

GMS Flash Alert

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Belgium - FAQ Clarifies New Reporting and Tax Withholding Obligations

The Belgian government has published additional guidelines in the form of a Frequently Asked Questions document ("FAQ") which provide more clarity on Belgian wage tax and reporting obligations for Belgian companies.¹

The recently published FAQ addresses questions posed in a theoretical way. However, the FAQ also includes practical examples of situations in which the wider scope of application should be applied. The FAQ makes it clear that a very broad interpretation should be given to the new reporting and withholding tax provisions.

WHY THIS MATTERS

The new guidance may shed light on additional compliance responsibilities for employers and add to both the costs and administrative burden related to managing overseas employees coming to Belgium.

Belgian subsidiaries might need to re-evaluate whether a reporting and wage tax obligation exists when it comes to their workforce.

Background

In our GMS [Flash Alert](#) (6 February 2019) we wrote about then-new legislation passed by the Belgian parliament that introduced a broader scope of application of Belgian wage tax and reporting obligations for Belgian companies. As from 1 January 2019, Belgian companies also have a reporting obligation for remuneration paid or granted by a foreign related company. As from 1 March 2019, a formal wage withholding tax obligation was introduced on the same type of remuneration. The new reporting and wage tax obligations on income attributed by a foreign related company are irrespective of any cost charge to or involvement of the Belgian subsidiary.

The new rules opened a lot of discussion on the correct interpretation of the new provisions.

Where initially the intention of broadening the scope of application was to include share-related remuneration granted by a foreign related company, the actual legislation and the interpretation by the government are much broader and envisage all remuneration attributed or paid by a foreign related company (e.g., bonus payment, salary, benefits-in-kind, etc.). The rules enacted in 2019 introduce a presumption that the Belgian subsidiary is 'deemed' to have paid the remuneration, which leads to a withholding tax and reporting obligation for the Belgian subsidiary. The presumption applies in all cases where employees or directors (both resident and non-resident taxpayers) receive remuneration from an affiliated foreign company for professional activities performed for the benefit of the Belgian subsidiary.

The notion of professional activities should be interpreted in a very broad sense: professional activities performed for the benefit of the Belgian subsidiary should not necessarily be performed on Belgian territory, nor under the provision of a formal Belgian employment contract. The latter would have as a result that, for example, in case of a secondment to Belgium, Belgian wage withholding tax and reporting obligations might arise.

Implications of New Guidance

1 Practical Organisation

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. An accurate communication between the foreign related company and the Belgian subsidiary will therefore be very important to be able to file the monthly return in time and avoid applicable sanctions. Especially in the case of business travellers frequently working for the benefit of the Belgian entity, the practical organisation of fulfilling the withholding tax obligation on a monthly basis might be challenging for Belgian employers.

However, when it comes to business travellers, the FAQ foresees some exceptions, where the fiction does not apply: for instance, if the assignee only has a reporting line in Belgium or in case he only uses the infrastructure of the company and is not performing activities for the benefit of the Belgian subsidiary.

2 Rollover Reimbursement Technique

As mentioned in our previous [Flash Alert](#), the new rules also have an implication for a frequently-used tax reimbursement technique in Belgium called the "rollover method" for assignees on a tax equalisation or net salary package. When using the rollover method, the employer will make the tax payment in the current year but this payment will only become part of the employee's taxable income next year.

The FAQ now explicitly confirms that this payment will also fall under the scope of the new rules and therefore will have to be reported and withholding taxes will need to be remitted. The paid withholding tax itself is considered a taxable benefit, but no withholding taxes are due on the withholding tax itself.

2 Trailing Income

Trailing income such as bonuses relating to a previous assignment to Belgium are also subject to withholding and reporting

Exemption of Payment Withholding Tax

Under certain conditions Belgian companies may use an exemption of payment of the withholding tax to the Belgian tax authorities, such as there exists in the field of R&D and overtime pay. The FAQ explicitly states that the exemption cannot be applied when it comes to wage withholding tax on remuneration attributed from abroad. If Belgian companies have applied the exemption, where the fiction applies, the situation should be rectified.

FOOTNOTE:

1 Circular 2020/C/52 of 7 April 2020

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Contact us

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