In this issue:

France: Proposed income tax withholding for resident individuals

Overview

As part of the 2017 proposed budget, the French government has confirmed that an income tax withholding system would be introduced for individuals who are resident France. Currently, French tax residents pay their income tax in the year following the year in which the income is received. As from 1 January 2018, income tax would become payable on a current-year basis. The draft bill will undergo the legislative process and potentially be adopted into law by 31 December 2016.

As a result, in 2017, French individual tax residents would pay income tax on their 2016 income, while in 2018, they would be required to pay French income tax on their 2018 income (special rules described below would apply for their 2017 income). Penalties would be imposed for noncompliance (on the employer or the employee, depending on the situation).

Types of income to be subject to withholding

Wages, “replacement income” and pensions would be subject to withholding. The payer of the income would have to withhold tax and remit it to the French tax authorities on an ongoing basis.

For wages, employers would be required to withhold tax on the net taxable compensation (basically, the wages after deducting social security contributions) each time a payment is made. If the employee qualifies for a favorable tax regime, the employer may wish to adjust the taxable basis to account for exemptions under the regime.

For self-employment and personal investment income, the individual taxpayer would be required to pay income tax on a monthly basis (or, if so elected, on a quarterly basis). The payment would be due from the taxpayer and would be debited by the tax authorities directly from the individual’s bank account, based on the last available information in the tax authorities’ files as to the taxpayer’s income level and bank account details.

Capital gains and equity income (from qualified share plans) would not be included in the types of income subject to withholding. Tax on these types of income would be payable in the following year, upon filing an income tax return (which should continue to be due in May of the year following the tax year).

Withholding tax rate

The withholding tax rate on wages generally would be provided to the employer by the French tax authorities on a monthly basis, through France’s new payroll procedure (DSN). The tax rate would be determined by the tax authorities based on the previous year’s tax return, as filed by the taxpayer. It, therefore, would take filing status and family size into account.

The rate applicable for income received from January to August each year would be determined using the income declared two years before (Y-2). The rate would be revised in September, based on the income declared on the tax return from the previous year (Y-1) filed in May of the current year. The revised rate would apply to income received from September to December of the current year.

If the French tax authorities do not provide a withholding tax rate to the employer for an employee, the employer would apply a standard tax rate. The standard tax rates would be updated through the annual budget process. The rates would depend on the employee’s level of income, without taking into account the employee’s filing status or family size.

If the amount of tax withheld using the standard tax rate is lower than the amount that would have been determined by the tax authorities, the taxpayer would have to make “top up” payments on a monthly basis.

The standard tax rate would apply:

- When the taxpayer has never filed a French income tax return (for example, an assignee arriving in France); or
- When the taxpayer specifically requests the use of the standard tax rate (an available option).

The taxpayer, therefore, would have the option to ask to have his/her withholding tax rate adjusted upward or downward if certain conditions are fulfilled, again with an obligation to “top up” payments as described above.

Foreign payroll and foreign employers

If a French resident taxpayer is on the payroll of a foreign employer that does not have access to France’s DSN payroll system, the withholding of French tax would not be required. In that case, the taxpayer (i.e. the employee on the foreign payroll) would be required to pay his/her income tax directly to the French tax authorities on a monthly basis.

Taxation of 2017 income

To avoid a double tax burden in 2018 (i.e. the income tax due on 2017 income, plus the withholding tax on 2018 income), the government has indicated that, upon filing the 2017 tax return, each taxpayer would benefit from a tax credit to cancel out the 2017 French income tax due on “non-exceptional” income.

The tax credit would be calculated on non-exceptional income only, in an effort to prevent aggressive tax planning. Exceptional income and income that is not subject to withholding would not benefit from a tax credit and would remain fully taxable in 2018 (upon filing the 2017 tax return in May 2018).

Exceptional income for 2017 that would remain taxable in 2018 would include:

- Severance payments;
- Corporate officer termination payments;
- Company profit-sharing and savings plans;
- "Pluri-annual" income (deferred compensation); and
- Any income that is not deemed to be received on an annual basis.

Deloitte's view

France is one of the countries where income tax is paid on a one-year lag basis, without withholding for residents. The introduction of a withholding and advance tax payment system, which has been the topic of debate for many years, now may become a reality.

These measures will have a significant impact on the administration and management of compensation, necessitating new mapping processes for companies and payroll providers. The proposed rules also will affect the management of international mobility policies and tax equalization for both inbound and outbound assignees. Finally, 2017, as a transition year, will present major challenges for companies and taxpayers, both of whom will have to juggle two years of taxation in the same calendar year (with a tax credit method applied to avoid double taxation).

— Diane Artis (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
DArtis@taj.fr

Vanessa Calderoni (Lyon)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
VCalderoni@taj.fr

Hélène Delechapt (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
HDelechapt@taj.fr

Alexis Fillinger (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
AFillinger@taj.fr

Nadia Hamya (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
NHamya@taj.fr

Philippe Legeais (Lyon)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
PLegeais@taj.fr

Christina Melady (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
CMelady@taj.fr

Nicolas Meurant (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
NMeurant@taj.fr

France: Public register for trusts declared unconstitutional

Overview

France's constitutional court issued a decision on 21 October 2016 concluding that the register for trusts recently made public violates the country's privacy rules and, therefore, is unconstitutional.

Established in 2013, the register for trusts contains detailed information on all trust arrangements that are connected to France and whose trustees are required to file trust returns in France. The registry also includes the identity of the trust settlor, the trustees, and the beneficiaries. The 2013 law providing that the register would be made public was only enacted recently, such that the register has been accessible to the public (with no restrictions on access) since 30 June 2016. Access was suspended, however, during the deliberations of the constitutional court (i.e., since 22 July 2016).

The concept of a public register was created in 2013 to promote fiscal transparency, and prevent tax avoidance and evasion, as well as money laundering and other illegal financial activities. The constitutional court acknowledged the validity of these objectives, but determined that the absence of limits on access to the register was disproportionate to the stated objectives.

The constitutional court's decision is the result of a case filed by a tax resident of France who had settled a trust in the United States and who claimed that the public nature of the French trust registry had revealed her testamentary intentions, thus violating her right to privacy guaranteed under the French constitution. The administrative supreme court had referred the case to the constitutional court.

As a result of the constitutional court decision, the trust register is no longer available to the public. The suspension of public access to the trust register does not justify any exemption from reporting the existence of/changes to the trust or the annual trust filing, where there is a nexus to France. Failure to report a trust is punishable by a fine of up to 12.5 percent of the worldwide trust assets.

Deloitte's view

Since trusts do not exist under French law, they can be viewed with suspicion for fraud. This decision takes into account the potential use of trusts for purely estate planning purposes, and protects privacy rights. Deloitte recommends that all arrangements involving a trust with a Nexus to France be reviewed carefully to ensure compliance with strict reporting and tax rules. It also questions whether the penalty of 12.5 percent will resist challenge in courts given a recent decision deeming a 5 percent penalty on undeclared foreign bank accounts invalid.

— Christina Melady (Paris)
Partner
Taj – Société d'avocats
Member of Deloitte Touche Tohmatsu Limited
CMelady@taj.fr

Korea:
Expansion of Eligibility for the Automated Immigration Clearance Service

Overview

The Korean Ministry of Justice amended the "Enforcement Decree of the Immigration Control Act," allowing all registered foreigners to take advantage of the automated immigration clearance service at the airport as of July 5, 2016.

Automated Immigration Clearance Service

The automated immigration clearance service allows travelers to expedite the entry process using self-check in kiosks that bypass the immigration inspection lines at the airport. Prior to the amendment in July, only Korean nationals and select visa holders were eligible to use the service. However, with the amendment, all registered long-term visa holders over 17 years of age can now sign up and start using the service.

Registered long-term visa holders can bring their passports and alien registration cards to various enrollment centers located in immigration offices in major cities throughout the country and at Incheon international airport. They will need to get their fingerprints and photo IDs registered.

Deloitte’s view

Companies employing foreign nationals may consider registering their employees who frequently travel in and out of South Korea for the automated immigration clearance service.
Deloitte Korea’s immigration team specializes in providing visa-related services, including registration for the automated immigration clearance service.

— Min Soo Seo (Seoul)
Principal
Deloitte Korea
mseo@deloitte.com

Sung Hye Jung (Seoul)
Senior
Deloitte Korea
sunghyjung@deloitte.com

Joe Choi (Seoul)
Senior Manager
Deloitte Korea
joechoi@deloitte.com

The Netherlands:
Immigration update

Changes in Dutch rules published for intracorporate transfers

Based on the intracorporate transfer directive (2016/44/EU) of the European Parliament and the European Commission, Dutch implementation rules were published on November 2, 2016. The rules set the conditions for a residence permit for managers, specialists, and trainees who come to work in the European Union (EU) as an intracorporate transferee (ICT). The rules will be enforced beginning November 29, 2016. Deloitte estimates that this new set of rules will have a significant impact on transferees who are currently covered by the highly skilled migrant (HSM) regulation.

The most important conditions are as follows:

- The transferee is working for an entity outside the EU and is transferred to an entity in the EU belonging to the same entity or group of entities.
- Managers or specialists can be transferred for a maximum period of three years. Trainees can be transferred for a maximum period of one year.
- The salary of the transferee must be according to Dutch labor market standards.
- Managers, specialists, and trainees can only be transferred if they are employed by the entity outside the EU for at least three months.
- A transferee is allowed to work for an entity of the group in another EU member state. If the ICT permit was obtained in the Netherlands, the transferee must work in the Netherlands for the majority of the duration of the permit.

Spouses, partners, and children can obtain a residence permit for the same duration as the ICT permit of the transferee. These dependents will also have free access to the national labor market.

The ICT directive does not apply to local hires (on a Dutch local employment contract). For local hires, the HSM procedure remains applicable.

Deloitte’s view

The ICT directive will have a significant impact on intracorporate transferees who are currently covered by the HSM regulation, especially relating to the duration of their transfer and their mobility within the EU. We will publish further updates on the implementation of the ICT directive shortly.

Increase of government fees for 2017

The immigration authorities (IND) published their revised fees applicable for 2017.

The government fee for a HSM permit will raise from €881 to €926. The government fees for an EU Blue Card and a residence permit for paid employment will raise from €881 to €897. The government fee for an extension of these permits will raise from €389 to €396.

The government fee to apply for recognized sponsorship will increase from €5.183 to €5.276. Companies with less than 50 employees will be charged €2.638 for an application for recognized sponsorship in 2017.

— Sebastian Spauwen (Amsterdam)
Director
Deloitte The Netherlands
sspauwen@deloitte.nl

Sandra Tilmans (Amsterdam)
Senior Consultant
Deloitte The Netherlands
stilmans@deloitte.nl

Marjolein Reedijk (Amsterdam)
Manager
Deloitte The Netherlands
mreedijk@deloitte.nl

Global Reward Updates:
Japan: Expanded employer reporting obligations on share incentives and potential changes to Capital Gains Tax Regime

Expansion of reporting requirements

The Japanese tax authorities announced in their 2016 Tax Reform Proposal that employer reporting obligations on share incentives would be extended to incorporate a larger amount of categories of employees. It was recently confirmed that these obligations would be effective for share incentives received from 1 January 2016.

Changes to the 2012 Tax Reform on Reporting: Under the old rules established by the 2012 tax reform, the scope of employer reporting requirements with respect to share awards applied to employees/directors who were Japanese resident and actively employed by the Japanese subsidiary/branch at the time of receiving their awards in the foreign parent company.

The expansion of the 2012 reform will now require employers to include non-residents and former employees/directors. Therefore, the following categories of employees will now be impacted by the reporting requirements:

1. Residents who were employees or directors of a Japanese subsidiary/branch but have been terminated.
2. Non-residents who are employees or directors of a Japanese subsidiary/branch and receive Japanese sourced income.
3. Non-residents who were employees or directors of a Japanese subsidiary/branch but have been terminated and receive Japanese sourced income.

A report must be filed for each person whose compensation is paid or vested. Further, if a person is paid or vested under more than one plan, a separate report must be filed for each plan. This will in most cases significantly expand the size of the submission and, in some cases, may mean that an electronic submission is required instead of a paper one.

New reporting information required: Since non-residents and former employees/directors will now be included, the Japanese tax authorities have also amended the reporting form so that information on the individual's residency in Japan and their period of contract with the company will need to be included by the employer.

In addition, with the recent introduction of the new social security and tax number system in Japan (also known as the 'My Number system'), the individuals' tax ID number ('My Number') will need to be shown on the reporting form. There is a lot of sensitivity over the My Number system, with many companies outsourcing collection and retention to third parties. This and the fact that non-residents may not be on local payroll (i.e. their My Numbers may not be collected) will make the process of reporting even more complicated for companies. Japanese subsidiaries/branches will need to consider how to modify their processes in preparing the equity report to include the My Numbers.

Changes to the Capital Gains Tax Regime

The Japanese tax authorities have put forward a proposal to amend the rules of taxation for gains realized on equity. From 1 January 2017, the authorities propose to subject all equity gains to capital gains tax for all residents. This would include foreign gains remitted by non-permanent residents who were previously solely taxable on the remitted income from their foreign gain.

The rules are still at the design stage and not yet clearly defined but we will monitor the developments and stay close to the issue to bring you further insights as soon as they become available.

Deloitte's view

The new reporting requirements will significantly increase the reporting burden for employers. The reporting form is due by 31 March following the end of the calendar year. For 2016, this will be 31 March 31 2017 and employers may therefore want to consider now what steps they must put in place to meet these new requirements.

Clients may wish to consider a formal communication to former and non-resident employees particularly those not receiving tax return support to notify them of the expansion to the employer report and to limit any potential outfall from individuals being caught as non-compliant.

Finally, if the changes to the capital gains tax regime go ahead, companies may wish to consider a communication to employees, particularly those with large numbers of non-permanent resident assignees responsible for tax on their personal income, as these individuals will need to be made aware that their overseas gains would become taxable in Japan.

— 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