Global Taxation Update

Argentina

Winds of change

Argentina has had a new government since 10 December 2015, and the country is likely to have a more pragmatic and business friendly President for the period 2016 to 2020. Revisions to policies that have previously limited growth and investment should help Argentina transition to a new and healthier economy.

The main measures are as follows:

- The Argentine peso was devaluated by 40% and its flotation depends on the market with no regulation from the Central Bank. This rate was in line with the previously existing "blue mkt"
- It is not required to obtain any authorisation from the Federal Administration of Public Revenues (AFIP) to access the exchange market
- No prior consent from the Central Bank is required for real estate investments abroad, loans to non-residents, contributions from direct investments, portfolio investments abroad, or purchase of foreign bills in the country
- The total amount operated cannot exceed the equivalent of US$2 (two) million per month
- Argentina Central Bank no longer regulates foreign currency withdrawal or expenses abroad made with credit cards. Credit limits are set by the banks according to the financial status of each customer.

BDO's comment

The new rules on foreign exchange will help expatriates and imply free access to salaried individuals to purchase and transfer foreign currency.

The political and economic climate is changing in Argentina and the next few years should see a period of growth and investment in the country. This could result in new or expanding operations and an influx of labour to support this.

Belgium

Salary Split Employment – Impact on Future Belgian Pension Entitlements

A salary split employment is a way to comply with the withholding obligations in multiple countries for employees who are internationally mobile. In some scenarios it can also result in a lower overall tax liability as the relevant double tax treaties will give each country the sole right to tax income relating to duties physically performed in that country (and therefore each country applies their progressive tax rates).

Whilst this approach generally works from the perspective of taxation, when considering EU countries and countries with which Belgium has concluded bilateral treaties with, this is not the case for social security purposes where the principle of exclusivity applies (i.e. an internationally mobile employee is generally subject to only one social security scheme). The applicable social security scheme will either be determined by the European regulation 883/04 or by the bilateral agreements on social security.

Due to this difference in treatment for tax and social security purposes, issues might arise with respect to future Belgian pension entitlement.

Example:

An employee, Belgian resident, is employed by 2 separate entities belonging to the same international group. One employer is located in Belgium; the other is located in The Netherlands. The employee divides his working time equally between the 2 employers. The remuneration of the employee will be taxed 50% in Belgium and 50% in the Netherlands. Based on the EU 883/04 regulation for social security purposes, the employee's full employment income will be subject to the Belgian social security scheme. In our example, the social security contributions due on the entire remuneration (100%) are withheld and paid by the Belgian employer.

Possible issue for the future Belgian pension of the employee involved:

In practice, only the Belgian employer is registered with the Belgian social security authorities. The Belgian employer will declare and pay the social security contributions also for and on behalf of the foreign (Dutch) employer and income.

As a result, Belgian social security contributions are withheld and paid on the entire (100%) remuneration, but often only the (number of) labour days (or equivalent days) for the Belgian employment (in the example 50%) will be declared to the Belgian social security authorities.

The reason for this is that, based on the administrative instructions of the Belgian social security authorities, only the Belgian labour time may be declared. In such cases the employee is not declared as a full-time employee for the employment years in the salary split situation. Consequently, depending on the method of reporting the Belgian and foreign working days, the future pension entitlement will be pro-rated in the same way as is done for part-time employments. The employee will receive a lower legal Belgian pension at his pensionable age regardless of the payment of the social security contributions on his full salary (100%).

BDO's Comment

The good news is that this issue can be reviewed to establish whether the reporting of the multiple employment payroll for internationally mobile employees (while remaining subject to Belgian social security) is compromising the employees' pension build-up. The authorities can then be contacted to ensure the pension position is regularised.

Canada

Non-Resident Employer Certification Programme

On 12 January 2016, the Canada Revenue Agency (CRA) announced that it is launching the Non-Resident Employer Certification Programme, as originally announced in the 2015 Federal Budget.

Under current tax legislation, non-resident employers must obtain employee-specific waivers from the CRA in order to be relieved of their obligation to withhold income tax on wages paid to employees performing services in Canada. In addition, the employer has to comply with reporting requirements such as obtaining Canadian tax numbers and year end payroll reporting for all employees working in Canada, even if they are not ultimately subject to Canadian tax.

Now, non-resident employers who register and are certified under this programme will no longer be required to obtain waivers for qualifying non-resident employees (see below). In addition to this, they would not need to fulfil the reporting requirements for such employees who earn less than $10,000 per year from their Canadian duties.

Programme requirements

To qualify for the programme, a non-resident employer must meet the following conditions:

- Be resident in a country with which Canada has a tax treaty (special rules apply for employers who are partnerships); and
- Be certified by the Minister of National Revenue via the newly-available registration process.

The non-resident employer should submit the request for approval at least 30 days before a qualifying non-resident employee starts providing services in Canada. If approval is granted by the CRA, it would be valid for two calendar years.

In order for an employee to be regarded as a qualifying non-resident employee, the employee should:

- Be resident in a country with which Canada has a tax treaty at the time of payment, and be exempt from income tax in Canada under the provisions of that treaty; and
- Either work in Canada for less than 45 days in the calendar year concerned, or be present in Canada for less than 90 days in any 12-month period that includes the time of the payment.

Careful tracking of days spent and worked in Canada (both before and after the payment date) by the employee is therefore crucial in benefitting from the programme. If the qualifying non-resident employer becomes aware that an employee ceases to meet these criteria, they are required to make a written disclosure to the CRA immediately.

If a qualifying non-resident employee earns less than $10,000 in a calendar year in respect of their Canadian working, no further action is required. However, if their Canadian-related earnings exceed this amount, the employer would be required to report the earnings on a T4, and the employee would be required to obtain a taxpayer identification number, even though no income tax withholding would be needed.

It is also important to note that the availability of this programme only applies to income tax withholding, not social security deductions (Canada Pension Plan and Employment Insurance). However, there are often other exceptions that would apply to remove the requirements to make these contributions under domestic legislation.

Employee working in Canada less than 45 days in the year or present in Canada less than 90 days in 12-month period?	Canadian-related earnings for the year less than $10,000?	Income tax withholding required?	T4 reporting required?
Yes	Yes	No	No
Yes	No	No	Yes
No	Yes	Yes, unless waiver obtained	Yes
No	No	Yes, unless waiver obtained	Yes

The table summarises the various thresholds and requirements under the programme (assuming that the employee is exempt from Canadian income tax under a tax treaty).

BDO's Comment

This is very welcome news for non-resident employers who send employees to Canada for short periods of time and these employees are exempt from Canadian tax under the provisions of a tax treaty. This new programme will greatly reduce the administrative burden associated with these short-term stays.

Please note that the Canada Revenue Agency has allowed for a retroactive filing for the 2016 calendar year as long as it is filed by 1 February 2016. BDO has been advised this date may be changed to 1 March 2016.

However, it is important to ensure that a robust process is in place to track the number of days each individual spends in Canada to ensure that compliance with the requirements of the programme is maintained.

France

Online Tax Returns Are Coming

Following recent legislation, online tax returns will be progressively mandatory from 2016 to 2019. From 2016, online tax return filing will be obligatory for all taxpayers having taxable income over €40,000. This threshold will be gradually updated.

Luxembourg

Stock Option Plans – Obligation of Notification

On 28 December 2015, the tax authorities issued a circular regarding the tax regime of stock option plans. This circular provides an obligation for the employer to notify the tax authorities of the stock option plans implemented.

The following plans are concerned:

- Stock option plans implemented before 1 January 2016 under which options are granted on or after 1 January 2016
- Stock option plans implemented as from 1 January 2016.

Plans implemented before 1 January 2016 in respect of which options have been granted exclusively before that date are not concerned even if the options have yet to be exercised.

With regard to the reporting format, it is necessary to distinguish between plans implemented before 1 January 2016 and plans implemented as from that date:

- Plans implemented before 1 January 2016 under which new options are allocated as from 1 January 2016 - The employer has to provide the tax authorities with a copy of the plan as well as a list of participants as soon as it is known
- Plans implemented as from 1 January 2016 - The employer has to provide the tax authorities with a copy of the plan at least two months before it is actioned. The employer also has to provide the list of participants to the tax authorities as soon as it is known.

BDO's Comment

Employers who use or intend to use stock option plans (classic plans or warrant plans) must review their obligations based on these new provisions.

Malta

Residence And Visa Programmeme Regulations

Malta has recently introduced a new residency scheme granting a residency permit confirming the right to land and to remain permanently in Malta, to individuals who satisfy specific conditions. The certificate entitles the beneficiary and their dependants to reside, settle and stay indefinitely in Malta and constitutes an e-residence card entitling the holder to travel within the European Union, together with a valid travel document, without needing to request a visa.

Upon issue of the certificate, once the beneficiary and their dependants take up residence in Malta, they will be deemed to be resident in Malta if on an annual basis they spend more than 183 days in Malta. Unless they express the intention of staying in Malta indefinitely, they will not be deemed to have acquired a Maltese domicile. Therefore, as a resident non domiciled individual, they will be taxable in Malta at the resident tax rates only on foreign source income which is remitted to Malta, and on Malta source income (unless they are a beneficiary in terms of the Global Residence Programmeme which provides for a flat tax rate of 15% on foreign source income remitted to Malta and 35% on Malta source income).

Any foreign source capital gains are not charged to tax in Malta even if remitted to Malta. The taxation on remittance basis is applicable as long as the beneficiary does not become a long-term resident or applies for long-term residence status.

UK

Payrolling of Benefits in Kind

Traditionally, taxable benefits in kind (such as medical benefit and company cars) have not been included directly within payroll reporting. Where such benefits are provided, a value based on the prior year amount is included within an employee's tax code to ensure a best estimate of PAYE is deducted on these. This can lead to an under or over payment of tax when the individual prepares their tax return, or further adjustments to the tax code to collect any shortfall.

The current process can lead to a constant cycle of trying to play catch up on tax due for earlier years, as well as consistent adjustments to tax coding notices to try and accurately reflect the value of the benefits being provided in the current tax year.

HMRC has mooted the real time inclusion of benefits in kind within the payroll cycle for some time; from April 2016, employers are now able to opt in to payrolling benefits in kind on an actual basis. The majority of benefits in kind can be payrolled with the only exceptions being vouchers, accommodation and beneficial loans.

If an employer wishes to payroll benefits for the 2016/17 tax year, they must notify HMRC by 5 April 2016 (and as soon as possible so tax codes can be adjusted to remove estimated values where real time benefit information is going to be submitted).

P11Ds do not need to be completed to report benefits that have been payrolled, however, a P11D(b) is still required to calculate the Class 1A National Insurance due.

BDO's Comment

This is a welcome announcement by HMRC and should lead to more certainty for employees that they are paying the right tax at the right time. It will also reduce the administrative burden on employers in terms of the removal of P11D reporting in the vast majority of cases.

Although it is optional for 2016/17, our view is that the payrolling of benefits could become mandatory within 3 to 5 years if it proves successful.

USA

Loss of US Passports for Delinquent US Citizens is now law

The proposed US tax payment enforcement provision has been enacted, and this tax provision allows the State Department the ability to revoke or deny passports for US citizen taxpayers who are behind on their income tax payments.

The law is effective from 1 January 2016, and applies to current debts. Estimates from the Joint Committee on taxation project the move could raise $398 million over 10 years.

The measure affects taxpayers who are "seriously delinquent" on $50,000 or more of income taxes owed, this figure includes penalties and interest and will be adjusted for inflation.

There are exceptions for taxpayers who have entered into instalment agreements, have requested or have pending collection due process hearings, or have claimed innocent-spouse relief. The Secretary of State may also issue a passport in emergency circumstances or for humanitarian reasons.

BDO's Comment

Delinquent US taxpayers must ensure they settle any outstanding liabilities or face the loss of their US passport.

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International HR Adviser

is delighted that Kim Smart, formerly Global Mobility Director of Brown Forman & Atkins, has joined our team as our Global HR Operations & Strategy Director. Kim has been an avid reader and supporter of International HR Adviser since its launch 16 years ago, and has read every issue of the magazine!

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