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日系企業各位

25 February 2013

平素より弊社業務にご理解を賜り厚く御礼申し上げます。

以下、Crisis levyに関する動向につきましてご案内申し上げます。詳細は英文をご参照下さい。

・Crisis levyとして、2012年通年における所得が15万ユーロを超える部分に対して、16%の追徴税が雇用者(会社)に対し課されますが、この追徴分については2013年3月の賃金税申告(同年4月末申告期限)に含まれる必要があります。

・同措置は財源確保(約5億ユーロ)を目的とし、2012年4月26日に合意、同年6月4日法案提出、7月18日に施行されており、2012年通年の所得に遡及適用ということになります。

・我々の見解では、この遡及適用は欧州人権条約における財産保護権に反しており、予算上の理由のみでは遡及適用は不可という判例があります。

・従って、Crisis levyに対する異議申し立てを申請することをお勧めするものです。また我々もこの遡及適用が法的に有効であるかの照会を行う予定です。

・異議申し立てについては、EYで代行も可能ですし、御社において行うこともできます。申し立ては納税後(2013年4月末納付期限)6週間以内に行う必要があります。

・現在のところ、オランダ税務当局がこれら異議申し立てをどう扱うかについては明らかではありません。なお、オランダ法上、「集団的異議申し立て」の扱いが規定されており、オランダ税務当局はいくつかのケースをピックアップして裁判に持ち込むことができ、回答が出るまでの間は他の異議申し立ては取り下げの扱いとなります。現在、この措置が取られるかどうかについては明らかとなっておりません。

ご不明な点などございましたら担当者までご連絡ください。

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Crisis levy 16% - violation of the European Convention on Human Rights?

With respect to the Dutch additional one-time crisis levy, please be informed as follows.

In April 2013, the wages taxes for the period march 2013 should be paid to the Dutch tax authorities. In this amount, also the amount of the crisis levy over 2012 should be included in the payment. As mentioned before, the crisis levy is an additional one-time tax of 16% over the taxable wages in excess of EUR 150,000 over 2012. Any possible bonus or benefits provided to employees should be included in this amount. The crisis levy is a wage tax which is borne by the employer. It should be noted that employees at an individual level should not be confronted with the crisis levy.

The crisis levy is part of the Dutch 2013 Budget agreement that was concluded on April 26, 2012, and was announced on that same day. According to this Budget agreement, it was estimated that the crisis levy would raise an amount of approximately EUR 500 million. On June 4, 2012, the legislative proposal was provided to Dutch parliament and on July 18, 2012, the legislative proposal was enacted.

The interesting part of the crisis levy is that it has effect retroactively. The crisis levy of 16% should be calculated over the taxable wages over the entire calendar year 2012, so including over the wages earned before the moment the crisis levy took effect (on July 18, 2012). In our view, this retroactive effect is in violation of the European Convention on Human Rights, to be precise, the right on protection of one's property. From case law of the European Court of Human Rights, it can be derived that legislation which is retroactive is not allowed if the only reason of that legalization is for budgetary reasons.

This seems to be the case with this crisis levy.

As the position could be taken that the crisis levy is therefore not legitimate, we recommend to file an objection to the crisis levy. We will also start one or more legal proceedings in which we will request clarification on the question whether the retroactive effect is legitimate.

In this respect, there are two possibilities:

- Ernst & Young can file a notice of objection on your behalf (i.e. on behalf of the employer);
- The other possibility is that you can file a letter of objection yourself. The letter of objection should be filed within six weeks after the payment over the amounts for wages taxes due in March 2013.

At this moment, it is not yet clear how the Dutch tax authorities will handle the letters of objection. We note that an arrangement is in place under Dutch tax law that allows for 'handling of mass filing of objections'. Under this arrangement, the Dutch tax authorities can pick some cases and bring these to court. The other letters of objection will then be withheld until the question is answered. At this moment, it is also not yet known if the Dutch tax authorities will actually apply this arrangement.

Should you have any questions, feel free to contact us.

Best regards,
Japan Business Services
Ernst & Young, Amsterdam

Ernst & Young Accountants LLP

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