Tax Newsletter

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Salary split: "opportunity or pitfall?"

- An employee or Director who is put on a salary split receives a salary in at least two countries, generally the Residence State and another Working State.
- In his Residence State this person needs to report his or her worldwide income. In order to mitigate double taxation, Belgian tax law is featured by the exemption with progression reserve if the income is derived from a country with which Belgium has concluded a tax treaty. In essence, this is a prorate rule: the higher the foreign-source income compared to worldwide income, the lower the Belgian personal tax cost.
- Being taxable in at least two countries, in each country the person will be subject to lower progressive personal tax rates compared to a situation where the entire salary would only be taxable in one country. Hence, the person will end up with a higher net-in-hand salary.
- An employee is taxable in at least two countries if (i) he concluded an employment contract with an employer in the Residence State and with an employer in a Working State, (ii) if the employer cross-charged a part of the salary to a party based in a Working State or (iii) if the employee has physically spent more than 183 days in a Working State, either during a calendar year, either during 12 consecutive months. The Working State will thus tax the employee in function of the number of days physically spent over there. The tax authorities may ask you to demonstrate your actual physical presence in the Working State.
- A Director is taxable in at least two countries if he has a mandate with a company in another country, regardless of the number of days physically spent there. However, this should be a Board room function whereby the company at hand also has sufficient qualifying middle management to be able to implement the strategic Director's decisions.
- Be careful: the employee or Director should be exposed to double taxation in order to be eligible for double taxation relief in Belgium. The actual wording of the tax treaty will make it clear whether the salary should be taxable in the Working State or whether it should be (effectively) taxed.
- You should also pay careful attention to the appropriate social security treatment of the salary. Within the EU an Ordinance will determine in what EU Member State social security is due. However, Belgium has also concluded social security agreements with some non-EU countries, e.g. the US Totalization Agreement and the bilateral agreement with India.
- Be careful: in some countries personal social security contributions are not tax-deductible which increases the global parafiscal cost.