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Czech Republic: Intracorporate transfer card

Overview

The Act on Residence of Foreign Nationals No. 326/1999 Collection is currently in the process of novelization due to the transposition of EU Directive 2014/66/EU on intracorporate transfers and some others. It also introduces major changes into the current immigration institutes. The novelization was approved in the third reading in the Czech Parliament on April 7, 2017; we outline the major changes below.

Intracorporate transfer card

The institution of the intracorporate transfer card (ICT card) was introduced for foreign nationals who are assigned within a group company from a non-EU country to the Czech entity for more than 90 days. The card will be available for managers and specialists who have been previously employed by the non-EU entity for at least six months, and company trainees, who have university education. The period of residence of the ICT holders cannot be longer than three years for managers and specialists, and one year for trainees.

One of the advantages of this type of permit is that the representative of the Czech entity can submit an application for the ICT card on the territory of the Czech Republic on behalf of the foreign national, in case the Czech entity is part of the program the government approved (*e.g.*, Fast Track, Welcome Package, etc.). The application shall be decided within 90 days. Family members of the ICT cardholder can apply for a long-term residence permit for the purpose of the family reunification.

ICT card issued by another EU country allows its holder to enter the territory of the Czech Republic and stay for up to 90 days in a 180-day period. In this case, the foreign national does not need to obtain any work or residence permit from the Czech authorities.

In case the foreign national plans to stay in the Czech Republic for an assignment longer than 90 days, it is necessary to obtain the ICT card of another EU country (mobile ICT card), which is also newly introduced in the law.

Deloitte’s view

Given the fact that the ICT card covers rather specific situations and does not bring advantages over an employee card in terms of processing times, we do not expect this type of permit to be widely used.

Investor card

Instituting a long-term residence permit for the purpose of investing (an investor card) could be granted in case a foreign national, who plans to stay on the territory of the Czech Republic for more than 90 days, is an entrepreneur or a statutory representative and at the same time plans to significantly invest on the territory. The Ministry of Interior shall confirm the exact requirements for a “significant investment.”

The Immigration office is issuing the Investor for up to two years and can be extended repeatedly. The Immigration office should decide the application in 30 days. For the applications of the statutory representatives, applicants should expect to wait an additional 15 working days. Family members can apply for the long-term residence permit for the purpose of family reunification, which the Immigration office decides within 90 days.

Deloitte’s view

There are rather specific requirements with respect to this application. The practical application of this institute will bring a clearer view.

Statutory bodies

It will no longer be possible for the statutory representative, who at the same time conducts activities of the company, to obtain an employee card. According to the Law on Employment, the statutory representative will need to obtain a work permit and, according to the Law on the Residence of Foreigners, will need to obtain a long-term residence permit for the purpose of business. This rule applies to newcomers as well as to foreign nationals already residing in the Czech Republic.

Residence permits for family members of EU citizens

A family member of an EU national will not have the right to choose which type of permit to obtain, *e.g.*, an employee card or a temporary residence permit. In case a foreign national is or becomes a family member of the EU national, then he or she is obliged to obtain temporary residence permit within three months from the point of entry to the territory of the Czech Republic – from the point of becoming the family member on the territory or from the point of expiration of the current permit.

Deloitte's view

A family member of an EU national can reside on the territory of the Czech Republic together with the EU national for 3 months without any visa and there is no administrative barrier against personal submission of the application. This approach brings certain advantages. However, as family situations are subject to change, the individual's right to reside in the Czech Republic and the free access to the Czech labor market can be jeopardized.

Miscellaneous

The validity of the employee card will be automatically finished, once the foreign national terminates the employment relationship. In case the employment relationship is terminated, the employee card validity is finished 60 days from the point of relationship termination or from the point when the application for the change of the employer was not approved. Until now, the employee card validity could be terminated only by the official decision of the immigration authority.

Extension of the employee card will be allowed until the last day of the employee card validity. In case the last day of validity is on the weekend or national holiday, the last day of validity moves to the first following working day. Until now, the employee card extension application needed to be submitted to the immigration office within 120 and 30 days prior the expiration of the current employee card.

In accordance with the changes, blue cards that another EU country issued would be considered valid on the territory of the Czech Republic until the Czech government approves the Czech blue card application. Until now, the blue card issued by another EU country was only allowing its holder to enter the territory of the Czech Republic in the regime of a visa-free stay for up to 90 days.

An institute of unreliable employers – who will not be allowed to employ foreigners – will be created in accordance with the proposed amendments. Unreliable employer is the one who has debts toward the Czech authorities, is not compliant with the activities stated in the company register, has fictional seat, etc.

Deloitte's view

A family member of an EU national can reside on the territory of the Czech Republic together with the EU national for three months without any visa, and there is no administrative barrier against personal submission of the application. This approach brings certain advantages. However, as family situations are subject to change, the individual's right to reside in the Czech Republic and the free access to the Czech labor market can be jeopardized.

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Hong Kong:
Update on automatic exchange of financial information

Update on automatic exchange of financial information (AEOI) partners

Based on the timeline outlined in the October 2016 NewsFlash, the Hong Kong Inland Revenue Department (IRD) planned to announce a list of AEOI partners by the end of 2016. AEOI partners are the jurisdictions with which Hong Kong has entered into AEOI agreements. As of April 3, 2017, Hong Kong has signed 37 comprehensive double taxation agreements (CDTAs) and 7 tax information exchange agreements (TIEAs).

In early March 2017, the IRD announced a revised AEOI approach that targets the exchange of information with 74 jurisdictions instead of the 44 jurisdictions with which IRD has entered into CDTAs or TIEAs.

As of April 3, 2017, Hong Kong has signed agreements for AEOI with the following 11 jurisdictions:

1. Japan;
2. United Kingdom;
3. Korea;
4. Belgium;
5. Canada;
6. Guernsey;
7. Italy;
8. Mexico;
9. The Netherlands;
10. Portugal; and
11. South Africa.

Negotiations on AEOI agreements with other jurisdictions are in progress.

Update on implementation timeline

The IRD originally planned to begin exchanging information with AEOI partners in September 2018. However, financial institutions (FIs) now have to gather information for all 74 jurisdictions, except Japan and the UK, for the period from July 1, 2017 to December 31, 2017, and provide the information to the IRD in early 2018. The AEOI agreements signed with Japan and the UK require FIs to gather information for these two jurisdictions starting on January 1, 2017.

Please note, the IRD will only exchange information with these 74 jurisdictions after agreements for AEOI have been signed with them. It is possible that some of the 74 jurisdictions may not enter into AEOI agreements with the IRD by 2018, and the information gathered and sent to the IRD by FIs may not actually be exchanged. However, information would still have to be gathered and sent to the IRD.

The government introduced the necessary legislation to the Legislative Council on March 24, 2017, and aims to have it in place by July 1, 2017.

Deloitte's view

As the IRD expands the scope of AEOI efforts, tax information transparency will be enhanced and cross-border tax evasion will be minimized.

Employers should review the 74 targeted AEOI jurisdictions to assess risk exposures associated with disclosures on the individual level, reputational impact on employers due to individual noncompliance, as well as the impact on mobility and assignees' choice of assignment locations.

Employers may also wish to provide their employees with guidance on how tax residence is determined as part of the self-certification process and ensure that this aligns with current tax filing positions.

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India:
Government makes reporting Aadhaar mandatory for PAN / return filing

Overview

Recently, the government has taken a series of measures to enforce the correct and complete reporting of income by taxpayers. In line with these measures, taxpayers have to link their Aadhaar numbers with their permanent account numbers (PANs) in the income tax e-filing portal.

The amendment to the Finance Bill 2017 (the insertion of Section 139AA to the Income-tax Act, 1961) mandates including Aadhaar numbers for all new PAN applications. Aadhaar numbers should also be included in the return of income (ROI). Existing PAN holders also have to link Aadhaar to their PAN, within the predetermined window (to be notified by the Government), failing which the existing PAN will be deemed to be invalid.

Highlights of the proposal

- Effective July 1, 2017, every person who is eligible to obtain an Aadhaar number would be required to report it on the application for a PAN and ROI.
- In the absence of an Aadhaar number, one can also mention the enrollment ID received after applying for it.
- Every person who already has a PAN as of July 1, 2017, and who is eligible to obtain an Aadhaar number, shall be required to report the PAN to the prescribed authority on or before a date of the central government's choosing.
- If a person fails to link the Aadhaar number, the PAN allotted to him/her shall be deemed invalid, and he/she would be treated as not having applied for a PAN.
- These conditions may not be applicable to any class or classes of persons, or any state or part of any state, as may be decided by the central government.

Deloitte's view

As per the amendment, disclosure of an Aadhaar number / Aadhaar enrolment id would be a mandatory requirement for the filing of an ROI, beginning July 1, 2017. Based on the tax return forms for India tax year 2016-17 which have been issued on March 31, 2017, the requirement to indicate Aadhaar number or enrolment ID does not seem to be mandatory. However, we would need to wait and watch for further instructions on the Government proposes to operationalise this wef July 1, 2017.

It also remains to be seen whether foreign nationals and Indian citizens staying overseas will be specifically excluded from this requirement given the practical challenges that they would face in obtaining an Aadhaar number.

Source: Amendments to Finance Bill, 2017.

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Ireland:
Significant changes to tax-free motor car travel and subsistence rates announced

Overview

The Department of Public Expenditure and Reform has made significant changes to the Civil Service rates and methodology applicable to the payment of tax-free motor travel and subsistence expenses. These changes are effective from April 1, 2017; however, at this time, the Revenue guidance for IT 51 (Motoring expenses), IT 54

(Employee Subsistence Expenses), and Statement of Practice IT 2 2007 (Statement of Practice regarding travel and subsistence expenses reimbursement) have yet to be updated.

Actions for employers

- Review your expense systems and policies immediately and implement changes where required.
- Ensure that details of the changes are communicated to the HR and Finance Departments, as well as to your employees.

Subsistence expenses

In practice, an employer may pay or reimburse subsistence tax free in one of two ways:

- **Flat-rate allowances, *e.g.*, lunch, day, or overnight allowances:** The tax-free treatment of such allowances is determined by the distance and time spent away from the employee's normal workplace and home, and can be paid up to the level of the prevailing schedule of published Civil Service rates.
- **Subsistence expenses paid direct or reimbursed by the employer (vouched expenses):** Where an employer pays or reimburses an employee's subsistence expenses while on a business journey, *i.e.*, hotel accommodation, lunch or dinner, etc., generally no taxable benefit arises once employees provide receipts for the expenditure incurred. The current Revenue guidance states that where subsistence expenses are reimbursed by employers to employees on the basis of actual costs incurred, then the reimbursed amount will generally not exceed the Civil Service flat-rate allowances for subsistence.

Subsistence: Flat Rate Allowances Effective April 1, 2017

Domestic Subsistence Rates Effective April 1, 2017				
Day Allowances		Overnight Allowances		
5 hours (but <10 hours)	10 hours or more	Normal rate: payable up to 14 nights	Reduced rate: payable for each of next 14 nights	Detention rate: payable for each of next 28 nights
€14.01	€33.61	€133.73	€120.36	€66.87

Day allowances

There are no changes to the flat-rate allowances, which apply to absences more than 8km one way from the normal place of work and home.

Overnight allowances

The rates of overnight allowances payable have been increased effective April 1, 2017. Revenue guidance states that an overnight allowance covers a period of up to 24 hours from the time of departure, as well as any further period not exceeding five hours, which is necessarily spent overnight at least 100km away from the employee's normal workplace and home. The overnight allowance is expected to cover the cost of accommodation and meals during the absence.

Introduction of a vouched accommodation (VA) rate for Dublin

Due to the rising costs of temporary accommodation in the Dublin area, sourcing suitable accommodations within the standard overnight allowance rate has proved difficult for employees.

Effective April 1, 2017, a separate VA rate may be applied when:

- Employees are required to stay overnight in Dublin (which is more than 100km from their normal workplace and home); and
- Those employees cannot source accommodation and meals within the standard (normal) overnight allowance payable.

In such cases, employers can provide or reimburse the cost of accommodation up to the limit of the standard overnight allowance rate (€133.73) plus provide the day rate (i.e., €33.61) for meals. Do not confuse this with actual vouched expenses supported by actual receipts, which remain unaffected.

Foreign subsistence allowances

A number of changes became effective April 1, 2017.

In order to bring the rules for claiming flat-rate foreign subsistence allowances in line with the domestic rules applicable since July 1, 2015, the class B rate of allowances has now been abolished, the effect of which means all employees claim the same rates regardless of salary level or grade. Rates have increased, and you can obtain a full schedule from your usual Deloitte Ireland GES contact.

Motor car travel allowance

Employees who are required to use their own private car on business journeys may claim a tax-free travel allowance, which is determined by their car engine size and number of business kilometers travelled in the year to date.

With effect from April 1, 2017, a new schedule of rates applies to reflect recent changes in environmentally friendly technology, road conditions and commuter behavior:

Distance Bands		Engine Capacity (cc)		
		Up to 1200cc	1201cc to 1500cc	1501cc and over
Band 1	0 – 1,500 km	37.95 cent	39.86 cent	44.79 cent
Band 2	1,501 – 5,500 km	70.00 cent	73.21 cent	83.53 cent
Band 3	5,501 – 25,000 km	27.55 cent	29.03 cent	32.21 cent
Band 4	25,001 km and over	21.36 cent	22.23 cent	25.85 cent

The new Band 1 rates are lower than the previous rates for such travel. The new Band 2 rates are higher than the previous rates for such travel. The new Band 3 rates are higher than the previous rates for such travel except for travel between 5,501km to 6,437km. The new Band 4 rates are lower for the 1201cc and above cars.

Kilometers travelled between January 1, 2017 and March 31, 2017 will count toward the aggregated kilometers for the year under the new rates.

Deloitte's view

While it is positive that a number of motorcar travel and subsistence rates have increased to reflect increased costs in Ireland, the new rules will create additional work for employers who must ensure that their expense policies and systems have been updated to account for the changes, which were effective 1 April 2017. This is in the absence of updated revenue guidance on these changes.

For the purpose of overnight subsistence rates, employers may now need to differentiate between those employees working in Dublin or elsewhere.

Employers should ensure that claim approvers understand the new rules and that processes are in place to ensure allowances are only paid in line with the new rules. Where employers fail to implement the new rules, the risk of a Pay as You Earn ("PAYE") exposure exists. Likewise, one must consider the risk of being selected for Revenue audit.

It is clear that changes to work and consumer practices are now being considered in determining travel and subsistence expense policies. The current directive from the Department of Public Expenditure and Reform confirms that further changes will be introduced in the years to come in order to align the schedule of allowable travel expenses with the Government's National Policy on Climate Action.

Section 6 of Finance (No. 2) Act 2008 provided for a new CO2-based system of calculation of benefit in kind with respect to company cars provided by employers. These changes were to become effective following a Ministerial Order. As the relevant departments are now considering the national policy on climate action when determining the travel expense policy, it remains to be seen whether the anticipated changes to the rules calculating benefit in kind will now be introduced.

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Korea:
New requirement to obtain short-term visas for certain individuals from countries participating in visa-waiver-programs

Overview

The visa-waiver program enables most citizens or nationals of participating counties to travel to Korea for up to 90 days, if their duties are limited to certain activities. However, the Korean Immigration Office recently released a new manual, which includes short-term visa requirements for particular business travelers who were previously allowed visa-free entries.

Who is required to obtain a short-term visa?

Effective March 20, 2017, business travelers visiting Korea for less than 90 days for the purpose of performing any types of substantial commercial activities such as providing services in exchange for remuneration, installing/maintaining imported machinery, or supervising shipyards and industrial facilities are now required to obtain C4 visas before entering the country. Previously they were allowed visa-free entries if they are citizens of countries participating in visa-waiver agreements with Korea and their wages were paid from overseas.

No official announcement had been made as of yet, but Deloitte was able to obtain clarifications from the Ministry of Justice via a written request for information on April 12, 2017.

C4 visas are applied for from their countries of origin and supporting documents, such as purchase contracts, service contracts, and proof of the applicants' qualification, will need to be submitted along with the visa application.

Deloitte's view

- Korean consulate offices in different countries may have varying lists of required documents and application protocols. Applicants are advised to consult with immigration experts before visiting the consulate office.
- Employees already working in Korea on visa exemption status and providing any of the above mentioned services will need to obtain C4 visas immediately, to be in compliance with the new guideline.
- Deloitte Korea's immigration team specializes in providing visa-related services, including C4 visa application assistance.

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People's Republic of China:
Scope of Nonresident Teachers/Researchers Eligible for Treaty Exemption Expanded

Overview

China's State Administration of Taxation (SAT) issued guidance on December 29, 2016 (Bulletin [2016] No. 91 (Bulletin 91)) that expands the scope of nonresident individuals who are eligible for tax treaty benefits under the teacher/researcher article of an applicable treaty.

The teacher/researcher article grants a tax exemption for payments made to an individual who is resident of a treaty partner country and who is temporarily present in China for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or other educational or scientific research institutions for a stipulated period.

Bulletin 91 applies as from the date of issuance and to any cases whose tax treatment has not yet been finalized.

Scope of eligible "educational institutions" expanded

Before the issuance of Bulletin 91, the term "university, college, school or other educational institution" included full-time institutions of higher education at or above the junior college level that had the capacity to hire foreign teachers or researchers as approved by the State Administration of Foreign Experts Affairs and were accredited by China's Ministry of Education.

Bulletin 91 significantly expands the scope of educational institutions to include schools that provide preschool education, primary education, secondary education, higher education and special education. Qualified educational institutions now specifically include the following: kindergartens, primary schools, adult primary schools, junior secondary schools, vocational junior secondary schools, senior secondary schools, adult senior secondary schools, technical secondary schools, adult technical secondary schools, vocational senior secondary schools, skilled worker schools, special education schools, schools for children of foreigners, colleges and universities, technical colleges and universities, and adult colleges and universities.

Training institutions are not considered eligible "schools," so teachers or researchers working in such institutions probably will not be able to enjoy a tax exemption under an applicable tax treaty.

Documentation requirements for treaty exemption claim

To claim treaty benefits under the teacher/researcher article, the following documents generally must be submitted to the competent tax authority:

- Photocopy of a valid foreign expert certificate and work permit (or employment license certificate);
- Reporting form of the tax residence status of the nonresident individual;
- Reporting form for a nonresident individual to claim tax treaty benefits;
- Tax residence certificate issued by the competent tax authorities of the other contracting state; and
- Relevant contracts, agreements, payment vouchers, etc.

The supporting documents must be submitted at the time the nonresident teacher/researcher derives the income for the first time and makes the relevant tax filing, or at the time the withholding agent makes the first withholding on the income.

Deloitte's view

Bulletin 91 expands the scope of educational institutions under the teacher/researcher article, which will enable more foreign teachers/researchers in China's educational institutions to enjoy a tax exemption for income earned as a teacher/researcher. As a result, more domestic education institutions will be able to attract foreign talent, thus promoting the further development of China's education sector.

It should be noted, however, that not all of China's tax treaties contain a teacher/researcher article, and where such an article is available, there may be other specific requirements that must be met to enjoy the exemption (*e.g.* requirements relating to the activities to be performed, the time period, etc.).

Given the more stringent enforcement of China's immigration rules, as well as the evolving compliance administration practice relating to foreign individuals, it is likely that the tax authorities will improve communications and information sharing with other Chinese authorities and intensify the tax administration on nonresident taxpayers. Thus, non-Chinese individuals who may be eligible for treaty benefits should pay close attention to their compliance obligations to ensure the consistency of all information provided to the various authorities.

Educational institutions that potentially may benefit from the new rules should review the relevant requirements and carry out an internal assessment to determine whether their contract arrangements will allow foreign teachers/researchers to qualify for treaty benefits. Such institutions also should make their foreign teachers/researchers aware of the potential impact of Bulletin 91 and the related compliance obligations.

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United States:
Individual Tax Reform: Impact on global mobility programs

Summary of tax reform proposals for individuals

Tax reform continues to be a high priority in Washington. Both the President and House leadership have recently indicated that tax reform would be their next area of focus. Although the proposed tax changes lack a great deal of detail and face tough challenges, it seems clear that if change is enacted, individual tax rates are likely to decrease. Currently, the maximum federal income tax rate is 39.6%. The proposed maximum marginal tax rate proposed by President Trump and the House GOP is 33%. Further, the seven current income tax brackets would be compressed into three brackets.

These changes could have a significant impact on the costs of managing global mobility programs. Without proper planning, companies may face a surprising increase in tax reimbursement costs even though US tax rates decrease. In an uncertain environment, it is important for US companies to understand how these potential changes could impact their global mobility programs and the costs of international assignments.

Impact on assignment costs

For companies that provide tax equalization coverage for their assignees, lower US tax rates could impact multiple parts of a tax equalization settlement, including lower hypothetical taxes, increased overall income, increased foreign tax liabilities, and potential increased US foreign tax credit carryovers. The overall impact may be driven by whether the assignee is in a country with a higher effective tax rate than the US or a lower one.

For US expats in high-tax host countries, the assignment tax costs may increase. With lower US tax rates, the US hypothetical taxes will be lower. In most countries where hypothetical tax is a reduction of foreign taxable income, if the foreign assignment country tax rate remains the same, the foreign tax liability, which is the Company's obligation, will increase.

In addition, the benefit of foreign tax credits will be limited. The foreign tax credit that may be claimed is limited to the US tax on the foreign-sourced income. If US taxes are reduced, the amount of excess foreign tax credits that are carried forward will increase. This means that assignees may need to remain on the global mobility program longer for the Company to recover the foreign taxes paid, which would also be an additional cost to the Company.

As a result of these changes, the overall tax reimbursement costs for a company with assignees in higher tax countries may, in certain circumstances, increase.

Conversely, for US expats in low-tax host countries, the assignment tax costs may decrease as US rates decrease. Where the US is the higher-tax country, the maximum tax rate paid by an individual will decrease with the lower tax rates under President Trump's and the House GOP's proposals. Similarly for foreign nationals who are tax equalized to their home country while on assignment in the US, companies may see an overall decrease in costs, as US taxes will decrease while stay-at-home taxes from the foreign jurisdiction will remain constant.

Next steps

In advance of potential tax reform, companies should consider the various global mobility implications of their assignee population. Deloitte Tax LLP's Global Employer Services group can assist with directional guidance to demonstrate the change to overall program spend for tax equalized assignments to allow companies to begin to analyze the potential impact. Such analysis may include an entire assignee population or a set of assignees and will factor in the individuals' filing status, compensation, and country combinations to calculate high-level the increase/decrease to the Company's overall tax costs. Deloitte may further assist with preparing more specific cost estimates for certain individuals. Based on the results of the analyses, companies may wish to refresh their global mobility strategy to address the potential changes.

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Global Reward Updates:
Colombia: New legislation surrounding share-based incentive plans

Key points to know

Colombian lawmakers have adopted Act 1819 of 2016 ("the Act"), which took effect on January 1, 2017. Article 108-4, of which, may impact employer share plan withholding and reporting requirements for companies which have share plan participants in Colombia. The Act confirms that, in the case of share plan awards granted by a non-Colombian entity to employees in Colombia, where a Colombian entity claims a corporate tax deduction with respect to such share-based compensation, the Colombian entity should operate income tax and social tax withholding on such share awards at the individual tax point.

While this legislation largely reflects our understanding of the tax treatment applicable in Colombia to date, the legislation is significant in that no formal legislation had existed previously to address the tax treatment of share plan awards granted by a foreign parent company. To summarize:

> Where Colombian plan participants receive share plan awards and are directly compensated by a non-Colombian parent company, if plan costs are charged out to the Colombian entity, and reimbursed by the local Colombian entity, payroll reporting and income tax and social tax withholding obligations should exist with respect to such awards.

However, where plan costs are not charged out to the local Colombian entity, no income tax withholding, social tax withholding, or payroll reporting requirement exists, though employees should be subject to income tax on the income realized from their share plan award via their annual personal tax return.

Overview

The Act aims to provide guidance and clarification with respect to the employee and employer tax treatment of equity awards, due to the previous lack of explicit legislation addressing share-based compensation. To be certain, this legislative guidance generally aligns with previous tax reporting and withholding advice issued by Deloitte, though should be confirmed on an individual issuer basis.

Main legislative updates

New guidance in the act: The newly implemented legislation specifically states that with respect to share-based payments where an individual either:

1. Acquires the right to exercise an option for the acquisition of shares of the employer; or
2. Receives as part of their remuneration shares of the employer company.

The value to be deducted for corporate income tax purposes shall be the corresponding value of the shares at the time the option is exercised or shares are delivered; and such a deduction for corporate income tax purposes will generally result in an income tax withholding and social tax withholding obligations with respect to the awards.

Additionally, the Act provides guidance with respect to the point of taxation to the employee and the amount of income realized by the employee (largely, share delivery), though to confirm, this guidance is principally viewed as a clarification rather than tax treatment change.

To confirm, the fact that a Colombian entity may be required to record a compensation expense with respect to awards granted to its employees by a foreign parent company, does not in itself result in a payroll reporting or income tax/social tax withholding obligation in Colombia. In other words, the recognition of a compensation expense in the Colombian entity's financial statements is not in itself sufficient to claim a corporate tax deduction for such awards, nor is it sufficient to trigger a payroll compliance obligation which would not otherwise exist.

Deloitte's view

This new tax legislation is a welcome update in Colombia, due to the previous lack of explicit guidance regarding employer tax withholding and reporting obligations for share-based compensation. Non-Colombian parent companies which deliver shares to Colombian plan participants and do not charge out costs should not see any new requirements. Non-Colombian parent companies who do charge out costs should also not have any new requirements but continue to operate payroll reporting and withholding. To be certain, it is our understanding that withholding on share awards in Colombia in the absence of a recharge of share plan costs, and corresponding reimbursement to the issuer company, is not required. Withholding should only apply to Colombian parent companies issuing shares of a Colombian company to Colombian employees, or in the case a foreign parent charges plan costs out to the local Colombian entity and is reimbursed for such costs by the Colombian entity. We will continue monitoring the legislative environment in Colombia and provide updates in case additional clarifications are made with respect to the Act.

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