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Global Employment Solutions

Global InSight

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Canada:
Form T1135 – Foreign Income Verification Statement: 2013 transitional reporting

Background – revised Form T1135

In June 2013, the Canada Revenue Agency (CRA) released revised Form T1135 – Foreign Income Verification Statement. Form T1135 is required to be filed by Canadian residents who, at any time during the year, owned specified foreign property with a total cost in excess of $100,000. Individuals, corporations, and trusts resident in Canada are subject to this filing requirement. Certain partnerships are also required to file Form T1135. The revised form must be used for taxation years ending after June 30, 2013.

Common examples of specified foreign property include: funds held outside of Canada, shares of non-Canadian corporations, indebtedness owed by a non-resident, and real property situated outside of Canada (excluding personal use property). The revised form requires details of foreign property to be provided on an asset-by-asset basis, including the applicable country code, the maximum and year-end cost of the foreign property, the amount of income (or loss), and the capital gain (or loss) generated from the foreign property during the year. An exclusion from the detailed reporting requirement applies where the taxpayer receives a Canadian T3 or T5 slip which reports income from the property. This exclusion applies on an asset-by-asset basis. For example, a taxpayer would not receive a T3 or T5 for a foreign security which does not make a distribution or for a security which was purchased after the ex-dividend date.

For a detailed discussion of revised Form T1135, please refer to our October 8, 2013 Canadian tax alert. As well, the CRA has published answers to a number of frequently asked questions to assist taxpayers with completing the revised form. If taxpayers have additional questions relating to Form T1135, the CRA invites them to contact the general enquiries line.
URL: http://www.deloitte.com/view/en_CA/ca/services/tax/tax-publications/cd17676f31391410VgnVCM3000003456f70aRCRD.htm?id=us:em:na:gis:eng:tax:041114
URL: http://www.cra-arc.gc.ca/tx/nnrsdnts/cmmn/frgn/1135_fq-eng.html

Extended filing deadline

The CRA has recently announced that it will extend the filing deadline for Form T1135 for the 2013 taxation year until July 31, 2014. This extended filing deadline applies to taxpayers whose tax year ended on or before December 31, 2013.

2013 transitional reporting method

The CRA's announcement also included a streamlined reporting process available to taxpayers who hold specified foreign property with a Canadian registered securities dealer. Rather than report details of foreign property on an asset-by-asset basis, for assets held by a Canadian registered securities dealer, taxpayers can instead report the year-end market value of the foreign property held in each account. The income (or loss) as well as the capital gain (or loss) from this foreign property would then also be reported on an aggregate basis. If a taxpayer chooses to use the transitional reporting method, it must be used for all accounts held with Canadian registered securities dealers.

The CRA has indicated that taxpayers who use the 2013 transitional reporting method should report each account which contains specified foreign property in Category 6 of Form T1135, as follows:

- "Description of Property" – Indicate the name and account number of each Canadian registered securities account which contains specified foreign property. Each account should be listed on a separate row
- "Country Code" – Indicate CAN
- "Maximum cost amount during the year" – Indicate "0"
- "Cost amount at year end" – Indicate the market value of the specified foreign property held within the account on the last day of the taxpayer's year
- "Income (loss)" – Indicate the total income earned (or loss incurred) from specified foreign property during the tax year within the account
- "Gain (loss) on disposition" – Indicate the total capital gain (or loss) resulting from the disposition of specified foreign property within the account

The transitional reporting method will be available to taxpayers for the 2013 tax year only.

Deloitte's view

As noted above, the revised form requires disclosure on an asset-by-asset basis. In some cases, this could include assets which were not purchased and have a cost of zero to a taxpayer. For example, specified foreign property includes unexercised stock options in a non-Canadian entity as well as non-Canadian insurance policies. Taxpayers should carefully review their assets in order to ensure that they do not omit foreign assets from Form T1135. Taxpayers holding specified foreign property with Canadian financial institutions should note two key considerations for 2013:

- The 2013 transitional reporting method applies only for assets held with a Canadian registered securities dealer. Taxpayers are encouraged to confirm whether the organization or individual holding their securities is a Canadian registered securities dealer.
- Taxpayers have the choice of using either the 2013 transitional reporting method or the T3/T5 reporting exception. In cases where all securities qualify for the T3/T5 reporting exception (that is, each security made an interest or dividend payment during the year which was reported on a T3 or T5 slip), taxpayers may wish to rely on the T3/T5 reporting exception as they would not be required to provide details of holdings on Form T1135.

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India:
Seconded employees constituted a service Permanent Establishment in India for the foreign company

Synopsis

Recently, the Delhi Tribunal has held that the deputation of employees on secondment basis constituted a service Permanent Establishment (PE) in India as the employees continued to remain as the employees of the tax payer despite their deputation to an Indian company. Further, the Delhi Tribunal has held that consideration received pursuant to the grant of Intellectual Property (IP) Rights was not "effectively connected" with such service PE of the tax payer in India.

Facts

- JC Bamford Excavators Ltd. (tax payer), a tax resident of UK, is a flagship company of JCB in UK, which owns, develops, and manufactures excavators sold under the JCB brand name.
- JCB India Ltd. (JCB India), an Indian company, is a wholly owned subsidiary of the tax payer.
- The tax payer entered into the following two agreements with JCB India:
    - Technology Transfer Agreement (TTA) 1 for grant of license to JCB India for transfer of IP Rights to manufacture, assemble, use, and sell licensed products.
    - International Personnel Assignment Agreement (IPAA) 2 for deputation of eight employees to JCB India on secondment basis (referred to as "the employees of the first category").
- In terms of the TTA, other employees or personnel (referred to as "the employees of the second category") of the tax payer occasionally visited India for doing stewardship activities and doing inspection and testing of the licensed products. No separate consideration was paid for undertaking the said activities.
- During the financial year (FY) 2005 – 06, the tax payer received consideration as royalties/fees for technical services (FTS) from JCB India for grant of the license. This amount was offered for taxation at the rate of 15% by treating the receipt as "Royalties and FTS" under Article 13(2) of the India-UK tax treaty.
- On perusal of the relevant clauses of TTA read with IPAA, the Assessing Officer (AO) observed that the tax payer was required to send its personnel to the plant of JCB India for solving problems relating to licensed products and IPAA was entered to formalize the broader terms set out in TTA for sending of technical people and other personnel of the tax payer to JCB India.
- Thus, based on review of the TTA and the IPAA, the AO held that:
    - Service PE was created in India as the deputation of the employees of the first category was for a period of more than 90 days.
    - The tax payer carried on business in India and royalties/FTS received from JCB India was liable to tax as "Business Profits" as it was effectively connected with the PE.
    - Services rendered by the employees of the second category did not constitute PE of the tax payer as the services were in nature of stewardship activities.
- On appeal by the tax payer, the Commissioner of Income-Tax (Appeals) [CIT (A)] observed that both the agreements should be considered as materially different and independent of each other. Further, the CIT (A) held that the tax payer did not have any PE in India as the employees of the first category deputed by the tax payer became the employees of JCB India and worked under the direction, supervision, and control of JCB India.
- Aggrieved by the order of the CIT (A), the revenue filed appeal before the tribunal.

Significant issues before the tribunal

- Whether the tax payer had any PE in India?
- Whether the consideration was taxable as "Business Profits" or as "Royalties/FTS" under the India-UK tax treaty?

Tribunal ruling

Whether the tax payer had any PE in India? –

- The service PE article of the India-UK tax treaty was analyzed. The requisite conditions for constituting the service PE, such as rendering of managerial services, rendering of services in India, and presence in India for more than 90 days were clearly fulfilled. However, the only other condition namely whether the employees deputed by the tax payer continued to remain employees of the tax payer or became employees of JCB India needed to be analyzed.
- It was observed that in case the employees of the first category were held to be the employees of the tax payer, it would amount to rendering of services by the tax payer. However, if these deputed employees became the employees of JCB India, then it would mean that the services were not rendered by the tax payer through its employees or other personnel.
- The tribunal held that the first category of the employees, i.e., deputed employees continued to remain as employees of the tax payer despite their deputation to JCB India. While reaching such conclusion, following significant aspects were considered:
    - The IPAA was not an independent agreement in itself, but was in the nature of an addendum to TTA that formalized the terms for the supply of personnel by the tax payer to JCB India.
    - The IPAA provided that JCB India desired to utilize services of the tax payer's employees on "secondment" basis. The term secondment in common parlance means that the employee remains an employee of his existing employer, but by virtue of some agreement between the employer and the third person, the employee has to perform the duties for the benefit of such third person. At no time the employee becomes employee of the host company.
    - As per the International Assignment Policy of the tax payer, on the termination of the expatriate's posting, the tax payer would reemploy the seconded employees. Further, if during such deputation certain disciplinary matter arose, those would be looked into by the group director and not by the individual company to which such personnel were deputed.
    - No appointment letters given by JCB India were placed on record.
    - The deputed employees which were sent on secondment basis to JCB India continued to be on the payroll of the tax payer and maintained their lien on their employment. Salary for these employees was the sole responsibility of the tax payer.
    - There was no material to indicate that the tax payer terminated their services and they were employed by JCB India.
    - As per the terms of the TTA, the employees of the tax payer during the time they were to be present on premises of JCB India were not be considered as employees of JCB India.
    - The CIT (A) appeared to have been swayed by the visiting cards and Form 16 of such employees for coming to the conclusion that they became employees of JCB India.
- Based on the above observations, the tribunal held that the tax payer had a service PE in India by virtue of the deputation of the employees of the first category.

Whether the consideration was taxable as 'Business Profits' or as 'Royalties/FTS under the India-UK tax treaty? –

- It needs to be decided as to whether the right, property, or contract in respect of which the royalties or FTS has been paid are "effectively connected" with the PE of the tax payer in India.
- The phrase "effectively connected with" has neither been defined under the Income-Tax Act 1961 nor the tax treaty. The words "effectively connected" are akin to "really connected."
- The characterization of three components of amounts earned by the tax payer from JCB India viz.; the consideration for supply of IP Rights simplicitor, the consideration for rendering of services by the employees of the second category and the consideration for rendering of services by the employees of the first category need to be determined.

Consideration for supply of IP Rights simplicitor –

- The service PE representing the deputationists had absolutely no role to play in relation to grant of IP Rights. The service PE was concerned only with the activities of rendering services after the grant of IP Rights.
- The amount of royalty received by the tax payer from the grant of IP Rights was in the nature of right or property and was not effectively connected with the service PE of the tax payer in India.

- Thus, it was held that the consideration was taxable as "Royalties" and not as "Business Profits."

Consideration for use of services of the employees of the second category, i.e. stewardship activities –

- Consideration for use of the employees of the second category was embedded in the consideration for use of IP Rights. It was held that such employees did not constitute a PE in India and thus there cannot be any question of income being effectively connected with a PE.
- Thus, it was held that the consideration was taxable as "FTS" and not as "Business Profits."

Consideration for use of services of the employees of the first category, i.e., deputation of employees –

- Consideration for use of services of the employees of the first category was in the nature of FTS.
- The effective connection is required to be seen between the PE and the "contract" from which such fees resulted and not from such fees for technical services per se. The "contract," which is the source of income in the present case is the TTA and IPAA.
- The TTA read with the IPAA, under which such employees were sent to JCB India, was effectively connected with the service PE of the tax payer.
- Thus, it was held that the consideration was not taxable as "FTS," but as "Business Profits."

Comments

The tribunal in this decision has analyzed in detail the concepts of "service PE" and "effectively connected" with the PE. Based on the factual aspects, the tribunal held that deputation of employees resulted in a service PE in India for the tax payer. Further, it noted that "effective connection" is required to be seen between the PE and the "contract" from which such fees resulted and not from such fees for technical services per se.

Way forward

Tax payers may review their arrangements in the light of the above ruling to determine whether the employees seconded to an Indian company constitute a service PE and whether the consideration received from the Indian company was "effectively connected" to such PE.

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Malaysia:
Special pass for overstay occurrence

What's new

Effective 1 April 2014, the Malaysian Immigration Department (ID) in Cyberjaya will only issue Special Pass (SP) to Employment Pass (EP) and Dependant Pass (DP) holders for overstay of not more than seven (7) days.

This only applies to Multimedia Super Corridor (MSC) and Information and Communications Technology (ICT) status companies whose EP and DP applications are submitted to the ID in Cyberjaya.

Changes to note

For individuals who have overstayed for more than seven (7) days, they are required to obtain a memo from the ID in Cyberjaya and thereafter proceed to the Enforcement Division at the Immigration Department Headquarters in Putrajaya for the SP application.

To obtain a memo from the ID in Cyberjaya, the following documents are required:

1. SP declaration from
2. Format A
3. Copy of passport (all pages)
4. Cover letter from employer for application of SP (in Bahasa Malaysia)
5. Approval letter from the Multimedia Development Corporation for EP and/or DP application (if any)

Deloitte's view

EP and DP holders should take note of the validity of their passes and initiate renewal application (if any) at least three (3) months before the expiry to avoid any complications that could lead to an overstay.

For expatriates who are no longer continuing their employment in Malaysia and have cancelled their respective passes, they should ensure that they depart on or before the expiry of their passes to avoid any overstay issues.

Overstaying in Malaysia without a valid pass is an offense under Section 15(1)(c) of the Immigration Act 1959.

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United Kingdom:
Immigration update: Trouble for investors ahead? Tier 2 changes

Overview

Possible Suspension of the Tier 1 (Investor) Route – The Home Affairs Committee (Committee) has published its latest report on the work of the UK's Immigration Directorates including a surprise recommendation to suspend the Tier 1 route for Investors.

URL: http://tax.createsend4.com/t/r-i-pudurdl-l-j/

The Committee criticized the recent recommendations made by the Migration Advisory Committee (MAC) regarding "selling settlement by auction" although the concepts of initial entry to the UK, settlement and citizenship appear to have been confused. Investors still need to pass English tests to gain settlement and to progress to citizenship, although proof of an ability to speak English is not required at the initial entry-clearance stage.

The Committee is not part of the government, and it will be for the government to consider whether to respond to the points made by the Committee.

On Thursday 13 March 2014, a written ministerial statement was laid before Parliament outlining a number of changes to the UK's immigration rules. – According to the Home Office, many of the changes are designed to introduce greater flexibility for businesses and to support growth.

Major changes to Tier 2

- Under the Tier 2 category, leave can now be granted for up to five years rather than the current three-year maximum.
- There will be an increase in the threshold for maintenance funds for student, worker, and family migrants, in line with the costs of living in the United Kingdom. These changes will affect all applications made from 1st July 2014. As applicants will need to have held the funds for 28 or 90 days (depending on the type of application and if it is being filed from inside or outside the UK), anyone planning to apply from July should take note of these changes now and ensure that appropriate funds are in place.
- Annual updates are being made to minimum salary thresholds and appropriate salary rates for individual occupations (as set out in UK Visa and Immigration Services codes of practice). These updates are in line with changes in average weekly earnings for resident workers. For example, the salary threshold for Tier 2 (General) migrants will rise from £20,300 to £20,500, and the salary threshold for Tier 2 (Intra) company transfer long-term staff migrants will rise from £40,600 to £41,000. The threshold salary for exemption from the Resident Labour Market Test is also increasing from £152,100 to £153,500.
- Where a sponsor assigns a migrant's Certificate of Sponsorship before 6 April 2014, the sponsor can rely on all the current, lower thresholds discussed above.
- Leave may be curtailed where a sponsor notifies the Home Office that a migrant's period of study or work is due to end earlier than had been originally planned when leave was granted.
- The sponsor licence team may refuse applications for Tier 2 sponsor licences if they believe that the prospective sponsor is unable to offer genuine employment that meets the Tier 2 (General) requirements.
- B-rated licenses for initial applications under Tier 2 and Tier 5 will no longer be granted. Prospective sponsors must be able to achieve an A-rating otherwise the application will be refused. (The policy on downgrading an A-rated licence to a B-rating remains unchanged).

Review the full list of the changes.
URL: http://tax.createsend4.com/t/r-i-pudurdl-l-t/

Other changes

- A visa regime has been introduced for all visitors from Venezuela. The new regime will be implemented from 5 May 2014.
- The government intends to close the Tier 1 (General) category for extension applications on 6 April 2015, and for settlement applications on 6 April 2018. This should give enough time for applicants who entered the category before its closure to apply for settlement if they can meet the requirements to qualify. The Tier 1 (General) route was closed for new applications in April 2011, but remained open for extensions and settlement.

Deloitte's view

Although the Home Affairs Committee's recommendation to suspend the Tier 1 investor route does not mean that the government will accept these recommendations, the report should be taken seriously. Proposed investors should consider lodging applications with some urgency in light of uncertainty about the route's future – and in light of the recent announcements regarding Tier 1 (General).

The Tier 2 changes are largely welcome in that five year applications can now be made. However, some subjective decision making powers appear to have been introduced to allow the sponsor licence team to refuse applications for Tier 2 sponsor licences if they believe that the prospective sponsor is unable to "offer genuine employment which meets the Tier 2 (General) requirements." It remains unclear how the sponsor licence team will assess these requirements in the future, and greater clarity for new sponsors will need to be sought.

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United Kingdom:
Short term business visitors and PAYE reporting

Overview

In view of stricter HM Revenue & Customs (HMRC) compliance requirements, employers who do not currently have a valid Short Term Business Visitor Agreement (STBVA) with HMRC may wish to put one in place by 31 May 2014. All employers bringing short-term staff to the UK may wish to review their procedures for 2014/15 in view of HMRC's tougher approach, described below.

As explained in our GES Newsflash of January 2014, HMRC has confirmed that where a UK business has a Pay As You Earn (PAYE) reporting obligation in relation to a Short Term Business Visitor (STBV) to the UK, the UK business is required to operate PAYE from day one unless the business has in place a valid STBVA.
URL: http://tax.cmail3.com/t/r-i-putulul-l-j/

Previously, HMRC was prepared to accept that employers could assess for themselves whether or not the STBV was exempt from UK tax under the terms of a relevant Double Tax Agreement (DTA) and operate PAYE only where exemption would not apply. However, this more relaxed approach has been withdrawn for the 2013/14 UK tax year (6 April 2013 – 5 April 2014) and future tax years. As a result, employers who adopted the more relaxed approach for previous tax years may now need to consider whether or not they are at risk of being viewed by HMRC as having failed to operate PAYE correctly.

Employers who do not have a STBVA for 2013/14 have until 31 May 2014 to:

- Apply for the STBVA and
- Submit a full report for 2013/14 in accordance with the terms of the STBVA.

In other words, for 2013/14 only, the application and the required report can be submitted at the same time. For all future years, any STBVA must be applied for by the end of the relevant tax year and the required report must then be submitted by 31 May following the end of the relevant tax year. HMRC will generally agree to allow an STBVA to apply retrospectively for the tax year to which it relates, but this places a requirement on UK businesses to have processes that will facilitate retrospective tracking to support the submission of the year-end report detailing certain information for those individuals for whom any PAYE reporting obligation has been relaxed.

In another change from previous practice, HMRC has confirmed that where:

- A PAYE obligation exists in relation to a STBV,
- The STBV is present in the UK for more than 60 days, and
- Their employment costs are "ultimately borne" in the UK.

HMRC no longer accepts that (for 2014/15 onwards) the individuals can be included in an appendix to the STBVA to highlight that PAYE has not been operated even though the strict conditions of the STBVA have not been met. In these cases, HMRC now requires the STBV to make an individual claim to exemption under the relevant DTA. The expectation is that PAYE will not need to be operated provided the signed claim is submitted on a timely basis. The precise format of the claim form has not yet been finalized.

Deloitte's view

As a result of HMRC's revised approach, STBVs now present an increased PAYE risk to businesses in the UK. This has direct implications for the obligations placed on UK businesses by the Senior Accounting Officer (SAO) regime. Under this regime, the SAO is required to establish and maintain appropriate tax accounting arrangements and certify that such arrangements have been in place throughout the company's financial year. Tax accounting arrangements include those in place for tracking STBVs and ensuring that the company meets its PAYE obligations in relation to such individuals.

Employers who do not have a STBVA for 2013/14 may wish to apply for one by 31 May 2014. In this case, steps should be taken to ensure that the required reports can also be submitted by this date.

With the possible withdrawal of personal allowances for most nonresidents from April 2015, the cost to employers of not getting their compliance right is likely to rise.

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Global Rewards Updates:
Australia: Increased focus on ESS reporting for foreign providers and clarification of sourcing for cross-border employees

Background

Deloitte previously issued Global Rewards Updates relating to Australian employee share scheme (ESS) reporting in June 2010 and June 2012. This update is intended to provide further clarification surrounding the Australian Taxation Office's (ATO) increased focus in this area.

Broadly, the provider of an ESS interest (such as share awards and share options) is required to report any ESS income taxation events during the Australian tax year. The taxation event is reported to the employee on an ESS statement by 14 July, and to the ATO on an ESS annual report by 14 August, following the 30 June year end. This report may be prepared via paper or electronically.

For these purposes, the term 'Employee' has a wide scope. It includes employees and associates of employees of both the company and its subsidiaries (including past and prospective employees). Individuals such as directors, contractors and consultants may also be treated as employees for ESS purposes.

Who is a provider?

An ESS provider can be a foreign headquartered company or an Australian company. For example:

- Where share awards/options are offered by a non-Australian tax resident company to employees of its Australian subsidiary, the foreign parent is considered to be the provider. The Australian subsidiary is not the provider.
- Where share awards/options are offered by a non-Australian tax resident company to its mobile employees who have an Australian service period, the foreign parent is considered to be the provider.
- Where share awards/options are offered by an Australian tax resident company to its own employees or employees of its Australian subsidiaries, the Australian company is the provider.

Recent changes indicating ATO focus on “foreign providers”

Many non-Australian-based parent companies are still not meeting their ESS reporting obligations in Australia. Therefore, the ATO has increased scrutiny surrounding the compliance of foreign providers with ESS reporting obligations. This has been demonstrated by a number of recent changes:

- The ESS annual report paper form has been updated to contain a tick box for companies that do not have an Australian Business Number (ABN) (i.e. foreign companies).
- The ATO’s electronic ESS Bulk Load Excel Spreadsheet allows for the ABN field to be completed with a zero if an overseas address is entered (intended for foreign companies).
- The ATO has ensured that its website and communications refer to the ‘provider’ rather than employer where ESS reporting is concerned.

Sourcing for mobile employees

Earlier in 2013, the ATO also released an announcement clarifying its position in respect of participants who are taxable only on a portion of the gain in Australia as a result of being resident in another country during the life of the award.

Where the provider is able to calculate the portion of the gain assessable to a mobile employee, the provider should report the actual assessable amount of the gain (after taking into account foreign service).

If the actual amount cannot be reported by the due date, the provider should:

- Report the gross amount by the due date; and
- When known, report the actual amount on an amended ESS statement to the employee and an amended ESS annual report to the ATO.

Providers should ensure that they report the actual assessable amount (taking into account any period of foreign service) where possible. This will avoid mismatches arising when the ATO subsequently compares data from ESS annual reports with employees’ tax returns.

Action

Companies should determine who the “provider” is for the purposes of ESS reporting and ensure that ESS reporting is carried out correctly and on an annual basis.

If there have been failures to report ESS taxable events, a provider should, within 30 days, provide ESS statements to employees and provide any outstanding ESS annual reports with the ATO. If there are changes to or omissions in any information previously provided, the provider should amend ESS statements and ESS annual returns.

Companies should ensure that their systems for completing the ESS reporting in Australia are adequate. If you need any assistance with this or if you would like to receive information about Deloitte’s automated tool for ESS reporting, please contact the mailbox below or your usual Deloitte contact.

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Global Rewards Updates:
United Kingdom: Finance Bill 2014 – new legislation on employee share plans

Background

Following the announcement in December 2013 of proposals to change the taxation and reporting of employee share plans in the UK, Finance Bill 2014 was released on 27 March 2014.

The changes proposed in this legislation were broadly in line with the earlier proposals. However there are a number of important differences. Employers should take early action to ensure that both they, and their employees, understand the implications of these changes on individuals working in, or with a connection to the UK.

Share plans for internationally mobile employees

The legislation aims to simplify the UK income tax and National Insurance (NIC) treatment of share incentives for internationally mobile employees.

Current position

Currently, there is significant complexity in determining the UK income tax and NIC treatment of share incentives for internationally mobile employees. There can be different outcomes depending on, for example, the type of award granted and residency at that point, whether the employee is inbound to or outbound from the UK, and which country they reside in after leaving the UK. The income tax analysis will also, in many cases, be different to the NIC analysis.

Proposed position

The Finance Bill seeks to simplify the treatment for all options and share awards held by employees with a connection to the UK, where the relevant "chargeable event" (typically exercise for share options, and vesting for RSU or restricted stock awards) occurs on or after 6 April 2015. This will apply regardless of when or where the original award was granted.

This is a change from the initial proposals, which would have related only to new grants made on or after 1 September 2014.

There is specific guidance on the sourcing period to be used in these circumstances. However, in cases where the sourcing period specified in the legislation is not considered to be 'just and reasonable', it should be possible to use a sourcing period that would be considered as such.

The Government have also announced that they will align the NIC position to follow the income tax treatment as far as possible.

These measures will be welcome to many employers who currently have to spend time grappling with the complex rules. However, there are significant implications for individuals who have come to the UK holding equity awards, which may now be subject to tax on a different basis to that which they would have been expecting. The most significant impact will be on employees who were granted share options or restricted stock before coming to the UK, who will now be subject to UK income tax if the share option is exercised, or the restricted stock vests, on or after 6 April 2015.

Example

An employee was granted a stock option outside of the UK whilst not UK resident, and not in anticipation of UK duties. The employee subsequently moved to the UK where he exercised the option. Under the current rules, no UK income tax would arise at exercise as the employee was not UK resident at grant. However, under the new rules, UK income tax would arise at exercise based on the UK working time in, ordinarily, the grant to vest period.

It should however also be noted that there will be "winners" from these changes. In particular individuals leaving the UK to work in a "non-treaty" country, such as the UAE, will now be taxed on an apportioned basis whereas previously options would have been subject to UK tax in full.

Action

This is a significant change that will affect many individuals holding equity awards. Employers will need to consider a number of implications, including:

- Ensuring the changes are understood by stock and payroll teams;
- Communicating these changes to employees; and
- Determining whether this change will impact existing policies (e.g. on tax equalisation/protection).

Employers will also need to consider whether current procedures for identifying individuals with UK tax liabilities on equity awards are appropriate to capture all impacted individuals. This also represents an opportunity to review procedures in respect of mobile employees more broadly, to ensure that both the "winners" and "losers" from these changes are treated appropriately.

In addition, employees who hold vested share options may wish to consider if it would be beneficial for the employee (or the company if the employee is tax equalised) to exercise the option before or after the new rules take effect.

Corporate tax relief for internationally mobile employees

The new legislation relaxes the rules for obtaining a statutory corporate tax deduction for options and share awards granted to employees who are on assignment or secondment in the UK (i.e. are not contractually employed by the UK company).

Currently, in order to obtain a statutory corporate tax deduction a number of conditions have to be met. One of the key conditions is that the employee must be contractually employed by the company claiming the statutory deduction.

The draft legislation proposes a statutory corporate tax deduction (assuming the other existing conditions are met) even if the employee is not (or was not) contractually employed by the UK company at the relevant time. Provided that the employee is performing services for the UK company, a deduction should be available for share income up to the amount on which the employee is chargeable to income tax. The legislation will now also apply to individuals who are permanently transferred to the UK business during the vesting period.

This change is set to apply to all exercise of options and/ or receipt of shares from 6 April 2015.

Action

This is welcome news and potentially allows employers to claim a statutory corporate tax deduction for employees where they previously could not.

Companies should consider how they can track employees into the UK and establish the amount of the relevant deduction.

Self-certification, online notification of share plans, and share plan annual returns

As previously outlined in our GRU in February 2014, new legislation is being introduced in the UK covering self-certification for tax advantaged share plans, along with the registration and online filing requirements for all employee share plans.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-gru-unitedkingdom-feb-2014.pdf?id=us:em:na:gis:eng:tax:041114

From 6 April 2014:

- Employers will be required to register their employee share plans with HM Revenue & Customs (HMRC) via the PAYE Online service.
- Companies will be obliged to file their annual share plan returns (including Form 42) online (for the 2014/15 tax year onwards). In addition, from the 2014/15 tax year onwards, a new automatic penalty regime will apply to late filed Forms 42.
- Companies who wish to implement a tax advantaged plan will no longer need to seek formal approval of the plan from HMRC. Instead they will be asked to self-certify that their plan meets the conditions set down in legislation. This would be done as part of the online registration process mentioned above.

Action

Employers should be prepared to register new and current share plans via the PAYE Online service.

Employers may also want to review the manner in which they compile their share plan annual returns, and consider whether this approach should change as a result of the introduction of online filing. For the year ending 5 April 2014, existing processes will apply, and therefore the current year is also potentially the final opportunity to bring any previously unfiled years into compliance ahead of the new penalty regime.

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Have a question?
If you have needs specifically related to this newsletter's content, send us an email at **clientsandmarketsdeloittetax@deloitte.com** to have a Deloitte Tax professional contact you.