Global Mobility Alert
April 2021

Introduction

We hope you and your families are well.

The Global Mobility landscape has been particularly impacted by the coronavirus pandemic for the last year. As companies adapt to the current trends on their employee mobility, it is now clear that this crisis will ultimately affect global mobility management worldwide.

We are pleased to present you the first edition of our Global Mobility Alert of 2021, which provides you with updates on the latest mobility regulations in different countries around the world.

In this edition, we detail Brexit's impact on the cross-border employment and social security regulations in Belgium, as well as how to keep your workforce compliant post-Brexit in the UK. Moreover, we have included insights on the new tax system for individuals in the Czech Republic, the split residency status in India, and the changes to the impatriate tax regime in Luxembourg. You may also read updates from Peru, Portugal and Poland.

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Life after Brexit: cross-border employment and social security regulations in Belgium

On 31 January 2020, the United Kingdom left the European Union. Both parties agreed on a withdrawal agreement (WA) which entered into force on 1 February 2020. However, a transition period ran until 31 December 2020, in which the 'usual' EU Regulations n° 883/2004 were still applicable.

Cross-border secondments started before 31 December 2020

For persons whose cross-border secondment began before 31 December 2020, nothing much changes as the European social security regulation n° 883/2004 will continue to apply after the end of this transition period under the so-called 'grandfather rights'.

It is important to note that these 'grandfather rights' are not applicable if the cross-border secondment is interrupted or changed, regardless of the interruption duration.

For clarification purposes, the Belgian social security authorities have already confirmed that annual paid holidays and assimilated periods such as sickness and paid career breaks are not seen as interruptions. At present, it is not yet confirmed whether COVID-19 travel restrictions would be considered as an interruption.

Cross-border secondments starting from 1 January 2021

There has been uncertainty as to what would happen to cross-border secondments that began after 1 January 2021. The lack of clarification would either result in social security contributions having to be paid in multiple countries or the cross-border worker not being insured at all. Each situation would have to be examined on a case-by-case basis.

Fortunately, the Belgian social security authorities recently confirmed an agreement between the EU and the UK regarding social security in the Trade and Cooperation agreement for secondments. According to article SSC.11 of the Agreement, the habitual social security system can be applied during a cross-border secondment in which the UK is involved for a maximum of 24 months if the involved EU-country is listed in the Annex SSC.8 of the Agreement. Most likely, Belgium will also be included in this Annex, which is good news.

For split employment situations where the work is performed in multiple countries, and the employer is based in the UK, no agreement has yet been reached and the applicable social security legislation will have to be analysed case by case.

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Key considerations for split residency status in India

A recent judgment is good news for expatriates completing a work assignment in India and returning to their home country, especially if they are deemed tax residents in India.

Determination of residential status under the Double Taxation Avoidance Agreement (DTAA) is essential in cases where an individual is a resident of both host country and home country, as the individual may become “dual resident” for tax purposes.

Applying the tie-break test

In such a situation, both countries’ revenue authorities would have claim over the individual’s worldwide income for tax purposes, leading to double taxation. In such an event, a tie-breaker test under Article 4(2) of the DTAA is applied to determine the individual’s main country of residence. The tie-breaker involves using certain tests such as permanent home, centre of economic and vital interest, habitual abode and nationality. The provisions of the tax treaty can be then applied accordingly to gain relief from double taxation.

There are cases where an expatriate needs to travel to several countries as part of their role during a given period. In such cases, the expatriate may qualify to be a tax resident of more than one country for different parts of the year. This primarily arises in the year when an employee returns to his home country on completion of an assignment resulting in a ‘split residency’ situation.

Split residency ruling

The concept of ’split residency’ is not recognised under Indian income tax law. However, in a ruling by the Income Tax Appellate Tribunal in India, the concept of ‘split residency’ was considered. Based on the facts of the case, the Tribunal upheld that the expatriate concerned was not deemed a resident of India for that part of the year when he returned to his home country. In Deputy Commissioner of Income Tax Vs. Sri Kumar Sanjeev Ranjan1, the individual lived in the US for several years working for Accenture US. He was then seconded to Accenture India, where he worked for a few years before moving back to the US.

When he moved back to the US, he provided services to Accenture India for part of the year. He qualified to be a tax resident in India as per the Indian domestic laws and, as a US citizen, he was also deemed a US resident. The Indian tax office taxed his entire income, including the salary earned by him on returning to the US, on the grounds that he was resident in India. The issue of taxability of his US salary was decided in favour of the individual by the First Appellate Authority. The Revenue Authorities preferred a further appeal before the Income Tax Appellate Tribunal (Second Appellate Authority).

Since the individual had dual residency, the tie-break test was applied. Generally, the tie-break test is applied for an entire year, but, in this case, it was applied for two parts of the year. The first part of the year was the period when the expatriate rendered services in India, and the second part was when he was rendering services to US on his return home.

For the first part, the tie-break residency was determined to be India, and for the second part, it was the US since his centre of economic and personal interests was the US. This was substantiated by providing details such as Tax Residency Certificate from the US Tax Authorities, location of personal belongings, voting rights, investment details and US driving license.

The Tribunal held that for the first part of the year, the expatriate was a resident of India and for the second part he was a resident of the US, as per the DTAA between India and the US. Therefore, the Tribunal held that the salary earned in the US was not taxable in India.

Key considerations

For expatriates qualifying as resident in India, the judgement means that no tax should be levied on income which accrues outside India. This is a welcome judgement for expatriates completing their Indian assignment and returning to their home country, especially if they qualify as tax resident in India. At the same time, it's essential to maintain the appropriate documentation that can substantiate strong social ties with the home country. However, the Assessing and Appellate Authorities in India are likely to analyse each case's facts and circumstances before deciding on residency and tax liability in India.

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Luxembourg makes changes to the impatriate tax regime

Following the adoption of the new budget law by the Luxembourg parliament, the existing impatriate tax regime has been transposed into the Luxembourg tax law.

The regime aims to help employers attract high-skilled employees residing outside Luxembourg and its close border by benefiting from favourable tax treatment. It can be applied to employees assigned to Luxembourg or hired locally.

Thanks to this scheme, the employer can provide benefits to the employee with a full or partial tax and social security exemption: reimbursement of moving costs, housing, regular trips to the home country, school fees for employee's children, tax equalisation costs and cost of living allowance.

Previously included in a circular, the impatriate tex regime's main conditions to be met by the employee and the employer, such as a list of eligible tax-free benefits, ceilings and reporting formalities, have been transposed with no or few modifications compared to the old scheme.

However, some important changes are noted.

Significant changes to the regime

One of the most notable changes to the regime is the scheme duration, extended to eight years, replacing the five years' duration previously applicable.

In addition, the minimum salary eligible for the scheme has been raised from 50 000 EUR to 100 000 EUR. On the employer's side, the condition of having at least 20 employees to use the regime has been deleted.

Finally, the cost of living allowance has been replaced by an impatriation premium paid to the employee to spend as they wish. Only 50% of that premium is tax-exempt, and it cannot exceed 30% of the annual gross base salary.

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Covid-19 is not a valid cause for changing tax status in Peru

The Peruvian Tax Authorities have finally clarified that the closure of the Peruvian borders to prevent the Covid-19 pandemic cannot be claimed by foreign individuals as a valid cause for suspending the computation of the “minimum period of permanence in the country” required for changing their tax residence status.

On 4 January 2021, the Peruvian Tax Authorities posted Ruling N° 133-2020-SUNAT/7T0000 on their website. The Ruling concludes that the closure of the Peruvian borders implemented by the Government on 16 March 2020 in response to the Covid-19 pandemic, by means of Supreme Decree N° 044-2020-PCM, does not suspend the term provided by the Income Tax provisions to determine if a foreign individual has acquired resident status for tax purposes.

Based on Peruvian Income Tax Law, a foreign individual acquires resident status if their stay in the country exceeds 183 days within any 12-month period. All days of physical presence must be considered, even if the individual stays only part of the day, including the arrival and departure day. Any change of status generally applies in the following fiscal year, determining the obligation to compute the individual’s tax liability on his Peruvian and foreign source income.

However, special conditions applied in the country during 2020 due to the pandemic. The government declared a national state of emergency on 15 March 2020, instructing, among other measures, the full closure of borders. As a result, all international passenger transport services by land, sea, and air were suspended as of 16 March 2020.

While the national state of emergency lasted until 30 November 2020, a gradual and progressive return of international passenger transport services was approved in October 2020. The reopening of the land borders was authorized subject to the parameters that each regional authority had to adopt in coordination with the Ministry of Health.

Different approaches adopted

In this peculiar context, different approaches were adopted by local tax practitioners when interpreting these strict measures to the tax resident status of foreigners that were forced to remain in the country. For this reason, a formal consultation was submitted to the tax authorities to receive further guidelines. As a result, the authorities have concluded that the time-limit provided by the Income Tax Law does not have a procedural character, being meant only to apply to evaluate an individual’s tax status. The Income Tax Law does not contemplate situations enabling the suspension of this time-limit, such as “force majeure” circumstances, which may have comprised the national state of emergency and the mandatory lockdown implemented in Peru.

Based on these considerations, the tax authorities have concluded that the computation of the 183 days term provided by the Income Tax provisions cannot be suspended based on the closure of borders by Supreme Decree N° 044-2020-PCM.

Evaluate the length of stay

The Ruling is binding for a tax inspector and therefore useful as a guidance for taxpayers. In this context, foreign companies that have sent employees to Peru must evaluate whether these recent guidelines could result in a potential tax exposure based on the length of their stay in the country. This is also relevant for future planning following the implementation of new lockdown measures in different areas of Peru that began on 1 February 2021.

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Tax change for Polish expats

Polish expats who work abroad but retain their family or a permanent home in Poland may be affected by the recent changes to the Polish personal income tax regulations that came into force on 1 January 2021.

The core of the change is a limitation of the so-called "abolition relief". This relief was applicable when the Polish tax was higher than the tax paid abroad. In this case, Polish expats were exempt from the obligation to pay income tax in Poland equal to the difference between the tax paid in a country where a person works and the tax due in Poland.

Impact and recommendations

The result of the change is a tax liability in Poland for Polish expats who work in countries with which Poland has concluded treaties on the avoidance of double taxation using the tax credit method. If income earned in a given tax year exceeds PLN 8000 (around €1,800) and the level of taxation in a country where the expat works are lower than in Poland, then a liability will arise.

The new legislation may entail an increased tax burden for Polish expats working in countries such as the Netherlands, Belgium, Ireland, the UK, Norway, Denmark, Austria, Russia, the US, Finland, Israel, Japan, Lithuania, Slovakia and Slovenia.

In light of the above, we recommend analysing the tax residence status of Polish expats who work in the above countries to assess the consequences of the change on tax settlements.

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Former residents’ regime extended and expanded in Portugal

The special tax regime for individuals who used to be tax residents in Portugal before 2015, who left the country, and then decide to return as tax residents has been extended from 2020 to 2023. The special tax regime offers attractions for those who intend to earn employment income or start a business activity again in Portugal. Under the regime, 50% of the income obtained will be disregarded for Personal Income Tax purposes.

In 2019, the Portuguese State Budget introduced a special tax regime for former residents who decided to return to Portugal until 31 December 2020. The regime applied to those who were not resident for tax purposes in Portugal in the last three years but were residents in Portugal before 31 December 2015.

Business start-ups included

While it was expected that this regime would end in 2020, it was decided to extend it until 2023 and expand its application to individuals who return to Portugal and start their own business. Previously, only employment and self-employment income was considered.

Under this programme, and if all requirements are met, taxpayers are only taxed on 50% of their income from employment, self-employment and business and professional income for a period of five years.

Assess the benefits

Portugal also has a special tax regime for Non-Habitual Residents (NHR) that offers different advantages to the former resident regime. However, it is not possible to benefit from both regimes simultaneously.

Before returning to Portugal, it is essential to analyse potential tax liabilities based on long-term income expectations.

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Keeping your workforce compliant post-Brexit

Now that the UK has left the EU formally, there are additional Right to Work compliance issues to ensure your existing EU national, UK resident employees continue to hold the right to remain and work in the UK.

Free movement under European law ended in the UK on 31 December 2020. EU nationals who began living in the UK on or before this date must apply for status under the EU Settlement Scheme and will have until 30 June 2021 to make this application.

From 1 July 2021, they must hold or have made an application under the EU Settlement Scheme to retain their ability to live and work in the UK.

Europeans working for an employer in the UK on or before 31 December 2020 will retain a right to live and work in the UK. Their right of residence will continue after 30 June 2021, provided they have an approved or pending application under the EU Settlement Scheme. A successful application to the EU Settlement Scheme will result in valid status either for five years, in the case of Pre-Settled Status, or indefinitely in the case of Settled Status. Those who do not apply to the Scheme by 30 June 2021 risk being unable to evidence their right to work, as well as difficulties holding a bank account, renting a property or accessing healthcare.

Any EU national new hires who cannot meet the EU Settlement Scheme requirements will be treated as all other oversea nationals and will require UK work permission before travelling to the UK to commence work. This will require the UK entity to hold a Sponsor Licence. There are costs and budgeting considerations and also the need to plan ahead to ensure you have the tools and policies in place to be able to employ EU nationals in the future.

CONFUSION

ADDITIONAL COSTS

TIME TO ONBOARD

SPONSOR LICENCE

ADDITIONAL OBLIGATIONS

For those EU nationals in the UK before 31 December 2020, we advise employers to communicate and remind them of the 30 June 2021 deadline to ensure the right to work in the UK is retained.

We strongly advise forward planning on the types of roles you are likely to be filling with EU national new hires. This will ensure you budget for the associated visa fees that will now apply, as well as whether your UK entity needs to apply for a Sponsor Licence, if not already done so.

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New Tax System for Individuals in the Czech Republic

After 13 years of relative inactivity, the Czech Republic has implemented a significant amendment to the Czech Income Tax Act, which became effective as of 1 January 2021. Overall, the amendment slightly improves the tax treatment for employees but may cause an increase in the Czech tax payable on the non-employment income of individuals who have higher levels of income.

More progressive tax rates

The amendment cancels the unusual concept of a “super-gross” tax base, under which an individual’s tax base for employment income was generally gross income plus the mandatory amount of social security and health insurance payable by the employer on the income. This base was subject to tax at 15%, causing an effective rate of taxation of about 20% for employees participating in the Czech social security system.

In the former tax system, other taxable income such as self-employment income, capital income, rental income, and capital gains from property or securities sales were taxed at a flat 15%. Employment and self-employment income was further subject to a 7% solidarity tax. The amendment also cancels the 7% solidarity tax that individuals had to pay on any annual employment income, self-employment tax base, or their combination, above 48 times the average monthly salary of EUR 67,000 in 2020).

The new tax system introduces two tax rates applied to an individual’s total level of taxable income; a 15% rate applies to gross taxable income up to EUR 68,045 in 2021 and a 23% rate which applies to income above that threshold. Certain limited income types, such as foreign interest or dividends, may be declared in a separate tax base and still be taxed at a flat 15%.

For individuals whose total taxable income does not exceed EUR 68,045 in 2021, the new tax system will be modestly more beneficial than the former tax system. Conversely, individuals who have higher levels of employment income and non-employment income may see a rather significant jump in the level of Czech income tax payable.

Other important changes

After nine years of remaining unchanged, there has been an increase in the personal tax allowance, which may be offset against a taxpayer’s calculated tax due by app. EUR 120. The amendment also introduced a cash lump sum meal allowance option for employers to complement the employer-supported canteen or paper meal voucher options. A cash benefit may be administratively easier for employers and allow a greater choice of meal options for employees. However, the tax-exempt amount is more limited than other options and may not be suitable for certain employees, such as those with limited contracts or executives.

Conclusion

The 2021 Czech tax system changes will generally be very good news for individuals with average employment and non-employment income levels. For individuals who have higher levels, the changes may be more negative as the tax rate may increase by 8% in some cases.

In addition, it may be advisable to review whether the provision of the cash lump sum meal allowance may be a better option for employers and their employees.

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