Global Tax Update

COVID-19/CORONAVIRUS

At the time of writing this update in early December, the world of global mobility continues to see an unprecedented challenge as a result of Covid-19/Coronavirus, although potential vaccines are now being approved, which provides added hope for positive change in 2021. Ever increasing globalisation is under pressure and business travel is still very slow. Access to some countries remains prohibited for non-nationals/citizens.

The reaction from Governments and tax authorities around the world has been relatively swift with a variety of special measures and relaxations introduced to help employers and employees navigate the immediate issues that arise with filing deadlines, payment of taxes and lack of mobility.

Summarising the huge volume of measures undertaken is a challenge with rules and positions still changing frequently. This article sets out measures introduced in Canada. For current up-to-date global changes, please do visit the BDO Global website www.bdo.global/en-gb/home.

CANADA

Employees working in Canada during Covid-19: important employer considerations

HR teams often seem to be the last to know the whereabouts of their employees. In the current Covid-19 pandemic environment, it would appear that tracking down employees can lead to some unexpected surprises. "Working from home" may turn out to be "working from a completely different country".

During this Covid-19 pandemic period, an individual employee may be tempted to relocate to Canada from their regular "home" jurisdiction. Since March 2020, we have become aware of a number of incidences where Canadian individuals living and working abroad return to Canada to live with family and work remotely. On the surface, the issues may seem trivial, however, digging a little deeper, the employee's temporary relocation to Canada can create significant reporting issues for both the individual as well as the employer.

When an individual is working in Canada on behalf of a foreign employer, a number of issues arise that need to be managed by both the individual as well as the employer. In particular:

1. The employee should consider their personal income tax liability arising out of physically working in Canada. The employee needs to be aware that regardless if their payroll is delivered outside of Canada (i.e. to a foreign bank account), employment physically rendered in Canada may trigger a significant Canadian income tax liability.
   If the employee continues to have income tax remitted in the country where the payroll is delivered, however, the primary tax liability is arising in Canada, a significant cashflow shortfall may arise. As well, spending significant amount of time in Canada during this pandemic may trigger Canadian income tax residency subjecting the individual to taxation on his/her worldwide income for the entire 2020 calendar year.
2. A foreign-based employer has an obligation to withhold and remit Canadian income tax and social security premiums on the wages earned by the employee in Canada. The employer will also have an obligation to report annual compensation details to the Canada Revenue Agency. Significant penalties for failure to remit the required source deductions can be levied.
3. The employee's activity in Canada may create significant corporate income tax reporting obligations for a foreign-based organisation. Penalties can apply for failure to file certain treaty-based corporate income tax reporting and the organisation may be subject to corporate income tax.

> When an individual is working in Canada on behalf of a foreign employer, a number of issues arise that need to be managed by both the individual as well as the employer

The Canada Revenue Agency issued administrative guidance in May 2020 (and later modified in August 2020), covering the period from March 16 to September 30, 2020, in regards to certain international aspects arising out of the COVID-19 crisis. Such guidance primarily covers circumstances arising due to travel restrictions imposed on the individual employee.

The focus of the CRA administrative relief for individuals and organisations applies in circumstances where an individual was visiting Canada when the travel restrictions were imposed and was unable to return to their country of residence. Where such a situation applied, the CRA offered some administrative relief including:

- Relief from possible personal income taxation arising from employment in Canada
- Relief from possible individual Canadian tax residency
- Relief from possible corporate permanent establishment.

While the intention of the administration relief is welcome, the actual potential application appears to be limited. In particular, the CRA commentary has been drafted in regards to circumstances involving an individual who has been essentially "trapped" in Canada and unable to return to their main country location due to COVID-19 travel restrictions.

In many situations, the choice of the individual to enter Canada has been a voluntary one, and there have been very limited restrictions in actually travelling back to their home country. On the surface and absent any additional commentary from the CRA, it would appear that the administrative relief provisions would not appear to provide relief in many situations as the employee likely could have returned to their "home" country at any time.

International employee travel is not something new for many organisations. However, some domestic organisations with no known international activities may unexpectedly be subject to Canadian reporting obligations when an employee relocates to Canada for a significant period during this pandemic. Human Resource, Payroll, Finance and Tax teams need to come together to understand their collective exposure arising from employee travel to Canada.

BDO Comment

The above comments are not only relevant to Canada and, regardless of the countries

involved, organisations need to reconfirm any assumptions made in regards to the location of its employees working from home during this pandemic period. Where individual employees are confirmed to be working remotely in another country, the organisation needs to understand its corporate payroll and income tax exposure and take necessary steps to properly be compliant with its obligations to minimise any penalty risk. With the typical tax regime calendar year ending now, time is of the essence.

SWEDEN

Legislative proposal regarding economic employer concept

New legislation is proposed to come into force from 1 January 2021. The implications of the change are that non-resident employees hired to a company in Sweden can become tax liable in Sweden. The employers' reporting obligation will increase, together with risks for further corporate tax liabilities.

Existing legislation implies that employees of a foreign company without a Swedish permanent establishment can work in Sweden for a period not exceeding 183 days during a 1-year period without Swedish tax liability.

The suggested new rules targets hired non-resident employees and would make them tax liable in Sweden. The hire is defined as an employee that is at the disposal of a Swedish company or a foreign company with a permanent establishment in Sweden for work in Sweden, and the employee will work with this company´s management and control working as an integrated part of that company. The suggested changes have the following implications for the foreign company:

- Foreign entities will have an obligation to register in Sweden for PAYE-purposes when their employees can be regarded as hired out to a Swedish entity or a Swedish permanent establishment
- Swedish entities will be obligated to withhold a preliminary tax of 30% upon payment of invoices from foreign entities who have business activities in Sweden by hired foreign workforce who are not registered for corporate tax purposes in Sweden
- Foreign entities who have business activities in Sweden will have to provide information to the Swedish Tax Agency due to the question of whether the business constitutes a permanent establishment in Sweden.

Exceptions to the rule of economic employer has been proposed to exclude employees that work for a shorter period than 15 workdays or a maximum of 45 consecutive workdays, in a calendar year in Sweden. Non-workdays are not to be included in the periods in Sweden.

BDO Comment

The new proposal has been discussed in Sweden for some years. The implementation of the economic employer concept is more in line with the rules in several European countries. The implications would see limited possibilities for foreign employers to second their workforce to Sweden for short-term temporary work without tax implications in Sweden. It will also follow that there will be an obligation for foreign employers to register as employer in Sweden.

This is a good time to review the frequent business travellers and implement routines for short-term visits to Sweden.

Foreign companies seconding employees to Sweden may have an increased risk of reporting obligations in Sweden as a result of the new rules if they are passed. Foreign companies conducting business in Sweden should review their present and future tax position.

> The UK Government confirmed plans to increase the Immigration Health Surcharge during the March 2020 Budget

UK

Immigration health surcharge

The UK Government confirmed plans to increase the Immigration Health Surcharge during the March 2020 Budget. The charges increased as follows for any applications made from 27 October 2020:

- £624 for all applications for entry clearance or leave to remain
- £470 for all other applicants, those under 18 years of age (and their dependants), students and some Tier 5 visa holders.

The increased fees will also apply to the UK's new Points-Based System as it begins to take effect at the end of the year. From 1 January, 2021, EU citizens wishing to come to the UK on a long-term basis will be subject to this levy.

Employers paying or reimbursing these costs for their employees should also consider the tax reporting requirements as HMRC generally considers these costs a taxable benefit in kind.

National Insurance - Transition Rules From 1 January, 2021

Introduction

The UK will see a number of changes come into force from 1 January, 2021 as a result of Brexit. One of the areas that will impact employees, and therefore businesses is the current social security regulations in respect of workers moving cross border within the EU (including EEA countries and Switzerland).

There is a transition period until 31 December, 2020 during which the current rules on social security coordination continue to apply.

Employee starting work in the EU, EEA or Switzerland before 1 January, 2021

Current European social security rules will be used to work out which country's social security scheme you will have to pay contributions to. This covers UK based employees who will start working in one or more of the EU, EEA countries and Switzerland before 1 January, 2021, and those from UK, EU, EEA/Switzerland working in one or more of those countries before 1 January, 2021.

Applying for an A1 certificate for a period that starts before 1 January, 2021

Provisions in the Withdrawal Agreement ensure that the current EU social security rules will continue to apply after 31 December, 2020, to certain individuals, whether a future relationship agreement between the UK and the EU on social security coordination is agreed or not.

Employers and individuals should continue to apply for A1s if they are to start working before 1 January, 2021, in a situation involving the UK and one or more of the EEA countries and Switzerland.

If HMRC has issued an A1 that started before 1 January, 2021, UK National Insurance contributions (NIC) will be payable for the period stated on the document. However, please see the 'Right to work in the EU, EEA and Switzerland after 31 December, 2020', part of this article if the certificate has an end date after 31 December, 2020.

Employees starting work in the EU, EEA or Switzerland after 1 January, 2021

The Withdrawal Agreement sets out the terms of the UK's withdrawal from the EU and provides for a deal on citizens' rights in Part Two.

- Part 2 of the EEA EFTA Separation Agreement
- Part 3 of the Swiss Citizens' Rights Agreement.

Applying for a A1 certificate for a period that starts after 1 January, 2021

Employers and individuals should continue to apply to HMRC for A1s for employees who are to start working after 31 December, 2020, in a situation involving the UK and one or more of the EEA countries and Switzerland. For example, an employee you send to work temporarily in France.

Whilst negotiations are ongoing, HMRC will only be able to process applications for A1s for employees in scope of the Withdrawal Agreement, one of the related agreements with EFTA countries and Switzerland. Further guidance will be issued in due course.

> Whilst negotiations are ongoing, HMRC will only be able to process applications for A1s for employees in scope of the Withdrawal Agreement, one of the related agreements with EFTA countries and Switzerland

Workers from the EU, EEA and Switzerland coming to the UK

If you employ a person from the EU, EEA or Switzerland before 1 January, 2021, and they have a A1 which shows they are subject to an EEA country or Swiss legislation, you will not have to pay UK NIC for the period stated on the A1, even if it ends after 31 December, 2020, so long as the employee's situation remains unchanged. If they have an A1 which shows they are subject to UK legislation, then UK NIC will be due.

If the employee is an EU, EEA or Swiss national and they haven't applied for settled or pre-settled status, they should consider registering with the EU Settlement Scheme by 30 June, 2021.

If you employ an individual from the EU, EEA or Switzerland who does not have an A1 and they work in two or more of any of the UK, EU, EEA countries or Switzerland, you or the employee should apply for an A1 to the social security institution of the country where they reside.

UK's future relationship with the EU

The UK Government has been clear that there will be changes to future social security arrangements for those individuals not in scope of the Withdrawal Agreement and the related agreements with EEA, EFTA countries and Switzerland. The Government continues to work with the EU to establish practical, reciprocal provisions on social security coordination which includes preventing dual concurrent social security contribution liabilities.

Right to work in the EU, EEA and Switzerland after 31 December, 2020

For periods after 31 December, 2020, employees should check the immigration rules in the country that they will be working in. Although Part Two of the Withdrawal Agreement protects social security coordination rights for certain UK and EU citizens, it does not protect the right to work in countries they are not resident in unless they are a UK national with rights as a frontier worker by 31 December, 2020. A frontier worker is a person who resides in either the UK or the EU, EEA or Switzerland who works in one or more of those countries but not the one they reside. So, this could affect individuals resident in the UK who work in the EU, EEA or Switzerland.

The UK's social security agreement with the Republic of Ireland

The UK has reached a reciprocal agreement with Ireland which ensures that social security coordination continues after 31 December, 2020 when considering moves by UK or Irish nationals between the UK and Ireland. The UK and Ireland have ensured that social security coordination continues on the same terms that are currently in place.

Refunds of NIC for Aircrew

If your employee's home base is or has been in the UK and you and they have paid UK, NIC, but they did not reside in the EU or UK at this time, a refund may be due.

Latest changes

On 2 December, we were advised by HMRC that The Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020 will ensure that, where no reciprocal agreement applies, the rules on payment of National Insurance contributions with respect to individuals moving between the UK and the EU (including EEA EFTA countries and Switzerland) will be the same as those for the rest of the world from 1 January, 2021. The "52 week" rules would therefore apply. The regulations and explanatory memorandum can be found on legislation.gov.uk here: www.legislation.gov.uk/ukdsi/2020/9780348215359/contents.

> As ever negotiations with the EU could continue up to the last minute and potentially even beyond 31 December. Do check with your BDO adviser for the latest information and any further changes to the above

BDO Comment

As ever negotiations with the EU could continue up to the last minute and potentially even beyond 31 December. Do check with your BDO adviser for the latest information and any further changes to the above.

Prepared by BDO LLP. For further information please contact Andrew Bailey on 0207 893 2946 or at andrew.bailey@bdo.co.uk