Deloitte.

Deloitte.
Legal

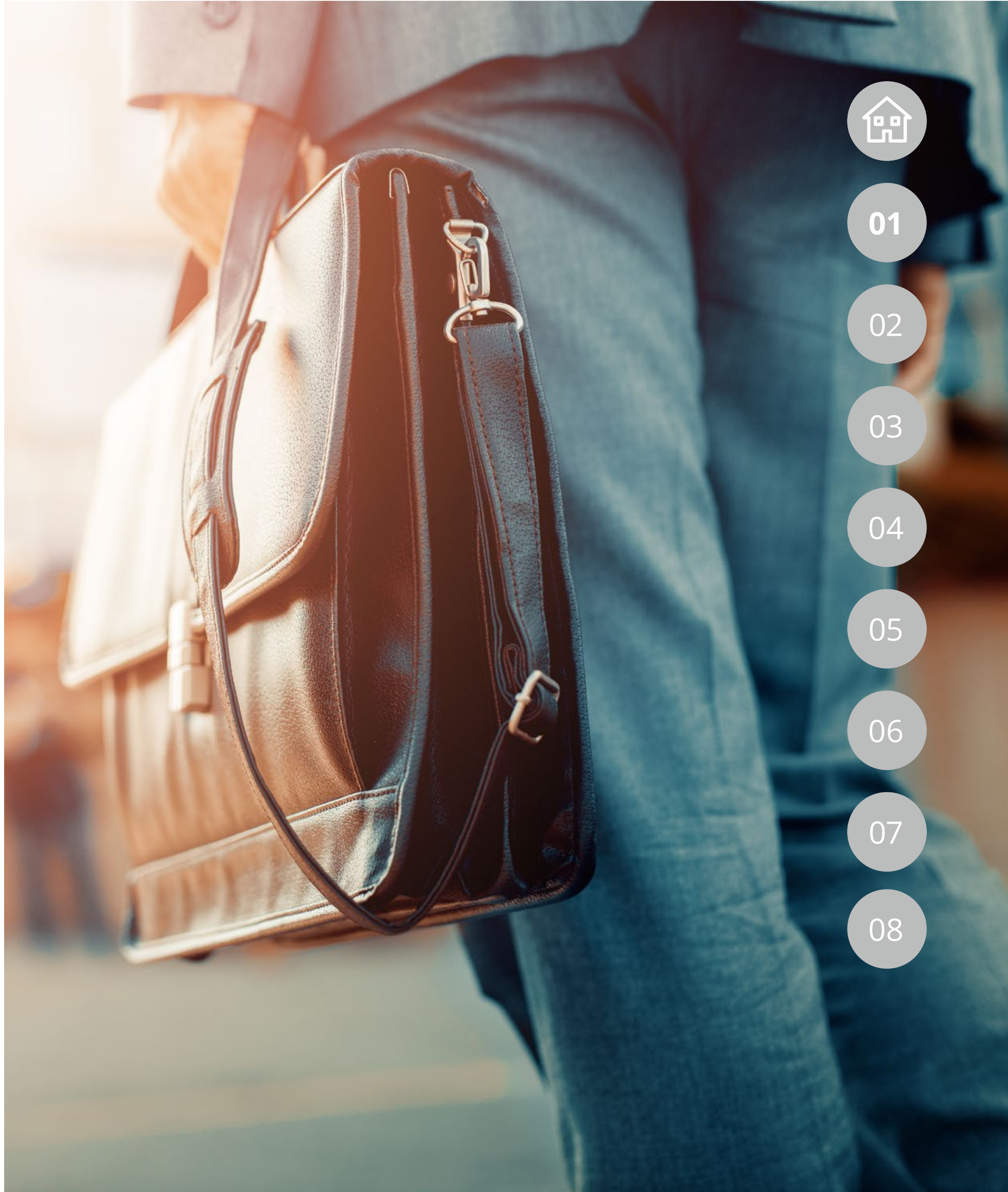
How does the new Profit Premium Plan fit into your variable pay Agenda?

2018

Introduction

On Christmas parliament adopted a program law, which includes an almost entirely new Profit Premium Plan, replacing the existing Profit Participation regulation. The objective is to improve employee's purchasing power by introducing a simplified and even more attractive scheme.

Of course, such new additional plan, certainly when as attractive as promised, requires employers to review the current variable pay strategy to see if, and how, this measure can complement and improve the current variable pay set-up within your organization.



01
02
03
04
05
06
07
08

What is a Profit Premium Plan?

A Profit Premium Plan is a legal framework for a company to distribute its profit, partially or fully, to its employees and this within a favourable tax and social security set-up.

The Profit Premium Plan replaces the Profit Participation regulation introduced in 2001, which was considered too burdensome and too rigid to implement. The Profit Premium Plan simplifies implementation, increases flexibility and enhances the net-in-hand of the employee by further reducing the applicable tax rate.

What are the main characteristics of the new Profit Premium Plan?

1. **Voluntary**
   The employer has a free choice to implement (or not) a Profit Premium Plan.

2. **Collective**
   The plan has to be open to all employees.

3. **Differentiation Possible**
   Or, all employees receive an identical Profit Premium, which refers to an identical amount or an identical percentage of their salary
   Or, all employees receive a categorised Profit Premium of which the amount is determined according to a distribution key based on objective criteria such as seniority, function, grade, salary scale, compensation etc.

4. **Method of distribution**
   The profit can be distributed as a fixed amount per employee, a percentage of the salary of the employee, a percentage of the distributable profit or a specific formula based on the above criteria.

5. **Profit attributable**
   The employer can freely decide on the percentage of the profit to be distributed, up to the full 100%, but to be capped at 30% of the employer's total gross payroll cost[1].

---

1 *The new program law does not elaborate what the gross payroll cost entails. Under the previous Profit Premium Plan, the gross payroll cost corresponds to the amount reported in category 102 of the social balance sheet. It is likely that this will also be the case under the new regime.*

What does it mean for your employees?

The Profit Premium is subject to a solidarity contribution of 13,07% and a 7% flat tax rate. This is a substantial reduction from the previous 25% flat tax rate and will result in a substantial increase of the employee's net-in-hand.

Both amounts are withheld by the employer and the employee does not need to declare his Profit Premium in his tax return.

Profit Premium	Old regime	New regime
Gross employer cost	**1 000,00 €**	**1 000,00 €**
Solidarity contribution	-130,70 €	-130,70 €
Taxable income	869,30 €	869,30 €
Income taxes	-217,33 €	-60,85 €
Net in hand	651,98 €	808,45 €
RATIO Net/Gross	**65,20%**	**80,84%**

Figure 1

As the Profit Premium does not qualify as "cash-salary", it is explicitly excluded from the salary notion for social security and employment law purposes, it is not part of the calculation basis of vacation pay, the statutory pension entitlements, guaranteed salary, 13th month, or severance pay.

A pro rata temporis grant to the employee in case of dismissal or interruption of the labour agreement also remains applicable.

Tax and social security obligations for the Employer

The employer tax and social security treatment remains unchanged.

The profit granted is considered as a disallowed expense for corporate income tax and will as such be subject to normal corporate tax rate (currently 33,99%, 29,58% as from 2018 and 25% as from 2020).

No employer social security contributions are due as the Profit Premium distribution is not considered as salary.

The employer is required to withhold the solidarity contribution and income tax and needs to file a 273A form.

No reporting on a salary form 281.10 is required.

Implementation

Similar to the old regime, the initiative to implement a Profit Premium Plan lies with the employer. It is a choice and not an obligation in the hands of the employer. The decision to implement such a plan should be renewed annually. The employees cannot invoke a right to any Profit Premium in the future.

Important is that the Profit Premium Plan cannot be used to replace an existing plan. This should not necessary result in an additional cost as it may replace a previous ended plan or a plan which was set-up for 1 year only.

The Profit Premium can also not replace, convert or supplement salary, premiums, benefits in kind or any other benefit, whether or not subject to social security contributions.

A careful implementation is therefore crucial, also considering the plan set-up wanted, identical or categorized distribution.

1. Identical Profit Premium

The new regime foresees a simplification as to the implementation process in case of identical Profit Premium. The Profit Premium Plan can be rolled out by means of a decision by the shareholders meeting (normal majority 50% plus 1 of the votes of the represented shares).

The minutes of that meeting should at least include the following elements:

- The identical amount or identical salary percentage applicable to attribute profit to employees and details on how the salary is determined
- The application of a minimum seniority. This is allowed only to exclude employees with a (combined) seniority less than 1 year, which includes subsequent contracts of definite duration.
- The pro rata calculation method used to determine the Profit Premium in case of interruption or end of the employment agreement (with the exception of dismissal for serious cause by the employer).

The employer must inform the employees about the decision to award an identical Profit Premium. No specific communication modalities are imposed but it is recommended to inform the employees in writing by email, paper, intranet or other means. As is the case for all employee communications on variable pay, this needs sufficient and well-thought preparation.

2. Categorized Profit Premium

In case a categorized Profit Premium Plan is considered, the procedure for implementation is more strict. A separate collective bargaining agreement or, in the absence of a trade union delegation, an act of accession is thus required. As a consequence, the employees will have the possibility to comment on the award criteria of the Profit Premium.

Timing

Under this new regime, the Profit Premium can for the first time be distributed after the first closure of the company’s accounting year as from 30 September 2017.

For many employers the new reference year will start 1 January 2018, which likely still leaves some time to update the current variable pay strategy and update to include for example a Profit Premium Plan.

Which bonus plan fits best your company?

The new Profit Premium Plan is easier, specifically the identical Profit Premium, more attractive and tax more efficient. For employers, this is an additional alternative to structure variable pay. An assessment how this new regime could fit within your reward agenda will be needed.

Next to the cost and tax impact, it is important that your overarching strategy is consistent with a right balance between the different pay elements. While the cost/net ratio of this new measure may be attractive, the question should be raised whether this type of bonus will increase the employees' identification with the company's (financial) success as a broad equal spread between all employees.

As an employer, you will need to determine the correct balance for your organization between implementation of an individual plan, a collective plan or a combination of both.

The below overview shows the difference between 4 schemes both from the employer and employee point of view. The below is focused on annual cash driven plans and does not include various other variable pay schemes possible, eg LTI's, bonus pension plan or other deferred plans, equity plans etc.

	Cash bonus	Warrants	CBA90	Profit Premium
Gross Profit company	5 000,00 €	5 000,00 €	5 000,00 €	5 000,00 €
- Bonus	-1 313,36 €	-1 000,00 €	-1 330,00 €	0,00 €
Taxable profit	3 686,64 €	4 000,00 €	3 670,00 €	5 000,00 €
- Corporate income tax (29,58%)	-1 090,51 €	-1 183,20 €	-1 085,59 €	-1 479,00 €
Net profit	2 596,13 €	2 816,80 €	2 584,41 €	3 521,00 €
- Profit Participation employee	0,00 €	0,00 €	0,00 €	-1 000,00 €
Net distributable to shareholders	**2 596,13 €**	**2 816,80 €**	**2 584,41 €**	**2 521,00 €**
Gross amount employee	**1 000,00 €**	**1 000,00 €**	**1 000,00 €**	**1 000,00 €**
Administrative costs		-50,00 €		
Stock exchange tax		-3,50 €		
Employee soc sec	130,70 €	0,00 €	130,70 €	130,70 €
Taxable income	869,30 €	946,50 €	869,30 €	869,30 €
Taxes	465,08 €	506,38 €	0,00 €	60,85 €
Net in hand	404,22 €	440,12 €	869,30 €	808,45 €
RATIO Net/Gross	**40,42%**	**44,01%**	**86,93%**	**80,84%**

Figure 2

As the above scheme shows, next to the beneficial tax impact for the individual, the impact on the company (and accordingly the shareholders) may not be neglected. The Profit Premium is granted after corporate tax, while a classic cash bonus plan, as well as a warrant plan and CBA90 bonus is tax deductible by the company.

Next to the total cost impact, the limits of each plan will influence the choice, cash and warrants are non limited and discretionary (warrants may however not be disproportionate in relation to the salary package). A CBA90 or a Profit Premium Plan will involve all employees, regardless of individual performance and the amounts will be limited, certainly for the CBA90.

Therefore, it might well be that a well-balanced combination of different plans will best meet the objectives you have set.

Contacts

Sofie Van Breedam
Partner Deloitte

+32 2 600 67 93
+32 476 41 67 53
svanbreedam@deloitte.com

Stijn Demeestere
Partner Deloitte Legal

+32 2 800 71 42
+32 473 65 21 32
sdemeestere@deloitte.com