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Ireland:
Real-Time Foreign Tax Relief

Overview

Revenue has recently issued an eBrief (119/15), which sets out the criteria and procedures in order to obtain real-time foreign tax relief through the Pay As You Earn (PAYE) system.

This comes about after representations were made to Revenue in this area by the Irish Tax Institute, which Deloitte took part in. This will alleviate the cash flow burden experienced where an employee who performs some of the duties of the employment abroad also triggers a simultaneous foreign tax withholding in that foreign jurisdiction.

Criteria

The provisions will only apply to individuals who are:

- Tax residents in Ireland;
- Employed by an Irish employer;
- Employed under an Irish contract of employment;
- Who exercise some of the duties of the employment abroad; and

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- Who are subject to a simultaneous deduction of both Irish and foreign tax.

In addition, the foreign tax suffered must be nonrefundable.

Where these criteria are met, Revenue will, on a case-by-case basis, consider an application for provisional tax relief in respect of the foreign tax through the PAYE system. Prior to the introduction of these measures, relief for foreign tax paid was only allowed by way of a claim at year-end.

Procedures

The method of granting the foreign tax relief will depend on whether the foreign tax is paid in a country where there is a Double Taxation Agreement (DTA) in place.

For DTA countries, an application for the relief may be made by the employee on Form DD1. Revenue will prepare an estimate of the real-time foreign tax relief and a credit for this will be given through the PAYE system. Any credit for foreign tax paid should not exceed the Irish tax payable on the same income and the eBrief sets out how the credit will be calculated. All credits granted in this manner will be subject to an end-of-year review when the employee files their annual tax return with Revenue, and Revenue will require proof of the final tax liability in the other jurisdiction.

For non-DTA countries, there is no double tax credit relief. However, unilateral relief can be granted by giving a deduction in respect of the nonrefundable foreign tax. This deduction will be expressed as a tax credit through the PAYE system, but the Revenue must be provided with evidence of the amount of the foreign tax and that such foreign tax is nonrefundable.

Shadow payroll

In many cases, where an employer sends an employee to work abroad, a shadow payroll will be operated in the foreign location to meet the withholding tax obligations in that country. The employer will generally fund the taxes due in the host location and in some circumstances recover that tax paid from the employee when a foreign tax credit claim is made at the end of the year.

In eBrief 119/15, Revenue has indicated that potential issues could arise with this arrangement, including whether a loan was made to the employee, the employee was in receipt of a benefit, or if the employee is entitled to a foreign tax credit where the foreign tax was not actually deducted from the employee's pay.

Notwithstanding these issues, Revenue has confirmed that for the years up to the 2015 tax year only, no charge to tax will arise on the payment of the foreign tax by the employer provided that evidence is supplied of the final tax liability paid in the foreign jurisdiction, and, within one month of the granting of the foreign tax credit relief, evidence is supplied by the employee that he/she has reimbursed the employer the full amount of the final liability foreign tax credit granted to them.

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Revenue's eBrief does not directly address the situation where an employer tax equalizes an employee so that the employee's net pay is not affected by the foreign taxes arising, but instead assumes that the employee bears the cost of any foreign taxes.

Next steps

While we await an update on the position for 2016 and subsequent years in respect of shadow payroll/tax-equalized individuals, claims for real-time foreign tax credits can be made to Revenue using Form DD1. The application must be made by the employee to his/her own local tax district rather than the employer's district.

There is also an opportunity to review the tax position of any employees where a shadow payroll was operated for the four years up to and including 2015 to ensure any foreign tax credits due are claimed.

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Korea:
Further guidance regarding the new requirement for domestic companies to withhold income tax for foreign assignees

Overview

According to the new tax law effective starting July 1, 2016, Korean entities having foreign assignees, where the relevant employment costs are not borne directly by the Korean entity, will be required to operate monthly income tax withholding at 17% (18.7%, including local income tax surcharge) when the Korean entity pays the service fee to the foreign company. The amount subject to income tax withholding will be the amount of the service fee identified as attributable to the earned income of the foreign assignee.

Further guidance has been provided by the Korean tax authorities regarding application of the new tax law.

Further guidance in the revised Presidential Decree

According to the revised Presidential Decree of the relevant tax law dated February 17, 2016, domestic companies meeting all of the following conditions are subject to the new withholding income tax reporting/payment obligation:

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1. Total service fee paid by the domestic company to the foreign company dispatching its employees to Korea exceeds KRW 3 billion per annum.
2. Previous year’s revenue of the domestic company is KRW 150 billion or more, or previous year’s total assets equal KRW 500 billion or more.
3. The core business of the domestic company falls under one of the following categories:
    a. Air transport
    b. Construction
    c. Professional, scientific, or engineering service

Foreign companies dispatching foreign assignees, where the domestic company withheld and paid income tax withholding, will be allowed to claim a refund of any overpaid income tax through the year-end tax settlement for payroll withholding tax procedures. The foreign company may delegate year-end income tax settlement to the concerned domestic company.

Deloitte’s view

Foreign companies with assignees dispatched to Korea under a service agreement, where the domestic Korean company meets the conditions above, should be prepared to account for this new withholding requirement.

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United States:
Tax authorities continue to warn of identity theft and tax scam concerns for taxpayers

Overview

The US Internal Revenue Service (IRS) continues to issue guidance to taxpayers on ways to protect themselves from identity theft and tax scams, as these attempts to steal taxpayer information continue. On February 9, 2016, the IRS disclosed a recently identified attack to its Electronic Filing PIN application program on IRS.gov perpetrated by cybercriminals in which a malicious bot used 101,000 Social Security Numbers (SSN) to successfully access electronic filing personal identification numbers (PIN). However, according to the IRS, “No personal taxpayer data was compromised or disclosed by IRS systems.”

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What is being done to safeguard against tax-related identity (ID) theft?

The IRS, states, and the private sector are committed to working together to combat tax-related ID theft and related matters. Below are some key programs and initiatives to note.

Identity Protection PIN (IP PIN): The IRS places an ID theft indicator on accounts whose information has been identified in connection with tax-related ID theft and requires victims of ID theft involving a fraudulently filed tax return to use an IP PIN when filing a tax return. For 2016, any taxpayer who had an IP PIN sent to them must have it entered on the return in order to electronically file the tax return with the IRS. Taxpayers with an IP PIN who are filing paper copies of their tax returns and fail to enter the IP PIN on the return are subject to additional ID verification with the IRS before any refund check will be issued. A taxpayer who lost the IP PIN sent to them or believes they should have received one and did not, should login using Get an IP PIN or visit Retrieve Your IP PIN for more information on how to retrieve it.
URL: https://www.irs.gov/Individuals/Get-An-Identity-Protection-PIN
URL: https://www.irs.gov/Individuals/Retrieve-Your-IP-PIN

Taxes.Security.Together.: The IRS has initiated a security awareness campaign, known as "Taxes. Security. Together.", which is designed to raise public awareness that even routine actions on the Internet and other personal devices can affect the safety of financial and tax data. The IRS YouTube Security Summit series, part of the Security Summit initiative, provides further information.
URL: https://www.irs.gov/pub/irs-pdf/p4524.pdf
URL:
http://links.govdelivery.com/track?type=click&enid=ZWFzPTEmbWFpbGluZ2lkPTIwMTYwMjAxLjU0NTU3MDAxJm1lc3NhZ2VpZD1NREItUFJELUJVTC0yMDE2MDIwMS41NDU1NzAwMSZkYXRhYmFzZWlkPTEwMDEmc2VyaWFsPTE3MDY3NDA0JmVtYWlsaWQ9YXRvY2NvQGRlbG9pdHRlLmNvbSZ1c2VyaWQ9YXRvY2NvQGRlbG9pdHRlLmNvbSZmbD0mZXh0cmE9TXVsdGl2YXJpYXRlSWQ9JiYm&&&127&&&https://www.youtube.com/watch?v=fLPQTkmnEvg

Highlights of IRS security steps taxpayers should take to protect themselves

- Always use security software with firewall and antivirus protections. Make sure the security software is always turned on and can automatically update. Encrypt sensitive files such as tax records you store on your computer. Use strong passwords.
- Learn to recognize and avoid phishing emails, threatening calls, and texts from thieves posing as legitimate organizations, such as your bank, credit card companies, and even the IRS. Do not click on links or download attachments from unknown or suspicious emails.
- Protect your personal data. Do not routinely carry your social security card and make sure your tax records are secure. Treat your personal information like you do your cash; do not leave it lying around.

Other security reminders of importance to individual taxpayers

Phishing scams: Taxpayers are regularly contacted by scam artists purporting to be IRS agents and indicating that there are issues with the taxpayers' tax situation. To protect taxpayers, the IRS has stated that it will never:

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- Call a taxpayer to demand immediate payment or to discuss taxes owed without first mailing a tax notice to the taxpayer.
- Demand that a taxpayer pay taxes without first giving the taxpayer the opportunity to question or appeal the amount they say is owed.
- Contact a taxpayer by email to ask for personal or financial information.
- Ask for credit or debit card numbers over the phone.
- Require a taxpayer to use a specific payment method, such as a prepaid debit card, to pay any taxes owed.
- Threaten to bring in local police or other law enforcement groups to arrest a taxpayer for nonpayment.

If a taxpayer receives a phone call or a message purportedly from the IRS:

- Get the employee's name, badge number, and callback number. Then, hang up and call TIGTA at +1 800 366 4484 to determine if the call was legitimate. If not, report the incident at that time or online at the IRS Impersonation Scam Reporting Page.
- Report the incident to the Federal Trade Commission at identitytheft.gov and use the words "IRS Telephone Scam" in the report notes.
- Do not reply to unsolicited emails and do not open any attachments or click on any links. Forward emails to the IRS at phishing@irs.gov.
  URL: mailto:phishing@irs.gov

Be aware of information on social media:

- Cases of tax-return ID theft are often possible because personal information is readily accessible by cybercriminals through social media.

Report ID theft to law enforcement:

- If a taxpayer's SSN was compromised and the taxpayer thinks he/she may be the victim of tax-related ID theft, file a police report.

As a reminder, if an individual receives an email from any unknown source:

- Validate the sender's address and the context of the email before clicking on email attachments or external links.
- Avoid email from unknown sources and report them using spam reporting plug-in within MS Outlook.
- Regularly verify antivirus software is up to date.
- Avoid connecting to unsecure third-party networks.

Deloitte's view

While the IRS, states, and the private sector have made significant progress in combatting stolen ID refund fraud over the last several years, the recent attack to the IRS' Electronic Filing PIN application program demonstrates cybercriminals' ability to pursue increasingly sophisticated avenues of attack when others are closed. As technology advances, cybercriminals search for untapped opportunities to steal personal information. Staying ahead

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of newly evolving cybersecurity risk is best accomplished through joint efforts by taxing authorities. Increasing personal awareness is critical to helping the authorities in effectively managing risk exposure and criminal opportunities for tax return ID theft. Taxpayers should remain diligent in protecting their personal information and should follow the guidelines mentioned above to protect themselves.

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United States:
Unrelated Business Income Tax: Changes to the 2015 Form 5500

Overview

The Department of Labor (DOL) Releases 2015 Form 5500 – New Internal Revenue Service (IRS) Compliance Questions, Including Specific Disclosure for Unrelated Business Taxable Income (UBTI).

DOL recently released the 2015 Form 5500, Annual Return/Report of Employee Benefit Plan, which is an informational return that generally should be filed annually by ERISA-covered employee benefit plans. The IRS has added compliance-related questions on Schedule H (Financial Information), Schedule I (Financial Information – Small Plans), and Schedule R (Retirement Plan Information). Even though the compliance questions are optional for 2015, the Form 5500 instructions specifically state that you are encouraged to answer these questions.

Schedules H and I now specifically ask whether the employee benefit plan incurred unrelated business taxable income. Plan administrators are responsible for signing the Form 5500 and completing these schedules. As a result, the IRS is now placing the responsibility on the qualified plan administrators to identify and disclose the existence and amount of UBTI.

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Deloitte's view

The above-mentioned change clearly suggests that the IRS is beginning to focus its attention on whether employee benefit plans are properly reporting and paying taxes on their unrelated business income.

This change will likely result in our clients/plan administrators asking for help with addressing this question. Clients may require immediate assistance to bring their employee benefit plans into compliance. Specialized benefit plan and UBTI knowledge is required given the complexity of the related DOL/ERISA restrictions. GES has a team of full-time professionals trained and dedicated in this particular area.

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Vietnam:
Vietnamese nationals are now allowed to participate in offshore indirect investment through share award schemes

Overview

Previously, the strict foreign exchange control regulations made it extremely difficult for Vietnamese nationals to participate in overseas share schemes since they were not allowed to remit funds overseas to acquire the shares. Instead, the most common scheme adopted by several international groups was cashless exercise, i.e., buying and selling immediately. As such, the type of share schemes is quite limited for Vietnamese nationals to participate in.

Recently, under a new guidance on offshore indirect investment (OII), effective from 15 February 2016, the Vietnamese government now allows Vietnamese nationals to participate in an overseas incentive shares plan (the "Plan") under certain conditions.

Changes to note

- Definition of scheme: Overseas incentive share plan, which is issued overseas, is a plan in which the international groups grant incentive shares to Vietnamese nationals working in foreign organizations in Vietnam.
- Compliance requirement: The Plan's procedures, execution schedule, and other associated issues related to the participation must follow regulations of the State Bank of Vietnam.

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- Restriction on funds for OII: The individuals are NOT allowed to use the loans (i) in VND from financial institutions/foreign bank branches or (ii) in other foreign currency from Vietnam/overseas for OII.

Deloitte's view

- The new ruling would be warmly welcomed by the investment society as Vietnam is currently joining international trade agreements (TPP, free trade agreements).This will provide more possibilities for Vietnamese nationals to enjoy investment benefits via their employment relationship.
- It is expected that with this new OII regulations, several foreign corporations will consider to provide participation in various overseas share schemes to Vietnamese nationals to diversify their remuneration packages. As with all such new regulations in Vietnam, further detailed guidance is expected and practical implementation requirements will develop. Companies considering the implementation of such plans for Vietnamese employees should, therefore, obtain our consultation regarding the current position on this together with the associated tax implications.

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Global Rewards Updates:
France: Change in reporting processes for equity plans

Background

There have been significant reporting requirement changes in respect of reporting income from equity plans in France recently.

The Déclaration Sociale Nominative ("DSN") requirements for mandatory payroll reporting aim to consolidate company reporting into just one report. It is progressively replacing the current company's annual wages return ("DADS-U") and this new process will impact the reporting requirements of the information relating to equity plans which in the past was filed through the "DADS-U".

Existing requirements

Companies must report to the French Administration information relating to their equity plans through the DADS-U, where equity data must be included in specific boxes on the return. The DADS-U form is still in use for 2015 and had to be filed by 31 January 2016.

From 1 February 2016, the DADS-U annual reporting form, is replaced by the DSN, a monthly reporting electronic form.

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New requirements

The DSN monthly electronic return will be mandatory for all companies (although there may be a postponement for small and medium sized companies) from 1 January 2016. The DSN aims to consolidate company reporting into just one monthly report to the French Administration.

For the DSN purposes, data relating to equity plans must be included under reference S89. The structure of this information remains the same as for DADS-U and is included in the three following groups:

- Free shares – S89.G00.87;
- Stock options – S89.G00.88; and
- Bons de souscription de parts de créateur d'entreprise (BSPCE) – S89.G00.89

In addition, further specific data, such as "Numéro d'inscription au repertoire" and "Numéro technique temporaire", has been included in each of these three groups in order to link the information relating to equity plans with the participating employees.

Deloitte's view

Employers should be aware they will now be required to submit DSN electronic returns on a monthly basis from 1 January 2016 and there will be a transitional period of one month during January 2016 as the DADS-U report for 2015 must be filed by 31 January 2016.

Additionally, companies should ensure that the process for providing the new required information on time to subsidiaries in France is clearly mapped out.

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Global Rewards Updates:
Luxembourg: New reporting for employee share option plans

Background

On 28 December 2015, the Director of the Luxembourg tax authorities issued an administrative circular relating to a new reporting requirement for employee share option plans. This circular applies to all share option plans that will be implemented as of 1 January 2016 but there will also be new reporting requirements for share option plans implemented prior to this date.

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Impact

Historically, there have been no specific legislative rulings in Luxembourg regarding reporting requirements for the implementation of a new share option plan, or the granting of options under an existing plan. Only one administrative circular was issued in 2012 in order to define the tax treatment to apply to options ("2012 circular").

The new circular released on 28 December 2015 ("2015 circular") does not modify the principles of taxation set by the 2012 circular, but merely introduces a new reporting requirement. The 2015 circular applies solely to share options (this includes "warrant plans" used by some Luxembourg companies). Other award types such as restricted share awards or performance share awards are outside the scope of the new circular.

As from 1 January 2016, employers who intend to set up new share option plans will have to notify the Bureau RTS at least two months before the implementation date of the plan.

The reporting obligations apply when beneficiaries, i.e. individuals employed by an employer located in Luxembourg, are granted options either by their local Luxembourg employer or by the foreign parent company.

The notification to the tax office should include a copy of the plan rules in addition to a list of the names of the beneficiaries.

The 2015 circular additionally applies to each new grant of options, whether the first grant in a new plan or a new grant under an existing plan implemented before 2016. The notification must also be provided at least two months prior to grant.

Furthermore, for all plans set up prior to 1 January 2016, but for which the grant of options has not yet taken place, employers must inform the tax office of the existence of these plans at their earliest convenience.

Deloitte's view

It is important for employers to consider this change in a timely manner in order to avoid any potential delay in the granting of share options. Luxembourg employers will still be required to consider their reporting obligations even where options are granted by another company in the group.

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