Global Tax Update

CHINA

Focused tax inspection/Audit regime for foreign employees and Chinese outbound employees

BDO Comment

The Chinese tax authorities are actively targeting foreign employees and Chinese employees working overseas. With the assistance of professional tax consultants, companies can take the necessary actions to make sure they are compliant with the tax laws and regulations and changing local practices.

With the increase in foreign nationals working in China and Chinese nationals going abroad, Chinese tax authorities in the main cities have recently been implementing stricter Individual Income Tax ("IIT") administration. Additionally, due to the nationwide usage of the new tax filing system (Golden Tax III), more detailed information for individuals is now being reported to the Chinese tax authorities.

The tax authorities have been launching random tax inspection/audits in order to investigate the accuracy of information reported for both foreign employees and Chinese outbound employees.

Trends And Challenges

Foreign National Employees

For foreign national employees who receive certain benefits-in-kind, such benefits can only qualify as non-taxable benefits when certain criteria is met. In addition, an increasing number of tax authorities in many main cities require registration of the non-taxable benefits, to include supporting policies on fringe benefits where relevant.

The local tax authority may not accept tax exemption of these benefits if there is a failure to perform such registration. However, in practice the local tax authority could request additional documents as proof of the benefits-in-kind. This is at their discretion.

Chinese Outbound Employees

According to Chinese tax regulations, Chinese nationals are subject to Chinese tax on worldwide income. For employees who have labour contracts with a local Chinese entity and are assigned to work in a foreign country, the Chinese local entity should act as a withholding agent and report both China sourced and foreign sourced income to the local tax authority via monthly IIT returns. For employees who are employed by a foreign company, they are also responsible for reporting worldwide income via the PRC Annual Tax Reconciliation ("ATR") return.

Some Chinese local entities and Chinese outbound employees are not fully aware of the compliance requirements placed on foreign sourced income. In view of this, local tax authorities are paying special attention to the benefits-in-kind offered to foreign employees as well as Chinese outbound employees who have received foreign sourced income.

Negative Impact

Where local tax authorities identify non-compliance through tax inspections/audits, the withholding agents/employees will be requested to pay the under-reported IIT. A daily late payment surcharge of 0.05%, as well as penalties of between 50% and 500% of the IIT due may also be imposed.

Additionally, there will also be reputational risks for both the withholding agent and employees. For example, local tax authorities can downgrade company and employee tax credit ratings.

The following are the key focus points:

- Re-evaluate the compliance level of benefits-in-kind offered to foreign national employees
- Review internal control procedures and documentation for benefits-in-kind
- Ensure the company has fulfilled their withholding obligations for Chinese outbound employees
- Notify Chinese outbound employees who are employed by overseas companies to report foreign sourced income with the local tax authorities.

Professional advice and proactive communication with the tax authorities is very efficient in reducing the potential tax risks. Meanwhile, where audits are already occurring, effective negotiations with tax authorities are essential in resolving these..

INDIA

Notification of income tax return forms for tax year 2017/18

BDO Comment

There are two different forms that employees can use to declare their income at the tax year-end. Expatriate assignees need to be clear on the correct form to use and the income they need to report.

On 5 April 2018, the Central Bureau of Direct Taxes (CBDT) issued notification of the income tax return (ITR) forms for the 2017/18 tax year. Some of the key changes in the forms generally used by employees (Forms ITR-1 and ITR-2) are mentioned below:

- **Form ITR-1 shall be applicable to individuals in the following cases:**
  - Those individuals are 'Resident and Ordinarily Resident' in India
  - Having income up to INR 5 million during the year, which includes salary income, income from one property and other sources such as bank interest, etc.
  - Additional detail is required in the form of a breakdown of remuneration
  - Details of property such as the nature of ownership (occupied or let-out), rental income received, local taxes paid, mortgage loan interest paid, etc. are now required to be provided in this form.
- **Form ITR-2 shall be applicable to individuals in the following cases:**
  - Having income from Capital Gains or income from multiple properties
  - Claiming foreign tax credits and/or short-stay exemption
  - Having assets in a foreign country
  - Having income from a source outside India
  - A key change in the form is the option to furnish details of foreign bank accounts to claim a refund of any tax dues. Previously, an Indian bank account was necessary. This is a welcome change, especially for expatriates.

Individuals are advised to ensure they file the appropriate tax return.

Date for linking AADHAAR

The CBDT has further extended the date for linking the AADHAAR (unique identification number) to the PAN and welfare schemes to 30 June, 2018. The date for linking the AADHAAR to an Indian bank account and mobile number has been extended indefinitely, until the Supreme Court of India delivers its judgement on petitions challenging the validity of the biometric scheme and the enabling law.

India & Hong Kong – Sign A Tax Treaty

In a step to improve transparency in tax matters and to curb tax evasion and avoidance, the Government of India and the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China have signed an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income.

The agreement provides articles on tie-breaker rules for determining treaty residency, dependent personal services and measures to eliminate double taxation between the countries. These are especially useful in respect of expatriates.

While the agreement was signed on 19 March, 2018, it will not come into force until it has been ratified by both countries.

IRELAND

Irish Payroll Tax System – Temporary Assignees

Summary

New guidance from the Revenue in Ireland with regard to the Pay As You Earn applications for non-Irish employees. Non-resident employers (in conjunction with associated Irish businesses) will need to put in place robust processes in order to track current and proposed temporary assignments to Ireland to ensure their Irish PAYE obligations are being met.

The Irish Revenue have updated their guidance on the application of the Pay As You Earn (PAYE) system in relation to non-Irish employments exercised in the State.

The payroll tax position on assignments to Ireland is now dependent on the following: -

- Whether the individual is resident in a country with which Ireland has a Double Taxation Agreement (DTA) or in a country with which Ireland does not have a DTA (referred to as non-DTA countries)
- Whether a DTA resident's Irish workdays are more or less than 60 days in one tax year
- Whether a DTA resident's Irish workdays are more or less than 60 days over two consecutive tax years
- Whether a DTA resident has Irish workdays over more than two consecutive tax years.

If resident in a non-DTA country then the above 60-day threshold is reduced to 30 days.

The revised guidelines will provide major practical challenges for employers with regard to the tracking of short-term assignments.

Ireland is moving to a Real Time Reporting system for payroll tax purposes

Historically, employers had the safety net of the exemption for up to 60 workdays in one tax year for residents of DTA countries. The updated guidelines will require employers to track all visits to Ireland, irrespective of length, and to consider the payroll tax implications of the assignment on a standalone basis, a cumulative year's basis and a rotational basis.

Added to that, Ireland is moving to a Real Time Reporting system for payroll tax purposes, effective from 1 January, 2019, and Revenue have indicated that there will be no special arrangements for foreign assignments albeit after a short transitional period.

MALTA

Qualifying employment in maritime activities and the servicing of offshore oil and gas industry activities (Personal) rules 2018

Summary

On 27 April, 2018, a new preferential tax rate was introduced, applicable to non-domiciled individuals employed by a Malta company to carry out maritime activities and services in the Offshore Oil and Gas Industry.

Please find below a summary of the main provisions:

- The Rules provide for a beneficial tax rate of 15% on the qualifying employment income derived from an eligible office, subject to a minimum annual salary (excluding fringe benefits) of €65,000. This results in a minimum annual tax of €9,750 without the possibility to claim any relief, deduction, credit or set off of any kind
- The employee must be employed by an undertaking that:
  a) Holds a Document of Compliance (DOC) issued in terms of the International Safety Management (ISM) Code or a Seafarer Recruitment and Placement Services Licence issued in terms of the Maritime Labour Convention, 2006; or
  b) Engages the particular individual for work on board any ship, excluding ships operating on regular services as well as ships whose use or operation requires certification in terms of the Commercial Vessels Regulations and which are berthed or anchored within the territorial waters of Malta or any port in Malta for at least a period of one month over a calendar year (referred to in the Rules as "Maritime activities"). For the purposes of the Rules, the term "regular services" shall have the meaning assigned to it in terms of the Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services) Regulations; or
  c) Carries on mainly a trade or business consisting in the Servicing of the offshore oil and gas and ancillary services industry (referred to in the Rules as "Servicing of the offshore oil and gas and ancillary services activities").

The beneficial tax rate is available from year of assessment 2017 for eligible offices in the Servicing of the Offshore Oil and Gas and Ancillary Services Industry, and from year of assessment 2018 for eligible offices in Maritime activities. The beneficial tax rate is available for a period of 5 years for EEA and Swiss nationals and for a period of 4 years for third country nationals. These can be renewed for a further 5 years and 4 years respectively.

It is crucial that all fully understand who these provisions apply to and who would qualify for this preferential tax rate. This could provide a significant saving for those in the offshore oil and gas industry.

NETHERLANDS

Dutch 30%-ruling – Updated from 2019

Summary

The favourable "30% Ruling" is to be altered with effect from 2019, with the maximum period it can apply reduced to 5 years. This will also affect extra territorial expenses.

The reduced period that the 30%-ruling will apply for will increase costs for both existing and new expats in the Netherlands. This will need to be reviewed to ensure that expats are not out of pocket. For those where tax equalisation is in place, this change will represent an increase in costs for the company.

Based upon Dutch tax law since 2001, it has been possible for some employees to receive a tax-free reimbursement for extra-territorial expenses. Extra-territorial expenses are expenses that occur because the expatriate employee is living outside their home country. In principle, the compensation for these extra-territorial expenses is based on the actual cost incurred by the expat.

The 30%-ruling was introduced for a specially defined group of expats. The 30%-ruling consists of a tax-free allowance of 30% of the taxable salary of these expats. The 30% tax-free amount is considered to cover extra-territorial expenses regardless of the actual costs incurred. Expats need to fulfil certain requirements in order for them to qualify for the 30%-regulation.

According to the current legislation, the 30%-ruling is granted for a maximum period of 96 months (eight years). This is expected to change to 60 months as of 1 January, 2019. According to a 2017 evaluation of the 30% ruling, 80% of the employees benefiting from the 30% ruling do not make use of it for more than five years. This is one of the reasons the maximum duration is being reduced. It will apply to both new and existing assignees with no transitional rules.

Please note that this new duration also applies to the payment of actual extra-territorial costs as well. Therefore, after the maximum 5 year period, it will no longer be possible to pay extra territorial costs tax free to employees.

SPAIN & CHINA

Social Security bilateral agreement signed between China & Spain

BDO Comment

Assignees working between Spain and China could continue paying social security contributions in their home country for up to 6 years (with possibility of an extension). It would be necessary to obtain the relevant certificate from the Social Security Authorities.

On 19 May, 2017, Spain and China entered into a bilateral agreement on Social Security, which came into force on 20 March, 2018.

The principal aim of the agreement is to avoid a dual social security liability for assigned workers and ensure the social protection of these workers.

Scope Of Application

The agreement is applicable to those who usually live and work in either Spain or China and are sent on assignment to the other country.

The Agreement is applicable to the following regimes:

SPAIN:

- Contributory pensions under the General Regime, except for those due to workplace accidents or occupational disease
- Unemployment contributions and benefits.

CHINA:

- Basic insurance for old age
- Unemployment insurance.

Period Of Application

The two countries have agreed a limit of six years during which the employees on assignment could apply the Bilateral Agreement. However, it is possible to apply for an extension if the Social Security Authorities of both countries agree.

Workers Seconded From Spain To China

The Bilateral Agreement would apply as follows:

The employee would continue paying their contributions to the Spanish Social Security system and therefore, those aspects included in the Bilateral Agreement relating to China would not be payable. However, the employee would have to pay contributions in China for health assistance, work accidents, occupational disease and temporary disability.

SWEDEN

Obligation to maintain Swedish personnel ledgers in additional industries

The Swedish Parliament has accepted that additional sectors should have the obligation to keep Swedish personnel ledgers from 1 July, 2018. The Swedish tax agency was commissioned by the Government to investigate how the system of personnel ledgers can be developed to include additional industries to oppose social dumping and the shadow economy.

The Decision

The new industries that will be required to keep personnel ledgers must follow the same rules that apply to restaurants, hairdressing and laundry businesses. The rules for the construction industry should therefore not apply to the new industries. The new decision also implies some minor changes to the current rules regarding personnel ledgers.

The new industries with an obligation to keep the personnel ledgers include Body & Beauty Care, Food & Tobacco Wholesalers and Automotive Service businesses.

The decision by the Swedish Parliament is based on the focus from the Government and the tax office to challenge the shadow economy and tax evasion. A number of changes were made with reference to these goals, such as previous extended obligations to keep personnel ledgers as well as the introduction of PAYE returns at an individual level.

PAYE returns at an individual level must be filed from 1 July, 2018 for companies that are liable to keep personnel ledgers under the previous rules, and have more than 15 employees. The remaining companies will be liable to file PAYE returns at an individual level from 1 January, 2019.

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