Global Taxation Update

Australia

Fringe benefits tax on travel expenses for 'Fly-in-Fly-out' arrangements

Australian industry is heavily reliant on mining operations which are often located in remote areas. As a result Fly-in-Fly-out ('FIFO'), also known as rotational arrangements, is widely adopted in Australia as a method of enticing people to work, by flying them periodically on a roster basis between the work site and their usual place of residence. It is also not uncommon for the travel to be international.

A common practice in a FIFO arrangement involves the employer arranging and paying for the employees transport from 'home-to-work' such as flights. The transport will be considered benefits provided to employees.

In Australia, tax is levied on the employer for provision of benefits to employees under the Fringe Benefits Tax ('FBT') legislation. Therefore, instead of the employees being liable to tax, employers who provide such benefits are generally subject to FBT. Where the employment is in a remote site or on an oil rig or other installation at sea however, a tax exemption is available to the employer for providing employees with 'home-to-work' travel. This is on the basis that transport is provided from the employee's usual place of residence.

As Australia's resource industry continues to grow, work sites continue to expand towards 'non-remote' areas, putting this exemption into question. As a result, employers are seeking alternatives for relieving themselves of the potential additional liability of tax.

As an alternative whereby an FBT exemption is unavailable, in some circumstances, the FBT obligation for an employer can be reduced to nil if the employee would have otherwise been entitled to a work-related tax deduction, had he/she incurred the costs themselves. This is known as the 'otherwise deductible' rule.

Applying this to the FIFO arrangements above, 'home-to-work' travel has historically always been viewed as a non-deductible expense for individual taxpayers. A recent case heard by the Federal Court has reaffirmed this clarifying that the 'otherwise deductible' rule cannot be applied to negate the FBT obligation arising on the travel expenses incurred on 'home-to-work' travel for FIFO arrangements. It had stated that the character of the outgoing reflected journeys to and from work, despite the fact that the employees travelled during their designated work hours and, as such, were paid for this time. It reasoned that the travel expenses were merely 'incidental and relevant', to the derivation of income which remained at the work site. The primary purpose of the transport was to enable employees to live in one place and work in another.

It was, as a result, determined that the expenses were not necessarily incurred in the course of gaining or producing income and not 'otherwise deductible'. As a consequence provision of the transport gave rise to an FBT obligation to the employer, which reinforces the normal position of 'home-to-work' travel.

This decision is increasingly relevant given an expanding mobile and flexible work force. It should however have no direct impact on employers providing home to work transport to FIFO employees who work in remote areas. Nevertheless, employers should remain prudent and ensure that their position taken in respect to the 'remote area' is documented and retained.

BDO's Comment

Currently, the deductibility of travel expenses is under consideration at the Australian Tax Office. It is also important to note that the case referred to above has been appealed to the Full Federal Court, and therefore, there is a possibility that the court ruling may be overturned.

In light of the above, employers, both local and overseas, should remain vigilant of their obligations with respect to any work transportation arrangements they organise and provide to Australian employees. Whereby transportation is provided in the context of enabling the employee to travel to and from work, the employer may be liable to FBT.

Belgium & Luxembourg

Bilateral agreement between Belgium and Luxembourg on taxation of cross-border workers

Most double tax agreements (DTA) which are based on the OECD Model Tax Convention (OECD MC) include an article on the allocation of taxing rights regarding income from employment (article 15 OECD MC). The same can be said for the DTA between Belgium and Luxembourg with its article 15.

The rule mentioned in article 15 specifies the following:

- The resident state is authorised to tax all components of income from employment earned worldwide by its inhabitants, except for when the activity is physically performed in the other contracting state
- The resident state however, continues to be allowed to tax income from employment earned by its inhabitants when all three of the following conditions are met
- The individual has spent less than 183 days in the other contracting state during a 12 month period ; and
- The salary earned by the individual is not paid by or on behalf of an employer in the other contracting state ; and
- The salary earned by the individual is not borne by a permanent establishment which the employer has in the other contracting state.

If any of the three conditions mentioned in the second paragraph above is not met, the other contracting state is allowed to tax any and all income which corresponds to professional activity physically performed on its soil by the individual concerned.

In other words, when Belgian residents perform professional activities in Luxembourg for a Luxembourg employer, Luxembourg will be entitled to tax that income. Conversely, the income related to working days that are not spent in Luxembourg (but in Belgium or in third countries) will be taxable in Belgium, without a 'de-minimis' rule applying. So even if a Belgian resident only works one or two days in Belgium, the Belgian tax authorities will have the right to tax the income received for those days, resulting in the employee potentially becoming liable to tax in both countries except for when the individual concerned can provide proof for every day that he physically worked in Luxembourg in order to be able to claim an exemption in his resident state Belgium. Failing to do so often results in the Belgian authorities taxing the income received for all days for which no such proof is available.

In the event that Belgium exercises its right to tax, the employee concerned will most likely be taxed twice because in most cases the Luxembourg employer will already have withheld income tax at source when paying the monthly income tranches. As a result, the employee would need to initiate a procedure in Luxembourg to claim a tax refund of all excess taxes unduly withheld in Luxembourg, an often burdensome and lengthy procedure.

The above rules cause a considerable administrative burden for cross-border workers who live in Belgium but close to the border with Luxembourg and work for an employer resident of Luxembourg (or the other way round, who live in Luxembourg but close to the border with Belgium and work for a Belgian employer). Such cross-border workers have become audit-targets for the tax authorities when for example employees have been allowed to work from home on occasion.

To alleviate this administrative burden, Belgium and Luxembourg have agreed on a tolerance period of 24 days for cross-border workers.

For example, the introduction of this tolerance period means that someone who lives in Belgium, but is employed by an employer who is resident of Luxembourg, and who habitually works full-time in Luxembourg, is allowed to work up to a maximum of 24 days ('less than 25 days') in his or her home country Belgium, without becoming liable to income tax in Belgium (and vice versa for someone who lives in Luxembourg but is employed by a Belgian employer). Time spent in third countries is not covered by this tolerance period and the income received for those activities will remain taxable in the state of residency.

This administrative agreement will apply to income earned as of 1 January 2015.

The tax authorities of both countries also intend to publish a joint statement on how they will audit the files of cross-border workers in future in a further attempt to alleviate the administrative burden that the present existing allocation rules for the right to tax income from employment, result in.

BDO's Comment

This common sense approach adopted by the Belgian & Luxembourg authorities is welcomed. Ideally other tax authorities should take note and follow this act. This would help to alleviate the administrative burden on taxpayers but still ensure payment of the correct tax.

Singapore

2015 Budget

Tax rates in Singapore are increasing for higher earners with a marginal rate increase proposed in the 2015 Budget from 20% to 22% for YA 2017.

Additionally, to celebrate Singapore's 50th jubilee year falling in 2015, there will be a personal tax rebate of 50% capped at S$1,000 per tax resident individual taxpayer.

BDO Comment

Despite the rate increase Singapore remains a low tax jurisdiction in comparison with other international destinations. The rebate is a modest token of appreciation from the Singapore Government to all taxpayers – if only other tax authorities were as appreciative or efficient!

Switzerland

Adjustment of the Expatriate Ordinance with effect from 1 January 2016

In January 2015, the Swiss Federal Department of Finance (FDF) published a revised wording of the Expatriate Ordinance. This new version will become effective on 1 January 2016 and aims to promote public acceptance of these deductions, after two parliamentary motions had previously demanded to abolish this ordinance. It has been stated by some that the special deductions are only granted to a limited group of people and it is therefore doubtful if the current Expatriate Ordinance is in conformity with the Swiss Constitution.

The FDF decided to enforce an adjusted wording of the ordinance, which intends to be more precise regarding the eligibility of the employees who qualify as expatriates and concerning possible deductions.

The adjustment mainly affects the group of expatriates with special professional qualifications. Contrary to the previous wording, it is now required that the employee is effectively seconded from the foreign employer to Switzerland. This applies to both categories of expatriates, executives as well as specialists. Only in certain rare cases employees with a limited local contract can qualify as an expatriate. The authorities will only accept such cases if the employment is transferred within the group for a fixed period and the home country employer guarantees re-employment after the stay in Switzerland. It is therefore important to consider such a clause in the secondment agreement.

The terms executive and specialist are still not defined in a precise manner. Therefore we expect, that in practice the same principles will continue to apply as under the current rule. Today a general acceptance exists that an executive is a director (or an employee with similar senior function), is temporarily seconded because of a specific professional reason. Specialists are typically defined as employees who are seconded to Switzerland because of their specific particular professional qualifications. Their specific and unique skills are required for a defined project and typically not available everywhere.

In principle, the existing and so far practicable tax deductions remain the same. Nevertheless, the new wording has some important consequences regarding the deductibility of housing costs. The new ordinance clearly stipulates that a deduction is only possible if the expatriate keeps a dwelling for his personal use permanently available in the home country. If the apartment or house in the home country is (temporarily) rented out during the secondment to Switzerland, no housing deduction is possible in Switzerland. This is a significant change because, in the past, some cantons accepted housing deductions based on the difference between the cost of reasonable housing in Switzerland and the rental income from abroad.

In general, expatriates can additionally deduct all costs that are directly linked with their secondment to Switzerland provided that the avoidance of these costs is not feasible.

Expatriates who are seconded to Switzerland only for a very limited period and do not take up residency in Switzerland, in particular commuters, are generally allowed to deduct the following costs:

- Appropriate travel expense for the journey between the foreign domicile and Switzerland
- Reasonable housing costs in Switzerland, if the accommodation in the expatriate's home country is kept permanently available for personal use.

Expatriates who are seconded to Switzerland for a longer period and therefore move their residency to Switzerland are allowed to deduct the following costs:

- Relocation costs, if they are in direct

connection with the assignment
- Reasonable housing costs in Switzerland, if the accommodation in the expatriate's home country is kept permanently available for personal use
- Private school tuition costs are deductible for children, with a foreign mother tongue attending a foreign language private school, if public schools cannot provide adequate tutoring in the child's native language. However, cost relating to food, transport and supervision before and after the classes are not deductible.

Individuals, who at the time of the entry into force of the revised Expatriate Ordinance qualified as expatriates, will benefit from a transitional period until the end of their assignment, which can last up to five years. However, for this group of employees the revised rules regarding the deductibility of costs will also apply.

BDO's Comment

We strongly advise employers to review existing contracts and policies as to whether they are in line with the new Expatriate Ordinance. Furthermore, it is important to inform expatriates who might be affected by these changes. All new assignments to Switzerland should carefully be examined to determine whether and how the new Expatriate Ordinance will apply in each individual case from 1 January 2016 onwards.

Country Agreements Regarding Exchange Of Information And Avoidance Of Taxes

The drive by tax authorities around the world to exchange information and help prevent avoidance and evasion of taxes continues. Examples of recent agreements signed and actions include the following:
- Italy has signed agreements with both Liechtenstein and Switzerland
- Seychelles has signed a multilateral tax cooperation treaty
- US & Dominican Republic are in discussions to exchange tax information
- Singapore & France have signed a double taxation agreement which includes anti-abuse provisions
- Greece is to crackdown on tax evasion as part of the agreement with its international creditors
- Ireland has collected over €1billion in tax since 2001 from Irish residents holding offshore bank accounts.

BDO's Comment

Expect to see further steps to provide quicker, automatic, exchange of tax information between global tax authorities and a further crackdown on those who evade taxes. This is long overdue.

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