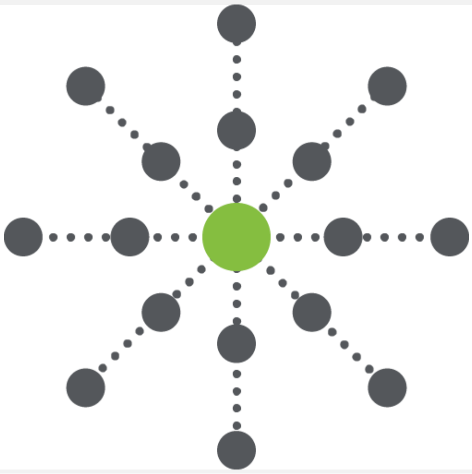
Belgium | Deloitte Tax | 18 September 2017



Global Employer Services
Individual tax & Social security

Are your equity plans still audit proof?

Context

The tax and social security authorities are increasingly scrutinising long-term incentive plans. The special tax inspection is focusing on non-declared foreign equity incentives and the social security inspection is very severe on benefits granted by a 'third party'.

Income tax

Increased tax audits by the Special Tax Inspection

The Special tax inspection is targeting Belgian employers and employees benefitting from incentives granted directly by the foreign parent company. This is to verify whether the employees have declared the incentive and whether the employer, as required, did not report and withhold taxes.

For example: a US parent grants Restricted share units to the Belgian employees. If the Belgian employer does not intervene, no withholding would normally apply, but the employees would still need to declare the incentive in their personal tax return.

The audit often starts with a request for information to the employer, asking for the equity plan's details and beneficiaries.

During this process, it is noteworthy that there is more collaboration between the different tax authorities (between the special tax inspection and local tax inspections in Belgium, and between the different countries).

Furthermore, a more transparent environment is emerging:

- Foreign accounts need to be registered with the National bank
- The stock exchange tax is, since 2017, also due on transactions by Belgian individuals, even if the plan is administered outside Belgium; in which case the Belgian resident needs to file a return and pay this tax (Link).
- The exchange of tax-related information between countries increases (e.g. the Common Reporting Standard - Link)

Social security

Benefits granted by a third party are no longer exempt from social security contributions

The Supreme Court confirmed that a benefit granted and borne by a third party should be considered as a benefit 'at the employer's charge' and accordingly subject to social security contributions.

This substantially changes the landscape. As soon as it is established that the employer has committed to grant a benefit, the employee is entitled to this benefit in terms of his/her employment. The benefit is therefore considered as being 'at his/her employer's charge' and subject to social security. Moreover, the term "employer" is broadly interpreted as including other companies of the same (Belgian) group.

Impact on foreign equity plans?

Based on this new case law, the social security authorities could argue that equity granted by a foreign group company to employees of a Belgian company - even without cross recharge or intervention of the latter - qualifies as salary if the employee is entitled to this benefit in terms of his/her employment. The equity would then be subject to social security contributions. Deloitte is currently verifying this with the social security authorities.

How can employers prepare?

If an employer has already received a request of information or is subject to an audit

Employers should carefully prepare a strategy to confirm a consistent story, and need to consider the information that can or needs to be shared. The employer should make sure it can validly prove that it was not obliged to withhold taxes or report the benefits on salary forms. Deloitte can assist in preparing a strategy, information sharing plan and in building a defence file on an employer's obligations.

If it would appear that employees were non-compliant, Deloitte can assist employees to correct their situation (directly or via the company).

If an employer has not been audited yet

Employers should carefully document why they have no reporting or withholding obligations (non-intervention in the plan) and make sure their employees are aware of their tax obligations.

Deloitte can run through its checklist on intervention, perform a risk assessment in case of an audit (for the company and/or the beneficiaries) and go over alternatives for the company and/or employees to regularise their situation in case of non-compliance.

Deloitte's Global Employer Services team is readily available to help make sure employers are fully compliant and that their employees are fully informed of their obligations.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

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