

LEGAL UPDATE

New Early Retirement Scheme Guide

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On 28 December 2018 the Dutch Tax and Customs Administration published a [new guide](#) on the interpretation of the term 'Early Retirement Scheme', as referred to in Section 32ba of the Wages and Salaries Tax Act 1964. The guide replaces the previous policy rules from 2005.

An early retirement scheme is a financial severance scheme that is intended to tide over the period from dismissal up to the commencement date of the pension or state pension. If a scheme is regarded as an early retirement scheme, a final levy of 52% is payable by the employer, in addition to the regular wage tax and social security contributions.

The adjustment to the early retirement policy rules by the Tax and Customs Administration relate to the [ruling](#) of the Supreme Court of 22 June 2018. The Supreme Court ruled that a collective severance scheme must be assessed in the context of an early retirement review on the basis of the objective conditions and characteristics of that scheme.

The new guide issued by the Tax and Customs Administration follows the Supreme Court's framework, but does not contain any substantial changes compared to the policy rules of 2005. The review looks like this:

- First of all, the scheme is tested against the objective conditions of a severance scheme, assessing whether or not the dismissal is age-related. The motives of the employer and the employee are not relevant.
- If, on the basis of the objective conditions, an early retirement scheme is likely to exist, the characteristics of the scheme will be assessed on an individual basis, including whether the severance pay actually enables the employee to bridge the gap until the state pension age or earlier retirement date, or whether it can be regarded as a supplement to the pension (the 70% test).

This is a Legal Update from Anne Haverkort and Evelien Brussee.

For more information:

Anne Haverkort
+31 30 25 95 528
annehaverkort@vbk.nl

Evelien Brussee
+31 30 25 95 552
evelienbrussee@vbk.nl