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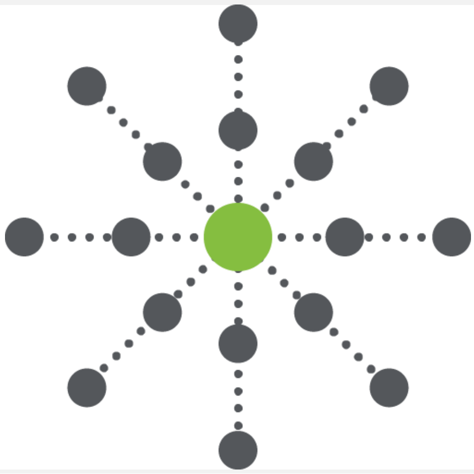

Global Employer Services
Individual Tax & Social Security

Are your equity plans still audit proof? Update on new developments

Context

As covered by the 18 September 2017 tax alert, 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

Deloitte's experiences from the Special Tax Inspection's audits

The previous tax alert on this topic informed of an ongoing audit campaign by the Special Tax Inspection with Belgian employers. These audits aim to check employers' reporting obligations of employees benefitting from incentives granted directly by foreign parent companies.

During the audits, it is clear that the inspection's focus is to collect personal income taxes from these companies' employees.

The imposed tax increases differ, depending on the employees' behaviour and intentions:

- If there was no intention to commit fraud, a tax increase of 30% is applied to the unreported equity income from the past 3 years
- If there was an intention to commit fraud, a tax increase of 50% is applied to the unreported equity income from the past 7 years

An unwillingness to collaborate with the tax authorities during the regularisation process, or a failure to register a foreign brokerage account with the National bank, are both considered as fraudulent.

Mainly US based companies (both large and small) are currently being targeted by audits.

During the audit process, the importance of an employer's communication on plan features and related compliance has once again become evident. Communication ensures that employees value the granted incentives' value and creates awareness of the correct reporting rules.

Social security

Impact of performance evaluations lodged in a global HR ERP system

Following the Supreme Court's October 2016 decision (also covered by previous tax alert on topic), the social security authorities have very recently confirmed that equity grants based on performance evaluations lodged by the Belgian employer in global HR ERP systems (e.g. Workday) are enough to trigger the Belgian social security scheme's applicability.

The social security authorities consider that equity grants based on performance evaluations lodged in HR ERP systems, which are accessible and used by the foreign parent company to determine equity grants, should be considered as an intervention. This is regardless of whether there is a legal commitment by the Belgian employer or any cross-charge to the foreign parent company.

Although this position does not seem in line with the legal provisions or Supreme Court ruling, Deloitte strongly recommends performing an in-depth assessment of equity processes. Based on this assessment, a re-alignment or revision of current practice, with all concerned stakeholders, may be required. Should the social security authorities enforce regularisation, a company could face an incremental cost of 60% or more.

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:

- Nicolaas Vermandel, nvermandel@deloitte.com, +32 2 800 70 77
- Nico Vanthuyne, nvanthuyne@deloitte.com, +32 9 393 75 24

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

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