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Belgium – Social Security Contributions Due on Specific Out-of-Service Compensation

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In Belgium, a recently published royal decree¹ alters the social security regime for certain out-of-service compensation as from October 1, 2013. The range of compensation which is subject to social security contributions is rather broadly extended.

As from October 1, 2013, the compensation that follows on the exercise of a non-compete clause (and/or non-solicitation clause), in execution of a non-compete/non-solicitation agreement concluded within 12 months after the termination of the employment contract, will be subject to social security contributions. In other words, the mere payment of such compensation after this period of 12 months is in itself not sufficient for the compensation to be exempt from social security.

Furthermore, the compensation related to the dismissal of protected employees (e.g., maternity leave, time-credit, etc.) and the client indemnity for sales representatives will be subject to social security contributions as from October 1, 2013.

This means that on the above-mentioned compensation, both employer's social security contributions and employee's social security contributions are due.

These measures will have a financial impact for employers as the costs related to the termination of an employment contract will generally increase.

Furthermore, if the employer does not withhold the employee's social security contributions within due time, the employer cannot reclaim these contributions from the employee and the cost in this respect would therefore remain at the charge of the employer – which would entail potentially an even greater financial impact for the employer.

Footnote:

1 Royal decree of 24 September 2013, Belgian Official Gazette of 27 September 2013. *Arrêté royal du 24 septembre 2013. (Cet arrêté modifie l'article 19 de l'arrêté royal du 28 novembre 1969 pris en exécution de la loi du 27 juin 1969 révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs.)* Published in the *Moniteur Belge/Belgisch Staatsblad*, du 27 septembre 2013, Ed.2, p. 68484.

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The information contained in this newsletter was submitted by the KPMG International member firm in Belgium. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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