Global Tax Update

AUSTRIA

Payroll tax obligation for employees with unlimited tax liability in Austria

Up to now foreign employers without a permanent establishment for payroll purposes in Austria are not obliged to run a payroll administration for its Austrian employees. Therefore, no wage tax is withheld during the year, with the consequence that the employees are obliged to file a tax return and declare the employment income in the tax return. Nevertheless, the foreign employer is allowed to register voluntarily for payroll purposes and deduct wage taxes on a monthly basis.

Due to a legislative amendment, the current law will change from 1 January 2020:

According to the amendment to the Austrian Income Tax Act (AITA), employers with no permanent establishment for payroll purposes in Austria will also have a payroll-tax withholding obligation on employment income of employees, if employees are subject to unlimited tax liability in Austria. If the employees are subject to limited tax liability in Austria, the payroll-tax withholding obligation on employment income of these employees in Austria continues on a voluntary basis.

CANADA

Potential changes to beneficial tax treatment on stock options

The Canadian government recently released proposed legislation that could limit access to beneficial tax treatment for stock options granted by certain companies after 2019. The proposals would introduce an annual limit on the amount of options that qualify for the beneficial treatment but would conversely allow a corporate deduction for the non-qualifying benefit. Companies should understand how the proposed legislation could affect them and their employees and if they may wish to accelerate stock option grants into the current year as a result.

Current Rules

Under current legislation, when a company that is not a Canadian-controlled private corporation (CCPC) grants a stock option to an employee, the employee is taxed when they exercise the option on the difference between the fair market value (FMV) of the shares at exercise and the exercise price payable for those shares.

If certain conditions are met (generally the exercise price equals the FMV of the shares at the option grant date and the options are over common shares of the company), the employee is only taxed on half of the taxable stock option benefit. This is known as the "50% deduction".

Employers are generally unable to claim a corporate deduction where shares are issued to employees through a stock option.

Proposed Legislation

The proposed rules state that employees granted stock options after 2019 in non-CCPC corporations will be subject to an annual vesting limit on the amount of the 50% deduction that can otherwise be claimed.

The limit imposed on the deduction will apply if the value of options that vest in a year is more than $200,000. The value of the shares to be used for this test is the FMV of the shares at the grant date.

For example:

Henry is granted 100,000 stock options in 2020 that vest equally over a 4 year period (25,000 options per year). The FMV (and exercise price) at the grant date is $15.

Each year, the value of the options that vest is $375,000 (25,000 x $15). The 50% deduction is therefore only available in respect of the exercise of 13,333 options that vest each year ($200,000/$15). The benefit arising on the exercise of the remaining 11,667 options that vest each year would be taxable in full.

To ensure compliance with the $200,000 limit, the proposals will require employers to notify employees in writing whether the limit applies when options are granted. Employers will also be required to notify the Canadian tax authorities if options are granted that fall under the new rules.

However, a welcome change in the proposed rules is to allow an employer to claim a tax deduction when an employee is denied the 50% deduction as a result of the annual vesting limit.

Exclusions From The Proposed Legislation

As previously mentioned, the above rules would not apply to options granted in a CCPC. In addition to this, the government has recognised that many start-up, emerging or scale-up companies are not CCPCs and has indicated that the proposed legislation is not intended to apply to such companies either.

Public consultation is currently taking place regarding the definition of these companies and further details should be released in due course.

BDO Comment

If the proposed legislation is enacted, employers will have an increased administrative burden to review whether stock option grants are subject to the annual vesting limit and notify employees. For smaller (non-CCPC) companies that may fall under the prescribed exclusion it will therefore be key to watch for further commentary from the authorities.

CHINA & JAPAN

Social Security Protocol

China and Japan officially entered into a social security protocol on 9 May 2018, to address the issue of a dual liability for expatriates working and residing between the two states. The protocol came into effect on 1 September 2019 and the main content is as follows:

Coverage of mutual exemption:

- China: Basic pension for employees
- Japan: National annuity (except for national annuity fund) and welfare pension (except for welfare pension fund).

Chinese personnel eligible:

- Dispatched employees
- Employees in ocean-going vessels
- Employees in aircrafts
- Personnel in embassies
- Civil servants
- Specific personnel
- Trailing spouses and children.

Japanese personnel eligible:

- Dispatched employees
- Employees in ocean-going vessels
- Personnel in embassies
- Civil servants
- Specific personnel

Period for exemption:

The maximum period in respect of the initial application for exemption is 5 years (where the assignment period exceeds 5 years, it may be extended upon approval of competent authorities or agencies in charge of both states).

MALAWI

Taxation of expatriates

There is no special tax regime for expatriates in Malawi and individuals are taxable on their Malawian source income irrespective of where payment is made. Expatriates may be exempt from tax under the terms of a relevant double taxation agreement. The conditions that need to be met are usually that the expatriate should be in Malawi for less than 183 days in the tax year and remuneration is paid offshore.

Every non-resident employer is required to appoint a local resident agent for P.A.Y.E purposes. Work permits for expatriate staff will only be granted on condition that the employer is registered for P.A.Y.E through a resident agent.

National Pension Scheme Contribution

A National Pension Scheme (NPS) managed by approved Pension Fund Administrators does operate in Malawi and can also apply to expatriates. Only those expatriates on Temporary Employment Permit who can produce written evidence that they are within a home country pension scheme are exempt.

Personal Income Tax Rates

Malawian employers are allowed to use the Graduated Tax Table system for their payroll tax. This system requires that the employer deducts the payroll tax accurately such that the individual employees do not have to submit income tax returns for their employment income to the tax authorities at the end of the year unless they have other sources of income.

The Taxation Act provides for the taxation of fringe benefits granted in the hands of the employer in respect of services rendered.

With regard to employment relationship, fringe benefit means any asset, service or other benefit in kind, provided by or on behalf of an employer to an employee, if such provision includes an element of personal benefit to the employee. All employers except the government are liable to Fringe Benefit Tax (FBT). FBT is taxed at 30% of the taxable value of the fringe benefits being provided.

Taxable income of the individual is computed after considering amounts exempt from income tax and deductions allowable in terms of the Taxation Act. While taxable income from employment is subject to tax at various rates, income from trade or investment is subject to tax at an effective rate of 30%.

Customs Duty

Expatriates working in Malawi temporarily or on a contract basis may import their personal effects into the county without any customs duty and VAT being levied. These include:

- Household effects and other movable articles
- Equipment necessary for the exercise of a calling, trade or profession
- Television and hi-fi sets and
- General household appliances.

All of these items must be imported for their personal use only, and must be brought within a period of six months from the date of entry into Malawi. These goods may also not remain in Malawi on a permanent basis and must be returned overseas upon departure of the expatriate, unless the foreign national obtains permanent resident status or citizenship in Malawi during the period of stay.

UK

Class 1A NIC Lability

From 6 April 2020, there will be a Class 1A NIC liability on non-contractual taxable termination payments over a £30,000 threshold which has not already incurred a Class 1 NICs liability. This more closely aligns the income tax and NIC treatment of termination payments.

The Class 1A liability will be 13.8% but will not be payable via the P11D(b) process. Instead, from April 2020 termination awards that include a cash element are still reportable via the PAYE/Real Time Information (RTI) process.

> The Government also intends to pass legislation to ensure that non-resident UK nationals will also continue to receive the personal allowances post Brexit

Off-Payroll Employees

Following the changes that were introduced into the public sector in 2017, the government will be reforming the operation of the off payroll working rules and extending these into the private sector from April 2020.

Ways you can prepare for these changes:

- Identify and review current engagements with intermediaries, including personal service companies and agencies supplying labour
- Review current arrangements for using contingent labour, this is most relevant within the organisations that are more likely to engage off-payroll workers
- Having comprehensive processes in place when assessing roles from a procurement, HR, tax and line management perspective are key things to think about when ensuring consistent decisions about the employment status of the people engaged
- Review internal systems, such as payroll software, process maps, HR and on-boarding policies in case any changes need to be made.

HMRC update on the availability of the tax free personal allowance after Brexit

HMRC recently answered some questions with regards to legislation changes after Brexit and the ability for non-resident individuals to claim the personal allowance.

Currently, EU nationals are able to claim the UK personal allowance as a non-tax resident of the UK by virtue of their nationality. HMRC confirmed that it is their intention to continue to allow EU nationals to receive the personal allowance when the UK leaves the EU.

The Government also intends to pass legislation to ensure that non-resident UK nationals will also continue to receive the personal allowances post Brexit.

Social security changes for UK employees in the EU after Brexit

Many UK employers have employees working in the EU, EEA or Switzerland and calculate the NIC due on their earnings in accordance with EU regulations. After Brexit, in the event of the UK leaving with no agreement, then these EU regulations will no longer apply to UK employers.

The terms of Brexit are currently unknown, but employers should be prepared for a no-deal Brexit and understand how this may affect their employees, as well as their obligation to deduct UK NIC.

Pre-Brexit

At present, individuals covered by the EU Social Security Coordination Regulations are only subject to the social security legislation of a single member state at any particular time – so there can be no double contributions on the same income. The basic rule is that contributions are paid where work is performed (there are exceptions for individuals working outside their home country for temporary periods).

Brexit With A Deal

In the event of the UK agreeing a deal with the other 27 EU member states then a transition period will come into force. A series of rules in relation to social security coordination have already been agreed for this scenario and these rules will be applicable until 31 December 2020. We would expect the UK government to enter into discussions with the EU during this period to agree further rules which will be applicable after the transition period.

Brexit Without A Deal

In the event of the UK leaving without a deal then the current European coordination rules will no longer apply and neither will the transitional rules mentioned above. The UK has proposed contingency legislation which would mean that we would continue to apply the European coordination rules on social security on a stand-alone basis. This does not mean that the 27 remaining member states of the EU would agree with the UK's approach and could lead to scenarios where dual social security liabilities can arise.

The UK also has historical social security reciprocal agreements with the following EU/EEA states – Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, and Switzerland. These agreements were in place to avoid double social security contributions liabilities arising, however, it is unclear whether the countries concerned will implement the agreements. In the event the UK leaves the EU without a withdrawal agreement, the Government has stated that it will keep these reciprocal agreements under review. Whether these come back into force will be subject to discussion and agreement between the UK and the relevant EU Member State.

There is also a consensus that many of the agreements do not adequately reflect the requirements of the modern day workforce. The UK/France agreement, for example, only allows home country social security coverage for posted workers to continue for a period of six months followed by a possible extension period of six months. It also only applies to UK and French nationals.

Helpfully, new social security agreements with Ireland and Switzerland have already been agreed. These will come into effect from Brexit day in the result of a "no-deal" Brexit, where other coordination measures have failed to be agreed. The updated Swiss agreement only applies to UK nationals who started working in Switzerland before Brexit (the existing 1968 agreement applies for secondees moving after Brexit).

It is hoped that the UK will be able to negotiate more up-to-date agreements with the remaining EU countries after Brexit, as the existing 'totalisation' agreements offer limited benefit to secondees and their employers in the majority of circumstances.

Employees Currently Working Overseas

If an employee with a UK-issued A1/E101 is already working in the EU, EEA or Switzerland NIC must be paid in the UK until the form expiry date. If the end date is after Brexit day, the relevant EU/EEA/Swiss authority should be contacted to determine whether social security contributions will be due in that country.

Employer Considerations

UK employers with employees currently working in the EEA should now consider whether:

- They will have additional social security contributions costs as a result of a no-deal Brexit
- They will have additional employer reporting and compliance obligations, which can also result in increased administration with the operation of payroll and ensuring social security compliance on a country by country basis.

BDO Comment

When reviewing the social security position of their UK employees working in the UK, employers should consider matters such as the following:

- Undertaking a risk assessment covering the current social security costs and the impact of a no-deal Brexit
- Providing an assessment and identify where they will incur any additional social security costs
- Operation of payrolls, facilitation of social security contributions payments and reporting requirements in countries within the EEA
- Reviewing existing and future assignment policies
- Preparation of employee communications and frequently asked questions on the impact of the changes for employees.

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