Global Tax Update

CANADA

Voluntary Disclosure programmes - consultations

In June 2017, the Canada Revenue Agency (CRA) released a discussion paper relating to their Voluntary Disclosures Programme. This paper outlines the CRA policy for disclosures involving income tax and source deductions. Of considerable interest are the proposed changes which narrow the eligibility for the Voluntary Disclosure Programme (VDP) and impose additional conditions on taxpayers applying under the programme.

If the proposed changes are implemented, the effective date would be 1 January 2018.

Overview

The VDP promotes compliance with Canada's tax laws and regulations by providing taxpayers with an opportunity to voluntarily come forward and correct any previous omissions in their dealing with the CRA. Under the current VDP, taxpayers can request that CRA provides relief from prosecution and penalties. Also under the current programme, anyone can use the VDP, including individuals, businesses, employers, payers, trusts and estates, whether a resident or a non-resident of Canada.

The CRA has recently conducted a review of the VDP and has begun consulting with the general public on the proposed changes to the programme. It is expected that the Minister of National Revenue will announce formal changes to the programme in the fall of 2017.

Canadian Non-Resident Employers – International Payroll

The information outlined below is to inform and provide Canadian non-resident employers with the importance of disclosure to the CRA and the CRA's upcoming changes to the VDP. We commonly use this programme to assist non-resident employers to ensure all filings and tax obligations are up to date in Canada, as well as other noncompliance. For example, subject to meeting certain tests, the non-resident employer certification offers the removal of the requirement to withhold tax from the salary, wages, and other remuneration that the employer pays to "qualified" non-resident employees. In many cases, the Canadian non-resident employers were not compliant with Canadian payroll taxes, therefore a VDP was necessary to bring all filings and obligations up to date prior to the non-resident employer qualifying for the certification.

Proposed Changes To Make The VDP Tougher

- Under the proposed VDP, the "no name" process will be eliminated. However, prior to a VDP application, taxpayers will be able to participate in a preliminary discussion about their situation on a "no name" basis for a better understanding of the VDP programme process and the risks involved
- The CRA has proposed two tracks for income tax disclosures, one for applications under the General Programme, and one for applications under the Limited Programme. Acceptance is not guaranteed under either programme. If accepted under the General Programme, applications will be eligible for penalty relief and partial interest relief. In contrast, applications that disclose major non-compliance will be processed under the Limited Programme and if accepted, will receive reduced relief under the VDP
- The taxpayer must include payment of the estimated taxes owing together with their VDP application
- Corporations with gross revenue in excess of $250 million in at least two of its last five taxation years will generally not be accepted, as the CRA considers that such corporations should follow normal procedures to amend their tax filings.

BDO Comment

Canadian non-resident employers with employees in Canada should ensure they are compliant in Canada. If not, determine whether or not a VDP can be completed prior to the proposed upcoming changes.

NETHERLANDS

Days of physical presence test

Based on the OECD model convention, most double tax treaties give the right to tax employment income to the country in which the employment activities are performed as well as the country of tax residence.

However, an exception is made to this rule, with respect to the income from employment when the employee does not spend more than 183 days (in a calendar year, tax year or period of 12 months beginning or ending in the tax year). When the other treaty conditions (no employer and a permanent establishment in the country of the activities) are also fulfilled, only the country of residence of the employee will be entitled to tax the income.

The counting of the days of presence seems straightforward. If, at any moment, a tax payer is present in the working country, this is considered as a full day of physical presence and needs to be included for the test. However, in a recent court case amongst others, the calculation of the days was at stake.

In this court case a resident of Belgium had been working 181 days in the Netherlands in the reference period for calculating the 183 days. Besides these working days, the tax payer was present in the Netherlands for private purposes on several other days. Therefore, the total number of physical days of presence in the Netherlands had exceeded the 183 days.

The lower Dutch courts decided that the number of days the taxpayer was present in the Netherlands for private purposes should not be included for the physical presence test. As a result, since it was determined there was no material employer or permanent establishment in the Netherlands, the Dutch court decided that only Belgium had the right to tax the income relating to the Dutch working days.

Finally, the highest Dutch court has decided that, based on the explanation of the word presence (commentary on the OECD Model convention), all days of presence (working or non-working) in principle need to be taken into account for calculating the number of days of physical presence. Calculation of the number of days is indeed straightforward and is now consistent with most other countries approach.

BDO Comment

As a consequence of the above, please bear in mind that all days should be taken into account to determine your tax position. The days spent in the other country for non-business purposes could change your tax position.

NETHERLANDS

Evaluation of the 30%-ruling published

The results of the report 'Evaluation of the 30%-ruling' were recently put forward to the Dutch parliament. The report concludes that the 30%-ruling is efficient and effective. The 30%-ruling is easy to use for employers and the Dutch tax authorities. In short, the conclusion is that the 30%-ruling should continue, but to a certain extent. In the report the following possible adjustments (not necessarily cumulative) have been suggested:

- Shortening the duration of the 30%-ruling (currently eight years) to five or six years
- Extend the 150 kilometer limit
- Reduction of the 30%-ruling at an income above €100,000
- Other adjustments (like another percentage than 30%), but these are less obvious.

The parliament should decide whether or not to make any adjustments in the current regime.

Almost simultaneously, but independent of this report, another report by the Netherlands Foreign Investment Agency (NFIA) was also published. This report relates to the (positive) impact of the 30%-ruling on the Dutch business climate. The results are similar to the 'evaluation of the 30%-ruling' report. Both reports provide insight into the effects of the 30%-ruling in the Netherlands, confirming that the 30%-ruling is indispensable.

The 30%-Ruling In A Nutshell

By means of the 30%-ruling, under conditions a tax-free reimbursement amounting to 30% of the income can be paid to certain groups of employees (with a specific expertise) who are seconded to the Netherlands. The 30% reimbursement is intended to cover the extra cost (extra-territorial costs) for working outside the country of origin.

To qualify for the application of the 30%-ruling, the expat should meet the following criteria:

- The expat should be hired from abroad or seconded to a domestic employer in the Netherlands (the expat must be living at least 150 kilometers away from the Dutch borders during two thirds of a 24 month period before the start of the activities in the Netherlands)
- The expat should have specific expertise that is not or scarcely available on the Dutch labour market (over 30 years of age a gross annual salary of at least EUR 37,000. Younger than 30 years of age and in possession of a Master degree a gross annual salary of at least EUR 28,125)
- The expat must be included in a Dutch payroll, i.e. the salary of the expat must be subject to Dutch wage tax withholding.

BDO Comment

Whilst we expect the facility to continue do watch out for possible revisions to current requirements for eligibility and terms.

SAUDI ARABIA

New expat levy

The government of Saudi Arabia recently introduced measures to increase the number of Saudi nationals employed locally.

Extensive use of foreign labour has helped the kingdom develop in recent decades and the demand for expatriates has been widespread, both in low skilled services and highly specialised areas such as medicine and law.

The Saudi Arabian government has recently been embarking on a nationalisation process, mainly involving raising the barriers to entry and to renewal of contracts. This has had limited success. A new expat levy has therefore been introduced from July 2017 for expats working in commercial entities. There are two kinds of fees; the first relates to the number of family members an expat has and the second is in respect of the Labour office fee already imposed on companies with expat employees.

BDO Comment

Expatriates still form a key part of the Saudi Arabian workforce, however the government is continuing to try and promote an increase in employing local Saudi nationals. Saudi Arabia is not alone in this. Companies operating in the kingdom should ensure they comply with the new expat levy.

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SWEDEN

Proposal from the Swedish Tax Agency regarding implementation of the term economic employer

Sweden is one of the few countries not applying the concept of economic employer, but the legal employer. In a proposal set forward by the Swedish Tax Agency, the concept 'economic employer' has been suggested to be incorporated into Swedish domestic law. The legislative changes, if passed, would apply from 1 January 2019.

Proposed Change

The proposal mainly focuses on the change of view from 'legal employer' to 'economic employer' and will mostly affect the determination of a Swedish non-tax resident's tax liability under 'the 183 days rule' found in Swedish domestic law. The domestic rule is similar to the one commonly found in the employment article 15 p.2 of the OECD's model tax convention.

Current Domestic Legislation

Generally, a non-tax resident is liable for tax on income deriving from work performed in Sweden. However, with the exemption to the general rule there is the '183 days rule', which is based on the same rule found in the OECD's model convention. Under current Swedish domestic law, a non-tax resident could be exempt from Swedish tax liability under certain provisions. The income could be exempt if the employee would be paid from a foreign employer without a permanent establishment in Sweden, the employee would not be present in Sweden for more than 183 days in a 12 month consecutive time period and no costs are recharged to Sweden. The result is no tax liability in Sweden based on domestic legislation.

Swedish domestic law uses the concept of 'legal employer', that is the company which the employee is formally employed by and receives remuneration from, is considered to be the employer. This is regardless of which company/employer actually benefits from the work performed or bears the actual cost for the employee (hence 'economic employer'). Sweden has not been able to tax income which the tax treaties in general allow it to, as the tax treaties cannot extend the right to tax. The Swedish Tax Agency has therefore suggested a change of view from 'legal employer' to 'economic employer' in order to be able to tax Swedish non-tax residents who work for and are paid by a foreign employer. The purpose is also to achieve a more balanced competition between workers employed by a company in Sweden and employees who are employed by a foreign company and are sent to work at its Swedish establishment.

BDO Comment

The changes may lead to an increased number of tax liable employees working in Sweden. The proposed change of the concept will not affect which company/employer has the obligation to report and pay tax withholdings and employer social contributions in Sweden. However, there could be a situation where the employee has to assume these obligations.

USA

Potential changes to US state withholding requirements

Early in Summer, the US House of Representatives passed H.R. 1393 the "Mobile Workforce State Income Tax Simplification Act of 2017" that prohibits the wages or other remuneration earned by an employee who performs employment duties in more than one state from being subject to income tax in any state other than:

(1) the state of the employee's residence, and
(2) the state within which the employee is present and performing employment duties for more than 30 days during the calendar year in which the wages or other remuneration is earned.

The bill exempts employers from state income tax withholding and information reporting requirements for employees not subject to income tax in the state under this bill. For the purposes of determining penalties related to an employer's state income tax withholding or reporting requirements, an employer may rely on an employee's annual determination of the time expected to be spent working in a state in the absence of fraud or collusion by such employee.

For purposes of this bill, the term "employee" excludes: professional athletes; professional entertainers; production employees who perform services in connection with certain film, television, or other commercial video productions; and public figures who are persons of prominence who perform services for wages or other remuneration on a per-event basis.

The bill does not apply to any tax obligation that accrues before the effective date. The bill takes effect on 1 January of the second calendar year that begins after the enactment of this bill. Companion US Senate Bill S. 540 was introduced in the Senate on 7 March 2017.

This is the third time the House version of the legislation has been cleared and while the Mobile Workforce State Income Tax Simplification Act of 2017 would create a uniform national standard and would significantly simplify compliance with all the different state laws, there are those who are opposed to the bill. Several states like New York, Massachusetts, and Illinois have publically stated that they stand to lose revenue if the bill is enacted and the Congressional Budget Office projects that the bill could cost states a combined $78 million in 2020.

The American Institute of CPAs (AICPA) and organisations representing multistate corporations welcome the bill since currently employees who travel outside their state of residence for business purposes can be subject to onerous administrative burdens to file an income tax return in every state they work in even if they were in a state for only one day. AICPA President and CEO Barry C. Melancon said "This legislation strikes an equitable balance, and we urge Congress to take swift action so the bill can become law and relieve the burden imposed on countless US employers and employees by inconsistent state laws."

BDO Comment

While the bill has bipartisan support in the House and Senate, and many lawmakers agree that a de minimis threshold is necessary, we will need to wait and see if the Senate passes S. 540 and what changes, if any, they might make to the legislation.

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