Laga

The Mobility Budget

An alternative to the company car

Introduction

According to the yearly report of the Flemish Traffic Centre the saturation level on the Flemish roads has – once again - increased with 0.4% on weekdays and 2.3% on weekends [1].

The Belgian government had already taken action with the **Cash for Car** measure, which was introduced with the Act of 30 March 2018. However, until today, only 320 employees have effectively exchanged their company car for an allowance.

Therefore, the Governement created an alternative, the **Mobility Budget**, which was adopted in the Chamber of Representatives on 28 February 2019.

In this brochure, you will find the key aspects of this new mechanism, which aims to be an alternative for the company car.

(1) http://www.verkeerscentrum.be/verkeersinfo/verkeersindicatoren/jaarrapport-2018-190212

What is the mobility budget

Since the Cash for Car measure is “all or nothing” (either a car, either an allowance), the government found it appropriate to provide a second alternative for the company car: **the mobility budget**.
With mobility budget an employee has the freedom to **choose or combine** between **three different pillars** in lieu of the current company car:

Company car:

- The employee can choose to keep a company car under the condition that it needs to be at least as environmentally friendly as the car exchanged
- Furthermore the company car needs to be either electrical or it should have a CO^2-emission of maximum 105 gr.(1) If the car is a plugin hybrid, the battery needs to have capacity of minimum 0,5kWh per 100kg

(1) The law indicates the CO2 emission should be maximum 100 as from 1 January 2020 and maximum 95 as from 1 January 2021. A further reduction can be defined by RD as from 1 January 2022.

Sustainable transport solution:

- The employee can choose to purchase ‘mobility’:
  - “Soft mobility”: bicycles and (fully electric) bikes (incl. maintenance and legally required equipment)
  - Public transport (subscription for the employee’s commute and/or separate tickets both in Belgium and EEA countries, which can also be used by others)
  - Organized joint transport
  - Sharing solutions (carpooling, car sharing, taxi, rent car+driver, car rental for maximum 30 days per year)
  - Mobility services which offer a combination

Housing costs are assimilated:
- rent and interest (not capital) payment on mortgage loan (if the housing is located within 5km of the work place)

Cash payout

- The remainder of the mobility budget is paid out as a cash amount to the employee
- At the latest in January of the following year

Who can implement and who can receive the mobility budget

Employer conditions

The employer must have granted 1 (or more) company car(s) to 1 (or more) employee(s) during an uninterrupted period of **36 months** immediately prior to the allocation of the mobility budget.
Can be proven via the DmfA-declarations on which the CO^2-solidarity contribution is mentioned.
Exception provided for start-up companies (i.e. younger than 36 months).

Employee conditions

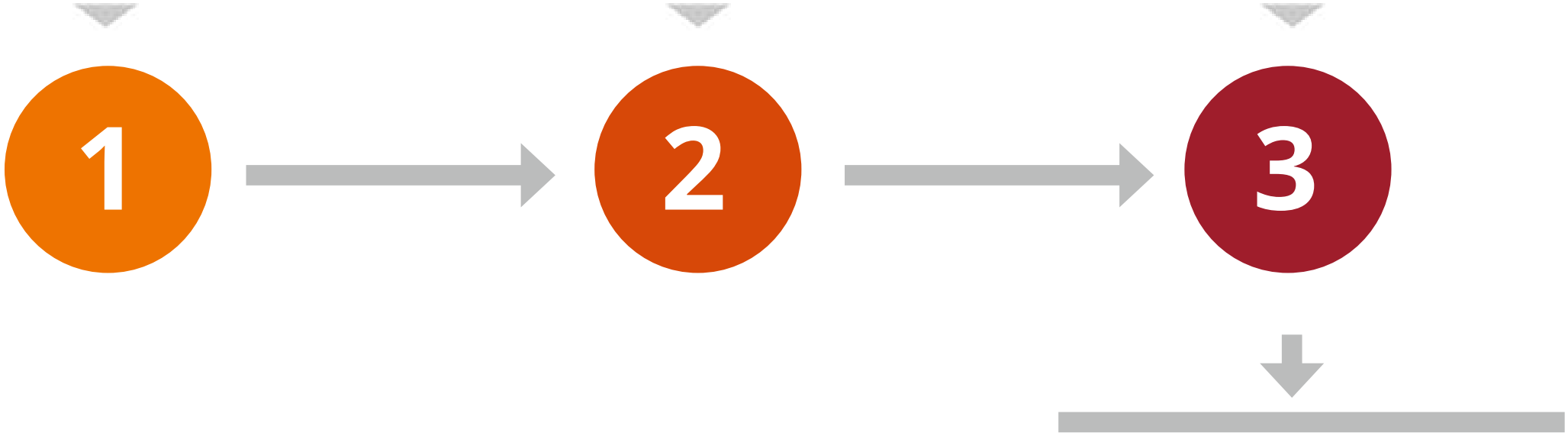
The employee is eligible to or has a company car during an uninterrupted period of at least **3 months** prior to the request to receive a mobility budget

AND

The employee is *eligible* to or has a company car for at least **12 months** with the current employer during the last 36 months prior to the request

- Eligible employees: the employees who are entitled to a company car based on their **function category** according to the **company car policy.**
- If the employee is eligible to or has a company car based on other criteria (e.g. the employee's length of service) or as a result of a salary sacrifice, the employee cannot request a mobility budget.

Roadmap



Amount of the mobility budget

Determination of the amount

The mobility budget is equal to the annual gross cost of the company car the employee is entitled to at the moment of the request. In order to determine the annual gross cost, the following elements are taken into account:

- financing cost or 20% depreciation if the company car is owned by the employer;
- fuel expenses;
- tax and related expenses;
- special solidarity surcharge (CO^2 tax).

Although not explicitly mentioned, based on the wording and the preparatory works it is clear that insurance expenses and non-deductible VAT can also be considered as 'annual gross cost'.

If the employee pays a personal contribution, this is deducted from the total cost of ownership.

What to do for new hires and employees who are eligible to a company car?

The amount of the mobility budget is determined on the basis of the specific company car the employee had before at the moment of the request for a mobility budget.

If the employee did not have a specific company car before, because he is a new hire, got promoted or was eligible to a company car but never chose a company car, there is no specific company car to determine the mobility budget. The law does not provide any guidelines on which reference car should be used, neither are there guidelines on how to determine the fuel expenses. The preparatory works however mention that the mobility budget will be calculated based on the company car "which the employee would have chosen".

In practice, **this can be regulated in the policy implementing the mobility budget**, whereby f.e. for each function category:

- a reference car must be selected; and
- a method for determination of the fuel cost must be determined (e.g. the average of the fuel costs of all employees of the function category, taking into account the commute of the employee).

Amount of the mobility budget

Adaptation of the budget

In case of a change in function or a promotion, the mobility budget can be changed if this change results in change of category of company car to which the employee would be entitled. Taking into account this wording, this adaptation seems not to be mandatory. This may be a loophole in the legislation opening the door for abuses.

Indexation of the budget

The mobility budget is not subject to an automatic indexation. The employer is free to implement an indexation mechanism, which in any case cannot be more beneficial than the indexation mechanism which is applicable in the industry.

Wage norm

The mobility budget is taken into account for the calculation of the wage norm.

Managing the budget

How the mobility budget should be managed is not provided in the law itself. It is provided that this will be regulated via a RD. Given the fact that the possible cash payout should take place in January of the following year, the employer will need an efficient and high-performing system.

Amount of the mobility budget

Exceeding the budget

As explained, the employee can chose between different pillars. The choices made should be deducted from this mobility budget: for the company car the total cost of ownership of the chosen 'more environmentally friendly' car, for the other pillars the cost of the chosen transport solutions and cash payment.

It is however possible that an employee exceeds the available budget, f.e. if the employee has chosen a company car and a public transport subscription (which is a fixed cost), and has a higher fuel cost then estimated upfront, or if the employee has chosen certain alternative transport solutions but resigns in the course of the year. The excess could be considered salary subject to normal taxes and social security treatment since the excess does not benefit any particular deviating tax and/or social security regime.

It seems not possible to deduct this extra cost from the normal salary, given the fact that article 23 of the Wage Protection Act defines which amounts can be deducted (and this article was not adapted) and it seems to be difficult to bring the extra cost under one of these permissions unless this would be qualified as an advance in cash (art. 23, 4° Wage Protection Act).

In practice, it could be considered to stipulate in the policy implementing the mobility budget that a potential excess of the mobility budget should be paid back to the employer within a certain term as of the end of the calendar year or at the last working day in case of termination of the employment contract.

Tax and social security treatment

Pillar 1
Company car

Employee
Follows the normal tax and social security treatment of a company car

Employer
In case the employee opts for a car that meets the conditions, normal tax treatment to that car will apply, a.o. VAT and corporate tax deductibility

Pillar 2
Sustainable Transport Solutions

Employee
Exempted from income taxes and social security contributions

Employer
Any payment made by the employer is considered an expense and will be 100% tax deductible

Pillar 3
Cash payment

Employee
- Exempted from income taxes
- Social security contribution of 38.07% (which is equal to 25% employer's contributions + 13.07% employee's contribution)

Employer
Any payment made by the employer is considered an expense and will be 100% tax deductible

The payment of the cash amount will need to be made in January of the following year. This has been implemented to discourage payment in cash within the mobility budget. For employees who whish to receive cash and manage their mobility independently, the Cash4Car legislation could be considered as an alternative.

Labour law treatment of the mobility budget

Mobility budget is no 'cash salary'

Therefore, the mobility budget as such should not be taken into account for the calculation of the 13th month or vacation pay, nor for the calculation of the legal pension built-up. The potential cash payment (the third pillar) is however by law considered to be gross salary for the legal pension, unemployment benefits and any other social security benefits. The cash payment should however not be considered for the 13th month or vacation pay, since it is not part of the normal salary.

Termination of the employment contract

The Act does not clearly stipulate what benefits need to be taken into account to calculate the possible indemnity in lieu of notice due in case of immediate termination of the employment contract.
The Act on Employment Contracts states that the salary and benefits in kind to which the employee is entitled at termination date should be considered. The Act on mobility budget clearly mentions that the employee has no entitlement to the mobility budget as such. Therefore, the mobility budget must not be considered. It thus seems that the actual chosen 'benefits' should in principle be taken into account. Based on the majority of case law, the benefits should be valued at the actual value for the employee (not the tax valuation). The question will be whether and how the benefits chosen within pillar 2 and pillar 3 will be considered for the indemnity in lieu of notice.

Combining the mobility budget with other mobility indemnities

If the mobility budget is combined with any other mobility indemnity for the commute, this indemnity will qualify as normal salary for tax and social security purposes. The legally provided social security and tax exemptions will not longer be applicable to this indemnity. As mentioned, this should also be written down in the agreement concluded between the employer and employee if a mobility budget is granted.
Note that the above will not be applicable if the employee was already entitled to such indemnity, subject to the tax exemptions as provided in article 38, §1, first paragraph, 9° (a) and (b) and 14° WIB 1992, in combination with the company car before the choice for the mobility budget

The mobility budget can be implemented, if you have **a company car policy** which grants company cars based on function category.

Given some uncertainties in the law, it is highly recommended to make a **clear policy** in which the modalities of the mobility budget are clearly set out.

If you have **any questions**, do not hesitate to reach out to the flexible employment specialists of Laga's Employment, Pensions & Benefits department.

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Laga

About Laga
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