



Deloitte Legal Newsflash

Employment, Pensions & Benefits

New guidelines on maximum supplement to unemployment benefits

On 2 April 2020, the National Office for Social Security (**NOSS**) published new guidelines regarding supplement on unemployment benefits exemptions.

Context

To cope with the COVID-19 outbreak, many employers have requested (full-time or part-time) force majeure temporary unemployment (TU) for their employees. These employees will receive unemployment benefits, increased with a daily allowance, both of which are at the National Employment Office's expense. Quite some employers consider paying a supplement to reduce the impact of TU on their employees' income. There was uncertainty about the maximum amount the employer could pay as supplement.

The supplement may not result in a higher overall income than the "normal net income"

The NOSS has always considered a supplement to temporary unemployment benefits as exempt from social security contributions, to the extent that the employee's overall net income (consisting of unemployment benefits and supplement)

does not exceed the 'normal net income, as if the employee had worked'. The NOSS never gave further clarification on the notion of net income, which was hence generally referred to as the gross monthly salary after deduction of the employee's social security contributions and the income tax withholdings (net amount found at the bottom of the payslip, and paid to the employee's bank account).

"Normal net income" equals "gross taxable income"

In response to the ambiguity and to the many requests for further clarification, the NOSS published new intermediary instructions outlining the conditions for exemption:

- (a) The employer must consider only salary components subject to social security contributions to determine the normal income. Other benefits, such as meal vouchers and lump sum cost allowances have to be excluded.
- (b) The employer should not only consider the fixed monthly salary but also the average variable salary of 'the last months' (without further clarification);
- (c) The NOSS refers to the net income as the gross taxable salary to determine the maximum supplement, considering that different tax withholdings are applicable to salary, unemployment benefits and supplement.

All amounts during TU ≤ gross taxable income

All amounts already paid to the employee must be taken into account to determine the maximum gross supplement (unemployment allowances, additional daily allowance, as well as possible supplements paid in accordance to industry/company regulations (by an industrial fund)). The sum of all these amounts can therefore no longer exceed the normal gross taxable salary of the employee concerned.

White-collar employee (single)	
Normal salary (gross)	EUR 3,000.00
Corresponding net:	EUR 1,992.74
Base income during 100% TU:	
Unemployment benefits (gross)	EUR 74.17 x 26 = EUR 1,928.42
Additional allowance (gross)	EUR 5.63 x 26 = EUR 146.38
Total gross base income:	EUR 2,074.80
Total net income (gross - 26.75% tax withholdings):	EUR 1,519.79
Maximum supplement:*	

Under the old guidelines:	EUR 1,992.74 EUR net - EUR 1,519.79 net = EUR 472,95 net, which corresponds to EUR 645.66 gross (considering 26.75% taxes)
Under the new guidelines:	EUR 2,607.90 (3.000.00 - 13.07%) - EUR 2,074.80 gros = EUR 533,10 gross

**Employees will have a net impact at the moment of payment, even if employers compensate 100% of the difference, to be compensated with the tax return (refund/claim depending on their effective tax rate (less or greater than 26.75%).*

Equal treatment

The NOSS reminds of the applicable non-discrimination principle. All employees of the same category must be treated equally (specific percentage of the maximum supplement or lump sum amount).

Too much paid in March?

The NOSS confirms that employers can settle excess payments with the supplement payable in April without sanctions. This means that the April supplement can be calculated in accordance with the new instructions and the amount in excess can be deducted. Companies deciding not to settle the excess in April, run the risk having to pay social security contributions (both employer and employee) on the full supplement paid in March.

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