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United Kingdom – Amendments Make Important Alterations to Tax Treaty with Canada

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Her Majesty's Revenue & Customs (HMRC) in the United Kingdom has confirmed that a protocol amending the double taxation agreement between the U.K. and Canada has been agreed[1]. The amending protocol makes some changes to the treaty that will be significant for employers and their Canadian resident employees who work in the United Kingdom.

The protocol was signed on 21 July 2014, and will come into force once the two countries have exchanged diplomatic notes and completed their necessary internal procedures to implement the agreement.

Why This Matters

Most importantly, the dependent personal services (employment income) article – which many employees and their employers rely on to claim exemption from U.K. taxation – is being amended and this will result in reducing the availability of relief.

The amended treaty will require taxpayers to consider whether they have been present in the other country for 183 days during any 12-month period starting or ending in the fiscal year in question, as opposed to 183 days in the calendar year.

Employers and their assignees will need to take into consideration the new rules for future assignments.

Key Aspects of the Protocol – Dependent Services, Directors' Fees, Exchange of Information, Remittances

This newsletter covers the provisions of the treaty and protocol that may concern international assignees and their employers.

Dependent Services Article and Directors' Fees

Under the current treaty, remuneration paid to a resident of one country for services performed in the other country can be exempted from tax in the other country where the remuneration is paid by an employer who is not a resident of the other country and where the individual is not present in the other country for more than 183 days in the calendar year. This treaty is unusual amongst U.K. treaties in that the number of days in the U.K. during the calendar year is considered when claiming exemption from U.K. taxation. U.K. treaties usually consider the U.K. tax year from 6 April to 5 April.

The amended treaty will require taxpayers to consider presence in the other country during any 12-month period starting or ending in the fiscal year in question. For example, consider an employee who worked for a non-U.K. resident employer and was present in the U.K. only from 1st September 2013 to 31st March 2014. Under the "former" provision, the employee would meet the old 183-days rule because in each of the calendar years

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2013 and 2014, the employee was in the U.K. for less than 183 days. Under the amended treaty, the employee would not meet the 183-days rule because the period 1st September to 31st March is a period greater than 183 days that falls during a 12-month period which starts or ends during the 2013/2014 fiscal year and the exemption can no longer be claimed. This brings the treaty in line with the OECD model treaty and other U.K. treaties.

There will continue to be the standard provisions prohibiting relief where costs are borne by or recharged to an employer resident in the country where the services are performed.

The current treaty states that "In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were that of an employee in respect of employment, and as if references to 'employer' were references to the 'company'." Consequently, the above change to the 183-days rule will also affect the availability of treaty relief in respect of the remuneration of a director.

Exchange of Information and Assistance with Collection of Taxes

The exchange of information article is being widened and will allow for information held by institutions such as banks or similar institutions to be exchanged. Representatives from one state will also be allowed access to the other state to interview a third party or examine books or records although this must be with the consent of that third party.

A new article is also to be inserted into the treaty which provides for one contracting state to give assistance to the other state "in the collection of revenue claims." The term "revenue claims" is defined as an amount which is owed in respect of any kind of tax that is collected by or on behalf of one of the states.

The two countries will agree how this article will be enforced and will help ensure that similar levels of assistance are provided between them. A request for collection assistance will need to be made by one competent authority to the other (the minister of national Revenue in Canada or the Commissioners of HM Revenue & Customs in the U.K.). The collection of monies owed in the other country will not take precedence over the collection of monies owed in the first country.

Remittance Basis Clause

Many U.K. treaties limit relief when income is taxable only if remitted to the U.K. and that income is not remitted. This treaty already contains such a remittance clause and this is not being amended.

Next Steps

The amendments contained in the protocol will enter into force following the exchange of diplomatic notes between the two countries and ratification by both countries.

Footnote:

1 See: http://www.legislation.gov.uk/ukdsi/2014/9780111121801 .

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Breakfast Seminar – Implications of Devolved Scottish Tax Powers

The income tax treatment of ‘Scottish Taxpayers’ is changing. All businesses with employees in Scotland should be aware of these developments and the timetable for change.

KPMG would like to invite you to our Breakfast Briefing where we will discuss the implications of prospective changes to the income tax treatment of ‘Scottish Taxpayers’.

Date:

*** Friday, 21 November 2014**

Time:

*** 8:30am-9:00am : Registration and Refreshments**

*** 9:00am-10:00am : Presentation**

*** Followed by discussion**

Venue:

*** KPMG, 15 Canada Square, London, UK E14 5GL**

To register, please contact Fredrica Cremore at Fredrica.cremore@kpmg.co.uk

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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