GLOBAL MOBILITY ALERT

April 2019

About Mazars

Mazars is an international, integrated and independent firm specialising in audit, accountancy, tax and legal services. As of 1 January 2019, Mazars operates throughout the 89 countries and territories that make up its integrated partnership. Mazars draws upon the expertise of 23,000 women and men led by 980 partners working from 310 offices worldwide. We assist major international groups, privately owned businesses, private investors and public bodies at every stage of their development.

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.

In this issue we offer several articles about actual and relevant issues that are affecting the international workforce of multinational organisations:

- Belgium: extended reporting obligations foreign equity plans;
- China: tax policy change to encourage expatriates to work in China;
- Croatia: introduction of a mini tax reform;
- France: new obligations for companies affected by the French withholding tax reform;
- Germany: A1 forms made compulsory for international assignments;
- Portugal: updated tax incentives for former tax residents;
- Romania: significant changes for construction field workers;
- South Africa: limitations to foreign employment income exemption for residents of South Africa.

We hope you find this issue useful and interesting. If you wish to be updated more regularly or differently on global mobility matters, feel free to let us know!

Kind regards,

Alexander Rasink
Head of Mazars Global Mobility Services

BELGIUM

EXTENDED REPORTING OBLIGATIONS ON FOREIGN EQUITY PLANS AND ADJUSTED SOCIAL SECURITY APPLICATION

As a result of the ‘Job Deal’ adopted by the Belgian government last summer, reporting obli-gations on stock options have been extended to equity incentives, including the grant of free shares, shares at a discounted price and any other benefit in kind linked to such an equity-based compensation plan such as Restricted Stocks or Restricted Stock Units (RSUs), for example. These reporting obligations will be required regardless of whether the Belgian com-pany acts as intermediary in the grant process or whether the related costs are re-charged to the Belgian entity. It is currently not yet clear when this change will enter into force, but it could be retroactively as from 1 January 2019.

Prior to 31 December 2017, when foreign companies granted stock options to employees of their Belgian subsidiaries, such provided that the options were compliant with the Belgian stock option law, such options were taxable at grant. Consequently, they needed to be report-ed by the Belgian employing subsidiary on the employee’s tax form 281.10 and summary account 325.10.

This reporting obligation was mandatory, irrespective of whether the Belgian subsidiary was involved in the option grant or included the stock option in its financial statements. So far, this reporting obligation is required when stock options falling under the scope of the Stock Option law of 26 March 1999 are granted by a foreign entity to individuals working for a Belgian company or Belgian branch. Failure to do so will result in an abnormal gratuitous advantage in corporate income tax for the Belgian company intervening in the stock option process, which will result in an effective corporate tax to be paid on the cost of the stock options granted even if the company would have tax losses.

In addition, the introduction of the Belgian wage withholding tax obligation on 1 March 2019, requires Belgian employers/companies to report any grant made by an affiliated foreign com-pany to its employees/directors and withhold and pay Belgian wage taxes accordingly.

Finally, the Belgian social security authorities have adjusted their point of view regarding the application of Belgian social security contributions on benefits granted by foreign companies to employees of a Belgian employer. In case stock options or RSUs, for example, are not directly offered by a Belgian employer but by a related party of the group, Belgian social se-curity contributions from both the employer and employee will be applicable, as well as dou-ble vacation payment.

As a result, the Belgian social security authorities will now try to prove that the RSUs and stock options granted are related to the employment activities of the employees in Belgium or are based on the position and/or function of the employee. It's important to note that this is only an interpretation by the Belgian social security authorities and that it is not an adjustment in the law governing the social security contributions in Belgium.

Hence, one could go to court to challenge the application of the Belgian social security regime for RSUs and stock options. However, given this is a recent adjustment, it is not yet clear what the Court’s position would be in this respect.

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CHINA

CHINA ENCOURAGES EXPATRIATES WITH PREFERENTIAL TAX POLICY

Before the amendment of China's Individual Income Tax Law (IIT) in 2018, bonus payments were calculated out of the normal monthly salary allowing individuals to benefit from a preferential tax calculation method. This rule will be maintained until December 31 2021. However, starting from 1 January, 2022, the bonus will be integrated into the IIT calculation based on annual salary.

In addition, from 1 January 2019 until 31 December 2021, the IIT on stock options will be calculated separately in full applying the seven brackets of progressive rate for comprehensive income. The policy after 1 January, 2022 is not yet clear and will be clarified in the future.

Under the new IIT laws, an individual who would normally be considered as a non-resident of China due to absence of residential ties, could be deemed to be a Chinese tax resident in a particular year if he has spent 183 days or more in China during the relevant tax year. The individual would then be subject to IIT on his worldwide income in that tax year.

Under the Implementation Rules, for individuals who do not have residential ties in China but deemed to be a Chinese tax resident under the 183 days presence test, they would not be subject to IIT on worldwide income. This applies so long as the “deemed tax residency” years are not continuous and exceed 6 years, and during the 6 year period the individual has been outside China for a single period of more than 30 days. In order to obtain the tax exemption on non-China source income, the individual needs to file a return with the relevant tax authority. The 6-year period starts from any one year during which the individual has been outside China for a single period of more than 30 days. For example, if the individual has not been outside China for a single period of more than 30 days until the 6th consecutive year, not only is the individual subject to the 6-year rule exemption for the preceding five years, but also for the subsequent five years.

The measure is to encourage expatriates to work in China and is a one year extension on the previous 5-years exemption in the exposure draft of Implementation Rules issued in October 2018.

The Implementation Rules also defines “ordinarily resident” as an individual having Chinese domicile, family and economic ties in China and, because of these ties, has been habitually living in China. In addition, the Implementation Rules also state that for an individual without residential ties in China in a particular tax year they would not be subject to IIT, so long as stays in China are on aggregate for 90 days or less; and employment income is paid by an overseas employer and not be charged back to a Chinese entity or a permanent establishment of the foreign employer. Based on the above status, expatriates must declare his/her individual tax status to the authorities through their bank or tax agent.

However, starting from 1 January 2022, housing rental, child education, language learning, home travelling, meal & laundry and relocation will no longer be tax deductible and expatriates should follow the specific deduction rules which are applicable to mainland Chinese tax-payers.

The new IIT laws also introduce anti-avoidance rules empowering the tax bureaus to make adjustments to combat tax avoidance in relation to transfer pricing not deemed to be at arm’s length, profits housed in offshore corporations and tax benefits given without reasonable commercial reason.

Under the draft Implementation Rules, the definitions on independent arm’s length principles, related parties, commercial reasons, control, and low tax are predominately consistent with the anti-avoidance rules for corporations. With respect to related parties’ transactions, it added to the definition of related parties to include husband and wife, immediate family, brothers and sisters, and anyone maintained or supported by the individual.

Under the final Implementation Rules, detailed anti-avoidance explanations were removed. Nevertheless, it should be pointed out that the anti-avoidance rules applicable to individuals are now part of the legislation. It is expected that future circulars would be issued in this regard.

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CROATIA

INTRODUCTION OF A MINI TAX REFORM

The Croatian Parliament has passed a number of new tax laws affecting corporate income tax, value added tax, real estate transfer tax, personal income tax and social security contributions.

Most of the changes have taken or will take effect in 2019 and changes relating to personal income tax and social security contributions affect Croatian employees, including globally mobile employees.

As of December 2018, Croatian employers are allowed to pay tax-free bonuses of up to HRK 5.000 / EUR 675 per annum. Other tax-free benefits, such as a Christmas bonus and other gratuities up to HRK 2.500 / EUR 340 per annum, benefits in kind up to HRK 600 / EUR 80 per annum remain the same.

In terms of personal income tax burden, as of 2019 the first tax bracket (24%) will be in-creased from HRK 17.500 / EUR 2.365 to HRK 30.000 / EUR 4.054 per month. The second and final tax bracket (36%) applies to taxable incomes exceeding this threshold. This change will impact employees with monthly gross salaries not lower than HRK 26.626 / EUR 3.600. The maximum benefit to the employee arising from this may amount to HRK 1.770 / EUR 240 per month.

Share awards in certain cases will be taxed as capital income at 24%, instead of other in-come (24% tax, plus contributions and possible additional tax via annual tax return), or employment income (24% to 36% tax, plus contributions, plus possible additional tax via annual tax return). However, we are still to see if the gross-up calculation requirement, which is mandatory in case of share awards and results in a heavy effective tax burden, will be eliminated via a Bylaw which is expected to be introduced shortly.

Residents who are required to report and pay tax on their foreign income in Croatia will be allowed to use the same tax basis as determined by the foreign tax authorities. So, for example, if the foreign tax authority allows a lump sum deduction against certain income, the tax-payer will be allowed to declare taxable income of the same amount. This will not be allowed in cases where the other country did not tax or did not have the right to tax such income. Non-resident artists and sportsmen may be taxed via corporate withholding tax at 15% if their performance in Croatia is paid via a foreign legal entity. Otherwise they are subject to Croatian personal income tax.

In addition, notional interest benefit arising from loans provided by employers to employees is reduced from 3% to 2% per annum and special provisions for seasonal workers in agriculture are being introduced. Such seasonal work income will be taxed as “other income”, subject to a tax rate at 12%, without recognizing expenditures. Such taxation would be considered as final and would not go into the annual personal income tax calculation.

Finally, the rate for mandatory health insurance is increased from 15% to 16.5%. However, the contributions for insurance of occupational injuries (0,5%) and insurance for unemployment (1,7%) have been abolished. This will ultimately result in an overall reduction of employers' costs by 0,7%, from 17,2% to 16,5. Given that this change concerns only employers’ contributions, it will not have a direct impact on net salaries of employees.

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FRANCE

NEW OBLIGATIONS FOR COMPANIES AFFECTED BY FRENCH WITHHOLDING TAX REFORM

Since 1 January 2019, all employers, regardless of size or the regime applicable to them, are affected by the withholding tax reform on salaries subject to income tax in France. This also applies to foreign companies, even if they are not established in France, but have employees working in France, whether those employees are subject to the French social security regime or to a foreign social security regime.

- The introduction of withholding tax creates new obligations for employers. Requirements include monthly employee reporting to the tax administration via the Nominative Social Declaration (DSN), or, if the employer does not fall under the scope of the DSN, via the Withholding Tax for Other Income system (PASRAU). In addition, the latest withholding tax rate set by the French tax authorities, which is personal to each employee, should be applied to salaries on a monthly basis and salaries paid net of withholding tax and the tax withheld by the administration.
- To comply with their withholding tax obligations, foreign companies must have a French identification "SIRET" number. Employers established abroad paying salaries which are subject to income tax in France, but do not yet have a SIRET number, must register in France in order to obtain one. The French tax administration will take at least one month to provide the SIRET number on the condition that registration is filed in the French language, inclusive of enclosures. Once the company registration number is created, wage taxes can be regularized for 2019 with any application of penal-ties for late filing and payment.
- Other requirements include a professional online account on impots.gouv, which can only be opened with a valid SIRET number; a bank account in a Single Euro Payments Area (SEPA) with a valid SEPA debiting mandate; as well as a tax representative mandated for withholding tax. The appointment of such a representative is mandatory if the company is established outside the European Union and outside a country of the European Economic Area that has concluded an administrative assistance agreement with France to tackle tax evasion and avoidance, as well as a mutual assistance agreement in recovery of taxes.

  If the company already has a tax representative to carry out other formalities, such as VAT, it will have to extend its mandate to withholding tax or appoint a new tax representative.

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GERMANY

GERMANY FOCUSES ON INTERNATIONAL ASSIGNMENTS

Since 1 January 2019, the electronic application and attestation procedure for A1 forms is compulsory for international assignments. In the case of cross-border employment within the EU / EEA country or Switzerland, employees with an A1 certificate in the foreign employment state can prove that the social security regulations of the home country continue to apply, thereby protecting themselves from double contributions.

For the determination of the applicable social security legislation, Regulation 883/2004 / EC mainly regulates the coordination of social security systems. For workers temporarily employed abroad for a period that does not exceed 24 months, the continuation of the German social security regulations is applied. If employment is usually carried out in two or more EU Member States, here too a continuation of home country legislation is possible if the worker spends more than 25% of his or her activity in the Member State of residence. In addition, a special permit can be requested. This will be negotiated and agreed between the Member States concerned. Equally, if a worker is employed on occasional missions and regularly stays abroad on a business trip which, as a rule of thumb, is 1 day per month or 5 days per quarter, an application must be made in according with Regulation 883/2004 / EC to Member States involved.

An employer must ensure that the A1 attestation is requested in good time before the start of an international posting or activity in several Member States to the responsible social security institution.

Authorities of other EU Member States will check whether employees carry the necessary papers and the certificate must be handed to the employee as a pre-emption document prior to the assignment. The absence of an A1 certificate may result in denial of entry or severe fines and penalties.

Within three days, the competent authority must also send the A1 attestation to the employer by electronic means, provided that the conditions for the continuation of the German legislation are met. The transmission must take place from system-approved payroll accounting programs.
For activities in several Member States, a paper-based application should continue to be made.

Finally, it should be noted that in addition to the application and the carrying of an A1 certificate as a result of the EU Posting of Workers Directive, there are more extensive reporting obligations for foreign missions, which vary greatly depending on the state for which non-compliance can result in fines.

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PORTUGAL

TAX INCENTIVES FOR FORMER TAX RESIDENTS

In order to encourage the return of emigrants to Portugal, the 2019 State Budget enacted tax relief of 50% on income derived from employment and self-employment. The relief is available for five years for individuals who decide to return to Portugal and have been resident for tax purposes prior to 31st December 2015.

Emigrants who return to Portugal in 2019 or 2020 and become tax residents may access this regime provided some requirements are met. Namely, if the individual was not resident for tax purposes during the three years prior to the return; was resident for tax purposes in Portugal prior to 31st December 2015; has no debts to the Portuguese Tax Authorities and did not apply for the special tax regime for non-habitual residents.

The tax relief is applicable to income earned in the first year of residency after the return to Portugal and in the following four years, expiring after this period. Entities required to withhold tax on the income covered by this regime shall apply the withholding tax rates determined based on half of the income paid or made available during the five year period.

The details about how the regime, which came into force on 1 January 2019, will be applied in practical terms are yet to be confirmed, or whether this reduction also includes the additional solidarity tax.

Nonetheless, this option should be carefully analysed, since the special tax regime for non-habitual residents - applicable for ten years - may be more beneficial.

It is important, therefore, that analysis between the non-habitual resident special tax regime and the regime for former tax residents, is undertaken to assess which one is most beneficial for the individual and employer. Indeed, depending on the regime chosen, application can increase the net salary of the employee, with the same cost to the employer, or a reduced cost to the employer with the same net salary to the employee. Taking into consideration the current challenges of recruiting and retaining professionals, these regimes are seen as important and of particular interest to the shared-services centres in Portugal.

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ROMANIA

SIGNIFICANT CHANGES FOR CONSTRUCTION FIELD WORKERS

In December 2018, Ordinance no. 114/2018 brought significant tax exemptions for individuals working in the Romanian construction sector, in order to encourage workers to remain in Romania. For ten years, from 1 January 2018 to 31 December 2028 payment of income tax on salary is fully exempt; social security contributions are reduced to 21.25%, from 25%; health insurance contributions are tax exempt; and work insurance contributions are reduced to 0.337%.

In addition, the minimum monthly gross salary for construction sector workers for the aforementioned period is increased to RON 3,000.

- However, the changes raise a number of questions due to the fact that in order to apply the exemption at the level of the employee, the conditions required to be fulfilled are only with the employer. Specifically, employers must carry out activities in the construction sector, i.e. have certain NACE codes, as specifically detailed in the Ordinance; 80% of annual turnover is achieved from construction activities as defined by the Ordinance; and the monthly gross salary income realized by the employees exempted is between RON 3,000 – RON 30,000.

Given that the Romanian Authorities did not insert any transparent criteria into legislation at the level of the individual, Romanian companies should apply the exemption for all their employees, including administrative and support staff, so long as the above-mentioned conditions at the level of the employer are fulfilled.

Indeed, this conclusion that the exemption also applies to administrative and support staff was also confirmed by representatives of the Romanian Ministry of Finances during an informal discussion. It is our understanding that it was a decision the authorities took due to the particularities of the construction business, where a significant number of employees fulfil several operational and administrative roles.

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SOUTH AFRICA

OPTIONS ARE NOT STRAIGHTFORWARD FOR SOUTH AFRICANS LOOKING TO FINANCIALLY EMIGRATE

With effect from 1 March 2020 South African nationals working abroad will become subject to tax on their foreign employment income in South Africa.

The change in legislation is mainly aimed at individuals working for a short to medium term outside of South Africa and who will lose their full exemption from income tax on their foreign employment income.

Currently, foreign employment income earned by South African tax residents is fully exempt from tax in South Africa provided they meet certain requirements. However, the change of legislation will result in foreign employment income being subject to tax in South Africa, with the exception of the first R 1 million.

- In the context of South Africa, there are three independent concepts of residency: Residency for immigration law purposes – affecting your visa and/or whether you can reside/work in South Africa; Tax residency for the South African Revenue Service (SARS) – affecting the taxes to be paid in South Africa; and Exchange control residency for the South African Reserve Bank (SARB) – affecting your emigration status for exchange control purposes.
- As a result of the forthcoming change, many South African nationals working abroad are assessing the option to “financially” emigrate for exchange control purposes to avoid paying tax on their foreign employment income. However, a distinction needs to be made between breaking tax residency (via the SARS) and financially emigrating by placing your emigration on record from an exchange control perspective (via the SARB). Breaking tax residency results in you being regarded as a non-resident for tax purposes, whereas financially emigrating via the SARB results in you being regarded as an emigrant, but will not necessarily change your tax status with SARS.

Indeed, an emigration application for exchange control in itself will have no bearing on tax residency status.

South African nationals will still need to address the implications of breaking tax residency with SARS, with an exit tax payable on capital gains as a result of a deemed disposal of their worldwide assets on the date immediately before becoming non-resident. It is, however, not a requirement of SARS to place on record an emigration with the SARB in order to break tax residency.

Based on the above intricacies, we strongly seeking professional advice in the determination of your tax status, the implications of breaking tax residency as well as a review of past disclosures before taking steps to formalise a financial emigration.

It should also be noted that the change in legislation is only applicable to nationals deemed resident in South Africa for tax purposes. It is unlikely that South African nationals working on a more permanent basis outside South Africa will be affected by this change in legislation as they may already be regarded as non-residents for tax purposes.

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