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GMS Flash Alert

Global Compensation Edition

2018-139 | October 25, 2018

Belgium – Authorities Announce New Reporting, Withholding Obligations

The Belgian government announced over the summer the introduction of an income tax reporting obligation and a tax withholding obligation for all Belgian employers with respect to remuneration paid or granted by a foreign parent company or affiliate. Currently the government is working on draft legislation. The drafts are not yet available to the general public.

This GMS *Flash Alert* serves as a reminder that the reporting obligation will apply for income year 2018. The tax withholding obligation will follow as from income year 2019.

To date, there has been no reporting or tax withholding obligation for elements of remuneration provided by foreign headquartered groups if there was no involvement of the Belgian subsidiary. Only one exception was made with respect to the reporting of stock options accepted within 60 days according to the Stock Option Law of 26 March 1999.

WHY THIS MATTERS

Once implemented, the legislation will introduce two new obligations that will enter into force at different times. **A new reporting obligation with respect to remuneration paid by a foreign parent company** or affiliate – applicable regardless of whether or not the Belgian employer has been involved – is introduced for income paid as of 1 January 2018. This income must be included in the salary reporting to be done by the end of February 2019. **As of 1 January 2019**, there will also be **a withholding tax obligation** for such remuneration. As the reporting and withholding obligations are on the Belgian employer, communication between the Belgian subsidiary and the foreign parent company will become crucial.

Groups that have a centrally managed equity-based compensation plan will have to review the implementation of these plans in Belgium as a result of the new obligations. Also, global mobility practices may have to be reviewed as income paid through the home country payroll becomes subject to reporting and withholding. An additional impact is that the roll-over method will no longer be an acceptable tax reimbursement technique for Belgium, so alternatives will need to be considered.

Background

The Belgian rules did not have a tax withholding obligation or a reporting obligation for remueration granted by a foregn parent or affiliate if the Belgian employer was not involved. Even though there was no obligation for the employer, the employee has always been obliged to report the income in his/her personal income tax return.

The Belgian government has recently introduced a draft bill following its agreement to make sure that equity income is reported and taxed in Belgium. **This reporting obligation will be effective for income year 2018. The tax withholding obligation will follow as from income year 2019**.

Implications of New Rules

1. Communications with Headquarters and Affiliates

In order to comply with both new obligations, the foreign headquarters and/or affiliates will need to inform the Belgian subsidiary about all remuneration granted to an employee working in Belgium. The obligation to report this income on the applicable Belgian salary statement will only occur once a year. The tax withholding obligation, however, is a monthly obligation with strict deadlines. Accurate communication between the foreign headquarters and/or affiliates and the Belgian subsidiary will therefore be very important to facilitate timely filing of the monthly return and avoidance of penalties.

2. Roll-Over Reimbursement Technique

The new rules will also have an impact on a frequently-used tax reimbursement technique for assignees on a tax-equalization package in Belgium, called the "rollover method." When applying this method, the home country employer pays remuneration in the current year without having to deduct wage withholding tax; income tax will then only be due after the assignee has filed a tax return and received a tax assessment, which is typically 12 to 18 months later. These payments will also fall under the scope of the new rules and therefore will have to be reported and withholding taxes remitted. Employers using this technique will need to explore alternatives.

Social Security and Elements of Remuneration Paid by Foreign Parent Company or Affiliate

As reported in GMS *Flash Alert* 2018-117 (6 September 2018), the Belgian social security authorities have modified their interpretation with respect to the qualification of salary subject to Belgian social security. According to the new administrative instructions, all benefits that relate to the work performed by the employee in the execution of his/her employment contract with the employer are subject to social security contributions. Thus, the new interpretation requires that equity-based compensation that is granted by a foreign parent company without recharge to the Belgian subsidiary be included. This change in interpretation should be considered in conjunction with the above income tax changes.

Penalties

The draft bill allows penalties to be assessed in cases where the new obligations are not complied with. A fine of 10 percent of the accrued or paid remuneration to the Belgian employee will be imposed in case of non-compliance. The fine will not be imposed, however, in case the employer can prove that the remuneration has been included in the income tax return of the employee. The taxation of the remuneration is in that case already assured.

Contact us

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