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Individual tax alert
News you can count on

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Belgian tax authorities to launch targeted audits on foreign executives benefiting from the special tax status for over eight / ten years

The special tax status for foreign executives allows a (deemed) non-residency tax status that applies as long as the foreign executive is not found to have established his residence or center of his economic interests in Belgium.

The non-residency status must be based on a set of precise and consistent elements highlighting the temporary nature of the presence in Belgium. Such elements are, among others:

- the fact that the spouse or children continue to reside abroad;
- the availability of a house outside Belgium;
- the ownership of real or personal property outside Belgium;
- the possibility that the executive can, because of the close ties with the foreign enterprise or in execution of contractual obligations, be transferred to another country;
- the fact that the children follow courses in private or international schools in Belgium or courses abroad;
- the existence of a life insurance contract in the country of origin;
- the continued coverage by a foreign social security legislation;
- the continued participation in foreign group insurance plans, or any other pension plan.

In line with the practice already observed for some time, Belgian tax authorities have announced their intention to launch a systematic audit campaign starting before the end of 2013, focusing on foreign executives benefiting from the Belgian special tax regime for eight years or more.

The eight / ten year threshold will be calculated from the first arrival date in Belgium (with the current or a previous employer).

Authorities will send the concerned companies a letter and a list of employees identified as having been in Belgium for at least eight / ten years, requesting that they submit a net balance of foreign and Belgian assets per employee concerned. The time frame to gather the information and to respond to the tax authorities will be one month from the letter’s posting date (requesting an extension will in principle be possible).

In case insufficient proof is provided (i.e. should it appear that a foreign executives' center of personal and economic interests did not remain outside of Belgium or in their home country), the special tax status of the employee concerned will be cancelled from 1 January 2014 (even if the tax authorities' decision occurs in first or second quarter of 2014).

Deloitte's recommendations

Companies with a population of foreign executives benefiting from a special tax status for a longer period of time should be prepared for questions by the tax authorities. It is advisable to review the factual situation of the concerned population to determine whether the temporary nature of the presence in Belgium can still be supported.

Other recommendations are the following:

- Inform the concerned expatriate population of a potential upcoming tax audit;
- Collect all relevant information in order to prepare the net balance;
- Assess the impact of a potential removal of the special tax regime, doing so from an employer and employee perspective;
- Consider a conservative approach in the 2014 year-start calculation of the concerned population;
- Consider alternative (sustainable) tax planning;

What Deloitte can do?

The Deloitte Global Employer Services team can help companies adapt, as accurately as possible, to the strengthened audit of their foreign executives population.

Such assistance can take many forms including individual meetings or group presentations as well as a review of individual files on a case by case basis, with recommendations aiming at helping maintain an expatriate tax status.

Contact

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