GLOBAL MOBILITY ALERT
December 2016

INTRODUCTION

Welcome to the December issue of our Global Mobility Alert.

In this edition we have contributions from the Czech Republic, Belgium, Romania, Slovenia, Hungary, Serbia and the Netherlands.

We hope you find the spread of subjects interesting. For your information, we intend to revisit the EU Data Protection regulations introduced by Jan Matto of our Netherlands practice in a later issue of this alert.

As ever we welcome all feedback, ideas and questions.

Kind regards,

Steve Asher
Head of Mazars Global Mobility Services

About Mazars

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, and tax, legal and advisory services. We rely on the skills of more than 17,000 professionals in the 77 countries that make up our integrated partnership.

Mazars Global Mobility Services have a long history. For many years we have been building 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, immigration services etc., including global mobility policy advice and the management of global mobility.
IMPLEMENTATION OF THE EU POSTING OF WORKERS DIRECTIVE

The EU Directive 2014/67/EU sets new obligations for both the employer posting employees to provide services in another EU country, and for the company receiving such services. These new rules should have been implemented by 18 June 2016.

The purpose of the Directive is to protect the rights of the posted workers throughout the EU to ensure they have a core set of rights in the host member state and are entitled to equal treatment with nationals in terms of access to employment, working conditions and all other social and tax conditions. These rules aim to prevent service providers abusing the advantages of the free movement of service within EU.

A key part of this Directive is for the member states to put in place effective cross-border communication and closer cooperation; and find the appropriate level of controls and penalties.

Based on the Directive, the member states should set the following obligations for the service provider:

- Inform the respective authorities about the provision of services including:
  - name of the company,
  - number of assigned employees,
  - assumed period of assignment,
  - address where the services will be provided, and;
  - type of services.
- To retain the documents, including:
  - copy of the employment contract of the posted worker,
  - payslips,
  - attendance sheets,
  - evidence of working hours,
  - documents confirming the payment to employee of salary etc.
- To determine the person who will closely cooperate with the authorities and person which can enter into collective bargaining in the host country.

The member states are also required to ensure either the posted workers are paid all unpaid salary or they are refunded all incorrectly withheld taxes and social charges or excessive costs related to these payments.

All the above measures are designed to assist the respective authorities to ensure a posting is a genuine assignment, i.e. whether the assigning company is economically active in the host member state (and particularly to make sure that this company does not only provide administrative support) and whether the working activities of the posted worker are temporary only. Based on verification of the situation, the authorities will also be able to check if all related obligations (tax, administrative, labour law) are fulfilled correctly.

Most of the EU countries have begun to introduce the majority the new rules, however, some countries have delayed implementation due to differing interpretations of some of the new rules.

How can Mazars help?

Given this uncertainty, if you are an employer who assigns employees to provide services abroad in another EU member state, you may find it beneficial to review your obligations in the respective countries. Otherwise, you may be exposed to unnecessary risk of being non-compliant with the rules and face unexpected penalties. In case of any questions, please contact your local advisor or Lenka Stöhrová (lenka.stohrova@mazars.cz, +420 224 835 813).

TEMPORARY EMPLOYMENT IN BELGIUM

Belgian wage withholding taxes as from the first day?

A (Belgian) employer should, in principle, withhold Belgian wage withholding taxes (if applicable) on the salary of an employee and transfer these to the Belgian tax authorities. However, for (regulated) temporary employment agencies (or interim agencies) in Belgium there were some uncertainties with respect to who should withhold and administrate cooperation through the Internal Market Information system (the IMI Regulation).
transfer the wage withholding taxes (if they are applicable). The Minister of Finance has recently clarified this.

**Situation**

A foreign temporary employment agency (with a license in Belgium for the temporary employment sector) supplies employees for a period of e.g. 2 months to Belgium to work under the authority and supervision of the Belgian customer. The main question is whether the foreign temporary employment agency should withhold and transfer the Belgian wage withholding taxes to the Belgian tax authorities and from when.

**Taxable in Belgium or not?**

It should first be determined whether or not the temporary employees are taxable in Belgium in case they work in Belgium. In this respect one should verify article 15 (and especially paragraph 2: the so-called 183-day rule) of the OECD-model convention specifically for the country involved, which mentions which state is authorised to levy taxes on the income of the employee. One of the 3 conditions of this 183-day rule is to understand who is the “employer” of the temporary employee. Therefore the factual situation should be verified.

The Belgian tax authorities consider the factual employer as the entity which benefits from the duties carried out by the temporary employee, which bears the risk and the responsibility of the duties performed, and gives the instructions to the temporary employee.

In the situation of temporary employment the factual employer is the customer of the temporary employment agency, whereas the temporary employment agency is only the formal employer.

As a consequence and assuming the customer is a Belgian company, the so-called 183 day rule is not applicable since the salary is borne by a Belgian employer resulting in a taxation of the salary in the work state.

Also based on the Belgian internal tax law this income is effectively subject to the Belgian wage withholding taxes because a Belgian establishment exists (i.e. the temporary employment agency supplies employees for at least 30 days in a period of 12 months).

**Who needs to withhold and transfer the Belgian wage withholding taxes**

The Belgian wage withholding taxes are an advance of the final income taxes, which should be transferred to the Belgian tax authorities. The monthly withholding of these taxes through the payroll and the (monthly/quarterly) transfer to the Belgian tax authorities is (in principle) the responsibility of the employer.

In this respect it is important to determine which “employer” should withhold and transfer the Belgian wage withholding taxes to the tax authorities.

The Belgian Minister of Finance has now confirmed that the temporary employment agency (and not the factual employer) should withhold and transfer the wage withholding taxes to the Belgian tax authorities in case the (foreign) temporary employment agency has a Belgian establishment.

Most of the foreign temporary employment agencies should withhold and transfer wage withholding taxes to the Belgian tax authorities, as from the first day of supplying employees to Belgian customers.

Please note that in case no wage withholding taxes are withheld and transferred to the Belgian tax authorities fines and late payment interest will in principle be due. This might also have consequences for the temporary employment agency’s license.

**How can Mazars help?**

If you would like more information about the Belgian wage withholding tax obligations (especially related to temporary employment agencies) or you want an analysis of your situation, please contact Stijn Sablon (Stijn.Sablon@mazars.be or +32 (0)9 265 8320).
RESEARCH & DEVELOPMENT IN ROMANIA

With effect from 16 September 2016, Romanian employees and secondees to a Romanian company can benefit from a Personal Income Tax (PIT) exemption for salary income arising from Research and Development activities (16%).

In order to benefit from the PIT exemption, the employees and secondees should meet several conditions. The activities conducted by employees and/or secondees should be reflected in the Research and Development project, based on the job position, level of degree and activities developed. The PIT exemption only applies to income derived from Research and Development projects, within the budget assigned for salary income. The obligation to check that the eligible conditions are met resides with the employer and, in the case of a secondees to a Romanian company, with the secondee.

The eligibility Research and Development activities include applicative-industrial research, experimental development, test activities and technological development. Activities such as quality or quantity control, testing and analysis are excluded.

The Romanian authority that can validate the application of Research and Development projects for which the PIT exemption can be granted is composed of experts enrolled in the Experts Register on Areas of Research and Development. The employees, employers and the secondees can ask the group of experts whether the activities developed by them are eligible for the PIT exemption.

How can Mazars help?

Mazars Romania can assist you with reviewing the qualifying activities and the other eligibility criteria for Research and Development activities. For more information on this topic, please contact Edwin Warmerdam (Edwin.Warmerdam@mazars.ro, +40 31 229 2600+) and Claudiu Ionita (Claudiu.Ionita@mazars.ro, +40 31 229 26 00).

INCOME TAX REFORM IN SLOVENIA

The recent amendments of the Personal Income Tax Act may, inter alia, impacts taxation of expats.

The key considerations are reduced tax burden of income exceeding 1.6 times the average salary in Slovenia, determination of tax residency status, and tax exemption of bonuses paid for business performance.

The amendments to the progressive income tax scale will affect individuals whose annual net tax base exceeds EUR 20,400 (monthly net tax base of EUR 1,700). An additional tax bracket is added between the current 3rd and 4th tax bracket at the annual net tax base between EUR 20,400 and EUR 48,000 (monthly between EUR 1,700 and EUR 4,000) with tax rate of 34%. At the same time the income tax rate of the current 4th tax bracket is reduced from 41% to 39%. Accordingly, tax-equalization and hypothetical tax calculations will have to be adjusted where necessary.

Determination of tax residency status will be changed as well. Individuals that are considered to be tax residents of Slovenia because of residential ties laid down in domestic law, but at the same time tax residents of another state according to ‘tie breakers rules’ from the double tax treaty, will be treated as tax nonresidents of Slovenia for domestic law purposes as well. Accordingly such an individual will in general no longer be entitled to tax allowances in Slovenia.

Under certain conditions a part of payroll referring to business performance or comparable foreign income will be tax exempt up to the amount of 70 % of the average salary in Slovenia. It should be paid out once per year to all of entitled employees at the same time and it should be laid down by an employer's general act or applicable collective agreement. Entitlement to the bonus should be provided equally for all employees.

Under certain conditions, the reimbursement of expenses for paid premiums for an individual health insurance policy with medical assistance abroad will be tax exempted. The amendments listed above are applicable for income received from 1st of January 2017 onwards.
How can Mazars help?

If you want to know more how the recent income tax reform affects your employees in Slovenia, please contact your local advisor, Jure Mercina (Jure.Mercina@leitnerleitner.si, +386 1 563 67 77). LeitnerLeitner is a Mazars correspondent firm in Slovenia.

THE US – HUNGARY TOTALISATION AGREEMENT ENTERED INTO FORCE

The Social Security Agreement between Hungary and the U.S. (“Agreement”), eagerly awaited by many, has finally arrived. After closing a dragged bilateral liaising process, the Agreement entered into force on September 1, 2016.

The main purpose of the Agreement is to eliminate dual Social Security coverage by way of providing a modern legal framework and to simplify the coordination and the situation of numerous assignees.

The Agreement settles the social security situation of private individuals who are subject to the social security laws of one of the contracting parties in the case they stay or live in the territory of the other contracting party. Based on the provisions of the Agreement, it can easily be identified in which contracting state the individual is deemed to be insured, from which country they are entitled for pension or survival pension payments. Moreover, the Agreement also regulates the social care of persons with a reduced working capacity from a Hungarian point of view.

For interstate economic relations, regulation of working performances, with special regard to local employments or assignments to the other contracting state, is immensely important. As a main rule, the regulation of the contracting state in which the person carries out its work performance prevails. However, in the case of assignments, self-employment or entrepreneurship, there is an option for staying insured in the home country if the person in question possesses the relevant social security certificate issued by the competent authority of the home country.

Once a certificate is obtained, the person can be exempted from social security contributions in the host country up to 5 years. The 5-year period should be calculated as of September 1, 2016 regardless of the actual commencement of the assignment.

Regarding benefits and specific issues of pension insurance, the Agreement pays special attention to the compensation of individuals, who are not entitled to pension benefits due to the fact that they did not accumulate sufficient insurance contributions in either of the contracting states. Such persons may relieve as based on the Agreement, the periods of insurance coverage shall be cumulated (including periods before the Agreement entered into force), by which the persons will be entitled for benefits in accordance with the principle of ‘pro rata temporis’, on a time proportional basis.

How can Mazars help?

If you would like to know more about social security issues arising out of Hungarian assignments or Hungarian-based working performance, please contact your local advisor, Sándor Szmicsek (sandor.szmicsek@mazars.hu, +3618850203) or Nóra Juhasz (nora.juhasz@mazars.hu, + 3618850252).

SERBIA’S EMPLOYMENT OF FOREIGNERS LAW

The Serbian Parliament adopted a new Law on employment of foreigners (the Law) in order to find a balance between necessity for employment of specialized foreign workers and obligation to protect the domestic workforce. According to the Law, engagement of foreigners in Serbia is conditioned by obtaining temporary residence and appropriate work permits. Two main types of work permits are envisaged by the Law: work permit for employment and special work permit.
Precondition for obtaining any type of work permit is temporary residence.

**Work permit for employment**

One of the key novelties in the recently adopted Law is the obligation of a domestic entity employing a foreigner to submit the application for recruitment to the National Employment Service (NES), after NES conducts labour market tests to verify if there are any local candidates with required qualifications registered as unemployed.

In the application, the domestic employer has to explain the reasons for employment of foreigner in detail.

This condition is satisfied if the domestic employer states that the foreigner has special knowledge and skills which cannot be found in Serbian labour market, so this type of work permit is usually requested for mid to upper level management and C-suite positions. Obtaining this type of work permit implies the conclusion of a local employment agreement. Local employment carries more commitments for a domestic employer such as the obligation to calculate and pay salary tax (10%) and social security contributions, in the same way as for locally employed workers.

**Work permit for special cases**

The work permit for special cases is another way of engaging a foreigner in Serbia. This type of work permit can be issued to seconded foreigners as well as to management staff. For work permits for seconded workers no local employment agreement is required. Therefore, the companies involved can conclude an international assignment agreement in which all relevant rights and obligations of both companies will be stated. The work permit for management staff is yet another type of work permit, which is reserved for executives, managers and specialists within the company. Hence, when the foreigner is seconded to the domestic entity, branch or representative office, the foreigner can be engaged as key personnel under the condition that the foreigner is engaged for the same work position as abroad.

Both types of seconded workers receive compensation for performing work in the territory of Serbia. Therefore, they are obliged to pay tax for received income in Serbia, as the source country.

If Serbia has concluded a double taxation treaty with the relevant country, favourable income tax rates can be applied and the amount of tax paid can be used as a credit in the country of residence. Otherwise, if there is no double taxation treaty concluded, the provisions of Serbian Personal Income Tax will be applied.

**How can Mazars help?**

Besides tax issues, one of the problems in practice is the incompatibility of the foreign education systems with Serbian and professional titles, leaving a lot of space for development in this area. If you want to know more about this please contact your local advisor or Jelena Knežević (Jelena.Knezevic@leitnerleitner.com, +381 11 6555-111). LeitnerLeitner is a Mazars correspondent firm in Serbia.

**DATA PROTECTION REGULATION**

On the 6th of April 2016, the EU parliament adopted the new General Data Protection Regulation (GDPR). This regulation will be implemented in all the EU member states by 25th May 2018 at the latest, including the United Kingdom after the Brexit. The GDPR will have a broad and significant impact on organizations, data processing systems and probably in some cases on existing business models based on the use of personal data. In case of non-compliance fines can be up to 4% of global annual turnover or € 20 million whichever is greater. In The Netherlands part of the GDPR regarding the mandatory data breach notification is already in effect since the 1st January 2016. Non-compliance in the Netherlands of the data breach notification regulation can result in a fine up to 10% of the annual turnover or € 820,000, whichever is greater. Since 2013, for governmental organizations in the Netherlands so called Privacy Impact Assessments regarding system changes are mandatory.

The GDPR is based on the privacy principles described in article 8 of the European Human Rights Treaty and the latest definitions of informational privacy principles as defined by the Organization for Economic Development and Cooperation (OECD) in 2013.
Each digital collection or processing of personal data can be seen as an infringement of the fundamental human right regarding privacy. Organizations have to implement measures to reduce the risks of digitalization of personal data.

Each organization that is responsible for the processing of personal data (the Data Controller) should demonstrate that the processing of this data has a clear and limited purpose. The processing of personal data is only allowed with the consent of the natural person involved. To guarantee this ability the Data Controller is according to the GDPR obliged to maintain a register of all the personal data processing.

Even if IT systems and data processing are outsourced to IT providers (Data Processors) the responsibilities for the Data Controller will be the same, also for the protection and security of the personal data. In fact the GDPR requires in the case of outsourcing of IT that the Data Controller as a specific agreement in place (Data Processor Agreement) and periodical audits are performed.

A brief overview of the most significant requirements of the GDPR are:

- The data controller has an actual register available of all the personal data processing operations. This register should be available for the Data Protection Authorities. All processing of personal data is documented and transparent;
- The Data Controller should guarantee on a permanently basis the security of personal data and that personal data is only accessible for authorized functionaries on a basis of "need-to-know";
- Security of systems and data should be on a level of the latest available technological standards. This implicates technical measures like logging, intrusion detection, encryption, periodically penetration testing, et cetera;
- Systems are designed on a basis of “Privacy by Design”. The use of privacy enhancing technologies and anonymizing personal data is mandatory where possible;
- The use of pseudonymization is mandatory, especially to reduce the risk of profiling by third parties and the abuse of digital identifiers to prevent identity theft;
- Processing and distribution of personal data should be based on the principle of data limitation and limitation of use;
- Personal data may not be stored longer than is necessary for the specified limited and specific purpose;
- It is mandatory to perform periodically security and privacy audits;
- In case of system changes or changes in use of personal data it is mandatory to perform a Privacy Impact Assessment. Privacy Impact Assessments are part of change management and system development;
- In certain circumstances depending on the size of the organization and the sensitivity of the personal data the appointment of a Data Protection Officer is mandatory;
- In case of a data breach the Data Protection Authorities have to be informed within 72 hours. The individuals (subjects in the databases) who can be negatively affected by the data breach need also to be informed immediately;
- The Data Controller should take measures to guarantee the availability and quality of the personal data;
- Users or subjects available in the databases, have the right on consent, inquiry and correction of their personal data in case of errors.

Conclusions

The GDPR will have a significant impact on organizations and IT systems. Ascertained compliance with the GDPR will become a constraint to take part in the digitalized society and economy.
It is about human rights and reputation. To be compliant it will not be enough to change governance and procedures. Technical systems and IT architectures need also to be compliant. Often it can be seen from the outside through the internet if an organization or system is compliant or not.

Cybersecurity is a constraint to being compliant. Privacy compliance is not about legal documents. It is about the IT reality. The GDPR will also redefine the business and profession for IT audit.

**How can Mazars help?**

If you want to know how GPDR will impact your organization and IT systems please contact your local advisor or Jan Matto (jan.matto@mazars.nl, +31 88 2771 500).
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