GLOBAL MOBILITY ALERT

November 2018

About Mazars

Mazars is an international, integrated and independent organisation specialising in audit, accountancy, tax and legal services. As of 1 January 2018, Mazars operates throughout the 86 countries and territories that make up its integrated partnership. Mazars draws upon the expertise of 20,000 women and men led by 980 partners working from 300 offices worldwide. We assist clients of all sizes, from SMEs to mid-caps and global players as well as start-ups and public organisations, at every stage of their development. that make up our integrated partnership.

Mazars Global Mobility Services consists of a worldwide group of international advisors, specialising in advising employers on the international mobility of their employees. Our services include global tax compliance and optimisation, international payroll services, social security administration, shares schemes planning, and immigration services.

INTRODUCTION

We gladly present you a new issue of our Global Mobility Alert.

We are much looking forward to the 16th Mazars Global Mobility Conference for our international expert colleagues, which will be held on 22 and 23 November 2018 in Lyon, France. We will offer a platform to discuss tax challenges under the main theme of 'Managing tax & compliance of a global workforce'.

European certificates of coverage (A1) have been disputed in many situations by local tax authorities. A recent case has developed itself in Belgium, and has led to the confirmation that A1's should be respected. But, when fraud is in play, the rules can be bent. Increased international and local monitoring make that filing of A1 applications should not be seen as a formality. Tax compliance obligations are continuously subject to change, sometimes increasing tax withholding obligations for non-resident employers, while at the same time local authorities are simplifying tax filing procedures for individual tax payers. We present you some examples for Canada and Romania. Finally, if you are dealing with employee equity plans in Switzerland, we will highlight the effect of a circular issue by the Swiss tax authorities earlier this year.

Kind regards,
Alexander Rasink
Head of Mazars Global Mobility Services

BELGIUM

EU COURT DECISION HIGHLIGHTS NEED FOR CORRECT PROCESSING OF A1 FORMS

While it's common practice for employees to decide to work in another EU Member State, an employee can remain subject to the social security system of his/her home country if, amongst other things, the expected duration of secondment does not exceed 24 months and certain conditions are met. In this situation, an A1-form will be requested in the home country and in principle this document should be accepted by the host country, if all conditions are met.

However, in a rule introduced to enhance the battle against social fraud, the Belgian legislator introduced an anti-abuse rule in 2012 based on which Belgian national courts, Belgian social security authorities and Belgian social inspectors could unilaterally disregard fraudulent A1 forms. While the rule was not applied in practice, the Commission took out an infringement procedure against Belgium in 2013 due to the fact that – notwithstanding this was foreseen in Belgian law - Belgium cannot unilaterally disregard A1-forms even in case of manifest error, but must follow the specific dialogue and reconciliation procedure foreseen in order to settle their disputes regarding the validity and accuracy of an A1-form.

The European Regulation 883/2004 provides that Member States must contact each other if difficulties arise in this respect. In the event that no solution is found within a reasonable period, the authorities can invoke the Administrative Commission, which will try to reconcile their points of view. Should the commission fail to do so, the Member States can initiate a non-compliance procedure before the European Court of Justice which will study the accuracy of the A1-form.

On July 11, 2018, the European Court of Justice ruled that Belgium cannot unilaterally decide to disregard an A1-form issued by another Member State. The ruling stated that an A1-form can only be disregarded if the court or tribunal ruled that the A1-form was issued based on fraud, and the competent authorities of the home country have failed to withdraw or review the delivered A1-form within due time. However, the European court nevertheless confirmed that a national court can only disregard the A1-form in case of demonstrated fraud after adversarial legal proceedings and if a specific set of conditions is complied with.

The ruling demonstrates that the correct application of the rules on the posting of employees is closely monitored on national and European level. Going forward, it is therefore of the utmost importance that A1-forms are correctly drawn up and processed using specialist assistance for more complex postings.

How can Mazars help

If you have any query in this respect, or if you would like to receive assistance from our specialists with all necessary documents for a secondment, please reach out to your local contact or:

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CANADA

ACT EARLY TO AVOID UNWANTED TAX EXPOSURE IN CANADA

For the past couple of years, withholding tax on income has become an automatic item covered in all audits of Canadian companies. Known as R102, under Canadian tax legislation both Canadian and non-Canadian employers are required to withhold income tax on the remuneration paid to an employee working in Canada and remit it to the Canadian tax authorities. The location of the payroll is not relevant for Canadian income tax purposes. Also, an employer's Canadian tax withholding obligation is not dependent upon whether or not the employee is permanently or only temporarily working in Canada, or whether or not a tax treaty exemption is applicable to the employee.

There are two exceptions to this income tax withholding obligation. A non-Canadian employer is authorized not to withhold income taxes if a formal waiver ("R102-R") is obtained from the tax authorities because of a relieving provision under article 15(2) of an Income Tax Convention that Canada has signed with another country ("Treaty"); or the non-resident employer is a certified employer by the Canadian tax authorities.

If a non-resident employee working in Canada is treaty exempt under article 15(2) of the Treaty and has obtained a waiver, then the employer will be exempt from withholding tax in Canada with respect to the remuneration paid to this employee. Where an employee is no longer treaty-exempt, the employer will be required to withhold tax immediately on all payments made to the employee.

Another option for obtaining relief from withholding tax on Canadian remuneration is to obtain an employer certification by filing a prescribed form. To do this, the non-Canadian employer has to be resident in a tax treaty country. The employer certification allows the non-Canadian employer to automatically be exempt from withholding with respect to its non-resident employees where the employee is resident in a tax treaty country; or the employee's employment income is exempt from Canadian income tax under a Treaty and either the employee works in Canada for less than 45 days in the calendar year, or is present in Canada for less than 90 days in any 12-month period.

Where the employee stops meeting any of the above conditions, the non-resident employer will be required to start withhold income tax immediately, retroactive to day one, with respect to such an employee. A non-resident employee who exceeds the work or presence day test, but who remains exempt from tax under the Treaty, may opt to apply for the R102-R waiver, as mentioned above.

Identifying risks early is therefore critical in order to avoid unwanted tax exposure.

How can Mazars help

If you have questions or need assistance, please contact your local advisor or:

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ROMANIA

ROMANIA SIMPLIFIES INCOME TAX SYSTEM

As from 2018, fiscal residents in Romania will declare and pay annual taxes on their worldwide income through a simplified self-assessment system by filing one Single Statement, which effectively replaces seven different statements that previously had to be filed. Additionally, the submission and payment calendar has shifted more towards the start of each year, with the deadline of 25th of May following each fiscal year being changed to the 15th of March of the following year in which the income is derived.

The changes make it both straightforward and faster for taxpayers to report private income, such as income from independent activities, rental income, capital gains and similar income from other sources, as well as payment of related personal income tax and social security contributions.

On this new self-assessment basis, taxpayers can take into consideration, where applicable, any taxes paid abroad, provided they have official documented proof, or any other specific deductions. Based on this assessment, the taxpayer then pays taxes due. The tax authorities can still, however, perform a tax audit in order to check the accuracy and correctness of the assessment. Previously, tax authorities issued tax decisions based on their assessment of the taxpayer.

Individuals can perform advanced payments at their own convenience and benefit from an incentive scheme. For 2018 incentives for advance payments include a 5% reduction in taxes due, granted to taxpayers which have submitted the Single Statement for 2018 electronically for taxes due up to the 31th of July 2018. Another reduction of 5% from taxes due will be applicable if the whole payment related to the 2018 income will be made before 15th of December 2018.

From 2019 onwards, the submission of the Single Statement will be performed electronically only. For employers with employees who have a fiscal obligation in Romania, updating processes to apply the new simplified system for worldwide income, as well for any additional matters in this respect, will need to be assessed.

How can Mazars help

Our colleagues within the Global Mobility Services team will be pleased to assist you with preparing the Single Statement for the worldwide income as well with any additional matters in this respect. For more information, please contact your local advisor or:

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SWITZERLAND

ONUS ON EMPLOYER AND EMPLOYEE WITH REGARD TO SWISS TAX TREATMENT OF PARTICIPATION SCHEMES

Employee participation schemes, which are often used by multinational or local companies to attract new talent, as well as retain and motivate employees generate complex questions, in particular from a tax and social security standpoint. While a circular issued in 2013 by the Swiss Federal Tax Administration (FTA) provides guidance on such questions associated with employees, a new circular issued by the Swiss tax administration issued on May 4, 2018 means the employer's tax treatment also requires attention.

In terms of the Swiss tax treatment from an employee standpoint, benefits in kind/cash deriving from participation scheme qualify as employment income as per article 17 al.1 of the Swiss direct federal tax law. As such, this benefit should be subject to tax and to social security.

The Swiss tax law distinguishes the tax treatment between (i) the shares and other participation schemes that the employer or related party offers to the employee; and (ii) options offering the possibility to acquire such shares, although cash compensation such as phantom stocks will not be considered in the present contribution.

For quoted shares, the official closing price at the day of their acquisition is in principle considered to be the fair market value. For unlisted employee shares, the applicable value is considered in principle to be the value as determined for the given employer in accordance with a suitable, recognized formula. Once chosen, it is mandatory that this calculation method be used for the corresponding equity-based compensation plan.

Finally, Swiss tax residents should declare such participation schemes in their taxable wealth as from acquisition.

In terms of the employer, the FTA recently published a new circular regarding the employer's tax treatment of employee profit-sharing investments. In essence, the new circular defines the tax consequences, as well as the accounting of employee profit-sharing investments such as employee shares, employee options and awards.

The circular describes the tax treatment deriving from various situations such as the employer's participation scheme grant by means of capital increase, by share purchase (on the market and to existing shareholders), or in the context of intra-group transactions.

One must also differentiate whether the employee participation scheme was acquired from the employer or a group company. In this context, the circular points out that the general tax principle of dealing at arm's length is applicable in the context of the participation scheme when the employer purchases shares to another group company for its employees.

In addition, it should not be forgotten that the employer also has tax, such as tax-at-source, and social security disclosure obligations to fulfil during the life of a participation scheme, and to consider the potential cross-border situation in order to correctly determine the taxable income in each jurisdiction.

How can Mazars help

If you would like to know how this may affect you please contact your local advisor or:

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