



News Alert – Incentive plans by foreign employers and tax withholding obligations for Belgian employers – March 2019

Incentive plans by foreign employers and tax withholding obligations for Belgian employers

Employees are often rewarded for their valued work in the form of a bonus, granted by the Belgian employer with which the employee has a formal relation of employment.

This bonus needs to be included on the tax statements and the Belgian employer is also obliged to withhold taxes on it and to pay these to the treasury. The same goes for regular remuneration granted by Belgian employers to their employees.

Within an international group, it does occur rather often that a (additional) bonus or an equity based benefit is granted by a foreign group company (e.g. the mother company) to the Belgian employee. This will often be in the form of free shares (e.g. American RSU plans), stock options or stocks with a discount/ESPP, but could also be a benefit in cash. As Belgium based employers in principle did not intervene in the award of these incentives, there were in principle no obligations in terms of reporting and withholding for the employer. The exception to the rule is when the foreign company grants timely accepted stock options (cfr. Stock Option Law of 26 March 1999). In this case the Belgian employer already had reporting duties. Outside

the scope of these plans, rules regarding reporting and withholding were uncertain.

Benefits granted by the foreign (mother) company often however create tax benefits for the Belgian employee, because they were obtained in remuneration for their employment activity. Until recently, the employee was solely responsible for the correct declaration and payment of relevant taxes. In the case of for example RSU plans it is not always clear to the employee when the benefits are taxable and if they need to declare them, furthermore the employee had the complex task to determine the taxable amount.

In order to assure tax collection and reporting, the Belgian legislator decided to intervene in 2018. Legislation amending the obligations of Belgian employers has now been published (Law of February, 11, 2019, published March, 22, 2019). As of March 1st 2019, Belgian employers now have the obligation to withhold taxes on these kind of foreign benefits, as well as to mention these benefits on the tax statements (pay slip). For the salaries paid between the 1st of January 2019 until the 28th of February 2019 only a tax statement should be drafted. This has to be transferred electronically to the FOD finances before the 1st of March 2020.

This new measure will bring clarity to the taxpayer and also to the tax authorities. On the other hand, the tax authorities will have more insight to the benefits granted by foreign group companies. Considering the tax audits already pending, taxpayers may wish to verify their current practice with respect to reporting and withholding in relation to equity based compensation.

Previously the Belgian National Social Security Office already changed its position where Belgian social security contributions will apply as soon as the benefit's attribution by a foreign affiliate company can be linked to the employment relationship or the employee's function performed for the Belgian employer.