



## Global Employer Services Social Security

### **Social security liability on foreign HQ granted Restricted Stock Units: appeal ruling in Esko case reaffirms authorities' position**

The [Supreme Court ruling of 20 May 2019 \(Sisley\)](#) stated that commission payments by a third (foreign) party, on sales transactions by a Belgian company's employees, are subject to social security contributions when the grant concerns a reward for the Belgian company's employment, or is related to the position held by the employee with that company.

This case law strengthened the [Belgian social security authorities' new position](#), applicable since the 3th quarter of 2018. The new position stated that social security contributions are due on a benefit granted to employees whenever this benefit is granted as a reward for work performed within the framework of their employment agreement, and to which the employee is entitled at the employer's charge. At the time, it was verbally confirmed by the social security authorities that a benefit constitutes a reward for employment when it concerns a performance-based award.

In a recent case from 20 April 2020 (Esko) and regarding Restricted Stock Units (RSUs) attributed by the US HQ to Belgian based employees, the Ghent Labour Court of Appeal specifically addressed the question of whether a benefit should be considered as being at the employer's charge. The ruling sets out a rather broad interpretation of the "at charge"

criterion and, based on a number of elements (such as the fact that the employee can only address the employer for an entitlement to the benefit, as it concerns a benefit under the employment relationship), concludes that RSUs are indeed subject to social security contributions. In this case, the court exclusively focused on the “at charge” criterion without elaborating on whether the RSUs are performance related and thus deemed to be a reward for employment. No supreme court appeal has been filed (yet).

## Impact

Both cases, which address different aspects of the same question, reaffirm the authorities’ view that, in general terms, equity incentives provided by foreign parent companies to their Belgian based employees will be deemed subject to social security contributions.

As confirmed verbally by the authorities, only a global share purchase plan granted to the entire employee population could still be considered a benefit that is exempt from social security contributions, under certain conditions. The underlying reason for such possible exemption is that, under such plan, there are typically no performance based eligibility criteria.

## Deloitte’s view

Companies should act with great caution and vigilance if they were to consider exempting foreign HQ granted RSUs from social security contributions, especially because tax law amendments on reporting and withholding obligations also require such benefits to be processed through payroll. In this respect, more information is available in [this Deloitte Academy webinar of 23 April 2020](#).

---

## Contacts

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

- Nicolaas Vermandel, [nvermandel@deloitte.com](mailto:nvermandel@deloitte.com), + 32 2 800 70 77
- Wendy Van Hullebusch, [wvanhullebusch@deloitte.com](mailto:wvanhullebusch@deloitte.com), + 32 2 800 28 25
- Anke Elsen, [aelsen@deloitte.com](mailto:aelsen@deloitte.com), +32 2 301 87 82

For general inquiries, please contact:  
[bedeloittetax@deloitte.com](mailto:bedeloittetax@deloitte.com), + 32 2 600 60 00

Be sure to visit our website: <http://www.deloitte.com/be/tax>

---

## Deloitte Academy

### Tax Tools and Publications



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax and legal, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 225,000 professionals, all committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2020. For information, contact Deloitte Belgium.

[Subscribe](#) | [Unsubscribe](#)