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Global Employment Solutions

Global InSight

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France:
French social surtaxes on investment and rental income: Opportunity to request a refund of surtaxes paid with regard to 2012 and 2013 income

Overview

Taxpayers subject to French income tax (residents and nonresidents on certain investment income) are liable to additional social surtaxes at a flat rate of 15.5% (8.2% CSG, 0.5% CRDS, 4.5% social withholding, 0.3% additional contribution, and 2% solidarity tax) on their investment income.

This income includes rental income, interest income, dividend income, life annuities, capital gains on personal and real property, and potentially equity income for shares/options.

The decision rendered by the Court of Justice of the European Union and its tax consequences in France

The decision rendered by the CJEU on February 26, 2015, upon request for a preliminary ruling introduced by the French “Conseil d’Etat” (administrative supreme court), states that investment income should not be subject to French additional social surtaxes when the taxpayer is affiliated to a non-French European social security scheme. This follows the single state legislation principle (article 13 of the EU regulation n° 1408/71), under which individuals are subject to the social security legislation of a single Member State only.

The “Conseil d’Etat” is now obliged to rule in accordance with the CJEU position.

Deloitte's view

Even before the final ruling is issued by the French court, we recommend that tax payers file claims for refunds of the overpaid French tax. Thus, we advise taxpayers (both resident and or non-resident of France) who have investment income and are affiliated to a European social security scheme other than France's to file refund claims with the French tax authorities before December 31, 2015 for income received in 2012 and before December 31, 2016 for income received in 2013.

Of interest is the scope of the CJEU decision, which is not limited to the facts of the case at hand. Indeed, our viewpoint is that the decision applies to (1) French residents covered by a non-French European social security scheme and (2) more broadly, any resident of an EU Member State covered by the social security scheme of any other Member State (notably nonresidents of France who receive certain French source investment income). Social surtaxes for 2014 may be automatically claimed by the tax administration on tax bills issued in 2015. We recommend verification and a timely filing of claims upon receipt of the bill in order to request suspension of payment.

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Global Rewards Updates:
Australia: Legislation introduced to reform employee share scheme tax rules from 1 July 2015

Background

Further to our Global Rewards Update, January 2015, the Australian Government has introduced a Bill to Parliament in relation to amendments to the employee share scheme (ESS) tax rules. The amendments are proposed to apply to ESS interests acquired (e.g. options or restricted stock units granted) on or after 1 July 2015.
URL: http://tax.cmail2.com/t/r-i-qkhao-l-j/

We have highlighted below further changes made since the time of the draft amendments to the introduction of the Bill.

Although the Government has picked up many suggested technical amendments to ensure that the legislation has the desired effect, it has acknowledged in its announcement that some may think the changes still do not go far enough.

Reversing and improving certain parts of the 2009 reforms

Automatic exercise of rights – restricted stock units: The Government has clarified that the interpretation of "exercise" includes situations in which the right is automatically exercised as a result of a contractual obligation between the employee and the provider of the ESS interest or because features of the right result in its automatic conversion into shares when certain pre-conditions are met. This means that awards which have automatic delivery of shares at vesting (e.g. restricted stock units) will be treated as being "exercised" upon vesting for the purposes of the new rules.

Relaxing the significant ownership and voting rights limitations: Under the existing rules, in order for awards to be taxed at the deferred taxing point rather than at acquisition, certain conditions need to be met. One of these conditions requires that immediately after the acquisition of the ESS interests, the participant does not have ownership or voting rights of more than 5% in the company. The Bill confirmed that the limitation will double from 5% to 10% for awards acquired on or after 1 July 2015.

In our Global Reward Update of January 2015, we questioned whether, when determining this percentage, "interests" includes only those interests which have vested and can be exercised or whether it includes all interests. The Government has indicated in the Bill that all interests are considered for the ownership limit. This therefore includes interests employees have a right to acquire, interests acquired from the exercise of previous ESS interests and interests acquired outside of an ESS arrangement as well as interests held by associates.

Updated market value valuation table: In the amendment there was a proposal made to update the market valuation table for unlisted rights. As the proposed valuation table is limited to 10 years, Deloitte raised a question on how to determine the market value of unlisted rights beyond 10 years. The Government indicated that they are working on their compliance cost savings method and the updated market valuation table will remain on the agenda for consideration in the future.

Plan rules must expressly state that tax deferral treatment applies to defer the taxing point: The proposed law requires plan rules to expressly state that tax deferral treatment applies to the plan from 1 July 2015 onwards. To meet this requirement, the Australian Tax Office (ATO) has acknowledged the compliance difficulty with alterations to plan rules for international plans and clarified that a statement in the employee offer document would be sufficient to fulfil this requirement.

However, the Government has not clarified the position for an individual who goes to Australia holding an existing ESS interest which was acquired whilst overseas.

Other changes: Other changes that were introduced in the Bill for awards acquired on or after 1 July 2015 include:

- Allowing the Tax Commissioner discretion with respect to the three year holding rule when the holding period is not met due to circumstances beyond the control of the employee.
- Ensuring that ESS interests deemed to have a nil value (e.g. premium priced options) are treated within the ESS provisions and are not subject to fringe benefits tax. The Government has stated that this amendment applies to the 2011/12 income year and later income years to align with existing amendment periods.

Concessions for interests in small start-up companies

The Bill confirms the inclusion of the start-up concessions introduced in the draft amendments. As outlined in our Global Reward Update of January 2015, where a start-up company's ESS and the employer meet the concession conditions, the employee will not be subject to income tax on the ESS interest discount and instead will be subject to capital gains tax rules.

The Bill also provides clarification to questions we previously raised such as whether it is relevant if a company is listed. The Government considers that the listing of a company demonstrates that the company is in an advanced period in its development where concerns around ESS compliance costs and liquidity are likely to be less prohibitive. Therefore, listed companies remain excluded from this concession.

Deloitte also raised a question in respect of whether the A$50 million aggregated turnover threshold includes affiliates and connected organisations. The Government has clarified that any investments by a tax exempt entity which is a "deductible gift recipient" or eligible venture investments by venture capital funds in start-ups will be excluded from the aggregate turnover and other grouping tests when determining eligibility for the start-up concession.

The Government has also clarified that determination of (i) whether the company has been incorporated for less than 10 years, (ii) whether the company has aggregated turnover not exceeding A$50 million, and (iii) whether the company is not listed on an approved stock or securities exchange, should be made at the end of the income year before the acquisition (i.e. grant) of the relevant ESS interest. These conditions must be met in order for a company to be classified as a start-up company and to therefore be eligible for the concession.

The Government also proposed one other prominent change, which is that the 50 percent capital gains tax discount will be available for options issued under the start-up concession which are held for at least 12 months, even if the underlying shares are sold within 12 months of exercise.

Action

Companies considering granting awards on or after 1 July 2015 should review the impact of the proposed ESS rules and may wish to consider amending their plan rules, or introducing new plans, to meet the requirements for more favourable tax treatment under the proposed rules.

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