Global Taxation Update

Africa

The following changes arise from 2015 Budget proposals:

Benin

The Finance Law for 2015 announced amended rates on wages and salaries as follows:

Monthly salary (F.CFA)	Rates
Up to 50,000	0%
50,001 – 130,000	10%
130,001 – 280,000	15%
280,001 – 530,000	20%
Over 530,000	30%

Central African Republic (CAR)

The Finance Law of 2015 introduced a Social development contribution through a payroll tax levied on all employers. The law excludes from the taxable base of this contribution payments to employees based on:

- The provision of medical treatment; and
- Family events such as death, marriage, birth and baptism.

The taxable base is the gross amount of all types of remuneration, including benefits in kind provided to the company's staff during a fiscal year.

The Republic Of Congo (Brazzaville)

The Finance Law 2015 amended the payroll tax for employers allowing for an exemption of payroll taxes for entrepreneurs and companies operating within the agricultural, livestock and fishing sectors.

Furthermore, the Law introduces a tax on capital gains derived by individuals. The tax is creditable where taxpayers are subject to the latter tax. The tax is payable in general to the notary, at the moment of the transfer. Under the new provisions, capital gains derived from immovable property are subject to tax at the rate of 10%.

Ghana

The Internal Revenue (Amendment) Act, 2014 added the following new measures:

- An increase in withholding tax rate on commission paid to a resident from 5% to 7.5%; and
- A reduction in withholding tax rate on endorsement fees paid to a resident from 10% to 5%.

Sierra Leone

The Finance Act 2015 amended the tax-free threshold of redundancy and retirement payments as follows:

Old Provision	
Amount (Le)	Rate
Up to 20,000,000	0%
Over 20,000,000	30%
New Provision	
Amount (Le)	Rate
Up to 50,000,000	0%
Over 50,000,000	5%

Under the Income Tax Act 2000, as amended, redundancy and retirement payments made to employees when their employment is terminated, have special tax treatment where an amount paid up to a certain limit is tax free, as seen in the table above. As such, redundancy and retirement payments are usually divided into two components for tax purposes: the tax-free amount and the assessable amount. Please make note of the more favourable rates.

Swaziland

The Swaziland Revenue Authority issued a new Practice Note on the issuance of tax deduction directives on lump-sum payments to employees or former employees. The Practice Note contains a number of requirements employers should adhere to, for example:

- The application for the directive should be made 30 days before the termination of employment for each employee
- Failure to remit withheld tax at this time will attract a penalty of 20%.

For the purposes of the Practice Note, "lump-sum payments" are any payments made upon termination of an employment contract from a pension fund, provident fund, preservation pension and provident fund, benefit fund, retirement annuity as well as terminal benefits, excluding salary arrears, whether or not such a fund was approved under the relevant provisions of the Order.

The Practice Note took effect on 1 March 2015.

Belgium

Tax arising as a result of tax equalisation for globally mobile employees.

For globally mobile employees it is quite common that an employer will apply tax equalisation. A tax equalisation approach ensures the employee does not have any tax advantage or disadvantage compared to working in their home country.

Since income taxes are a personal liability, the income tax paid or reimbursed by the employer will create a taxable benefit in kind on behalf of the employee. As a result this taxable benefit in kind should be included in the tax return related to the income year during which the employer has made the payment.

For employees working temporarily in Belgium due to an international assignment, this might trigger a Belgian tax filing obligation even after they have left Belgium.

An example: An Italian employee has been assigned to Belgium to work for 1 year (as from 1 January 2015 – 31 December 2015).

Based on the double tax treaty between Belgium and Italy, the Italian employee will become taxable in Belgium and will need to file a Belgian tax return for income year 2015. The employer applies tax equalisation. As a result, the employee will only have to pay tax as if he had never left Italy. In order to have an idea of what the tax liability is in this situation, a hypothetical tax calculation will be undertaken. This result will be compared with the actual Italian taxes (home country) and the Belgian taxes the employee will need to pay to the relevant tax authorities due to his international assignment. The difference will be paid by the employer. In practice this will often result in Belgian taxes being paid by the employer. The Belgian tax assessment for income year 2015 would be issued at the latest in June 2017. The payment will need to be made 2 months after receipt of the tax assessment, which will lead to a taxable benefit in kind and a tax filing obligation for income year 2017. Therefore, the tax return for income year 2017 (which will need to be filed in 2018) will lead to reporting obligations almost 2.5 years after the employee has left Belgium.

Previously the Belgian tax authorities said that in arriving at personal deductions (e.g. children at charge, entitlement to personal allowance) allowable in the tax calculation of income year 2017, one could take the personal situation into account as it was on 1 January following the year during which the professional activity has been performed in Belgium (in the example: 1 January 2016). If the employee had 2 children at charge at that point in time, the tax deduction for 2 children at charge could also be claimed for the taxation of the benefit in kind during income year 2017.

From the tax year 2013, the Belgian tax authorities have changed their point of view in this matter. The reference year in order to determine which personal tax deductions the employee is entitled to regarding the taxable benefit arising in 2017 will be determined based on his situation on 1 January following the year during which the payment of taxes has been made by the employer (in the example: 1 January 2018). At this point in time the employee is no longer working and living in Belgium and therefore is not entitled to any personal tax deduction (e.g. children at charge). Only employees who are resident of the Netherlands or France may claim a pro rata of the personal tax deductions based on the double tax treaty between Belgium and the Netherlands/ France. For that purpose, the details of the foreign, non-Belgian, income earned during 2017 will need to be reported in order to determine the pro rata. Whether or not the limited tax benefit which can be claimed will compensate the effort of collecting this information will depend on each case.

Tribunal judgement regarding claiming treaty relief on personal tax return

Based on Belgian domestic legislation, Belgian residents are taxable in Belgium on their worldwide income. They need to report their income from Belgian and foreign sources in their Belgian tax return.

If a taxpayer has the opinion that his professional income related to a foreign employment should be exempted from Belgian taxation based on the double tax treaty between Belgium (Residence State) and the Work State, the taxpayer can note this in his tax return.

The Belgian tax authorities argue that the burden of proof that the income has to be exempted lies with the taxpayer and advises them to attach specific information to the tax return that the income should be exempted together with supporting documents to prove that the conditions for the exemption are met.

In recent case law the question was raised whether or not the Belgian tax authorities should issue a notice of amendment of the tax return if the taxpayer has not provided proof of his right to exemption for income from a foreign source or, can they just assess the income without granting any exemption?

The judgement dated 23 October 2013, was against the tax authorities. Based on the titles of the relevant code in the tax return ('Income for which you are entitled to a tax reduction for income from a foreign source') the Liège Tribunal has the opinion that by completing this part of the tax return, the taxpayer confirms that the income has a foreign source. If the tax authorities subsequently believe that the conditions for an exemption in Belgian are not met, it is required to send a notice of amendment to the taxpayer. If the tax authorities do not send a notice of amendment, the tax assessment will be cancelled. As the Belgian domestic legislation does not foresee an obligation to add specific annexes to the tax return with respect to the request for exempting foreign source income, the Belgian tax authorities cannot oblige the taxpayer to do so.

Defining an 'employer' per article 15 of the OECD Model Tax Convention

Most double tax treaties (DTT) which are based on the OECD Model Tax Convention (OECD MC) include an article on the allocation of the authority to levy taxes between the Residence State and the Work State on employment income (usually article 15 OECD MC).

Article 15 of the OECD MC stipulates that wages and other similar remuneration derived by a resident of a contracting State will be taxable in the Residence State unless the professional activities are performed in the other contracting State. But the article also foresees that in the case where the professional activities are performed in the other contracting State (Work State), the remuneration can still be taxable in the Residence state where the following three conditions are met:

- The taxpayer is not present in the Work State for more than 183 days in any 12-monthly period starting or ending in the fiscal year concerned
- The remuneration is not paid by or on behalf of an employer based in the Work State
- The remuneration is not borne by a permanent establishment of the employer in the Work State.

The second condition contains two elements: on the one hand, an 'employer' in the State of employment, on the other hand, remuneration paid "by or on behalf of" this employer.

Correct application of the second condition is only possible when the above two elements are correctly interpreted. The concept 'employer' can be interpreted formally or economically. The formal interpretation means that the employer is the one with whom the employee has signed an employment contract. The economic employer is the one who exercises the authority over the employee, without the necessity of a legally binding employment agreement between both parties.

In the past the Belgian tax authorities published a circular (25 May 2005) confirming their point of view regarding the interpretation of the concept of an 'employer'. In the circular the Belgian tax authorities clearly confirmed that they will choose the approach of the 'economic employer' in applying DTT relief. The circular specifies that the concept of the economic employer is characterised by the existence of a link of subordination between the employee and the employer, irrespective of whether there is a formal employment contract in place. They stipulate a number of criteria that should help settle the existence of a link of subordination.

For example:

- The employee will follow the employment instructions from the company that employs him
- The employee's work will be performed under the responsibility of the company that employs him
- The company that employs the employee can decide to terminate the employment.

The recent decision of the Ruling Commission is in line with the above mentioned circular of the Belgian tax authorities and confirms that the Ruling Commission favours an economic interpretation of the concept 'employer' referred to in article 15 of the OECD MC.

It is worth noting, however, that not all countries use the economic employer definition. Therefore, it is recommended in an international employment situation to specifically verify with the countries involved what their approach is towards the concept 'employer' for the interpretation of the double tax treaty concerned.

BDO's comment

Many aspects relating to globally mobile employees provide detailed considerations for both employers and employees. There is specific focus on the application of treaties which adds another layer of tax law on top of local country law. All parties need to be very clear on the application of this in Belgium.

Canada

Withholding on Non-Resident Employees

The 2015 Canadian federal budget, tabled on 21 April 2015, introduced changes of interest to employers of non-resident employees who work in Canada, as follows:

Employers who are not residents of Canada are generally required to withhold amounts on account of the income tax liability of an employee working in Canada, in a manner similar to that which applies to employers who are resident in Canada. This rule applies even if the employee is a non-resident who is expected to be exempt from Canadian tax because of a tax treaty. Under the current rules, it may be possible for the employer to obtain an employee-specific waiver from the Canada Revenue Agency (CRA) in order to be relieved from its obligation to withhold. However, there are inefficiencies in this process.

The Canadian government has also proposed certain processes to provide an exception to the withholding requirements for payments made to employees who are in Canada for less than 90 days in a year, and where a treaty will exempt the income from tax in Canada. The exception from withholding will apply to payments by qualifying non-resident employers to qualifying non-resident employees. This new measure will apply to payments made after 2015, and will provide relief to non-resident employers who frequently make payments to treaty-exempt employees. Under this new process, once the employer has been certified, they will not need to apply for a waiver for each qualifying employee.

An employee will be a qualifying non-resident employee in respect of a payment if the employee is:

- Exempt from Canadian income tax in respect of the payment because of a tax treaty; and
- In Canada for less than 90 days in any 12-month period that includes the time of the payment.

A qualifying non-resident employer must meet the following conditions:

- Be resident in a country with which Canada has a tax treaty (special rules apply for employers who are partnerships)
- Must not carry on business through a Canadian permanent establishment in its fiscal period that includes the time of the payment; and
- Be certified by the Minister of National Revenue at the time of the payment.

In order to be certified, an employer must apply to the Canadian government in prescribed form, and the government will then grant certified status. The regulations to enable the certification process have not yet been released.

Although a qualifying non-resident employer will not be obligated to withhold under these circumstances, they will continue to be responsible for preparing and issuing the T4 Statement of Remuneration Paid to non-resident employees. These statements are due by the last day in February following the year in which the payment is made. Note however, the penalty for failure to withhold on payments to non-resident employees will not apply to a qualifying non-resident employer for failing to withhold in respect of a payment if, after reasonable inquiry, the employer had no reason to believe, at the time of payment, that the employee did not meet the conditions as a qualifying non-resident employee.

Please note that certification will not affect the determination of a non-resident's Canadian tax liability and employers will continue to be liable for any withholding in respect of non-resident employees found not to have met the conditions of a qualifying non-resident employee.

BDO's comment

For those affected by the above changes it is recommended to act quickly to ensure compliance is up to date and to obtain the appropriate agreements with the Canadian Revenue.

Prepared by BDO LLP.
For further information please contact Andrew Bailey on +44 (0)207 893 2946 or at andrew.bailey@bdo.co.uk