KPMG

Tax Corner

Magazine / April 2015

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Is your organization BEPS-proof?

We are at the beginning of 2015 and it is no exaggeration to say the work of the OECD on BEPS (Base Erosion and Profit Shifting) is running at full speed. The BEPS action plan consists of 15 points designed to help governments and tax authorities prevent corporations from taking advantage of rules in order to pay little or no tax and to shift taxable income away from countries, where the added value has been created. A significant number of (draft) reports have been published in the meantime.

Corporations are expected to operate differently today and in the years to come than they may have done in the past.

It is still a work in progress with numerous details that need to be refined before the OECD sends its final recommendations to its members in December 2015. Afterwards, each government will have to determine how they will implement its existing rules, conferring with the private sector to forecast the impact on the economy as a whole. This must occur before any new legislation is proposed, debated, and enacted. In some countries, years may pass before reforms become law. Nevertheless the clock cannot be turned back. Some countries (e.g. France, Ireland, The Netherlands, Spain and Switzerland) have not waited for the final outcome of the OECD recommendations and have adopted BEPS changes in laws. Furthermore, the mindset of tax inspectors during tax audits has changed. The same applies to the mindset of the public in general. Corporations are expected to operate differently today and in the years to come than they may have done in the past.

It is crucial that company groups that are operating and structured as a multinational prepare themselves to cope with the various BEPS-initiatives. Among the issues to be addressed and actions to be taken are the following:

- Revise the group structure and intra-group financing schemes in instances where hybrid financial instruments and hybrid entities have been implemented;
- Check whether the necessary basic elements (office space, tangible assets, and employees) are present and the people monitoring and controlling the important business risks are located in the countries where the value is being created. Discrepancies will emerge to the surface following the country-by-country reporting disclosures of the entire group structure and legal entity results (profits and losses) to all relevant tax authorities;
- Monitor the correct use of double tax treaty provisions;
- Reconsider the way business is being conducted in order to reassess the risks of deemed permanent establishments under the current circumstances;
- Map the tax planning arrangements that can be considered to be aggressive and estimate the impact, both internally and externally, if they had to be mandatorily disclosed;
- Re-examine the available transfer pricing documentation on its viability for the coming years; and
- Introduce a reporting system, enabling the group to monitor double taxation appropriately and to rely on tax treaties and relief procedures to eliminate double taxation.

KPMG is well-placed to act as your sounding board on whether you and your organization are BEPS-proof.

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Lump sum daily allowances: new list as from April 1, 2015?

Due to globalization, employees and executives are increasingly required to travel abroad for their work. During these business trips, they are confronted with additional expenses which are in principle at the charge of their employer or their company. We are talking here about food and drink, local travel costs by public transportation, taxi, and tips.

These costs can be reimbursed upon presentation of an expense report, but that involves a lot of administrative hassle. To avoid this administrative burden, it is possible to opt for a reimbursement of certain expenses on a lump sum basis. The question is: "What amount is acceptable for this allowance to be considered as a cost proper to the employer, which is not taxable for the employee, and which is a fully tax-deductible as a business expense for the employer".

Acceptable lump sum allowances

The federal government service of Foreign Affairs publishes on a regular basis in the Belgian Official Gazette a list of acceptable lump sum allowances. The new list is expected to be published around April 2015. The lump sum allowances in this list are established per country and are deemed to cover the cost of meals and other "petty expenses," such as local travel costs, tips, and local phone calls. Hotel and travel expenses - except local travel - are not included and must be substantiated by the necessary information to justify the reimbursed amounts.

However, the tax administration does not accept these amounts for all employees and executives in the private sector, but only for those who work mainly on Belgian territory and have to travel abroad on a one-off or occasional basis, or even on a regular basis. Consequently, cross-border workers and self-employed individuals are excluded since business trips are part of their normal professional activities. They always have to prove the costs, even petty expenses, of their foreign business trips.

Only for short business trips?

At first, only business trips of a minimum of 10 hours and a maximum of 30 calendar days were eligible. However, the Belgian authorities confirmed in a circular letter of 10 October 2013 that foreign business trips lasting longer than 30 consecutive days are also eligible. The amountof a lump sum daily allowance is lower for business trips of a longer duration than for shorter trips.

Based on the administrative instructions for the fourth quarter of 2013, it appears that the social security authorities accept the same reference amounts if the remuneration that the employee or executive receives for the days worked abroad is subject to Belgian income tax.

So within the limits set by the federal government service for Foreign Affairs, a lump sum daily allowance can be paid to employees and executives who are residing abroad for their work, without the need of submitting any detailed supporting evidence. The lump sum daily allowance is then deemed to be considered as a reimbursement of a cost proper to the employer, which is exempt from Belgian income tax and social security contributions for the individual, and which is fully tax-deductible as a business expense for the employer.

This article was written by Ilse Copers (Supervising Senior Tax Adviser).

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Transatlantic Trade and Investment Partnership: where are we?

In 2013, the European Commission and the United States (US) began negotiations on a Transatlantic Free Trade and Investment Treaty (TTIP). It was intended to become the flagship of European trade policy and the new standard for world trade. What is left today of those sky-high expectations?

The European Commission has not yet come up with a convincing answer to this growing criticism.

Facilitation of trade

At present European goods can only be admitted to the US market after completion of import formalities and provided that they comply with American product and safety rules. Since the import duties between the two countries are particularly low, European companies perceive the non-tariff barriers as an obstacle to being competitive on the US market. The following points are on the European wish-list:

- common standards in the chemicals and automotive industry;
- mutual recognition of the 'QMS' audit system and the introduction of a *'Unique Device Identification System'* for medical devices;
- cooperation on labeling, product safety, and testing methods for textile products.

Liberalization is also required in the field of foreign investment and public procurement, so that European and American firms can compete on an equal footing. The ultimate aim of the TTIP is to eliminate the barriers to trade that exist between the EU and the US as much as possible. According to the European Commission, a successful agreement would result in economic growth, more jobs, and better public service provision.

Increasing criticism

As the TTIP negotiations have progressed, opposition has grown, both from public opinion and from organizations in civil society. They often ask the following critical questions:

- will SMEs be able to derive the same optimum benefit from this agreement as multinationals?
- will we have to allow genetically modified organisms (GMOs), chlorine chickens and hormone meat onto the European market?
- will Turkey want to revise the Customs Union with the EU if the TTIP becomes a reality?
- will companies be able to haul the authorities in front of an international arbitration panel, under certain circumstances, to demand compensation?

The European Commission has not yet come up with a convincing answer to this growing criticism.

Conclusion

Whether the US and the EU will reach a framework agreement quickly is anybody's guess. We will probably know more by the time the US presidential election campaign starts...

This article was written by Frederik Cappelle (Senior Tax Adviser).

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