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Global Employment Solutions

Global InSight

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Belgium: The abolishment of the SIS-card

From 1 January 2014, the Belgian health insurance funds will no longer issue SIS-cards for Belgian health care coverage.

New System

The SIS-card currently fulfills two objectives:

- The insured person's identification (i.e., the person affiliated with a Belgian health insurance fund);
- Determination of the insured person's rights with regard to the reimbursement of Belgian health care costs incurred.

From 1 January 2014, however, new SIS-cards will no longer be issued by the Belgian health insurance funds. Instead, Belgian EID-cards (Electronic ID) will be used for the insured person's identification. Other data currently saved on the SIS-cards will be stored electronically by the insured person's Belgian health insurance fund. Health professionals will then be able to access the health insurance funds database online, allowing them to determine the rights of coverage and reimbursement of an individual.

Individuals who do not meet the requirements for a Belgian EID-card will receive a so-called "isi+-card" (identification sociale / sociale identificatie). This isi+-card will, for instance, be issued to children younger than 12 years and to persons who do not have a Belgian EID-card but are socially insured in Belgium (e.g., frontier workers and their families).

Existing SIS-cards will continue to be used during a (yet to be determined) transitional period for identification purposes only. However, SIS-cards that expire during the transitional period will no longer be renewed.

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United Kingdom:
Split year treatment under the proposed Statutory Residence Test

Overview

On 13 June 2013, the government made amendments to the draft legislation which, once enacted, will introduce a Statutory Residence Test (SRT) to the UK. The SRT is expected to take effect from 6 April 2013, i.e., some three to four months prior to enactment.

Under the SRT, individuals are regarded as 'resident' or 'not resident' for the whole year but resident individuals will be able to split the tax year into a 'UK part' (effectively taxed as a resident) and an 'overseas part' (effectively taxed as a non-resident) if they meet one or more of the tests for 'split year treatment.' The way these tests will be applied has changed as a result of the amendments to the draft legislation.

Individuals leaving the UK

Individuals leaving the UK may be able to split the tax year if they meet one or more of the following three tests:

- Starting full-time work abroad (FTWA) (case 1)
- The partner of someone starting FTWA (case 2)
- Ceasing to have a home in the UK (case 3)

Under the original draft legislation, individuals leaving the UK would have been required to consider all three cases. Individuals whose circumstances fell within one case only would have been able to split the tax year by reference to the relevant date for that case. However, individuals whose circumstances fell within more than one case would have been required to split the tax year by reference to the later or latest of the relevant dates under whichever of the cases applied to them. This maximized the 'UK part' of the year thereby maximizing the period for which an individual would have been taxed as a resident.

Under the amended legislation, the three cases will be considered in order with case 1 taking priority over cases 2 and 3 and case 2 taking priority over case 3.

Individuals coming or returning to the UK

The position for individuals coming or returning to the UK is less straightforward.

There are five cases which might apply:

- Starting to have an only home in the UK (case 4)
- Starting full-time work in the UK (FTWUK) (case 5)
- Ceasing FTWA (case 6)
- The partner of someone ceasing FTWA (case 7)
- Starting to have a home (but not an only home) in the UK (case 8)

Under the original draft legislation, individuals coming or returning to the UK would have been required to consider all five cases. Individuals whose circumstances fell within one case only would have been able to split the tax year by reference to the relevant date for that case. However, individuals whose circumstances fell within more than one case would have been required to split the tax year by reference to the earlier or earliest of the relevant dates under whichever of the cases applied

to them. Again, this maximized the 'UK part' of the year thereby maximizing the period for which an individual would have been taxed as a resident.

Two key amendments have been made to split-year treatment for individuals coming or returning to the UK:

- Case 6 will apply only where the individual met the conditions to be regarded as not resident on the basis of FTWA in the previous year but was regarded as UK resident in one or more of the four tax years immediately prior to that. This means that individuals who have never been to the UK before, or who have been absent from the UK for several years, will not qualify for split-year treatment on the basis of ceasing FTWA.
- A priority order has been introduced although the way this priority rule operates is not entirely straightforward.

The priority rule will operate as follows:

- If case 6 applies, the individual will need to consider whether case 5 also applies. If both case 5 and case 6 apply, the year will be split from the earlier of the two dates given under the two cases. If case 5 does not apply, the year will be split from the date given under case 6.
- If case 6 does not apply but case 7 does, the individual will need to consider whether case 5 also applies. If both case 5 and case 7 apply, the year will be split from the earlier of the two dates given under the two cases. If case 5 does not apply, the year will be split from the date given under case 7.
- If neither case 6 nor case 7 applies, the individual will need to consider which, if any, of cases 4, 5, and 8 apply. If only one of these three cases applies, the year will be split from the date given under the relevant case. If two or three of the cases apply, the year will be split from the earlier or earliest date.

Deloitte's view

The amended legislation provides individuals leaving the UK including and in particular those leaving the UK to take up FTWA with much greater certainty about the date from which they will qualify for split-year treatment, if at all. This will be welcomed by both individuals and employers. Employers will have more certainty over their Pay As You Earn (PAYE) obligations and the date from which any 'No Tax' PAYE code should be applied. For these reasons, the amendments to the draft legislation are to be welcomed.

The rules on split-year treatment for individuals coming or returning to the UK are complicated. Individuals and employers are likely to find it a challenge to determine the date from which the tax year can be split, if at all.

The ability to split a tax year on the basis of ceasing FTWA can be advantageous in some cases but not in others. Restricting case 6 to individuals returning to the UK after a relatively short period of absence is to be welcomed as it removes an anomaly under the original draft whereby individuals who had never been to the UK previously could have been required to split the tax year from a date before they ever set foot in the UK. For these individuals, the amended legislation provides a more logical basis for splitting the tax year.

However, the application of the priority rule to individuals who fall within the revised case 6 is likely to result in the tax year being split from an earlier date than some at least may be expecting. Employers should consider the impact on policy and procedures and how best to communicate with affected employees.

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United Kingdom:
Statutory Residence Test receives Royal Assent

Overview

The Finance (No. 2) Bill 2013 (the Bill), which included the draft legislation on the statutory residence test (SRT), received Royal Assent on 17 July 2013. As a result, the draft legislation, as amended, is now law with effect from 6 April 2013. This GES Newsflash highlights the key changes that were made to the Bill proposals published in March.

The Finance Act 2013 (the "Act") has amended priority rules for determining the date on which an individual becomes resident or nonresident in the UK, where split-year treatment applies. Where an individual begins full-time work abroad, the year will be 'split' from the first qualifying workday abroad in priority to the other two applicable tests. Where an individual arrives in the UK, up to five tests may apply. Where an individual ceases full-time work abroad and starts full-time work in the UK, the date on which they started full-time work in the UK will apply if it is earlier than the date on which they ceased work abroad. This order of priority also applies to the accompanying spouse of full-time employees, if the spouse takes up full-time work on repatriation. In all other cases, the earliest applicable date will apply.

Additional amendments made to the Bill since March 2013 confirm that from 2013/14 foreign service relief applying to termination payments is restricted to service while non-resident, or to the extent that overseas workdays relief applies.

The Act also provides for a relaxation of the strict remittance rules applying to eligible individuals who operate employment-income-only bank accounts in accordance with the 'special mixed fund rules'. Individuals who have UK and overseas employment income during the tax year may benefit from operating a qualifying account, which enables a simpler calculation of the amounts of employment income taxable in the UK.

Deloitte's view

Properly understood and applied the SRT allows individuals to be certain about their residence status. However, the rules are detailed and complex and may in some cases prove difficult to apply. As a result, it will be necessary for employers and employees to carefully assess the impact and timing of an international move. As the SRT is an annual test, in many cases there may be a requirement for ongoing monitoring and assessment of an individual's residence position.

Employers will need to focus on the cost impact of the SRT on their international assignment program. The date from which an individual in effect acquires or ceases UK tax residence is critical in determining the applicable tax treatment. Under the revised split-year rules, the split-year date is likely to be closer to the date the individual considers he arrives in, or leaves, the UK. Unfortunately, the rules are complex and do not guarantee the dates will coincide in all cases. In particular, employers should consider their employer compliance obligations under Pay As You Earn, particularly in light of Real Time Information reporting requirements.

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Global Rewards Updates:
Finland: Finnish Supreme Administrative Court decision on the sourcing of stock option benefit in a cross-border case

Background

The Supreme Administrative Court (SAC) made a decision on 16 May 2013 on the taxation of stock option income that changes the sourcing rules of stock option benefits in cross-border cases.

Finland has traditionally applied sourcing from grant to exercise, but the new decision changes the Finnish tax treatment in cross-border cases.

Ruling of the Supreme Administrative Court

According to the SAC, stock options are considered to be earned from grant to vest. This new approach is in line with the position taken in the OECD model tax convention commentary.

The case concerned a Finnish national who had been granted stock options in two different plans while he was working outside of Finland. As the individual had been regarded as a non-resident for Finnish tax purposes during the entire time between the grant and vest of the options and he did not perform any work in Finland during that period, none of the stock option gain was taxable in Finland irrespective of his tax status or work location after vest of the options.

With respect to the second plan, only the portion of the option gain that related to time the individual had worked in Finland between the grant and vest of the options was subject to tax in Finland.

The case concerned tax year 2006 so it is possible that the ruling may be referred to retrospectively.

We expect that the Finnish Tax Administration is likely to give more precise guidance on the new practice in the near future and we will provide a further update then.

Action

Companies should take note of the new sourcing guidelines for future exercises of stock options.

Deloitte can also provide guidance on whether tax savings may be achieved by appealing against prior years' tax assessments. Significant tax refunds may be available e.g. in cases where inbound assignees to Finland have held stock options that have vested prior to arrival in Finland, but the exercise has occurred while working in Finland. In 2013, it is still possible to appeal against tax assessment for the year 2007 and onwards.

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