



Night and shift wage tax exemption

New (stricter) rules
introduced with the law
of 28 March 2022

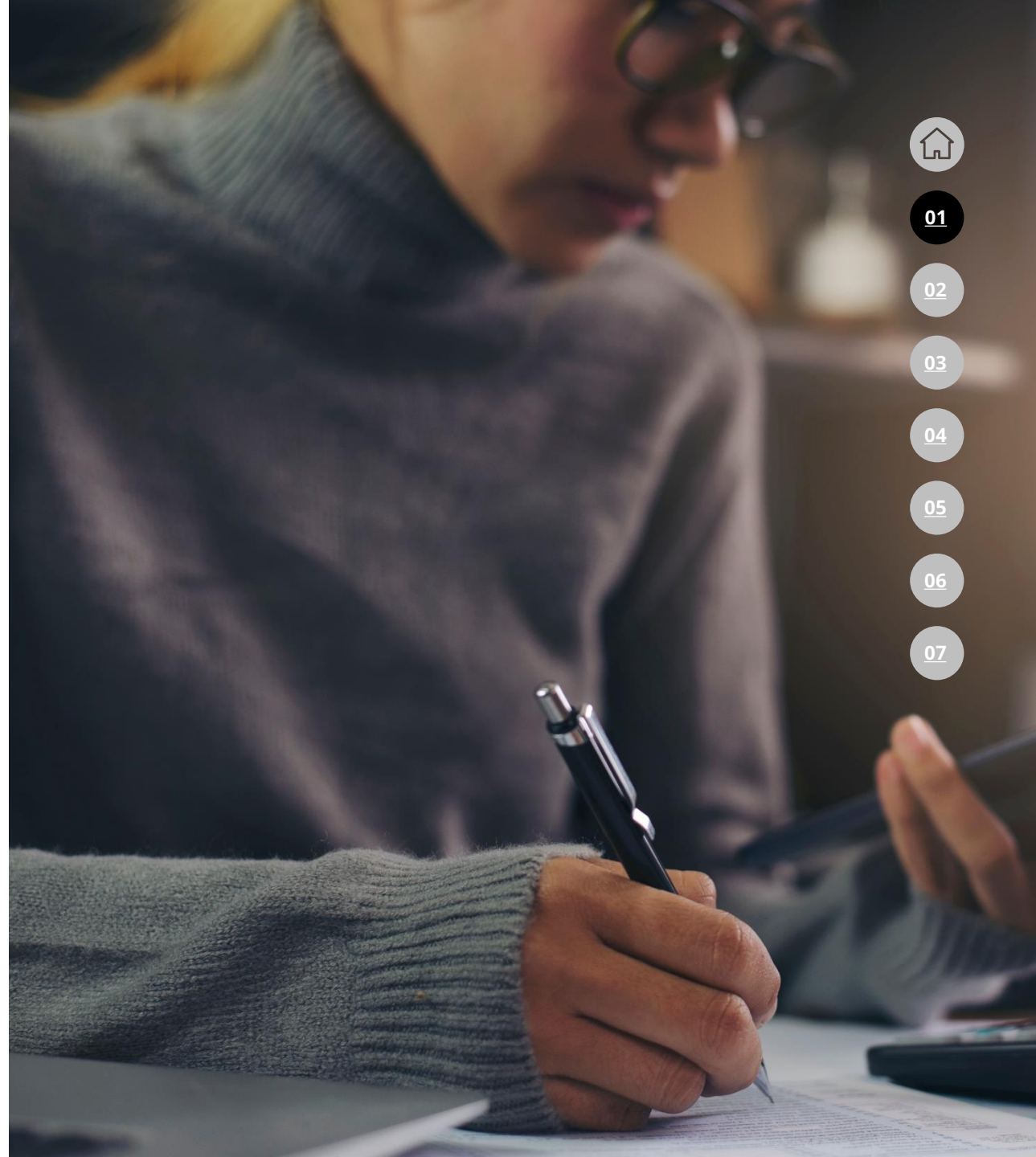
Introduction

On 28 March 2022, Parliament has adopted a new legislation (published in the Belgian Official Gazette on 31 March 2022), introducing a reduction of the labour cost, also known as the “Mini Tax Shift”.

The tax shift will partially be financed by imposing stricter qualifying criteria for a number of payroll tax exemption regimes that are currently available.

Most of the stricter criteria already apply as of April 1st, 2022.

It is now time for companies to review their current night and shift practice and to analyse what should be adjusted/updated to continue qualifying for the partial exemption for night and shift work, taking into account the new eligibility requirements.



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Framework for change

Current legislative framework

Tax audits have revealed many practical application issues due to the ambiguity of some legal concepts, leaving room for interpretation. This results in lengthy discussions in view of audits and uncertainties for taxpayers with the risk of having to reimburse part of the claimed wage tax incentives. Case law and administrative guidelines (circular letters and FAQ) provide some clarification, but many practical difficulties remain unresolved.

Ongoing spending review

Based on the last available report of the Court of Audit, the total budgetary spending on partial wage tax exemptions amounted to EUR 2.45 billion for income year 2017 (Research & Development, night & shift work and overtime only). To keep budget under control, the Court of Audit has urged the federal government to increase tax audits, and to aim for a correct application of the different measures.



Avoid misuse

Tax audits have revealed misuse. For example, in some companies, a practice is applied whereby a symbolic shift/night premium is granted (formally satisfying the legal requirements to benefit from the wage tax incentive), but without actual substance.



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In a nutshell

Companies which qualify for the measure, remain exempt from payment of part of the wage tax that they have withheld from their employees' salaries (i.e. 22.8%, or 25% (in case of continuous work)).

This important salary cost reduction is aimed to have (international) market competitiveness.

Given the significance of the measure and its impact, companies should carefully review their continued eligibility, as well as the correct application of the measure.

What are the main changes to the existing legislation?

Until end of March 2022	This changed to	Since April 1st, 2022
<ul style="list-style-type: none">Employees benefitting from the partial exemption for shift work (night work), had to receive a shift premium (night premium)		<ul style="list-style-type: none">Premium of at least 2% for shift work, and at least 12% for night work, calculated on the gross hourly wage. The premium should be formalized in either a CBA, work regulation or employment contract, ultimately by April 2024All employees performing shift work, must receive the shift premiumSeparate premium, and separate assessment required for shift and night work
<ul style="list-style-type: none">Companies could opt to evaluate the 1/3rd norm either on an hourly, or on a daily basis		<ul style="list-style-type: none">1/3rd norm must be evaluated on an hourly basis, denominator may under conditions include suspension periods with continued salary
<ul style="list-style-type: none">Administrative tolerance for a 15-minute break between shifts		<ul style="list-style-type: none">Legal tolerance for a 15-minute break between shifts
<ul style="list-style-type: none">Temporary work agencies were sometimes claiming the incentive, without the end user being aware of it, also leading to practical difficulties in view of audits (no supporting evidence available)		<ul style="list-style-type: none">Temporary work agencies can only claim the exemption if they have obtained upfront consent from the end user (as of October 2022)
<ul style="list-style-type: none">Statute of limitation for refund claims: 5 years, starting as of 1 January of the year of payment of the withholding tax		<ul style="list-style-type: none">Statute of limitation for refund claims will be limited to 3 years following the tax year (as of July 2022)



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Key take-aways



Concepts “shift work” and “night work” remain unchanged

The incentive and the main concepts (shift and night work) remain unchanged.



Same exemption percentage and limited change to calculation method

The percentage of the incentive remains unchanged (22.8% of the taxable remuneration excl. some items) but computation is slightly impacted by new rules.



Limited interruption allowed

For shift work, the successive teams must continue to perform the same work, both in terms of its nature and volume. The overlap between shifts should remain limited. However, there is some more flexibility since a limited interruption between two successive shifts is now formally allowed (up to 15 minutes).



Interpretative and practical issues remain

Some important difficulties/grey zones leaving room for interpretation, remain and we also see some new practical difficulties (e.g. premium not expressed as a percentage of the gross hourly wage, differentiation amongst premiums, formalization in several documents, new reporting requirements, etc.).



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Timing

As most of the changes entered into force on April 1st, 2022, companies need to re-examine their policies in connection with the incentive measure without delay, and will have to reflect on the alignment of their HR systems, as well as their company agreements, work regulations, individual employment contracts and other relating documentation.

Deloitte has developed a road map methodology supporting companies to manage the change and to cope with the new regulation.



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What does this mean for your organization?



Financial impact



Legal impact (by April 2024)

CAO, work regulations, employment contracts, etc.



Update of HR & payroll systems



Update the 1/3rd calculation method, and apply/adjust the shift premium (taking into account the minimum substance requirement and mandatory payment to each shift/night worker)



Employers who were eligible for the wage tax incentive in 2018, 2019, 2020 or 2021 but have omitted to apply it (and consequently have overpaid withholding tax), may consider filing a formal tax claim. For IY2018, the tax claim must be filed before the end of June 2022. With respect to 2021, a correction via payroll remains possible until end of August 2022.

How can we help?

Deloitte Belgium has a multidisciplinary team of professionals experienced in tax, social security, labour law, HR, payroll and IT systems and can support businesses with the identification and application of the adjustments that are required in order to continue benefitting from the partial wage tax exemption under the new (updated) regulations.

As such, Deloitte can outline an action plan and assist with the secured application of the changes.



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