



GES NewsFlash

The Netherlands – Labour Costs Facilities

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Summary

The Lower House recently adopted the Tax Plan 2010. The labour costs facility is one of the issues to which major amendments have been made. Below we list the amendments relevant to the payroll taxes.

Labour costs facility

A new labour costs facility will be implemented in 2011. The implementation of the new labour costs facility will cancel virtually all current tax-free reimbursements and provisions. They will be replaced by a fixed rate facility, based on which employers can only reimburse or provide a fixed amount of the wage bill for tax purposes to their employees tax-free.

Optional regime up to and including 2013

Technically, the labour costs facility becomes effective on 1 January 2011. However, a three year optional regime will apply: for 2011, 2012 and 2013 the employer can either opt to apply the current legislation and regulations of free reimbursements and provisions, or the new labour costs facility. Every year the employer can change options, which must either be done when the calendar year starts or the obligation to withhold payroll taxes and social security contributions occurs. The optional regime aims at ensuring a smoother transition from the current regime of free reimbursements and provisions to the labour costs facility. It allows employers more time to implement the required adjustments in the business operations and to conclude new agreements with employees about reimbursements and provisions. As from 2014, the labour costs facility will be structurally implemented and the possibility to opt for the current regime of free reimbursements and provisions will be cancelled.

Prior to its structural implementation in 2014, the use of the labour costs facility will be evaluated. The cost effectiveness of implementing the labour costs facility in terms of macro costs will be tested as well.

If the employer opts not to apply the labour costs facility in one or several years up to and including 2013, then the current regime of free reimbursements and provisions will apply (with an exception for incidental staff facilities such as staff trips and staff parties).

General structure

The starting point of the new labour cost facility is that reimbursements and provisions to employees are taxable. However, specific mentioned exemptions (see below) and the intermediary costs (see below) are tax exempt. The remaining costs can be designated or not. When they are not designated, the costs are treated as additional taxable income for the employee. When they are designated, the costs are tax-free up to a cap of 1.4% of the (total) wage bill for tax purposes. The excess is taxed with the employer at an 80% final levy.

Specific exemptions

The new labour costs facility designates a number of cost items as specific exemptions. These are specific, tax-free reimbursements and provisions that are not included in the fixed amount, subject to conditions. The facility includes, for example, the following specific exemptions:

- travelling costs for business purposes
- temporary costs of stay as part of the employment
- training and education costs
- extraterritorial costs
- removal costs in the event of business removals
- outplacement
- extraterritorial costs

Extraterritorial costs are considered to be extra costs due to temporary stay outside the country of origin. Under the current and new labour costs facility a specific exemption applies for reimbursements and provisions relating to extra costs of temporary stay outside the country of origin as part of the employment. Just like under the current facility, the 30% facility for extraterritorial costs will be available to specifically designated groups of employees. The related criteria will not change.

Intermediary costs

Intermediary costs are costs that employees incur on the instructions and at the expense of the employer. Hence, any related payment does not constitute a cost allowance for the employee: the latter merely pays you an advance on your costs. Therefore, reimbursement of intermediary costs will not be deducted from the 1.4% general fixed amount of the wage bill for reimbursements and provisions.

Lower valuation of certain forms of wage in kind

Some changes will be introduced relating to the valuation of wage in kind as from 2011. The main rule is still that provisions are based on the commercial value. If, however, an (independent) third party (such as the provider of said provision) charges the employer for the provision, the invoice value must be taken into account. The new system also cancels the savings value as a factor to be considered for wage in kind. This savings value led to a lot of ambiguity and discussion. Alignment with the invoice value provides more clarity.

If, however, during the transitional period of 2011 through 2013 it is opted to continue to apply the current regulations relating to free reimbursements and provisions (thus not opting for application of the labour costs facility) during one or more years, in those years the current valuation rules for wage in kind continue to apply as well.

Deloitte's View

Companies will have to list all reimbursements and provisions on time. So, HR- and financial managers will have a busy time ahead of them if they want to make a well founded choice and determine how the many different reimbursements must be dealt with under the regime of the labour costs facility. Deloitte can help structuring this process and has developed an online tool for this. This will help the employer to list the consequences in terms of tax, finances, labour law and organizational structure and to make the right decisions.

People to Contact

If you have any questions concerning the issues in this GES NewsFlash, please contact one of the tax professionals as follows:

Harm Prinsen

Tel: + 31 88 288 2247

Wouter Eenhoorn

Tel: + 31 88 288 1347

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