Due to deduction of the pension premium, the taxable wage may fall below the statutory minimum wages. As a result, the LIV entitlement may lapse.

### Payrolled hours

Payrolled hours are hours on which wages are paid. This includes:

* Contractual working hours, i.e. the number of working hours agreed with the employee. This includes hours that were paid out but not worked, for example during sick leave or holidays.
* The additional hours worked by an employee and paid out, such as overtime paid out. This includes any hours of leave not taken up and fully paid.

**Which hours are not payrolled?**

The following hours are not classed as payrolled hours:

* Unpaid hours not worked, for example unpaid leave;
* Unpaid hours worked, for example ADV hours (shorter working week) or unpaid overtime hours;
* Payments paid out by the self-insured employer.

### Application for LIV

A LIV is not subject to individual applications by the employer. Based on the policy administration, the UWV (Employee Insurance Agency) determines for which employees an employer is entitled to a LIV. This is fully based on the payroll tax returns submitted to the Tax Authorities by the employer.

The correctness of the payroll tax returns is therefore crucial. Correction of any errors is possible only until May 2018. Subsequently, any entitlement to LIV can no longer be claimed. The LIV is assessed for each employer. If an employee is payrolled by various sub-numbers, the payrolled hours and the annual wage must be added up. The LIV is remitted to the account number of the lowest sub-number.

#### Payment

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

1. Before 15 March, the Tax Authorities send the employer a preliminary calculation of LIV, youth LIV and LKV. The calculation is based on the returns and corrections on 2017 through 31-01-2018.
2. You may submit corrections on 2017 until 1 May 2018. These will still be considered in the final calculation; corrections received after 1 May will not be factored in.
3. The Tax Authorities send the employer a decision presenting the final calculation of the LIV, youth LIV and LKV. This is completed by 1 August 2018, 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 6 weeks of the date of the decision.

**Please note!**

In the case of operational or technical issues, the Minister of Social Affairs and Employment has the option of prolonging the above dates in 2018 by a maximum of two months.

**Please note!**The above pay-out is completed for the first time in 2019 for the youth LIV and LKV, as these benefits will not start until 2018, and as the average hourly wage and the number of payrolled hours cannot be determined until the end of the year.

## Payroll benefit

As from 2018, employers who employ older persons entitled to benefits and workers with an impairment or 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 wage costs benefits (loonkostenvoordelen - LKVs). These LKVs replace the premium discounts that were in place previously. From 2018 onwards, the LKV consists of a fixed amount per payrolled hour, capped at a maximum annual amount. As for the current premium discounts, the entitlement to an LKV is capped at a three-year period. Only the LKV for reassigned occupationally disabled employees applies for a period of one year.

### Four payroll benefits

|  |  |  |  |
| --- | --- | --- | --- |
| **LKV (payroll benefit)** | **Amount per hour paid** | **Maximum amount** **per year** | **Term** |
| Older employee | € 3.05 | € 6,000 | 3 years |
| Impaired or occupationally disabled employee | € 3.05 | € 6,000 | 3 years |
| Target group Jobs and Jobs Quota (Work Disabled Persons) Act | € 1.01 | € 2,000 | 3 years |
| Reassigning occupationally disabled employee  | € 3.05 | € 6,000 | 1 year |

### LKV conditions

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 disabled 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).
* 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 paragraph, of the Participation Act.
* The employee has social insurance.

Additionally, for each type of LKV, additional conditions apply, which are specified below.

**LKV older employee**

The employee was entitled to a WW, WAO, WIA, Wajong or WAZ benefit in the month prior to the start of employment. The employee is age 56 or older on the start date of employment.

A difference with the previous premium discount for older employees is that the LKV does not apply for persons entitled to an ANW benefit, a qualification period benefit or a benefit pursuant to the General Pensions Act for political incumbents prior to the start date of the employment contract.

**LKV occupationally disabled employee**

* The employee is impaired or occupationally disabled.
* The target group includes employees who were entitled to a WIA benefit prior to the start of employment.

**LKV employment agreement target group**

* The employee is impaired or occupationally disabled.
* The target group includes employees who were entitled to job support pursuant to Wajong or a Wajong benefit, or were classed as within the scope of the Sheltered Employment Act during the month prior to the start of employment.

**LKV reassigning occupationally disabled employee**

* After being entitled to a WIA benefit, an employee who fully or partially returns to his/her own job or a different job with the same employer.

### Target group declaration

The employee may apply for a target group declaration from the UWV or the municipal authorities. The target group declaration is provided exclusively to the employee. However, the employee may authorise the employer to apply for and receive the declaration on behalf of the employee.

The application for the target group declaration must be submitted within three months of the start of the employment contract. After this term, the target group declaration will not be issued. The employer is then no longer eligible for LKV, also with respect to future periods of the employment contract.

An employer with a target group declaration can request the LKV only by activating the indication for LKV in the payroll tax return. Without the indication in the payroll tax return, the LKV is not granted. The employer should keep the target group declaration on file.

## Youth LIV

The Youth LIV is a new 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.

**Youth LIV conditions**

An employer is entitled to the Youth LIV for each employee fulfilling the following 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.

**Amounts of Youth LIV**

If an employer is entitled to Youth LIV for an employee, the employer receives an allowance based on each payrolled hour. The amount per hour is different for each age. The exact amount of the benefit depends on both the number of payrolled hours and the employee’s age.

|  |  |  |
| --- | --- | --- |
| Age as at 31-12-2017 | Youth LIV per employee per payrolled hour | Maximum Youth LIV per employee per year |
| age 18 | € 0.23 | € 478.40 |
| age 19 | € 0.28 | € 582.40 |
| age 20 | € 1.02 | € 2,121.60 |
| age 21 | € 1.58 | € 3,286.40 |

The 2018 Youth LIV is 1.5 times the 2019 amount. This is because the minimum wage for young workers was increased as per 1 July 2017, whereas the Youth LIV was not introduced until 1 January 2018.

The requirement of at least 1,248 payrolled hours of the LIV does not apply for the Youth LIV.

**Please note!**

An employer making use of BBL (apprentice) 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.

**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.

# The DBA Act is abolished

The new Cabinet aims to abolish the DBA Act (Deregulation of Assessment of Independent Contractor Status Act) This Act, introduced in 2016 to replace the VAR (Declaration of Labour Relation) caused too much unrest and uncertainty among ZZP contractors (self-employed contractors) and their clients. Instead, the new Act will give such clients and genuine ZZP contractors the certainty that their relation will not be classed as employment. Meanwhile, the implementation of the DBA Act will remain suspended.

## From DBA to the new Act

The new Cabinet announced this plan for a new ZZP Act in the Coalition Agreement presented on 10 October 2017. The plan must be further specified into a full Bill. The main themes were announced. The Cabinet aims to affect three categories of ZZP contractors:

* The self-employed contractor working at a low rate in combination with a contract longer than three months, or in combination with performing regular work. Such cases are always classed as an employment contract. A low rate is defined as somewhere between
€ 15 and € 18 per hour.
* A self-employed contractor working at a high rate of over € 75 per hour in combination with a contract shorter than one year, or in combination with not performing regular work or activities. In this case, the Cabinet provides an opt-out. The self-employed professional and the client will then agree to not withhold any payroll tax.
* A self-employed contractor above the low hourly rate. The Cabinet aims to introduce a ‘client confirmation’. Such a confirmation involves the employer answering a few clear questions about the work relation with the self-employed contractor. If this shows that this does not concern employment, the client has the certainty that no income tax and social insurance has to be withheld and paid for this professional. However, all questions must be answered truthfully.

Please find below a flow diagram of the new plans:

|  |  |  |
| --- | --- | --- |
| **Rate** | **ZZP (self-employed contractor)** | **Employee** |
| € 15 - € 18 | * no regular activities
 | * longer than three months
 |
| > € 18  | CLIENT CONFIRMATION |
| > € 75 (opt-out option) | * maximum 1 year
 | * no regular activities
 |

## Implementation suspended

It will take some time before the new Act enters into effect. In the Coalition Agreement, the Cabinet indicates that the Tax Authorities will refrain from implementation of the DBA Act until the introduction of the new Act. This means that the Tax Authorities will not impose any retrospective tax payments, payroll tax, fines or correction tax amounts if concluding that a relation between a ZZP contractor and the client is classed as employment. Enforcement is implemented only in the event of malintent. After the introduction of the new Act, non-enforcement of the DBA Act is gradually reversed. This gives all parties adequate time to change over to the new rules.

**Please note!**

The previous Cabinet had suspended the enforcement of the DBA Act until at least 1 July 2018. The new Cabinet intends to further postpone this. However, no formal decision has been made in this respect.

# Pension

## Raising the retirement age

Due to the increased life expectancy of the Dutch population, the standard retirement age was raised from age 67 to age 68 as per 1 January 2018. This actuarial age will be used for the calculation of the annual maximum tax efficiency limits for pension accrual. This may affect the amount of the pension premium and the amount of the pension payments.

## Self-administered pension abolished: what choice would you make?

Since 1 July 2017, you no longer have the option of accruing pensions in your own Company entity. The self-administered pension was abolished. For all persons who accrued a self-administered pension capital, a transition regime applies that will continue for another two years (2018 and 2019), during which you must make a choice what to do with your existing pension capital held within the entity. You have three options: commutation, conversion or leaving it is where it is. Some choices are subject to your partner’s approval or to mandatory disclosure to the Tax Authorities.

**Please note!**

This choice is yours to make. Please ask advice, as all three options have specific benefits and disadvantages.

### Option 1: commutation against a tax rebate.

You may choose commutation of the self-administered pension capital accrued to date, receiving a tax rebate. This implies that your pension entitlement will be reduced from the commercial value to the value for tax purposes (tax value on balance sheet) in a tax-neutral manner. This reduction means you lose part of your pension entitlement: the difference between the commercial and tax value of the entitlement.

The reduced pension entitlement can then be fully commuted in a lump-sum transaction with a tax rebate and tax efficiency. This rebate is applicable for a three-year period and the amount is capped at the balance sheet value for tax purposes of the retirement facility as at 31 December 2015. No rebate is granted on the capital appreciation after that date.

**Tax credit**

A 25% tax credit applies during 2018. This implies that payroll taxes would be payable on 75% of the balance sheet value for tax purposes of your pension entitlement as at 31 December 2015. Any capital appreciation after that date is fully taxed. In 2019, the tax credit will amount to 19.5%. You do not owe any revisionary interest.

**Please note!**

Commutation is no longer permitted after 2019. If you do decide on commutation, you will pay a significant income tax rate and Healthcare Insurance Act premiums on the amount. You will also be charged 20% of revision interest.

Tip:
Please ask for advice on commutation. The tax credit makes it sound appealing, but it is not always worth it. Additionally, you must pay tax immediately on a significant amount, and you may not have that amount of cash available. This would mean that commutation is not always an option.

**Please note!**

If you have returned an externally insured pension portion to self-administration in time (return request before 1 July 2017), commutation is possible for this portion during 2018 or 2019. However, the tax rebate is not applicable to this portion.

Tip:
Also for a self-administered pension that has come into payment (i.e. you have already received pension payments from your BV), commutation at a tax rebate is possible. As your pension has come into payment, the balance sheet value for tax purposes at the moment of the reduction will generally be lower than the tax value in late 2015. The tax rebate is calculated for you on this lower balance sheet value for tax purposes.

**Please note!**

Do you also have a self-administered pension and a severance pay insurance in the BV? The mandatory severance pay insurance can be an impediment to commutation. Please ask advice on this issue.

**Your partner and commutation**

Commutation of your pension is subject to your partner or ex-partner’s approval, as this also has an impact on his or her pension rights. Your partner will therefore have to be informed and advised too. Preferably, and in some cases this is mandatory due to your auditor’s duty of care, such advice must be provided by an advisor other than your principal auditor or tax consultant. In order to prevent any potential problems in the future, good agreements are essential!

Also any compensations - certainly if you were married with prenuptial agreements - may be a topic in such advice. After all, your partner will lose his/her right to some of the self-administered accrued retirement pension capital (partner’s pension) after commutation. Furthermore, the transaction may be classed as a taxed donation if your partner is not or not sufficiently compensated for waiving his/her rights. If a compensation applies, and if yes, to what amount, depends on your personal situation. No general rules are in place.

Tip:
After the commutation, there is no self-administered pension any more, and therefore also no partner’s pension. This means that if you should come to die, this gives rise to a problem.

Your partner’s or ex-partner’s approval of the commutation must be forwarded to the Tax Authorities. This is based on a special form to be downloaded from the Tax Authorities’ website. This form should be signed by both you and your partner or ex-partner.

**Mandatory disclosure**

This special information form is designed to ensure you provide the following details to the Tax Authorities within one month of commutation of the accrued self-administered pension capital, or the conversion of the self-administered pension into a retirement commitment (see below).

* + private data (including name and BSN) of yourself and your partner or former partner (if any)
	+ details of your BV holding your self-administered pension
	+ the choice you made: commutation or conversion of the tax-based pension entitlement
	+ the time of commutation or conversion
	+ the balance sheet value for tax purposes of the pension entitlement in three different snapshots: 1 January 2015, 31 December 2015 and the date of commutation or conversion
	+ the commercial balance sheet value of your pension entitlement at the date of commutation or conversion
	+ upon conversion into a retirement facility, if you made agreements with your partner regarding the allocation of this retirement facility in the event of divorce.

**Please note!**

It is important that you comply with your mandatory disclosure obligation in due time (within one month of the date of commutation or conversion). Failing to do so, the Tax Authorities classes your pension entitlement as ‘improper’, and will tax you on the full commercial value of the entire pension entitlement, charging you 20% revision interest on top of that.

**Commutation without pay-out**

If you chose commutation of your self-administered pension, this communication is taxed. However, a tax rebate will be applied. With the BV, you can arrange to receive the commutation sum at a later stage, rather than at the commutation transaction date.

The postponed payment does not affect the date on which the BV must withhold the payroll tax on the commutation sum and pay it to the Tax Authorities. This transaction is related to the date of commutation, rather than the date of pay-out. If the communication of the self-administered pension takes place in December 2017, payroll tax must be withheld on the commutation amount on that date. The BV must include the payroll tax due accordingly in the payroll tax return on the payroll period of December 2017 and pay it to the Tax Authorities. That the BV subsequently pays out the commutation sum in 2020 to you, does not affect the tax transaction.

### Option 2: converting it into a retirement facility

You may decide to convert your accrued self-administered pension into a retirement facility. Also in this case, your pension entitlement will be reduced from the commercial value to the value for tax purposes (tax value on balance sheet) in a tax-neutral manner. This reduced pension entitlement is subsequently converted into a savings facility for retirement. This conversion can be completed until 31 December 2019.

This option implies that you keep the capital and your retirement facility within the BV. After conversion into the retirement facility, no further accrual is permitted. However, based on the statutory market interest rate, the accrued interest must be added to the retirement facility on an annual basis until the retirement date.

**Please note!**

The retirement facility is a savings scheme within your own BV. The return rate on savings is currently very low. This means that your retirement facility is unlikely to quickly accrue by the annual interest accruals. The amount of ‘pension’ that your BV pays out to you in future is therefore uncertain.

When reaching the retirement date, you will receive retirement pay-outs from the BV for twenty years. These will not be taxed until the pay-out phase. If the facility comes into payment before the statutory retirement age for AOW state pension (with a maximum of five years before that age), the twenty-year term must be extended by that period.

Tip:
Subsequent commutation of the retirement facility is an option. If you do so in 2018 or 2019, you may benefit from the tax rebate. After 2019, you are charged payroll tax and revision interest on the full retirement facility upon commutation.

Tip:
Also for a self-administered pension that has come into payment (i.e. you have already received pension payments from your BV), conversion into a retirement facility is possible.

**Deposits**

Alternatively, you may make use of the retirement facility for an annuity with a banking institution or an insurance company. This conversion of a retirement facility into an annuity can be completed at any time up to your statutory retirement age for AOW state pension. Up to latest two months of reaching the statutory retirement age for AOW state pension, the retirement facility may be used for an annuity. Additionally, it is also possible to purchase an annuity from a banking institution or an insurance company after the retirement facility coming into payment, such up to five years after the statutory retirement age for AOW state pension.

Tip:
Transfer all or some of your retirement facility into an annuity. This way, you have more options for the pay-out term compared with the fixed twenty-year period that applies to the retirement facility. Depending on the annuity form you chose, different pay-out terms may apply, which gives you more options.

Just as for the commutation option, the procedure for conversion of the self-administered pension into a retirement facility is the same with respect to your partner. Conversion of your pension is subject to your partner or ex-partner’s approval. The partner will have to be informed and advised on this issue to protect his/her rights. A compensation to your partner for the loss of his/her right to some of the self-administered accrued retirement pension capital (partner’s pension) may apply.

The approval of the conversion into a retirement facility must also be disclosed to the Tax Authorities. The specific disclosure form is designed to inform the Tax Authorities of your choice of conversion or commutation (see above). This form must be signed by both you and your partner or ex-partner.

**Please note!**

This special disclosure form should be completed and signed within one month of the conversion of the accrued self-administered pension capital into a retirement facility and submitted to the Tax Authorities. When failing to do so, the Tax Authorities may class it as an ‘improper’ pension entitlement.

**Indexation cost**

If your retirement facility is on the balance sheet of a separate BV (external self-administered pension), then an indexation issue may arise. Income and expenses for future indexation activated in the tax balance sheet must be processed as follows. In the event of tax-efficient commutation of your self-administered pension, such indexation income and expenses may be deducted from the profit as a lump sum at the date of the commutation transaction. In the event of conversion of the self-administered pension into a retirement facility, the activated indexation income and expenses may be deducted in equal annual parts.

### Option 3: freeze the self-administered pension

Alternatively, you may choose to do nothing - freezing your self-administered pension. The rules applicable before April 2017 will continue to apply in that event. However, since 1 July 2017, no further accrual is permitted in the self-administered pension. The annual actuarial interest accruals of the accrued pension rights is mandatory. Depending on the pension commitment, annual indexation may be required.

The difference between the commercial and tax value of the pension entitlement will continue to exist. On your retirement date, your BV will start paying out the pension reserve to you as set out in the pension agreement between you and the BV.

**Please note!**

If you freeze the self-administered pension, please take any dividend payments into due considerations. A dividend payment is not possible until the equity in your BV is and will continue to be adequate to cover the future pension payments. To determine adequacy, you need to use the commercial value as a basis, rather than the value of your retirement facility for tax purposes as stated on the balance sheet.

**Conclusion**

The transition regime will lapse as per 2020. By that time, you must have made a choice regarding your current self-administered pension: commutation, conversion, or freezing. As further pension accrual in the BV is no longer possible as from 1 July 2017, you will also have to consider future years. What does your worry-free retired life look like? You may decide to continue accrual of your pension with an insurance company, or perhaps you prefer a retirement annuity. You may have accrued a significant ‘buffer’ in your BV to ensure adequate dividend pay-outs after your retirement. Whatever your choice, please ask for advice and carefully consider the options.

# Car

## Addition to income for private use of a company car 2018

Are you driving a car for private purposes that is part of your business equity? Then you must add an amount to your profit to cover private use, unless you can demonstrate that your private annual mileage was less than 500 kilometres.

The addition to the income is based on a percentage of the car’s catalogue value. In 2018, there are two different rates for this addition for cars that were registered after 1 January 2017: 4% and 22%. The addition depends on the CO2 emissions of the car. In 2018, only cars without CO2 emissions are classed in the lower 4% rate.

The table below applies to cars that were registered for the first time in 2018.

**Table addition to income percentage 2018**

|  |  |
| --- | --- |
| **Tax addition** | **CO2 emissions in grams per kilometre** |
| 4% | 0 |
| 22% | more than 0 |

In 2018, the regular rate is 22% (same as in 2017). Was your car first registered before 2017, and did the 25% addition rate apply for that car? Then the 25% addition rate will continue to apply.

*How long will the lower percentage apply?*

Are you eligible for the decreased tax addition rate (4%) in 2018? This rate applies to a period of 60 month. This period starts on the first day of the month following the month during which the vehicle was first registered. If a car is first registered on 7 March, then the 60-month period will start on 1 April.

Immediately after expiration of the 60-month period, the rate is redetermined based on the rules applicable at that time.

*Decreased rates and cars registered before 2017*

The transition right for the tax addition of the car with a date of first admission on the public roads (DET) before 1 January 2017 is not easy, among others due to the exceptions to the exceptions set out within the transition scheme. Please ask your consultant for more details.

**Please note!**

For cars with a DET before 2017, the tax addition that applied on the date of first registration is in principle applicable for 60 months. After expiration of the 60-month period, the 25% tax addition rate will apply!

**Tax addition passenger cars without CO2 emissions**

Cars without CO2 emissions will remain eligible for incentives up to 2020. The tax addition applicable for new cars will remain 4% in this period. However, the Cabinet has capped the lower tax addition rate for zero emission vehicles to the part of the catalogue price up to € 50,000 from 2019 onwards (also referred to as the Tesla tax). For zero emission vehicles with a hydrogen fuel cell, this cap does not apply.

## Tax addition difference of company cars not discriminatory

The 22% tax addition rate being applicable only to new cars and not to existing company cars is not discriminatory according to the The Hague District Court. This does not concern infringement on the principle of equality or the right to unhampered enjoyment of property.

**Tax addition**

As per 1 January 2017, a standard tax addition rate of 22% of the catalogue value (including VAT and BPM tax) applies to private use of a new company car, unless this concerns a zero CO2 emissions car. An existing company car with a DET (date of first admission on public roads) before 1 January 2017 and a 25% tax addition rate will continue to be subject to that rate, and will therefore not fall back into the 22% rate in 2017 or after the 60-month period. The VZR (Association of Business Drivers) feels that this is tax discrimination and therefore started four trial procedures.

**Appeal rejected**

The District Court in The Hague recently rejected the appeal in this case. According to the Court, the addition for private mileage of regular cars from before 2017 will remain 25%. For newer cars this is 22%. This measure does not infringe on the principle of equality, nor the right to unhampered enjoyment of property. The legislator has extensive freedom of assessment and the choice to maintain the 25% rate for cars with a DET before 1 January 2017 is not unreasonable.

# Various withholding taxes and social insurance contributions

## Minimum wage slightly higher as per 1 January 2018

The gross amounts of the statutory minimum wage and the minimum wage for young workers will be announced on 1 January 2018. These amounts are adjusted every six months. The amounts have increased slightly compared with 1 July 2017.

The gross amounts of the adult minimum wage and the minimum wage for young workers are always adjusted on 1 January and 1 July to stay in line with the average contract wage development in the Netherlands. As per 1 January 2018, the gross minimum wage for employees of age 22 and older with a full-time employment contract amounts to:

* + € 1,578.00 per month (July 2017: € 1,565.40)
	+ € 364.15 per week (July 2017: € 361.25)
	+ € 72.83 per week (July 2017: € 72.25)

**Please note!**The age at which the right to full minimum wage arises has been lowered from age 23 to 22 as from 1 July 2017.

Also, the minimum wages for young workers age 15 through 21 have slightly increased. For example, the wage of an employee age 21 will increase from € 1,330.60 to € 1,341.30 per month as per 1 January 2018, and for an employee age 18 from € 743.55 to € 749.55 per month.

**Please note!**

For employees age 18 through 20 employed in the context of a BBL contract (apprenticeship), alternative sliding scales apply. For example, as per 1 January 2018, the minimum wage for young workers for a BBL student age 18 amounts to € 718.00 per month.

**Liabilities**

The statutory minimum wage applies as the minimum wage for your employees. Please ensure that you do not underpay your employees, as this is a punishable offence carrying high penalties. 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. Finally, 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.

## Customary wage of directors and major shareholders (DGAs)

The fixed amount in the customary wage scheme for the DGA and his/her partner amounts to € 45,000 for 2018 (same in 2017). Subject to certain conditions, DGAs can set the customary wage below € 45,000 in 2018. 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 rule for a maximum of three years.

## Low sector premium for permanent employment contract and annual working hours standard

As per 1 January 2018, a Decree becomes effective to the effect that an employer paying the low sector premium on the wage of an employee if this concerns:

* + a permanent employment contract in writing, and
	+ the scope of the work for the year was determined in advance (annual working hours standard), and
	+ the contract sets out that the entitlement to wage during the year is paid in regular instalments.

The work therefore does not need to be evenly spread over the year.

**Please note!**

A temporary employment contract with an annual working hours standard therefore does not fulfil these conditions.

**Please note!**

If the employee has unpaid leave during the year, the conditions are no longer fulfilled. This implies that the high sector premium must be applied.

The same decision once more stresses that the scope of the work to be performed must be set out unambiguously. This implies that a zero-hour contract does not fulfil the conditions. The Decree also indicates that the high premium is charged for min-max contracts. It is currently unclear whether this remark affects only the period after 1 January 2018.

## Fictive final levy and option rights

In the event of an excessive severance pay granted to an employee, the employer is confronted with a fictive 75% final levy on the severance pay. Whether or not the severance pay is classed as excessive is based on the assessment wage. If the assessment wage amounts to more than € 540,000 and if the severance pay exceeds the same amount and the assessment wage, the scheme is applicable.

Certain share option rights that were acquired in the calendar year before the employee left the company are generally not factored into the severance pay calculation.

In 2016, the Supreme Court ruled that the exception also applies for share option rights that were not unconditional for the calendar year prior to the calendar year in which the employment contract with the employee was terminated. The fictive final levy on the excessive severance pay can therefore be prevented by applying conditional option rights.

Due to amendment of the Income Tax Act, the conditional share option rights that were allocated to an employee before the year prior to the calendar year in which he/she leaves the company and that became unconditional in the year before termination of employment, are still factored into the final levy for excessive severance pay. This implies that the Supreme Court’s decision may no longer be leading.

## Limitation of applicable tax credits for foreign tax payers

Foreign tax payers are conditionally entitled to the same benefits as a domestic tax payer regarding the taxed portion of the tax credit. The conditions are that the foreign tax payer must live in a EU or EEA member state and at least 90% of the income is taxed in the Netherlands.

If the foreign tax payer does not fulfil the income criterion, the tax payer is entitled to the taxed portion of the labour-related tax credit. Non-qualifying foreign tax payers were not entitled to the taxed portion of the tax credit in the income tax. This difference was not applicable in the income tax, resulting in too much tax credits being claimed.

For this reason, in the wage tax for all foreign taxpayers (both ‘qualifying’ and ‘non-qualifying’), only the taxed portion of the work-related tax rebate (including the labour rebate) may be factored in as from 2019. If the employee is a qualifying foreign taxpayer, then he/she may be entitled to the taxed portion of the general tax credit, young handicapped rebate, elderly rebate and single parent rebate via income tax.

## Premiums WGA and ZW 2018 announced

Are you insured for WGA and ZW employer insurance with UWV? In 2018, the average premiums for these insurances covering occupational disability and sickness benefits slightly increase.

**Premiums WGA and ZW**

UWV (Employee Insurance Agency) recently announced the differentiated premiums for 2018 for the WGA and ZW (Return to Work Fund). This shows a slight increase in both premiums. The average WGA premium increases from 0.74% in 2017 to 0.75% in 2018. The average premium that an employer contributes to UWV for the Sickness Benefits Act increases in 2018, to 0.41% (2017: 0.35%).

The premium generally depends on the sector that you are operating in as the employer, and on the average payroll total. You can use a special [calculation tool](https://www.uwv.nl/werkgevers/eigenrisicodrager/eigenrisicodrager-wga/premiewijzer-gedifferentieerde-premie-werkhervattingskas.aspx) to calculate the amount of premiums you will be charged in 2018.

**Please note!**

The calculation tool is not designed to cover self-insured employers, as they do not pay any differentiated premium for the Return to Work Fund.

In late 2017, the Tax Authorities sent you a decision stating the individual differentiated premiums for WGA and ZW for 2018.

Please check if the details on the decision are correct. If necessary, submit your objection in due time. An objection is served in due time if it is received by the Tax Authorities within 6 weeks of the date of the decision. You should also request the inflow lists of employees receiving benefits that are allocated to you in the context of the Whk decision. This allows you to verify if the benefits of such employees were allocated to you correctly.

## Additional administrative processing for extension of Unemployment Act benefit

Since recently, parties may opt for private extension of the unemployment benefit for the third year of unemployment as part of the CLA. The choice of the negotiating parties does involve additional administrative processing for the employer.

**Separate tax return**

The premium is withheld from the employee’s gross wage. The amount withheld must be specified in the payslip. Also, a separate declaration to the administrative organisation PAWW is required, and the premiums must be paid in separately.

**Addition**

Due to the extension, a maximum unemployment period of 38 months can be achieved.

**What to do in the event of unemployment?**

The PAWW Foundation ensures that the employee who is eligible to extension pursuant to his/her CLA, receives an additional private unemployment benefit from PAWW after expiration of the regular unemployment benefit.

**Declaration and payment of contribution**

The employer must submit a declaration of the PAWW contribution and the payment of the relevant premium amount based on the calculations in the internal payrolling accounts on a monthly or 4-weekly basis. The periods for PAWW contribution declarations is the same as that for the Tax Authorities.

**Please note!**

The declaration must be submitted via the site www.spaww.nl. This is where the employer should copy the details from the totals stated on the payroll accounts statement.

**Adjustment of the administrative process**

The employer’s administrative process may have to be adjusted to enable the employer to provide the correct information for collection and payment of the contribution. The administrative organisation of the PAWW Foundation can provide assistance in the structure of the payroll accounting system and financial accounting system. Offering the calculation rules to payroll software developers is a first step.

## Additional option to transfer to self-insurance for WGA

Did you want to continue your self-insurance for WGA, and this was terminated against your wish and outside your control as per 1 January 2017? The Cabinet offers a ‘repair scheme’ in return. You will have the opportunity to transfer back from public insurance to self-insurance for WGA as per 1 July 2018.

**Self-insurance for WGA**

As per 1 January 2017, the excess refers to the total WGA cost (i.e. both for fixed and flex workers). Due to the change, existing WGA self-insurers that also wished to continue self-insurance in 2017, were required to provide a new guarantee statement to the bank or insurer. The guarantee had to be received by the Tax Authorities latest by 31 December 2016. This process did not go smoothly. In some cases, the insurer unintentionally did not provide a new guarantee to the Tax Authorities, or not in time. This way, it is possible that you, as some other employers, have unintendedly flowed into the public insurance policy of UWV as per 1 January 2017.

**Repair scheme**

Just like for any transition, you were subject to a minimum return period of three years. Self-insurance was not possible until after that period. This is not reasonable if you were in time in indicating your wish of continuing self-insurance for WGA as per 1 January 2017, but that the Tax Authorities have not received your guarantee statement in due order outside your control. This is why you can make use of a repair scheme, allowing you to transfer to WGA self-insurance as per 1 July 2018. This is subject to the condition that you must submit your application for self-insurance for the WGA latest 13 weeks before 1 July 2018 to the Tax Authorities.

In order to make use of the repair scheme the following conditions apply:

* on 31 December 2016, you were self-insured for WGA, and
* you are able to demonstrate that in 2016, you indicated in due course to your insurer, bank or intermediary that you wished to continue self-insurance for WGA as per 1 January 2017, and
* it is outside your control that the guarantee to continue self-insurance for WGA in 2017 was not provided to the Tax Authorities by 31 December 2016.

**Please note!**Insurers are preparing a list of employers that indicated ‘in due time’ their wish of continuing self-insurance for the entire WGA risk as per 1 January 2017. The Tax Authorities can check this list and apply it to select the employers entitled to restore self-insurance for WGA as per 1 July 2018.

## Long-term sick leave notification self-insured employers

The terms for submitting a sick leave notification and return to work notification to UWV by employers who are self-insured for the Sickness Benefits Act, were extended as per 1 January 2018.

If you are self-insured for the Sickness Benefits Act, then you were subject to the same terms for filing sick leave and return to work notifications as for employers that are not self-insured. The terms for the latter are fairly short, as UWV must be able to pay out a Sickness Benefits Act benefit based on such a notification. As a self-insured, however, you are individually responsible for paying out a Sickness Benefits Act benefit, and you determine the entitlement, amount and duration on an individual basis. This means that regarding self-insured employers, UWV’s role is far more limited than for non-self-insured employers.

**Please note!**For employers with self-insurance, UWV has a more supervisory role, as this institution has final responsibility for the implementation of the Sickness Benefits Act. If the self-insured employer does not, or not adequately, fulfil its role, UWV takes over the provision of the Sickness Benefits Act benefits at the expense of the self-insured employer.

**Extension of the sick leave notification term**

Due to the more limited role of UWV during the first phase of the sick leave process, the Cabinet aims to extend the term for sending a sick leave notification for self-insured employers to six weeks from the date of termination of the employment contract. This Bill was adopted on 28 November 2017.

**Please note!**

For retrospective effects, the first day of sick leave of the former employee must fall within four weeks after termination of employment. The six-week notification term starts on the first day of sick leave.

The extended sick leave notification term also gives the self-insured employer the option of reporting sick leave and return to work simultaneously if the employee returns to work within six weeks. However, the return to work notification may not be submitted before the sick leave notification. If the sick leave notification and the return to work notification are submitted separately, the return to work notification is subject to a term of two days after the former or current employee returned to work.

## WBSO simplification for employers coming up

The 2018 Tax Plan includes simplification of the WBSO. As an innovative employer, the method for submitting the R&D hours, costs and expenses incurred to the RVO (Netherlands Enterprise Agency, rvo.nl) will be easier in 2019.

**Mandatory disclosure**

The proposed simplification is a reduction of the administrative burden. If you made use of the WBSO (R&D Incentive Act), you are required to forward the hours spent on research & development (R&D hours) and the cost and expenses incurred (if you selected ‘actual cost and expenses’) to rvo.nl within three calendar months of the closing date of the application year. This mandatory WBSO disclosure is currently for each R&D declaration issued, but this is now set to change. The disclosure can soon be made jointly for all R&D declarations issued in the calendar year.

Regarding the R&D declarations received in 2017, the current mandatory disclosure will continue to apply. This means that you are required to submit the hours spent (and any costs and expenses incurred) for each R&D declaration by 1 April 2018.

**Please note!**

If you are an independent entrepreneur, you need to submit a disclosure only if you realised less than 500 R&D hours in the relevant year.

# AVG privacy rules

On 25 May 2018, the AVG (General Data Protection Regulation - GDPR) will become definitively applicable. The AVG is set to replace the Wbp (Private Data Protection Act), which will be abolished as per the same date. The GDPR introduces a number of new obligations and responsibilities. All companies and organizations that process private data must prepare for this GDPR - also smaller SME’s and self-employed contractors and professionals.

If the GDPR is applicable, your organisation has more obligations regarding processing of private data. The GDPR highlights the organization’s responsibility to demonstrate compliance with this new Act. This is referred to as compliance accountability.

**Compliance accountability**

Compliance accountability means that you are required to demonstrate that you implemented the correct organisational and technical measures to ensure compliance with the GDPR. However, simultaneously, the GDPR offers organisations more instruments that help achieve compliance. For example, the model provisions for forwarding private data.

Organisations can take steps now to ensure being ready for the GDPR in a few months. You can start reviewing if your current processes, services and goods must be adjusted in certain ways to ensure compliance with the GDPR. The Data Protection Authority has listed the ten key steps for compliance.

**New privacy rights**

In addition to reinforcing the existing rights, the GDPR extends people with a number of additional rights, such as the right to disclosure and the right to data portability.

*Right to disclosure*

People may ask an organisation if it has registered any of their private data. They do not need to provide any reason for such request. If someone requests disclosure, the organisation must respond with a clear and understandable message, letting the person know if the private data were processed and used, and if yes:

* which data;
* the purpose of the use;
* the parties that the data were provided to, if any;
* the origin of the data, if known.

The right to disclosure exclusively concerns a person’s own private data.

*Right to data portability*

This means that people will soon have the right (under certain conditions) to request a copy of their private data in a standard format. This makes it easier for them to pass on their details to a different provider of the same type of service. They may also require an organisation to forward their private data to the new service provider, if this is technically possible.

**Outsourcing data processing?**

If you outsourced data processing to a data processor, you need to assess to what extent the agreement fulfils the requirements that apply to a contract with a data processing company pursuant to the GDPR. It is important to apply changes in due time.

The data processing agreement must set out the following:

1. General description of the nature and purpose of the processing, the type of private data, and your rights and obligations.
2. Instructions relating to processing.
3. Confidentiality clause for employees employed by or working with the data processor.
4. Security: appropriate technical and organisational measures.
5. Sub-processors: not without permission.
6. Privacy rights: right to disclosure, correction, right to be forgotten, and data portability.
7. Other obligations: reporting data leaks, completing data protection impact assessment and data minimisation.
8. Removing data: not keeping data longer than strictly necessary.
9. Audits: cooperation is mandatory.

**Retention period**

GDPR is based on the premise that data should be kept no longer than strictly necessary for the purpose of the data processing. This is not subject to a term as this may differ for individual cases. However, specific retention periods are stated in other Acts.

The GDPR sets out that in any case, the following is required relating to the retention period:

* You determine in advance how long you keep the private data. If this is not possible, you determine at least the criteria for determining the retention period. The retention period or the criteria to be applied are set out in a retention policy.
* The retention periods must be set out in a processing register or similar document.
* The persons of which data are processed must be informed regarding the retention periods, for example in a privacy statement on your website.

**Longer retention period**

In some situations and under certain conditions, data may be retained longer than required for the original processing purpose. This could concern data that are relevant to scientific or historical research, for statistical purposes or for the general interest.

**Please note!**

After expiration of the processing services, the processor will remove the data, or returns the data to you at your request. The data processor also removes any copies. The only exemption is if longer data retention is a legal requirement to the data processor.

Tip:
Please refer to the website of the [Data Protection Authority](https://autoriteitpersoonsgegevens.nl/nl/onderwerpen/avg-nieuwe-europese-privacywetgeving) for more information.

#  Labour law and miscellaneous

## Amendments to the Minimum Wage Act and minimum holiday allowance

In 2018, the WML (Minimum wage and minimum holiday allowance act) is amended regarding paying out the minimum wage for overtime or additional work and piecework pay.

### Minimum wage for overtime (additional work)

As from 1 January 2018, you need to pay at least the minimum wage for overtime hours on an average basis. If your employee performs work longer than the normal contractual working hours, then he/she must earn at least the minimum wage for such additional hours, such on an average basis. This also applies if your employee works on a part-time basis and works additional hours.

**Are there any exceptions?**

Additional hours may be compensated in paid leave time if this is set out in the CLA and this compensation is agreed on in writing with the employee. In order to offer sufficient time to social partners to include this option in the CLA, an agreement in writing with the employee will suffice until 31 December 2018. These hours must be taken up by or paid out to the employee latest by 1 July of the subsequent calendar year. In the event of termination of employment, you need to pay out any hours that were not yet compensated. In the event of compensating additional hours in paid leave time, the employer must register when the additional hours were accrued and when these were compensated as paid leave time. The registration method is up to the employer.

### Minimum wage for piecework pay

Employees must earn at least the minimum wage for each hour worked hour on an average basis if you pay them a piecework pay. This must be set out in your accounting system. Therefore, it is important to register the number of actual hours worked by such employees.

**Exceptions?**

For certain works in a sector, exceptions can be made to the piecework pay rules. This concerns work where employers have insufficient insight into the work carried out by the employee, and the employee has a certain extent of freedom of structuring and performing the work. In order to determine a remuneration for such work, a request can be submitted to the Minister of Social Affairs and Employment via the Labour Foundation to make an exception for such work. If the work is exempted, you may pay out based on the sector piecework pay standards that apply.

### Minimum wage for contractors

From 2018 onwards, the statutory minimum wage applicable to employees will also apply to contractors performing work based on a contract against a remuneration. Specifically, this concerns the so-called result beneficiaries. This pertains to employees that receive a payment based on a result achieved from other work.

**Please note!**

Register the number of hours that a contractor works for you and the relevant remuneration.

Tip:
Check the contract with your contractors and amend the contract where necessary.

**Exceptions?**

The minimum wage does not apply to contractors that work in independent performance of their profession or business.

## Holiday allowance on overtime wage from 2018

The WML previously included an exception that overtime pay was not part of the wage definition. This implied that no holiday allowance was due on overtime pay. This changed as per 2018.

This implies that any overtime paid out from 1 January 2018 must also be increased by an 8% holiday allowance.

**Please note!**

There is no exception for hours worked in 2017 or before. If these are not paid out until 2018, you still need to add an 8% holiday allowance.

Tip:
If you do not wish to pay any holiday allowance on the overtime worked before 1 January 2018, you may have your employees take up time in lieu (this is also permitted after 1 January 2018. If the employees eventually are unable or unwilling to take up such hours within the required term, you must pay out the relevant hours including the holiday allowance.

**Exceptions?**

Under certain circumstances, you may deviate from the provisions of the statutory minimum holiday allowance. For example, the CLA may set out that the employee is not entitled to holiday allowance, or entitled to a lower amount. The CLA may therefore set out deviating agreements, for example no entitlement to holiday allowance on the overtime allowance, or a lower percentage, provided that this falls within the limits set out in Section 16 of the WML Act. For example, pursuant to this Section, the sum of the wage and holiday allowance must at least amount to 108% of the minimum wage. This means that an employee at minimum wage level is at least entitled to an 8% holiday allowance on his/her wage (including overtime).

**No CLA**

If an employer is not party to a CLA, then he/she needs to pay out a holiday allowance on the overtime pay, and is then not able to negotiate different conditions in a CLA. However, the employer may adjust the employee benefits in consultation with the Works Council and the employees to set out that the holiday allowance is included in the overtime allowance. The advice is to specify the two items in the pay slips. If the allowance was 25%, you should then specify this as 17% overtime allowance and 8% holiday allowance.

Tip:
An employer may make an agreement with an employee whose contractual wage is more than three times the statutory minimum wage to the effect that the employee is not entitled to the holiday allowance, or is entitled to a lower amount of holiday allowance, for the excess.

## Transition allowance upon termination of employment up in 2018

Since 1 July 2015, you, as an employer, have owed a transition allowance if a temporary or permanent employee was employed by you for at least two years and his/her employment contract ended at your initiative. This transition allowance is due also if you terminate the employment contract of an employee on sick leave after two years of continued payment of wage.

**Maximum compensation**

The amount of the transition allowance depends on the number of years the employee was employed and the monthly salary. The maximum gross allowance was € 77,000 in 2017, or an annual salary if that was higher. The maximum allowance of € 77,000 was increased to € 79,000 as per 1 January 2018.

Also, the new Cabinet announced its intention to change this transition allowance in various respects. For example, the Coalition Agreement sets out that a transition allowance should be accrued from the start of the employment contract. Also, the Cabinet intends to change the structure of the allowance after 10 years of employment. The employers may receive a compensation for the transition allowance to be paid out to an employee with long-term occupational disability.

**Age brackets no longer allowed when recruiting personnel as per 1 January 2018**

From 1 January 2014 through 31 December 2017, employers were permitted to phrase recruitment ads to include specifically asking for young workers between age 18 and 27. This temporary exception was aimed at countering high unemployment rates among young workers. This measure was originally in place until 31 December 2016, and was extended by one year. Employers were also permitted to specifically ask for employees above age 50 in recruitment ads.

However, from 1 January 2018, making such age distinctions is no longer permitted in recruitment ads. Using age brackets of specific target groups is then classed as age discrimination of other age brackets.

*No liability is accepted for any incompleteness or inaccuracies in this newsletter despite the fact that it has been drawn up with the greatest possible care. The broad and general nature of this newsletter means that it is not intended to provide all information that is needed to make financial decisions. Date of publication: 9 January 2018*