Global Tax Update

AUDIT CONFLICTS IN A GLOBAL MOBILITY CONTEXT

BDO Comment - Review of the audit market by regulatory authorities and the potential knock-on effect on choice of global mobility advisers.

Our last article highlighted the numerous current reviews into the UK audit market and the potential for conflicts of interests to arise where the auditor also advises clients on non-audit issues. Deliberations are ongoing and the likelihood of changes to the current rules remains. We will advise further on such changes once known.

If working in global mobility, do you know your auditor? Do you know about all potential conflicts of interest? Are you aware of the restrictions that may apply to certain companies regarding the provision or limitation of non-audit services? You may have to move quickly in the event of rule changes, so take the opportunity now to learn about potential alternative advisers.

IRELAND

Real-time reporting in Ireland

The PAYE system in Ireland is being reformed and modernised with the introduction of real-time reporting (RTR). This change to how employers and employees interact with the Revenue Commissioners (Revenue) represents the most significant change to the PAYE system since it was originally introduced.

Employers are now required to calculate and report employees' pay and deductions in real time. This is intended to ensure that every time employers run their payroll the correct amount of deductions are being made at source from the employees, reported to Revenue and paid over by the employer.

The new system effective from 1 January 2019, applies to all employers, regardless of size. From this date the Revenue will issue a statement after the end of each calendar month, based on submissions received by the employer, which sets out the tax due for the period. The statement is deemed a statutory return by the 14th day after month end. However, there is scope to amend this statement prior to the above date. Payroll taxes are then remitted to the Revenue by the 23rd day of the following month.

The year-end P35 filing will no longer be required as the reporting process must be correct for each pay period. Penalties of €4,000 per breach can apply, so it is essential that employers comply.

GLOBAL MOBILITY

Inbound Assignees

The Revenue have advised that where a shadow payroll is being operated in Ireland then the payroll submission can be aligned with the Irish employer's next pay date for equivalent Irish employees.

For example, if a US individual is assigned to Ireland and the US employer operates a payroll on the 14th and 28th of the month but the Irish entity pays their local employees on the 25th of the month then the assignee's pay details for 28 March and 14 April should be included in the Irish entity's payroll submission on 25 April.

If an employee of a foreign entity does not have a set number of working days in Ireland each month then a best estimate of the number of days an individual works in Ireland should be used if actual details are not available when the payroll process is run. If there are more (or less) days than originally estimated the pay details should be amended in the following payroll submission.

When filing the payroll submission with the Revenue, the employer will need to flag any employees on a shadow payroll by ticking the relevant box on Revenue Online Service (ROS)/payroll software.

Outbound Assignees

Employers may have obtained a release from the obligation to operate payroll taxes on outbound expatriates who continue to be paid by the Irish employer during an assignment. However, the employee may remain on the Irish PRSI system with contributions being collected through the monthly payroll process. In these cases, the Revenue have indicated that a "best estimate" of benefits, allowances, and expenses should be included in each payroll submission and then corrected in the following payroll submission, where required.

Benefit in Kind/Notional Payments

Employees are taxable through payroll on all Benefits in Kind (BIKs) they receive. While most BIKs are for a fixed amount, e.g. medical insurance, the BIK calculations on company vehicles can vary (due to variances in mileage) each month, which may result in under-declaration of BIK. It is strongly recommended that employers require employees to submit their mileage sheets in a timely manner. The Revenue has indicated that employers, at a minimum, should carry out quarterly checks on mileage and adjust the payroll records where necessary.

A key area of concern continues to be the application of RTR to share plans, such as RSUs. There can be a significant amount of administration involved in determining the number of shares to be awarded to an employee, the value of the shares for tax purposes and the relevant date for taxation of the shares. In addition, the scheme may allow for the sale of a portion of the shares to cover taxes payable by the employee. All of this information needs to be compiled, assessed and provided to the payroll team to enable them to capture the data and accurately report it to Revenue. It is difficult to envisage how these rewards can be processed on a real time basis or how 'best estimates' could be applied. The PAYE Guidance Manual should be checked for latest updates.

SINGAPORE

Compliance Requirements of Frequent Business Travellers

Businesses and companies now operate in an increasingly global environment where employees work across borders with greater ease. Consequently, ensuring that you remain compliant with regard to immigration, social security, taxes, etc. is more important than ever.

Over the years, Singapore's various government agencies, including the Inland Revenue Authority of Singapore (IRAS), have reviewed and revised the requirements and employer's obligations in respect of frequent business travellers (FBT). A FBT is defined as an employee who is based outside of Singapore who makes frequent business trips into Singapore. Although Singapore does not have monthly withholding requirements, companies still face risk in the other areas relating to FBTs travelling into Singapore for business purposes.

Immigration

An employment pass (EP) has to be obtained before an individual is able to carry out work in Singapore regardless of the duration of the stay. Generally, an FBT cannot carry out any employment activities in Singapore without an EP. The only exceptions are where the intended work is the following:-

- Company meetings, corporate retreats or meetings with business partners
- Study tours or visits as a participant
- Company training courses/workshops/ team building events as a participant
- Seminars and conferences as a participant
- Exhibitions as a trade visitor.

Tax Reporting And Filing Obligations

An annual review of all FBT's business days into Singapore is required by 31 January of the following year by the employer. The individuals would therefore fall into the following categories depending on their number of business days:-

Individuals with not more than 60 business days in a calendar year in Singapore

Under the Singapore Income Tax Act, employment income is exempt from Singapore tax if the individual is a non-resident for tax purposes and does not exercise employment for more than 60 days in a calendar year. This does not apply to a non-tax resident director or public entertainer.

If the employee does not hold an EP, as an administrative concession, there is no employer's reporting requirement to the IRAS. By 1 March of the following year, an employing entity has to submit travel dates into Singapore to the IRAS for all FBTs with valid EP as at 31 January of the following year. Additionally, upon cancellation or expiry of the EP, the employing entity is to notify the IRAS within 2 months of the cancellation/expiration to prevent any enforcement actions by the IRAS.

Individuals with more than 60 days but less than 183 days in Singapore

Where an individual has more than 60 business days in Singapore but less than 183 days, they are liable to tax on their employment income earned in respect of their business days in Singapore. They will be taxed on this income at the non-resident tax rate. A tax exemption could be possible to the extent that the employee qualifies under the criteria of a relevant Double Taxation Agreement (DTA) that Singapore has with the relevant country. This is typically the country where the individual is tax resident and where their employment is based. Where a treaty exemption is available, the employer must make an application on the employee's behalf to the IRAS before the filing deadline of 15 April. All employees with this level of travel will very likely be engaging in activities that requires an EP.

In respect of the filing requirement, filing of the FBT's Return of Employee's Remuneration (Form IR8A) is required by 1 March unless a Form IR21 is applicable in the case of an EP cancellation or expiry. As part of the tax clearance process, a Form IR21 (Notification of a foreign employee's cessation) should be filed at least 2 months from the date of cancellation or expiry of the EP, unless a request for an extension is obtained.

Once it is certain that a FBT will no longer be making business trips into Singapore, the employer should cancel the EP and a Form IR21 needs to be filed within 2 months from the final business day in Singapore.

Individuals with more than 183 days in Singapore

FBTs who have more than 183 business days in the preceding calendar year and still have a valid EP at the time of the employer filing the employees' Form IR8E. The filing requirement and deadline will be the same as all regular employees. They will not be able to claim exemption under the Double Tax Treaty; the employment income will be taxed at the resident rate.

An individual is regarded as tax resident in Singapore in the year they are physically present or exercising employment in Singapore for at least 183 days in the preceding calendar year.

Taxable Income

From 1 January 2016, onwards IRAS revised the tax treatment of compensation provided to a FBT. Currently, the following items are not taxable:

- Airfare
- Accommodation
- Transport and entertainment allowance for business purposes
- Per diem within the acceptable rate laid out by the IRAS (the excess per diem is taxable)
- Other reimbursements for business expenses.

Any other compensation provided to the FBT is taxable in Singapore and is reportable to the IRAS unless the FBT qualifies for tax exemption.

Social Security (Central Provident Fund/CPF)

The CPF is a mandatory savings scheme for working Singapore citizens and Singapore permanent residents. Foreign individuals are not eligible to participate in this scheme. However, upon becoming a permanent resident of Singapore, participation in the CPF would be compulsory.

Should a Singapore citizen or Singapore permanent resident who works for an overseas employer make business trips into Singapore, CPF contributions are not required to be made by the employing entity. However, both the employer and FBT employee can continue with voluntary contributions into the CPF.

BDO Comment

Due to difficulties in tracking FBTs and a lack of understanding and knowledge of the reporting requirements for FBTs, the risk of non-compliance is high. Such risk may lead to corporate reputational damage, heavy penalties and even prosecution (potentially affecting the right of business). Companies should review the current process to manage these FBTs and to ensure immigration and tax/social security compliance.

Some preliminary questions, which the company can ask are:-

1. How are the business days of travellers being tracked?
2. Is the appropriate work pass being obtained before a FBT travels?
3. What are the compensation items provided to the FBT during the trips?
4. Is the company familiar with the various compliance regulations?
5. Is there any possible corporate tax implications (i.e. Permanent Establishment) in the destination country of the FBT?

UK

Brexit – National Insurance Contributions (NIC or social security) in event of a no-deal Brexit

As part of planning to cope with a no-deal Brexit should that occur, the Government recently addressed the amendments that would be needed to UK NIC legislation.

The key problem in this area is that the current cross-border social security arrangements are dependent on coordination between EU/EEA Member States – not something that can be assumed in a no-deal Brexit scenario. Therefore, the Government has published four draft Statutory Instruments that amend the UK's EU Regulations on social security coordination.

The draft regulations would maintain the current 24 month extension of NIC for employees posted to an EU member state and the 24 month exemption for inbound employees moving from EU member states into the UK. The draft regulations also seek to apply the current rules for multi-state workers.

While this may seem a practical approach, there is no guarantee that EU or EEA member states will also seek to preserve the status quo. Interestingly, the draft regulations do not take account of the longstanding bilateral social security agreements that the UK has with some EU Member States: it is assumed that these would revive when EU based agreements end on the UK's departure from the EU (overriding a new domestic NIC regulations where they apply).

As well as leaving a patchwork of social security rules for employers to cope with, where there is no bilateral agreement with an EU member state, there is no guarantee that that state will put new reciprocal rules in place. Therefore, double social security charges could apply, for example, in the first 24 months of a secondment to an EU member state as well as for employees with simultaneous roles in the UK and in an EU country.

BDO Comment

Employers with internationally mobile workers should be enhancing their monitoring systems to ensure that they are ready for the additional administrative burden that may arise (not to mention the potential additional costs) on a no-deal Brexit.

Increase To The Immigration Health Surcharge

The Immigration Health Surcharge (IHS) was brought into effect in 2015, and has contributed more than £600 million towards funding for the National Health Service (NHS) since it was introduced. IHS is a surcharge that those who are immigrating to the UK either for work, to study or to join a family member have to pay in order to receive free NHS hospital treatment as if they were a UK resident, if they are staying for 6 months or more.

IHS provides cover for as long as the visa is in date, from the start date of the visa until the end date. It applies to all non-EEA nationals and dependents.

From 8 January 2019, the amount to be paid has increased from £200 to £400 per person per year and the discounted rate for students on the Youth Mobility Scheme also increased from £150 to £300. From this increase, the NHS could receive an estimated £220 million in extra funding.

BDO Comment

Employers should bear in mind the increased IHS costs when sending assignees to the UK for more than six months.

USA

Complexity in Reporting Virtual Currencies

Recent reports indicate that there are currently more than 1,600 known virtual currencies. Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account and/or a store of value. This may be used to pay for goods or services or held for investment. In some environments, virtual currency operates like real currency but it does not have legal tender status in any jurisdiction. Because transactions in virtual currencies can be difficult to trace and have an inherently anonymous aspect to them, some taxpayers may be tempted not to report these transactions to the Internal Revenue Service (IRS).

In November 2017 a federal judge in a Northern California District Court approved a summons requiring the Bitcoin wallet service Coinbase, the world's largest Bitcoin trading exchange, to hand over records of all transactions that took place from 2013 to 2015. This was part of a larger investigation into possible tax fraud by Coinbase users.

As a result of the summons, for accounts with at least the equivalent of $20,000 in any one transaction type during the 2013 to 2015 period, Coinbase was ordered to produce the following:

- Taxpayer ID number
- Name
- Date of birth
- Address
- Records of account activity including transaction logs or other records identifying the date, amount, and type of transaction (purchase/sale/exchange)
- The post transaction balance
- The names of the counterparties to the transaction
- All periodic statements of account or invoices (or the equivalent).

It is likely that during 2019 the IRS will exhibit cryptocurrency criminal cases spotlighting fraudulent behaviour because of the information obtained from the summons. Taxpayers need to be aware that unlike the IRS Offshore Voluntary Disclosure Programme (OVDP) that encouraged taxpayers to be compliant by minimising penalties, the current Domestic Voluntary Disclosure Programme (DVDP) does not. The current DVDP programme for taxpayers whose omission was wilful requires them to amend the most recent six years' of tax returns and pay civil penalties for, at a minimum, the one tax year with the highest tax liability. However, the IRS can apply the penalty to multiple years based on the facts and circumstances in each case. This change no longer incentivises taxpayers to correct errors or omissions in past returns.

Income Tax Return Reporting

The IRS has reminded taxpayers that income from virtual currency transactions is reportable on their income tax returns and provides reporting guidance for transactions involving convertible virtual currencies.

Convertible virtual currency received in payment for goods and services should be included in gross income at the fair market value in US dollars on the date received. Since the IRS categorises convertible virtual currencies as property, gains or losses should be reported when buying and selling the currency. As the use of blockchain becomes more prevalent, taxpayers compensated for mining or leasing their computer resources to validate virtual currency transactions and maintain the public ledger, should report the payment as income. If mining of virtual currency is deemed to be a business then the income will also be subject to self-employment tax.

Report of Foreign Bank Account and Financial Accounts (FinCEN Form 114, FBAR)

Taxpayer's may also have a requirement to disclose their virtual currencies to the US Department of the Treasury. The last guidance issued by the Treasury only addressed regulations regarding the administering, exchanging or use of virtual currencies. With the IRS' characterisation of virtual currencies as property, it could be argued that foreign property is not required to be reported on the FBAR; however, until more definitive guidance is issued a reasonable approach would be to report virtual currency held in a virtual wallet that is hosted overseas.

BDO Comment

Regardless of country, the taxation and reporting of virtual currencies needs to be regularly considered in light of greater usage and rapidly changing rules.

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