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EXPATRIATE NEWSLETTER

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THE NETHERLANDS

MATERIAL EMPLOYMENT UNDER THE TAX TREATIES WITH THE NETHERLANDS AND THE DUTCH 60-DAYS RULE

According to most double tax treaties with the Netherlands, as well as the OECD model treaty, income from employment is taxable in the country in which the employee is living, unless the employment is fulfilled elsewhere. As a main rule, this leads to taxation in the working country.

The exception to this rule applies when:

a) The employee is not present in the working country for more than 183 days during a 12-month period/tax year/calendar year (depending on the applicable double tax treaty); **and**

b) The remuneration is not paid by or on behalf of an employer in the working country; **and**

c) The remuneration is not borne by a permanent establishment of the employer in the working country.

If these cumulative conditions are met, the remuneration will remain taxable in the country of residence.

Assuming the non-resident employee is not present in the Netherlands for more than 183 days (in the respective period according to the treaty), the remuneration will also have to be paid by or on behalf of an employer who is not a resident of the Netherlands. As of 2006, in the Netherlands the employer is defined as also including the material employer, the employer for who the benefits and risks of the activities are performed, and who has actual authority over the employee. When seconding an employee temporarily to perform activities within a group company, this can quickly lead to taxation and a withholding obligation in the Netherlands.

However, in cases of a short term secondment between group companies, it might be possible to benefit from the Dutch 60 days-rule. An employee who has been assigned within a group company to the Netherlands as part of an exchange programme, for career development, or on the grounds of specific expertise for a period of no longer than 60 days in a 12-month period, will not be considered as being under the authority of the Dutch group company.

As a result, a non-resident employee who is not working in the Netherlands for more than 60 days within a group company and fulfils the above-mentioned conditions will not be subject to Dutch taxation on their employment income. However, if this regulation would lead to double exemption from taxation, the Dutch tax authorities could decide to consult with the country of residence.

BDO comment

Many countries are imposing ever more stringent application of their tax laws on business visitors – the Dutch authorities are no exception although the 60 days-rule is a welcome relaxation. Tracking of visitors is mandatory and up front consideration of local tax legislation and overarching tax treaties must be considered at the outset.

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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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The articles contained in this newsletter have been prepared for your general information only and should not be acted or relied upon without first seeking appropriate professional advice for your circumstances.

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AUSTRALIA

FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING

What is foreign resident capital gains withholding?

Foreign resident capital gains withholding is a 10% non-final withholding tax which is applied on payments made to foreign residents that dispose of certain taxable Australian property. This withholding applies to contracts entered into on or after 1 July 2016. The penalty for failing to withhold is equal to the amount required to be withheld and paid. An administrative penalty may also apply and interest charges apply to late payments.

While there is no change to the underlying capital gains tax liability, a new compliance burden has been created for the purchasers of real estate from foreign residents because they are required to withhold 10% of the purchase price and remit it to the Australian Taxation Office ('ATO') without delay unless a clearance certificate or variation notice has been received (see below).

The foreign resident vendor may then either have a further income tax liability or may be entitled to a tax refund depending on the value of the final capital gain. This will be determined when the foreign resident's annual income tax return is submitted to the ATO.

While this change is primarily aimed at capturing capital gains made by foreign residents, it also applies where the disposal of such 'taxable Australian property' by a foreign resident generates gains on revenue account. For example, it applies where taxable Australian property is disposed of as part of a property development business.

What property is included?

The new foreign resident capital gains withholding is aimed at 'taxable Australian property', namely:

- Real estate located in Australia, including land, buildings, residential and commercial property.
- Lease premiums paid in relation to the grant of a lease over real estate in Australia.
- Mining, quarrying or prospecting rights.
- Indirect interests in real estate such as shares in Australian companies whose majority assets consist of real estate.
- Options or rights to acquire the above properties or interest.

What property is excluded?

There are three main exclusions from the new withholding rules. Where the foreign resident meets the requirements for one of any of the following three categories the withholding is not applicable.

1. Real estate with a market value under AUD 2 million.

   Note that the purchase price is accepted as a proxy for market value when a sale takes place between a purchaser and vendor on an arm's length basis.

2. Transactions that are listed on an approved stock exchange.
3. Sales where the foreign resident vendor is under external administration or in bankruptcy.

How will this be administered?

The ATO has made available the following three forms to assist taxpayers in meeting their compliance obligations.

1. **Clearance certificate application form – for Australian residents**

   This form is to be completed by foreign residents who are tax residents of Australia. If approved by the ATO then the resulting clearance certificate removes the need for the purchaser of the asset to withhold any amount from the purchase price.

   The foreign resident vendor must provide the purchaser with an ATO-issued clearance certificate on or before the day of settlement of the sale of the asset in order to ensure that no withholding is required from the sale proceeds.

2. **Variation application form**

   Foreign resident vendors who do not secure an exempting clearance certificate can nevertheless apply for a reduction to the 10% rate of foreign resident capital gains withholding.

   The foreign resident vendor has to provide the purchaser with an ATO-issued variation notice on or before the day of settlement of the sale of the asset to ensure that the reduced rate of withholding applies.

3. **Purchaser payment notification form**

   The purchaser uses this form to notify the ATO of a transaction that will take place, or has taken place, in which foreign resident capital gains withholding applies. This form needs to be completed and lodged with the ATO on or before the day of settlement of the purchase of the asset.

BDO comment

Taxpayers must be very clear as to whether these rules apply to them and ensure they are compliant when dealing with the sale of property. Penalties can be severe where these rules are not adhered to.

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CHILE

REVISED TAX RATES FOR 2017

The latest Chilean Tax Reform (Law N° 20.780 of 2014) lowered the two highest brackets of the Chilean employment income tax, from 35.5% on amounts exceeding 120 Monthly Taxable Units (UTM) to 35%, and from 40% on amounts exceeding 150 UTM to 35% equally, thus simplifying the system by reducing the amount of brackets available to calculate the tax and also lowering the tax burden for employers and tax payers.

This tax reform was enacted during 2014 but will be enforced from 1 January 2017. From that point all income subject to Chilean employment income tax will be subjected to this new lower tax bracket of 35% on earnings exceeding USD 8,445.60.

As for many countries around the world, Chile charges employment income tax on progressive tax rates and this principle remains untouched.

BDO comment

From 2017 both foreign taxpayers and foreign employers should be aware that the cost of employment taxes triggered by the deployment of expatriate labour forces has reduced which should lead to lower assignment costs.

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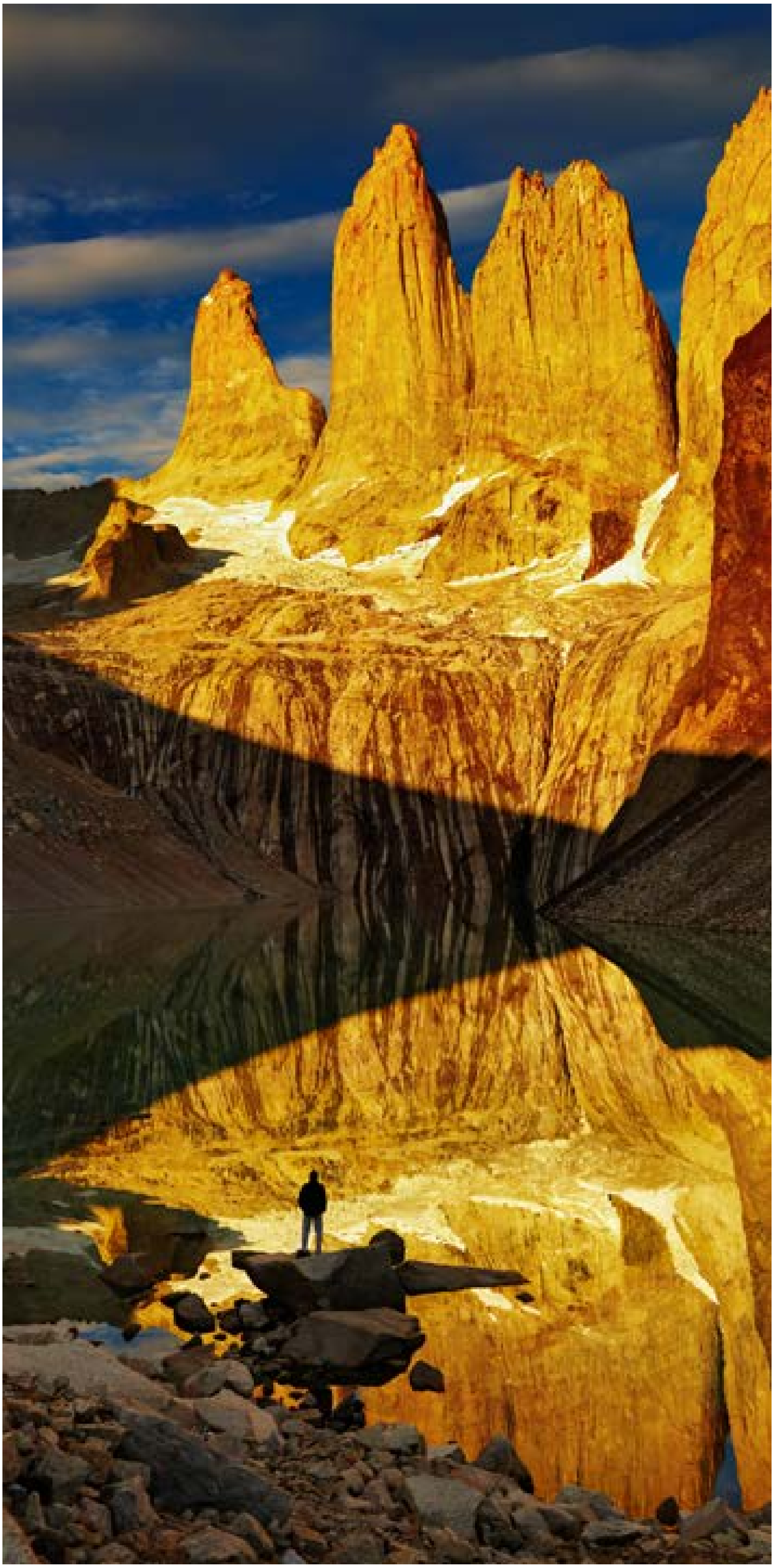

CHINA

AN INSIGHT INTO CHINESE TAX IMPLICATIONS OF EXPATRIATE DUAL CONTRACT ARRANGEMENTS

The Chinese tax authorities have tightened the monitoring and supervision on foreign employees' dual contract arrangements in individual income tax. Under a typical dual contract arrangement, foreign employees will sign two employment contracts, one with a Chinese employer and another with an overseas employer. The salary will be paid separately inside and outside of China. According to the China Tax Laws, the foreign employees need to file individual income tax returns for salaries paid from inside and outside of China.

The Chinese tax implications of dual contract arrangements may vary case by case. Some foreign employees tried to argue that the portion of the salaries allocated to the overseas contract and paid outside of China were not subject to Chinese individual income tax because:

– The income is paid from overseas;

– They are only liable to Chinese individual income tax on China-sourced income (as opposed to worldwide income); and

– The Chinese employer has no statutory withholding obligation on the payment made by the overseas employer outside China.

There is a published judgment case in Guangzhou Court about a dual contract arrangement. In the court judgment, the taxpayer (a UK resident) has signed two independent contracts with a China employer and a US employer and these two companies were related parties. The Court upheld the decision made by the Guangzhou local tax bureau that the taxpayer's employer in Guangzhou China has the statutory withholding obligation on the salary paid by his US employer. Also, the Court has confirmed that even if the income is from the US contract and subject to tax in the US, it does not mean that income would be exempt from individual income tax in China.

The court judgment adopted the principle that substance prevails over format and agreed with the Chinese tax authorities' persistent position toward dual contract arrangements. From our experience, the tax bureaus will become suspicious of the dual contract arrangements where the offshore payroll is excluded from Chinese individual income tax reporting and the reported income in China is far below the reasonable compensation for the expatriate's job in China.

BDO comment

The tax authorities' monitoring efforts on foreign employees' taxation are becoming more stringent. The Chinese companies and their foreign employees need to review the existing dual contract arrangements carefully to manage the tax risks. It is also advised to seek help from tax counsel and communicate with local in-charge tax authorities proactively.

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ISRAEL

CASE LAW WITH REGARDS TO AN INDIVIDUAL'S RESIDENCY AND HOW GAMING INCOME SHOULD BE TAXED

On 15 June 2016, a ruling was issued by the District Court in Israel with regards to Rafi Amit ("the individual"). The case law discussed the status of the individual as an Israeli resident and how an Israeli international poker player should be taxed in Israel.

When the individual was 23 years old he started to spend extended periods of time abroad participating in poker games which included cash games, tournaments and online gaming. The individual claimed that he ceased to be an Israeli resident for tax purposes from 2002, the year of his first extended trip abroad and therefore in 2007 the year under discussion (the years before 2007 were outside the statute of limitations) when he resided in Israel for only 30 days he should not be deemed an Israeli resident and as such should not be liable to tax in Israel on his gaming income. Alternatively, the individual claimed that poker is a game of chance and cannot be classified as a business or occupation, and therefore even if he is deemed resident of Israel, the tax rate should only be 25% as this is the tax rate applicable on income from gambling, lotteries and prizes.

The Israeli tax authority ("the ITA") claimed that notwithstanding the lengthy absences from Israel, the individual remains an Israeli resident and in accordance to this they issued a tax assessment for 2007. With respect to how the income should be taxed, the ITA claimed that the participation of the individual in the poker games should be deemed as a business and occupation and should be taxed at the marginal tax rates (10%-50%) in accordance with Section 121 of the Israeli Tax Ordinance ("ITO"). The parties also disagreed regarding whether the individual is entitled to a foreign tax credit for US tax withheld by the World Series of Poker organisation ("WSOP") on earnings from tournaments.

The court district examined the "centre of life" test within the definition of Israeli residency according to section 1 to the ITO, determined that the application of the personal, family and economic parameters lean to the direction that the centre of life of the individual was in Israel (mainly the lack of "planting roots" elsewhere, his extended stay in Israel and the 'economic base' remaining in Israel, including a bank account to where savings were transferred). Similarly, the court stressed that since the individual is 'lacking residency' elsewhere (the individual was not deemed a resident of the US or any other jurisdiction and did not report his income in other jurisdictions) he did not cease to be an Israeli resident for tax purposes.

With respect to how the gaming income should be taxed in Israel, it was determined that the circumstances of the case indicate that the individual was a "professional poker player" and that his income (from his occupation rather than a game of luck) should be subject to marginal tax rates.

With respect to the foreign tax credit, the court district accepted the individual's position that the certificate of withholding tax issued by the WSOP should suffice and there is no requirement to produce a certificate from the IRS for the tax paid in the US.

BDO comment

Spending a limited number of days in Israel does not, in itself, make an individual a non-Israeli tax resident. The ITA takes a holistic approach in determining the taxpayer's residence status including lifestyle, ongoing links to Israel and lack of appreciable ties to any other country. Taxpayers claiming non-residence should ensure they consider all applicable Israeli tax law in this area and have a robust set of facts and circumstances to back up any claim.

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ITALY

NEW APPROACH OF THE ITALIAN SUPREME COURT: PRIORITY TO ECONOMIC INTERESTS OVER SOCIAL AND FAMILY TIES FOR THE PURPOSES OF ITALIAN TAX RESIDENCE

The increased focus of the Italian tax courts on the theme of Italian tax residence emphasises the role of clarification of the Italian Supreme Court.

In recent case law (n. 6501/2015), the Supreme Court made a radical change of direction in the definition of the "centre of vital interests" of an individual.

Italian tax residence requirements

Although the European Court of Justice has ambitiously tried to create a coordinated and unified concept of tax residence within the European Union, each European country still uses different criteria to decide whether someone is a resident for tax purposes.

According to Art. 2 of the Italian Income Tax Act (d.p.r. 917/86 - hereinafter ITA), an individual is considered an Italian tax resident if, for the greater part of the fiscal year (for more than 183 days) they:

- Are registered in the Records of the Italian Resident Population (called "Anagrafe della Popolazione Residente" in Italian); or
- Have a residence in Italy (habitual abode); or
- Have a domicile in Italy (principal centre of business, economic and social interests, e.g. the family).

The above requirements are not cumulative so the presence of only one of them would be sufficient in order to consider an individual as being tax resident in Italy.

Furthermore, pursuant Art. 2, par. 2 bis of ITA, Italian citizens who cancel themselves from the Records of the Italian Resident Population to move to a "Black List" country (i.e. tax heaven) are still regarded as Italian tax resident, unless they can prove they have actually moved their main centre of vital interests (inversion of the burden of prove) to that country.

Recent case law of the Supreme Court

The recent case law concerned an Italian businessman who transferred his residence from Italy to San Marino (listed at that time as a black list country).

The Italian Tax Authorities appealed the second instance decision, claiming that the tax judge had underestimated the importance of "personal and affective relations of the man" for Italian Tax Resident purposes.

Bucking the trend, the Supreme Court rejected the appeal and stated that the residence of a taxpayer has to be identified in the place in which he "habitually develops and manages his professional or economic interests in a recognisable manner".

According to the Supreme Court decision, in determining with which State the individuals relations are closer, there is no doubt that the location of the individual's family is an important factor, but the aspect of the economic interests mustn't be considered as secondary in respect to the personal and family interests.

This means that, to define if a person is an Italian tax resident, all interests involved should be examined and the most appropriate balance between all of them should be reached. In other words, this ruling states that the circumstances of an individual's life must be examined as a whole and a broad examination of all the factors should be observed.

Potential contrast with the European Court of Justice (ECJ) case law and the previous Italian rulings of the Supreme Court

The ECJ in the case C-262/99 stated that if a person has both family and business relationships in two different Member States, the pre-eminence should be granted to his personal relationships (such as physical presence of family, the availability of a house, the place in which his children go to school).

This was also the consistent approach of the Italian Tax courts and authorities before such Supreme Court decision ("a person must be considered as tax resident in Italy where, despite having moved their residence abroad and carrying out their activities outside the country, they retain their social and family centre of interests in Italy" – Circ n. 17/E 10 February 1999).

Conclusion

The case law n. 6501/2015 helps us to better define the meaning of the term "centre of vital interests" and to clarify its implications with regard to tax residence. "Personal and economic relations" is a broad term intended to cover a full range of social, domestic, financial, political and cultural links.

In determining an individual's centre of vital interests both personal and economic factors are to be taken into account, but economic affairs could in future be regarded as more important.

Unfortunately, such balance of interests could create fiscal incertitude when the centre of economic interests doesn't match the centre of personal and social interests.

BDO comment

Looking forward it will be interesting to see the impact of such case law on the Italian Authorities and Tax courts. It is clear that the authorities are paying close attention to the question of tax residence and we could see further reforms in the future.

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LUXEMBOURG

STOCK OPTIONS PLANS – NOTIFICATION REQUIREMENTS

The circular L.I.R. n° 104/2bis issued on 28 December 2015 sets out an obligation for the employer to notify the tax authorities of stock option plans.

This circular defines different notification requirements depending on the date of implementation of the plan:

- For plans implemented before 1 January 2016 under which options are allocated as from this date, the employer has to provide the tax authorities with a copy of the plan as well as with the list of participants as soon as it is known.
- For plans implemented as from 1 January 2016, the employer has to provide the tax authorities with a copy of the plan at least two months before it is actioned, as well as with the list of participants as soon as it is known.

The tax authorities have specified recently, through an information notice, that notification should be made electronically by using a specific Excel file which must be downloaded from the tax authorities' website: http://www.impotsdirects.public.lu/echanges_electroniques/stock_options/index.html

An Excel file will have to be filed for each plan implemented by the employer and the plan will be allocated a unique identification number. The use of the Excel file in native format is mandatory.

It is interesting to note that not only stock options plans are covered by this new notification, but also share allocation plans. Indeed, the file includes two sections respectively related to stock option plans/warrant plans and to share allocation plans.

Information to be provided in these two sections depends on the type of plan and the following information has to be provided for each participant:

- Year of grant;
- Number of options/warrants/shares allocated;
- Amount of the taxable benefit, etc.

The file shall be submitted through a secure IT tool called One-Time-Exchange (OTX) which has been set up by the tax authorities.

These notification requirements are applicable retroactively from 1 January 2016, the date on which the circular came into force. All employers who allocated options, warrants or shares to their employees as from this date have to comply with this new obligation, even if a notification has previously been completed in another format.

BDO comment

There are prescriptive rules governing share plan reporting from 1 January 2016. Even if filing has already been completed, this must be redone if this was not in the required format. Companies should ensure they are clear on the rules and up to date with their obligations.

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MALTA

THE QUALIFYING EMPLOYMENT IN AVIATION (PERSONAL TAX) RULES (2016) HAVE COME INTO EFFECT BY VIRTUE OF LEGAL NOTICE 177 OF 2016

The Rules state that individuals not domiciled in Malta in receipt of income arising from qualifying contracts of employment in Malta may opt to pay tax at a reduced flat rate of 15% on such income. This flat rate applies to income earned after 1 January 2016 and to employees of companies licensed to operate in the aviation industry by the Authority for Transport in Malta (i.e. the *competent authority*).

The individual concerned must satisfy a number of conditions in order to benefit from this scheme, namely that:

- The employment activity must constitute an eligible office;
- The income must be derived by means of a qualifying contract of employment; and
- The qualifying contract of employment of the eligible office is in respect of the employment of a qualifying beneficiary.

Eligible office

The employment activity in the contract of employment is an *eligible office* if it is an employment defined as key for the operations of the company and whose function is confirmed by the competent authority. The Rules list the following senior positions which would qualify as eligible offices:

- Chief Executive Officer;
- Chief Operations Officer;
- Chief Financial Officer;
- Chief Risk Officer;
- Chief Technology Officer;
- Chief Commercial Officer;
- Chief Investment Officer;
- Chief Insurance Officer;
- Accountable Manager;
- Deputy Accountable Manager;
- General Manager;
- Flight Operations Manager;
- Nominated Person Flight Operations;
- Training Manager;
- Nominated Person Training;
- Ground Operations;
- Nominated Person Ground Operations;
- Continuing Airworthiness Manager;
- Nominated Person Continuing Airworthiness;
- Compliance Manager;
- Quality Systems Manager;
- Safety Manager;
- Flight Dispatch Manager;
- Instructor Manager;
- Head of Marketing;
- Head of Public Relations;
- Actuary;
- Underwriting Manager;
- Risk Management Officer;
- Key account manager;
- Product coordinator;
- Material coordinator;
- Engineering reporter;
- Aeronautical engineer;
- Head of Maintenance Operations;
- Aviation Systems Developer;
- Key Aviation Specialist.

Qualifying contract of employment

A *qualifying contract* is an employment contract which gives rise to a minimum income of EUR 45,000 and such income consists of emoluments from an eligible office. This amount excludes the annual value of any fringe benefits. In order to benefit from these rules, such emoluments cannot be paid by an employer (or a person related to such an employer) who has received benefits under the Malta Enterprise Act and/or the Business Promotion Act.

Qualifying beneficiary

In order for an individual to be considered as a *qualifying beneficiary*, he or she must:

- Derive income subject to tax and received in respect of work or duties carried out in Malta or in respect of any period spent outside Malta in connection with such work or duties, or on leave during the carrying out of such work or duties;
- Be domiciled in any country other than Malta;
- Be protected as an employee under the provisions of Maltese law;
- Prove to the satisfaction of the competent authority that he or she is in possession of the required specific competence or professional qualifications;
- Fully disclose for tax purposes and declare emoluments received in respect of income from a qualifying contract of employment;
- Prove to the competent authority that he or she performs the activities of an eligible office;
- Be in receipt of stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family without recourse to social assistance in Malta;
- Reside in accommodation regarded as normal for a comparable family in Malta, thereby meeting all the general health and safety standards in force in Malta;
- Be in possession of a valid travel document and of sickness insurance both for himself/herself and his/her family.

Applicability

Individuals who meet the requirements set out in the Rules and who would wish to avail themselves of the 15% tax rate should:

- Apply to the relevant competent authority in order to obtain a formal determination of their eligibility as beneficiaries;
- Attach a declaration form, duly endorsed by the competent authority, to their income tax return;
- Include in their income tax return all emoluments received in respect of income from a qualifying contract of employment and all income received from a person related to the payer of such income chargeable to tax in Malta, irrespective of where the duties have been performed.

EEA or Swiss nationals vs. third country nationals

The flat 15% tax rate applies for a consecutive period of five years for EEA and Swiss nationals or four years in the case of third-country nationals.

This period commences in the year in which the individual is first liable to tax in Malta. Any income derived after this timeframe has expired would be charged at the standard rates of tax applicable to the said individuals.

The tax benefit shall also be withdrawn with immediate effect if the granting of benefits and the beneficiary's stay in Malta is not in the public interest.

The 15% tax rate is final and cannot be reduced by means of double taxation relief, deductions, credits or set-offs of any kind.

BDO comment

The flat tax rate of 15% may clearly be beneficial to those in a relevant employment. Companies operating in this area should consider whether these rules apply to their workforce.

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NEW ZEALAND

FOREIGN TRUST DISCLOSURE RULES

A report was released late June following the Government's inquiry into New Zealand's foreign trust disclosure rules. The inquiry was a direct response to a perception that, as a result of the Panama Papers leakage, New Zealand is a tax haven and has "weak" laws around due diligence and reporting of foreign trusts.

The inquiry examined New Zealand foreign trust disclosure rules and reported on whether the rules and the enforcement of the rules are sufficient to ensure that New Zealand's reputation is maintained internationally.

The inquiry concluded that the current disclosure rules are "inadequate" and "not fit for purpose". It considered that strengthened disclosure requirements should act as a deterrent to offshore parties looking to use New Zealand foreign trusts for illicit purposes.

The recommendations included in the report are designed to achieve a balance between allowing foreign trusts to continue in New Zealand, while materially reducing the scope of foreign trust structures being used for hiding illegal funds or evading tax.

The recommendations include:

- Expanding required disclosure to Inland Revenue. The current rules require only the name of the New Zealand-based trustee and whether the settlor was resident in Australia. The proposed revised disclosures will require the name, email address, foreign residential address, country of tax residence, tax identification number of the settlors, trustees, protector, beneficiaries and any person effectively exercising control;
- Annual returns and financial statements to be provided to New Zealand Inland Revenue;
- A requirement to file the trust deed when registering a foreign trust;
- Imposition of a fee (proposed to be NZD 270 per annum) to cover administration costs of the new regime;
- Maintaining a register of foreign trusts, searchable by regulatory agencies;
- Early application of New Zealand's Anti-Money Laundering ("AML") laws to lawyers and accountants. AML due diligence and reporting requirements to apply when they establish/administer New Zealand foreign trusts;
- Revising the legislation/regulations around reporting of suspicious financial transactions that do not go through a New Zealand bank.

The Government has announced that it will action all of the recommendations. There are modifications to some of the recommendations, such as the early application of AML to lawyers and accountants to be "as soon as practicably possible" (citing issues regarding legal privilege and regimes supervision that can only be dealt with by an Act, not regulation).

BDO comment

Global focus on robust tax laws and ensuring a fair tax system, especially around offshore activities, continues to remain high on the agenda for Governments. We expect a tax bill in August 2016 including incorporating the proposed changes to legislation.

RESIDENTIAL LAND WITHHOLDING TAX UPDATE

We have previously reported that a residential land withholding tax ("RLWT") is to be introduced to supplement the new "bright-line" land taxing provision. The RLWT provisions have been enacted and apply to sales on or after 1 July 2016.

Broadly, the bright-line provision requires income tax to be paid on any gains from the sale of residential property acquired after 1 October 2015 and sold within two years, subject to certain exclusions (such as the vendor's main home).

RLWT is required to be withheld where:

- The property being sold is residential land (as defined in the context of the bright-line provision) located in New Zealand;
- The vendor acquired the property on or after 1 October 2015 and has owned the property for less than two years before disposing of it;
- The sale amount is paid on or after 1 July 2016;
- The vendor is an offshore RLWT person (we note this is different to the definition of "offshore person" in the context of IRD number applications).

The definition of an offshore RLWT person is different for individuals, companies, partnerships and incorporated clubs and societies.

RLWT will not be required to be deducted when the vendor holds a certificate of exemption. A certificate of exemption can be obtained where the seller is an individual or trust and the property would be subject to the main home exclusion under the bright-line test. In addition, a certificate of exemption may be available where the seller carries on a business relating to land and has either provided acceptable security to Inland Revenue or has a good compliance history.

There is a prescribed form that needs to be completed as part of the sales process, "Residential land withholding tax declaration" (Form IR 1101), if the land was acquired on or after 1 October 2015.

The obligation to deduct RLWT primarily lies with the vendor's conveyancer or solicitor. If the vendor does not have one, this obligation will pass to the purchaser's conveyancer or solicitor. In the absence of either the obligation will fall on the purchaser. The RLWT must be paid by the 20th day of the following month.

In respect of the quantum of the withholding tax, the lowest of three calculations is applied:

- Sale price x 10%;
- Sale price minus purchase price the vendor originally paid for the property multiplied by the RLWT rate (being 28% for companies and incorporated societies and 33% for all other taxpayer's) or zero;
- Sale price minus any amounts required to cover any mortgage or other security with a New Zealand registered bank or licensed non-bank deposit taker against the property, and minus any outstanding local authority rates. N.B. the security amounts can only be deducted if the person responsible for paying the withholding tax is the vendor or vendor's solicitor.

A person who has sold land and had RLWT deducted can still file a New Zealand tax return and this would facilitate a refund of any excess tax withheld.

BREXIT – A FOREIGN EXCHANGE GAIN CONUNDRUM

It is often a surprise to taxpayers that New Zealand legislation taxes unrealised foreign exchange gains (unless exemptions apply).

For example, let's assume James borrows GBP 300,000 to acquire a property in the South of England. At the time of the borrowing assume the exchange rate was NZD 1 = GBP 0.50.

Based on this exchange rate, the NZD equivalent of the GBP 300,000 is NZD 600,000.

As we are aware the Brexit decision has caused shock waves around global financial markets and exchange rates alike. A consequence is that the GBP has weakened against the NZD and now, for the purposes of the example, assume NZD 1 buys GBP 0.55.

Restating the GBP 300,000 borrowing, the NZD equivalent is NZD 545,455. Under the current exchange rate, James now only needs to repay an equivalent of NZD 545,455 for the borrowings. He has made a gain of NZD 54,545. Although this gain is unrealised, it is taxable income (unless he qualifies for concessionary treatment) and should be considered in your tax planning programme.

BDO comment

Foreign exchange gains can be an unwelcome surprise to taxpayers redeeming mortgages in foreign currencies. Individuals holding these mortgages must be aware of the potential pitfalls at redemption.

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SWEDEN

TAX TREATMENT OF KEY STAFF MEMBERS

Non-resident individuals may choose between being taxed as per standard provisions under the Income Tax Law (IL) or under the Law on Special Income Tax on Non-Residents (SINK). The latter is a final withholding tax regime of 20% on a gross basis. In addition Sweden grants a special tax relief to qualifying foreign key staff members temporarily employed in Sweden under the so called Expert Tax regime. In short the relief is applied by exempting 25% of their employment income from tax and social security contributions.

On 13 June 2016, the Swedish Tax Authorities (STA) published clarification regarding their view on key staff members temporarily employed in Sweden and their ability to choose to be taxed under the SINK regime. The clarification touches upon two cases in which employees have been granted a special relief for key staff members.

– In the first case, an employee left Sweden before being subjected to unlimited tax liability in Sweden. In such cases the STA's standpoint is that the employee cannot benefit from the Expert Tax Relief when opting for taxation under the SINK regime. However, if the employee instead chooses to be taxed as per standard income tax provisions (IL), he is entitled to the reliefs for resident taxpayers.

– In the second case, an employee who was subject to unlimited tax liability in Sweden received remuneration from his employer after leaving Sweden and becoming non-resident. If the remuneration relates to work performed in Sweden while being tax resident here, the remuneration qualifies for the Expert Tax Relief although the employee is also eligible to be taxed under the SINK scheme after becoming a non-resident. Hence, in such cases only 75% of the remuneration would be subject to the 20% final withholding tax.

BDO comment

The special rules contained within SINK and the Expert Tax Regime can be beneficial to those who qualify; however the STA has clear views and guidelines on this and individuals need to be aware of the applicability of these laws to their personal tax position. Companies also need to consider this up front when seconding employees to Sweden as it can have a significant impact on the overall cost of an assignment.

FATCA REPORTING DEADLINE

The Swedish tax administration updated its general information guidance regarding the reporting obligations under the Sweden - United States FATCA Model 1A Agreement (2014). The updated guidance clarifies that, from 2016, the information relating to the previous year must be submitted by 15 May of the following year.

DEDUCTIBILITY OF REPRESENTATION EXPENSES

The Swedish Ministry of Finance's plans for tax measures for the Spring Budget 2016 and Budget for 2017 (announced on 31 March 2016) includes changes to the deductibility of representation costs for meals and other refreshments.

For VAT purposes, the deductibility of input VAT will be limited to a maximum of SEK 300 per person and per occasion. The income tax deductibility of representation expenses relating to lunch, dinner, dinner parties or other refreshments will however be abolished from 1 January 2017, unless such expenses relate to consumption of lesser value.

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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 24 August 2016.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Australian Dollar (AUD)	0.67415	0.76359
Euro (EUR)	1.00000	1.13258
New Zealand Dollar (NZD)	0.64539	0.73105
Swedish Krona (SEK)	0.10551	0.11951
United States Dollar (USD)	0.88283	1.00000

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