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India: Failure to file tax return liable grounds for prosecution: Judicial pronouncement by the Delhi High Court

Background and facts

Karan Luthra (the “individual”) failed to furnish his income tax return for the India tax years 2002–03 to 2004–05 within the due date specified by law.

The India tax officer had initiated the prosecution process and held claimed that the individual had committed a punishable offense under India income tax law. The individual filed an application challenging the order on the basis that, for tax years 2003 – 04 and 2004 – 05, no tax was payable (as a refund was due); additionally, the individual argued that, for the tax year 2002 – 03, the income tax return documentation guidelines did not provide a timeline for compliance.

Relying on an earlier decision of the Supreme Court, the Revisional Court rejected the individual’s contention that tax return filing was not required since no taxes were due on his tax return (for both tax years 2003 – 04 and 2004 – 05). For the case specifically focusing on the tax return for 2002 – 03, the Revisional Court accepted the individual’s contentions and ruled against the revenue authorities.

Both parties took the matter to the Delhi High Court (HC) for the years in which the verdict was not in their favor.

Ruling of the Delhi HC

The HC noted that earning taxable income creates an obligation to file an income tax return on or before the required date. Failure to file a return would trigger prosecution under the tax laws. Therefore, the HC upheld the decision of the Revisional Court and confirmed prosecution for non-filing of tax return for the tax years 2003 – 04 and 2004 – 05.

For tax year 2002 – 03, the HC rejected the individual's ground, concluding that the intention of the law is not to allow an indefinite period for compliance. The HC dismissed the individual's appeal, stating that subsequently filing the returns would be an unacceptable fix to the offense.

Deloitte's view

The HC has adopted a strict interpretation of the applicable legal provisions in holding that the not filing of a return and ignoring noncompliance notices creates grounds for prosecution. The above decision is a precautionary call for taxpayers to be compliant with the return-filing deadlines.

The taxpayers should be vigilant in filing their tax returns in India in a timely manner to avoid any defaults. We encourage employers to highlight this point by sending out suitable communications.

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Malaysia: Social security coverage extended to foreign workers, including expatriates

Overview

In Malaysia, the Social Security Organisation (SOCSO) covers only employees who are Malaysian citizens or permanent residents for the benefits listed below:

- **Employment Injury Scheme:** Protection against accident or occupational disease arising out of or in the course of one's employment.
- **Invalidity Scheme:** Protection for employees who suffer from invalidity or death due to any cause not related to employment.

The contribution to SOCSO consists of two portions: employer's contribution and employee's contribution.

What's new?

Effective 1 January 2019, employers in Malaysia who hire foreign workers, including expatriates, with valid documents must register their employees with SOCSO and contribute to the Employment Injury Scheme only.

Under the Employment Injury Scheme, foreign workers, including expatriates, are eligible for medical benefits, temporary/permanent disablement benefits, constant-attendance allowance, dependent's benefits and rehabilitation, as well as RM 6,500 for repatriation costs, including funeral.

However, benefits from the Invalidity Scheme do not extend to foreign workers, including expatriates.

How does this impact employers?

In view of the implementation fast approaching, employers must register their foreign workers, including expatriates, with SOCSO at any of SOCSO's offices throughout Malaysia.

How much to contribute?

For foreign workers, including expatriates, only employers are required to contribute to SOCSO. Employees are not required to make a contribution.

Employers are expected to contribute 1.25 percent of an employee's monthly wage to SOCSO on a monthly basis (subject to the insured wage ceiling of RM 4,000 per month).

More details on contribution rates and administrative procedures will be announced by SOCSO shortly.

Deloitte's view

The Malaysian government's decision to require social security protection for all foreign workers, including expatriates, is in line with the Equality of Treatment (Accident Compensation) Convention 1925 (No. 19) and the Conference Committee on the Application of Standards under the International Labor Organisation. (ILO), which Malaysia has rectified.

With this new development, all foreign workers in Malaysia, including expatriates, will now be accorded the same benefits as local employees under the Employment Injury Scheme.

Furthermore, the cost of hiring foreign workers, including expatriates, will increase marginally, although it is not anticipated to be a major determinant factor when hiring foreign workers.

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