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Global Employment Solutions

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Austria:
Ministry of Finance: Need for action regarding cross-border personnel leasing

Overview

On 12 June 2014 a decree regarding cross-border personnel leasing was issued by the Austrian Ministry of Finance. This decree shall implement the changes of the term "economic employer" as interpreted by the Austrian Supreme Administrative Court in its decision 2009/13/0031 of 22 May 2013.

Economic employer

The Ministry of Finance elaborates that the receiving entity in cases of cross-border personnel leasing shall be seen as the employer for purposes of the applicable tax treaty. Consequently, employees will become liable to tax in the country of employment even if they are not present there for more than 183 days. As the decree does not provide a tolerance period, foreign employees will become taxable with their first day of work activity in Austria. Conversely, domestic employees on a secondment abroad might be tax exempted from the first day of their foreign work activity. The decree expressly states that the changes to the term "employer" are only applicable to the interpretation of tax treaties, whereas at a national level no changes will take place. Furthermore, the decree is applicable to personnel leasing (i.e., passive services/secondment) but not for active services (e.g., consulting, training etc.).

Outbound cases

The decree states that a tax exemption in outbound cases shall only apply if proof of taxation of the employing country is available. Alternatively, it might be proven that the foreign tax authorities, in fact, see the employing company as employer in accordance with the 183-days rule, but when applying the national taxation rules, no taxes would be due. It remains yet to be seen how this evidence has to be provided.

Inbound cases

The taxation of inbound-cases shall – according to the decree – preferably be ensured by the following two approaches: voluntary wage tax withholding or withholding tax of 20% of the secondment fees. In the past, the latter tax deduction only played a subordinate role in the area of group-company secondments, but may now receive more attention. However, this approach seems to be contradictory to the regulations in most tax treaties as well as to the MoF Decree on the Avoidance of Double Taxation (Federal Gazette III 2005/92).

Germany

The 183-days rule shall still be applicable to cases of personnel leasing (according to the Austrian Personnel Leasing Act) with Germany. Thus, the taxation right shall remain in the country of residence for secondments with duration of less than 183 days.

Legal validity

The decree shall be applied to all open cases. Exempting rulings which were already issued shall remain unaffected. The 183-days rule shall exceptionally and preliminarily be applicable to certain cases of existing short-term secondments.

Conclusion

Although the Ministry of Finance is broadly appreciated for dealing with this highly complex subject, opinions are highly disputed when it comes to evaluating the implementation of the high court ruling. In outbound cases, additional accountability obligations are imposed on the employer. A tolerance rule is missing in inbound cases so that many cases will trigger in a lot of administrative work and low or zero tax revenues. Overall, in spite of the newly issued decree, many questions still remain unanswered.

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Russia:
Changes in currency control regulations

Overview

As of August 2, 2014, the provisions of Federal Law No. 218-FZ, "On amendments to certain legislative acts of the Russian Federation" (RF or the "Law") dated July 21, 2014, became effective. Among other changes, the Law incorporates long anticipated amendments in Russian currency control legislation extending the list of allowed currency transactions carried out by the currency control residents of the RF via their accounts opened with the banks located outside the territory of the RF (the "foreign bank accounts") as well as expands the scope of the currency control legislation and establishes reporting obligation for the currency control residents of the RF.

Operations with the accounts of residents of the RF opened with the banks situated outside of the territory of the RF

Previously, the individuals, who were considered to be residents under Federal Law No. 173-FZ, "On currency regulation and currency control" (i.e., citizens of the RF and holders of the residence permit, unless they stay outside Russia for the period exceeding one year) (the "residents"), could perform very limited list of the currency transactions using their foreign bank accounts. For example, the residents could not receive remuneration, interests, dividends, and most types of other income in their foreign bank accounts. In practice, these restrictions caused a lot of inconveniences for those individuals, who remained residents of the RF, but rendered employment, business, or investment activities outside of the territory of the RF.

When the new rules became effective, the list of the allowed currency transactions with the use of the foreign bank accounts of the residents has extended significantly. As a result, residents now can credit to their foreign bank accounts

salary and other payments connected to performance of employment duties outside of the territory of the RF under employment agreements concluded with the nonresidents, including payments and/or compensation for costs connected to the business trips of such individuals.

In addition to the employment-related income, the residents, depending on the country where the bank is situated, can credit to their foreign bank accounts payments of social nature (e.g., pension), payments made due to opening and holding an account (deposit) with the foreign banks (e.g., interest payments), payments made under insurance contracts (e.g., insurance premium), income derived from non-Russian securities (e.g., dividends, payment under bonds, bills of exchange, payment for a decrease in the share capital of the issuer of the external security), and some other types of payments.

At the same time, many types of currency transactions carried out by the residents are still considered as transactions not allowed under Russian currency control legislation. For example, the residents are not allowed to credit to their foreign bank accounts salary or any other employment-related income paid by the foreign entities without properly concluded employment agreements. This may be the case when, for example, no employment agreement is concluded with the international assignee in the host country (e.g., the assignee's activities are rendered under secondment agreement and/or the assignment letter only) or a part of the compensation package is provided to him/her through the third-party relocation provider. We would like to remind that receipt of "not allowed" payments to the foreign bank account may result in a fine for the resident amounting up to 75-100% of the sum of the illegal transaction.

Other changes in currency control regulations

The Law also introduces the following changes in the area of currency control regulations:

- According to the Law, transactions with the currency of the RF and internal securities (i.e., securities issued by the Russian companies (organizations and securities with registration of the issue in the RF) outside of the territory of the RF now fall within the transactions regulated by the Russian currency control legislation. This means that these transactions have become subject to currency control restrictions in Russia.
- The Law also establishes a responsibility for the individuals – residents of the RF to submit to tax authorities reports on movement of cash on their foreign bank accounts (deposits) together with supporting bank documents. This rule will take effect as of 1 January 2015. The procedure of such reporting has not been established yet, it is expected that the relevant instructions will be issued by the RF government in concurrence with the Central Bank by the end of this year.

Deloitte's view

Based on the described changes in Russian currency control legislation, the residents of the RF working outside Russia can now receive the remuneration directly to their bank accounts opened in the banks located outside of the territory of the RF. In order to do so, the residents will be required to conclude employment agreements with their foreign employers. It is advisable, therefore, that the companies review the payment arrangements set for the residents of the RF and implement necessary adjustments where required.

We recommend that each transaction involving crediting of funds directly to the account of the resident of the RF held with a bank located outside of the territory of the RF be analyzed for compliance with the list of permitted transactions. Due to ambiguity of certain paragraphs in the Law, lack of proper analysis may lead to an inadequate conclusion about the legality of a transaction and subsequent penalties for the individual.

In addition, the residents of the RF working outside of the territory of the RF should carefully arrange the process of the regular reporting to the tax authorities on the accounts opened with the foreign banks.

We will be pleased to assist companies and individuals with the above issues.

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Russia:
Disclosure of foreign citizenship (residency)

Overview

On 4 June 2014, the President of the Russian Federation signed Federal Law No. 142-FZ "On amendments to Articles 6 and 30 of the Federal Law 'On Russian citizenship' and some other legislative acts" (hereinafter, "the Law"). Published on the same date, the Law took effect on 4 August 2014.

The Law sets the responsibility for Russian citizens to disclose whether they hold any foreign passport, residence permit, or any other document entitling its holder to permanent residence in a foreign country. Failure to do so may also result in administrative or criminal liability.

Disclosure of information on foreign citizenship/residency

According to new rules, any Russian citizen who holds a foreign passport, residence permit, or any other document entitling him/her to permanent residence in a foreign country should disclose this information to the local Federal Migration Service authorities (FMS). For Russian citizens who are under 18 or have a limited legal capacity, disclosure of the aforementioned information is the responsibility of their legal guardians. Holders of multiple citizenship/residency documents must disclose each of them.

The above-mentioned changes may affect, for example, employees – Russian citizens assigned to work in the foreign countries, where receipt of the residence permit (temporary or permanent) is mandatory for the immigration purposes. At the same time, it is not clearly defined what types of "other documents entitling to permanent residence in a foreign country" may lead to disclosure obligations.

Formally Russian citizens, who permanently reside outside Russia, may be exempt from the above-mentioned rules. However, since effective provisions of the Law do not define "a citizen permanently residing in a foreign country" and, consequently, it remains ambiguous who may apply for such an exception.

It is established that a special notification form (hereinafter, the "notification") should be submitted personally by the responsible individual either at FMS office or via territorial departments of Post of Russia. At the moment, it is not clear whether the responsible individuals may issue a proxy authorizing another individual to submit the notification on his/her behalf.

Deadlines and sanctions for failure to disclose foreign citizenship/residency

The individuals responsible for disclosure must submit the notification to the FMS within 60 days after being granted a document entitling them to foreign citizenship/residency. Russian citizens who held such documents before the Law came into effect (i.e., 4 August 2014) are required to submit the notification within 60 days of the effective date, i.e., no later than 2 October 2014.

Violation of the above-mentioned rules may have the following consequences for the individual responsible for disclosure:

- Administrative penalty in the amount from RUB 500 to RUB 1,000 will be applied in case the notification is submitted to the FMS after the established deadline and/or the information indicated in the notification is incomplete and/or misleading, and
- Nonsubmission of the notification to the FMS will be regarded as a criminal offense, which may result in a fine of up to RUB 200,000 or the obligation to perform community services for a period of up to 400 hours.

Deloitte's view

According to the recent changes in Russian legislation, Russian citizens, who hold a foreign passport, residence permit, or any other documents entitling them to permanent residence in a foreign country must submit to the local FMS authorities a special notification form within 60 days after being granted any of these documents. At the same time, the current version of the Law contains a lot of uncertainties, notably:

- The Law does not provide a definition of "the individual permanently residing in a foreign country", therefore, it remains unclear which criteria should be met in order to apply for the exemption from these rules, and
- It is also not clearly defined by the new regulation what types of immigration documents held by the Russian citizens may trigger disclosure obligation and whether such an obligation may be fulfilled by the representative individual on the basis of the Power of Attorney.

We believe that further clarifications with regard to the above-indicated issues should follow shortly. Nevertheless, considering the potential administrative or criminal liabilities applicable for the violation of the new rules, it is advisable that the immigration arrangements in the host locations of the assignees – Russian citizens are carefully reviewed and the assignees are properly informed of their obligation.

We will be pleased to assist companies and assignees with the above matter.

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Have a question?
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