

# GMS Flash Alert

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## Belgium - Court of Cassation Rules on Notion of Salary Subject to Social Security

Last year, the National Social Security Office (NSSO) modified its stance with regard to the qualification of salary subject to Belgian social security<sup>1</sup> on the basis of a judgement of the Belgian Labour Court<sup>2</sup>.

The judgement of the Belgian Court of Cassation of 20 May 2019<sup>3</sup> has now confirmed the earlier judgement of the Labour Court and therefore the opinion of the NSSO. As a consequence, social security contributions remain due on all benefits that relate to the work performed by the employee in the execution of his/her employment contract with the employer or that relate to the function of the employee carried out for the employer. This principle applies even without any intervention of the (Belgian) employer in the payment/grant of the benefit.

### WHY THIS MATTERS

The confirmation of the Court of Cassation has an impact on the bonuses and other benefits, including equity-based compensation, that are attributed to employees which were until recently not considered as salary subject to social security contributions. Foreign third-party (group) entities that allocate a benefit to the employee subject to Belgian social security can furthermore be held liable for the declaration and payment of the social security contributions due on these benefits, where the conditions for an exemption as laid out by Belgian legislation are not met.

### Background

The judgement of the Labour Court and the new interpretation of the Belgian social security authorities give rise to the broadening of the notion of salary that is subject to social security, as from 1 July 2018. As a consequence of this, discussion arose whether this was in line with the legal definition of salary. An appeal against the decision of the Labour Court was lodged with the Belgian Court of Cassation.

## Judgement of the Court of Cassation

In its 20 May judgement, the Court of Cassation confirmed the judgement of the Labour Court, stating that premiums (e.g., benefits) paid by a (foreign) third party to the employees of a Belgian employer are to be regarded as salary (and therefore subject to social security contributions) to the extent that the premium is granted in return for the services provided under the employment contract. The (foreign) third-party entity is in this context to be regarded as an agent of the employer when awarding this premium.

The Labour Court was furthermore of the opinion that the foreign third-party entity that paid the premium has an obligation to report and pay the social contributions due on these premiums unless all information required to report the income and pay contributions due have been provided in a timely manner to the actual employer.<sup>4</sup>

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### KPMG NOTE

On the basis of this judgement and the interpretation of the NSSO, a bonus paid by a (foreign) affiliate company to the employees of a (Belgian) subsidiary company qualifies as a benefit at the charge of the employer, and is subject to Belgian social security, in cases where the benefit relates to work performed in the framework of the employment contract with the employer or relates to the function of the employee carried out for the employer. This is also the case for equity-based compensation that is granted by a foreign parent company even without a recharge to the Belgian subsidiary.

It is important to verify in such case whether the Belgian employer has timely received all the necessary information from the (foreign) parent company to declare the benefits concerned to which the payment of the social security contributions applies. If not, the (foreign) parent company will be held liable for the declaration and payment of the social security contributions, which may lead to more administration and possible late payment interest and surcharges.

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### FOOTNOTES:

1 See (in Flemish) [\*Administratieve instructies RSZ - 2018/3\*](#) on the website for Belgium's [\*Sociale zekerheid / Onderneming\*](#). Also see our prior report on this: GMS [\*Flash Alert 2018-117\*](#) (6 September 2018).

2 Labour Court Brussels 7 March 2018, *JTT* 2018, afl. 1323, 473.

3 The decision of the Court of Cassation 20 May 2019, S.18.0063.F/1, can be found on the [\*Juridat website\*](#).

4 Royal Decree implementing the Act of 27 June 1969 revising the Act of 28 December 1944 on the social security of workers, *BS* 5 December 1969.

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