

Pay optimisation.

Legal framework for pay optimisation through staff gifts

The Belgian legal framework for staff gifts is reasonably complicated. In fact, the social security, direct tax and VAT authorities are still not in complete alignment. The conditions also depend on the reason for the gift, and on the perspective (whether the taxpayer is the employee or the employer).

This white paper offers objective, relevant information to help you make decisions about staff gifts. It provides clear answers to all tax, social security and VAT questions about staff gifts, such as:

- **What gifts** can I give?
- **How often** can I give a gift?
- For **what occasions** can we use staff gifts?
- When does the employee not have to pay **personal income tax**?
- When does the employer not have to pay **corporate income tax**?
- When does the employee not have to pay **personal social security contributions**?
- When does the employer not have to pay the **employer's social security contribution**?
- When can the employer recover 100% of the **VAT** on a gift?
- What are the consequences if you **exceed a maximum amount**?

Permitted gifts

In general, we're talking about **collective** staff gifts, i.e. gifts that everyone receives systematically, and that have a clear social purpose. We're not talking about a reward for the performance of an individual or group. In other words, these gifts are not a form of salary, reward or bonus. The amount cannot be fully or partially paid out in cash – although there are a couple of exceptions¹.

Staff gifts can take **many forms**, such as gift baskets, gift cards, vouchers, multi-chain gift cards, retail gift certificates, physical gifts and benefits in kind.

Note: For tax reasons, gift cards, vouchers and gift certificates may only be valid for **up to one year**. Otherwise the voucher will not be exempt from personal income tax for the employee, or from corporate income tax for the employer!

How often can you give a gift?

Unless otherwise stated, the amounts set out below are always **annual amounts**. For the purposes of social security and direct taxes, it doesn't matter whether the total amount of a gift is given on one occasion or spread over several occasions. However, the VAT authorities require only one gift to be given per beneficiary per year.

To recover the **VAT**, the gift cannot include any of the goods listed in Article 45(3)(1) and (2) of the VAT Code (including tobacco products and spirits). The VAT authorities also allow you to deduct the VAT paid on only one gift or gift card per beneficiary per year.

¹ To mark 25 or 35 years of service, an employer may opt for a cash bonus with the same tax benefits as a gift of the same value. Cash may also be given for collective benefits or upon retirement.

What occasions can you mark with gifts?

St Nicholas, Christmas, New Year's Eve, New Year's Day or a patron saint's day

For St Nicholas Day, Christmas, New Year's Eve or New Year's Day, as well as for other holidays with the same social purpose (such as the usual patron saint's days in certain business sectors, such as St Eligius or St Barbara), you can give a gift of up to **€40** including VAT without the tax or social security authorities getting involved. In other words, neither the employer nor the employee must pay any taxes or social security contributions.

However, it should be noted that this is a total amount per year for all gifts combined – including an employee's birthday. It is not the value of each individual gift. A second point to note is that a gift must be given on the same specific occasion to all members of staff, or to all staff members' children below a certain age on St Nicholas Day.

For each employee, you can **increase that amount by €40** including VAT per calendar year and per dependent child. This amount is also fully net for the employer and without cost to the employee.

If the maximum amount of €40 including VAT is exceeded, taxes and social security contributions are payable on the full amount, not just on the portion that exceeds the limit.

The VAT is also fully deductible for the employer up to the higher amount of €49,99 excluding VAT.

Employee's birthday

For the birthday of an employee, you can give a gift of up to **€40** including VAT without involving the tax authorities. In other words, neither the employer nor the employee must pay any taxes.

Bear in mind though that in terms of personal income tax and the VAT authorities, this occasion falls into the category outlined above. This means that you can't combine a gift of €40 including VAT for St Nicholas Day, Christmas, New Year's Eve, New Year's Day or a patron saint's day with a €40 gift for the employee's birthday. Incidentally, the rule stated above applies here too: you must give a gift for the occasion in question to all members of staff.

Since birthday benefits are not listed in the social security legislation, these gifts are considered to be part of an employee's salary. This means that both personal and employer's social security contributions must be paid. The only exception to this rule is a "gift out of generosity". However, the social security authorities seldom accept this justification.

Marriage or legal cohabitation

For each employee getting married or commencing legal cohabitation, a gift of up to **€245** including VAT is exempt from taxes and social security contributions. For the purpose of corporate income tax, the deductibility of a wedding or legal cohabitation gift is not expressly provided for in the legislation, but it is accepted as a common practice. So in practice, neither the employer nor the employee must pay any taxes or social security contributions.

However, the employer cannot recover the VAT. If the maximum amount of €245 including VAT is exceeded, taxes and social security contributions are only payable on the portion that exceeds the limit.

Long service gifts

Although most companies give gifts to recognise long periods of service, the social security authorities only recognise gifts given after **25 and 35 years** of service. On those two occasions – or at a later milestone² – you can give a gift equal to **one or two months' gross salary** respectively, including VAT, without the employee incurring any tax or social security obligations. You may opt to calculate the benefit based on the average gross amount of a monthly salary in your company. You would do this by dividing all salaries paid out in the previous calendar year by the number of full-time equivalent employees. It is not permitted to apply both calculation methods during a single calendar year.

Note that this is not a deductible business expense for the employer for corporate income tax purposes. This means such a gift will have tax consequences for the employer.

The employer also cannot recover the VAT. If the maximum amount is exceeded, social security contributions and taxes will be payable only on the portion that exceeds the limit, not on the full amount.

Retirement, early retirement or unemployment with corporate allowance

When an employee retires, provided he or she has been working for you for at least three years, you can pay a social security and tax-friendly gift. Up to **€40** including VAT **per full year of service** will not incur tax or social security obligations. As well as the minimum amount of €120 including VAT, this gift is also subject to a maximum amount of €1,000 including VAT.

The employer cannot recover the VAT. If the maximum amount is exceeded, taxes and social security contributions are payable on the full amount, not just on the portion that exceeds the limit.

Note that if an employee receives an amount upon becoming eligible for the “unemployment with corporate allowance” (RCC in French or SWT in Dutch) scheme, the above favourable tax regime will not apply again when the employee becomes eligible for the pension.

Birth or birthday of a child of an employee

A gift to an employee upon the birth or birthday of a child of that employee is exempt from personal and employer's social security contributions for a value of up to €50 including VAT per month. This is subject to the condition that the gift must increase the employee's purchasing power. The gift is also exempt from personal income tax up to a value of €50 excluding VAT per year. Accordingly, for the gift to be 100% net for the employee, the maximum amount is **€50** including VAT per year.

This is never a deductible business expense for corporate income tax purposes. However, the VAT is fully deductible for the employer – up to an amount of €50 excluding VAT per year.

Remember that for the purposes of both personal income tax and the VAT authorities, the maximum amount for this occasion must be added to the amounts for St Nicholas Day, Christmas, New Year's Eve, New Year's Day, a patron saint's day and the employee's birthday.

² It is an exempt social benefit if it is paid out no more than twice in a career: once in the calendar year of the 25th year of service (at the earliest), and again in the calendar year of the 35th year of service (at the earliest). Accordingly, you may decide not to make a payment for 25 and 35 years of service, but instead to make a payment for 30 and 40 years of service for example, and the same conditions will apply.

Summary table

A check mark symbol indicates a full exemption from taxes, a full exemption from social security contributions, or that the VAT is fully recoverable.

Occasion	Maximum	Employee		Employer		
		Tax	Social Security	Tax	Social Security	VAT
St Nicholas Day, Christmas, New Year's Day, etc.	€40	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Employee's birthday	€40	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Marriage or cohabitation	€245	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Long service: 25 or 35 years	1x or 2x monthly salary	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Retirement or unemployment with corporate allowance	€40/year & €1,000 in total	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Birth of a child, or child's birthday	€50	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

All amounts are annual amounts and include VAT. For all details and nuances, we refer you to the explanation for each occasion.

What do employees like to receive as gifts?

It's really very simple: these days, employees like to choose for themselves. The tradition of giving everyone the same gift doesn't work anymore. Employees mainly want to be **surprised and delighted**. At the same time, they want to be able to **choose for themselves**. Employees also want things to be easy: choosing a gift should be **fast and simple**.

As the market leader in Belgium – with the most extensive range of products on the Belgian market – we've noticed a surprising trend. On average, 49% of employees select a physical gift from our online catalogues, and 51% opt for a digital gift card. In other words, **half of your employees would prefer something other than a gift card**. This is despite our extremely wide range of gift cards: A.S. Adventure, Amazon, Bol.com, Bongo, Coolblue, Decathlon, ICI PARIS XL, Ikea, Kinopolis, MediaMarkt, Zalando and many more.

Our conclusion? Employees want to select a gift from a **wide range of choices**. Not only gift cards, but also physical gifts, trips, concert tickets, chocolate, wine, charitable donations and much more.

Do you have any questions?

Get in touch at hello@arteel.com or +32 16 499 960. We would love to hear from you.

Sources

Circular 2017/C/32, 29 May 2017; Circular 2018/C/125, 5 December 2018; Circular No. Ci.RH. 241/608.543, 23 May 2011; Article 38(1)(1)(11), Income Tax Code 92; Com. IB 53/214; Royal Decree of 3 July 2018.