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Finland: Changes to the Posted Workers Act to promote equal treatment of employees and equal competition between companies

What is the change?

The amended Posted Workers Act (the "Act") came into force on 1 December 2020. The amendments to the Act will promote equal treatment of posted workers compared to national employees regarding terms of employment. In addition, the Act aims to improve fair competition between companies. Amendments to national law will implement the amendments made to European Union (EU) legislation.

The amendments concern:

- More detailed guidelines on pay provisions applicable to posted workers;
- Restrictions to the employer's right to set off receivables against an employee's salary;
- A new provision for making pay comparisons according to any payments made by the employer of an uncertain nature would be regarded as compensation for expenses and not as wage or salary;
- Extension of applicable collective agreements in transfers within a subcontracting or corporate group;
- Application of the same accommodation quality requirements to posted and local workers;
- Additional employment conditions to be applied in long postings of more than 12 months; and
- The employer's obligation to compensate the posted worker's travel, accommodation and meal expenses incurred during travel from the worker's regular workplace in Finland during the posting.

The amendment would introduce a protection provision concerning travel and accommodation costs arising from the person's posting to Finland. The proposal reconciles the level of protection in the country of origin, protection agreed in the employment contract, and protection in the country of employment.

Amendments to the Posted Workers Act entered into force on 1 December 2020. A 12-month transition period will apply to posting agreements concluded before the entry into force of the Act. This would give companies an opportunity to make adjustments reflecting the new requirements into their agreements.

Amendments concerning prior notification of posting would enter into force after the completion of technical revisions on 1 October 2021.

Deloitte's view

As indicated in the earlier communications related to Posted Workers Directive, now when the updates affecting remuneration came into force also in Finland, foreign companies sending employees to Finland will need to understand the local Finnish pay landscapes, together with a broad appreciation of the existing collective bargaining agreements. In order to guarantee compliance, companies will need to pay attention to the preparatory administrative work in assignment processes.

Posted worker obligations are monitored in the EU increasingly, and the amendments to member countries legislation are a sign of this. A well working process in relation to posted workers compliance is becoming highly important to companies in the future.

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Italy:
Special tax regime for remote worker employed by a foreign employer

What is the change?

On December 28, 2020, with the Circular letter n. 33/E, the Italian Tax Authority provided important clarifications about the Italian Special Taxation Regime applicable to employees who move their tax residency to Italy, also in light of the legislative updates introduced on April 30, 2019 by Law Decree No. 34/2019 and subsequent amendments.

For eligible individuals who moved their tax residency to Italy after April 30, 2019, the Special Tax Regime consists into a 70% exemption applicable to employment income produced in Italy, for an initial period of five tax years.

The exemption rate is *raised to 90%* for individuals who move their tax residency to the following Italian regions of South Italy: Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardinia, and Sicily. In addition, if some further eligibility conditions are satisfied, the initial five-year period may be extended another five years, up to maximum duration of ten tax years.

In this context, the circular letter in exam, among others, provides clarifications on the key topic below.

Individuals performing remote working in Italy for non-Italian employers

The Italian Tax Authority confirmed that, according to the current version of the Italian Special Taxation Regime, eligible individuals are not required anymore to perform their work activity within an Italian resident company, one or controlled or connected to an Italian resident company.

Therefore, if all the requirements to access the regime are satisfied, the exemption can apply also to employment income produced by individuals who move their tax residency to Italy to perform herein remote working for an employer based abroad.

In detail, individuals moving to Italy to perform remote working for a non-Italian employer may access to the Special Taxation Regime, benefitting of a 70% exemption from the taxation of the employment income produced in Italy (raised to 90% for individuals who move to Southern Italy regions), for an initial period of five tax years.

The tax relief may be then extended to another five-year period, up to a maximum duration of 10 years, if eligible individuals either purchase Italian real estate in the 12 months preceding their move to Italy or within the first five years in the Special Taxation Regime, or have at least one minor/dependent child.

During such additional five-year period, in particular, employment income produced in Italy by individuals performing remote working for a foreign employer can benefit from a 50% exemption from Italian income taxes, raised to 90% if the eligible individual has at least three minor/dependent children.

It is intended, however, that the employee presence in Italy may trigger Italian permanent establishment risks for the foreign employer.

Deloitte's view

The Italian Special Taxation Regime, in light of the most recent clarifications in exam, represents a great opportunity for employees moving their tax residency to Italy to perform remote working for non-Italian-based entities.

At the same time, the higher net salary that remote workers would be entitled to according to the Italian Special Taxation Regime may represent a great opportunity for companies to contain employment costs as well.

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United States: Business related relief

Overview

Employee retention tax credit: The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) includes a refundable tax credit, computed on a calendar-quarter basis, against the 6.2 percent employer-side Social Security payroll tax for certain employers carrying on a trade or businesses in 2020 that either fully or partially suspend operations due to a government order or that sustain a significant decline in gross receipts (defined as the first calendar quarter after December 31, 2019, for which gross receipts within the meaning of section 448(c) are less than 50 percent of the amount in the corresponding prior-year quarter and ending with the next quarter in which gross receipts exceed 80 percent of the corresponding prior year quarter). The refundable credit was only applicable for wages paid after March 12, 2020, and before January 1, 2021.

Under the CARES Act, this employee retention tax credit (or ERTC) was based on 50 percent of the "qualified wages" (up to $10,000 per employee per year) paid to each employee. The computation of qualified wages differed depending on whether the employer's average number of full-time employees during 2019 was more or less than 100.

The ERTC as enacted in the CARES Act was not available to governmental employers but was available to certain nonprofits.

What is the change?

The new legislation extends the ERTC through June 30, 2021, and modifies it by:

- Increasing the credit rate from 50 percent to 70 percent of qualified wages;
- Expanding eligibility for the credit by reducing the required year-over-year gross receipts decline from 50 percent to 20 percent and providing a safe harbor allowing employers to use prior-quarter gross receipts to determine eligibility;
- Increasing the limit on per-employee creditable wages from $10,000 for the year to $10,000 for each quarter;
- Boosting the full-time employee threshold for a business to be treated as a "large employer" (and therefore subject to a restrictive standard for determining qualified wages) from 100 to 500 employees;
- Making the credit available to certain governmental employers; and
- Providing rules to allow new employers who were not in existence for all or part of 2019 to be able to claim the credit.

These modifications take effect on January 1, 2021.

The new legislation also makes retroactive clarifications and technical improvements to the ERTC as originally enacted to:

- Provide that employers who receive (or received) Paycheck Protection Program loans may still qualify for the ERTC with respect to wages that are not paid for with forgiven PPP proceeds;
- Clarify the determination of gross receipts for certain tax exempt organizations; and
- Clarify that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance.

These provisions take effect as if enacted in the CARES Act.

Credits for paid sick and family leave: The legislation extends through March 31, 2021, the refundable payroll tax credits for paid sick and family leave that were enacted earlier in 2020 in the Families First Coronavirus Response Act (P.L. 116-127). It also would allow self-employed individuals to use their average daily net earnings from self-employment income from 2019, rather than 2020, for purposes of computing these credits.

In addition, the legislation makes technical changes coordinating the definitions of qualified wages within the paid sick leave, paid family and medical leave, and the exclusion of such leave pay from employer OASDI tax. This provision would retroactively apply as if included in Families First Act.

Temporary allowance of full deduction for business meals: The legislation provides a 100 percent deduction for business meal food and beverage expenses (but not business “entertainment” expenses) provided by a restaurant that are paid or incurred before January 1, 2023. Currently, the deduction is limited to 50 percent for those expenses.

Pension plan provisions

The legislation includes two provisions that make changes to certain rules for employer-sponsored pension plans.

Election to terminate transfer period for qualified transfers from pension plan for covering future retiree costs: Section 420 of the Internal Revenue Code permits “qualified future transfers,” under which up to 10 years of retiree health and life costs may be transferred from a company’s pension plan to a retiree health benefits account and/or a retiree life insurance account within the pension plan. These transfers must meet a number of requirements: the plan must be 120 percent funded at the outset, it must be 120 percent funded throughout the transfer period, all unused amounts must be transferred back, and the plan is subject to a maintenance of effort requirement.

Applying the current-law requirements during the market volatility related to the coronavirus pandemic has caused plans that have been historically far over 120 percent funded to fall below 120 percent and face a requirement to immediately restore these large market losses in order to get back to 120 percent funded.

This provision allows employers to make a one-time election during 2020 and 2021 to end any existing transfer period for any taxable year beginning after the date of election, provided the maintenance of effort continues to apply as if the transfer period were not shortened, the employer ensures the plan stays at least 100 percent funded throughout the original transfer period, the plan has funding targets for the first five years after the original transfer period, and all amounts left in the retiree benefits account at the end of the shortened transfer period must be returned to the pension plan (without application of an excise tax to such amounts).

Temporary rule preventing partial plan termination: Generally, an IRS assessment of plan termination is triggered whenever workforce turnover exceeds 20 percent. The legislation defers assessments until March 2021 to give companies time to restore at least 80 percent of their workforce and avoid termination. The provision applies during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80 percent of the number of active participants covered by the plan on March 13, 2020.

Tax relief for individuals

Tax relief for individuals under the legislation includes, among other things, another round of direct payments for certain households, temporary enhancements to the earned income tax credit (EITC) and an extension for the deduction for charitable contributions, and a short-term federal supplement to state-level unemployment benefits.

Direct payments: The legislation provides for a refundable tax credit (similar to the credit enacted in the CARES Act) of $600 for a single taxpayer, $1,200 for joint filers, and $600 per dependent child. The credit would phase out beginning at $75,000 of modified adjusted gross income for single taxpayers, $112,500 for head-of-household filers, and $150,000 for joint filers at a rate of $5 per $100 of income. (The CARES Act provided payments of $1,200 for single taxpayers, $2,400 for joint filers, and $500 per child dependent, subject to the same phase-out thresholds that are proposed under the new legislation.)

The Treasury Department is authorized to issue advance payments based on the information on 2019 tax returns. Payments for Social Security beneficiaries, Supplemental Security Income recipients, Railroad Retirement plan participants, and Veterans Administration beneficiaries who did not file returns for 2019 would be determined based on information provided by the Social Security Administration, Railroad Retirement Board, or Veterans Administration.

Taxpayers without an eligible Social Security Number are not eligible for the payment; however, the legislation provides that married taxpayers filing jointly where one spouse has a Social Security Number and one spouse does not are eligible for a payment of $600, in addition to $600 per child with a Social Security Number.

Taxpayers who receive an advance payment that exceeds their maximum eligible credit based on 2020 information are not required to reimburse the government for any overpayment. If the credit based on 2020 information exceeds the amount of the advance payment, taxpayers would be allowed to claim the difference on their 2020 tax returns.

The payments generally would not be subject to administrative offset for past due federal or state debts and are protected from bank garnishment or levy by private creditors or debt collectors.

"Lookback" for earned income tax credit and child tax credit: The Act includes a special temporary rule allowing lower-income individuals to use their earned income from tax year 2019 to determine the earned income tax credit and the refundable portion of the child tax credit (*i.e.*, the additional child tax credit) in the 2020 tax year.

Charitable deduction: The legislation extends for one year (through 2021) the $300 above-the-line-deduction, which was established in the CARES Act and set to expire the end of 2020. It also increases the amount for 2021 that married couples filing jointly can deduct for charitable contributions, from $300 to $600. Additionally, the bill would extend through the end of 2021 the increased limits on deductible charitable contributions for individuals who itemize.

Temporary special rules for health and dependent care flexible spending arrangements: The legislation provides further flexibility for taxpayers to roll over unused amounts in their health and dependent care flexible spending arrangements from 2020 to 2021 and from 2021 to 2022. It also permits employers to allow employees to make a 2021 mid-year prospective change in contribution amounts.

Extension of certain deferred payroll taxes: A memorandum issued by President Trump on August 8, 2020, allowed employers to defer withholding employees' share of Social Security taxes or the railroad retirement tax equivalent from September 1, 2020, through December 31, 2020, and required employers to increase withholding and pay the deferred amounts ratably from those wages and compensation paid between January 1, 2021, and April 31, 2021. Under the memorandum, penalties and interest on deferred unpaid tax liability would begin to accrue beginning on May 1, 2021.

The legislation extends the repayment period through December 31, 2021. Penalties and interest on deferred unpaid tax liability would not begin to accrue until January 1, 2022. Note, The Act does not further extend a provision in the CARES Act that allowed employers to defer payment of the employer's share of Social Security taxes.

Tax extenders

The legislation extends dozens of temporary provisions collectively known as "tax extenders" over various time spans as discussed below. Most of these provisions were otherwise scheduled to expire after December 31, 2020, though a handful were not set to lapse until the end of 2022.

Provisions made permanent: The Act permanently extends a number of tax provisions benefiting individuals and businesses, including:

- The lower adjusted gross income (AGI) threshold (that is, 7.5 percent instead of 10 percent) above which out-of-pocket medical expenses can be claimed as an itemized deduction under section 213(f);
- The above-the-line deduction for qualified tuition and related expenses under section 222 is repealed after 2020 and replaced with increased income phase-out thresholds for the Lifetime Learning credit under section 25A(d)(2).

Five-year extensions: The Act grants five-year extensions to a number of provisions, thereby generally aligning their new expiration dates with the December 31, 2025, the date after which nearly all of the provisions affecting individual taxpayers in the 2017 tax code overhaul (P.L. 115-97, commonly called the Tax Cuts and Jobs Act or TCJA) are also scheduled to lapse, setting up a massive fiscal cliff for future legislators to tackle. Certain TCJA-related business provisions, including the deduction for individuals, estates and trusts under section 199A, as well as components of the new international tax regime, are also scheduled to expire or phase out after 2025.

The five-year extensions include:

- The employer credit under section 45S for paid family and medical leave, originally enacted as part of the TCJA;
- The expanded exclusion for employer-provided educational assistance, including student loan repayment benefits as enacted as part of the CARES Act; and
- The gross income exclusion for discharge of indebtedness on a principal residence under section 108(a)(1)(e), though the legislation would limit the maximum exclusion to $750,000 (down from $2 million) and in so doing align the maximum exclusion with the maximum mortgage balance on which interest may be claimed as an itemized deduction.

Disaster tax relief

The Act includes provisions that provide tax relief for individuals and businesses situated in disaster areas (not related to the coronavirus pandemic) declared by the president after December 31, 2019, and through 60 days after the date of the bill's enactment.

Expanded use of retirement account funds for disaster-related expenses: The Act allows residents of disaster areas to borrow or take out a loan of up to $100,000 from a retirement plan or IRA account without penalty. Amounts withdrawn would be included in income over three years or may be recontributed to avoid tax and restore savings. The repayment period would be extended for one year for new and outstanding retirement plan loans.

Employee retention credit for disaster zones: The Act provides a tax credit of 40 percent of wages (up to $6,000 per employee) to employers in disaster zones (disaster areas where individual and public assistance is mandated). The credit would apply to wages paid without regard to whether services associated with those wages were performed.

Deloitte's view

The Act contains extensive economic stimulus provisions, building upon provisions introduced as part of 2020's CARES Act as well as prior legislation. It will be important to review these changes and determine the impact for your organization. Please reach out to the Deloitte contacts listed below for further discussion.

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