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PERSONAL INCOME TAX AND INSURANCE ALERT

Updates on Personal Income Tax ("PIT") and compulsory insurance implications for expatriates working remotely in Covid-19 situation

05 May 2020

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Executive Summary

Current context

The global outbreak of Covid-19 has impacted deeply the current business working process. With the implementation of local and international travel bans and compulsory quarantine requirements, an increasing number of foreign expatriates cannot physically come to Vietnam to perform their Vietnamese assignment. Instead, these "stranded expatriates" will need to work in a country which is not their usual place of work, i.e. their original home country or another safer working location (neither their home nor host country) to avoid the Covid-19 crisis.

It is specially noted that on 03 April 2020, the OECD Secretariat issued the guidance on Analysis of tax treaties and the impact of the Covid-19 crisis, taking into account the various tax issues on the international remote working arrangements.

From both Vietnamese and international tax perspectives, there have been a variety of implications from PIT and compulsory insurance requirements that need to be addressed to in order to manage the global mobility process smoothly during this period of time.

What Enterprises should do ?

- Closely monitor the tax residency status of your expatriates and take appropriate actions with regards to the related tax filing obligations based on their Vietnamese tax residency status;
- Be aware of where your "stranded expatriates" are currently staying to consider international tax treaty (if applicable); and
- Get connected with your global HR colleagues to monitor the situation.

What Deloitte can support ?

- Provide analysis from tax and compulsory insurance requirements for your expatriates' actual cases (taking into account the specific home & host country situations);
- Propose appropriate arrangements/ methods for Enterprises on how to avoid double individual taxations and mitigate the Permanent Establishment risks in other countries; and
- Propose suggestions on international workforce planning during the Covid-19 crisis time.

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Summary of typical PIT and insurance issues

Change in the individual's tax residency status

- As a result of travel restrictions, the expatriate's tax residency status in Vietnam might change compared with the original residency assessment, i.e. from tax residents to tax non-residents.
- Alternatively, the expatriates might also become tax residents of other foreign countries and dual tax residency is likely to exist (tax residents of both Vietnam and other countries). In such case, careful considerations from international tax treaty guidance need to be taken into account to allocate the taxing rights among countries, i.e. applying the residency tie- breaker rules.

Compulsory insurance obligations during remote working period

- In case the expatriates still maintain labor contracts with Vietnamese employers, then the social and health contributions are still required (with the exception of social insurance exemption for the case of internal transfer expatriates).

Deadline extensions during remote working period

- Currently, there have not been any extensions for PIT and compulsory insurance filings/ payments for expatriates working remotely. All deadlines for tax and compulsory insurances are still required to be strictly complied with.

Possible tax implications for Vietnamese tax non-residents

- When the expatriates are treated as Vietnamese tax non-residents as under the local Vietnamese regulations, they would be subject to tax on their income derived from performing works related to Vietnam.
- Exemption under Double Tax Treaty ("DTT") could be arguable to apply from Vietnamese perspectives since the principle under DTT is focusing on where the employment is exercised rather than where the work is sourced from as under Vietnamese regulations.
- Complex tax issues might happen among countries of the expatriate's current residence and the countries where they work before Covid-19 with regards to the taxing rights and allocation of taxable income. OECD is working with countries to mitigate the new tax burdens in this regards.

Permanent Establishment ("PE") implications

- As the expatriates might have to work in a country which is not their usual place of work, such remote arrangement during Covid-19 might create a PE for the employers in such unusual working countries and thus, trigger new filing requirements and tax obligations.
- In such case, similar to the dual tax residency status, international tax treaty needs to be applied to determine the PE status of the employers in such countries, i.e. following OECD's guidance.

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