Global Taxation Update

Italian, Indian & Jamaican FATCA Developments With The US

India

India is likely to sign an agreement to apply FATCA (Foreign Account Tax Compliance Act).

The FATCA rules are intended to ensure that the US obtains information on accounts held outside the US with non US financial institutions by US persons. Failure to disclose information on their US clients will result in a requirement to withhold 30 percent tax on payments of US sourced income. FATCA compliance will cover all new accounts opened by Indian financial institutions from 1 July 2014 onwards, and data will be shared with the US.

Italy

Italy has now ratified the agreement with the US to assist in compliance with FACTA.

Under the terms of the agreement Italian institutions will be required to report their information to the Italian Revenue Agency, which will then automatically exchange the information with the US Internal Revenue Service (IRS). There is also a provision for reciprocal exchange of information.

Jamaica

FACTA rules have now come into effect requiring financial institutions in Jamaica to submit relevant financial information to Tax Administration Jamaica in relation to persons who reside permanently in the US or those who earn a substantial amount of their income from the US. The tax authorities will share such information with the IRS.

BDO comment

The US government has increasingly sought to ensure that US taxpayers pay US tax on their worldwide income. Using FATCA, the US has now reached agreements for the sharing of information with various countries where American individuals and companies have accounts and other assets. Tax authorities around the world are following suit with similar rules in order to limit tax evasion.

New Zealand

A simpler tax system

New Zealand plans to introduce tax simplification measures. The aim of the proposals is to simplify the tax system, reduce costs of compliance and utilise modern methods of communication.

Suggestions to do so include proposals to allow earlier tax refunds and also to increase the threshold for automatic tax refunds. There are plans to make employee share scheme rules less onerous by permitting employer withholding. Additionally, there are plans for greater use of electronic filing methods and online communication between taxpayers and the tax authority.

Sweden

Changes in social security contributions

The Swedish social security system is fully funded by employer contributions. The standard rate for 2015 is 31.42%, but reduced rates apply for certain age groups. Usually the applicable rates are set annually as part of the budget bill process. In 2015, there has however, also been some in-year changes in the rates applied for young employees, i.e. individuals born in 1989 or later.

The amended rates that have been approved by the parliament in this respect are as follows:

Employees born 1992 or later	
As from August 2015	25.46%
May-July 2015	10.21%
Jan-April 2015	15.49%

Employees born 1990-1991	
As from August 2015	25.46%
Jan-July 2015	15.49%

Employees born 1989	
As from May 2015	31.42%
Jan-April 2015	15.49%

Other age groups who are subject to special rates, but who not affected by the in-year changes:	
Employees born 1938-1949	10.21%
Employees born 1937 or earlier	0%

Foreign Exchange Rate - Which One Do You Use?

On 7 April 2015, the Swedish Tax Agency published guidance on use of an exchange rate for payments such as salaries, pensions and other forms of employment income received in a foreign currency.

A basic rule in Swedish tax law is the so called cash principle which implies that employment income should be considered taxable in the year the income is available for the individual. The cash principle is defined in Swedish tax law however it is not specified how employment income in a foreign currency should be converted to Swedish kroner.

The published guidance states that when a Swedish tax resident receives a payment related to employment income or pension, the payment should be converted for tax purposes into Swedish kroner by using the official exchange rate on the day the recipient received the payment. If the payment is not converted on the actual payment date the exchange rate set by the Central Bank of Sweden for the payment date should be used. When the payment is a periodical payment that does not vary significantly during the year, the average annual exchange rate published by the Central Bank of Sweden may be used.

United Kingdom

Scottish Taxpayers Rate of Income Tax

Although the Scottish electorate voted against becoming an independent country in September 2014, from 6 April 2016 the rates of income tax paid by Scottish Taxpayers on certain categories of income, including employment income, will be set by reference to a Scottish Rate of Income Tax (SRIT).

Who will be a Scottish Taxpayer?

The definition of a Scottish Taxpayer will be focused on where an individual lives in the course of a UK tax year. For the vast majority of individuals, the question of whether or not they are a Scottish taxpayer will be a simple one – they will either live in Scotland and thus be a Scottish Taxpayer, or live elsewhere in the UK and not be a Scottish Taxpayer. However, this question will not always be simple to answer.

Firstly, in order for an individual to be a Scottish Taxpayer, they must be UK resident for tax purposes. An individual who is not a tax resident of the UK cannot be a Scottish Taxpayer. The remaining parts of the definition are based on the location of an individual's sole or main place of residence. If they have one place of residence and this is in Scotland, they will be a Scottish Taxpayer.

Individuals who have more than one place of residence in the UK will need to determine which of these has been their main place of residence for the longest period in a UK tax year. If this is in Scotland, they will be a Scottish Taxpayer. For example, if an individual with a single place of residence moves house into or out of Scotland part way through a UK tax year, whether they will be a Scottish Taxpayer in that year will depend upon which house is their main place of residence for the longer amount of time.

Individuals who cannot identify a main place of residence will need to count the days they spend in Scotland and elsewhere in the UK. If they spend more days (midnights) in Scotland, they will be a Scottish Taxpayer.

An individual who meets the definition of a Scottish Taxpayer will be a Scottish Taxpayer for a whole UK tax year.

What will be the Scottish Rate of Income Tax?

The main UK income tax rates in the UK are currently: basic rate 20%; higher rate 40%; and additional rate 45%. Using these rates as an example each will be reduced by 10% making the basic rate 10%; the higher rate 30% and the additional rate 35%. The Scottish Parliament will then set a single rate which will be applied across the three reduced rates giving the Scottish Rate of Income Tax.

That is to say, if the Scottish Parliament sets an income tax rate of less than 10%, this would mean that the main income tax rates for Scottish taxpayers would be less than for taxpayers elsewhere in the UK. For example, if the Scottish Parliament sets a rate of 9%, the Scottish basic rate would be 19%, the Scottish higher rate would be 39% and the Scottish additional rate would be 44%. Similarly, if the Scottish Parliament sets a rate of 11%, the Scottish basic rate would be 21%, the Scottish higher rate would be 41% and the Scottish additional rate would be 46%.

Practical Considerations

HMRC will be issuing more guidance to individuals nearer the time on whether or not they will be Scottish Taxpayers. They should also be specifically contacting individuals who, according to their records, are likely to be Scottish Taxpayers.

If an individual pays tax through Pay As You Earn (PAYE), HMRC will tell their employer whether or not to treat the individual as a Scottish Taxpayer. For Scottish Taxpayers, HMRC will issue PAYE tax codes prefixed with an 'S'. This is aimed at helping to reduce the burden of employers needing to determine the status of individual employees. All payrolls must operate the Scottish rates of income tax for Scottish Taxpayers, regardless of where the employer is based.

BDO Comment

Companies are going to have to be able to identify those employees considered Scottish resident and update their payroll systems to account for the Scottish Rate of Income Tax. Going forward we could also see further devolution with the Scottish and UK systems moving further apart.

Pension Schemes - HMRC Significantly Reduces Number Of Qualifying Recognised Overseas Pension Schemes (Qrop's) From Their Qrops List

HM Revenue & Customs (HMRC) has removed thousands of schemes from its list of recognised overseas pension schemes due to concerns over rules around early access to funds.

The list, which was initially suspended, has since been republished with significant reduction in the number of recognised overseas pension schemes. The number of schemes on the June 2015 list was approximately 3,800, but this has now fallen to under 700.

- Australia had around 1,600 schemes but now has one
- Ireland had approximately 800 but now has less than 60
- Switzerland had 100 but now has one
- France had over 30 but now has four
- Spain had around 16 but now just has two
- Barbados now has no recognised schemes
- Canadian schemes are expected to be challenged too, as registered retirement savings plans can be cashed in partly or fully at any time regardless of age.

The changes follows new rules implemented by HMRC in April 2015, which stated that overseas pension schemes had to pass a pension age test in order to remain compliant.

To prevent pension scheme members from accessing their pensions by transferring them abroad, schemes had to declare that they, or their country rules, did not allow benefits to be taken before age 55 unless members were affected by ill health. HMRC imposes a 55 per cent charge on any unauthorised transfers into non-compliant schemes.

Australian pension rules for example, do permit benefits to be taken early in certain hardship circumstances as well as ill health. Other countries have similar rules allowing early access. Changing the non UK scheme rules simply to meet the UK rules could adversely impact those who have no UK connection whatsoever.

HMRC would not comment on specific schemes dropped from the list.

BDO comment

Pension rules in the UK have changed dramatically in the last few years with additional changes likely in the next few years too. Adding a non UK dimension to the issue merely increases complexity. Uncertainty as to the tax treatment of contributions, investments and future benefits, makes retirement planning extremely difficult. Simplification, a period of stability, and certainty of treatment, would be welcomed by all.

United States

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 FinCen Form 114 (FBAR) Due Date Changes

Date/Timing:

As a result of the above Act, significant changes will be made to the due date and extension time of FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), for tax returns for tax years beginning after 31 December 2015.

Affecting:

Any US persons with a financial interest in, or signature authority over, foreign bank and financial accounts with a total balance exceeding $10,000 at any time during the calendar year.

Background:

Taxpayers are currently responsible for filing FinCEN Form 114 (FBAR), on or before 30 June of the year immediately following the calendar year being reported and there is no provision for extensions. As a result of the Act, the due date for FBARs will be changed from 30 June to 15 April.

Additionally, a maximum extension will be available for a 6-month period ending on 15 October under rules similar to the rules in Reg. § 1.6081-5. The Act also provides that for any taxpayer required to file Form 114 for the first time, any penalty for failure to timely request for, or file, an extension, may be waived by the Treasury Secretary.

Details:

FinCEN requires that FBARs be filed electronically. US persons are required to file an FBAR if they have a financial interest in foreign bank accounts with an aggregate value exceeding $10,000 at any time during the calendar year. FBAR filing is also required by certain individual US persons even if they do not have a financial interest in a reportable account if they have signature authority over one or more reportable accounts. This may include an officer or employee of a US entity who has the requisite control over the transfer or withdrawal of funds from foreign financial accounts.

Failure to file an FBAR report may subject the non-filer to civil and criminal penalties. Penalties for a wilful failure to file can be as much as the greater of $100,000 or 50 percent of the amount in the account at the time of the violation. Since the statute of limitations for civil or criminal violations is generally six years for FBARs, total penalties from failure to file for multiple years could be more than the value in the account.

Relief exists for delinquent FBAR filers who properly reported all income related to their foreign financial accounts on their US income tax return but who inadvertently failed to file an FBAR. Provided that these taxpayers have not yet been contacted by the IRS regarding their delinquent FBARs and are not currently under IRS review, delinquent FBARs may be submitted penalty-free.

BDO's comment

Due to increased scrutiny and the severe penalty regime with respect to failure to file FBARs, it is important for all individuals and entities to review whether there is any financial interest in, or signature authority over, accounts subject to FBAR reporting.

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