

Unexpected tax hits for employers on certain employee benefits

An employer may face an additional (and often unexpected) tax burden when implementing the so-called Labour Costs Scheme (*Werkkostenregeling*) (mandatory with effect from 1 January 2015!), severance payments or early retirement schemes. Such additional taxes are levied by way of a final wage tax charge (*eindheffing*), which cannot be withheld from the payout to the relevant employees. This briefing provides guidance on the situations in which this issue may arise.

The Labour Costs Scheme

The Labour Costs Scheme (the "Scheme") deals with the question what employee facilities, such as company fitness, Christmas parties or housing allowances can be provided in a tax-free manner. The Scheme has become effective as per 1 January 2011, but is mandatory as per 1 January 2015.

Since the Scheme provides for a transitional arrangement (*overgangsrecht*) up and including fiscal year 2014, you may not yet have implemented the Scheme.

With effect from 1 January 2015, a final wage tax charge of 80% will be levied upon the employer in relation to tax-free employee benefits beyond the threshold amounting to 1.2% of the total employee wages for tax purposes (*fiscale loonsom*).

This measure may thus make current compensation and benefits packages more expensive if they remain unchanged. For employers who have not already done so it is important to assess the impact of the Scheme on their company. Changing relevant

benefits may require collective amendments to existing employment conditions. It is important to start this process promptly, particularly if a works council will need to be involved.

Severance payments and early retirement schemes

A pseudo final wage tax levy on "excessive" severance payments is in principle due if, on leaving employment, an employee with a salary of over EUR 531,000 (in 2014) receives a severance payment that exceeds one year's salary. If that is the case, the employer owes wage tax of 75% on the excess amount. This levy applies to all persons whose relationship with the company constitutes an employment relationship for wage tax purposes, so typically including members of the management board and executive board.

A pseudo final levy on early retirement schemes is in principle also due if, on leaving employment, an employee with an age of eg 52 years (or older) receives a payment (or any other financial arrangement)

which is, based on its age, comparable with a deemed early retirement or pre-pension scheme. If that is the case, the employer owes wage tax of 52% on the excess amount.

The above-mentioned levies on employers are in addition to the wage

Key issues

- A final wage tax charge of 80% will be levied upon the employer in relation to employee benefits that are provided to employees beyond the threshold level of what can be provided in a tax-free manner. Therefore, it is important to assess the impact of the Scheme to your company.
- Please be aware of tax levies on the employer in relation to employee payments qualifying as excessive severance payments or early retirement schemes.

tax withheld on the employee's salary.

In order to counter evasion of these levies, the legislature has defined the terms "severance payment" and "early retirement scheme" very broadly: it generally includes all payments and benefits in cash or in kind issued to the employee upon termination of the employment relationship - and irrespective the nature of the termination (and thus also applies eg in case of a voluntary termination, retirement or even death of the employee). Given the target group (employees effectively earning more than EUR 531,000 or with an age of 52 years or older), these levies should only be applied sporadically.

However, given the scope of "severance payment" and "early retirement scheme", these levies should be carefully considered to avoid additional – and unexpected – costs for the company, including when setting up management participation schemes and when

awarding employee incentives such as stock options and/or when terminating employment agreements.

Clifford Chance's Amsterdam employment, pensions and benefits team is more than happy to assist, both with the assessment of the impact of the Scheme and the pseudo final wage tax levies on your company, as with any possible follow up actions.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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