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Global Employment Solutions

Global InSight

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Ireland:
Finance Bill 2014

Overview

Minister for Finance, Mr. Michael Noonan T.D., delivered the 2015 Budget on 14 October 2014, which was aimed at securing and sustaining economic recovery in Ireland.

Following a lengthy period of austerity, the Minister for Finance confirmed that the macroeconomic and fiscal framework underpinning Budget 2015 is far more favorable than in previous years.

The 2014 Finance Bill was published on 23 October 2014 detailing the changes announced in the Budget.

A number of income tax changes were introduced, which will positively affect the level of income taxes paid by individuals working in Ireland. Such changes may create cost-saving opportunities for employers of tax-equalized employees.

Special Assignee Relief Programme (SARP)

SARP is an income tax relief for individuals assigned or contracted to work in Ireland in any of the tax years 2012, 2013, or 2014. Where certain conditions are satisfied, a relevant employee can under the current SARP make a claim to have 30% of his or her income between €75,000 (lower threshold) and €500,000 (upper threshold) disregarded for income tax purposes and the relief can be claimed for a maximum of five years. A government consultation held on SARP in May 2014 showed that only 15 SARP claims were made in 2012 confirming that the relief was unattractive in its current form.

The Finance Bill confirmed that the SARP introduced in 2012 is being extended for a further three years – 2015, 2016, and 2017. For new applicants from 2015, the current conditions are being relaxed in order to ensure more individuals qualify for the relief. Based on current conditions, the employee must have worked outside Ireland for a minimum period of 12 months for the relevant employer before being assigned/transferred to work in Ireland. It is also a requirement for an employee to be tax resident in Ireland in the year of the SARP claim and not tax resident elsewhere. This condition proved difficult for employees in their year of arrival. The new form of the relief will be available to individuals employed by the relevant employer for a minimum period of six months and regardless of their overseas tax residence status. The residence elsewhere condition is also removed for individuals who arrived in 2014 although all other conditions of the current SARP regime remain in place for that year.

The Finance Bill also confirmed that the upper income threshold of €500,000 is being removed and, in a welcome change, this applies from 2015 regardless of the year of arrival. Finally, the Finance Bill provides that the employer must certify to Revenue that the employee meets the conditions for the relief within 30 days of the employee's arrival in the state.

Deloitte's View

Since its introduction in 2012, SARP has been limited in impact due to the stringent conditions applying. The relaxation of qualifying criteria, particularly the residence criteria, is very welcome in the context of attracting key personnel to Ireland, although it is disappointing that the relief was not extended to new hires. SARP may provide employers with cost savings in cases where individuals are assigned to Ireland on a tax-equalized basis. There will be no maximum on the relief for key executives with packages, including bonuses and share awards, which in total exceed €500,000 compared with the current maximum relief of €127,500 giving a maximum saving of €52,275. While the employer certification requirement creates further reporting obligations, the hope is that this will provide real-time information regarding number of claimants.

Foreign Earnings Deduction (FED)

The FED was introduced in 2012 and applies for the tax years 2012, 2013, and 2014. Employees carrying out more than 60 qualifying work days in the BRICS countries (Brazil, Russia, India, China, and South Africa) are eligible to claim a tax deduction (FED) against employment income (capped at €100,000) based on the number of qualifying work days spent in the foreign location. Maximum tax relief is capped at €35,000 and does not apply to the Universal Social Charge (USC) or Pay-Related Social Insurance (PRSI).

For the years 2013 and 2014, the relief also applies to employees spending more than 60 qualifying work days in Egypt, Algeria, Senegal, Tanzania, Kenya, Nigeria, Ghana, or the Democratic Republic of the Congo.

A government consultation on the FED held in May 2014 confirmed that the relief was not as successful as intended with only 83 FED claims submitted in 2012. The Finance Bill confirmed the extension for a further three years – 2015, 2016, and 2017 together with a relaxation of the qualifying conditions, which hopefully will increase its availability. The 60 work-day requirement will be reduced to 40, and a reduction in the required minimum stay to three days (including travelling time) was confirmed. For the years 2015 – 2017, "qualifying countries" will also include Japan, Singapore, Korea, Saudi Arabia, United Arab Emirates, Qatar, Bahrain, Indonesia, Vietnam, Thailand, Chile, Oman, Kuwait, Mexico, and Malaysia.

Deloitte's View

Where qualifying conditions are relaxed as outlined, the FED should provide real tax cost-saving opportunities for individuals temporarily working in qualifying countries, particularly those with which Ireland does not have a double taxation agreement and where a double taxation credit would not be available. Employers should ensure processes are in place for the company to receive tax relief where arising as a result of an Irish employment where the individual is tax equalized. Consideration should also be given to implementation of tax-equalization policies where employees make frequent business trips to these locations.

Income tax, USC, and PRSI

The Minister for Finance announced a number of changes to income tax and the USC. The higher rate of income tax is being reduced from 41% to 40%. Taxpayers will pay less tax at 40% as the entry level for the higher rate is being increased by €1,000 for single individuals and married one-income couples to €33,800 and €42,800, respectively. Married couples each earning in excess of €33,800 will be entitled to a joint standard rate band of €67,600.

A number of changes to the USC are being introduced. Income of €12,012 or less will be exempt from USC. The following sets out the rates of USC and income thresholds expected to apply for 2015:

- 1.5% USC on income to €12,012
- 3.5% USC on income between €12,013 and €17,576
- 7% USC on income earned between €17,577 and €70,044
- 8% USC on income earned between €70,045 to €100,000

Pay As You Earn taxpayers will suffer USC at 8% on income in excess of €100,000. Self-employed income in excess of €100,000 will be liable to USC at 11%.

Medical card holders (or those over 70) whose aggregate income does not exceed €60,000 will pay USC at 3.5%.

Deloitte's View

The changes in the basis of income tax and USC together with the availability of SARP will mean that an inbound assignee (who is exempt from PRSI) who qualifies for SARP will have an effective tax rate of 36% instead of 48% on his or her employment income over €75,000.

These are welcome first steps in reducing an uncompetitive marginal tax rate and low entry point to that rate, which are a necessity if Ireland is to attract and incentivize key talent.

Employer Return of Share Options and Other Rights – Form RSS1

The Finance Bill also introduced mandatory electronic filing of the employer's annual return of share options and other rights granted to or exercised by employees.

Employers with internationally mobile employees should ensure that the RSS1 contains details of options granted or exercised where all or part of the gain is taxable in Ireland, e.g., an employee may have been granted an option while being an Irish company employee but exercises it while on assignment abroad.

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Malaysia:
Permission to Work for Dependants

Overview

With immediate effect, the Malaysia Immigration Department (MYID) has ceased acceptance and processing of Permission to Work (PTW) applications for Dependant Pass (DP) holders in Malaysia.

Changes to note

DP holders who wish to work in Malaysia are no longer allowed to apply for a PTW tagged to the DP. They must now cancel the DP and apply for an Employment Pass (EP) sponsored by their employer in Malaysia.

Deloitte's view

With the recent implementation of the Expatriate Services (ESD) system, the MYID is looking toward streamlining all processes and enhancing efficiency in applications.

Moving forward, the ESD system will also allow stringent monitoring between the Inland Revenue Board and MYID to ensure all EP holders comply duly with income tax regulations.

In the past, many PTW holders have been found to not adhere to their Malaysian income tax obligations. We see this as a measure by the MYID and Inland Revenue Board to reduce delinquents.

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Global Rewards Updates:
Australia: Securities law – new Class Orders

Background

Securities laws in Australia are administered by the Australian Securities and Investments Commission (ASIC). An offer of securities under an employee share plan would generally need to be accompanied by a disclosure document to ASIC, unless the offer is exempt under either a statutory or administrative exemption.

For example, if the shares offered by foreign (i.e. non-Australian headquartered) companies under employee share plans have been quoted on an approved foreign stock exchange for at least 12 months and are offered only to employees of the group, foreign companies have historically been exempt from disclosure, licensing, hawking and incidental requirements under an administrative exemption (ASIC Class Order [CO 03/184]) if certain conditions are met.

In an effort to reduce the compliance burden on companies in respect of employee incentive schemes, ASIC will adopt a new Class Order (Class Order [CO 14/1000]) for listed companies and a new Class Order (Class Order [CO 14/1001]) for unlisted companies to replace Class Order [CO 03/184]. Case by case relief can also be obtained for employee incentive schemes that do not meet the Class Order conditions, although they must meet policy objectives.

In addition, ASIC has updated its policy guidance (Regulatory Guide 49) on employee incentive schemes.

The ASIC changes are to be read together with the Australian federal government's recent announcement on taxation arrangements for employee share schemes.

The new Class Orders

The ASIC decided to widen the scope of its class order relief to accommodate developments in employee incentive schemes that do not offend the ASIC's fundamental policy objectives of granting relief i.e.:

- That the employee incentive scheme is designed to support interdependence between the employer and its employees for their long-term mutual benefit by seeking to align their respective interests;
- That there are adequate protections for participants in the scheme, including appropriate disclosure and pricing information for the products offered; and
- That the objective of the offer is not fundraising.

New Class Order [CO 14/1000] will apply to a wider range of financial products typically used in employee incentive schemes, including shares, share options and certain other arrangements payable in shares or cash. Certain loan arrangements are also specifically granted relief.

In order to rely on Class Order [CO14/1000], listed companies must satisfy a number of general conditions, including:

- The shares (or other eligible product) must have been quoted on ASX (the Australian Securities Exchange) or another eligible foreign financial market for at least three months with suspension of no more than five trading days in the preceding 12 months. This is a more relaxed position than under Class Order [CO 03/184];
- Offer documents must be presented in a clear, concise and effective manner with a warning that any advice given in respect of the eligible products offered does not take into account a participant's objectives or financial situation. The offer documents also need a general product risk warning. This is more specific and prescriptive than under [CO 03/184]; and
- Instead of requiring a copy of the offer documents be filed with ASIC within seven days, for new employee incentive schemes, the offeror must send ASIC a notice of reliance on ASIC relief no later than one month after first relying on the Class Order. Notwithstanding the notice of reliance, ASIC has the power to request employee incentive scheme documents, and to exclude a company from relying on the Class Order where it has substantial concerns about the company's compliance or conduct.

Class Order [CO 14/1000] also provides transitional arrangements, under which relief will be 'grandfathered' for employee share schemes that were covered by ASIC Class Order [CO 03/184] or an individual instrument of relief granted by ASIC in terms similar to ASIC Class Order [CO 03/184].

Different conditions must be satisfied by non-listed companies seeking to rely on the new Class Order [CO 14/1001].

New employee incentive schemes that come into existence on or after commencement of the new Class Orders will only be able to have the benefit of the new Class Order relief.

The commencement date for the new Class Orders will be the later of the dates when registered or gazetted. This date has not yet been determined.

Action

If you have previously relied on the exemption under ASIC Class Order [CO 03/184] or individual instrument of relief, then you should continue to comply with any ongoing obligations, which have been grandfathered by the new Class Order 14/1000.

If you are considering offers of securities under a new employee incentive plan or if you would like to offer phantom awards, you should seek to comply with the new Class Orders, Class Order [CO14/1000] (for listed companies) or Class Order [CO 14/1001] (for unlisted companies).

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