



Global Employer Services

Social security

Belgian authorities' new position regarding social security contributions on foreign activities

EU Regulation 883/2004 on the coordination of social security determines the applicable social security legislation in cross-border employment situations within the EEA and Switzerland. According to its general principle, employers and employees have to pay social security contributions in the work state. However, special rules exist for assignments and simultaneous activities.

For simultaneous activities, specific conflict rules in the EU Regulation determine the "competent country", i.e. the country where contributions have to be paid. If Belgium is the competent country, employers have to take into account the Belgian social security authorities' new position regarding the payment of social security contributions on foreign activities.

Contributions in case of simultaneous activities

A look at the different steps of the decision process regarding simultaneous activities in the EEA and Switzerland can provide a complete picture of what the new position entails:

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|----------------------------|---|---|
| 1. Simultaneous activities | The situation where an individual is performing professional activities simultaneously in two or more countries | <ul style="list-style-type: none">• Director in BE (50%)• Director in FR (25%) |
|----------------------------|---|---|

		<ul style="list-style-type: none"> • Director in UK (25%)
2. Qualification of activities	Each country where the individual (physically) performs professional activities, determines (according to its own internal social security legislation) whether those activities are employed or self-employed activities.	<ul style="list-style-type: none"> • Self-employed in BE • Employee in FR • Employee in UK
3. Determination of applicable legislation (EU Regulation 883/2004)	Based on those qualifications, the conflict rules of Regulation 883/2004 can be applied to determine the competent member state for social security	<ul style="list-style-type: none"> • Belgian social security
4. Contribution payment in competent state	The type of social security contributions (in the employee or self-employed scheme) to be paid on foreign activities depends on the position of the competent country's social security authorities. The latter either accept the foreign qualification of a foreign activity or "requalifies" a foreign activity for contribution purposes, based on their own internal social security legislation (i.e. activities treated as if they were performed in authorities' own territory)	<ul style="list-style-type: none"> • New Belgian position

The Belgian social security authorities' new position relates to point 4 above, i.e. in simultaneous activities situations in which Belgian social security is applicable according to Regulation 883/2004.

New position

The Belgian social security authorities' previous position was to accept the foreign qualification of a foreign activity for contribution purposes. If the foreign activity was an employee activity abroad, Belgian RSZ/ONSS had to be paid on remuneration. If the foreign activity was a self-employed activity abroad, Belgian RSVZ/INASTI had to be paid on remuneration.

Under the new position, the Belgian social security authorities will no longer accept the foreign qualification but will "re-

qualify" foreign activities for contribution purposes, based on internal Belgian social security legislation.

The new position mainly impacts director mandates abroad, as a director mandate is often considered an employee activity abroad, whereas this is a self-employed activity according to Belgian social security legislation.

Examples

Mr. X resides in Belgium and holds corporate mandates in a Belgian, Dutch and British firm.

Old position	New position
BE: self-employed NL: employee UK: employee	BE: self-employed NL: employee UK: employee
Applicable legislation: Belgian social security	Applicable legislation: Belgian social security
Contributions: RSVZ/INASTI on Belgian remuneration RSZ/ONSS on Dutch and UK remuneration (uncapped)	Contributions: RSVZ/INASTI on Belgian, Dutch and UK remuneration (EUR 16K cap)

Mrs. Y resides in Belgium and is an employee of a Belgian firm (60% of her working time). She also holds a director mandate in a French firm (40% of her working time).

Old position	New position
BE: employee FR: employee	BE: employee FR: employee
Applicable legislation: Belgian social security	Applicable legislation: Belgian social security
Contributions: RSZ/ONSS on BE and FR remuneration (uncapped)	Contributions: RSZ/ONSS on BE remuneration (uncapped) RSVZ/INASTI on FR remuneration (EUR 16K cap)

Mr. Z resides in Belgium and is an employee of a Belgian firm (where he works 95% of his time) and holds a specific director mandate in a Spanish firm.

Old position	New position
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BE: employee
ES: no qualification

BE: employee
ES: no qualification

Applicable legislation:
Belgian social security

Applicable legislation:
Belgian social security

Contributions:
RSZ/ONSS on BE
remuneration (uncapped)
No contributions on ES
remuneration

Contributions:
RSZ/ONSS on BE
remuneration (uncapped)
RSVZ/INASTI on ES
remuneration (EUR 16K cap)

Impact

Who?

Individuals subject to Belgian social security and exercising activities abroad which are qualified differently under Belgian social security law

This will mainly affect individuals with corporate mandates that are qualified as employee activities abroad, but on which Belgian social security contributions for the self-employed have to be paid.

What?

Change in the type of Belgian social security contributions due on remuneration

Where RSZ/ONSS contributions are currently being paid on such foreign mandates, RSVZ/INASTI contributions will have to be paid. In most cases, this will lead to a substantially lower social security cost. In addition, this change may also affect the individual's social security coverage.

When?

This new position will be applicable from 1 October 2018. Retroactive effect will only be accepted from 1 January 2018 for employment situations that started in 2018. There will be no retroactive effect for earlier situations.

Required action

Given this new position's significant impact, it is recommended to re-analyse all existing setups within a company, or group of companies, where an individual is subject to the Belgian social security scheme and is exercising corporate mandates abroad.

Screening directors' social security position will be key in order to avoid financial and reputational damage, and will most likely lead to a lower social security cost.

It should be noted that this new position is a Belgian position and not a new EU position. If an individual with mixed activities is not subject to Belgian social security, the competent state's position needs to be checked.

Finally, the limited retroactive effect (only from 1 January 2018 for situations that started in 2018) brings up several legal questions regarding the validity of such restriction. Deloitte is following up with the Belgian social security authorities in that regard.

Contacts

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