Global Taxation Update

Germany

Tax change for EU/ EEA citizens who work in Germany and have their residence in Switzerland

Persons who are living abroad but who retain German source income are generally limited taxpayers, which means only their income from German sources is taxable in Germany. Under certain conditions these persons can choose to be treated as unlimited taxpayers in Germany. As such they would obtain some special tax benefits which a limited taxpayer does not have. For example, they would be allowed to deduct insurance premiums and exceptional costs (e.g. medical costs) but do remember that in return they would be subject to tax in Germany on their worldwide income.

According to German income tax law citizens of EU or EEA member states who have their residence in an EU or EEA member state can have some additional advantages. If they are unlimited taxpayers the following can apply at their request:

- joint assessment with splitting approach for spouses
- special discounts can be doubled (deducted for both spouses)
- payments to an ex-spouse can be deducted
- special discount for single parents
- special discount for parents with a disabled child.

It is often advantageous for an unlimited taxpayer's spouse who has no income of their own to choose unlimited tax liability in Germany.

As Switzerland is not a member of the EU or EEA, persons being citizens of EU or EEA member states and having their residence in Switzerland are not allowed to use these tax advantages according to German domestic income tax law.

In February 2013, the European Court of Justice (ECJ) decided that this restriction is contrary to the Agreement on the Free Movement of Persons between the EU and Switzerland. So citizens of an EU or EEA member state who have their residence in Switzerland but generate their income in Germany can be unlimited taxpayers upon request, too, and thus are allowed to benefit from the above mentioned advantages. In September 2013, the German Federal Ministry of Finance issued an announcement that the respective clause in the German income tax law has to be interpreted according to the ECJ's judgment. This interpretation is applicable in all open cases.

BDO comment

Tax authorities need to consider the impact of EU laws as any infringement could lead to a successful taxpayer challenge to application of domestic rules.

Sweden

Tax proposals in the budget bill for 2014

In September 2013, the Swedish Government presented a budget bill for 2014. Some of the tax proposals to come into force as from 1 January 2014 are summarised below:

- The tax on income is reduced by increasing the earned income tax credit. For those who have an average rate of tax (municipal tax 31.73%) and are under 65 years of age, the tax relief represents a tax reduction of SEK 4,044 per annum
- The tax on retirement income is reduced by an increased basic allowance for individuals over 65 years of age
- The State income tax is proposed to be limited by a raised threshold. Today the State income tax is levied at 20% from a threshold of SEK 420,800 and it is proposed that this be raised to SEK 435,900. A further 5% State income tax will be, as in previous years, levied if the income amounts to more than SEK 591,600
- The special income tax for non-residents is proposed to be reduced from 25% to 20%
- The Government proposes that the temporary reduction of the tax value for some environmentally friendly cars will be extended for an additional three years
- A cut in employer contributions for employees working in research and development, is proposed through the introduction of a deduction for the contributions. The deduction is equal to 10% of the remuneration of staff working on research and development, with a cap of SEK 230,000 per month per group
- Contributions for self-employed are proposed to be reduced by a further deduction from 2.5% to 7.5%. The maximum deduction is increased from SEK 5,000 to SEK 15,000
- Changes proposed for the calculation of the tax on dividends for closely held companies by a change in the calculation of the rate-based space.

Further suggestions are proposed to come into force as of 1 July 2014:

- In regions or areas with the highest number of unemployed with low training and long-term maintenance support, a new system is proposed. This would entail that the employer under certain conditions would be able to deduct the employer's contributions. The regional deductions are dependent on approval by the European Commission. This system would, upon approval, only be in effect for a limited period of time. An evaluation will be carried out before any possible extension
- Employer contributions for employees aged less than 23 years are proposed to be reduced to 10.21%, i.e. the old age pension contribution. The reduction for those aged 25 or older will be discontinued. Contributions will remain at 15.91% for those over the age of 23.

The Government also proposes the following reviews:

- A review of the tax rules on options and other share-based incentives that companies give to key personnel. The purpose of the review is to improve tax regulations for incentives, particularly those offered by fast growing companies
- An evaluation of the transfer pricing rules regarding documentation requirement. The current documentation requirements have been applied during more than six years and the Government is proposing that the functionality and potential for simplifications should be assessed.

BDO comment

Do consider the impact of the proposed changes announced and be aware of the impending review of stock incentives.

United Kingdom

Pensions auto-enrolment for international workers

The phased introduction of auto-enrolment for pensions in the UK started in October 2012 for the very largest employers and will continue through until early 2018 for small to micro employers.

The indications are that 2014 is going to be a particularly busy year for auto-enrolment with staging dates for employers who have anywhere between 500 and 51 employees, falling within the first half of the year, so it would therefore seem timely to consider the implications of auto-enrolment for international workers.

At first glance the position might appear to be fairly straight forward as the basic criteria for auto-enrolment is that an employee works, or ordinarily works, in the UK. However, the lack of clear definition of these terms in the legislation means that the eligibility assessment which employers will be required to carry out on their workforce may produce some unexpected results for employees who are internationally mobile.

In recognition of how vague the position is with regard to internationally mobile employees the Pensions Regulator has issued guidance to help employers with the workforce assessment process. This guidance indicates that the employee's contract will be of primary importance in assessing their eligibility status and gives particular consideration to peripatetic workers who regularly travel between countries in the course of their employment. It also sets out a number of factors which employers will need to consider as follows:

- where the worker begins and ends their work
- where their private residence is, or is intended to be
- where the worker's headquarters is
- whether they pay National Insurance contributions in UK
- what currency they are paid in.

It is probably useful to consider a few examples as this stage to put the eligibility assessment into context.

Orville is based at London Gatwick and flies long haul to destinations in the USA and Australasia. Whilst his employer has an office in the UK, their head office is in the Netherlands and Orville, who lives near Amsterdam, commutes to London Gatwick. He is paid in Euros and does not pay social security contributions in the UK.

The Pensions Regulator has indicated that Orville may be regarded as not ordinarily working in the UK although he begins and ends work in the UK.

Christopher is Spanish but has lived in Harwich for several years and works on large container ships for an Italian freight company that is registered and based in Genoa, Italy. Christopher normally works out of the Port of Felixstowe and whilst his contract states he is based in the UK, he can be away from the UK for several weeks at a time as he works primarily on cargo routes with the Americas although his routes also now include Asia and Europe.

The Pensions Regulator has indicated that there are sufficient factors present to indicate that Christopher will be regarded as ordinarily working in the UK.

Turning to workers seconded to the UK, the responsibility for the eligibility assessment here lies in part with the overseas employer and therefore they will be need to have a working knowledge of the eligibility criteria for auto-enrolment in the UK.

The key criteria will be whether or not the employee is still regarded as based outside the UK and whether they are expected to return to that overseas base at the end of their assignment. The guidance indicates that this will apply equally for short placements and for extended secondments of up to 3 to 4 years. In addition the guidance indicates that this may apply, in contrast to the peripatetic workers, regardless of the fact that the employee is paying both UK tax and social security contributions.

BDO comment

It is anticipated that in due course, case law will develop which will help to provide more clarity to the assessment process for internationally mobile employees. However, in the meantime it is important for both UK and overseas employers alike to consider their responsibilities under the auto-enrolment obligations for UK pensions.

A shrinking world - further moves regarding exchange of information

The American Foreign Account Tax Compliance Act (better known as FATCA) was introduced as part of the US HIRE Act of 2010 and requires non US financial institutions to report on the holdings of US taxpayers to the Internal Revenue Service or face penalties. The US legislation is aimed at reducing tax evasion by US citizens. The law has provoked much controversy and complaint from governmental authorities and financial institutions around the world, who complain that the law compromises extra territoriality principles and violates banking confidentiality laws.

Despite such criticism, pace is gathering with agreements being discussed or signed with the US. Additionally, other countries are seeking to introduce rules mirroring the FACTA requirements and/or to exchange information between tax authorities:

Cayman Islands & Guernsey sign agreements

Both The Cayman Islands and Guernsey have reportedly signed 'FATCA-style' agreements with the UK. Additionally, The Cayman Islands is expected to sign a similar agreement with the US. Agreements will enable the automatically sharing of financial information.

Hong Kong seeks agreement with US

News reports indicate that Hong Kong is currently in negotiations with the US over its FATCA law.

Malta expected to sign US agreement

News reports indicate that Malta will shortly be signing an agreement with the US, which will include some of the requirements and deadlines set out in FATCA.

Switzerland says it will sign tax deal

Latest reports indicate that Switzerland intends to sign an international deal drafted by the OECD/Council of Europe on exchanging tax information. The agreement on information concerns non-residents with assets in Switzerland.

South Africa joins pilot scheme for automatic information exchange

South Africa is to join the pilot scheme for the greater exchange of tax information launched by the UK, France, Germany, Italy, and Spain, and based on the US FATCA. Mexico and Australia have already joined the scheme.

Turks and Caicos Islands and the US agree to share tax information

Turks and Caicos Islands have entered into a FACTA style agreement with the US.

US and France sign agreement

US and French officials have signed an agreement to progress FACTA implementation.

BDO comment

Authorities are increasingly sharing information and/or applying withholding taxes. International assignees need to be aware of and comply with their worldwide tax obligations.

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