Global Taxation Update - Recent Tax Updates From Around The World

CHILE

Stock Options regulation after the Tax Reform

Tax Reform in Chile has introduced major changes over various aspects of the tax legal system with one of these changes being the enactment of a new tax treatment for Stock Options.

Before the enactment of the Tax Reform there was no tax legislation on this subject. In order to fill this legal gap, the Chilean IRS allowed beneficiaries of Stock Options to defer the taxation until the sale of the shares which gave rise to a less burdensome tax rate.

These rules were completely modified under the Tax Reform establishing a new tax article as follows:

1) The benefit generated by granting the option to acquire shares, bonuses or any other kind of titles issued in Chile will be recognised as additional remuneration of the employee. (This rule has brought major difficulties regarding determination of tax value, whenever the right to acquire shares (the option) has a different value from the shares, options or other titles themselves).
2) Both the exercise of the option and the assignment of the option will be recognised as taxable income.
3) Finally, the capital gain over the sale of titles or instruments acquired through the option will be subject to income tax.

BDO Comment

Due to this new treatment, taxation will be triggered by the mere acquisition of an option that may or may not be exercised; therefore it is necessary to evaluate the real benefit of operating these types of plans in Chile.

Revised Tax Rates For 2017

Reform has also lowered the two highest brackets of the Chilean employment income tax, from 35.5% on amounts exceeding 120 Monthly Taxable Units (UTM) to 35%, and from 40% on amounts exceeding 150 UTM to 35% equally, thus simplifying the system by reducing the amount of brackets available to calculate the tax and also lowering the tax burden for employers and tax payers.

This tax reform was enacted during 2014 but will be enforced from 1 January 2017. From that point all income subject to Chilean employment income tax will be subjected to this new lower tax bracket of 35% on earnings exceeding USD 8,445.60.

As for many countries around the world, Chile charges employment income tax on progressive tax rates and this principle remains untouched.

BDO Comment

From 2017, foreign taxpayers and foreign employers should be aware that the cost of employment taxes for the use of expatriate labour forces in Chile has reduced. This should lead to lower assignment costs.

CHINA

An insight into Chinese tax implications of expatriate dual contract arrangements

The Chinese tax authorities have tightened the monitoring and supervision on foreign employees' dual contract arrangements in individual income tax. Under a typical dual contract arrangement, foreign employees will sign two employment contracts, one with a Chinese employer and another with an overseas employer. The salary will be paid separately inside and outside of China. According to the China Tax Laws, the foreign employees need to file individual income tax returns for salaries paid from inside and outside of China.

The Chinese tax implications of dual contract arrangements may vary case by case. Some foreign employees tried to argue that the portion of the salaries allocated to the overseas contract and paid outside of China were not subject to Chinese individual income tax because:

- The income is paid from overseas
- They are only liable to Chinese individual income tax on China-sourced income (as opposed to worldwide income); and
- The Chinese employer has no statutory withholding obligation on the payment made by the overseas employer outside China.

There is a published judgment case in Guangzhou Court about a dual contract arrangement. In the court judgment, the taxpayer (a UK resident) has signed two independent contracts with a China employer and a US employer and these two companies were related parties. The Court upheld the decision made by the Guangzhou local tax bureau that the taxpayer's employer in Guangzhou China has the statutory withholding obligation on the salary paid by his US employer. Also, the Court has confirmed that even if the income is from the US contract and subject to tax in the US, it does not mean that income would be exempt from individual income tax in China.

The court judgment adopted the principle that substance prevails over format and agreed with the Chinese tax authorities' persistent position toward dual contract arrangements. From our experience, the tax bureaus will become suspicious of the dual contract arrangements where the offshore payroll is excluded from Chinese individual income tax reporting and the reported income in China is far below the reasonable compensation for the expatriate's job in China.

BDO Comment

The tax authorities' monitoring efforts on foreign employees' taxation are becoming more stringent. Chinese companies and their foreign employees need to review any existing dual contract arrangements carefully to manage the tax risks. It is also advised to seek help from tax counsel and communicate with local in-charge tax authorities proactively.

ITALY

Tax relief for expatriates working in Italy

Italy has typically been regarded as a high tax cost location but do remember that there are specific tax regulations concerning the taxation of workers assigned to Italy.

The so-called "Internationalisation Decree" applies with effect from 7 October 2015 to the income of workers, whether Italians or foreigners, who after being abroad for more than 5 years become Italian tax resident, such that they will only be taxable on up to 70% of their income. Considering that the ordinary Italian tax brackets for individuals are fixed from 23% to 43%, this means that inbound expatriates in Italy could benefit from reduced tax brackets of 16.1% to 30.1%.

In order to obtain such tax advantages, the following conditions should be met:

a) Being non-resident in Italy during the previous five tax years

b) The working activity should be carried out mainly within the Italian territory
c) The working activities have to be carried out within a company resident in Italy and it should be supported by a regularly signed contract with the same company, or within other companies which, directly or indirectly control it or are controlled by it
d) Transferring their residence to Italy with the commitment to stay for a period of at least two years
e) Workers having an executive job position or having a high level of qualification and specialisation as defined in a decree of the Minister of Finance to be published within 90 days from the publication of the law.

Interaction With The Previous Tax Relief Provided

The criteria for determining the income described above (30% tax free) is also applied to those beneficiaries of the tax relief provided under previous rules (Law n. 238/2010 - whose benefits remain in force until 31 December 2017), which provided a reduction to the taxable basis to 20% (for women) or 30% (for men) of the taxable income base. The conditions set out by Law 238/2010 are as follows:

1) EU citizens having a university degree, who have resided continuously for at least 24 months in Italy and who, although residing in their country of origin, have continuously performed an employment, self-employment or enterprise activity outside their country and outside Italy, in the last 24 months or more, who are hired or have started an enterprise or self-employment activity in Italy and transfer their domicile, as well as their residence to Italy within three months of hiring or starting an activity.
2) EU citizens who have resided continuously for at least 24 months in Italy and who, although residing in their country of origin, have continuously studied outside their country and outside Italy, in the last 24 months or more, taking a university degree or a post-graduate specialisation, who are hired or have started an enterprise or self-employment activity in Italy and transferred their domicile, as well as their residence, to Italy within three months of hiring or starting an activity.
3) The requirement that these workers had to be born after 1 January 1969 has been abolished.

Steps for choosing either the previous tax relief (Law 238/2010) or the subsequent rules (D.lgs. 147/2015): are as follows

- Individuals who have met both requirements provided by Law n. 238/2010 and D.lgs 147/2015 who moved to Italy by 31 December 2015, may decide whether to opt for the Regime provided by Law n. 238/2010 for the tax year 2015, 2016 and 2017 or for the new regime introduced by Decree n.147/2015
- Individuals who have only met the requirements provided by the latest rules (Decree n.147/2015) can opt only for this new regime
- The option for the regime had to be completed via written request to be submitted to the employer by 29 June 2016
- The employer will have to withhold taxes on the 70% of the employee's taxable income starting from the month following that of the relief request. If the employee opts for the Regime provided by Law n. 238/2010, the application of the withholding tax will be applied on 20% (for women) or 30% (for men) of the taxable income base.

Lastly, it is important to specify that those who transfer their residence to Italy starting from 1 January 2016 (if they meet the requirements to be defined with a specific Decree) can opt only for the new regime (30% tax free).

The option for the new regime has effect from 1 January 2016 and for the following four fiscal years (2016-2020).

BDO Comment

There are some advantageous tax reliefs for expatriate employees working in or moving to Italy. The applicability of these should be considered as appropriate planning and can significantly reduce the cost of assigning individuals to Italy.

THE NETHERLANDS

Material employment under the tax treaties with the Netherlands and the Dutch 60 days rule

According to most double tax treaties with the Netherlands, as well as the OECD model treaty, income from employment is taxable in the country in which the employee is living, unless the employment is fulfilled elsewhere. As a main rule, this leads to taxation in the working country.

The exception to this rule applies when:

a) The employee is not present in the working country for more than 183 days during a 12 month period/tax year/calendar year (depending on the applicable double tax treaty); and
b) The remuneration is not paid by or on behalf of an employer in the working country; and
c) The remuneration is not borne by a permanent establishment of the employer in the working country.

If these cumulative conditions are met, the remuneration will remain taxable in the country of residence.

Assuming the non-resident employee is not present in the Netherlands for more than 183 days (in the respective period according to the treaty), the remuneration will also have to be paid by or on behalf of an employer who is not a resident of the Netherlands. As of 2006, in the Netherlands the employer is defined as also including the material employer, the employer for who the benefits and risks of the activities are performed, and who has actual authority over the employee. When seconding an employee temporarily to perform activities within a group company, this can quickly lead to taxation and a withholding obligation in the Netherlands.

However, in cases of a short-term secondment between group companies, it might be possible to benefit from the Dutch 60 days-rule. An employee who has been assigned within a group company to the Netherlands as part of an exchange programme, for career development, or on the grounds of specific expertise for a period of no longer than 60 days in a 12-month period, will not be considered as being under the authority of the Dutch group company.

As a result, a non-resident employee who is not working in the Netherlands for more than 60 days within a group company and fulfils the above-mentioned conditions, will not be subject to Dutch taxation on their employment income. However, if this regulation would lead to double exemption from taxation, the Dutch tax authorities could decide to consult with the country of residence.

BDO Comment

Many countries are imposing an ever more stringent application of their tax laws on business visitors – the Dutch authorities are no exception although the 60 days-rule is a welcome relaxation. Tracking of visitors is mandatory and up front consideration of local tax legislation and overarching tax treaties must be considered at the outset.

SWEDEN

Tax treatment of key staff members

Non-resident individuals may choose between being taxed as per standard provisions under the Income Tax Law (IL) or under the Law on Special Income Tax on Non-Residents (SINK). The latter is a final withholding tax regime of 20% on a gross basis. In addition, Sweden grants a special tax relief to qualifying foreign key staff members temporarily employed in Sweden under the so called Expert Tax regime. In short, the relief is applied by exempting 25% of their employment income from tax and social security contributions.

On 13 June 2016, the Swedish Tax Authorities (STA) published clarification regarding their view on key staff members temporarily employed in Sweden and their ability to choose to be taxed under the SINK regime. The clarification touches upon two cases in which employees have been granted a special relief for key staff members.

- In the first case, an employee left Sweden before being subjected to unlimited tax liability in Sweden. In such cases the STA's standpoint is that the employee cannot benefit from the Expert Tax Relief when opting for taxation under the SINK regime. However, if the employee instead chooses to be taxed as per standard income tax provisions (IL), he is entitled to the reliefs for resident taxpayers

- In the second case, an employee who was subject to unlimited tax liability in Sweden received remuneration from his employer after leaving Sweden and becoming non-resident. If the remuneration relates to work performed in Sweden while being tax resident here, the remuneration qualifies for the Expert Tax Relief although the employee is also eligible to be taxed under the SINK scheme after becoming a non-resident. Hence, in such cases, only 75% of the remuneration would be subject to the 20% final withholding tax.

BDO Comment

The special rules contained within SINK and the Expert Tax Regime can be beneficial to those who qualify; however, the STA has clear views and guidelines on this, and individuals need to be aware of the applicability of these laws to their personal tax position. Companies also need to consider this up front when seconding employees to Sweden, as it can have a significant impact on the overall cost of an assignment.

FATCA Reporting Deadline

The Swedish tax administration updated its general information guidance regarding the reporting obligations under the Sweden - United States FATCA Model 1A Agreement (2014). The updated guidance clarifies that, from 2016, the information relating to the previous year must be submitted by 15 May of the following year.

Deductibility Of Representation Expenses

The Swedish Ministry of Finance's plans for tax measures for the Spring Budget 2016 and Budget for 2017 (announced on 31 March 2016), includes changes to the deductibility of representation costs for meals and other refreshments. For VAT purposes, the deductibility of input VAT will be limited to a maximum of SEK 300 per person and per occasion. The income tax deductibility of representation expenses relating to lunch, dinner, dinner parties or other refreshments, will however, be abolished from 1 January 2017, unless such expenses relate to consumption of lesser value.

Prepared by BDO LLP.
For further information please contact Andrew Bailey on 0207 893 2946 or at andrew.bailey@bdo.co.uk