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EXPATRIATE NEWSLETTER

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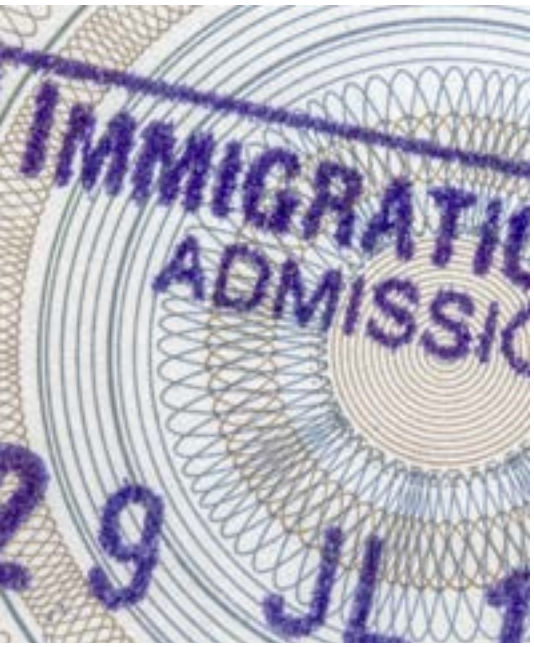
GLOBAL IMMIGRATION SERVICES

A GLOBAL VISA AND MOBILITY APPROACH TO MEETING CLIENT EXPECTATIONS

In an ever shrinking world, with global business and the movement of goods and people across borders, global immigration services are becoming increasingly important to multinational companies. Having the right advisor in place helps your business meet the needs of your workforce to get the right visa granted at the right time, while ensuring compliance and avoiding financial penalties and reputational damage in cases of breach.

Tax authorities have placed great emphasis on the accurate tracking of business visitors for a number of years now. There is an increasing expectation that companies are fully aware of their employees whereabouts to ensure they are compliant across a number of areas, from personal income tax and social security to corporate establishment issues to meeting their HS&E obligations.

Having the correct visa documentation in place has always been a prerequisite for travel; historically however, especially for shorter trips, some travellers have utilised visa waiver programmes (such as ESTA for entry to the US) to work in overseas locations. This has largely gone under the radar but immigration departments are now cracking down on this. They will scrutinise the paperwork in place for travel and will refuse entry where this is not in order.



BDO comment

It is imperative that businesses are aware of their legal requirements when employees are working cross border. Immigration authorities are clamping down on 'unauthorised' travel and will refuse entry to employees who do not have the correct documentation in place. Some countries actually require up front notification of travel, utilising online systems to track the amount of time overseas visitors are spending in their location.

If you would like more information or to discuss this in further detail, please contact the below.

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EDITOR'S LETTER

The BDO Expatriate Newsletter provides a brief overview of issues affecting international assignees, predominantly, but not exclusively, from a tax and social security perspective.

This newsletter brings together individual country updates over recent months. As you will appreciate, the wealth of changes across multiple jurisdictions is significant so to provide easily digestible information we have kept it to the key developments that are likely to affect your business and international assignees.

For more detailed information on any of the issues or how BDO can help, please contact me or the country contributors direct.

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ARGENTINA

SOCIAL SECURITY REFORM

As from 1 February 2018 the new Law 27.430 becomes effective, establishing reforms to social security issues. The highlights of said law are the following:

– The percentage of employer contributions will be gradually unified on the payroll assigned to the subsystems of Sistema Único de Seguridad Social for all employees at 19.50% according to the following Schedule:

Employer Contributions Rate					
Employer Classification	From 1 February 2018	To	To	To	From
	31 December 2018	31 December 2019	31 December 2020	31 December 2021	1 January 2022
Decree 814/2001, Article 2, Point a)	20.70%	20.40%	20.10%	19.80%	19.50%
Decree 814/2001, Article 2, Point b)	17.50%	18.00%	18.50%	19.00%	19.50%

– It is established that from the base on which employer contributions are calculated, there will be a monthly deduction of ARS 12,000.00 for each employee. Its application will be gradual as per the following schedule:

Amount to be removed from the base to calculate employer contributions	From 1 February 2018	From	From	From	From
	to 31 December 2018	31 December 2019	31 December 2020	31 December 2021	1 January 2022
	ARS 2,400.00	ARS 4,800.00	ARS 7,200.00	ARS 9,600.00	ARS 12,000.00

Income tax – Fourth category – Period 2018

The Argentine Revenue Service (Tax Authority) established an increase in personal deductions for all workers who are in an employee capacity. This came into force as of January 2018.

It is to be noted that the above mentioned entity has extended the filing of the form F.572 web SIRADG (information on personal deductions) containing data corresponding to 2017, until 31 March 2018.

Additionally, the amount as from which the informative tax returns have to be filed by taxpayers (workers in an employee capacity) will be increased to ARS 1,000,000 and the due date for the personal tax returns corresponding to the period 2017 will be extended to 30 June 2018.

Digital payroll book

From 1 January 2018 the system for the Sealing of Labour Documentation has become digital for the Ciudad Autonoma de Buenos Aires (Autonomous City of Buenos Aires). This is created by resolution (SsTIC) 2623/2017, for all employers who have to keep labour documentation within the framework of the legislation and according to the activity performed in the City of Buenos Aires.

Implementation schedule:

a) Those employers who, as of today, carry the above-mentioned book in micro files format, will have to implement said modality as from 1 February, being the mandatory date to file the first book corresponding to January 2018.

b) Those employers who keep their records with mobile pages or manual books, with a payroll of 20 or more employees, will have to comply with its filing on 1 February (relating to January 2018).

c) Every month, upon sealing said labour documentation, the following should also be attached: the last form F931 (social security information) filed, Certificate of Registration before the ARS (tax authorities) and Prequalified Report (Informe Precalificado).

Those companies which, as of the date of implementation of said General Resolution, still have mobile pages to be used can utilise these until 31 March 2018. After this date they should adopt the new Digital Book system.

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AZERBAIJAN

LAW ON UNEMPLOYMENT INSURANCE

A new law governing unemployment insurance has been enacted in Azerbaijan as of 1 January 2018. It intends to create a sustainable mechanism for financing unemployment benefits and to relieve employers from the excessive burden of staff redundancy payments. It shall be noted that alongside the Law, the Labour Code of Azerbaijan has been amended to reduce the redundancy notice periods and the amount of severance payments.

The Law is applicable only to employees whose employment contract has been terminated due to the following reasons:

– Liquidation of the employer;

– Staff redundancy.

An applicant is only entitled to receive the unemployment insurance payments for 9 months within a consecutive 24 month period.

Insurance premium

The burden of insurance premium payments is split between employers and employees and is paid monthly to the Unemployment Insurance Fund as follows:

– The employer withholds 0.5% from each employee's gross salary and transfers this amount to the fund;

– The employer pays to the fund the amount equalling to 0.5% of the total gross salaries of all employees on its own expense.

Amount of benefit

The amount of unemployment insurance payment is conditional upon the employee's experience. Depending on experience, employees shall receive insurance payments as shown below:

Experience	Amount of Payment
3 to 5 years	50% of lost average monthly salary of employee
5 to 10 years	55% of lost average monthly salary of employee
More than 10 years	60% of lost average monthly salary of employee

Ex-employees in care of children are entitled to an additional 5% per child not to exceed 20% in total.

The allocated unemployment pay gradually reduces from starting from the 3rd month of unemployment as follows:

Months		Percentage
First 2 months	(1st and 2nd months of unemployment)	100 %
Subsequent 2 months	(3rd and 4th months of unemployment)	80 %
Following 2 months	(5th and 6th months of unemployment)	70 %

Upon expiration of the 6-month period, the applicant is entitled to reapply for the unemployment benefit to receive it for another 3 months. However, in this case the amount is limited to a minimum statutory salary, which is at present AZN 130 (approximately USD 76).

It is important to note that in any case the monthly unemployment benefit is capped by the amount of average monthly salary in the country.

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ECUADOR

COMPANIES INCOME TAX RATE

On 29 December 2017, the Law for the Reactivation of the Economy, Strengthening of Dollarisation and Improvement of Financial Management was issued, which establishes an increase in Income Tax rate for companies, corporate branches of foreign companies that are domiciled in Ecuador and permanent establishments of non-domiciled foreign companies, to which a 25% rate must be applied to the tax base.

The companies that have shareholders, partners, participants, constituents, beneficiaries or similar, that are resident or established in tax havens or in regimes of lower taxation, and that have a participation equal to or greater than 50% of the share capital, must apply a 28% income tax rate.

Likewise, where the aforementioned shares are less than 50% of the capital of the companies, a 28% tax rate will be applied to the proportion of the tax base of such shares.

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ICELAND

GENDER PAY REPORTING

Since 1961 Iceland has had legislation with the purpose of guaranteeing equal pay for men and women and laws banning employers from paying women less than men based on their gender as well as a comprehensive equality act in 1976 and 2008; however, men were still being paid more than women.

To address this, the Icelandic parliament passed a law in 2017 mandating that all companies and employers with 25 or more employees must be able to prove that men and women working for their companies enjoy equal wages and the same employment terms for the same jobs or jobs of equal value. The legislation requires companies to prove that they are paying men and women equally, by obtaining an equal pay certification using the equal pay management system standard IST-85.

The equal pay standard aims at the implementation of targeted and professional means of determining wages, active review and continual improvement of the execution of the equal wage policy within organisations/institutions. The equal pay standard was written in cooperation between Icelandic trade unions, the employers' confederation and the ministry of labour and finance. The standard is a set of rules and guidelines which analyses the pay structure within a company, and shows if men and women are paid equal wages for the same or equal value of work within the workplace or not.

An organisation that believes itself to fulfil these requirements can seek certification from a competent body. All the requirements of the equal pay standard should be integrated into the organisation's wage management. Guidance on use is provided through Annexes:

- Employers with 250 or more employees must implement the standard by 31 December 2018;
- Employers with 150-249 employees must complete the certification by 31 December 2019;
- Employers with 90-149 employees must complete the certification by 31 December 2020;
- Employers with 25-89 employees need to have undergone certification by 31 December 2021.

However, all state ministries need to have undergone certification by 31 December 2018, and state institutions and companies owned by the state with 25 or more employees need to undergo certification by 31 December 2019.

Employers are expected to renew their certification every three years.

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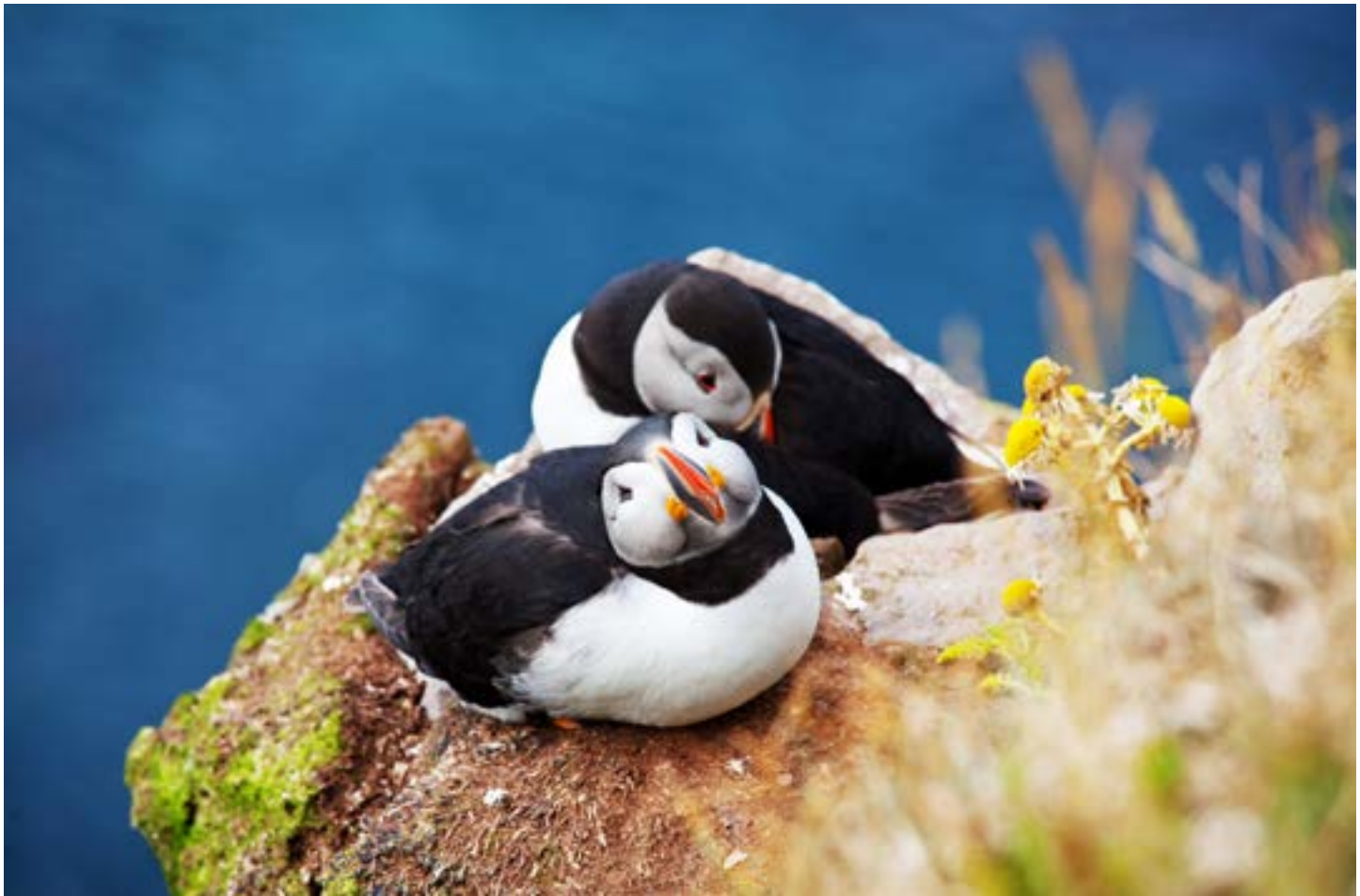

INDIA

TAX UPDATES

Linking of AADHAR with PAN

The Central Board of Direct Taxes (CBDT) has extended the timeline for taxpayers to link their Aadhar to PAN through to 31 March 2018.

Withholding tax from salaries

The CBDT has issued their annual circular containing rates of deduction of tax from payment of salaries during fiscal year 2017/18. It also provides various instructions for matters relating to withholding tax on salaries. Relevant changes introduced by Finance Act 2017 have been incorporated in the circular.

JUDICIAL UPDATES

Fair market value of redeemable non-cumulative preference shares as determined by valuer upheld

Section 56(2) (viib) of the income tax (IT) act, 1961 provides for taxation in the hands of a closely held company if the consideration received for the issue of shares is more than fair market value. The Kolkata Tax Tribunal considered the case of a taxpayer company that had allotted redeemable non- cumulative preference shares (RNCPS) at INR 2000 per share (face value -INR 10, premium -INR 1990). The valuation report (adopting discounted cash flow method) obtained as per the prescribed rules was filed by the taxpayer. The tax officer computed the market value at INR 1285 per share and thereby added the difference as income to the taxpayer. In relation to the dispute on the quantum of the premium, the decision of the tax tribunal is summarised below:

- All types of shares are covered within the ambit of Section 56(2) (viib) of the IT Act and thus RNCPS would not be excluded;
- The Tax Tribunal rejected the contention of the taxpayer that tax officer was not an expert in the field of valuation, thus cannot interfere in valuation reports and arrive at a different valuation. The Tax Tribunal noted that if the valuation was not based on relevant material, the adjudicating authority can interfere with the same. The tax officer has a right and is duty bound to examine valuation reports, evaluate it and record findings. Such findings should be based on relevant material and rational view taken in a judicious manner;
- The Tax Tribunal negated the objections of the tax authorities that the taxpayer would suffer liquidity crunch, default on repayments and redemptions, thus affecting credibility and credit rating. It observed that when the taxpayer has a good investment portfolio that has grown in value, such conclusions are incorrect;
- Rejecting the adoption of home loan rate for valuation, the Tax Tribunal noted that the rate of return for an investor should be considered and composed of instruments in which he can deploy his funds. The rate of return on preference shares issued by other companies for the relevant period is relevant material;
- The Tax Tribunal accepted the comparable taken by the valuer for benchmarking rate of return. It upheld the 10% discount factor taken by the valuer;
- Weight was also given to the fact that an unrelated independent investor has invested in these RNCPS on the terms and conditions, at the value of INR 2000 per share.

It concluded that RNCPS were issued at fair market value by upholding the value determined by the valuer.

UNION BUDGET 2018/19 – AN UPDATE ON PERSONAL TAX IMPLICATIONS

The Finance Minister tabled the Union Budget 2018/19 in the Parliament on 1 February 2018. This was the last full annual budget presented by the current Government before the ensuing general elections in the next year. A lot of initiatives were announced in the Union Budget in relation to improvisation of infrastructure, empowering the agricultural sector and farmers and had greater focus on health, education and social protection.

This article discusses the key amendments made in respect of the individual taxpayers.

Tax rates

- There is no change in the structure of personal income tax rates for Financial Year (FY) 2018/19 (1 April 2018 to 31 March 2019). The rates applicable for individual taxpayers for FY 2018/19 shall be as below:
- Rebate of up to INR 2,500 shall be available to resident individuals with annual taxable income up to INR 350,000;
- Surcharge shall continue to be charged at the below rates:
  - Annual taxable income exceeds INR 5 million but less than INR 10 million: at 10% on tax;
  - Annual taxable income exceeds INR 10 million: at 15% on tax.

Income slabs (INR)	Age of the individual		
From	Below 60 years	Above 60 years but below 80 years	80 years and above
Up to 250,000	NIL	NIL	NIL
250,001 to 300,000	5%	NIL	NIL
300,001 to 500,000	5%	5%	NIL
500,001 to 1,000,000	20%	20%	20%
1,000,001 and above	30%	30%	30%

Accordingly, Marginal Relief shall be available on annual taxable income exceeding INR 5 million and INR 10 million.

– However, it is proposed to discontinue the levy of Education Cess at 2% and Secondary and Higher Education Cess at 1%. Instead a new cess namely 'Health and Education Cess' shall be levied at 4%.

Standard deduction on salary income

While there are deductions for specific allowances or expenses for salaried taxpayers, no deduction for expenses in general is currently available against salary income. Standard deduction was available to salaried taxpayers earlier but was later repealed.

The Union Budget has now reintroduced the standard deduction of up to INR 40,000 from salary income. The standard deduction is in lieu of the below exemptions currently available:

– Transport allowance of up to INR 19,200 per annum granted to employee (except in case of differently abled persons) to meet expenditure for commuting between the place of residence and the work place;

– Medical reimbursement by employer of up to INR 15,000 per annum for expenditure incurred by an employee on medical treatment of self or family.

The above amendment is proposed to be made effective from FY 2018/19.

Additional relief to senior citizen taxpayers

The Union Budget had a lot of emphasis on the health benefits available to senior citizens through various schemes, enhanced deductions, etc. These were announced considering the health and fixed source of income of the senior citizens.

The Union Budget proposed to provide enhanced deductions to senior citizens in respect of the below:

– Deduction limit for health insurance premium and medical treatment is proposed to be increased from INR 30,000 to INR 50,000. If the health insurance premium is paid in respect of multiple years, the deduction is proposed to be allowed on a proportionate basis for the number of years for which the health insurance cover is provided;

– In case of medical treatment for specified diseases such as malignant cancer, Parkinson's, AIDS, etc. it is proposed to increase the deduction limit from INR 60,000 (for senior citizens) and INR 80,000 (for very senior citizens) to INR 100,000;

– Deduction up to INR 50,000 to senior citizens in respect of interest income from deposits (including time deposits i.e. Fixed and Recurring Deposits) held with banks, co-operative societies or the post office. Consequently, the threshold limit of WHT on interest income of senior citizens shall be increased from INR 10,000 to INR 50,000.

The above amendments are proposed to be made effective from FY 2018/19.

Long Term Capital Gains on sale of listed securities

Currently the Indian tax laws provide for exemption on Long Term Capital Gains (LTCG) from the sale of equity shares in a company or a unit of an equity-oriented fund/ business trust provided the share/unit was held for more than 12 months and Securities Transaction Tax is paid on such transactions. The Union Budget now proposes to bring such LTCG under the tax ambit as per the new tax regime.

Accordingly, such sale transactions made after 1 April 2018 shall be taxed as below:

Full value of consideration (sale proceeds);
Less – Cost of acquisition to be determined as higher of the below: (a) Actual cost of acquisition; (b) Lower of: i. Fair market value of asset as on 31 January 2018; *(For quoted shares – highest price on stock exchange as on 31 January 2018; For unlisted units – net asset value as on 31 January 2018)* ii. Full value of consideration (sale proceeds).

Further, such LTCG shall be computed without giving effect to indexation and foreign exchange fluctuation. The taxpayer shall be liable to tax on such LTCG at 10% on gains exceeding INR 100,000.

It is to be noted that LTCG on sale transactions until 31 March 2018 shall continue to be exempted.

Electronic assessment proceedings

With the objective of reducing interface between the tax authorities and the taxpayers, the Central Government shall prescribe a new scheme for assessment proceedings through electronic mode. Such scheme shall be aimed at bringing greater efficiency and transparency. It shall also entail optimum utilisation of government resources through economies of scale, functional specialisation of tax authorities and introducing a team-based assessment with dynamic jurisdiction.

The above amendment shall take effect from 1 April 2018.

BDO comment

Individuals are advised to familiarise themselves with the proposed changes in personal tax laws applicable for the upcoming tax year.

With the proposed changes in certain deductions on the salary front, employers could consider revisiting their employee salary structures to bring in more tax efficiency and reduced documentation.

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IRELAND

KEY CHANGES TO PAYE RULES IN FINANCE ACT 2017

Revenue given powers to gross-up

Finance Act 2017 has given the Revenue a statutory basis for the re-grossing of emoluments where an employer makes a payment of emoluments to an employee but fails to operate PAYE on any of the emoluments, or where the employer has disguised or omitted the emoluments in its books or records. In such cases, the employer is liable for the tax that would have been deductible from the employee, on the basis that the amount paid to the employee was the net amount of emoluments after deduction of tax i.e. income tax is calculated on a re-grossed figure.

Where an employee receives emoluments without the deduction of tax and the relevant provisions apply, the employer is liable for the tax that would have been deductible from the employee. The amount paid to the employee is treated as the net amount of emoluments after deduction of tax. This amount is re-grossed, and tax is calculated on the re-grossed figure.

Emoluments to be assessed on a paid basis

PAYE income is to be assessable on a paid basis, rather than an earnings basis for 2018 onwards. However, this does not apply to directors holding 15% or more of the shares in their employer or to emoluments where an exclusion order is in place.

Transitional rules apply with respect to emoluments earned in 2017 but paid in 2018. Where emoluments fall chargeable to tax for the year 2017 (on the earnings basis of assessment) but also fall chargeable to tax in the year 2018 or a subsequent year (on the receipts basis of assessment), an individual can apply to Revenue to have the emoluments for the year 2017 charged to tax on the basis of the actual emoluments paid to the individual in 2017 (i.e. on the receipts basis of assessment).

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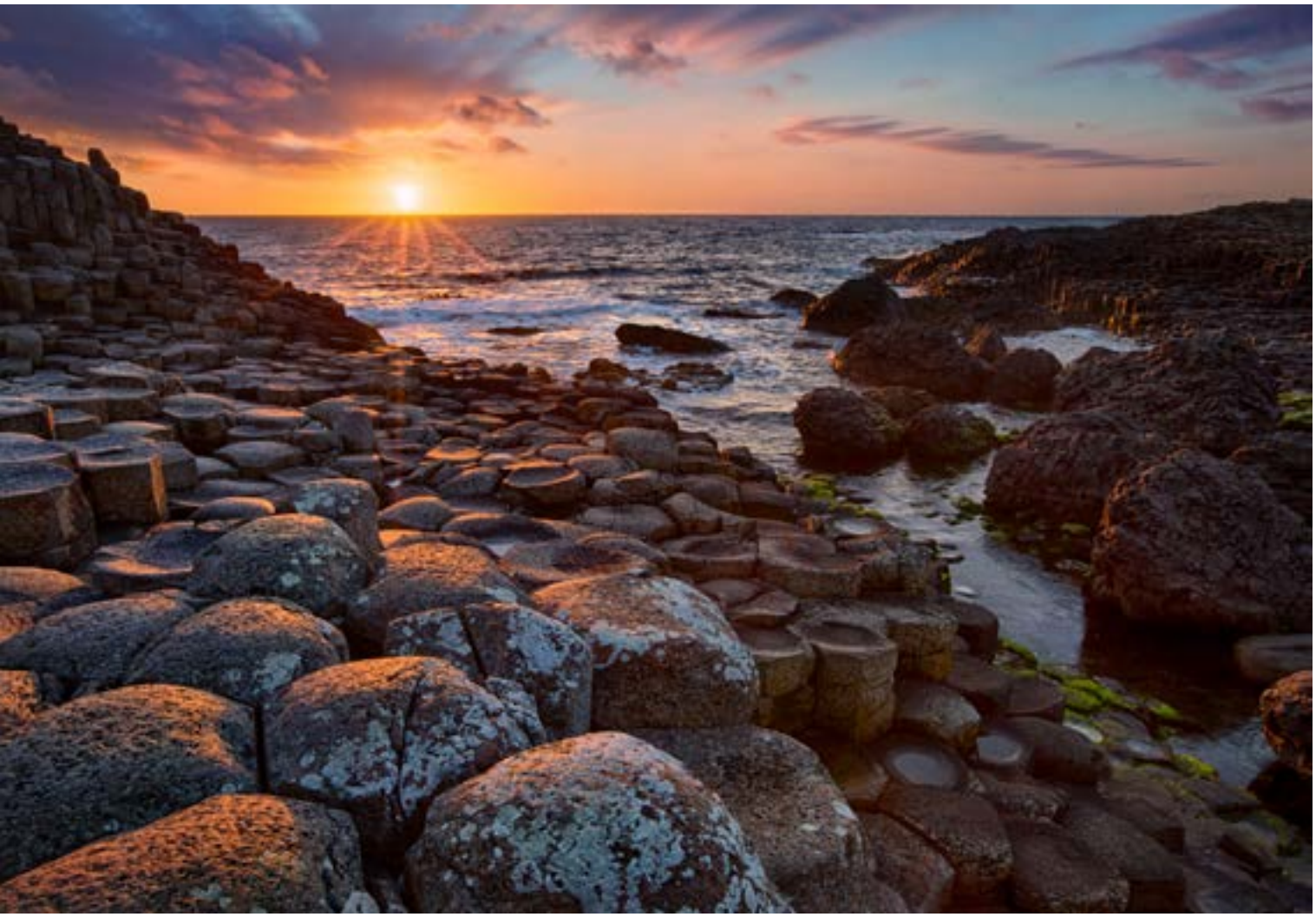

ITALY

'PERSONAL' PE RISK INCREASES IN ITALY AS IMPLEMENTED BY BEPS ACTION 7

A foreign company that relocates an employee to carry out his job duties in Italy will need to review not only the tax and social security implications but also the possible risk of configuring a permanent establishment in the form of a dependent agent.

This aspect has gained relevance after the adoption of the changes incorporated in the new Finance Act 2018 (Law 205/2017), which has expanded the notion of permanent establishment (PE) to include dependent agents.

While the lawmakers' intention, for personal fiscal purposes, was to facilitate the moving to Italy of top executives, managers and high qualified non-resident individuals, (see Art. 16 of Legislative Decree 147/2015) by offering a more favourable tax treatment (50% of the employees' income is tax exempt), the new tax provisions are stricter from the perspective of the permanent establishment, expanding the definition of the term and actually increasing the risk that a non-resident company be assumed to have a PE in Italy based on the activities carried out by its employee.

In particular, a company would have a dependent agent if it uses one of its employees to sell its products and stipulate the relevant contracts with Italian customers.

While PE risk has been rather easy to address so far, starting from the current year the risk profile has become considerably higher as the Budget Law 2018 came into force.

The new Italian regulations have changed the notion of permanent establishment by introducing an amendment to Art. 162 of the Income Tax Code. The change was inspired in particular by the amendments to Article 5 of the OECD model, as amended by BEPS Action 7.

Under the new Paragraph 6, Article 162 of the Italian Income Tax Code, as amended by the lawmakers, there is a permanent establishment in the territory of the State 'if an individual acts on behalf of a non-resident company and habitually concludes contracts or engages in activities aimed at entering into contracts without material modifications being made by the company and these contracts are on behalf of the Company'.

The amendment introduced in Paragraph 6 includes into the concept of permanent establishment of a non-resident company the circumstance where an individual:

– Acts in the territory of Italy on behalf of a non-resident company;
– Habitually concludes contracts, or engages in activities finalised to conclude contracts, without any material modification being made by the company.

In the light of the definition above, what becomes relevant is whether the employee negotiates relevant elements of the contracts on behalf of the non-resident entity, even if the contracts are signed directly by the foreign company and not by the agent. The employee's role during the phase of contract negotiations becomes pivotal in order to determine the existence of a PE in Italy.

Therefore, an executive who moves to Italy in order to negotiate the key elements of a contract – e.g. prices, quantities, logistics, delivery terms and so on – even if the contract is actually signed by the non-resident company and not by him or herself might, according to the new provisions of law, configure as a persona permanent establishment in Italy.

On the other hand, if the employee acts solely in order to promote products, submit price lists and carry out preparatory or ancillary activities, he will not configure as a permanent establishment according to Article 162 as amended.

Therefore, the most important aspect lies in the fact that the dependent agent, as in the case of a manager of a foreign company who deals with customers in Italy, acts 'on behalf of' the mother company and concludes contracts on the latter's account.

In particular, there might be a permanent establishment if the intermediation activities carried out, for instance, by an individual for the commercialisation of a given product, play an essential role in bringing the contracts to conclusion, and the foreign company does nothing else but signing them.

As a consequence, certain activities that in the past would not have configured a PE in Italy according to the provisions of law previously in force, might configure one now under the new amendments.

BDO comment

This statutory change will demand a greater amount of attention in the evaluation of the activities and functions actually performed in Italy by employees seconded from non-resident companies.

The relevance of contract negotiation role had already been recognised by both the OECD and the Italian case law, but has now gained full status of regulatory provision with the introduction of the new Article 162.

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MALTA

DO I NEED TO PAY TAX WHEN I ACQUIRE OR SELL CRYPTOCURRENCIES?

The recent years will be remembered as the point at which the general public first heard of Bitcoin. The term cryptocurrencies was first used many years ago, however it was not until recently that the mainstream public first heard of the term and came to accept this new reality. This article attempts to analyse the tax treatment in Malta of cryptocurrency transactions. From an income tax point of view, it distinguishes between the three main reasons why someone would hold a crypto currency.

Bitcoins were originally conceived as a payment medium alternative to the traditional currencies. When a person gets paid for services rendered or goods sold, by way of virtual currencies, such person is deemed to have received taxable income which would need to be brought to tax in the same manner as if the payment was made in a traditional currency such as USD or EUR. In fact, the potential tax evasion using payments in cryptocurrencies, where the payment is not reported for tax purposes, is the main argument utilised by governments to restrict, in certain cases even prohibit, the use of virtual currencies for day to day transactions.

From a VAT point of view, in the European Union, payment for supplies by way of cryptocurrencies is considered to be for all intents and purposes a payment by way of a legal tender as opposed to a transfer of a commodity. This means that payment by way of Bitcoin is exempt from VAT, with the actual service provision or supply of goods falling within the parameters of the traditional VAT laws.

In reality, the popularity and the associated double (and in certain cases triple) digit increase in the price level of cryptocurrencies over the last couple of years came about when virtual currencies started being acquired as an investment or trading instrument. This is where it gets complicated from a tax point of view. Maltese tax law provides for a huge difference between, on the one hand acquiring a cryptocurrency, forgetting about it and selling it in three or five years' time and on the other hand acquiring Bitcoins in anticipation of an upward trend with the intention of crystallising a short term profit.

In order for a capital gain to be brought to tax, such a gain must arise on an asset which is listed in Article 5 of the Income Tax Act. Article 5 of the Act provides for an exhaustive list of assets; the disposal thereof triggers an income tax charge on the capital gain. There is no catch all provision in Article 5, which is in fact limited to transfers of immovable property, securities, partnership and trust interests and intellectual property. Therefore, just like capital gains arising on the sale of bonds, capital gains on the disposal of cryptocurrencies acquired as a long term investment without the intention to trade, are not brought to tax in Malta.

On the other hand, day trading in cryptocurrencies is no different from trading in bonds, company shares (even when listed on the Malta Stock Exchange), commodities, currency pairs or CFDs – any profits made are deemed to be an income arising from a trade or business which must be reported in the tax return and taxed at the applicable tax rates.

Finally, should a person acquire a mining device with the intention of mining cryptocurrencies over a period of time, one could consider the virtual currencies gained through mining as a taxable profit with a right to deduct depreciation on the mining apparatus and any directly related energy costs.

BDO comment

As the global understanding of cryptocurrencies by states and their tax authorities is still in development stage, the above conclusions may change as the regulators and legislators catch up with this new technology.

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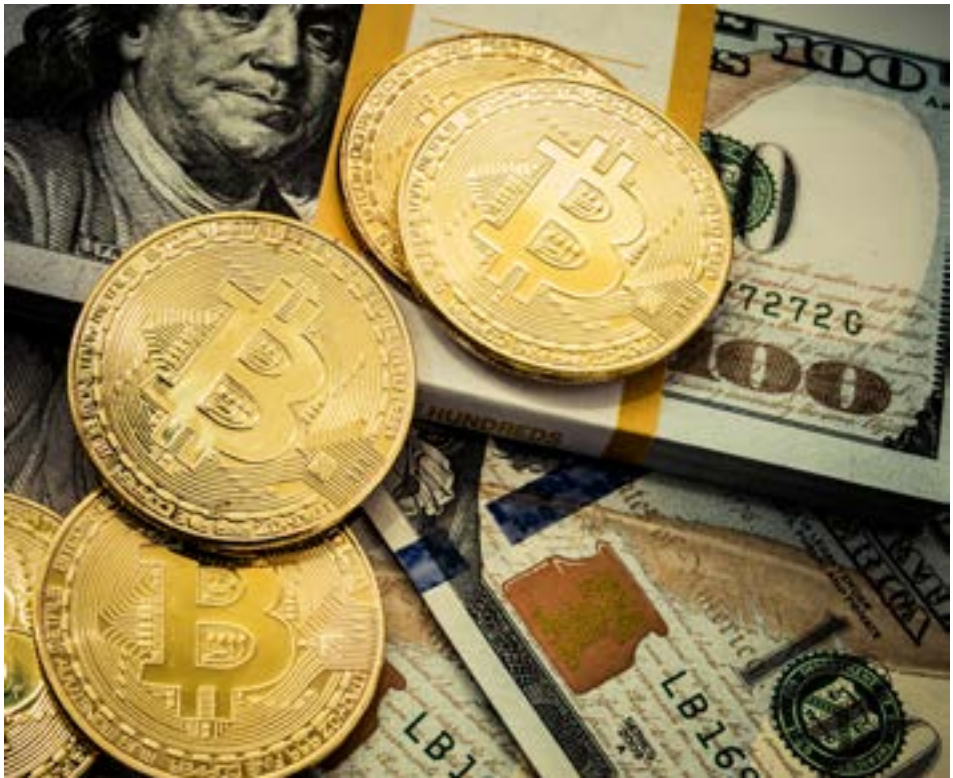

THE NETHERLANDS

REPEAL FICTIVE EMPLOYMENT RELATIONSHIP FOR NON-EXECUTIVE DIRECTORS OF A COMPANY LISTED ON THE STOCK EXCHANGE

Due to amendment of the laws and regulations, the fictive employment relationship for supervisory directors has been legally repealed as from 1 January 2017. Earlier, in 2016, approval had been given for deductions to be left out. As a result, there was unequal treatment between non-executive directors of a company listed on the stock exchange and supervisory directors, even though they actually filled a comparable, supervisory role within a company. By repealing the fictive employment relationship for non-executive directors of a company listed on the stock exchange, there is equal treatment of a supervisory director and a non-executive director of a company listed on the stock exchange.

In this way, neither of them are included in the payroll tax. An executive director of a company listed on the stock exchange and an executive director of a company not listed on the stock exchange both continue to be included in the payroll tax. The Trade Register defines the distinction between executive and non-executive directors.

New facility of share options for innovative start-ups

Income tax is levied on the wage benefit enjoyed not with the assignment of the share option rights by employees but with the practice (or alienation) of these rights. The consequences of this is that the tax on the wage benefits (the option profit) no longer depends on the value development of the shares and that the tax occurs at a progressive rate (a maximum of 52%). As from 1 January 2018 however, a new incentive with regard to share options of innovative start-ups has been introduced. In order to be eligible for the new incentive, the start-up must be a recognized R&D company with an R&D statement (and important restriction) and an increased starter percentage.

After recognition of the options, a minimum of 12 months and a maximum of 5 calendar years must have passed. If all of these conditions have been met, a wage benefit of up to a maximum of EUR 50,000 shall be exempt upon exercise for 25%.

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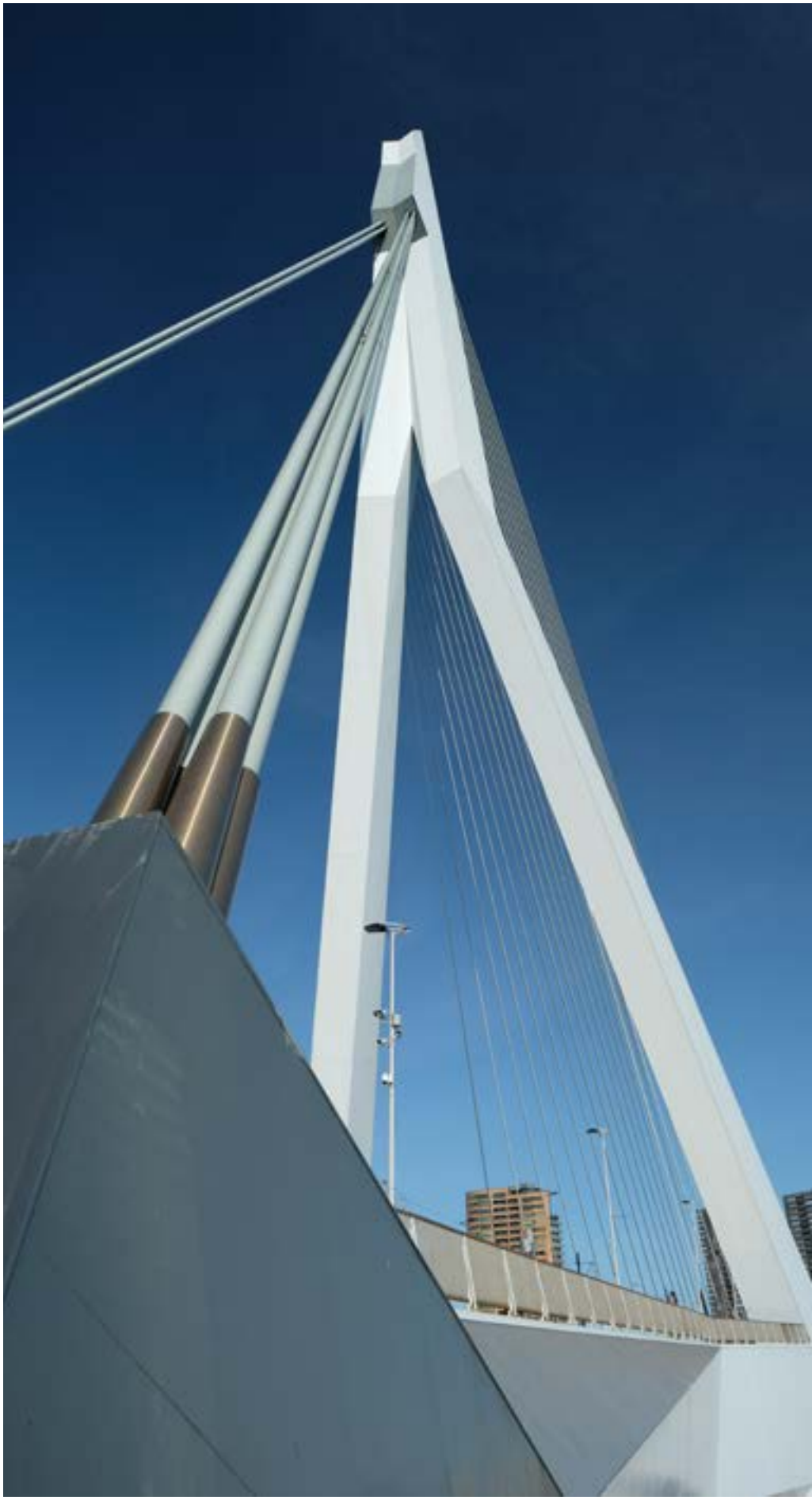

SRI LANKA

KEY CHANGES TO EXPATRIATE TAXATION

An individual who is physically present in a country in which he/she does not hold residency, would generally be seen as an expatriate to that country. In such situations, together with other demographic and economic factors, an important aspect is the manner in which such expatriates would be captured in the Tax Framework.

An analysis on this is timely, as with the introduction of the Sri Lankan Inland Revenue Act No. 24 of 2017 ('NEW Act'), the treatment towards expatriates has undergone a number of significant changes. The changes take effect from the 1 April 2018.

As per the Sri Lankan Inland Revenue Act No. 10 of 2006 ('CURRENT Act'), all profits or income that is earned within Sri Lanka will be charged to Income Tax. Thus, an expatriate who comes to Sri Lanka on a casual basis too would be captured in this system during every Year of Assessment. This is principally by way of the PAYE scheme, where all payments to expatriate employees including wages, salaries and other benefits are taxed. However, under the CURRENT Act, an expatriate who does not maintain a physical presence in Sri Lanka for at least 183 days in a year of assessment (i.e. a twelve-month period from 1 April to 31 March) is deemed to be a non-resident. Under the NEW Act, the 183 days to constitute residency does not refer to a year of assessment and could even cut across two such years, making the expatriate liable in Sri Lanka as a resident for both periods.

The CURRENT Act provided a worthwhile exemption for expatriates employed in Sri Lanka through Section 13 (zz). The relevant Section provides that, profits and income of any individual who is not a citizen of Sri Lanka and who is employed in Sri Lanka in any undertaking, being profits and income arising or derived from outside Sri Lanka during the period commencing from 1 April 2008, and ending on the date of cessation of such employment, would be exempted from being taxed in Sri Lanka. Nevertheless, this exemption that was exclusively provided for expatriates is not followed by the NEW Act. Consequently, any expatriate employed in Sri Lanka as a resident for more than 183 days will be liable to pay income tax in Sri Lanka on his Global Income. Double Tax Avoidance Agreements however will come into play to assess the eligibility of that specific employee to be taxed in Sri Lanka instead of the jurisdiction in which the citizenship is held or the respective income is earned.

Additionally, with regard to the procedural aspect of the CURRENT Act, the overall obligation of compliance of expatriate's tax liability is with the employer of the expatriate. The employer shall deduct the Income Tax as PAYE from the overall remuneration of the expatriate and remit such sums in the Commissioner General's favour. However, in comparison to the PAYE Scheme, the NEW Act maintains the same, where the tax on employment income is deducted by the employer as withholding tax.

A comparative substantive analysis on the Tax rates is as follows:

CURRENT Act		NEW Act	
Taxable Income (LKR)	**Tax Percentage**	**Taxable Income (LKR)**	**Tax Percentage**
On the first 500,000/-	4%	On the first 600,000/-	4%
On the next 500,000/-	8%	On the next 600,000/-	8%
On the next 500,000/-	12%	On the next 600,000/-	12%
On the balance thereafter	16% (max rate for employment income)	On the next 600,000/-	16%
		On the next 600,000/-	20%
		On the balance thereafter	24%

A special mention to be made is the qualifying payment on employment income currently available to all employees is not available for non-citizens, non-resident employees of Sri Lanka under the new law.

Therefore, on a concluding note, it is believed that the Tax Framework of Sri Lanka has been made more stringent in respect of the expatriates' contribution towards the national income.

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SWEDEN

OWNING PROPERTY IN SWEDEN – LAND REGISTRY – OLD ENTRIES WILL BE DELETED

Older easement registered in the Swedish land register before 1 July 1968 must be renewed or else the entry will be deleted. The Swedish Renewal Act applies to:

– Contractual Easements;

– Access Rights; and

– Benefit rights.

The purpose of a clean-up of the Swedish land register is to simplify the sale of real estate, reducing costs to the Swedish Land Ordinances and for the land registry to be more reliable.

After the clean-up, the old enrolments would not apply to a new owner. However, there is no charge to register a renewal of an old easement before the end of 2018.

BDO comment

Property owners of land in Sweden will also be expected to keep this information actual and updated at the Swedish Land Ordinances (Sw. Lantmäteriet).

Please do not hesitate to get in touch with us if you have any questions regarding the registration of land.

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THE SWEDISH TAX FREE BENEFIT FOR SPORT ACTIVITIES WILL COVER GOLF AND EQUESTRIAN ACTIVITIES

The Swedish Supreme Administrative Court has, in a decision on 12 January 2018, ruled that golf activities may be part of the tax free benefit for sport activities. Subsequently, the Swedish Tax Agency has approved some equestrian activities to be considered tax free sport activities when paid by the employer.

Background and information

In Sweden, an employer may cover the costs for some forms of exercise and other wellness activities of low-value without incurring a taxable benefit for the employees. The employer covers the costs for employees by cheques, vouchers or other documents giving the employees access to approved exercise facilities. The benefit will not be considered as taxable employment income in Sweden.

In order for the benefit to be considered as tax free in Sweden, the following prerequisites needs to be fulfilled:

– The benefit cannot be exchanged for goods or cash;

– The offer must be offered to all employees, including temporary employed staff;

– The benefit must be of low value, at least not exceed the equivalent cost of a season pass at a gym in the local area, i.e. not more than SEK 5,000 per year.

Some activities have historically not been approved as tax free activities. Such activities not considered as tax free benefits have been those considered as more expansive sports, such as golf and equestrian activities due to the assumption of high-value and expensive equipment.

The new ruling from the Swedish Supreme Administrative Court somewhat alters the earlier rules regarding sport activities that may be considered as tax free benefit. In the ruling the Supreme Administrative Court notes that the law should follow the development of the society. According to the ruling, nothing forbids an employer to grant a benefit to the employees, as long as it fulfils the other prerequisites listed above.

As a result of the ruling the Swedish Tax Agency has released a statement noting that a wellness benefit of low value, below SEK 5,000, should be considered as a tax fee benefit, even if it is used for golf or equestrian activities. This means that even golf and equestrian activities provided by the employer could be considered as tax free benefits, should their value be under SEK 5,000 per year.

BDO comment

The question of which sports that could be included in the offer from an employer has been a source of frustration and debate in Sweden and often describe as a class-based set of rules.

The new ruling should be considered as a natural step towards a more equal view of activities and the continued development of the society should follow. BDO Sweden will however follow the future progress in this area.

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UNITED KINGDOM

IMMIGRATION HEALTH SURCHARGE SET TO DOUBLE

The UK Government has announced they intend doubling the charge to temporary migrants in the UK later this year, although they have not yet set a date for the change. This will increase the fee for most immigration categories to GBP 400 per year. Students and individuals applying for a Tier 5 (Youth Mobility) visa currently pay GBP 150 per year – this cost is also set to double.

Who is liable to the Immigration Health Surcharge?

Nationals of a country outside the European Economic Area (EEA), applying for a visa or leave to remain to work, study or join their family in the UK for more than six months (but not those applying to remain in the UK permanently).

BDO comment

Employer's should be aware of the extra cost of bringing non-EEA nationals to work in the UK. It also remains to be seen whether these charges will extend to nationals of EEA countries following Brexit, with the details of this still to be agreed. Advance planning is recommended to minimise the impact of the increased fees on individuals coming to the UK.

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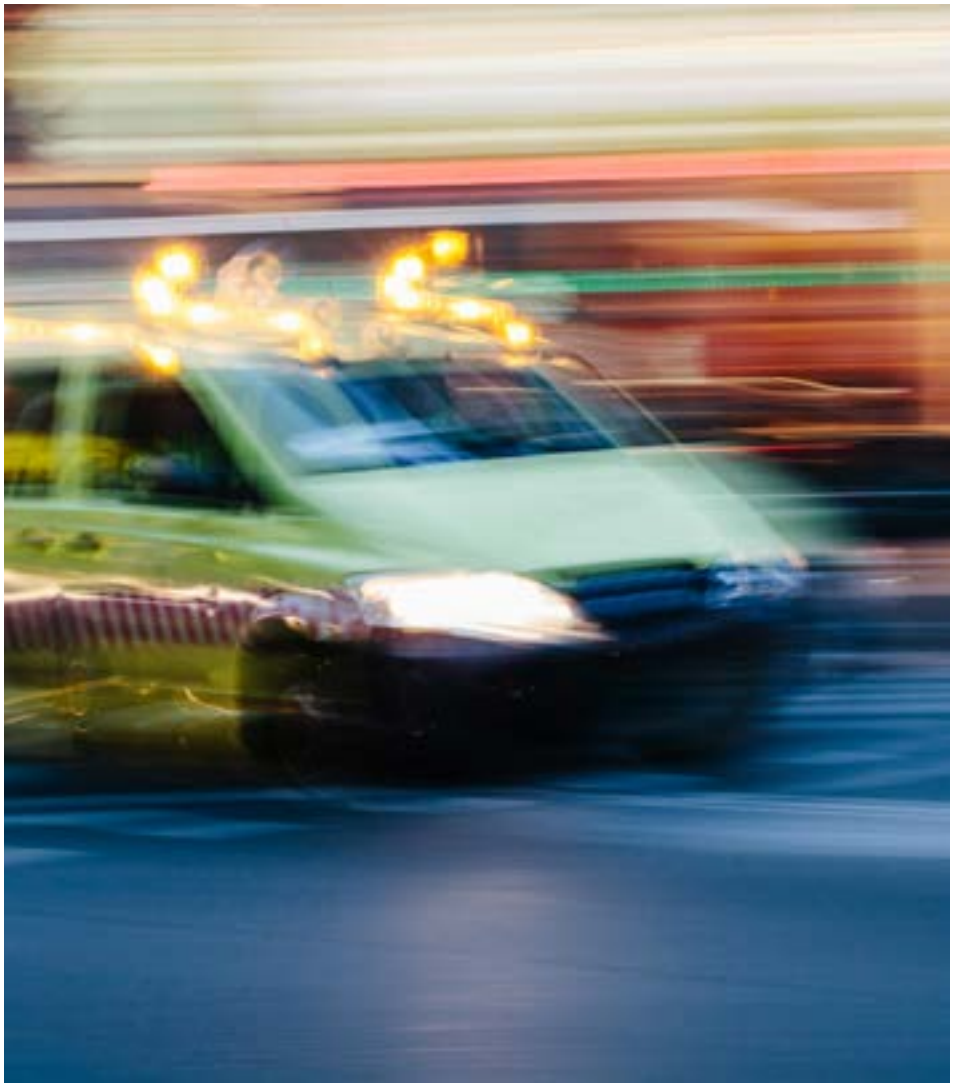

UNITED STATES

FRENCH TAX 'WHITE YEAR' – IMPACTS ON 2018 US TAX FILINGS

In the January 2018 issue of the BDO *Expatriate Newsletter* (Issue 36, page 4) we outlined the details of the French withholding tax at source that will be implemented effective 1 January 2019. While income taxes will be paid in France on a Pay As You Earn (PAYE) basis from 1 January 2019, with respect to ordinary income there are US tax implications for calendar year 2018 that need to be considered as soon as possible regarding US citizens and green card holders living and working in France. This applies to local hires in France or participants in a company sponsored global mobility program who are tax equalised, or French nationals working in the US as local hires.

In addition, program managers of company sponsored global mobility programs who have French nationals living and working in the United States who are tax equalised to France as their home country will also have tax implications to consider during 2018, the so called 'White Year'.

French authorities have set up the exceptional tax credit ('Credit d'Impot de Modernisation du Recouvrement' (CIMR)) that will be granted for income taxes due on 2018 'non-exceptional' income received in 2018 (i.e., ordinary income) that falls within the scope of the withholding tax system. The purpose of the exceptional tax credit is to avoid a double payment of income tax and social charges in 2019 when the 2018 French income tax liability would normally be due since individuals will also be subject to PAYE withholding on ordinary income (i.e. wages) they receive in calendar year 2019. If an individual only has 2018 ordinary income (i.e. wages) the 2018 French income tax will be calculated and the CIMR will be granted so that effectively there will be no 2018 French income tax due with respect to 2018 ordinary income. French income tax will be due on 'exceptional income' such as equity and portfolio income.

Since there will essentially be no 2018 French income tax liability with respect to 2018 ordinary income and because US persons continue to be taxed on worldwide income regardless of physical residence, it is critical that US citizens and green card holders living and working in France review their 2017 Form 1116 (Foreign Tax Credit (FTC)) to determine if they have excess FTCs that will be carried forward to 2018. If there are not sufficient FTC carryforwards to 2018 then the individuals will need to increase their 2018 US Federal income tax withholding if they are paid on a US payroll or make 2018 US Federal estimated tax payments to cover their expected 2018 US Federal income tax liability. For individuals who are participants in a company sponsored global mobility program the program manager, in conjunction with the tax service provider, will need to review this issue to ensure the appropriate amount of US Federal income tax withholding is remitted during calendar year 2018 in order to satisfy the US Federal income tax liability and ensure that no underpayment of estimated tax penalty is incurred. For individuals who participate in a company sponsored program, these additional US Federal income tax payments will need to be considered with respect to the overall assignment cost as well as budgetary estimates.

Global mobility program managers of company sponsored programs who have French nationals living and working in the US who are tax equalised to their home country (i.e. France) and have French hypothetical tax withheld on 2018 stay at home wage income (i.e. ordinary income in France) will need to consider if they should suspend the 2018 hypothetical withholding since the assignee would have been entitled to the CIMR which would effectively eliminate any 2018 French income tax liability due with respect to 2018 ordinary income. If the company suspends the French hypothetical tax withholding during 2018 then the actual US income tax liabilities (i.e. Federal, State, Local, Social Security and Medicare taxes (if applicable)) will increase since the hypothetical tax withholdings reduce taxable wages. These additional costs will need to factored into the overall cost of the assignment from both a budgetary and actual perspective.

The granting of the CIMR does not change the fact that US citizens and green card holders who have a tax home in a foreign country or countries and meet either the Bona Fide Residence (BFR) test or Physical Presence Test (PPT) can still claim the Foreign Earned Income Exclusion (FEIE) for 2018 since, as noted above, taxpayers are still liable for 2018 French income tax; it's just that the French authorities have set up the CIMR that will effectively eliminate the 2018 French income tax on ordinary income. French income tax on exceptional income (i.e. income not covered under the PAYE withholding system) will still be due.

BDO comment

While French PAYE withholding is implemented effective 1 January 2019 there are many things, as outlined in this article, that US citizens, green card holders, French nationals working as local hires in the US and program managers with US assignees in France and/or French nationals on an equalised assignment in the US should be thinking about and addressing during 2018.

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CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 14 February 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Argentine Peso (ARS)	0.04057	0.05003
Azerbaijan New Manat (AZN)	0.47668	0.58787
Indian Rupee (INR)	0.01260	0.01554
United States Dollar (USD)	0.81086	1.00000
Euro (EUR)	1.00000	1.23312
Sri Lanka Rupee (LKR)	0.00644	0.00522
Swedish Krona (SEK)	0.10077	0.12426
British Pound (GBP)	1.12483	1.38717

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