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France:
Self-employed individuals: Income Tax and Social Security updates

Overview

Self-employed individuals and partnerships should be aware of a number of recent tax developments that may affect the calculations and procedures relating to their income tax payments and social security contributions. These updates and other relevant considerations are described below.

Introduction of current-year income tax withholding

Article 60 of the 2017 Finance Law introduces a new system that will require current-year income tax payments to be made through tax withholding at source (currently, French tax residents pay their income tax in the year following the year in which the income is received). A tax credit will be granted in 2018 in relation to income received in 2017, to avoid requiring the payment of two years of income tax in 2018. The following rules will be applicable as from 1 January 2018.

For self-employment income (business, nonbusiness and farming income), the "withholding at source" will be implemented via current-year installments payable by the taxpayer: the amount will be determined in advance by the French tax authorities, based on the most recent prior-year income reported to them.

Amount of installments: The computation methodology for the current-year installments will be based on the current rules for the payment of social contributions (URSSAF) by self-employed individuals.

Under the methodology (article 204 H.-1.2- of the French Tax Code), the amount of the installments payable in the current year (Year N) for the income earned in Year N is as follows:

- For the months of January to August of Year N, the installments are determined based on the last reported income, i.e. the income earned two years prior to the current year (Year N-2) and reported in May of the prior year (Year N-1) on the Year N-2 French income tax return; and
- For the months of September to December of Year N, the installment calculation is updated based on the income earned in Year N-1 and reported in May of Year N (on the Year N-1 French income tax return).

Thus, for the first year of implementation (2018), the income earned in 2016 and reported in 2017 will be used to determine the amount of the current-year installments due for the months of January to August 2018. The installments then will be updated based on the 2017 income reported in 2018 for the months of September to December 2018.

In the case of a year-to-year variation of the self-employment income, the taxpayer will have the opportunity, upon request, to adjust the amount of the current-year installments to be withheld. This request must be filed with the French tax authorities during the tax year concerned, based on the current-year circumstances and an accurate estimate of all income to be earned during the given year.

Frequency of installments: Installments will be payable on a monthly basis (over 12 months), or on a quarterly basis upon the election of the taxpayer, through the taxpayer's bank account held in a financial institution in France or in the SEPA area (Single Euro Payments Area).

Treatment of foreign-source income: Upon payment, foreign-source self-employment income will be subject to inclusion in the calculation of the current-year income tax installments in France, except when such income is not effectively taxable in France.

Taking into account France's tax treaties, current-year installments are payable on the income derived only if France has an effective right, or a shared right, of taxation on such income under the relevant treaty provisions. Therefore, current-year installments will not be due on income that is tax exempt due to the application of either the French domestic tax law or a relevant tax treaty signed by France with the source country, such as the foreign-source income subject to an "exemption with progression" or income benefitting from a foreign tax credit.

Treatment of French-source income of nonresidents: The income tax on French-source income derived by a French nonresident individual taxpayer with a permanent establishment in France is payable under the same conditions as described above. The implementation of the withholding at source, notably regarding the payment procedures for the current installments, has not yet been determined.

Regularization and adjustment of social security installment payments

New calculation procedures for social security contributions have been applicable since 1 January 2015. Once the self-employment income has been reported online through the French social return (DSI), there is a final calculation of the contributions due on the income of Year N-1 (regularization), as well as an adjustment of the provisional contributions due on the income earned in Year N.

Social security installment payments for Year N initially are based on the income earned in Year N-2 at the rates applicable in Year N-1; such payments are adjusted later in Year N based on the actual income reported on the Year N-1 French social return.

Therefore, the final social security contributions on the self-employment income earned in 2015, which were reported on the French social return filed in June 2016, were regularized in 2016 and the provisional social security contributions due on the 2016 income have been adjusted accordingly. Such contributions (regularization of the 2015 income and adjustment of the 2016 income) were payable in August and November 2016.

- Final assessment in Year N of the social security contributions due on Year N-1 income: If the provisional contributions paid in Year N-1 exceed the final assessment, the balance due is either reimbursed to the individual or offset against any outstanding installments payable in Year N on Year N income. If there is a balance due from the individual on the income of Year N-1, the contributions are collected via equal installments payable at the same frequency as the installment payments due for the provisional contributions on Year N income (monthly payments, or quarterly payments if the self-employed individual has opted for this).
- Adjustment of the provisional social security contributions due in Year N on income of Year N: If the provisional contributions calculated after adjustment are lower than the contributions already paid earlier in Year N, the difference is reimbursed to the individual. If the adjusted provisional contributions are higher, they are collected via equal installments payable on a monthly or quarterly basis, depending on the payment schedule the self-employed individual has opted for.
- Revision of estimated income for Year N: In the case of a significant variation of self-employment income from year to year, the individual may file a written request with the tax authorities, along with an estimate of his/her current-year income, so that the provisional contributions can be recalculated based on the estimated current-year income provided.

Enhanced communication between French authorities

A decree dated 8 July 2016, relating to the strengthening of the rights of social contributors, has implemented procedures to enhance the communication between the French tax authorities and the French RSI (French social authority for basic health) with regard to information concerning the income earned by self-employed individuals. The provisions detailed below are applicable to audits carried out as from 11 July 2016:

- In the case of a correction by the French tax authorities of the self-employment income reported by the individual on the French tax return, the relevant information will be provided to the French RSI so that the final social security contributions due on the income of Year N-1 can be reassessed and the provisional contributions due on the income of Year N can be readjusted.
- In the case of an audit leading to a reassessment of the French social security contributions (RSI), if there is a discrepancy between the income reported to the French tax authorities and that resulting from the correction by the French RSI authority, this information will be communicated to the French tax authorities once a formal notification has been sent to the individual.

Collection of RSI by French social authorities (URSSAF)

French social security contributions on self-employment income currently are assessed and collected separately by the URSSAF (family allowance, “CSG” and “CRDS”) and the RSI (basic health contributions).

The 2016 Social Security Finance Law has extended the authority of the URSSAF to collect the basic health contributions falling under the scope of the RSI.

The assessment and collection of basic health contributions, as well as related litigation, would be handled by the URSSAF at the same time as the collection of the contributions due by self-employed individuals. The new procedure would become effective once a decree is enacted, which is expected to occur by 1 January 2018.

Additionally, the 2017 Social Security Finance Law cancels the split of the authority between the URSSAF and the RSI, to set up their joint liability for the collection of the social security contributions relating to income earned by self-employed individuals.

Tax audit procedure

An off-site tax audit procedure has been introduced, which will consist of the audit of the accounting entries files (FEC) that taxpayers (corporate entities and partnerships/non-corporate entities) have to provide within 15 days following receipt of an audit notification. If the entity is unable to deliver the FEC, a fine of EUR 5,000 will be imposed (and potentially other penalties). Taxpayers will need to have the FEC ready at the latest within 15 days as from the date the notice of reassessment is received from the French tax authorities. In practice, this means that the partnerships will need to extract their FECs shortly after finalizing the partnership tax return. This measure applies as from 31 December 2016.

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France: New legislation affects individual tax, international mobility and employee shareholdings

Overview

Several tax measures affecting both employers and employees have been adopted by the French parliament and enacted through the Amended 2016 French Finance Act, the 2017 French Finance Act and the 2017 French Social Security Act. The measures, which apply as from various dates listed below, include a new income tax withholding system for resident individuals, changes to share-based compensation, amendments to the “impatriate” tax regime, certain modifications to penalties and anti-tax evasion measures.

Measures that directly impact all employers and employees

Monthly income tax withholding for tax residents: A monthly income tax withholding system for tax residents of France has been adopted and will need to be implemented by employers as from 1 January 2018. The validity of the system was confirmed by France’s highest constitutional court on 29 December 2016.

Currently, French tax residents pay their income tax in the year following the year in which the income is received, while under the new system, income tax will become payable on a current-year basis. A tax credit will be granted in 2018 in relation to income received in 2017, to avoid requiring the payment of two years of income tax in 2018. The procedures for the application of the tax credit are provided in the 2017 Finance Act, and “safeguard” measures have been included to prevent employers from maximizing the amount of their 2017 tax credit by deferring income to 2017.

The overall scheme is quite complex, and a separate communication will cover it in detail. In a nutshell, in some cases the obligation to withholding lies with the employer, while in others, an advance payment is due by taxpayers. While the employers will have the obligation to determine the taxable base, the withholding rate will be communicated by the French tax administration (“FTA”) on an individual basis, based on that taxpayers personalised average rate of taxation.

Share-based compensation: New tax regime for free and performance shares: New provisions will be applicable to free and performance shares granted as the result of a decision taken by an extraordinary shareholders’ meeting after the publication of the relevant finance law (i.e. 30 December 2016).

- The portion of acquisition gains not exceeding EUR 300,000 will continue to be taxed as capital gains; and
- The portion of acquisition gains exceeding EUR 300,000 will be taxed as wages and salaries.

Based on this change, the “holding period” tax relief (which can reach 65% for shares that are held for eight years or more from the date of vesting) no longer will apply to the portion of acquisition gains exceeding EUR 300,000.

The additional social contribution (CSG/CRDS) rates will remain 15.5% for the portion of acquisition gains up to EUR 300,000, and will be 8% over this limit.

Employer contribution rate increased to 30%, 10% employee contribution reinstated for gains over € 300,000: The employer contribution payable at the time of the acquisition (vesting/release) of free and performance shares will be increased to 30% (from 20%). The 10% employee contribution will be reinstated for the portion of the gain exceeding EUR 300,000 that is taxed as salary income.

As a consequence, free and performance shares that are granted as the result of a decision taken by an extraordinary shareholders’ meeting after 30 December 2016 will be taxed at a combined rate that could reach 64.7%.

Measures affecting international mobility

Extension of favorable tax framework for impatriates: The French tax code article (155B) providing for a favorable tax framework for impatriates (i.e. certain employees coming to France for work) now is applicable until 31 December of the eighth year (increased from five years) following the year the employee’s duties began in France.

The impatriate tax regime provides a French income tax exemption for elements of remuneration that are linked to the impatriation to France (“impatriation premium”) and for the part of the remuneration that relates to an activity performed outside of France (up to certain limits). For employees that are recruited directly from abroad by a French employer, the amount that can be exempted can be fixed at 30% of the remuneration, if the employee opts for this.

This new provision applies to taxpayers meeting the criteria defined in 155B and who assumed their duties in France on or after 6 July 2016. Taxpayers who assumed their duties in France before 6 July 2016 are not allowed the extension.

Exemption from wage tax for impatriates: The elements of remuneration exempt from income tax under 155B also are now exempt from wage tax for the same period of time, provided the taxpayer meets the conditions to qualify for the impatriate tax regime.

This provision applies to wage tax due on the remuneration received after 1 January 2017 and for taxpayers who assumed their duties on or after 6 July 2016. This is a particularly relevant measure for the financial services and insurance industries.

New penalty for failure to produce a certificate of coverage during an audit: A new penalty is introduced for each employee exempt from the French social security system (and covered under the social security system of another country) for which the employer fails to produce a valid certificate of coverage in the case of an audit by the labor inspector. The amount will be the monthly social security ceiling (i.e. EUR 3,269), which will be doubled in the event of a new breach occurring within two years of the notification date of any previous noncompliance. This penalty will be recovered by the social security administration.

The penalty will be waived if the following conditions are satisfied during the audit:

- The company produces a receipt for a request for the certificate of coverage; and
- The company produces the certificate of coverage delivered by the foreign authorities within the two-month period following the initial application.

This provision will enter in force as from 1 April 2017.

Measures affecting social security: Clarification has been provided regarding the taxation method for social security contributions in the case of deferred compensation. As from 1 April 2018, social security contributions and CSG contributions will be due for the periods to which the relevant income is allocated.

No further clarification has been provided at this point.

Measures that impact individual taxpayers

The total of the income tax, additional taxes and wealth tax paid by a taxpayer in a given year cannot exceed 75% of his/her worldwide income for the previous year. This mechanism is called the "wealth tax ceiling."

For wealth tax due as from 2017, the 75% ceiling is narrowed – income distributed to a corporate taxpaying company controlled by the taxpayer will be reintegrated in the calculation of the French wealth tax ceiling.

This reintegration will be effective only if the main purposes of the existence and use of the company is to limit or eliminate the taxpayer's French wealth tax. France's highest constitutional court has validated this measure, but has added the additional condition that the French tax administration will need to demonstrate that the income realized by the company that is are taken into account for the calculation of the taxpayer's wealth tax ceiling corresponds to income or expenditure directly or indirectly made by the company on behalf of the taxpayer.

Reinforcement of anti-tax evasion measures

Reinforcement of tax penalties for failure to report assets held abroad: The system of proportional penalties for the failure to report assets held abroad will be replaced by a single 80% surcharge on all taxes due that are linked to an undeclared foreign bank account, life insurance contract or trust (exclusive of any other increase or lump-sum fine) for unfiled returns as of the application date of the law. In particular, this new provision replaces the 12.5% penalty on trust worldwide assets in the event of non-compliance with reporting obligations.

The 80% surcharge cannot be less than a fine of EUR 1,500 per undeclared foreign bank account or life insurance policy (EUR 10,000 in the case of bank account/life insurance policy held in a "non-cooperative state") and EUR 20,000 per undeclared trust.

Modification of late tax penalties: The 10% penalty for the late payment of income tax, French wealth tax, occupancy tax and property taxes now is applicable to taxes claimed via a notice of assessment, in addition to those claimed via a tax bill, as from 1 January 2017. Notably, this will apply to the late payment of wealth tax that is due on global assets with a value exceeding EUR 2,570,000.

For income tax purposes, the two cumulative 10% penalties for late filing and underassessment of the taxable basis are replaced by a single 20% penalty applicable to the tax due. The 40% and 80% penalties remain due, respectively, in the case of an income tax return that is filed more than 30 days after the tax administration has requested the filing of such return, and in the case of fraudulent activities discovered by the French tax authorities.

Deloitte's view

- French companies should actively start preparing for the implementation of the withholding tax for residents, which will apply as from 1 January 2018 (unless a revised finance act for 2017 revoking the tax is approved before the end of 2017). Additional complexities will exist for non-French employers and payments made by non-French group entities, application of mobility policies, classification of exceptional income for purposes of the transition year tax credit.
- The attractiveness of France is reinforced for employees sent on temporary assignment to France or hired from abroad, with special incentives for salary taxes (which are particularly high in the financial services and insurance industry).
- The "Macron" free and performance share regime remains beneficial for both the employer and the employee, even though the tax regime has been tightened for gains exceeding EUR 300,000. To the extent possible, future grants should remain under Macron plans subject to shareholder or equivalent ad hoc approval between August 8, 2015 and December 30, 2016.
- Increased vigilance should be applied in securing timely and appropriate documentation for employees remaining under a non-French social security system.
- Employers should re-examine the structuring of deferred payments (bonus payments, share-settled incentive plans, dismissal packages, etc.) in a cross-border context for potential French social security and CSG/CRDS liabilities.
- The fight against fraud is reinforced by the increase in penalties, measures on wealth tax and other measures relating to the automatic exchange of information, as well as the increase in the powers of the tax authorities. We are available to support client on audits and tax litigation in front of the courts.

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Ireland:
Revised income tax Statement of Practice (IT/3/07) (December 2016) – Pay-As-You-Earn (PAYE) system and employee payroll tax deductions regarding non-Irish employments exercised in the State

Overview

Irish Revenue's Statement of Practice (IT/3/07) has recently been updated to take account of Revenue's interpretation of Article 15 (the Employment Article) of the OECD Model Tax Convention on Income and Capital. The update also contains a number of changes which Revenue has implemented since its initial publication in 2007.

Revenue's interpretation of Article 15 impacts the granting of a release from the obligation to operate PAYE for temporary assignees who spend *60 work days or less* in Ireland in a calendar tax year or in a continuous period straddling two tax years.

The updated guidance provides that Revenue is not prepared to accept, for the purposes of granting a release from the obligation to operate PAYE, that the remuneration is paid by, or on behalf of, an employer who is not a resident of Ireland where the assignee is:

- Working for an Irish employer where the duties performed by the individual are an integral part of the business activities of the Irish employer, or
- Replacing a staff member of an Irish employer, or
- Gaining experience working for an Irish employer, or
- Supplied and paid by an agency (or other entity) outside the State to work for an Irish employer.

In addition, the release from the obligation to operate PAYE will not be granted by Revenue based on the following:

1. Simply because the remuneration is paid by a foreign employer and charged in the accounts of a foreign employer or
2. Where the remuneration is paid by a foreign employer and the cost is then recharged to an Irish employer.

The above changes also apply to non-Irish employers with temporary assignees/short term business travelers who spend *more than 60 workdays and less than 183 days* in Ireland in a calendar tax year. Previously, a PAYE dispensation could be applied to Revenue for the release from the obligation to operate PAYE subject to fulfilling a number of conditions. One of these conditions was that the temporary assignee's remuneration be paid by, or on behalf of, an employer who is not a resident in Ireland. However, as Revenue's interpretation has changed in this regard, it now restricts the scenarios under which a PAYE dispensation will be granted.

Revenue has, however, announced that non-Irish employers with short-term business travelers who spend 30 days or less working in Ireland will be exempt from the operation of PAYE as long as the duties they perform in Ireland are incidental in nature.

Access the revised Statement of Practice (IT/3/07).
URL: http://www.revenue.ie/en/practitioner/ebrief/2016/no-1022016.html

Deloitte's view

This is the most significant change to the tax landscape for international employers operating in Ireland since the abolition of the remittance basis of taxation for non-Irish company employees working in Ireland in 2006.

While it stops short of formally adopting the "economic employer" concept, this update is the first time that Revenue has formally published its interpretation of Article 15 and, therefore, all non-Irish employers who post temporary assignees to Ireland or who have short-term business travelers to Ireland should consider it, as it may significantly increase their compliance obligations and the costs of these assignments.

In recent times, Revenue's approach to the application of the Statement of Practice has been inconsistent and has lacked clarity for employers and their advisors. This update will exacerbate this uncertainty for non-Irish employers particularly in relation to the interpretation of such subjective words/phrases as "integral," "gaining experience," and "incidental." Numerous employers will be forced to operate the PAYE system on the income of employees spending insignificant amounts of days working in Ireland and, in some instances, employers with employees working just one day in Ireland in a tax year may be subject to the PAYE system.

Nonresident employers should now review planned temporary assignments to Ireland during 2017 and consider whether a PAYE system needs to be applied in Ireland at the outset of the assignment, given the increased likelihood that the PAYE dispensation may not be granted.

This tightening of the Irish tax rules further underlines the need for international employers to have robust tracking systems and processes in place in order to identify short-term business travelers who may fall within the Irish PAYE net.

One would question the timing of such changes, particularly when the ability to attract talent into Ireland is vital in order for the country to capitalize on the opportunities brought about by the Brexit vote.

Deloitte will continue to lobby the Irish authorities to reverse this update and for Revenue to adopt a fair, probusiness approach in this area.

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Italy:
Flat-tax regime for new tax resident individuals

Overview

The new flat-tax regime guidelines have been published in the official journal of the Italian parliament on December 21, 2016, to introduce a flat-tax regime for new Italian tax resident individuals.

Main provisions

Starting from fiscal year 2017, this new regime introduces a flat tax equal to €100.000 per year for the individuals transferring the tax residency to Italy (reduced to €25.000 for each family member applying for the same tax regime); this flat tax substitutes the ordinary taxation of the incomes produced outside of Italy, but keeps unchanged the tax treatment of Italian-sourced income, which remains subject to ordinary taxes.

The taxpayer can opt not to apply for the flat-tax regime for one or more specific countries; in this case, the individual is subject to ordinary taxes for the income produced in said country and he or she is entitled to claim a foreign tax credit for taxes paid abroad to mitigate double taxation, as per general tax rules.

In addition, please note that the only income that is not included in the flat tax regime is the capital gain realized on sale of qualified participations, which are the participations that give the taxpayer more than 20 percent of the total voting rights (2 percent if listed on a public stock market) or more than 25 percent of the equity of the company (5 percent if listed). This exclusion applies only for the first five years of the option regime.

This tax regime lasts 15 years, is revocable, and foresees that the taxpayer pays the €100.000 flat tax within the ordinary deadline for the tax payment; if the flat tax is not entirely paid, the option for the tax regime is considered forfeited and the regime cannot be exercised any longer.

Conditions to qualify for the tax regime

In order to apply for the tax regime, the individual – and the applying family member – had to have qualified as Italian nontax resident individuals for at least nine of the 10 years preceding the application.

The individual also to lodge a tax ruling to the Italian tax authorities, which will assess his or her tax position, and will communicate with the foreign tax authorities in which the taxpayer had his or her tax residence prior to transferring to Italy.

Other considerations

In addition to the avoidance of taxation of non-Italian incomes (which are replaced by the flat tax), the new tax regime provides also further exemptions during the period:

- Foreign assets monitoring obligation (i.e. RW Form);
- Wealth tax on financial assets and real estate held outside of Italy; and
- Inheritance/gift tax for assets held outside of Italy.

Finally, please note that the tax regime is not compatible with the favourable tax regimes currently in place for other categories of individual returning to Italy (e.g., researchers or high-skilled employees).

Deloitte's view

The new tax regime represents an important innovation in the Italian tax law and increases significantly the attractiveness of the relocation to Italy from a tax standpoint, with specific reference to high-income individuals.

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Japan:
Change in taxation of nonpermanent residents

Overview

As part of Japan's Base Erosion and Profit Shifting (BEPS) reforms, Japanese domestic law was amended by the 2014 tax reforms to adopt the principles reflected in the 2010 Organisation for Economic Co-Operation and Development (OECD) Report on the Attrition of Profits to Permanent Establishments. The new law will affect both corporations and individuals and will come into effect for the 2017 calendar year for individuals.

From 1 January 2017, the scope of taxable income for nonpermanent residents (NPRs) will change. Currently, an NPR is not taxable on worldwide income but on Japan-sourced income, regardless of where it is paid, and any non-Japan-sourced income paid in Japan, remitted, or effectively remitted to Japan. Under the new domestic rules with effect from 1 January 2017, an NPR is taxable on all income except foreign-sourced income that is not paid in, remitted, or effectively remitted to Japan.

2017 tax reforms

Realizing the additional tax burden that the new definitions would place on NPRs who historically would not have been taxed on his or her share and security-related gains retained offshore, the government made a further clarification to the rules in the recent 2017 tax reforms.

Effective from 1 April 2017, any gains arising on the sale of shares or securities, with the exception of those relating to shares or securities acquired by an NPR after 1 April 2017, can be excluded when determining the taxable income of an NPR.

This change will have the effect of limiting the taxation of gains on overseas shares and securities for an NPR to those relating to acquisitions subsequent to the later of 1 April 2017, or his or her arrival in Japan.

Double tax relief

Japan's network of tax treaties will allow further limited protection from the new definitions. Under the tax regulations, when a gain is realized on a sale of shares or securities overseas, and the country in which it is realized has the right to tax the gains under a tax treaty with Japan (i.e., gains are taxed on a source-country basis), it may continue to be considered a foreign source of income.

Please note separate rules can apply for the sale of shares in certain types of business or for substantial share holdings.

Where double taxation arises in a country other than those listed below, relief should be considered in the other country.

Deloitte's view

The new scope of taxation will be imposed beginning 1 January 2017, and will affect foreign nationals who realize income from the sale of foreign securities/shares during the period that they are NPRs.

There will then be a three-month period before the more relaxed regime applies, beginning 1 April 2017. Affected individuals may wish to consider delaying disposals until after 1 April 2017.

Individuals who have significant holdings in overseas securities should consult their tax advisers on the tax impact of disposals and possible planning around double taxation and tax treaties.

Companies may wish to communicate the change to current employees and especially their foreign national employees who are currently on an assignment in Japan and had been informed of the pre-2017 regime.

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Malaysia:
Tax borne by employer (Public Ruling 11/2016)

Overview

The Inland Revenue Board of Malaysia (MIRB) has issued a Public Ruling (PR) No. 11/2016 on 8 December 2016 on taxes borne by employer. This PR replaces the earlier PR2/2006 dated 17 January 2006.

The contents of PR11/2016 are essentially the same as the previous PR, but also reflect the changes to the law pertaining to employment income, specifically that gross employment income will now be treated as gross income in the year of receipt.

Tax computation examples have also been updated to reflect tax exemptions for certain perquisites.

This PR has also included a detailed description of both the employee and employer's tax obligations.

This ruling explains the tax treatment for tax borne by employers, including the following:

- When to bring tax borne by employers to tax:
    - The income tax liability of an employee paid by the employee would fall within the definition of perquisite and is part of the gross income from employment.

- The income tax of an employee borne by his or her employer for a basis year for a year of assessment (YA) is treated as income of that employee in that basis year when the actual amount of tax for that YA can be ascertained, i.e., in the following basis year.

- Tax from revised assessments:
  - Where there is a change in taxable/chargeable income that results in a reduced assessment for a YA, the tax for that YA and the following YA has to be recomputed to ascertain the actual tax payable, which should be borne by the employer.
  - Alternatively, if there is an additional tax for a YA, which is borne by the employer, this additional tax is an additional perquisite to the employee and will be taxed in the YA in which the additional assessment is made.
- Penalties from additional assessment:
  - If the amount of penalty is borne by the employer, the total amount of tax payable by the employer is a perquisite to the employee and must be treated as gross income from employment.

Deloitte's view

This PR has been issued to replace an existing PR to reflect changes to the law, i.e., whereby gross employment income will now be treated as gross income in the year of receipt as well as tax exemptions for certain perquisites provided to employees.

The MIRB has again emphasised the employer's responsibilities, such as notifying and withholding of money payable to employee as well as stated the penalties for noncompliance to be imposed on the employer.

As for the employee's responsibilities, these would include notifying of chargeability and filing of income tax return. When an employee's taxes are borne by the employer, he or she is still required to submit an income tax return. Penalties for noncompliance to be imposed on the employee have also been stated in the PR.

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Malaysia:
Amendments to Form E, CP 8D, and EA with respect to remuneration for 2016

Overview

The Malaysia Inland Revenue Board (MIRB) has recently announced that amendments have been made to Form C.P.8D and Form EA with respect to remuneration for 2016, for the provision of additional information.

The amendments/improvements to these forms are made for the following purposes:

- For verification of/reference to information relating to employees who opt for monthly tax deduction (MTD) as final tax; and
- To facilitate the uniformity of information retained by the MIRB, the employer (Form E and C.P.8D), and the employee/taxpayer (Form EA).

The additional information (where applicable) to be provided in Form C.P.8D in respect of each employee is as follows:

- Category of employee – Category 1/2/3 (as per the MTD schedule)
- Tax borne by employer (if any)
- Number of children who qualify for child relief
- Total amount of child relief
- Benefits-in-kind received
- Value of living accommodation received
- Benefits from employees' share option scheme (ESOS)/equity scheme
- Total reliefs and zakat payments (i.e., payments under Islamic law and used for charitable and religious purposes in Malaysia) other than via salary deductions claimed by the employee via Form TP1
- Contributions to the employees' provident fund
- Zakat payments via salary deductions

Meanwhile, the following additional information (where applicable) is now required to be reported in the Form EA of each individual:

- Number of children who qualify for child relief
- Benefits from ESOS/equity scheme
- Gratuity
- Details of payments of arrears and other payments with respect to prior years and received in the current year
- Benefits-in-kind received
- Zakat payments via salary deductions
- Total reliefs and zakat payments, other than via salary deductions, claimed by employee via Form TP1
- Total amount of child relief
- Contributions to Social Security Organisation of Malaysia, which is only applicable to employees who are Malaysian citizens or permanent residents

Deloitte's view

The MIRB has emphasised the following employer's responsibilities:

- The submission of Form E and C.P.8A is considered complete only if it is received on or before the final stipulated date for submission, i.e., by 31 March following the end of the tax year pursuant to Section 83(1) of the Income Tax Act, 1967 (ITA).
- With the introduction of Section 83(1B) of the ITA, where the employer is a company, the Form E must be furnished on an electronic medium or by way of electronic transmission in accordance with Section 152A of the ITA. This change is effective from the year ended 31 December 2016 and subsequent years.

With the above, more tax audits can be expected from the MIRB. Therefore, employers will need to have sound knowledge of the demography of their employees as well as the tax treatment of all the compensation items provided to their employees to ensure that the details reported in Forms E, C.P. 8A, and EA are true, accurate, correct, and complete.

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The Netherlands:
Japanese nationals not restricted to the EU Intra-Corporate Transfer (ICT) Directive

Overview

Japanese nationals who fall under the scope of the EU Intra-Corporate Transfer (ICT) Directive implemented in the Netherlands on November 29, 2016, are not obliged to apply for an ICT Residence Permit, contrary to what Dutch immigration authorities have previously communicated.

In light of the ICT Directive, Deloitte made inquiries about whether the Highly Skilled Migrant Procedure applicable to Japanese nationals on assignment in the Netherlands would continue. Dutch immigration authorities confirmed to us that Japanese nationals continue to have the right to the Highly Skilled Migrant Procedure based on a trade treaty between Japan and the Netherlands, which takes precedence over European law.

It is important for Japanese nationals assigned to the Netherlands to be able to procure residence permits under the Highly Skilled Migrant Procedure because:

- A local contract in the Netherlands is not required.
- The assignment in the Netherlands can exceed the maximum three-year period regulated by the ICT Directive.

For Highly Skilled Migrant Applications, companies in the Netherlands must be recognized sponsors. As of January 1, 2017, the legal fee for small companies (less than 50 employees) to apply for recognized sponsorship status was halved to €2.638.

As of January 1, 2017, the gross monthly salary thresholds for Highly Skilled Migrants in the Netherlands (excluding the Dutch mandatory 8% holiday allowance) have been updated as follows:

- Highly Skilled Migrants 30 years or older: €4.324
- Highly Skilled Migrants younger than 30 years: €3.170
- Highly Skilled Migrants subsequent to graduation or after having a search year-permit: €2.272

Deloitte's view

Japanese nationals are not obliged to file ICT Residence Permit applications, even if they fall under the scope of the ICT Directive. Based on a trade treaty between Japan and the Netherlands, Japanese citizens can still apply for residence permits as Highly Skilled Migrants. Deloitte recommends that Japanese citizens continue to apply for the Highly Skilled Migrant Residence Permit instead of the ICT Residence Permit in case an assignment will exceed 3 years.

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Singapore:
Update on individual tax filing requirements for frequent business travelers and clarification on reporting of exempt/non-taxable income on Forms IR8A, IR8E, and IR8T

Update on individual tax filing requirements for frequent business travelers

For frequent business travelers (FBTs) based outside of Singapore for employment but travel to Singapore for business purposes, employers are generally required to notify the Inland Revenue Authority of Singapore (IRAS) by filing Form IR21 (Notification of a noncitizen employee's cessation of employment or departure from Singapore) within two months from the date of an FBT's last business visit or cancellation/expiry of an FBT's employment pass.

Form IR21 is generally not required to be filed for short-term non-resident visiting employees (e.g., FBTs) who exercise employment in Singapore for not more than 60 days in a calendar year.

However, if FBT's employment passes have been applied for, renewed, or cancelled by the Singapore Ministry of Manpower (MOM), the IRAS may not be aware that such FBTs have exercised employment in Singapore for not more than 60 days in a calendar year. Accordingly, the IRAS expects employers to report their income derived from FBT employment in Singapore on Form IR21 by the stipulated deadline. If an employer fails to file Form IR21, the IRAS may issue an estimated assessment to the FBT and may take enforcement actions if the taxes remain unpaid.

The IRAS has clarified that for an FBT who is issued an employment pass and exercises employment in Singapore for not more than 60 days in a calendar year, it may be possible to request that the IRAS waive the employer's requirement to file Form IR21. The IRAS will require such an employer to inform the IRAS of FBTs (i.e., name and foreign identification number as indicated on employment passes) and the period of their employment/physical presence in Singapore during the calendar year to enable the IRAS to consider the waiver request.

The deadlines to notify the IRAS are as follows:

- If an employment pass is still valid: For cases in which an employment pass is still valid as of 31 December of the calendar year (Year 1), notification should be submitted to the IRAS by the extended deadline of 1 March of the following year (Year 2).
- If an employment pass has expired or been cancelled: For cases in which an employment pass has expired or been cancelled during the calendar year (Year 1), notification should be submitted to the IRAS within two months from the date of cancellation or expiry to enable the IRAS to update its records (so that such cases will not be treated as late filing or non-filing of Form IR21).

In considering the above request, the IRAS may ask for additional information (e.g., a letter from the FBT's employer that indicates the FBT is contracted to be based outside of Singapore along with the location where the FBT will be based, a description of the FBT's role and responsibilities, and the amount of the FBT's income attributable to his or her period of employment and/or business trips to Singapore). The waiver is subject to the approval of the IRAS.

Employers are required to file Form IR21 for FBTs who have exercised employment in Singapore for more than 60 days in a calendar year. Form IR21 should be filed upon cessation of an FBT's employment and/or business trips to Singapore.

Deloitte's view

In view of the fact that the IRAS has access to immigration system information and is focused on enforcing the reporting of FBT income for tax collection purposes, companies must monitor their FBTs and comply with the tax reporting requirements. Failure to report FBT income is an offence under the Singapore Income Tax Act.

Failure to notify the IRAS promptly may result in the issuance of estimated tax assessments to FBTs and the imposition of composition fees on employers for the late or non-filing of Form IR21. In addition, failure to arrange for payment of assessed taxes may give rise to the issuance of directives by the IRAS to prevent the FBTs from leaving Singapore.

Clarification on the reporting of exempt or non-taxable income on Forms IR8A, IR8E, and IR8T

Effective from the Year of Assessment 2017 (income year 2016), the IRAS has included an additional reporting item, termed “Exempt/Non-Taxable Income,” on Forms IR8A, IR8E, and IR8T that requires employers to report on employees’ remuneration related to overseas postings (in which the overseas employment was not incidental to employment in Singapore).

We have clarified with the IRAS the reasons for these disclosure requirements, since the income should not be taxable in Singapore. It is our understanding that the disclosure requirements are meant to assist the IRAS in reviewing the individual tax returns of employees more efficiently and accurately. Disclosure of the exempt income is not mandatory.

Deloitte’s view

The IRAS has been issuing assurance questionnaires to assess the completeness and accuracy of the reporting done by employers related to employee remuneration. Accordingly, this additional disclosure requirement is an effort to ensure that employers are aware of their reporting obligations. Employers should review whether relevant employee income derived from overseas employment is considered incidental to employment in Singapore and complete the statutory returns correctly to mitigate tax exposure related to the risk of incorrect or under-reporting of employee income.

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Global Reward Updates:
France: Final Adoption of New Free Share Taxation Regime by French Parliament

On December 20, 2016, the French Parliament formally adopted article 61 of the Finance Tax Act for 2017 (“article 61). Article 61 modifies the income tax and social security regime applicable to free shares which was previously adopted in article 135 of the Law n. 2015-990 for growth, business and equal economic opportunity (the “Macron Act”). Subsequent to the Finance Tax Act for 2017 adoption by the French Parliament, the measures were subject to review by the French Constitutional Council to ensure the measures are constitutional, though the Constitutional Council made no comment on the measures; as such, these measures are now deemed final.

Measures adopted

Taxation of acquisition gain in excess of €300,000 as employment income: Article 80 quaterdecies-I of the French Tax Code has been modified as follows: “The gain corresponding to the value, at the acquisition date, of the free shares granted further to the provisions of the Articles L. 225-197-1 to L. 225-197-3 of the French Commercial Code is taxed in the hands of the beneficiary as employment income pursuant to the paragraph 3 of the article 200 A, within an annual limit of EUR 300,000. The portion of the gain exceeding this limit is taxed as employment income.”

Therefore, the acquisition gain will continue to benefit from the taper relief regime based on the holding period of the shares, though only up to the annual limit of €300,000. Any acquisition gain exceeding this limit will be taxed as employment income.

In addition, the acquisition gain will be subject to the social security surcharges at the rate of 15.5% for the portion of the gain up to and including €300,000, and at the rate of 8% for any acquisition gain exceeding €300,000.

Employer contribution rate of 30% and restoration of the employee contribution of 10%: The employer fixed social contribution rate is increased to 30% (previously this rate was 20%). Small and medium-sized enterprises (SMEs; defined by European Union legislation) who did not issue dividends on their shares are exempt from this fixed social contribution. SME's which do issue dividends are, conversely, subject to the fixed employer social contribution.

The employee fixed social contribution rate of 10% is restored for the portion of any acquisition gain exceeding €300,000 and taxed as employment income.

Entry into force: The new provisions will be applicable to any free share award grants made further to a plan which was adopted by shareholder approval, which approval was given after the publication of the law.

Notes and Recommendations

- This modification is a new illustration of the instability of French tax law.
- SMEs should use this new favorable free share income tax and social tax regime before further modifications are introduced.
- With respect to those companies that do not satisfy the definition of an SME, those companies will need to clearly identify those grants made (or might be made) pursuant to the current regime (applicable from August 8, 2015).
- The grant of free shares in 2017 under a French qualified plan is still preferable, from a tax perspective, when compared with non-qualified plans and/or classical variable remuneration schemes. Of note, the above measures do not impact French qualified stock options.

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