

Pinboard - April 2021

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I. Aid following the increase in the social minimum wage

The aid to compensate for the increase in the social minimum wage is intended to support companies in the sectors most severely affected by the COVID-19 pandemic and find themselves in a financial situation that makes it more difficult to bear the new burden resulting from the increase in the social minimum wage since 1 January 2021.

The aid is intended only for companies that carry out certain activities and operate in the following sectors in particular:

- companies in the tourism sector;
- companies in the events sector;



- the hospitality industry;
- companies in the culture and entertainment sectors;
- companies operating retail shops and similar businesses.

The aid takes the form of a **one-off, tax-free capital subsidy**. It is calculated by multiplying the number of employees covered by the subsidy who are employed in a monthly period between 1 January and 30 June 2021 by €500.

The employees of the company taken into account to calculate the aid are those:

- whose monthly remuneration is equal to or higher than the minimum social wage and equal to or lower than the minimum qualified social wage;
- who were hired before 31 December 2020;
- who are employed during a monthly period between 1 January and 30 June 2021;
- who are assigned to an eligible activity.

Good to know:

It should be noted that companies need submit **only one application** for this aid. Furthermore, employees on short-time work are excluded from the calculation of the amount of aid.

In order to **maximize the aid** that will be granted therefore, it may be advisable to wait until **the end of June before applying for it** and to choose in the period from January to June 2021 the month during which your company had the fewest employees on short-time work.

Aid applications must be submitted via MyGuichet.lu by **30 September 2021 at the latest**. This deadline will therefore enable the company to analyse, after the above-mentioned period, which month is the most beneficial to claim.

II. Extension of leave for family reasons

Following the latest government measures in the education sector, the right to leave for family reasons has been **extended until 17 July** for parents whose children cannot attend school or an education and childcare facility for reasons relating to the current health crisis or who are receiving distance learning.

As part of the measures implemented in schools and childcare facilities to combat the spread of the coronavirus, a child may have to be quarantined or isolated on **the order or recommendation** of the Directorate of Health or the competent authority.

In order to reduce the risk of the virus spreading, and depending on the trend in the number of infections, it may also be necessary to **suspend** the activities of **educational and childcare institutions** (education and childcare services, mini-crèches and parental assistants) **partially or completely**.

In this context, a **specific procedure applicable as of 3 April inclusive until 17 July 2021 inclusive** has been put in place so as to enable one of the parents to benefit from extended leave for family reasons.

This concerns parents (employees, self-employed, apprentices) affiliated in Luxembourg who have a dependent child:

- **vulnerable to COVID-19** in accordance with the recommendations of the *Conseil supérieur des maladies infectieuses* [Superior Council of Infectious Diseases]; or
- **born before 1 September 2017 and aged under 13 years or who has not left basic education** and who cannot attend school or the education and childcare facility, or who is in distance learning; or
- **born after 1 September 2016** who cannot attend a childcare facility, provided it caters for young children, due to a closure decision; or
- **under 13 years of age** attending a school or childcare facility which had to be closed in isolation for reasons relating to the health crisis, or
- **between 13 and 18 years of age and hospitalized** under a quarantine or isolation measure decided or recommended by the Health Directorate.

The parent who avails him- or herself of leave for family reasons must **inform his or her employer as soon as possible, either orally or in writing, and indicate the beginning and end of the leave**.

Subsequently, the parent must send the **NEW COVID-19 family leave form**, duly completed and signed, to the *Caisse nationale de santé* (CNS) [National Health Fund] and to his or her employer, enclosing:

- the supporting documents issued by the Directorate of Health for a quarantine or isolation measure for a child; or
- a medical certificate attesting to the child's vulnerability; or
- a certificate issued by the Ministry of National Education.

For children **residing abroad** whose parents are affiliated to Luxembourg, it is the **competent authority of the country** in question that recommends or takes the decision to place the child in quarantine or isolation. It must then issue a certificate or attestation of this decision or recommendation. As in the case of educational institutions and facilities abroad, it is up to the competent national authority of the country to issue an official document.

The employee should then send **the form and the required documents to the CNS [National Health Fund]** by post or electronically.

For more information, please consult our Coronavirus FAQ: <https://securex.lu/>

III. New rules for short-time work

In order to continue to support companies and their employees affected by the COVID-19 crisis, special rules on short-time work are in force **until 30 June 2021**. While applying to all companies during this period of economic recovery, these arrangements nevertheless take into account the fact that some sectors or branches of the economy have been affected more severely than others.

Under the current arrangements, the State continues to pay compensation at a rate of 80% of salaries during periods of short-time work. The companies concerned may resort to redundancies under certain conditions.

The following arrangements will therefore apply **for the period from 1 May to 30 June 2021**:

1. **Industrial companies** will continue to benefit from the cyclical short-time work scheme so as to be able to respond to disturbances in international markets. In applying the cyclical short-time work scheme, industrial companies undertake not to proceed to redundancies for economic reasons.
2. **Companies in the vulnerable hospitality, tourism and the events sectors** will be able to benefit from accelerated access to structural short-time work up to **50% maximum of the total normal monthly working hours of the company**, provided that they do not proceed to redundancies for reasons not inherent to the individual. The normal working hours may not exceed 40 hours per week per employee. In the event that companies in the above-mentioned sectors are again forced to close their doors by virtue of an administrative decision, they will again be eligible from unlimited short-time work during the period of closure.
3. **Companies affected by the health crisis, other than industrial companies and those in vulnerable sectors**, will also be able to resort to structural short-time work through the accelerated route, provided that they do not proceed to redundancies. In this case, **the number of working hours lost may not exceed 10% of the total normal monthly working hours of the company**. The normal working hours may not exceed 40 hours per week per employee.
4. **Companies in vulnerable sectors (the hospitality industry, tourism, events) as well as industrial companies** and companies from **other sectors affected by the crisis**:
 - which are nonetheless expected to proceed to redundancies; or
 - which are expected to lose more than 10% of their total normal monthly working hours;

may do so only if they provide a recovery plan for small companies with fewer than 15 employees, or an employment maintenance plan pursuant to the provisions of Articles L.513-1 ff. of the Labour Code for companies with more than 15 employees.

For more information, please consult our Coronavirus FAQs: <https://securex.lu/>

IV. What about VAT on company cars?

An important ruling concerning VAT on company cars was handed down by the Court of Justice of the European Union (CJEU) at the beginning of this year. By way of reminder, this ruling follows a tax dispute dating back to 2014 between the German tax authorities and a Luxembourg company that provides a company car for two of its employees residing in Germany. In 2014, the German tax authorities issued a circular according to which the provision of a car by an employer to his employee was to be qualified as a long-term lease of a means of transport, and therefore liable for VAT at the place of residence of the lessee.

On 20 January 2021, the CJEU recognized that **the payment of VAT on a leased car must be made in the country of residence of the motorist**, i.e. of the employee. The Court thus ruled in favour of Germany.

Following this ruling, the Luxembourg VAT administration issued a circular on 11 February concerning VAT on company cars.

This circular sets out clearly the criteria developed by the CJEU to determine in which cases the provision of a car by an employer to his employee will be considered as a "long-term lease of a vehicle" and therefore taxable in the employee's country of residence.

Three cumulative conditions must be met for this to be the case:

- The vehicle is made available to the employee for a period of **more than 30 consecutive days**.
- The employee must have the **permanent right** (to the exclusion of any other person) to use the vehicle for private purposes.
- **A consideration must be paid**. The vehicle must be made available "in return for payment" through:
 - a **payment** made by the employee to the employer, or
 - a **withholding** by the employer of **part of the employee's cash remuneration** (Salary Sacrifice), or
 - **the employee's choice between different benefits offered by the employer** pursuant to an agreement by and between the parties whereby the right to use the company car would imply the renunciation of other benefits (Car Allowance).

Thus, as soon as these 3 criteria are met, and the employee has a residence address in a Member State other than Luxembourg, the employer will have to register for VAT in that State in order to meet the local VAT obligations.



Only employees who receive a company car **without consideration**, i.e. the case where the employee receives a company car without the possibility of refusing the car or at least of obtaining additional pay in compensation and without paying anything extra, will be exempted from this new tax obligation.

What is at stake in this decision?

In actual fact, one may wonder about the consequences of this new rule for both the employer and the employee. This change actually entails an additional cost for the employer who could rightly refuse to pay this difference. By way of reminder, VAT is 17% in Luxembourg compared to 19% in Germany and 20% in Belgium and France. Luxembourg employers will therefore have to analyse the impact of such a change and the actions they will have to take (amendment of the employment contract / car policy, registration with the foreign VAT body). It should also be noted that we do not know at this time whether this decision will be retroactive or not.

Finally, whereas there is currently a legal basis in Germany, this is not the case in France and Belgium. In the case of Germany, we find it difficult to ignore this new regulation. On the other hand, we recommend waiting for France and Belgium to take a position. It remains to be seen how they will interpret this case law.

V. What about public holidays falling on a weekend?

This year, 5 public holidays will fall on a weekend: 1 May (Labour Day), 9 May (Europe Day), 15 August (Assumption), 25 December (Christmas) and 26 December (Saint Stephen's Day). Two of these days fall on a Saturday. What rights do employees have?

Public holiday falling on a Sunday

According to **Article L 232-3 of the Labour Code**, if one of the public holidays falls on a Sunday, the employee is entitled to **1 day of compensatory leave** to be taken individually within **3 months as of the date of the holiday in question**.

Public holiday falling on a working day (Monday to Saturday)

According to **Article L 232-6 of the Labour Code**, if a public holiday coincides with a weekday during which the employee would not have worked according to the stipulations of his or her contract, he or she is also entitled to **1 day of compensatory leave**, which must be granted within a period of 3 months **as of the day after the holiday in question**.

In both cases, however, the Labour Code specifies that if the company's operations do not allow it, the day of compensatory leave must be granted before the end of the calendar year, with the exception



of public holidays falling in November and December, which may be taken during the first three months of the following year.

It should be noted that the day of compensatory leave must be taken in kind and cannot be exchanged for financial compensation.

These 5 days of compensatory leave should therefore be added to your 2021 holiday account, in addition to the legal or extra-legal leave traditionally allocated to your employees!

VI. Telework: extension of agreements

On the basis of the legal obligation for the employer to ensure the health and safety of employees at work (Article L. 312-1 of the Labour Code), many companies currently continue to use telework. As you know, for frontier workers, telework is likely to have certain effects both in terms of their social security affiliation and their taxation. Derogation agreements continue to apply nonetheless because of the current pandemic.

For social security

Due to the **COVID-19 pandemic**, the Belgian, German and French authorities have decided that periods of telework performed on their territories by their border residents because of the coronavirus will **not be taken into account in determining the applicable social security legislation**. This measure remains in force **until 30 June 2021**.

For taxation

In view of the COVID-19 **health crisis**, agreements have been signed with the border countries.

For **Belgian and French tax residents**: the presence of a worker at home, in particular for telework, **will not be taken into account**. This measure is applicable **until 30 June 2021**.

For **German tax residents**: the days of working from home of these frontier workers do not have to be **taken into account for the tolerance threshold of 19 days**. Since January 2021, this agreement has been automatically extended from month to month until it is terminated by one of the two countries.

VII. The new electronic tax cards are coming!

At the end of March, the Administration des Contributions Directes [Inland Revenue] gave some details about the new tax cards which will now be electronic and multi-year.

As part of its digitalization process, the *Administration des Contributions Directes* (ACD) [Inland Revenue] will set up a secure platform from May 2021 onwards so that employers can access their employees' tax deduction forms directly.



Employers will be able to access their employees' records during the transitional phase from 1 May to 31 December 2021. It should be noted that employees have already been able to do so since December 2020 via their private space on the MyGuichet platform.

In order to access this platform, employers will receive 2 Luxtrust tokens in due course to consult and download the tax forms: one for themselves and one for their possible service provider (e.g. payroll provider).

As of 1 January 2022, employers will be required to consult MyGuichet directly and employees will no longer be required to submit their tax forms in paper format to their employer.

In addition, the tax withholding forms issued from 1 May 2021 onwards will become multi-year and will no longer indicate a "valid until" date. They will remain valid beyond 31 December 2021 and will be updated only if there is a change in one or more items on the form (address, tax class, tax rate, employer, place of work, tax relief, deduction, ...). Automatic notifications will be sent to employers as soon as a change is made by Inland Revenue. Only tax withholding forms issued for a fixed-term contract will contain an end date (i.e. the end date of the contract).

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