Global Employment Solutions

Global InSight

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Hong Kong:
False Claim of Rental Reimbursement

Overview

A taxpayer was sentenced on July 14 to 160 hours' community service and fined $20,000 for charges of evading salaries tax, making a total fine of $100,000, equivalent to about 86% of the tax evaded.

The defendant is a former senior manager of an accounting firm. The court heard that in her tax returns for the years of assessment 2004-05 to 2008-09, she stated that she had paid total rent of $900,000 for her residence and received partial refund of $864,375 from her employer. An investigation by the Inland Revenue Department (IRD) revealed that the defendant had actually never rented the property and the five tenancy agreements submitted to her employer were forged. By falsely claiming rental reimbursement, the defendant sought to reduce her assessable income for the five years by a total of $725,509 and the total tax evaded was $116,386.

Our observations

Preferential tax treatment can be applied to housing benefit provided by the employers by way of rental reimbursement. It is common for Hong Kong employers to include a Rental Reimbursement Program as part of the employees' compensation structure so to improve the competitiveness of the company's remuneration package. As part of the IRD's review process of the validity of such programs, the IRD may request employers and/or employees to provide details of the program (e.g., the policy itself and details of the implementation process) and supporting documentation. In the aforesaid prosecution case, the IRD found that the lease agreements were forged ones and hence took the case to the court.

While the IRD's prosecution cases for the recent years did not involve much about rental reimbursement program, there have been a number of tax dispute cases where the IRD has sought to tax the rental reimbursement as a fully taxable cash allowance for the reason that the employers have not properly administered the programs. As a result of the IRD's challenge, the employees who have participated in the company's Rental Reimbursement Program may have to settle unexpected additional tax demands. At the company's level, the negative outcome may ruin its goodwill and reputation both with the IRD and its own employees.

In order to mitigate potential challenges from the IRD on the company's Rental Reimbursement Program, it is important for employers to understand the areas of issue, which make such program become problematic and take notes of them when implementing/running the program.

Problematic areas

Rental Reimbursement Programs that are rejected by the IRD are likely the ones where the employers have not exercised proper control over the programs.

Examples indicating that the employers may not be exercising proper control include:

- There is no written policy in place;
- Participating employees are not required to provide the company with valid supporting documentation (e.g., stamped lease agreement/rental receipts) on a timely basis;
- Companies do not perform a diligent check on the documents submitted by the participating employees;
- Payroll records are inconsistent with the amount claimed by the participating employees, etc.

Deloitte's view

For the employers who already have a Rental Reimbursement Program in place, a health check that reviews the implementation and operational processes of the program is recommended. The health check review will help identify the problematic areas that require rectification, thus help minimize potential risks and also help ensure the implementation process follows the policy.

For employers who do not have a formal policy currently in place, it is important to standardize and formalize the process and have written policy and procedures in place that provide ground rules to govern and administer the process. Professional advice is recommended in case there is any doubt.

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Singapore:
Immigration updates

Summary

The Ministry of Manpower (MOM) has provided the clarification relating to the following.

Job Advertising Requirement

1 August 2014 – From 1 August 2014, companies will be required to advertise in the Singapore Workforce Development Agency (WDA) Jobs Bank before submitting a new Employment Pass (EP) application. The advertisement must be open to Singapore citizens and comply with the Tripartite Guidelines on Fair Employment Practices at http://www.tafep.sg/fairemployment.asp, and posted for at least 14 calendar days.
URL: http://www.tafep.sg/fairemployment.asp

Where the company should eventually hire a foreigner for the job that has been advertised, the EP application must be made within three months from the closing date of the job advertisement. Otherwise a new advertisement will need to be posted.

Companies need not state the position's salary range in the Jobs Bank if it does not intend to hire a foreigner for that position. However, if there is a possibility to consider a foreigner, companies are encouraged to state the salary range. Although the salary range does not have to be made public, the salary range is required by MOM to assess an EP application. Accordingly, an EP application may not be approved if no salary range has been stated in the advertisement.

Companies can register with the Jobs Bank at https://www.jobsbank.gov.sg/. For further queries, please email the WDA at wda_job@wda.gov.sg or call +65 6883 5885.
URL: https://www.jobsbank.gov.sg/
URL: mailto:wda_job@wda.gov.sg

Exemption from the job advertising requirement may be granted on the following:

1. Small companies with 25 or fewer employees (includes both local and foreign employees)
2. Jobs that pay a fixed monthly salary of SGD 12,000 and above
3. Intra-Company Transferees (ICT) who are expected to be of managerial/executive/specialist level. MOM may require companies to submit documents (such as an overseas employment contract) to show that the ICT has worked for at least one year in the company group before being posted to the subsidiary or affiliated company in Singapore.

Deloitte's view

Given the recent change in government immigration policy to manage the constitution of workforce and to ensure that Singapore citizens remain at the core of Singapore's workforce, the MOM is now more stringent when considering the applications for EP. The processing time for applications of EP may take longer and MOM may reject applications without providing reasons. Accordingly, companies should take this into consideration when managing the movement of foreign employees into Singapore.

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United Kingdom:
Revised short term business visitor agreement

Overview

UK resident employers may be required by UK tax law to operate Pay As You Earn (PAYE) tax withholding in respect of short term business visitors (STBVs) to the UK. However, some STBVs will be exempt from UK tax under the provisions of a double tax treaty (DTT) concluded between the UK and their country of residence. In this case, HM Revenue & Customs (HMRC) may enter into an agreement with the UK employer to relax the strict operation of PAYE provided certain conditions are met and provided the UK employer agrees to make annual reports to HMRC in accordance with the agreement.

This agreement is often referred to as a short term business visitor (STBV) agreement or an EP appendix 4 (EP 4) agreement. HMRC has confirmed that a revised agreement will be published on its website at the end of August. The revised agreement:

- Explains what the '60-day rule' is and how it interacts with the reporting requirements under the agreement.
- Extends the agreement to some STBVs excluded under the existing agreement.
- Introduces new reporting categories, the aim of which is to distinguish between STBVs exempt from UK tax by virtue of the 60-day rule and STBVs exempt from UK tax but not because of the 60-day rule.

All employers with existing STBV agreements will be required to operate in accordance with the terms of the revised agreement but will not be required to sign a new agreement. All employers who do not have an STBV agreement with HMRC currently but who would like to enter into such an agreement will be required to sign the new agreement from the date this is published on HMRC's website.

Deloitte's view

The revised agreement provides welcome confirmation regarding the interaction of the 60-day rule and the reporting categories included in the STBV agreement. The further relaxations offered by the revised agreement are also welcome.

The 60-day rule

Where the concessionary 60-day rule applies, individuals who are resident in a treaty partner country will be regarded as exempt from UK tax provided they are legally employed by a non-UK resident employer and they are present in the UK for fewer than 60 days in the tax year so long as the days of presence do not form part of a more substantial period. Exemption is available even if the duties performed are integral to the business of a UK resident employer.

The existing agreement does not make clear that individuals present for fewer than 60 days in a tax year need to take account of days of presence in earlier or later tax years that are linked with the days of presence in the tax year under consideration (linked days). The revised agreement makes this clear.

Deloitte's view

The revised agreement provides certainty about the application of the 60-day rule and its interaction with the STBV agreement. Employers will need to review their processes to ensure that they are:

1) Taking linked days into account and applying the 60-day rule correctly, and
2) Operating PAYE on a timely basis where individuals are unable to make use of the 60-day rule and are not otherwise exempt from tax.

Extension of the agreement to additional STBVs

Going forward, employers will be able to include in their STBV agreement individuals who:

- Are legally employed by a UK resident employer,
- Have been seconded to work outside of the UK for a non-UK employer,
- Return to the UK to perform duties solely for this non-UK employer.

Even though such individuals can be included in an STBV agreement, they are not covered by the 60-day rule (please see above).

For a trial period, expected to be 12 – 18 months initially, HMRC will also allow individuals to be included in an STBV agreement even though:

- They are present in the UK for 60 days or more and
- Their employment costs are ultimately borne in the UK.

This further relaxation only applies where the individual is expected to be exempt from UK tax under the provisions of a relevant DTT and requires HMRC agreement on an individual-by-individual basis.

Deloitte's view

Extending the agreement to cover individuals legally employed by a UK resident employer is to be welcomed.

Allowing the STBV agreement to be applied to individuals who are exempt from UK tax even though they are present in the UK for 60 days or more and their employment costs are borne in the UK will also be welcomed although employers may be disappointed that they must make a specific application to HMRC before the agreement can be applied.

New reporting categories

There are two reporting categories for individuals covered by the 60-day rule: 1 – 30 days and 31 – 59 days.

There are three reporting categories for individuals to whom the 60-day rule does not apply (including individuals who are legally employed by a UK resident employer who have been seconded to work outside of the UK for a non-UK resident entity): 1 – 90 days, 91 – 150 days and 151 – 183 days.

As now, the 151 – 183 day category applies only where HMRC has agreed that the individual can be included in the STBV agreement.

The amount of information that needs to be provided to HMRC at year-end depends on the category the individual falls into.

Deloitte's view

Employers who have an existing STBV agreement or those who may wish to enter into one with HMRC should familiarize themselves with the revised agreement and the new reporting categories. Where relevant, employers should ensure that they are collating contemporaneous records appropriate to their reporting requirements in respect of 2014/15 and that they include their STBVs in the correct category when the end of year reports are filed in due course.

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United Kingdom:
Immigration Update: Immigration Act 2014 – Health Service

Immigration Act 2014

The Immigration Act 2014 (the "Act") paved the way for the introduction of health care charges for certain migrants to the United Kingdom.

In response to this Act, the Department of Health has published its plans to recover costs for the treatment of visitors and migrants provided by the National Health Service (NHS).

Visitor & Migrant NHS Cost Recovery Programme

There are two approaches by which the Department of Health will seek to recover costs:

- Improve the ability of the NHS to recover the costs for health care provided to European Economic Area (EEA) patients (nonresidents in the UK) from their home member states
- Have a statutory requirement for NHS provider trusts to charge (as per the charging regulations) patients from non-EEA countries directly

Implementing the surcharge

The Department of Health will implement the surcharge as follows:

- Non-EEA National Temporary Migrants – This will require non-EEA nationals who are subject to immigration control and who are coming to the UK for more than six months to pay an immigration health surcharge when they apply for a UK visa. This is expected to be £150 per year for students and £200 per year for others. It will be paid upfront for the duration of the visa. For example, for a family of four applying for visas for three years, the health care surcharge payable at the time of application will be £2,400.
- At present, it appears that Tier 2 Intra Company Transfer migrants will not be subject to the surcharge.
- Non-EEA Visitors – Visitors in the UK for less than six months will continue to be charged for using the NHS, unless an exemption applies (i.e., reciprocal agreements exist with their countries of nationality).
- Reciprocal Agreement – The UK has reciprocal agreements with several non-EEA countries, but these usually only cover treatment for unexpected accidents and illnesses rather than comprehensive health needs. Therefore, the Department of Health anticipate that the surcharge will still be payable by migrants from those countries.

- EEA Nationals – EEA nationals will be required to make greater use of the European Health Insurance Card (EHIC) system, as well as the S1 and S2 (state funded treatment in another European Economic Area (EEA) country or Switzerland) agreements.
  URL: http://www.nhs.uk/NHSEngland/Healthcareabroad/movingabroad/Pages/Introduction.aspx

Anticipated surcharge introduction

According to the Department of Health's published plan, it appears the surcharge will come into effect in March 2015.

The full plan can be found here.
URL: http://tax.cmail2.com/t/r-l-majrjt-iriyiuhjtr-j/

Other news

The Court of Appeal has dismissed a legal challenge to the Home Office rules for UK citizens who want to sponsor their non-EEA spouses to live with them in Britain.

Since 5 July 2013, many applications have been on hold pending the outcome of the legal challenge to the Home Office's minimum income threshold of £18,600 to sponsor a migrant spouse. The ruling dismisses the illegality of the minimum income threshold and will now potentially mean that the applications on hold will likely be refused.

Deloitte's view

Further information about the Visitor & Migrant NHS Cost Recovery Programme will no doubt come out from the Department of Health as we get closer to the March 2015 implementation date.
We will keep you informed.

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Global Rewards Updates:
Italy: Foreign asset reporting requirements for Italian residents

Background

Tax resident individuals in Italy may be required to report, and pay wealth tax, on assets held overseas. This includes any shares acquired in foreign companies (and held overseas) as a result of participating in employee share plans.

Individuals were previously required to report assets held overseas in Form RW, if the value of the total foreign assets held by the individual exceeded, as an aggregate, EUR 10,000 at the end of the calendar year. Form RW was due with an individual's annual tax return by 30 September following the end of the tax year,

The 2013 European Law introduced a number of amendments to the previous Foreign Investments Monitoring Regime (Law Decree n° 167/1990) applicable to Italian residents who hold assets, including shares, outside of Italy. The law was wide ranging but the changes applicable to share plans only are detailed below.

Update to foreign asset reporting requirement for share plans

Following the changes made by the 2013 European Law applicable for returns to be filed from 30 September 2014, the Form RW will no longer include Sections I or III, where asset transfers in and out of Italy and abroad were previously reported. Form RW now only contains one section where the taxpayer has to report the amount of all investments and financial activities held abroad, including shares, subject to IVAFE (wealth tax on foreign financial assets).

The threshold of EUR 10,000 has now been removed in respect of foreign assets and therefore Italian tax residents are required to include on Form RW all shares held as a result of participating in employee share plans, regardless of the total value of their foreign assets. The following examples would be within the scope of the requirements.

- Shares held as a result of vested restricted share units (subject to IVAFE)
- Shares held as a result of exercised share options (subject to IVAFE)
- Vested but unexercised share options where the market value at 31 December is higher than the exercise price (not subject to IVAFE, but should be included for information purposes)
- Reinvestment of dividends into shares (subject to IVAFE)
- Purchase of shares under an employee share purchase plan (subject to IVAFE)

IVAFE is generally payable at a rate of 0.15% (although the rate is 0.2% for FY14) on the value of each financial asset held in the year at 31 December (or the date of sale, if earlier).

The threshold of EUR 10,000 still applies for bank accounts held abroad and therefore employees are only required to report these where the bank account value exceeds this threshold at the end of the year. Where the average annual value of the bank account exceeds EUR 5,000, the average yearly balance is subject to IVAFE at a flat amount of EUR 34.20.

Please note that these rules will also apply where individuals hold assets through companies or other legal entities.

Penalties for non-compliance

The penalties for non-compliance vary depending on whether the assets not declared are held in a "white list" country or a "black list" country. Where the assets not declared are held in a white list country, which is a country which has agreed an information exchange with Italy (e.g. the UK), the penalties range from 3% up to 15% of the value of the assets value not declared.

Where the assets not declared are held in a black list country, which is a country which has not agreed an information exchange with Italy (e.g. Jersey), the penalties range from 6% up to 30% of the value of the assets not declared.

Where Form RW is not filed on time, a flat penalty of EUR 258 applies provided that this is filed within 90 days of the 30 September deadline. Any Form RW filed after 90 days from the ordinary deadline is subject to the penalties described above, unless the taxpayer decides to opt for a regularization process (i.e. "*ravvedimento operoso*").

Action

Although Form RW is an employee reporting requirement, companies should consider giving their employees specific guidance in respect of this or updating existing employee communications to ensure employees are aware of their compliance responsibilities.

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Global Rewards Updates:
United Kingdom: Finance Act 2014 and recent Government consultations relating to share plans

Background

On 17 July 2014, Finance Bill 2014 received Royal Assent. As discussed in the Global Rewards Update (GRU) of April 2014, the Finance Bill contained a number of significant amendments to the UK legislation governing both tax advantaged and non-tax advantaged share plans.
URL: http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-gru-unitedkingdom-april-2014.pdf

The changes, which take effect on various dates, have a wide ranging impact on employers and employees. Early action should be taken to ensure that all relevant stakeholders (representing HR, share plans, payroll, mobility and corporate tax) understand the implications of these changes. A recap of these changes is provided later in this GRU.

The majority of the changes enacted in the Finance Act 2014 came as a result of recommendations made by the Office of Tax Simplification (OTS) in their review of UK share plans in 2012 and 2013. The remaining recommendations made by the OTS are now subject to consultation, and are discussed below.

Valuation of listed shares – consultation

HMRC has recently published draft regulations to simplify the process of valuing listed shares for employment tax purposes. Currently shares listed on the main market of the London Stock Exchange are, technically, valued on a “quarter up” basis (i.e. taking the lowest recorded price for the day plus a quarter of the difference between the lowest price and the highest recorded price). There are no statutory rules for valuing shares listed on a foreign exchange.

The proposal is to replace the “quarter up” method with using the closing mid-market price (or equivalent on foreign exchanges). If employment-related securities are sold on the date they are acquired, the sale proceeds will be taken to be the market value.

Responses to the consultation are due by 22 August 2014.

Deloitte’s view

The aim of this proposal is to simplify how listed shares are valued for tax purposes. However, the current proposal does not help a situation where, for example, shares cannot be sold on the same day they vest due to liquidity concerns (e.g. not being able to sell all shares immediately in one day). In this example the taxable value would be based on the close price at vest and not the sale proceeds. We would like to hear from you if this is a concern, or if you have any other thoughts or comments regarding the proposals that you would like to feed into Deloitte’s response to the consultation.

Marketable security – consultation

This consultation is based on the OTS’s recommendations to change the time at which shares become taxable. Broadly, under the consultation proposal, a tax charge will only arise on a share when it becomes ‘marketable’, at which point income tax and National Insurance will be due. The consultation also contains a proposal to allow the employee and employer to jointly elect for a tax charge to arise at the time of award even if the shares are not marketable at that point.

The consultation asks for responses to a number of questions about the reasons for, and the consequences of, introducing the concept of marketable securities and necessary consequential amendments to the legislation.

The full consultation can be found at: https://www.gov.uk/government/collections/government-response-to-the-ots-review-of-unapproved-employee-share-schemes.
URL: https://www.gov.uk/government/collections/government-response-to-the-ots-review-of-unapproved-employee-share-schemes

Responses to the consultation are due by 10 October 2014.

Deloitte's view

This proposal is aimed at helping facilitate share plans in private companies where a market for the shares is not readily available. The OTS highlighted that dry tax charges, in particular, were a barrier to participation, and this proposal seeks to help alleviate those concerns. However, these proposals will have a far reaching impact on all companies, not just those in the private environment. We would be grateful for any feedback with this regard.

Employee shareholding vehicle – consultation

A further consultation has been opened on the OTS's recommendations to introduce a new form of employee shareholding vehicle. The purpose of such a vehicle would be to allow employers to use an alternative to a traditional off-shore employee benefit trust (EBT) to acquire shares, warehouse shares, deliver the shares to employees, or to create an internal market for the shares.

The consultation asks a number of questions on the level of demand for such a vehicle and requests comments on which exemptions would be needed for the vehicle to be successful, and what safeguards are needed. The full consultation can be found at the link above.

Responses to the consultation are due by 10 October 2014.

Deloitte's view

This proposal is particularly aimed at small companies who struggle with the administration and costs associated with operating an EBT. However, if such proposals were taken up, the new 'vehicle' could be suitable for all types and sizes of companies, and could help with the funding and operation of global share plans. We would be grateful for any additional feedback you may have.

Finance Act 2014 – summary of changes

Online registration and filing for 2014/15 – As discussed in our GRU of May 2014, the Finance Act 2014 has introduced the requirement for employers to register their share plans with HMRC online via the PAYE online service. The requirement to register applies to any share plan or arrangement (both existing and new) which has participants in the UK. This registration must be completed before the submission deadline of the 2014/15 share plan annual returns of 6 July 2015.

The Finance Act 2014 also contains the legislative provisions under which the share plan annual returns should be filed online. These returns will be significantly different from those in prior years both in terms of format and reportable information, as summarised in the GRU of May 2014.

Action

Employers should ensure that they register their share plans well in advance of the deadline of 6 July 2015.

Employers should analyse the draft share plan reporting templates to ensure that they are able to capture all relevant information. In particular, where there is a new reporting requirement, such as reporting the lapse of share options, employers should consider how this information can be made available when the returns are compiled.

A failure to comply with these new rules could give rise to penalties.

Tax advantaged share plans

The Finance Act 2014 made a number of changes to the tax advantaged share plans (formally HMRC approved plans). The majority of these changes aim to simplify the operation of these plans; however, some of the other key changes are:

- Increase in SIP Free share limit to £3,600 and Partnership share limit to £1,800 from 6 April 2014.
- Increase in the SAYE monthly savings limit to £500 from 6 April 2014.
- Removal of the requirement to obtain formal approval of the plans, and instead require companies to self-certify their plans are operated compliantly.

Action

The increase in limits for the SIP and SAYE are welcome changes. Employers who want to increase their limits will need to first ensure that their plan rules allow for the change. Updates should then also be made to any relevant employee communications to reflect the changes.

Employers will need to ensure they have self-certified all their tax advantaged share plans with HMRC as part of the online registration process before 6 July 2015. Employers should be aware that this requirement to self-certify applies for both new plans and those that had previously been given express approval from HMRC.

Share plans for internationally mobile employees

As discussed in our GRUs of April 2014 and June 2014, significant changes were proposed to the taxation of share awards for internationally mobile employees. These changes will now take effect from 6 April 2015 and apply to all share releases and option exercises occurring on or after 6 April 2015 (irrespective of the date on which the award was granted).

Where a relevant "chargeable event" (typically exercise for share options, and releases of shares for RSU or restricted stock awards) occurs for internationally mobile employees, the UK tax treatment will generally be based on the apportioned income earned in the UK over the grant to vest period. Where a restricted stock award is subject to tax on its full unrestricted value at award in another jurisdiction, and the employee subsequently moves to the UK, no further charge to income tax should generally arise.

HMRC published a consultation document on 24 July 2014 detailing their proposal to align the NIC position with the income tax treatment as far as possible (broadly an apportionment approach). The consultation is open until 16 October 2014 with the proposed changes to take effect from 6 April 2015.

The full consultation can be found at: https://www.gov.uk/government/consultations/internationally-mobile-employees-and-earnings-related-securities.

URL: https://www.gov.uk/government/consultations/internationally-mobile-employees-and-earnings-related-securities

Action

This is a fundamental change to the taxation of mobile employees. Employers should seek to fully understand the impact on their current employees and ensure the changes are communicated to them. Employers may also need to review their tax equalisation/protection policies, and their processes for tracking the movement of mobile employees in order to comply with the new requirements.

Companies should consider how they will be affected by the proposed changes to the NIC rules and whether they have sufficient processes to enable compliance. Companies may want to consider replying to the consultation directly or providing their comments to Deloitte to feed back to HMRC.

Corporate tax relief for internationally mobile employees

The GRU of April 2014 also discussed the proposed amendments to the rules for obtaining a statutory corporate tax deduction for options and share awards granted to employees who were on assignment or secondment in the UK (but did not have the UK company as their contractual employer).

Finance Act 2014 has now enacted the proposed changes that, from 6 April 2015, the requirement to be contractually employed by a UK company will be relaxed. As a result, provided all other existing conditions are met, where an individual is providing services to the UK company, a statutory corporate tax deduction should be available for share income up to the amount that the employee is subject to UK income tax.

Action

Companies should consider how this change will impact their corporate tax deductions, whether changes need to be made to track employees in the UK, and establish a method for ensuring the correct deduction is taken for each relevant individual.

Other legislative changes

The Finance Act 2014 has also implemented a number of other smaller changes that affect share plans, including:

- Relaxing the timeframe in which an employer is required to recover from an employee the tax due on notional payments (such as share vests) to 90 days following the end of the tax year.
- Relaxing the rules for claiming a statutory corporate tax deduction for share options exercised following the takeover by an unlisted company. Under the new rules, provided the option is exercised within 90 days of the transaction, a deduction may still be available.
- Amending legislation to permit a tax free rollover of restricted shares (in an effort to mirror the position for share options).

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Have a question?
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