



Laga Newsflash

Profit premium plan: what will 2019 bring?

The **profit premium plan** was introduced by the Program law of 25 December 2017. This measure enables a company to distribute a portion of its profits (maximum 30% of the total gross payroll cost for the last closed accounting year) to its employees, doing so within a favourable tax set-up.

The profit premium amount is either:

- An identical amount for all employees, or an identical percentage of their salary (“the identical profit premium”);
or
- A different amount for all employees, determined according to a distribution index based on objective criteria (“the categorised profit premium”).

The law of 14 December 2018, which contains various provisions on employment, clarifies some aspects of the profit premium plan applicable since **1 January 2019**.

Pro rata temporis calculation

Before the law’s amendment, it was unclear when the profit premium could be distributed *pro rata temporis* (i.e. proportionate to the length of time involved). The Program law only provided a *pro rata temporis* grant in cases of “voluntary suspension” or “in the event the employment agreement is terminated”. It was unclear how these two terms should be interpreted (e.g. for part-time work, time credit, thematic leaves?).

The new law answers these questions by clarifying that the profit premium can now be calculated in relation to the

“employee’s effective performances during the closed accounting year”. In practice, the profit premium can be distributed *pro rata temporis* for part-time work or if an employee left the company during the closed accounting year.

However, some periods of interruption in the employment agreement’s execution (such as annual leave, holidays, maternity leave, periods of guaranteed salary in cases of work incapacity, etc.) must be considered equal to effective performances.

Identical amount or identical percentage

To avoid a dual application of the *pro rata temporis* principle, the law clarifies that the *pro rata temporis* calculation is only applicable for identical profit premiums based on a fixed amount (“identical amount”) and not for those based on an “identical percentage”. The latter types are determined by a percentage of the employee’s gross salary, effectively earned during the last closed accounting year, and are therefore already *pro rata*.

Excluded employees

Legislators established which employees can be excluded from the distribution of profit premiums. These are employees who were dismissed for serious cause during the last closed accounting year and/or employees who resigned during said period (excluding those who resigned for serious cause on the part of the employer).

Profit premium not considered as salary

Legislators also confirmed that profit premium distribution is not considered as salary. This means that going forward, the profit premium is not part of the calculation basis for severance pay and vacation pay and must not be included in determining whether or not the wage norm is respected. This amendment to the law entered into force retroactively from 1 January 2018.

Last closed accounting year as reference period

Finally, the new law clarifies that the reference period is always the last closed accounting year. This is relevant for determining beneficiaries, the total amount of participations to the profit and the salary as calculation basis for the profit premium.

Needed action

Companies aiming to implement a profit premium as of 1 January 2019 should imperatively take into account these new provisions.

Laga's Employment, pensions and benefits team is readily available to answer any questions relating to the profit premium plan.

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