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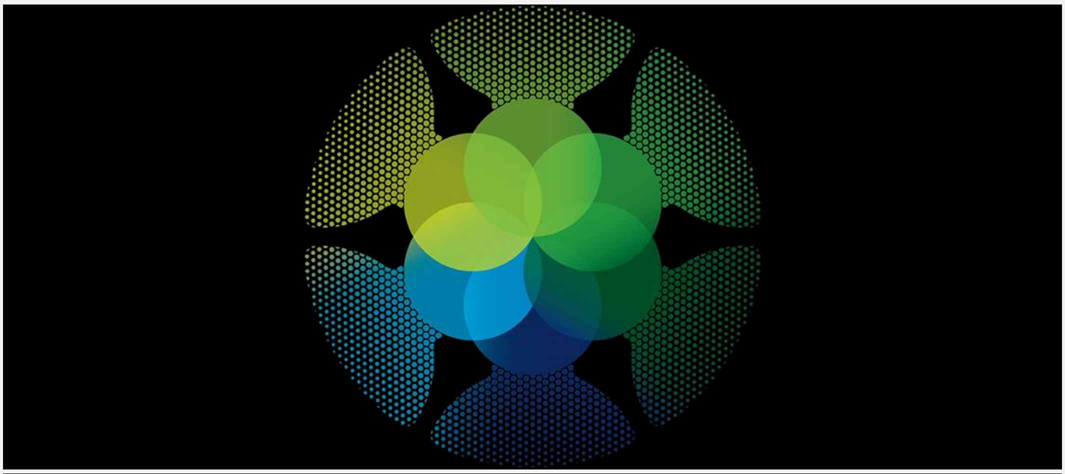

Global Employer Services
Social security

The NSSO formally changes its position regarding "at charge of the employer" notion

Context

As outlined in the 31 July 2018 tax alert, the Belgian social security authorities are applying a stricter position on benefits granted by the parent company (typically equity related incentive schemes).

However, the Belgian National Social Security Office (NSSO – RSZ/ONSS) has formally changed its position regarding the "at charge of the employer" notion, more precisely on benefits granted by the parent company.

New NSSO position

In the "Administrative Instructions", published in the third quarter of 2018, the Belgian social security authorities removed the previous notion of "the employer's intervention-point of contact" and have introduced a **very broad**

interpretation of the "indirectly at charge of the employer" notion.

Based on the new position, the benefit will be considered as being at charge of the employer if:

- The benefit is granted by a third party to employees, and when the costs are recharged to the actual employer

  And/or

- Granting this benefit rewards **the work performed within the framework of the employment contract** concluded with the employer, or is **linked to the function** performed by the employee.

Consequently, the argument that no social security contributions are due because the benefits are granted indirectly via a parent company, without an employer's intervention, is no longer valid for the NSSO.

Belgian social security contributions will apply as soon as the benefit's attribution by a parent company can be linked to the employment relationship, or the employee's function performed for the employer.

Consequences in practice

It is clear that the NSSO's new formal position will have a major impact. Nevertheless, Deloitte considers this position questionable from a legal perspective, as the latter is actually stricter than the Court of Cassation's current case law, (outlined in 18 September 2017 tax alert) and could even potentially qualify as *contra legem* with the Salary Protection Act. Whether the courts will align or reject this new position will be a point of interest.

Finally, attention is drawn to the fact that the government is contemplating the introduction of a **fiscal reporting obligation** for Belgian companies, in relation to benefits granted by the parent company directly to Belgian company employees. It is clear that such a measure would enable the NSSO to easily target social security compliance with their new position.

Given the above, Deloitte strongly recommends an impact assessment for the past and future. Especially since all social auditors will begin applying the new NSSO position.

Contacts

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