



## Global Rewards Update

Belgium – Draft legislation to require taxable stock compensation income reporting and withholding for foreign company plan benefits. Social security authorities also target foreign company plan benefits

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### Key Points to Know

- Early draft legislation has been approved by the Council of Ministers and is expected to become law which will introduce a new general requirement for Belgian subsidiaries to report the stock compensation realized by Belgian employees and directors via participation in a foreign, non-Belgian related-company plan.
- The draft legislation will also impose an income tax withholding obligation for such taxable stock compensation beginning in January, 2019.
- The new income tax reporting and withholding obligations will bring a spotlight on the historical and current social security tax provisions that apply to benefits under a non-Belgian related-company plan.
- Following increased audit activity, the Belgian National Social Security Office (NSSO) have introduced a new, broad interpretation of the relevant tests within the NSSO's "Administrative Instructions", indicating the NSSO will reject the argument that no social security contributions are due because the benefits are granted indirectly via a

parent company plan, without a Belgian employer's intervention or action as contact point.

## **Background**

Under existing law, except for certain stock option grants, when a foreign related-company (i.e. foreign parent company) has offered compensation plan benefits to employees and directors of a Belgian subsidiary, there generally has been no obligation for the Belgian subsidiary to report the taxable compensation if the individual's participation in the foreign compensation plan is not directly or indirectly "at the charge" of the Belgian subsidiary and the Belgian subsidiary is not an intermediary for operation of the foreign compensation plan. However, if the foreign-related company charges the cost of the employee plan benefit to the Belgian subsidiary, or the Belgian subsidiary participated in the operation of the foreign plan as an intermediary or contact point, a wage income reporting obligation would exist for the Belgian subsidiary, for both income tax and social tax purposes.

Generally, the foregoing rules resulted in Belgian employer reporting of income only for stock options granted by a foreign entity to individuals working for a Belgian company that came under the scope of the stock option law of 26 March 1999, which are stock options that are taxable at grant based on a formulaic value.

Despite the general lack of Belgian subsidiary employer reporting of taxable compensation realized via foreign related-company plans, Belgian individual plan participants have always been obligated to report all remuneration received in an individual annual tax return.

## **New Legislation**

Under the draft legislation, which is expected to become law, a Belgian subsidiary employer will be required to comply with an income reporting and income tax withholding obligation when remuneration is granted under a foreign related-company plan to an individual plan participant by virtue of the professional activity performed by the plan participant for that Belgian employer.

The draft legislation provides that income tax withholding should be collected and remitted by the Belgian subsidiary employer for foreign compensation plan taxable transactions occurring in 2019 and future years.

The draft legislation also establishes an income reporting obligation, to be completed by end of February, 2019, of the Belgian subsidiary employer for foreign compensation plan taxable transactions occurring in 2018, although income tax withholding will not be required for 2018 transactions.

## **New NSSO Position**

In a related development, the Belgian social security authorities continue to refine and apply stricter positions on benefits (generally long-term incentives) granted by non-Belgian parent companies.

In its 2018 3<sup>rd</sup> quarter "Administrative Instructions", the NSSO indicated a change in their position regarding the concept of "at

charge of the employer,” by removing wording about “the employer’s intervention and point of contact” and substituting a much broader test on whether Belgian social security contributions are due on foreign related-company compensation plan benefits.

According to the amended “Administrative Instructions”, benefits will be considered as being “at charge of the employer” and subject to Belgian social security if:

- The benefit is granted by a third party (i.e. parent company) to employees, and when the costs are recharged to the actual employer

And/or

- Granting this benefit rewards **the work performed within the framework of the employment contract** concluded with the (Belgian) employer, or is **linked to the function** performed by the employee.

The new NSSO position amounts to a rejection of the historical argument that no social security contributions are due on benefits granted indirectly via a parent company because no employer intervention or contact point exists within the Belgian subsidiary employer.

As a result of the change of NSSO’s position, a material social security contribution liability may exist for both employers and plan participants for foreign compensation plan benefits. Currently, the employee social contribution rate is 13.07% and the employer social contribution rate is approximately 28% on all social-taxable compensation.

## Deloitte's view

These new developments create a new tax landscape for the operation of non-Belgian company share-based compensation plans, with consequences for both Belgian employers and employees and directors.

Non-Belgian companies that offer compensation plans to employees and directors of a Belgian subsidiary should begin now to address these developments in the various aspects of subsidiary employer payroll tax liability, reporting and income tax and social contribution withholding from plan participant compensation realized under the foreign plan, and financial accounting, and prepare for further developments in the coming months.

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