Deloitte.

Global Employment Solutions

Global InSight

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Czech Republic: Social Security Agreements with India and Russia

Overview

The Social Security Agreements with India and Russia will come into effect on September 1, 2014, and November 1, 2014, respectively.

Benefits and entitlements

The newly concluded Social Security Agreements with India and Russia, two important business partners of the Czech Republic, guarantee individuals working in these countries the totalization of the periods of their coverage by the social security system of the other country for the purposes of claiming benefits. Thus, such individuals will not lose their entitlements due to migration for economic activity in participating countries. This will free such individuals from the necessity to pay voluntary pension insurance in order to ensure they have sufficient numbers of years of participation in order to be entitled to benefits covered by the respective social security agreements.

While the Social Security Agreement with India only covers pension insurance, the Social Security Agreement with Russia also applies to sickness insurance. The health insurance scheme is not covered in any of these agreements; thus, participation in the health insurance system remains governed solely by the local legislation of the respective country.

The Social Security Agreement with Russia concerns only Czech and Russian nationals; the Social Security Agreement with India covers all persons who are, or have been, subject to the social security systems of participating states.

Deloitte’s view

The totalization principle applies retrospectively, even to periods of coverage for the pension scheme earned before the effective date of the respective Social Security Agreement.

Assignment of employees

The Social Security Agreements will change the position of employees assigned to work in participating countries. Based on the Social Security Agreement with Russia, such employees shall remain covered by their home country social security system during their work abroad for a period of up to 24 months. Based on the Social Security Agreement with India, such employees shall remain covered by their home country scheme if the anticipated duration of posting does not exceed five years.

Deloitte's view

We recommend reviewing the situation of employees currently working abroad in the countries concerned to ensure that they are compliant with the new Social Security Agreements as this change can lead to significant reductions in costs both for employers and employees. It should also be kept in mind that the new Social Security Agreements may stipulate new obligations for some current activities as well.

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Malta:
The Residence Programme Rules, 2014 for individuals who are EU, EEA or Swiss nationals

Introduction

A Malta residence programme, entitled 'The Residence Programme Rules' ("TRP Rules") has been introduced with effect from 1 July 2013, for individuals who are nationals of the EU, European Economic Area (EEA) or Switzerland (but not Maltese nationals) in terms of Legal Notice 270 of 2014 and Articles 56(23) and 96 of the (Malta) Income Tax Act, Chapter 123 of the Laws of Malta ("ITA"), and which TRP Rules confer on the successful applicant a special tax status.

The TRP Rules replace the residence scheme for High Net Worth Individuals (HNWIs) applicable to EU/EEA/Swiss Nationals with effect from 1 July, 2013, and the scope of the TRP Rules are to set out more favorable conditions under the new rules which are in line with those applicable to non-EU/non-EEA, or non-Swiss nationals in terms of the Global Residence Programme.

Who is eligible to apply?

To apply under the TRP Rules, an individual must be an EU, EEA or Swiss national but not a Maltese national. Such person must also not be a "Permanent resident" of Malta or have applied for a Permanent Residence Certificate and not be in possession of a permanent residence certificate in terms of the Free Movement of European Union Nationals and their Family Members Order (S.L. 460.17).

Should an individual who has been granted special tax status in terms of the TRP Rules become a permanent resident of Malta, such individual will lose his/her status and be subject to tax in Malta on his worldwide income at the progressive rates of taxation up to a maximum of 35%.

Who qualifies as a dependant of the applicant?

The eligible dependants of the applicant who should also apply for the scheme if they reside with the beneficiary in the qualifying property are:

1. The beneficiary's spouse or person with whom the beneficiary is in a stable and durable relationship;
2. Minor children, including adopted minor children and children who are in the care and custody of the beneficiary or the person mentioned in paragraph (a) above;
3. Children who are under the age of 25, including adopted children and children who are in the care and custody of the beneficiary; or the person mentioned in paragraph (a) above, provided that such children are not economically active;
4. Children, including adopted children and children who are in the care and custody of the beneficiary or the person mentioned in paragraph (a) above, who are not minors but who because of circumstances of illness or disability of a serious gravity are unable to maintain themselves;

5. Dependent brothers, sisters, and direct relatives in the ascending line of the beneficiary or the person mentioned in (a)above;

In order to apply as a dependant of the applicant, in all cases (a) to (e) above a dependant should not be benefitting under the Residents Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the High Net Worth Individuals – Non-EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Global Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules, or the Highly Qualified Persons Rules.

Conditions for application

An individual who is eligible to apply under the TRP Rules must prove to the satisfaction of the Commissioner for Revenue (the Commissioner") that such individual satisfies all of the conditions set out below:

1. The applicant holds a 'Qualifying Property Holding,' which is defined as immovable property situated in the Maltese islands, which was either (i) purchased in Malta for a consideration of not less than €275,000 or in Gozo or the South of Malta for a consideration of not less than €220,000; or, (ii) rented for not less than €9,600 per annum for a property situated in Malta or €8,750 for a property situated in Gozo or the South of Malta. In all cases, the said property must be occupied as the primary place of residence and no persons other than the beneficiary, his dependants and household staff (who have been employed by the applicant for at least two years prior to the application) may reside in the property;
2. The applicant does not benefit under the Residents Scheme Regulations, the High Net Worth Individuals – EU/EEA/Swiss Nationals Rules, the High Net Worth Individuals – Non-EU/EEA/Swiss Nationals Rules, the Malta Retirement Programme Rules, the Global Residence Programme Rules, the Qualifying Employment in Innovation and Creativity Rules, or the Highly Qualified Persons Rules;
3. The applicant is in receipt of stable and regular resources, which are sufficient to maintain himself and his dependents without recourse to the social assistance system in Malta;
4. The applicant is in possession of a valid travel document;
5. The applicant is in possession of sickness insurance, which covers himself/herself and his/her dependents in respect of all risks across the whole of the EU normally covered for Maltese nationals;
6. The applicant is a fit and proper person; and
7. The applicant can adequately communicate in English or Maltese, which are the two official languages in Malta.

The above noted conditions must be satisfied on an ongoing basis. The applicant will lose his special tax status should he become a Third Country National.

Tax treatment

A beneficiary in possession of the relevant special tax status certificate issued in terms of the TRP Rules, his spouse, and children referred to in (b) and (d) in the list of dependants would be subject to the following tax treatment in Malta:

1. Income from foreign sources would be chargeable to Malta income tax as from the year in which the special tax status was granted only if remitted to Malta ('remittance basis' of taxation) and at a flat rate of 15% with the possibility of claiming double taxation relief but subject to the minimum annual tax liability referred to below.
2. The income of the beneficiary, his spouse, and children referred to in (b) and (d) in the list of dependents not chargeable at the rate of 15% is chargeable at the rate of 35%. Consequently, no separate tax computation is provided for.
3. Any other realised income that is not charged at the 15% income tax rate above and including realised capital gains arising in Malta on the transfer of a capital asset (other than immovable property situated in Malta) would be chargeable to Malta income tax at the rate of 35%.

In terms of the ITA, any realised capital gain arising in Malta on the transfer of immovable property situated in Malta would be subject to a final withholding tax of 12% of the transfer value (an exemption applies in special circumstances, including the disposal of immovable property occupied as an individual's "own residence" for a period of three years). An individual may opt for the 35% tax rate on the capital gain, if the property being transferred was acquired less than 12 years prior to the sale.

Any realised capital gain arising outside of Malta, even if remitted to Malta, would be exempt from Malta tax in view of the non-Malta domicile of the individual.

A nonrefundable minimum annual Malta income tax payment payable by the beneficiary amounting to €15,000 in respect of income from foreign sources that is remitted to Malta, applies in terms of the TRP Rules. This minimum tax is due for payment by not later than 30 April of the year in which the income is received in Malta and is payable in full in both the year when the special tax status was granted and in the year when the individual ceases to possess the said special tax status. The payment must be accompanied by a return made to the Commissioner confirming that all the conditions of the scheme have been satisfied. The said return is not required to be submitted in the year that the special tax status is granted.

Procedure for application

An application for special tax status in terms of the TRP Rules may only be submitted to the Commissioner through the services of a person that qualifies as an Authorised Registered Mandatory (Deloitte Malta is an Authorised Registered Mandatory in terms of the Scheme) and on the prescribed application form.

A nonrefundable administrative fee of €6,000 is payable to the Commissioner on application. In the event that the qualifying owned property is situated in the South of Malta, the administrative fee is reduced to €5,500. A list of localities has been published for the purpose of identifying towns and villages defined in the rules as the "South of Malta" and are set out at the end of this Tax Alert.

Minimum residence period

There is no minimum residence period. However, an individual in possession of the relevant special tax status certificate may not reside in any other tax jurisdiction for more than 183 days in any calendar year.

Grandfathering of HNWI EU/EEA/Swiss Nationals Rules

As a result of the introduction of the TRP Rules and, in terms of Legal Notice 268 of 2014, 'grandfathering' provisions have been introduced in respect of the HNWI EU/EEA/Swiss Nationals Rules. In terms of these 'grandfathering' provisions, a person in possession of or having a pending application in respect of special tax status in terms of the above referred HNWI Rules may request the Commissioner, through an Authorised Registered Mandatary, for a determination in writing that the special tax status be migrated to that in terms of the TRP Rules or that the application in terms of the above-referred HNWI Rules be considered as an application in terms of the TRP Rules.

Localities for the purposes of the definition of the South of Malta – Birzebbugia, Cospicua, Fgura, Ghaxaq, Gudja, Kalkara, Kirkop, Luqa, Marsascala, Marsaxlokk, Mqabba, Paola, Qrendi, Safi, Sta. Lucija, Senglea, Siggiewi, Tarxien, Vittoriosa, Xghajra, Zabbar, Zejtun, Zurrieq

Deloitte's view

This residence programme replaces the previous HNWI Rules for EU, EEA and Swiss nationals and provides more favourable conditions to prospective applicants.

Further information about the Residence Programme will be available once the Malta Tax Authorities issue the rules and application forms governing this residence programme.

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Global Rewards Updates:
United States: IRS initiative to test company compliance around deferred compensation plans and increased focus on employment tax compliance

Section 409A compliance initiative

Section 409A of the Internal Revenue Code provides rules for deferred compensation, which may impact typical global share plans operated by companies.

Compliance Initiative

The Internal Revenue Service (IRS) recently announced that it has started a project to test compliance with section 409A on a group of roughly 50 large companies. The companies were selected from an existing pool of taxpayers currently under employment tax audits and based on the probability of the companies sponsoring non-qualified deferred compensation plans which are within the scope of section 409A.

The project will include a review of compliance in respect of specific aspects of section 409A, such as initial deferral elections, subsequent deferral elections and distributions under section 409A, including compliance with the six-month delay for payments made to specified employees upon separation from service. An audit that is part of this project will be limited to deferral elections and distributions made during the years under audit. Because the statute of limitations in the US is generally 3 years, an audit under this project would generally cover tax years 2011 to 2013. To ease the burden of companies participating in the project, the scope of review will be limited to the top 10 highly compensated individuals employed at the relevant companies.

The IRS anticipates that this project will be completed within 12 months, likely to be by the middle of 2015. It is expected that the information gathered will provide the IRS with additional material regarding section 409A compliance and will identify compliance areas that taxpayers find particularly challenging. In addition, the IRS will use this information to examine the effectiveness of existing information request procedures used in connection with an audit.

Action

Although the focus of the initiative is limited in scope, it indicates that the IRS intends to enforce section 409A. While the existing project is narrowly focused, the section 409A rules are complex and errors can occur in both plan drafting and plan operation. To the extent these audits reveal compliance issues, the IRS may decide to broaden the enforcement activity to other employers and/or issues.

Employers that offer deferred compensation that falls (or may fall) within the scope of section 409A should consider taking this time to review plan documents and operational procedures to ensure section 409A compliance.

Employment tax compliance for share based compensation

In recent months, the IRS has stepped up its enforcement of late employment tax deposits relating to share based compensation. Although the IRS Field Directive, discussed below, was issued in 2003, the timely deposit of employment taxes continues to be an issue caught by the IRS on audit.

Typically, an employment tax liability is triggered on the date compensation is paid to an employee. An employer's tax deposit schedule is generally monthly or semi-weekly, based on the average employment taxes paid in a period. IRS requires a next business day deposit once the accrued payroll tax liability exceeds $100,000 (the "next day deposit rule"). Penalties for late deposits range from 2% to 10%, depending on the length of delay in satisfying the liability; if no reasonable cause is demonstrated, these penalties are often automatically imposed.

Following a share based compensation taxable event, such as the exercise of share options (which are not statutory incentive stock options), vest of restricted stock ("RSAs"), or settlement of restricted stock units ("RSUs") there is typically a time lag between the transaction date and the shares being settled into a taxpayer's account (the settlement date). The application of the next day rule with respect to share based compensation is often inconsistently applied.

To relieve confusion in this area and provide IRS auditors with guidelines on when to impose penalties, the IRS issued a Field Directive in 2003 explaining how to apply the next day rule with respect to certain share based compensation, specifically options which are not tax approved in the US (Incentive Stock Options).

Employment tax deposit due date for share option exercises

The Field Directive, dated March 14 2003, is currently in effect and advises auditors not to challenge the timeliness of deposits under the next day rule if such deposits are made within one day of the settlement date, as long as such settlement date does not fall more than three days from date of exercise.

As such, IRS should not challenge the timeliness of employment tax deposits following the exercise of non-statutory share options, provided such deposits are made within four business days of the date of exercise.

The Directive only applies to the exercise of share options. It does not apply to other forms of share based compensation. As a result, while taxpayers in some circumstances have been successful in arguing that a comparable approach is appropriate to other awards, auditors are not under the same directive to apply this rule.

Action

Employers should ensure they are properly and consistently reporting all US employment tax liabilities generated from share based compensation (including share options) in a timely manner.

Employers should consistently report the liability date for share options as either the exercise date, or the date the shares are settled to the taxpayer's account.

Employers should ensure that deposits of employment taxes related to share based compensation are timely.

Employers should review their current procedures related to employment tax deposits for all compensation, particularly share based compensation, to determine if the deposit rules are satisfied.

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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.