Global Taxation Update - Recent Tax Updates From Around The World

CHINA & THE NETHERLANDS

New social security agreement

The Dutch and Chinese government recently signed a social security agreement; however, this agreement differs from the regular bilateral agreements the Netherlands has concluded as it does not include all social security insurances.

Based on the agreement, for Dutch employees who are seconded to China the following applies:

- The employee remains covered by the following Dutch social security insurances:
    - Dutch state pension (AOW)
    - Survivors Dependant Insurance (ANW)
    - Unemployment Insurance (WW)
- There is an exemption for paying contributions to the Chinese base pension and unemployment insurance, but not for the contributions for medical and disability insurances in China (if applicable).

For Chinese employees who are seconded to the Netherlands the following applies:

- The employee remains covered by the following Chinese social security insurances:
    - Base state pension
    - Unemployment Insurance (WW)
- There is an exemption for paying contributions to the Dutch state pension (AOW), Dutch Survivors Dependant Insurance (ANW) and the unemployment insurance (WW), but not for the contributions for other insurances in the Netherlands.

The above applies for a maximum period of 5 years.

Certificate Of Coverage

The Certificate of Coverage should be requested in the home country. Based on the social security agreement between China and the Netherlands this Certificate of Coverage should be requested within 6 months of the commencement of the secondment.

Current Secondments

In the agreement a transitional period is taken into account. This means that for current secondments, if the requirements mentioned in the agreement are fulfilled at the beginning of the secondment, the above can be applied from the date the agreement enters into force. In this case, this can be applied for 5 years from the date the agreement is ratified. Certificates of Coverage still need to be filed in time.

Entry Into force

Please note that the exact date this agreement will enter into force is as yet unknown.

BDO Comment

This is a key change for secondments between the Netherlands and China and means that employees can remain in their home country systems. It will even apply to those individuals currently on assignment and the applicability of the new agreement should be considered for those employees as well.

ITALY

Moving to Flat Tax Regime for new residents

Italy is introducing a flat rate of income tax for those moving their tax residency to Italy. The tax payer will pay a flat 100,000 Euros tax per year on all foreign income. The flat rate option will be valid for 15 years. It is possible to choose to exclude income sources arising in a specific country, to which the ordinary tax regime will apply. In such cases taxes paid abroad can be used to offset Italian taxes. The tax amount is reduced to 25,000 Euros for each family member.

Individuals applying for the flat tax regime are exempt from tax on real estate owned abroad and from wealth tax on foreign financial investments. Additionally, they do not have to fulfil the requirements provided by the foreign investments monitoring legislation.

The flat tax does not apply to:

- Italian source income
- Capital gains on qualified shares, for five years after application.

The regime applies to individuals moving their tax residency to Italy. An individual is considered to be an Italian resident for tax purposes if, for the greater part of the tax year, one of the following conditions is met:

- He/she is registered in the Office of Records of the Resident Population
- He/she physically lives in Italy
- His/her centre of business or sphere of interest are in Italy.

They must have been non-Italian tax resident for at least nine years in the previous ten years. To apply for the regime, a ruling has to be submitted to the Italian Tax Authorities and an agreement must be reached before 30th September of the following year.

The benefit ceases in the case where a flat tax payment is missed. The loss of requirements to benefit from the flat regime for a family member does not imply the automatic exit of the main taxpayer; vice versa, the end for the main one implies the end of the regime also for other family members.

BDO Comment

The new flat regime will be beneficial for those with large amounts of non-Italian income. In such cases application should be made to the Italian tax authorities for the flat regime to apply.

THE NETHERLANDS

The Directive on Intra-Corporate Transfers (ICT): changes to the existing rules

As of 29 November 2016, the Intra-Corporate Transfer Directive will be implemented in Dutch national laws. This ICT Directive provides the possibility to companies from outside the European Union with an entity in an EU member state to temporarily second managers, specialists or trainees to their entity in the EU.

Purpose Of The Regulation

The purpose of the ICT Directive is to harmonise the admission rules of the different EU members and to simplify the short-term mobility within the EU members. The aim is in order to make the EU as a whole more attractive for international business so that it enhances the competitiveness of the European labour market and economy.

For Whom?

The ICT Directive is applicable to 'managers', 'specialists' and 'trainees'. These employees need to be employed for at least three months with the company outside the EU, and their place of residency at the time of the filing of the request should be outside the EU as well. It should concern a temporary secondment to one or more group entities within the EU. The employment with the home country company should remain in place (no local contract with the host company). Furthermore, it is important the employment conditions are competitive in the local labour market.

ICT Permit

The ICT permit is a combined work and resident permit. This permit should be requested in the country in which it is the expectation that the employee will stay the longest. The ICT permit will be granted for a maximum period of three years for managers and specialists and for a maximum of one year for trainees. An extension based on the ICT Directive is in principle not possible.

Short-Term Mobility

As mentioned, one of the benefits of the ICT permit is the simplification of the short-term mobility to other group entities within the EU.

Under 90 Days

In case of a transfer to another group entity within the EU for a period less than 90 days within a period of 180 days there will only be a notification obligation. However, this is only possible if the employee will not move his residency to this country. In the Netherlands, this notification should be filed with the UWV (Dutch social security authorities for work). The employee is allowed to start working per direct.

Over 90 Days

In case of a transfer to another group entity, a simplified and shorter request procedure is applicable. In the Netherlands, this request should be filed with the IND (Dutch immigration services). Also in this case, the employee is allowed to start working immediately.

Highly Skilled Migrant Rule

The group of employees for which the ICT Directive is applicable, would in principle also fulfil the requirements of the Highly Skilled Migrant Rule. Even though, in these situations it is not possible to choose which permit will be requested. If the requirements for the ICT Directive are fulfilled, this ruling prevails. If an employee is not seconded for a group company outside the EU, but hired locally, the Highly Skilled Migrant Rule is still applicable according to the IND.

Required Salary

There is no salary threshold. The offered salary must be competitive according to Dutch standards. According to the IND, for the time being the salary thresholds that are applicable for the Dutch Highly Skilled Migrant Rule will be used. These salary thresholds are EUR 4,240 excl. 8% holiday allowance for employees above 30 years, and EUR 3,108 excl. 8% holiday allowance for employees under 30 years (amounts for the year 2016).

Request

The ICT permit can be requested with the IND. The IND informs that for employees for which the ICT Directive applies, but whom have been granted with a permit based on the Highly Skilled Migrant Rule, these permits will remain in place for now as long as the permit is valid. The costs for the request of the ICT permit will be the same as for the other permit requests according to the IND.

BDO Comment

The new rules may make it easier to be able to temporarily transfer certain currently employed non EU individuals to the EU providing the employment is within the same group. Do ensure the correct procedure in each country is followed.

SWEDEN

Tax penalty waivers based on information received from abroad

Submitting incorrect or incomplete tax return information can lead to penalties. The tax authorities may however, under certain circumstances, waive such penalties, for example, where the factual risk for tax evasion is minimal.

On 21 October 2016, the tax authorities published their opinion on waiving tax penalties based on information received from abroad due to an exchange of information agreement, Directive or a tax treaty provision.

According to the publication the tax authorities regard information received based on automatic information exchange as normal control information and hence tax authorities may waive tax penalties (partly or wholly) for undisclosed or misrepresented information in the same way as for locally available information provided that:

- The tax information from abroad is available to them within 1 year from the end of the fiscal year in question and
- Before the tax authority's investigation into the incorrect information submitted has begun.

The above will not apply on arbitrary assessment situations, e.g. when no tax return has been filed at all.

Payroll And Data Protection – New Legislation In 2018

In January 2012, the European commission proposed a comprehensive reform of data protection rules and the official texts of the Regulation and the Directive were published in the EU Official Journal in May 2016. The regulation will apply from 25 May 2018 and the Directive entered into force in May 2016 with EU Member States having to transpose it into their national law by 6 May 2018.

The objective of this new set of rules is to give citizens better control over their personal data and to simplify the regulatory environment for businesses in this respect, and to ensure that the same provisions apply regardless of where the data is processed. Penalty charges imposed for non-compliance may be up to €20,000,000 or 4% of the organisation's revenue.

From a Swedish perspective the new regulations will, for example, most likely imply that employers and payroll providers will be prohibited by law from sending payslips by email. Further details on the implications will follow when a formal legal proposal is presented.

Tax Authority Clarification On Special Payroll Tax On Certain Earned Income

On 3 November 2016, the Swedish Tax Authority (STA) published clarification in respect of the special payroll tax on certain earned income that is not subject to social security contributions. The special payroll tax is levied at a rate of 24.26% for insurance companies on payments made under severance, work accident and group health insurance schemes and for employers making provisions for profit-sharing funds. The tax is also levied at a rate of 6.15% for earned income paid to individuals as from the year in which they reach the age of 65. The STAs November statement clarifies that foreign employers without a permanent establishment (PE) are not subject to the special payroll tax.

Proposed New Provision For Taxation Of Shares In Closely Held Companies

The Swedish Ministry of Finance released a consultation document on changes to the regime for the taxation of shares in closely held companies on 14 November 2016. The main purpose of the special scheme for taxation of such shares is to combat tax avoidance through income conversion i.e. to prohibit shareholders converting earned income to capital income to benefit from the lower tax rates applicable for dividends and capital gains.

The current proposal includes various changes e.g. in respect of calculation of qualifying salary levels and on taxation on transfer of sales of shares to related parties. According to the proposal the amendments should apply from 1 January 2018 and the consultation period closes on 10 February 2017.

Further details will follow as developments occur.

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