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European Union: What Estonia's Presidency of the Council Means

Overview

On July 1, 2017, Estonia assumed the role of president of the EU Council, taking over from Malta. The Council presidency rotates among EU member states every six months. As president, Estonia will chair Council meetings, determine agendas, establish a work program and facilitate dialogue at Council meetings and with other EU institutions. Estonia will hand over the reins to Bulgaria on January 1, 2016, followed by Austria on July 1, 2018.

Member states holding the presidency work in groups of three (called "trios"), which set long-term goals and prepare a common agenda determining the topics and major issues that will be addressed by the Council over an 18-month time frame. Based on this program, each of the three countries prepares its own more detailed six-month agenda. The current trio is made up of the presidencies of Estonia, Bulgaria and Austria.

Four areas of focus

Estonia has established four priorities for its tenure:

- An open and innovative European economy.
- A safe and secure Europe.
- A digital Europe with the free movement of data.
- An inclusive and sustainable Europe.

A safe and secure Europe means that Estonia will use the platform of the presidency to strengthen internal security and protect Europe's external borders by improving cooperation and using cutting-edge information systems. This translates to enhanced focus on reforming the Schengen information system (SIS) and the Schengen border code, as well as establishing an entry-exit system, and the European travel information and authorization system (ETIAS), two initiatives that have been proposed by the European Commission.

The entry-exit system is an EU-wide database whereby third-country travellers scan their passports and fingerprints when they enter and leave the Schengen area, resulting in increased control over traveller flow through the EU. Different sources have confirmed that Estonia wants to conclude an inter-institutional agreement on the entry-exit system by the end of July 2017.

Under the ETIAS, third-country nationals who do not require a visa will need to log onto a website and provide basic information. This information then will be cross-checked across several databases, and if there is a "no-hit," the traveler will receive approval. Several sources indicate that Estonia is aiming to conclude an inter-institutional agreement by the end of its presidency.

Deloitte's view

With security currently a hot topic and a planned area of focus during Estonia's presidency, many changes affecting immigration into Europe are likely. Deloitte will continue to monitor changes at the EU level that affect employers and employees, and will provide updates as needed.

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Malaysia:
New Tax Audit Framework

Overview

The Malaysian Inland Revenue Board (MIRB) issued an amended Tax Audit Framework on May 1, 2017, which supersedes the 2015 Tax Audit Framework issued on February 01, 2015.

The amended framework aims to ensure that tax audits are carried out in a fair, transparent, and impartial manner. The framework outlines the following:

- The rights and responsibilities of tax audit officers, taxpayers, and tax agents in respect to a tax audit; and
- The general audit process, which provides clearer expectations for tax audit officers and taxpayers regarding how a tax audit will be conducted.

Changes under the amended framework

The key changes are noted as follows:

The scope of a tax audit review: Generally, for cases not attributable to fraud, willful default, or negligence, the tax audit review period is up to three years of assessment (YAs). However, the review period can be extended up to five YAs, depending on the findings of the aforesaid initial review.

A tax audit can be also extended to any related company/business that has the same director without prior notification to the taxpayer and/or the company.

The MIRB can, in any condition, organize a tax audit visitation to any premise of the taxpayer or premises in connection to the taxpayer and the company without prior notification.

Concessionary penalty rate: As a concession, the penalty rate for a voluntary disclosure after six months from the due date of submitting the income tax return form (ITRF) is now 35%, provided that the ITRF was submitted by the stipulated deadline and the voluntary disclosure is made before the case is selected for audit.

Voluntary disclosure is no longer given any consideration once the tax audit has commenced.

Pursuant to Section 113(2) of the Income Tax Act, 1967, a penalty equivalent to 100% of the tax undercharged will be imposed if a person makes an incorrect return by omitting or understating any income or gives incorrect information in relation to any matter affecting his own chargeability to tax.

Effective May 1, 2017, the Director General (DG) may abate or remit the penalties as follows:

Voluntary Disclosure / Discovery	Period from the Prescribed Submission Deadline	Penalty Rate
Voluntary disclosure before case is selected for audit	≤ 60 days	10%
	>60 days to ≤6 months	15.5%
	> 6 months	35%
Nondisclosure (discovery of omission during the audit)audit)		100% or as directed by the DGIR, a penalty of 45% for the first offense

MIRB's clarification on the imposition of 100% penalty

On April 17, 2017, the MIRB issued a "Clarification Regarding The Imposition Of 100% Penalty For Failure To Declare Income And Correct Information," which it will implement beginning January 1, 2018.

The MIRB is empowered, under Section 113(2), to impose a 100% penalty for offenses such as the following:

- Repeated undeclared or incorrectly declared income received by way of an ITRF;
- Refusal to give full co-operation during an audit or investigation process;
- Failure to give information or documents requested to assist in an audit or investigation process;
- Carrying out an organized tax evasion scheme; and
- Failure to comply with the tax law even though the tax payer has been audited or investigated before.

Expatriates who fail to pay tax will not be allowed into or out of Malaysia: The MIRB noted that more than USD50 million (or RM213 million) in tax arrears have not been collected from expatriates who have left Malaysia since 2012. The majority of them were people working in the services sector (the top five sectors include construction, manufacturing, services, oil/gas/energy, and education), who had either falsified their real wages in the application form or had declared a lower wage from what they actually received.

There were also foreigners who abused the student pass to carry out businesses in the country and did not declare their income to the MIRB.

The MIRB is currently in talks with 75 countries where double taxation agreements have been signed to track these underpayments and to recover the taxes due from the expatriates.

Extra measures to recover nonpayment of taxes

Intensify tax recovery action: In 2017, the MIRB has been taking various actions to recover nonpayment of taxes. Recovery actions taken include blacklisting, fines, or imprisonment against employers or sponsors who fail to carry out their responsibilities to deduct tax due of its foreign workers before they are released to their respective sending or home countries.

Collaboration with Malaysian Immigration Department (MID):

- **Individual taxpayers:** The MIRB has been working closely with the MID. Immigration-related data can be easily extracted from the Expatriate Services Division (ESD) of MID to allow the MIRB to check the status of each foreigner's tax status before a tax clearance is issued before someone is leaving Malaysia. Failure to comply will result in the expatriate being detained and prohibited from leaving the country until his or her taxes are fully settled.
- **Employer/deemed employer:** The same information will be used to verify against an employer/deemed employer's compliance with monthly tax deduction requirements.
- **MIRB branches:** From July 1, 2017, such information is used in all MIRB's branches nationwide to ensure that all foreign employees working in Malaysia are reporting their income and paying taxes.

Deloitte's view

The concession penalty rate provided in the tax audit framework aims to encourage voluntary compliance amongst taxpayers, particularly in dealing with taxpayers who are hard-core tax defaulters.

The proposal to increase the rate of penalty to 100% of tax unpaid or under declared income beginning January 1, 2018, is a step forward to enforce taxpayers' compliance.

In view of the new measure to be adopted by the MIRB, taxpayers are strongly encouraged to review the correctness of their income declaration and come forward on any omission or incorrect submission within the stipulated time to mitigate penalties.

Further, in collaboration with the MID, the MIRB is now in a better position to identify compliance gaps amongst foreign taxpayers. We strongly encourage the employer and expatriate to review their compliance program.

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