

# THE POWER OF BEING UNDERSTOOD



## THE WKR. EVERYTHING CLEAR?

The Work Cost Regulation (WKR) became compulsory for all employers on 1 January 2015. The idea behind the WKR is simple. All reimbursements and benefits in kind to your employee are considered wages and are, in principle, taxable. Under the WKR, the so-called 'discretionary scope', may be spent on tax-free allowances and benefits in kind for employees. This means you do not withhold and/or pay any payroll taxes on these allowances and benefits.

In 2021, the maximum discretionary scope is 3% of the total taxable wages up to € 400,000, and a maximum of 1.18% of the taxable wages in excess of € 400,000. Excess amounts are subject to a final levy of 80%. Some reimbursements, allowances and benefits in kind are not charged to the discretionary scope. These are the designated exemptions, zero valuation items and intermediary costs.

The legislator is still fine-tuning the WKR; in the past year, for example, a number of relaxations were implemented in respect of items that often failed in practice. Below, we included a number of misunderstandings we often encounter in practice and the relaxation that was announced last year.

### Misunderstanding 1:

**When it comes to the WKR, it refers to the 1.2% 'discretionary scope' and tax is due if this is exceeded.**

The WKR covers more than the discretionary scope and also includes designated exemptions, zero valuation items and intermediary costs. This brings us straight to the relaxation.

### Relaxation:

**Commuting allowances (€ 0.19 per km) are always untaxed because they are a designated exemption.**

Until 2020, the rule was: without designation as an exemption, the allowance is considered taxable wages. To be

able to pay out these allowances untaxed, they had to (then) be charged to the discretionary scope.

Despite the fact that there will probably not be an employer in the Netherlands who chooses to pay out a taxed commuting allowance of up to € 0.19 per kilometre to his employee, such allowances are, according to the relevant legislative text, considered taxed wages of the individual employee if they have not been explicitly designated as a final levy component under the WKR.

In its handbook on Payroll Taxes, the Dutch tax authorities now stipulate that if the conditions and maximum amounts for specific exemptions are complied with, the basic principle is that the allowances, benefits in kind and provisions have been designated as final levy items. Thus, this applies to the commuting allowances of up to € 0.19 per km, as well as other allowances for which a specific exemption is included in the law, such as for the '30% facility' or reimbursement of actual extraterritorial costs, study costs, business meals and the like.

### Please note!

If the travel allowance from this example exceeds € 0.19 per km, an explicit choice must be made as to whether this excess is designated as final levy. In the absence of a choice, it shall be considered wage for the employee where the reimbursement, benefit in kind or provision exceeds the maximum amount.

#### Action items:

- Check whether allowances are paid for the maximum amounts and, if so, whether any excessive amounts have been designated as final level components under the WKR;
- If not, make sure that these costs are designated this (the current) year!

#### Misunderstanding 2:

##### Christmas packages are untaxed when the employer's discretionary scope has not yet been fully used.

Here too, the WKR may not be applied without designation. Christmas packages do not fall under the specific exemptions the aforementioned relaxation refers to. As a result, the Christmas packages must be taken into account as taxable wages for the employee. You obviously do not want employees to pay tax on their Christmas packages. And in case of a gross-up, these Christmas packages would suddenly cost more than twice as much.

This applies not only to Christmas packages, but to all reimbursements, benefits in kind or provisions for your employees. Designation must take place prior to this reimbursement, provision or benefit in kind.

#### Action item:

- While we are still at the beginning of the calendar year, it is wise to look ahead and consider what you might want to reimburse, provide or pay in kind to your employees in 2021, to ensure these are designated in good time. Obviously, the list of designated items can always be adjusted and updated during the year.

#### Misunderstanding 3:

##### We hold our staff party in the workplace. Therefore, there are no tax consequences.

As with the above, if you do not designate the staff party as a final levy component under the WKR, the staff party at the workplace will also be considered taxable wages just like employee's regular wages. This applies not only to the staff party at the workplace, but also to other reimbursements to which a zero valuation applies, such as the provision of work clothing and small refreshments at the workplace.

#### Action items:

- Check whether the staff party and all reimbursements or benefits in kind to which a designated exemption may apply have been designated as a final levy component under the WKR;
- If not, you may still be able to arrange this for this year!

##### In short: is the provision not designated for the purpose of the discretionary scope? Then it is considered as wages!

To clarify, a sample calculation:

Fees	
Commuting expenses (total of €0.30 km), the excess is considered wages	€ 15,000
Birthdays gifts on behalf of the employer	€ 5,000
Meal in the workplace cafeteria (valued at €3.35 per meal)	€ 20,000
Christmas packages	€ 11,000
<b>Total</b>	<b>€ 51,000</b>

If you have not designated any of the above costs, they are considered wages. For 2021, the additional tax assessment may be as high as €49,990 (excluding penalties and interest).

#### More information

Do you have any questions about the WKR and would you like to know whether you are taking full advantage of it within your organisation? Please contact your trusted RSM advisor.