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Hungary:
Tax, Social Security, and labor law changes impacting Hungarian employees and foreign individuals posted in Hungary

Overview

The Hungarian Parliament accepted amendments to the Personal Income Tax (PIT) Act and other related regulations earlier this summer. Most of the changes would come into effect as of January 2017; however, further changes are also possible late this autumn.

The Hungarian labor code and labor inspection rules have also been expanded with new regulations affecting Hungarian companies hosting international assignees recently.

In addition, the US-Hungary Social Security agreement came into force as of 1 September 2016.

The most important changes are as follows:

Social Security exemption of individuals assigned to Hungary

Third-country (non-EEA, European Economic Area) national individuals assigned to Hungary by a foreign employer for a period not exceeding two years continue to be exempt from Hungarian Social Security, subject to certain conditions. The amendments clarify that if the duration of work in Hungary originally planned for a period up to two years is extended for unforeseen reasons and the employee notifies the tax authority, Hungarian Social Security obligations arise only after the two years elapse. The two-year exemption might be available for EEA national assignees, as well, although the conditions of such exemptions should be further clarified with the authorities.

Deloitte's view

The amendments clarify that assignees coming from third countries could still be exempted from Social Security charges in the first two years of their assignment even if the assignment is extended for unforeseen reasons.

Changes impacting employees

Tax-free benefits: The tax-free benefit list of the PIT Act will include additional items. As a result, in addition to day-nursery services, companies (employers) will also be able to provide kindergarten services in a tax-exempt manner to their employees or assignees.

A Hungarian employer can also provide health care services tax-free if this is available to all employees. The conditions and list of such health care services are expected to be regulated separately by other tax laws this fall.

Flexible benefit schemes: Hungarian companies operating flexible benefit schemes should pay attention to the changes to the taxation of in-kind benefits typically provided as part of flexible employee benefit programs (currently subject to beneficial tax treatment, approximately 34.5 percent overall tax is due from the company or benefits could be provided tax-free). The vast majority of these in-kind benefits (e.g., contributions to voluntary health care or pension funds, local travel passes, meal vouchers) will no longer fall under the preferential tax treatment (approximately 34.5 percent overall tax). Employers will still be able to provide these in-kind benefits to their employees, but these benefits would be taxable at a higher overall tax rate (approximately 50 percent). As a new element, however, cash up to HUF 100,000 p.a. can be built in the flexible benefit system attracting the preferential 34.5 percent overall tax charges due from the employer (Hungarian company).

Supporting workforce mobility: The new regulation contains several changes to facilitate the mobility of the workforce within Hungary, for example:

- Increasing the tax free expense reimbursement regarding the usage of one's own car for commuting to work from HUF 9 per km to HUF 15 per km;
- Modifying the concept of a workers' hostel where the requirement to arrange accommodation for at least two persons per room will be abolished; and
- Introducing a new housing benefit if the employee moves (within the country) where the value of tax-free monthly benefit ranges between 15 percent and 40 percent of the statutory minimum wage, depending on the length of stay.

Deloitte's view

The tax law changes essentially impact the taxation of employee benefits; thus, all companies are encouraged to review and update their compensation schemes in the coming months.

Amendment to the labor code / labor inspection regarding posted workers

The Hungarian labor code was updated with new regulations relating to the posting of workers. The aim of the legislation is to provide the Hungarian authorities with proper legal basis and appropriate information regarding individuals working in Hungary. These new rules impose additional administration on Hungarian companies hosting foreign national expatriates.

As of June 2016, Hungarian companies hosting expatriates bear joint responsibility with the foreign employer paying employment income, completing compliance requirements regarding Social Security contributions (if the Hungarian company was – or, with due care – should have been aware that the foreign employer failed to comply with its wage and contribution payment obligations).

Hungarian host companies are also obliged to ensure that certain documents/data (e.g., employment contract, pay slips, time sheets) of the assignees could be made available for Hungarian labor authority inspections. Registration and data provision about the expatriate population should also take place; regarding current expatriates, this requirement was to be completed by 31 August 2016.

Deloitte's view

The interpretation and application of the new legislation raise several questions, the range of potential sanctions is also unclear in the case of noncompliance, so clarity is requested in discussions with the authorities.

US / Hungary Social Security Agreement

The US/Hungary Social Security Agreement came into force as of 1 September 2016. In practice, this means that inbound assignees (covered by the contracting countries' Social Security regimes) transferred from the United States and outbound assignees going to the US can be exempted from Social Security in the host country for five years, resulting in a significant decrease of assignment costs and administrative obligations. (In the case of ongoing inbound assignments, the five-year period shall be counted from 1 September 2016.)

To support the Social Security exemption, a Certificate of Coverage should be applied in the country of coverage.

Exemption is also available if the employee was performing working activities in a third country right before the start of his or her foreign assignment. Moreover, further exemption could be achieved based on a specific request (i.e., for a period longer than five years or the five-year exemption period could be extended).

In terms of benefits, the agreement focuses on the coordination of old age and survivors benefits and benefits for persons with a changed working capacity, so the agreement itself does not deal with health care benefits.

Deloitte's view

In the case of assignments from the United States that have already begun and were originally planned for two years, an exemption up to or even more than seven years could be achieved based on the domestic regulations and the provisions of the agreement. Applications for Certificates of Coverage regarding inbound and outbound assignee transfers should be arranged.

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Taiwan:
Individual CFC Rules

Overview

In response to the BEPS and Panama Paper event, the Taiwan government has proposed the individual Controlled Foreign Company (CFC) rule to cope with potential tax evasions.

The Executive Yuan of Taiwan approved draft amendments to the statute of alternative minimum tax (AMT) on July 21, 2016, that included rules related to CFCs owned or controlled by individuals. However, the draft amendments are yet to be passed by the Legislative Yuan to become effective.

Summary

Under existing rules, Taiwan residents are taxed only when they receive distributions from their offshore investments, i.e., earnings derived from foreign companies are not required to be included in Taiwan income until individuals receive dividends. As a result, it is common practice for Taiwan individuals to "park" earnings in tax haven jurisdictions to defer their Taiwan income tax liability. The proposed CFC rules would require Taiwan residents who own directly or indirectly 10 percent of the CFC to include the pro rata share of the taxable profits of their CFCs in his or her taxable AMT income. A CFC for these purposes would be defined as a foreign corporation located in no- or low-tax jurisdictions that is more than 50 percent owned (directly or indirectly) by Taiwan individuals together with his or her relatives. The proposed rules would eliminate the deferral of taxation and would discourage Taiwan individuals from leaving earnings in foreign jurisdictions.

Any tax losses that are certified by a certified public accountant and assessed by the tax office could be deducted from the CFC income throughout a 10-year period. The distribution of CFC can also be deducted from the CFC income. The foreign tax credit is also available.

The above CFC rules, according to The Executive Yuan, are likely to become effective in 2018.

Deloitte's view

It is time to review the need to hold personal assets through offshore vehicles. Once the CFC rules have been implemented, it will be difficult to defer the tax offshore and the compliance cost is expected to be higher. However, it is also a challenge for the Taiwan tax authority to levy the tax on the CFC income if they do not enter CRS or equivalent platforms as they may have difficulty accessing these individuals' information.

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