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Indonesia:

National Manpower Security Agency (BPJS Ketenagakerjaan) and National Healthcare Security Agency (BPJS Kesehatan)

Overview

The Indonesian government aims to have a universal social security system in place to cover all Indonesian citizens, and not only employees as in the previous system. The transition commenced with the establishment of BPJS (the National Social Security Agency), which is in charge of administering social security matters in Indonesia. Based on Law No. 24 of 2011, BPJS will replace the following social security institutions:

1. PT Jamsostek (Persero), to become BPJS Ketenagakerjaan (National Manpower Security Agency) – transformation to be completed in mid-2015; and
2. PT Askes (Persero) to become BPJS Kesehatan (National Healthcare Security Agency) – transformation was completed in early 2014.

National Manpower Security Agency – BPJS Ketenagakerjaan

Companies that have been participating in the previous programs will have their membership automatically transferred to BPJS Ketenagakerjaan. The current law does not provide an exclusion for expatriate employees; therefore, companies are encouraged to register their expatriate employees with the National Manpower Security Scheme, even if they remain covered by similar schemes overseas.

The contributions payable to BPJS Ketenagakerjaan are currently the same as the contributions to Jamsostek.

Companies are required to fund the following contributions on behalf of each employee:

- Occupational accident security: 0.24% to 1.74% of the employee's monthly wages (the rate varies based on the grouping of the business type).
- Old-age security: 3.7% of the employee's monthly wages.
- Death (life insurance) security: 0.30% of the employee's monthly wages.

Employees will be required to make a personal contribution to the old-age security, which is calculated as 2% of the employee's monthly wages.

Indonesian nationals can withdraw their old-age benefit funds when they reach retirement age, or when they are no longer working (subject to conditions). Non-Indonesian nationals can withdraw their old-age benefit funds when they leave Indonesia permanently. Income tax at concessional rate of up to 5% will apply upon withdrawal.

The government will also implement pension security scheme at the latest by 1 July 2015. The implementing regulation is yet to be issued.

National Healthcare Security Agency – BPJS Kesehatan

Companies must register themselves and their employees with BPJS Kesehatan by 1 January 2015.

Once registered, companies are required to facilitate payment of the monthly contributions to the BPJS. The mandatory monthly contributions for each employee are calculated on the employee's regular/fixed gross wages (subject to a cap of monthly wages of IDR 4.725.000), and are made up of 4% employer contribution and 0.5% employee contribution. The employee contribution portion will increase to 1% in July 2015.

Participation in BPJS Kesehatan covers up to five family members. Employees may add additional family members if required; however, they will be liable for an additional 1% contribution per family member per month.

The employee contribution portion paid by employees is not tax deductible for the employees under their personal income tax calculation, while the contributions made by the employers will be considered additional taxable income for the employees, and in most cases the employers can claim their contribution as deduction for corporate tax purposes.

Current Development

The Indonesian government has received a number of requests from insurance providers, as well as companies and entrepreneurs, to postpone the deadline for registration with the BPJS Kesehatan. They are concerned that the current public healthcare system may not be adequate as yet to offer a standard similar to what is offered by their private health plans. As a

result, companies may incur double benefit costs by participating in the government scheme while also maintaining their current health benefit plans.

On 22 December 2014, the BPJS Kesehatan responded to the request, and stated that the deadline for companies to register themselves with BPJS Kesehatan remains 1 January 2015. However, they agreed to provide an extension until 30 June 2015 for companies to start making payments to the BPJS Kesehatan. Those companies that register after 1 January 2015 will be considered late and may be penalized based on the prevailing law and regulations.

Deloitte's view

The mandate to register all residents of Indonesia under the national health care security scheme, and all workers in Indonesia under the national manpower security scheme, indicates a positive development within the Indonesian social security system. However, it is expected that the transition will require some time to complete.

Companies are advised to consider the following:

- Potential double coverage of social security in a case where expatriate employees remain covered in their home country social security scheme, as Indonesia currently does not have any social security agreement with other countries. Review their tax equalization policy and assignment agreements to confirm whether they provide protections from host country social security taxes, as well as the settlement arrangement between companies and employees in regard to the old-age benefits payout, where applicable.
- A discussion with their current health insurance provider to go through available options to ensure that companies will continuously meet their objectives, and to prevent overlapping of benefits.
- Communication to their employees concerning the implications for their net pay, as well as the benefits that they will get by participating in the government health care scheme.

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Ireland: SARP 30-Day Notification

Overview

Introduction of a requirement for employer certification within 30 days to claim Special Assignee Relief Program (SARP): Employers are required, for employees who wish to claim SARP, to certify to Revenue that an employee meets certain conditions. This certification must be made within 30 days of arrival in Ireland for individuals who arrive in 2015, 2016, or 2017.

Background

SARP is an income tax relief for certain individuals assigned to, or employed to, work in Ireland. This was initially available for individuals who arrived in Ireland in any of the tax years 2012, 2013, or 2014. The relief has been extended to individuals who arrive in Ireland in any of the tax years 2015, 2016, or 2017. Where certain conditions are satisfied, a relevant employee can, under the current SARP, make a claim to have 30% of his or her income above €75,000 (lower threshold) disregarded for income tax purposes and the relief can be claimed for a maximum of five years. There are a number of conditions to be satisfied to qualify for the relief, including the following conditions, which must be satisfied by the individual.

1. For the whole of six months, immediately before his or her arrival in Ireland, the individual was a full-time employee of a relevant employer and exercised the duties of his or her employment for that relevant employer outside of Ireland;
2. The individual arrives in Ireland at the request of his or her relevant employer to:
 - a. Perform in Ireland the duties of his or her employment for that employer, or
 - b. To take up employment in Ireland with an associated company and to perform duties in Ireland for that company;
3. The individual performs the duties referred to in paragraph 2 for a minimum period of 12 consecutive months from the date he or she first performs those duties in Ireland; and
4. The individual was not resident in Ireland for the five tax years immediately preceding the tax year in which he or she first arrives in Ireland for the purposes of performing the duties referred to in paragraph 2.

Certification

A new requirement applicable to individuals arriving in 2015, 2016, or 2017 is that employer certification is required up front. The employer must certify within 30 days of the individual's arrival that the individual satisfies the conditions 1 to 3 above. A new SARP claim form, SARP1, has just been published by Revenue for SARP claims from 1 January 2015. Employers should use this form to complete the required 30 day notification.

Deloitte's view

The introduction of the requirement for certification within 30 days is not ideal as this is a relatively short period. Based on the current legislation, failure to complete this certification on time would mean the individual does not qualify for the relief and could, strictly, not claim the SARP. It is unclear at this stage if there will be any flexibility in this regard. We recommend

that employers establish a formal process to identify employees who may qualify for SARP to ensure that the required certification to Revenue is completed within the required 30-day period.

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Ireland: Electronic Form RSS1 for Share Option Reporting

Overview

Introduction of Electronic Form RSS1 – Return of share options and other rights:

Companies are obliged to provide information to Revenue in relation to the grant, assignment or release of rights, the allotment of shares on the exercise of a right or the transfer of any asset under rights granted in accordance with Section 128(11) Taxes Consolidation Act 1997.

Currently, this information is provided on the Form RSS1, which must be filed by 31 March each year. The 2014 RSS1 is due to be filed by March 31, 2015.

Following the enactment of the Finance Act 2014, such information must be delivered in an *electronic format approved by the Revenue Commissioners*. The Revenue Commissioners have outlined that to facilitate this requirement. An electronic version of the Form RSS1 is currently in development and will be made available to customers and agents in February 2015. This electronic version will be in spreadsheet format, tailored to capture the Form RSS1 information, and will, according to the Revenue Commissioners, make it easier and quicker to complete and submit the form.

A further Revenue eBrief is expected issue when the electronic version of the Form RSS1 is available and is expected to include detailed instructions and explanatory notes for customers and agents on the completion and filing of the electronic Form RSS1.

Deloitte's view

The introduction of electronic filing of the form is to be welcomed, as historically it was quite a manual process. However, there will be a relatively short period between the expected release of the form and the filing date of March 31. We recommend that companies compile the required data as early as possible and do not wait for the actual form to commence this process. Penalties, both on the employer and the company secretary, apply for nonfiling of the form, so all employers should ensure they meet this filing obligation.

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Global Rewards Updates: Germany: Shares Acquired at a Reduced Price – Federal Court decision regarding valuation

Background

The Federal Tax Court (BFH) recently considered whether the acquisition of shares at a reduced price represents employment income. Although certain elements of the Court's decision were consistent with prior case law, the BFH seems to have departed from its previous position on the timing of the valuation of the benefit.

The court's decision

Tax point – In accordance with previous decisions, the BFH confirmed that a benefit in kind resulting from the acquisition of shares at a reduced price represents employment income only if it qualifies as consideration for providing services within the broad scope of the employment.

The court also confirmed its previous decisions as to when the tax liability arises, i.e. at the time the employee acquires the economic authority to dispose of the shares, which is when legal and economic ownership of the shares is transferred to the employee (generally at the time the shares are booked into the employee's custody account).

Taxable amount

However, deviating from its previous position, the BFH ruled that, when calculating the taxable benefit in kind, a taxpayer no longer should value the benefit at the time of the taxable event (i.e. when ownership transfers to the employee), but rather at the time of the legally binding sales transaction, when the employee and employer finally agree on the acquisition of the shares (e.g. generally at the time the employee notifies the employer they would like to exercise their share options or purchase discounted shares). According to the BFH, any change in value between the time of the sales transaction and the actual transfer of ownership is no longer based on the employment, but simply derives from the market.

Impact of the court's decision

As the BFH decision applies to shares acquired at a reduced price, it may impact discounted share options plans, share purchase plans where shares are purchased at a discount, or sharesave plans where the employee receives a discount to the option exercise price.

When applying the new valuation approach to standard employee share option plans, for example, the taxable option gain should be calculated by reference to the share quotation (i.e. the lowest listed price quoted on the relevant stock exchange) on the day the option is exercised (as this likely would be considered the legally binding sales transaction, in the case of an option exercise), and no longer at the time ownership in the shares transfers to the employee following the exercise of the option (when the shares are booked into the employee's custody account). The new valuation approach may make the fiscal administration of employee share plans easier in practice, since employers will no longer have to determine when the ownership of the shares is actually transferred to the employee when determining the taxable amount. Instead, they may simply look to the time of the legally binding sales transaction (e.g. exercise, in the case of share options).

Additionally, employers would no longer have to differentiate between different settlement methods. For example, for share options, prior to the BFH's decision the approach was as follows:

1. "Sell all" transactions (where all shares are immediately sold upon exercise) have always been valued by reference to the share price at exercise.
2. "Keep all" transactions (where the employee retains all of their shares following exercise) were generally valued by reference to the share price at the time the shares were released to the employee (i.e. booked in the employee's custody account) following exercise.
3. "Sell to cover" transactions (where, on exercise, some of the shares are sold to cover the tax due and the exercise price) required a combination of both valuation approaches.

According to the BFH, employers should now be in a position to simply use the share price on the day of exercise to calculate the taxable benefit in kind, irrespective of the chosen exercise method listed above.

The BFH's decision has been published in the Federal Tax Gazette but it is not yet clear whether the German tax authorities will follow the new valuation approach adopted by the BFH in practice, as the decision referred to a case where a third person, not the employee (a close member of his family), acquired the shares.

Action

Employers that would like to apply the new approach in the wage tax withholding procedure should consider requesting a binding wage tax ruling from the tax authorities.

Even if an employer continues to follow the former valuation rules, employees may apply to determine the benefit in kind in accordance with the new valuation approach in their annual

income tax return, if this would result in a lower taxable benefit in kind. Any amount overwithheld by the employer would be refunded to the employee.

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Global Rewards Updates: United States: Final Reporting Rules for Specified Foreign Financial Assets on Form 8938

Background

Effective from the 2011 tax year, certain United States (US) taxpayers holding non-US financial assets may be required to report additional information about those assets.

Generally, Form 8938 must be attached to the annual US tax return if the specified individual has an interest in specified foreign financial assets and the aggregate value of the specified foreign financial interests exceeds the applicable reporting threshold.

The applicable reporting threshold varies depending on filing status and whether the individual lives in the US.

Significant civil and criminal penalties may be imposed for failure to file Form 8938.

Recently, the Internal Revenue Service (IRS) issued final rules on the filing of Form 8938 providing additional clarification and addressing comments received since the issuance of the proposed and temporary rules on this.

Individuals required to report

Generally a “specified individual,” that may be required to file Form 8938, includes a US citizen, a resident alien, and a non-resident alien who elects to be treated as a resident alien.

Under the proposed and temporary rules, an individual who is classified as a resident alien under domestic US tax rules, but who claimed non-resident alien status under an income tax treaty with the US, was still considered a specified individual subject to the Form 8938 reporting requirements.

In response to comments, the final rules provide an exemption for certain dual resident taxpayers. Under this exemption, a dual resident is exempt from reporting non-US financial

assets on Form 8938 if the individual determines his or her US tax liability as a non-resident alien and claims a treaty benefit under an income tax treaty with the US, provided the individual timely files Form 1040NR and attaches Form 8833.

Specified foreign financial assets

In addition to being a specified individual, the individual must have an interest in a “specified foreign financial asset” to fall within the scope of Form 8938. A specified foreign financial asset generally includes the following:

- Any depository or custodial account maintained by a foreign financial institution,
- Any equity or debt instrument in a foreign financial institution, and
- Certain other foreign financial assets held for investment and not held in an account maintained by a foreign financial institution including stock and securities issued by non-US persons, an interest in a foreign entity, and any financial instrument or contract that has a non-US person counterparty/issuer.

Based on the proposed and temporary rules and informal IRS guidance, vested and unvested shares as well as stock options were considered reportable assets for the purposes of Form 8938.

However, the final rules clarify that only vested property is considered a reportable asset for the purposes of Form 8938. Unvested property (including unvested shares) generally may be disregarded for purposes of Form 8938 until the time of vest, unless the individual makes a valid election to include the assets in income for income tax purposes (an 83(b) election). Stock options are generally not considered property and are not considered a reportable asset until exercise.

Reporting thresholds

Specified foreign financial assets should be reported if their aggregate value exceeds the thresholds below:

- Unmarried Taxpayers or Married Taxpayers filing separately, and living in the United States – \$50,000 on the last day of the tax year (or \$75,000 at any time during the tax year).
- Married Taxpayers filing jointly living in the United States – \$100,000 on the last day of the tax year (or \$150,000 at any time during the tax year).
- Taxpayers not filing a joint return who are living abroad and otherwise qualify for the foreign earned income exclusion – \$200,000 on the last day of the tax year (or \$300,000 at any time during the tax year).
- Married Taxpayers filing jointly who are living abroad and otherwise qualify for the foreign earned income exclusion – \$400,000 on the last day of the tax year (or \$600,000 at any time during the tax year).

Specified foreign financial assets should be reported on Form 8938 in US dollars. If the asset is denominated in foreign currency, the maximum value is first determined in the foreign currency and is then converted to US dollars at the taxable year-end spot rate for converting

that currency. Specific guidelines are provided to determine the exchange rate that should be used.

The final rules clarify that the maximum value may be determined based on a periodic account statement showing the currency conversion of foreign assets if a statement is provided at least annually by or on behalf of a financial institution maintaining an account.

Note, the IRS declined to eliminate Form 8938 reporting in situations where similar information is also reported on FinCEN Form 114 (formerly, Form TD 90-22.1, Report of Foreign Bank Account and Financial Accounts (FBAR)).

Action

Reporting and income inclusion associated with foreign accounts and assets continues to be a focus for the IRS. Taxpayers should be diligent in determining their taxable income and fulfilling any reporting obligations, including Form 8938 reporting.

Employees should determine if they are specified individuals and value their specified foreign financial assets held to determine whether the applicable reporting threshold is met. Consultation with the individual's personal tax advisor is recommended to determine whether and how these rules apply to the individual's situation.

Employees should monitor US tax reporting practice and rules for further clarification from the IRS.

Employers should consider providing employees with informational guidance on Form 8938 when drafting employee communication.

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