Early retirement and avoidance of 52% tax penalty for employer

KWPS Employee Benefits & Risk Management

How to realize early retirement without 52% tax penalty?

In the Netherlands an employer could agree upon a financial arrangement in the event of early termination of employment. In case of older employees, a much feared 52% tax penalty for the employer will be triggered, but could be avoided. This requires customization and sometimes a combination of measures. In this brochure you will find some examples of early retirement arrangements. KWPS could elaborate these arrangements and make financial comparisons. This brochure is for information purposes. We always advise to engage a specialist.

Impact of 52% tax penalty

Severance payment to of older employee:	€ 100,000 (gross)
52% tax penalty on declaration:	€ 52,000
Total costs employer:	€ 152,000

The 52% tax penalty is due on declaration and therefore requires initiative of the employer.

1. Collective voluntary termination scheme

A voluntary termination scheme does not trigger the 52% tax penalty if participation to the scheme is not subject to age criteria. In certain cases, such a scheme could be used to achieve a reduction of the workforce. We are more than happy to brainstorm on the design.

2. Other non-age-related reasons

The aforementioned also applies to other non-age-related reasons, such as consistently poisoning the work atmosphere for colleagues. In that case no 52% tax penalty is due on severance payments either. Again evidence is essential. This could also be demonstrated in other ways than the personnel file.

3. Payments too low to trigger 52% tax penalty

If a severance payment is too low to provide for early retirement, no 52% tax penalty is due. An individual actuarial calculation needs to be made in this respect, since this depends on all individual facts and the circumstances. Our econometrists and mathematicians could determine exactly the applicable limits and when the 52% tax penalty could be avoided. Between 2023 up to and including 2025, with an extension up to and including 2027, a gross compensation of 36 months times € 2,182 may be granted under specific conditions.

4. Improving the pension scheme

An improved pension scheme, whether or not within the fiscal framework, does not trigger the 52% tax penalty. Our pension specialists could check whether such improvements are possible. Instead of a severance payment, the pension benefits will increase and could be accelerated, without triggering to the 52% tax penalty.

5. Arrangement for high rate of absenteeism through illness

The physical condition of an employee could be a reason to dismiss an individual employee. The reason for dismissal is not the age, but the inadequate or non-performance of the employee. It is important that this could be substantiated by objective and convincing evidence. If so, no 52% tax penalty is due by the employer. KWPS assesses the situation against specific tax law, tax regulations and case law. In case of doubt, our specialized tax advisers could consult the Tax Authorities up front, so that you could change directions.

6. Saving paid leave

The government facilitates to save up to 100 weeks of leave for and by an employee. The paid leave piggy bank can be formed by employers and employees' contributions. A piggy bank of 100 weeks means a volume of almost 200% of the salary. This allows an employee to retire three years earlier if 70% of the wage is sufficient. A leave saving scheme could trigger a 52% tax penalty if the scheme is intended to early retire. In this light, the scheme should be determined carefully. Prior coordination with the Tax Authorities could provide the necessary clarity up front.

7. Generation pact

As long as someone continues to work 50%, it is possible to continue to receive up to 100% of the salary, without triggering the 52% tax penalty. It is important that an employee works at least 50%. If extra holidays are taken or if the employee is actually on garden leave, the total wage payment is subject to the 52% tax penalty. It is essential that unequal treatment will be avoided and the generation pact forms part of a balanced sustainable employability policy that applies to all employees. Our pension lawyers could assist you in this respect.

8. Part-time pension

For the part that the employment is terminated, the pension benefits could commence. If someone continues to work for 60%, then 40% of the pension benefits commence. Part-time retirement could be combined with a high / low ratio of the commenced pension in order to bridge the gap to the State Pension.

Don't forget personal attention and guidance

At least as important as all the aforementioned possible measures is intrinsic attention to the person and his situation. This could also mean that the employee is facilitated in tax and financial support. KWPS is pre-eminently capable of sketching a professional, independent and simple picture of the financial consequences of a severance arrangement, also for the employee.