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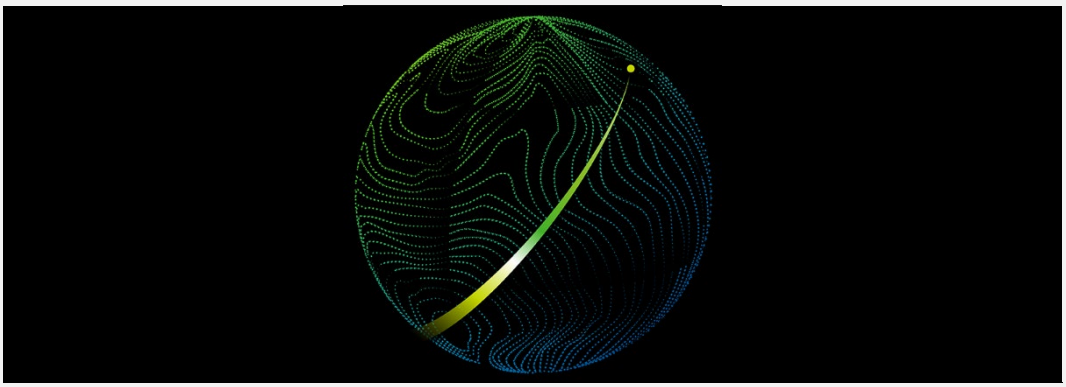

Global Employer Services

Reward & Mobility Alert

Social security due on RSUs granted by foreign parent company only if benefit "borne by" Belgian affiliate

On 5 September 2022, the Belgian Supreme Court **overturned a ruling** by the Ghent Labour Court of Appeal dated 20 April 2020 (see our previous tax alert of 8 June 2020) that social security contributions are due on equity compensation granted by a foreign parent company to employees of its Belgian affiliate. The Supreme Court determined that contributions are not payable, owing to the lack of evidence in the case that the entitlement to the benefit is "borne by" the Belgian affiliate.

The Supreme Court held that an entitlement to a benefit which is not consideration for work performed under an employment agreement, is "salary" (*loon/rémunération*) for the purposes of social security contributions only if borne by the Belgian affiliate. This is the case when the Belgian affiliate has made a commitment to grant the benefit (based on any documentation or the facts at hand).

The Ghent Labour Court of Appeal previously ruled that social security contributions are due on the value of restricted stock units (RSUs) granted, paid for, and borne by the US parent company to the employees of the Belgian affiliate. However, according to the Supreme Court ruling, the Labour Court of Appeal **failed to demonstrate adequately** that the equity compensation was borne by the Belgian affiliate, and did not make any further ruling.

The Supreme Court's decision is **not a final position**, as the case will now transfer to a new Labour Court of Appeal that must rule again based on the facts at hand. If the National Social Security Office (NSSO) presents adequate evidence that the RSUs granted by the US parent company are borne by the

Belgian affiliate, the resulting decision **may still prove unfavourable** to the taxpayer.

The NSSO has confirmed that based on this ruling, it sees no reason to amend its administrative instructions or the legal definition of "salary." In other words, the **NSSO is not expected to change its current position, and will continue to apply the principle** that benefits that are part of the consideration for work performed within the framework of the employment agreement are always salary and therefore subject to social security contributions. The question of whether the benefit is borne by the employer will only arise for benefits that do not represent such consideration.

As most benefits granted by parent companies are likely to qualify as part of the consideration for work performed, and would therefore be subject to social security contributions, a careful interpretation of the new ruling is recommended.

Contacts

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