

“Profit premium”: a simplified and attractive bonus

What is a “profit premium”?

Bonuses have become common practice and different reward systems exist in Belgium. As from 1 January 2018, the old regime of profit participation as introduced by 22 May 2001 Law has been replaced by the profit premium (“*winstpremie*” or “*prime bénéficiaire*”). This is a more simplified bonus system and is, moreover, more attractive tax and social security wise.

Compared to the old regime, the advantages of the new regime of “profit premium” are:

- (i) the simplification of its introduction into the bonus plan of a company; and
- (ii) a lower tax rate and exemption from social security.

How to introduce the profit premium in your company?

The initiative to set up the profit premium is taken exclusively by the employer on a yearly basis. Therefore, the employment contracts need not be modified and no vested right is recognised for the employees so that they cannot claim a profit premium in the future.

Employers can choose between two types of profit premiums:

- (i) Identical, meaning that the amount of the premium is the same for all employees *or* that it corresponds to a percentage of their salary equal for all employees; *or*
- (ii) Categorized, meaning that the amount of the premium is different for different categories of employees and depends on a distribution key based on objective criteria (i.e. seniority, grade, function, pay level, salary level and educational background).

The conditions to introduce this bonus vary according to the choice of the employer between identical or categorised premiums, as summarized in the table below:

	Identical	Categorised
Introduction	By ordinary or extraordinary General Assembly decision (requiring simple majority of the votes).	By ordinary or extraordinary General Assembly decision (requiring simple majority of the votes).
Implementation	The minutes of the General Assembly decision must contain mandatory provisions.	By a collective labour agreement (when a trade union delegation exists). It must contain mandatory provisions. By a collective labour agreement or an act of accession at the will of the employer (when a trade union delegation does not exist). It must contain mandatory provisions.
Information obligations	The employer informs in writing the employees individually of the decision to grant profit premiums. There is no information/consultation obligation towards the trade union. However, if a works council exists, we advise to inform them.	In case of an act of accession, employees are informed in writing or by display (in which they can communicate their remarks in a special register during 15 days).
Maximum amount	The total amount of the premium may not exceed 30% of the total gross payroll and 100% of the total benefit. There is no individual limit in amount.	The total amount of the premium may not exceed 30% of the total gross payroll and 100% of the total benefit. There is no individual limit in amount. However, the abovementioned criteria cannot result in a differentiation of granted premiums exceeding a ratio of 1 to 10.

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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