



Individual tax alert

Belgium

Non-remunerated mandate fulfillment – social security and immigration impact

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Social security impact

In aligning with case law from the Belgian Constitutional Court and the European Court of Justice, the Belgian legal presumption which considers a board director appointed in a Belgian company as holding a self-employed activity in Belgium has become refutable by law since mid last year.

Subsequently, directors of a company subject to Belgian corporate tax or non-resident income taxes can refute the presumption of self-employment and thus no longer need to enrol with a social insurance fund and pay social security contributions; doing so in two ways:

- a) by demonstrating that their mandate is non-remunerated;

The non-remunerated character of the mandate should be proven both by law and in the facts, through for example a statutory provision or a decision from the competent corporate body determining the director's (lack of) remuneration.

- b) by demonstrating that they do not physically exercise an activity in Belgium.

Therefore, if a company director can demonstrate that he/she does not physically exercise the director's mandate in Belgium or can provide proof that the mandate is executed on a non-remunerated basis, there is no longer any obligation to affiliate with a social insurance fund or pay Belgian social security contributions for self-employed persons.

Immigration impact

Foreign (non-EU) executives who perform an employment activity on Belgian soil often also execute a mandate as director within their company. For immigration purposes, these individuals are considered to be performing an employment activity as well as a self-employed activity. For the execution of their activities, they require both a work permit and a professional card.

The responsibility for handling professional card applications for self-employed foreign nationals was recently transferred to the regions, following the implementation of the 6th state reform. This transfer of authority, combined with the legal changes as to the social security treatment of non-remunerated mandates, brought a fresh interest in how the regions would handle the performance of non-remunerated director mandates.

As the legislation on professional cards defines a self-employed activity as "an activity which is not governed by the legislation relating to the employment of foreign employees", the regions consider that board mandates, whether remunerated or not, are self-employed activities for the purposes of the professional card legislation. This means that non-EU nationals performing such a mandate

require a professional card (even if they already possess a work permit for the execution of their professional activity as employee).

Deloitte's view

If it appears that an individual is not remunerated for his/her board mandate or does not physically exercise his/her mandate in Belgium, this individual should neither affiliate with a social insurance fund for self-employed persons nor pay contributions for the execution of this mandate. It is nevertheless advisable to document the files of new board members in this respect. Furthermore, actions must be undertaken to make sure existing situations are in line with the new rules. Deloitte Belgium can assist in this respect.

Although the social security administration for non-remunerated mandates decreases, the immigration authorities maintain their legal requirement to obtain professional cards for non-EU nationals executing a mandate on Belgian soil, even if they are not remunerated for this mandate.

Deloitte Belgium's immigration and social security team (IMSS team) will provide updates and is readily available to provide more detailed information.

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