

GMS Flash Alert

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Belgium - Practical Aspects of Requalifying Cross-Border Activities for Social Security

In 2018, an important change in the position taken by the Belgian social security authorities was announced¹ with regard to the qualification of activities in a cross-border context. This change applies when Belgium is identified as the competent country on the basis of the social security coordination rules in EC Regulation 883/04, applicable to the member states of the European Economic Area and Switzerland.

Following the principle of equality of treatment as stipulated in EC Regulation 883/04,² in cases of multi-state employment, Belgium now re-evaluates a person's social security status according to its own national legislation in order to determine the applicable Belgian social security regime. Previously, the Belgian authorities kept the qualification given by the country where the activity was performed.

WHY THIS MATTERS

This development could impel companies to assess the applicable social security regime for company directors and business managers. Company directors may need to take steps to affiliate themselves with the Belgian social security regime for the self-employed.

Moreover, there may be extra steps foreign companies and their directors must take in respect of the request for the A1 certificate (the "certificate of applicable law," which documents which country has the right to apply its social security tax in a given employment situation).

Background

Regulation 883/04 provides social security coordination rules for individuals who normally work in two or more member states or Switzerland. Following the basic principles of EC Regulation 883/04, the rules are designed to establish for individuals that the social security legislation of only one country be applicable at a time.

When applying these coordination rules in order to *determine the competent country*, the qualification as given by the country where the activity is performed is respected.

Once the competent country is determined in accordance with EC Regulation 883/04, it is up to that country to determine to *which (national) social security regime a person should be subjected and which benefits are linked to this*.³ In Belgium, there are separate security regimes for self-employed persons, for employed persons, and for public officers. Whether an individual falls under one or the other social security regime is determined by Belgian legislation.

Example: Company Directors

Belgian legislation qualifies company directors and business managers (for their activities in the framework of their corporate mandate) as self-employed persons and thus subject to the social security regime for self-employed persons.⁴ In other countries (Switzerland, Denmark, France, and the U.K.) company directors may be subject to the social security regime for employees. In some countries, the applicable social security status will depend on the factual circumstances wherein the corporate mandate is executed.

Example: A Belgian resident has a Belgian employment contract and is mainly working in Belgium. She also takes up a corporate mandate in France. Based on the EU coordination rules, Belgian social security legislation applies, meaning that for the professional income earned in the framework of the French corporate mandate, the individual will now need to affiliate herself to the Belgian social security regime for self-employed workers. For the income earned in relation to the Belgian employment contract, the Belgian employer will need to continue to pay Belgian social security contributions into the social security regime for employees. Two different regimes apply, requiring additional administration.

KPMG NOTE

Over the past several months there have been questions on the practical implications of this new approach. Only recently has clarification been given by the Belgian social security authorities.⁵ Instructions were provided on the start date of this new position, the payment (or reimbursement) of social security contributions and related benefits, and the effect on the procedure for the request for certificates of coverage (A1 documents).

Clarification has been provided whereby application of this new approach is mandatory as from 1 October 2018. For situations that started in 2018, there is a possibility to voluntarily "regularize" the situation as from 1 January 2018.

This retroactive start date practically means that companies should (re-)assess the social security regime of their company directors and business managers who may eventually be subject to Belgian social security. It is advisable that these companies inform their directors about their responsibility to affiliate themselves, possibly retroactively, to the Belgian social security regime for self-employed persons, and to pay the contributions for their directors' activities. Social security contributions that were paid into the social security regime for employed persons can be reimbursed to the company. Affiliation to the Belgian social security regime for self-employed persons may have a cost-saving effect for the company, because the social security contributions in this regime are capped.

To request a certificate of coverage (A1 document), a specific questionnaire must be completed. For the foreign company director mandates, supporting documents (e.g., the statutes of incorporation of the company) must be provided to enable the Belgian social security authorities to qualify the foreign activity correctly. The A1 document will eventually refer to the qualification given in the member state of work. There might thus be a discrepancy between the qualification of the corporate activities on the A1 (since qualified as employed activity in the country of work) and the actual applicable social security scheme in Belgium (self-employed persons).

There are still a few topics pending resolution, including which (self-employed) activities other than corporate mandates are covered, whether the Belgian social security authorities will requalify these if they appear to be a self-employed activity abroad, and how the Belgian authorities will assess these (specific) types of activities.

FOOTNOTES:

- 1 See also our GMS [Flash Alert 2018-064](#) of 16 April 2018.
- 2 Preamble (5) and article 4 of EC Regulation 883/04.
- 3 Preamble (17a) of EC Regulation 883/04.
- 4 Articles 7:85, 7:107, 6:58 and 5:70 of the new Belgian company code. In addition, there was a legal presumption in Belgian social security legislation (article 3, §1 of Royal Decree n°38).
- 5 Representatives of the KPMG International member firm in Belgium received this information from the Belgian social security authorities on an informal basis (please note this information was disclosed to us, but not confidentially or with any restrictions on its use/disclosure); an official publication will follow soon.

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Contact us

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