Global Employment Solutions

Global InSight

Moving together. Making tomorrow.

29 January 2016

In this issue:

Canada:
Employer certification: The much awaited relief for nonresident employers is here

Overview

The Department of Finance and the Canada Revenue Agency (CRA) have responded to feedback from the international business community with the release of Form RC473, Non-Resident Employer Certification, and related guidance to accompany the proposed changes to the payroll withholding and reporting rules for nonresident employees who are exempt from Canadian tax by virtue of a tax treaty. Such changes were originally proposed as part of the 2015 federal budget and were subsequently amended on July 31, 2015. The new regime allows qualifying nonresident employers to apply for certification and, once approved, be relieved from Canadian tax withholding and, potentially, reporting requirements for payments to qualifying nonresident employees.

While the budget proposal which introduced these measures has not yet been enacted, the CRA has indicated that it will implement the certification process effective January 1, 2016.

Background

Historically, Canadian tax rules required all employers to withhold Canadian income tax from remuneration paid to nonresident employees providing services in Canada. Such obligation applied despite the fact that an employee might have been exempt from Canadian tax on such earnings as a result of a tax treaty that Canada had entered into with the employee's country of residence. Such withholding obligation is referred to as "Regulation 102 withholding." In an effort to mitigate the cash flow challenges imposed by Regulation 102 withholding, the CRA allowed employees to apply for a waiver of such obligation on a case by case basis. Such waiver process generally was found to be administratively burdensome and, in some cases, impractical, as a separate waiver was required to be sought for each individual employee and was also required to be received in advance of the services being provided. Employer certification is designed to mitigate or completely eliminate many of the administrative challenges inherent in this waiver application process. This process will remain available, however, for employers and employees that either do not qualify for the new certification program or are otherwise better serviced by the existing waiver program.

Employer certification

Any employer that is a resident of a country with which Canada has a tax treaty is eligible to apply for certification. In addition, partnerships where 90% or more of their annual income is allocated to partners resident in countries with which Canada has a tax treaty and US limited liability companies are also eligible to apply for certification.

Once an employer has become certified as discussed below, it will not be subject to Regulation 102 withholding on payments to a qualifying nonresident employee. The definition of a qualifying nonresident employee is one who:

- Is resident in a country with which Canada has a tax treaty at the time of payment;
- Is not liable to income tax on the payment because of the tax treaty; and
- Has less than 45 workdays in Canada in a calendar year or is present in Canada for any purpose for less than 90 days in any 12-month period.

In addition, where the qualifying nonresident employee earns less than CAD $10,000 of Canadian-source compensation during the year, the annual requirement to report such remuneration on Form T4 is waived. The waived T4 filing obligation is significant since it also removes the need for the employee to apply for and obtain a Canadian taxpayer identification number.

Form RC473, Non-Resident Employer Certification: Form RC473 must be completed and submitted to the Pacific International Waivers Centre of Expertise located in the Vancouver Tax Services Office. The CRA has designated this office to process all applications related to employer certification so that applications can be reviewed on a timely and consistent basis. The CRA recommends filing the application at least 30 days in advance of when the employer wishes the certification to be effective. The application requires the nonresident employer to have a CRA Business Number (BN) or, alternatively, the nonresident employer can apply for a BN along with the application. Other than a BN, the application does not require any additional supporting documentation to be included. The CRA has indicated that any further information necessary to process the application will be requested on a case-by-case basis.

Once the application is processed, the CRA will inform the employer, in writing, that it has been approved for employer certification and the effective date. Until such approval is received, the employer is required to withhold Canadian tax at source or ensure that an appropriate waiver has already been received by the employee. An approved certification application is valid for a period of up to two years.

The form has five sections and requires employer identification, representative and employer information, residency declaration and certification. The form also notes that the employer must inform the CRA immediately, in writing, of any changes to the information submitted or if the employer or employees no longer meet the conditions specified therein.

Employer obligations: The form lays out employer obligations resulting from certification. These obligations include:

- Tracking and recording the number of days each qualifying nonresident employee works or is present in Canada and the income attributable to these days on a proactive basis;
- Determining whether the employee is a resident of a country with which Canada has a tax treaty;
- Evaluating and documenting whether the qualifying nonresident employee's remuneration is expected to be exempt from Canadian tax under the relevant tax treaty;
- Determining whether the qualifying nonresident employee either works in Canada for less than 45 days in the calendar year that includes the time of payment, or is present in Canada for less than 90 days in any 12-month period that includes the time of payment;
- Obtaining a BN, and, if required to make remittances, a program account for payroll purposes;
- Completing and filing a T4 Summary and Information Return for those employees earning in excess of CAD $10,000 of Canadian source remuneration for the year;
- Filing any necessary Canadian corporate income tax returns for calendar years under certification; and
- Upon request, making books and records available in Canada for inspection by the CRA for purposes of administrating the employer certification agreement and the Regulation 102 withholding requirements.

In addition, the CRA has clarified that even where a qualifying employer is exempt from income tax withholding, the employer may still be required to withhold Canada Pension Plan contributions and/or Employment Insurance premiums, subject to exceptions given under these regimes.

Where an employer has received certification approval from the CRA, such status can be revoked should the CRA determine upon inspection of the books and records that the employer has not fulfilled the above obligations.

As a result of the CRA's ability to revoke an employer's certification status upon discovery of a violation of one of the above obligations, it is imperative that employers take the actions necessary to develop and implement processes and procedures that will allow for the tracking of employee presence in Canada both for work and nonwork purposes over different time periods. In addition, adequate internal controls should be implemented to ensure the tracking data is reliable. Failure to implement such tracking system prior to applying for and receiving employer certification can lead to an increased risk that the CRA will revoke certification. Revocation of an employer's certification may lead to difficulties in receiving approval upon reapplication.

Transitional period: The CRA has offered a transitional window period for an employer to become certified and any application received during this period will allow for the certification period to be backdated to January 1, 2016. For any application filed after the window period, the employer must continue to withhold and remit tax on payments made to employees, unless an employee-specific waiver has been obtained. The CRA has not yet indicated whether any additional transitional relief will be available in respect of the 2016 calendar year, given the timing of the application form's release.

Deloitte's view

The Department of Finance and the CRA have taken welcome steps to reduce administrative burdens previously placed on nonresident employers providing services in Canada. The new employer certification program should allow for organizations to effectively and efficiently manage their obligations while at the same time protecting the CRA's enforcement abilities to ensure that the proper amount of Canadian tax is assessed and collected.

The time for employers to take advantage of these much desired changes is now. This means that if they have not already done so, nonresident employers with nonresident employees performing services in Canada should take the necessary steps to develop the proper internal policies and procedures in order to allow them to meet their obligations under the certification process.

— Lorna Sinclair (Toronto)
Partner
Deloitte Canada
losinclair@deloitte.ca

Fatima Laher (Toronto)
Partner
Deloitte Canada
flaher@deloitte.ca

Christina Diles (British Columbia)
Partner
Deloitte Canada
cdiles@deloitte.ca

Jeff Paisley (Calgary)
Senior Manager
Deloitte Canada
jpaisley@deloitte.ca

Maria Tsatas (Quebec)
Partner
Deloitte Canada
mtsatas@deloitte.ca

Shivani Joshi (Toronto)
Manager
Deloitte Canada
shivjoshi@deloitte.ca

Italy:
Italian government has recently introduced significant modifications to the foreign tax credit rules

Overview

The Italian government has recently issued the Legislative Decree N. 147/2015 introducing significant modifications to the foreign tax credit (FTC) rules, essentially in order to align the regime applicable to all kind of taxpayers (both individuals and legal entities).

Background

According to Article 165 of the Italian Tax Code, basically the following conditions have to be met in order to claim the FTC in the tax return:

- Taxable income includes incomes produced abroad.
- Foreign taxes have to be paid in “a definitive way” before the deadline for filing the Italian tax return (i.e., September 30th). If such condition is not met, the claiming of the FTC is postponed and claimed in the following tax return, when the foreign taxes will be definitively paid by the filing deadline. A foreign tax is “definitively paid” when it can be considered as final for the taxpayer (i.e., not paid in advance or with the possibility to be refunded);
- Foreign taxes can be deducted from the Italian tax liability, respecting specific limits provided by the law.

Modifications introduced by the Legislative Decree N. 147/2015

The Legislative Decree introduced important changes in the FTC regime, extending to individuals-specific provisions previously applicable to legal entities only.

In particular, the modifications will have an impact on:

1. Timing allowing the taxpayer to anticipate the claiming under specific circumstances and
2. The amount of the FTC that can be claimed.

With reference to the timing, the new rule provides that the FTC can be claimed in the Italian tax return related to the FY in which foreign incomes are produced, even if foreign taxes will be definitively paid within the deadline for filing the tax return related to the first following FY.

Deloitte’s view

The new legislative decree has introduced important changes that could have a positive impact on FTC in terms of possibility to:

- Anticipate the claim of the FTC;
- Claim an additional tax credit considering the exceeding quota of foreign taxes over Italian ones during an eight-year period; and
- Claim the FTC for taxes not expressively mentioned by treaties against double taxation.

Waiting for the official clarifications from the Italian tax authority, the new rules grant opportunities even if this will imply an additional and intensive monitoring activity of the FTCs. Moreover, the new provisions could have a positive impact also on companies with expatriates since generally under the tax equalization policies, the FTC has to be reimbursed to the employers.

— Roberto Rocchi (Rome)
Partner
Deloitte Italy
rrocchi@sts.deloitte.it

Singapore:
Updates on individual tax filing requirements for FBTs and clarification on individual tax treatment

Clarification on individual tax filing requirements for frequent business travelers (FBTs) (updated)

Generally, an employer is required to notify the Inland Revenue Authority of Singapore (IRAS) by filing the Form IR21 (Notification of a noncitizen employee's cessation of employment or departure from Singapore) for its employee who is neither a Singapore citizen nor Singapore Permanent Resident (SPR) (under immigration rules) or is an SPR who is leaving Singapore permanently (including on overseas posting for a period of more than three months) on cessation of employment in Singapore, at least one month before the expected date of cessation of employment or departure from Singapore, whichever is earlier.

In addition, the employer is required to withhold all monies due and payable to such employee until the expiry of 30 days after the receipt by the IRAS of such notification, or until tax clearance is obtained from the IRAS, whichever is earlier.

Where the employee's tax liability is fully borne by the company, the IRAS will grant a two-month extension of time from the cessation date to file the Form IR21 and the withholding of monies may not be required.

In view of the practical issues faced by employers in meeting the tax clearance filing timelines for foreign employees who have employment bases outside Singapore (i.e. exercising employment outside of Singapore) but are required to make frequent business trips to Singapore (i.e. FBTs) and as additional time may be required to obtain the Certificate of Residence (COR) from the relevant countries for FBTs that may claim for tax exemption under an Avoidance of Double Taxation Agreement, the IRAS has clarified the timeline for the filing of the tax clearance returns for the FBTs as follows:

Category of FBT	Submission Deadlines
The work has ended and the FBT will not be making further business trips to Singapore [with or without work pass obtained]	Two months from the date of last business visit. *Example:* *Date of last business visit: 30 November 2015* *Due date to submit Form IR21: 31 January 2016*
The company cancels the work pass of the FBT or the work pass expires	Two months from the date of cancellation or expiry of the work pass, whichever is earlier. *Example:* *Date of cancellation: 30 November 2015* *Expiry of work pass: 31 December 2015* *Due date to submit Form IR21: 31 January 2016*
FBTs with no work pass obtained	The company has until 31 January of the following year to complete an annual review of the travel days of the FBT to Singapore. The company has to file the Form IR21 by 31 March (i.e. two months from 31 January of the following year). **Update:** The IRAS has indicated that where the Form IR21 cannot be filed by 31 March, an extension of time would be granted until 30 June (i.e. five months from 31 January of the following year). *Example:* *The FBT made five business trips to Singapore during the year 2015 and is still required to make three business trips to Singapore during the year 2016.* *Extended due date to submit Form IR21 for the year 2015: 30 June 2016 (updated)* *Due date to submit Form IR21 for the year 2016: Two months from the date of last business visit in the year 2016*

Category of FBT	Submission Deadlines
FBTs whose business trips straddle over more than a year and work pass is obtained	The company is required to prepare the Employer Return of Employee Remuneration (Form IR8A) and provide the same to the FBT by 1 March of the following year. If the company is under the Auto Inclusion Scheme (AIS), the company is required to electronically transmit the same to the IRAS (via submission of Form 8E) by 1 March of the following year. The FBT is required to file his Singapore tax return (Form B1/Form M) by 15 April of the following year or e-file by 18 April of the following year. *Example:* *The FBT made five business trips to Singapore during the year 2015 and is still required to make three business trips to Singapore during the year 2016.* *Due date to prepare Form IR8A/e-file Form 8E for the year ended 31 December 2015: 1 March 2016* *Due date to submit/e-file Form B1 for the Year of Assessment 2016 (income year 2015): 15 April 2016 (paper filing)/18 April 2016 (e-filing)* *Due date to submit Form IR21 for the year 2016: Two months from the date of last business visit in the year 2016*

Please note that the above tax clearance filing timelines apply to FBTs who have exercised employment in Singapore for more than 60 days in the calendar year.

For FBTs who have made business trips to Singapore for not more than 60 days during the calendar year, they may be treated as short-term nonresident visiting employees and may be exempt from tax in respect of income from employment of not more than 60 days under Section 13(6) of the Singapore Income Tax Act. However, please note that Section 13(6) does not apply to income derived by a director of a company.

Please note that the extension of time until 30 June to file the Form IR21 is not extended to FBTs with work passes.

Please also note that for the FBTs to avail themselves to the respective filing extensions, the employer has to indicate that the employee is an FBT by way of a covering letter when submitting the Form IR21 to the IRAS, together with the FBT's travel schedule.

For companies who are e-filing the Form IR21 via the IRAS' External Value Network (EVN) system, please e-file the covering letter using document type "ATTREQ-TA."

IRAS acceptable rates for per diem allowances for FBTs travelling to Singapore [with effect from the year of assessment 2017 (income year 2016)]

Any income derived by FBTs in respect of employment exercised in Singapore should generally be considered Singapore-sourced and subject to tax in Singapore, unless exemption of income in Singapore is available under domestic legislation or tax treaty. This includes any per diem allowances that are given to FBTs travelling to Singapore for business purposes.

Currently, per diem allowances received by Singapore-based employees who travel outside of Singapore for business purposes pursuant to their Singapore employment will not be subject to tax in Singapore if they are below the IRAS acceptable rates published for the respective country(ies) for the relevant income year. Any per diem allowance received in excess of the IRAS acceptable rate will be subject to tax in Singapore.

To rationalize the tax treatment of per diem allowances received by FBTs travelling to and from Singapore, the IRAS has published an acceptable rate of SGD 141 per day for per diem allowance given to FBTs travelling to Singapore for business trips on or after 1 January 2016, which will be tax exempt.

The Singapore individual tax treatment and employer tax reporting requirements of the per diem allowances paid to FBTs on business trips to Singapore on or after 1 January 2016 are summarized as follows:

	Allowance not exceeding acceptable rate	**Allowance above the acceptable rate**
Taxable?	No	Yes
Reportable in Form IR8A/IR21?	No	Yes. To report the amount in excess of acceptable rate

The IRAS will review and publish the acceptable rate for the following year in December each year. Once the rate is published, no changes will be made so that the same rate will apply to all employees.

Please note that the IRAS acceptable rate for per diem allowances will only be applicable for FBTs on business trips to Singapore. This will not be applicable to employees who are assigned to exercise employment in Singapore, including employees on short-term assignments in Singapore. For per diem allowances received by employees on assignments in Singapore, the full amount will be subject to tax in Singapore, notwithstanding that the amount may be below the IRAS acceptable rate.

Clarification on individual tax treatment for accommodation and travelling and entertainment expenses incurred by FBTs

For FBTs on business trips to Singapore on or after 1 January 2016, the IRAS has clarified that the following expenses incurred by the employer would not be taxable in Singapore in the hands of the FBTs:

- Accommodation
- Travelling and entertainment (which have been expended for business purposes)

Where the FBT is paid a fixed cash allowance to cover business expenses during business trips to Singapore (e.g., hotel costs; travel from hotel to client's office, airport, or place of work; entertainment with clients) and the same are not reimbursed by the employer, the IRAS has clarified that the employer should ascertain the actual amounts expended for business purposes and exclude the same for tax reporting purposes. Nevertheless, where the business expenses incurred are lower than the amount of allowance paid to the FBT, the excess of the allowance is taxable and reportable by the employer accordingly. Receipts to substantiate the business expenses incurred should be retained should the IRAS requests for the same.

Deloitte's view

With the extension of the filing deadline until 30 June for the submission of tax clearance returns for FBTs with no work passes, it appears that the IRAS has recognized the difficulties for employers to be compliant with its tax reporting requirements in respect of FBTs into Singapore on timely basis. The extension of the filing deadline from 31 March to 30 June will give employers additional time to collate information of employment income from home country employers and obtaining the COR, if treaty exemption is applicable, from home country tax authorities. This should mitigate the risk of employer being penalized for late filing of the tax clearance returns and the enforcement action taken by the IRAS for such late filing.

It is, however, important to note that the IRAS has not extended the same 30 June filing deadline to FBTs who have obtained work passes, although similar challenges are also faced for such FBTs.

Nevertheless, it is increasingly clear that the IRAS expects companies to review their tracking mechanisms for FBTs into Singapore and also implement processes to collate the necessary compensation information required to fulfil the tax reporting requirements, to avoid penalties and enforcement actions by the IRAS.

Separately, the introduction of the IRAS acceptable rate for per diem allowances received by FBTs travelling to Singapore for business purposes should be a welcomed development for employers as this reduces the tax burden for FBTs travelling into Singapore and rationalizes the tax treatment for such payments received by FBTs travelling into and from Singapore. The clarity by the IRAS on the individual tax treatment of the accommodation and travelling and entertainment expenses incurred by FBTs also seeks to provide guidance and reduce the tax burden for FBTs travelling into Singapore.

— Jill Lim (Singapore)
Partner
Deloitte Southeast Asia
jlim@deloitte.com

Sabrina Sia (Singapore)
Director
Deloitte Southeast Asia
ssia@deloitte.com

Sarah Lane (Singapore)
Director
Deloitte Southeast Asia
sarahlane@deloitte.com

Ukraine:
Changes in the Ukrainian personal income taxation and compulsory state social security system

Overview

Recently, the Ukrainian Parliament has adopted the Law "On amending the Tax Code of Ukraine and certain legislative acts of Ukraine in terms of ensuring the balanced budget receipts in 2016". The Law introduces changes in the Tax Code of Ukraine (hereinafter, the "TCU") and other laws in respect of Personal Income Tax and Unified Social Security Contributions. Below you may find a brief summary of the key provisions of the adopted law that became effective on 1 January 2016.

Major changes to Personal Income Tax (PIT):

- The tax rate decreased from 20% to 18% and shall be applied to the total amount of the taxpayer's taxable income.
- Tax rate on the passive income (interest, dividends on shares and/or investment certificates paid by mutual investment institutions, etc.) decreased from 20% to 18%.
- The Law abolishes the requirement of individuals to file an annual tax return in respect of receiving income from two or more tax agents.

Military contribution: Military tax of 1.5% on salaries has also been prolonged for 2016 until the separate decision of the Parliament.

Unified Social Security Contribution (USSC):

- Effective from 1 January 2016, salary deductions (USSC), previously paid by individuals at 3.6%, are no longer applicable.
- The Law also decreases the USSC burden on employers: a flat rate of 22% USSC shall be applied by employers instead of various rates ranging from 36.76% up to 49.7%.
- The maximum cap for collecting USSC was increased from 17 to 25 minimal costs of living and will constitute UAH 34,450 in January – April 2016, UAH 36,250 in May – November 2016 and UAH 38,750 in December 2016.

Deloitte's view

The above-mentioned changes decreased PIT rate that affect resident employees and non-residents assigned to work in Ukraine, as well as expatriates. Please consider changes when calculating hypothetical tax on Ukrainian source income and worldwide income for tax residents.

The above-mentioned changes on USSC rates should reduce the payroll tax burden on business and should facilitate the legalization of salary payments in the shadow economy.

— Viktoria Chornovol (Kyiv)
Partner
Deloitte Ukraine
vchornovol@deloitte.ua

Svitlana Tutovska (Kyiv)
Manager
Deloitte Ukraine
stutovska@deloitte.ua

Global Rewards Updates: Amendments to IFRS 2 for net-settlement of share-based payment transactions

Background

This update discusses the accounting standard for share plans and the impact of net settling, which has now been clarified. This is of interest for companies because treating awards cash-settled rather than equity-settled can impact the accounting cost.

Many jurisdictions oblige companies to withhold an employee's tax on a share award or option and to transfer the tax amount to the tax authority. There are various processes a company can use to collect the funds from employees.

Some companies deduct from the award enough shares with a value equal to the value of the employee's tax liability. The company then pays the amount withheld to the tax authorities from its own cash. This is known as 'net-settlement'. This is different from a 'sell to cover' arrangement where the full number of shares is transferred or issued on vesting/exercise of an award but sufficient shares are then sold on the employee's behalf to cover their tax.

Whilst the value received by the employee is the same under both arrangements, the number of shares and an entity's cash liability is different.

Among companies which net settle awards, the accounting treatment of the net-settled portion currently varies, with some companies accounting for the withheld portion as cash-settled and some as equity-settled.

The IASB was asked to consider whether the portion of the share award that is used to pay taxes under net-settlement should be classified as cash-settled (which requires the company to re-measure that portion of the award at the end of each reporting period and the date of settlement, with any changes in fair value recognised in the entity's profit and loss account) or equity-settled (with no requirement to re-measure).

On 15 December 2015, the IASB agreed amendments to the wording of IFRS 2 to clarify the position. A copy of the agreed wording can be found online.
URL: http://www.ifrs.org/Meetings/MeetingDocs/IASB/2015/November/AP12B-IFRS-Implementation-Issues.pdf

Application

The new standard is expected to be finalised in late February 2016, and will be mandatory for new and unvested share awards and option in accounting periods beginning on or after 1 January 2018. Companies can choose to apply the amendment for an earlier period.

Effect

The agreed wording confirms that where a share-based payment is net-settled by withholding a specified portion of the shares to meet a statutory withholding obligation, the transaction should normally be accounted for as equity-settled in its entirety.

For existing unvested share awards, companies will need to reclassify any proportion that was being accounted for as cash-settled as equity-settled at the beginning of the accounting period in which the amendment is first applied.

This will not apply to shares withheld in excess of the amount required to satisfy the tax obligation.

Impact

Where companies currently net-settle, and treat the net-settled amount within an equity-settled transaction, there should be no impact.

However, this will only be the case where the company net-settles based on the statutory withholding requirement. Where a company net-settles based on a higher amount (for example the highest marginal rate of tax in a jurisdiction) and the excess between the amount net-settled and the statutory withholding requirement is settled in cash, the excess should be treated as a cash-settled share-based payment transaction. This may result in an additional expense to be recognised on settlement.

Where companies currently net-settle share-based payment transactions and treat the net-settled amount as a separate cash-settled share-based payment transaction, from 1 January 2018 they will need to start accounting for the net-settled amount as equity-settled.

Where a company net-settles their share-based payments it is still important to consider the other implications, for example the impact on cash, the availability of a corporate tax deduction and the impact on dilution.

Deloitte's view

Clarification of the treatment of the withheld portion of share awards is to be welcomed, although companies will need to ensure that they only withhold the appropriate amount of shares to cover the actual tax due, if equity-settled treatment is to be available in its entirety. For those companies with a significant number of employees receiving share-based payments, this could result in additional complexity, but choosing to net-settle at the highest marginal rate of income tax could result in a further accounting expense in respect of any excess settled in cash.

Companies should review their current approach to classification of share-based payments to consider the impact of these changes on their plans.

— Mark I. Miller (San Jose)
Principal
Deloitte Tax LLP
mamiller@deloitte.com

Rive Rutke (Chicago)
Director
Deloitte Tax LLP
rrutke@deloitte.com

Peter Simeonidis (New York)
Principal
Deloitte Tax LLP
psimeonidis@deloitte.com

Sean Trotman (New York)
Principal
Deloitte Tax LLP
strotman@deloitte.com