VAN BAEL & BELLIS

CLIENT ALERT MEMORANDUM

6 September 2018

The NSSO UPDATES its point of view regarding the qualification of salary subject to social security contributions, CAUSING drastic repercussions for international employers

(A) Legal framework and previous interpretation

Based on current legislation, all benefits with monetary value to which the employee is entitled by virtue of his/her employment and which are due by the employer are considered as salary, subject to social security contributions.

The National Social Security Office (***NSSO***) held that benefits are due by the employer if the employer either (i) directly or indirectly, participates in the financing of the benefits, (ii) has discretionary powers regarding the granting of the benefits, or (iii) is the contact point for the employees in relation to the benefits.

This discussion is most relevant for internal groups of employers whereby a parent company (or another foreign company belonging to the same group) grants benefits, such as RSUs or stock options taxable upon exercise, to employees of the local Belgian employer.

(B) Current interpretation

Earlier this week the NSSO published its new and broader interpretation in this respect, stating that benefits are considered as due by the employer if (i) there is a financial participation of the employer in the financing of the benefits (*e.g*. via a recharge of costs) or (ii) the grant of such benefits follows from the activities performed in the framework of the employment contract with the (local) employer or is linked to the function that the employee exercises at the (local) employer.

Hence, it is no longer relevant according to the NSSO to assess whether the local employer has discretionary powers regarding the granting of the benefits or is the contact point for the employees in relation to such benefits. Even if no local intervention occurs, the benefits would become subject to social security contributions as long as the grant thereof follows from the employee's activities performed or the employee's function exercised.

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(C) Action points

As a result of this new interpretation, employers should re-assess carefully the social security treatment of employee benefits granted by a parent company or another affiliated foreign entity within the group and they may well decide to subject such benefits to Belgian social security contributions in the future in order to avoid any issues with the NSSO. Nevertheless, such actions should be examined prudently in order to avoid any claims from the NSSO for arrears of social security contributions on similar benefits for the past as well.

In addition, the above very strict interpretation could be considered as too far-reaching and not in line with Belgian legislation. Van Bael & Bellis can assist you to challenge the position of the NSSO and/or to address any alternatives with regard to the granting of employee benefits not subject to Belgian social security contributions within the limits of the law.

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Get in touch

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