



Global Reward Update

Belgium

Social security contributions not due on RSUs awarded by a foreign parent company

February 2024



Headline

- Antwerp Labour Court of Appeal rules Belgian social security contributions not due on restricted stock units (RSUs) awarded by a foreign parent company to employees of its Belgian affiliate, as the RSUs were not “borne by” Belgian affiliate nor were they consideration for work performed by employees.
- Latest ruling follows Belgian Supreme Court decision in 2022 setting out guidelines under which social security contributions may not be due on RSUs granted by a foreign parent company.
- Belgian National Social Security Office (NSSO) confirms it has no plans to change its administrative position and has indicated that it intends to explore the possibility of a (new) appeal before the Belgian Supreme Court.
- Any decision to stop applying Belgian social security contributions to RSUs awarded by a foreign parent company to employees of its Belgian affiliate should be approached with caution and preceded by a thorough review of the relevant equity compensation arrangements/documentation.

Background

The case law in Belgium concerning social security contributions has been active in recent years. On 5 September 2022, the Belgian Supreme Court overturned an earlier ruling by the Ghent Labour Court of Appeal (see [Deloitte Belgium tax alert](#) here) that social security contributions were due on RSUs granted by a foreign parent company to employees of its Belgian affiliate.

The Supreme Court held that “benefits” (in this case, RSUs), which did not (as a matter of fact) form consideration for services performed under the employment agreement, are only considered salary for the purposes of Belgian social security contributions if they are “borne by” the Belgian affiliate. The court set out some guidelines on the circumstances in which benefits would be considered to be “borne by” the Belgian affiliate. A key feature is the presence of a commitment by the Belgian employing company to grant the benefit to its employees, as opposed to this commitment being at the foreign parent level. The case was subsequently referred to the Antwerp Labour Court of Appeal for determination.

Latest ruling

On 20 November 2023 the Antwerp Labour Court of Appeal, applying the Belgian Supreme Court’s reasoning, held that the RSUs in question were not “borne by” the Belgian affiliate nor were they consideration for work performed by employees. Therefore, no social security contributions were due on the RSUs. The key arguments presented to the court were as follows:

- The RSUs were not granted as consideration for work performed under the employment agreement, but rather to bind these employees to the company on a long-term basis (i.e., for retention, rather than reward purposes);
- The foreign parent company took full legal and financial responsibility for the RSUs;
- It could not be established that the Belgian affiliate made a commitment to its Belgian-based employees to grant RSUs issued by the foreign parent company. Instead, the RSUs resulted from a separate commitment at the level of the foreign parent company, one unrelated to the recipients’ employment relationship with the Belgian affiliate. These facts distinguish it from the previous Supreme Court case (Sisley), in which the third party did not have its own separate commitment; and
- The final decision to grant RSUs to particular employees rested entirely with the foreign parent company. The Belgian affiliate had no part in the decision, nor did it function as an intermediary, the affiliate’s role was limited to simply suggesting certain employees to receive the RSUs.

The court also held that the fact that the Belgian affiliate operated tax withholding on the benefit did not necessarily imply that social security contributions were also due.

Deloitte's view

- Based on these recent developments, there is now a window of opportunity for Belgian affiliates to argue that equity granted by a foreign parent company to their employees in Belgium should not be subject to Belgian social security contributions.
But this opportunity only exists for a limited number of situations since it is key that all conditions developed by the case law are satisfied. Whether equity compensation is subject to Belgian social security contributions is highly dependent on the specific facts in each case, requiring a thorough review of each individual situation.
- Overall, a cautious approach is recommended, given that the Belgian NSSO has no plans to change its administrative position and has indicated that it intends to explore the possibility of a (new) appeal before the Belgian Supreme Court.
- In our view it is reasonable to expect a similar approach could be taken in relation to other forms of equity compensation arrangements delivering multi-year compensation (e.g., stock options).
- Where there is uncertainty as to whether or not a particular equity compensation arrangement meets the conditions set out by the Belgian courts, it may be prudent for employers to continue paying Belgian social security contributions. It is possible to make this payment with a "reservation of rights". If the situation meets the conditions set forth by case law, it could be defensible to stop payment of social security contributions on equity benefits, but we cannot exclude future developments taking place which could alter this position.
- Some employers may wish to consider filing a claim with the NSSO in parallel to reclaim the last three years' worth of social security contributions. Some caution remains advised, as it is not inconceivable that this could trigger an audit from the authorities.

Who to contact

Deloitte Belgium have assisted several clients with foreign parent companies to determine whether they are likely to fall within the new case law fact pattern.

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

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