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EXPATRIATE NEWSLETTER

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AUSTRALIA

ABOLITION AND REPLACEMENT OF THE SUBCLASS 457 VISA/FURTHER CHALLENGES TO BUSINESS AND THE WAR ON TALENT

Following the merger of the Department of Immigration and Border Protection with the Australian Customs and Border Protection and the formation of the Australian Border Force as the operational enforcement arm, the Department is now an enforcement agency with a focus on delivering on national security, law enforcement and security priorities.

Currently, it is estimated that the Government receives some 25,000 visa applications each day, worldwide. This year the Government is budgeted to raise over AUD 2 billion in visa fees and fines.

Australia's every changing immigration laws and policies reflect the current tension between on the one hand meeting Australia's skilled labour force shortage needs and on the other hand protecting jobs for Australian workers. Coupled with the extraordinary demand for temporary and permanent entry into Australia, Australia's already highly complex immigration laws and policies (which are arguably the most complex in the World) continue to be subject to constant and ongoing change.

The Government's announcement on 18 April 2017 that the Temporary Work (Skilled) visa (Subclass 457) visa will be abolished and replaced with a completely new Temporary Skilled Shortage (TSS) visa in March 2018 took everyone by surprise. As did the Government's announcement, that with immediate effect some 200 occupations had been removed from the Consolidated Skilled Occupations List (CSOL) and a further 59 occupations were subject to 'caveats', a novel concept to Australia's immigration laws. The TSS visa programme will be comprised of the Short Term stream of up to two years and a Medium Term stream of up to four years.

The obligation to evidence genuine skilled shortages will require more robust Labour Market Testing (LMT). These and other safeguards aim to protect the jobs of Australian workers and ensure that Australian employment standards and conditions are maintained.

These legislative reforms are part of an ongoing reform programme which aims to strengthen the integrity and quality of Australia's temporary and permanent employer sponsored skilled programmes.

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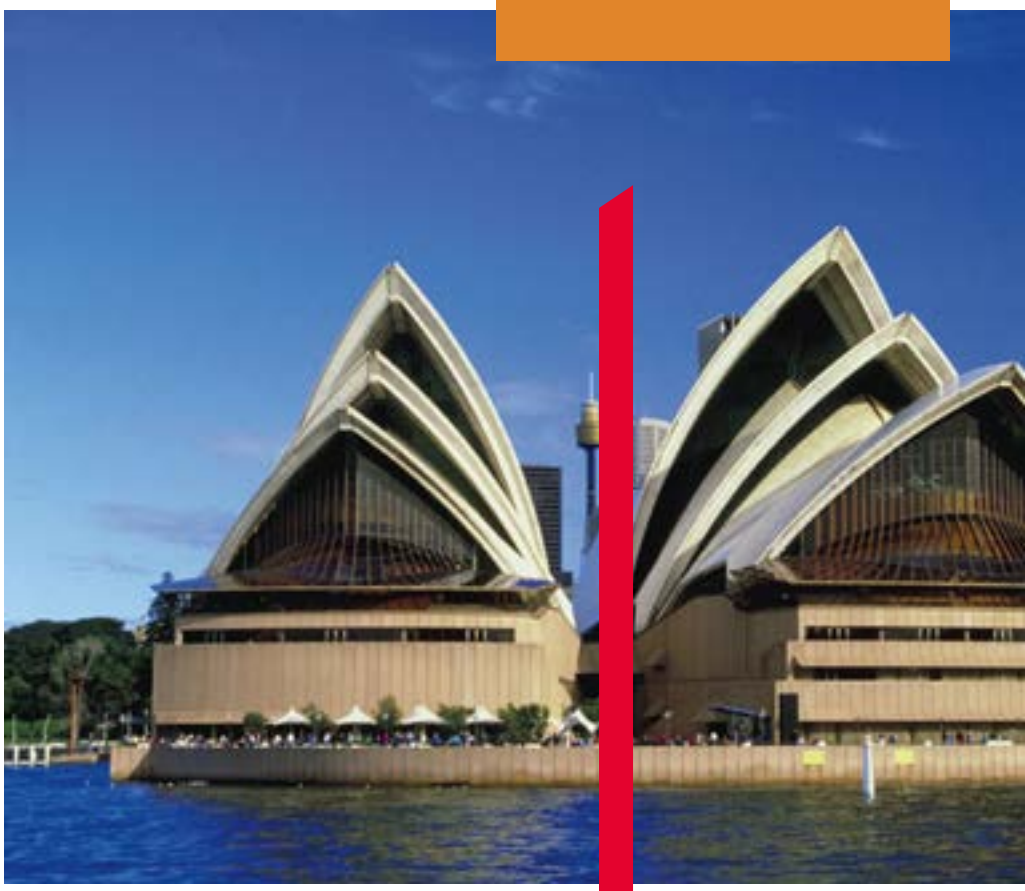

EDITOR'S LETTER

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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In response to the overwhelming demand for temporary and permanent entry to Australia, the Australian Government has embarked upon a significant and ongoing restrictive reform program which aims to strengthen the integrity and quality of Australia's temporary and permanent employer sponsored skilled visas. These reforms aim to protect the jobs of Australian workers and ensure that Australian employment standards and conditions are maintained.

The most dramatic announcement was on 18 April 2017 that the Government would abolish and replace the Subclass 457 visa with the Temporary Skilled Shortage (TSS) visa which is to come into effect in March 2018.

By way of summary, the requirements for the new TSS visa (some of which will come into effect 1 July 2017) will include the following:

- New, more targeted occupation lists which better align with skill needs in the Australian labour market;
- A requirement for visa applicants to have at least two years' work experience in their skilled occupation;
- A minimum market salary rate which ensures that overseas workers cannot be engaged to undercut Australian workers;
- Mandatory labour market testing, unless an international obligation applies;
- Capacity for only one onshore visa renewal under the Short-Term stream;
- Capacity for visa renewal onshore and a permanent residence pathway after three years under the Medium-Term stream;
- The permanent residence eligibility period will be extended from two to three years;
- A non-discriminatory workforce test to ensure employers are not actively discriminating against Australian workers;
- Strengthened requirement for employers to contribute to training Australian workers;
- The Department of Immigration and Border Protection will collect Tax File Numbers and data will be matched with the Australian Tax Office's records; and
- Mandatory penal clearance certificates to be provided.

The Government will also be tightening eligibility requirements for employer sponsored permanent skilled visas, including but not limited to:

- Tightened English language requirements;
- A requirement for visa applicants to have at least three years' work experience;
- Applicants must be under the maximum age requirement of 45 at the time of application;
- Strengthened requirement for employers to contribute to training Australian workers; and
- Employers must pay the Australian market salary rate and meet the Temporary Skilled Migration Income Threshold.

The impact of the caveats vary in respect of specified occupations and will impact businesses that employ less than 5 employees and have a turnover of less than AUD 1 million per annum.

From 19 April 2017, the new occupations lists are as follows:

- Medium and Long term Strategic Skills List (MLTSSL); and
- Short term Skilled Occupation List (STSOL).

Under policy the maximum 4 year visa period will only be available if the primary applicant's occupation is on the MLTSSL.

From 19 April 2017, the requirements of 'Market Salary Rates' will include minimum base salary levels for specified occupations and in respect of businesses that must meet specified details relating to the nature of the business and the scope and scale of the business.

From 1 July 2017 further changes to the Subclass 457 program may include:

- Possible further changes to occupations which are eligible for a 4 year visa;
- The expansion of primary applicants for whom mandatory skill assessments are required; and
- Other changes to the training benchmarks for Subclass 457 sponsors.

Before 31 December 2017 for the existing 457 visa:

- The Department of Immigration and Border Protection will commence the collection of Tax File Numbers for 457 visa holders (and other employer sponsored migrants) and data will be matched with the Australian Tax Office's records to ensure that visa holders are not paid less than their nominated salary;
- The Department will commence the publication of details relating to sponsors sanctioned for failing to meet their obligations under the Migration Regulation 1994 and related legislation.

The dramatic nature of these changes and their potentially far reaching impact on Australian businesses has yet to be understood as other than the introduction of MLTSSL and STSOL we have yet to see the enabling legislation which creates these further restrictions or caveats.

Many questions are also being raised as to whether the Minister of Immigration has purported to exercise a legislative, rather than an executive, power which may be an invalid exercise of legislative power.

BDO comment

With the significant complexity of Australia's immigration laws and the ever expanded powers and reach of the Department of Immigration and Border Protection and the Australian Border force as the operational enforcement arm, businesses recruiting overseas workers must ensure that they stay ahead of potential breaches of the law.

Companies recruiting overseas skilled workers, so as to meet their talent needs need to be on constant alert to the rapidly changing regulatory framework which is part of a new and evolving order of Border Protection.

Businesses which are subject to sanction because of visa and related breaches can face significant civil and criminal pecuniary penalties (and even jail). Such breaches, including the associated poor press undermine the confidence in an organisation and damage its reputation and its brand.

Risk, governance and compliance is now a broader enterprise risk management system which should be embedded into the strategic, business planning, human resource and decision-making processes of the organisation as a whole.

Increasingly Human Resources operations must be part of the broader enterprise risk management approach where talent strategies are aligned with regulatory framework and the increased focus on regulatory compliance, sanctions and enforcement for breach.

BDO migration services

BDO Migration Services, an incorporated immigration legal practice provides strategic, expert and practical advice in all aspects of visa and migration related requirements.

Maria Jockel is the Legal Principal and National Leader of BDO Migration Services, an incorporated immigration legal practice which specialises in all aspects of Australian immigration law for corporate and private clients.

For further assistance, please contact Maria or see **https://www.bdo.com.au/en-au/our-people/maria-jockel**

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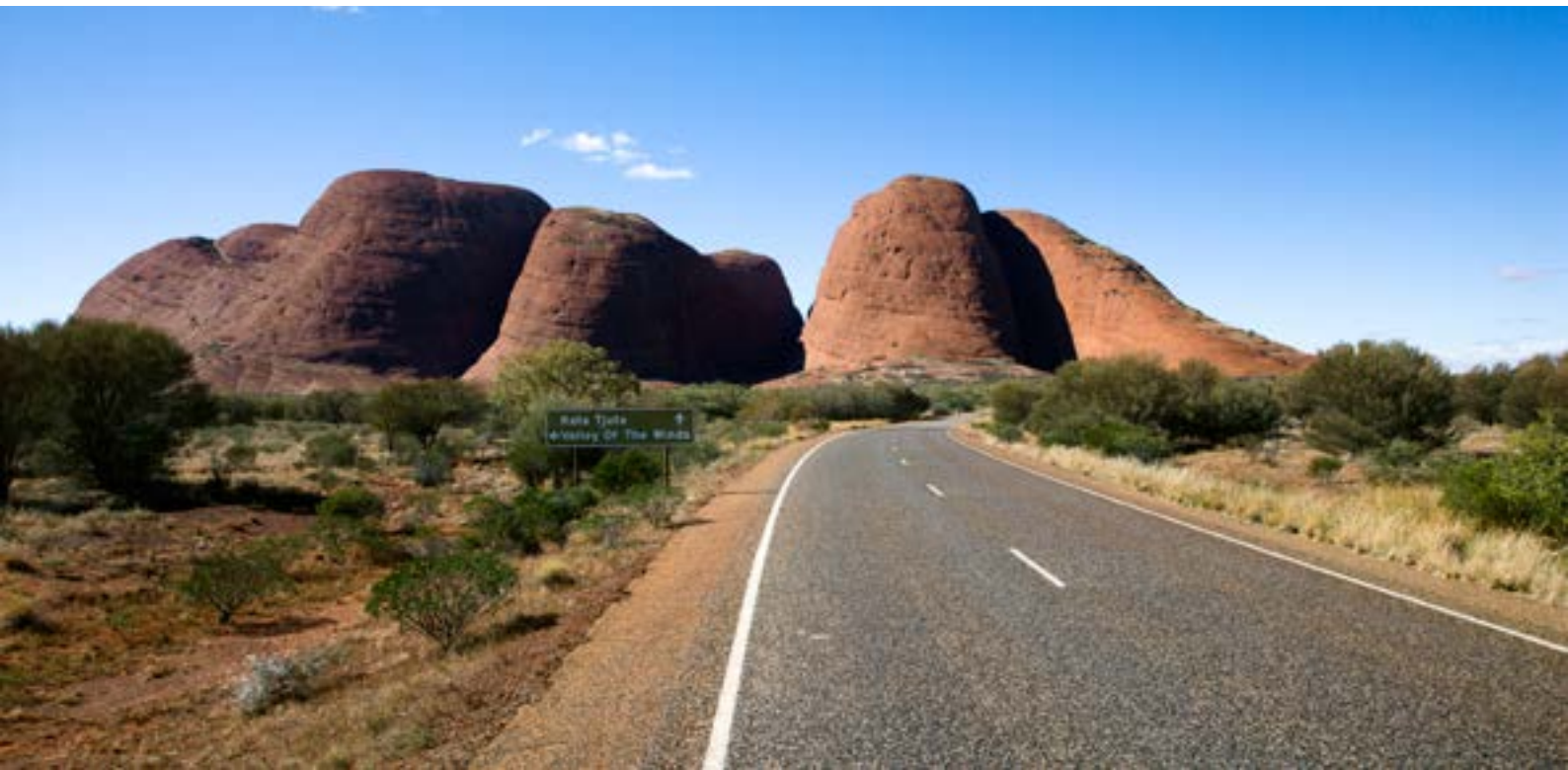


AUSTRALIA

PROPOSED LEGISLATIVE CHANGES IMPACTING BOTH EMPLOYERS AND THE INDIVIDUAL

In the 2017/18 Federal Budget speech delivered on 9 May 2017, the Government announced a number of changes to tax legislation which will impact both employers and individuals, with particular focus on foreign residents.

Overall, these changes don't provide any relief to employers or individuals. Instead, they introduce additional levies on employers hiring foreign skilled workers, additional levies on individuals who own utilised residential property, stricter limitations on deductions, increased Medicare levy and tighter student loan repayment thresholds.

Furthermore, the Government will provide further funding to the Australian Taxation Office (ATO) for ATO audit and compliance programs to detect and combat behaviours such as non-lodgement, omission of income, and non-payment of employer obligations.

New levy on employers of foreign workers

On the back of the announcement of the replacement of 457 visas, the Government has announced the introduction of a new levy on businesses with foreign workers on certain skilled visas, with a slightly lower levy applying to small business entities.

Levy to fund Skilling Australians Fund

The Government has proposed the introduction of a new levy for businesses with foreign workers on certain skilled visas, with application from March 2018. The revenue raised from this measure will be applied to a new 'Skilling Australians Fund' to support the training and development of Australian workers.

Businesses with a turnover of less than AUD 10 million per year will be required to pay:

– Upfront payment of AUD 1,200 per visa per year for each employee on a Temporary Skill Shortage visa;

– One off payment of AUD 3,000 for each employee being sponsored on a permanent Employer Nomination Scheme (subclass 186) visa or a permanent Regional sponsored migration Scheme (subclass 187) visa.

Businesses with turnover of AUD 10 million or more will be required to pay:

– An upfront payment of AUD 1,800 per visa per year for each employee on a Temporary Skill Shortage visa;

– One off payment of AUD 5,000 for each employee being sponsored on a permanent Employer Nomination Scheme (subclass 186) visa or a permanent Regional sponsored migration Scheme (subclass 187) visa.

This measure is estimated to have a revenue gain of AUD 1.2 billion over 2018 to 2021.

BDO comment

There is no specific detail yet regarding the administration of this new levy, but this will be a significant (and unexpected) cost to small businesses who may already be struggling with costs to employ staff. The process of hiring foreign workers is already a complicated and costly process, involving many cross border issues, including cross border taxation considerations. The levy is targeted at making hiring foreign workers less attractive in an effort to provide jobs for Australians first. The proceeds going to fund a training program for Australian workers will be a good idea to assist people getting back into the workforce.

However, for businesses with a global presence who are required to send staff between different jurisdictions across the globe for proprietary skills particular to that business (e.g. staff with access to particular intellectual property), hiring foreign workers is unavoidable in many cases. The new levy adds an unnecessary burden.

Annual charge on foreign owners of underutilised residential property

The Government has announced its intention to introduce an annual levy which will apply to foreign owners of residential property located in Australia. The charge will apply in cases where the property is neither occupied, nor genuinely available for rent for at least six months of the year.

The charge itself is to be equal to the foreign investment application fee of about AUD 5,000, which is imposed at the time the property is acquired by the foreign owner. The measure is anticipated to raise approximately AUD 16.3 million for the Government coffers over a four year period.

The charge will be administered by the ATO and will apply with immediate effect to foreign persons who make a foreign investment application for residential property from 7.30 pm on 9 May 2017.

A separate measure is also proposed to be introduced by the Victorian Government on inner-Melbourne houses and apartments which are vacant for in excess of six months. A Vacant Residential Property Tax (VRPT) will be levied at 1% of the capital improved value of each property. This measure is set to apply from 1 January 2018 to all owners, not just foreign owners.

BDO comment

The so called 'ghost house' reforms are a welcome attempt to encourage foreign owners of residential property to make their properties available for rent. This should help to increase the supply of premium residential housing stock in capital cities.

There will be an effective 'double whammy' where foreign owners acquire property in inner-Melbourne and crystallise liability to both the ghost property tax and the VRPT. It is not anticipated that any relief or offset will be made available for this.

Foreign residents & Capital Gains Tax (CGT)

Through the extension of a number of pre-existing measures, the Government is tightening foreign residents' ability to access CGT concessions.

Withholding payments

As a result of measures in the 2013 Budget, a 10% non-final withholding tax on payments made to foreign residents that dispose of certain taxable Australian property was introduced. This regime applied to all contracts entered into on or after 1 July 2016.

Specifically excluded from the 'taxable Australian property' umbrella were residential real property transactions with a market value under AUD 2 million. This ensured that the vast majority of residential house sales were unaffected by this measure.

What has changed?

Under the proposed Budget measures, the applicable CGT withholding rate for foreign tax residents will increase to 12.5% from 1 July 2017.

Furthermore, the AUD 2 million threshold will be reduced to AUD 750,000 from 1 July 2017.

Main residence exemption

In another hit to foreign residents, the Government will deny foreign and temporary tax residents access to the CGT main residence exemption from 7.30 pm (AEST) on 9 May 2017. Existing properties held prior to this date will be grandfathered under the existing provisions until 30 June 2019.

It is expected that these rules will result in the deemed disposal and reacquisition of foreign owned properties on 1 July 2019 at market value. Where foreign ownership of property is maintained after this date, we suspect market valuations will be required to exempt (to some extent) any gain accrued to this date.

Tax concessions – first home super save scheme

Individuals who are looking to purchase their first home will be able to access specific voluntary contributions made into superannuation after 1 July 2017. The voluntary contributions, and an amount of associated deemed earnings, will be accessible by individuals from 1 July 2018.

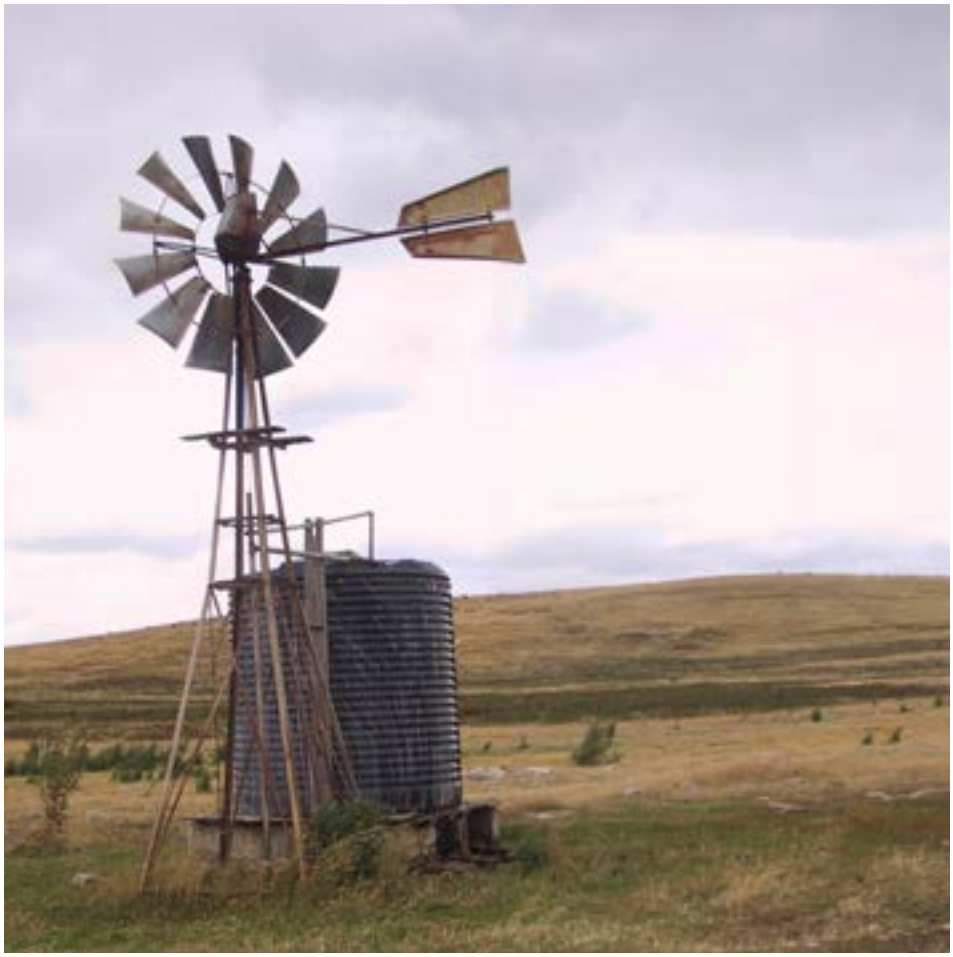
Limits apply to the amount that individuals can contribute under this measure to AUD 15,000 per year and AUD 30,000 in total. The existing contribution caps must be adhered to in conjunction with this initiative.

Withdrawals under this measure will be taxed at the individual's marginal tax rate less a 30% tax offset.

BDO comment

While this measure may provide young Australians with an incentive to start, or continue saving for a home, the major tax benefit will be limited to those who sit outside of the lowest tax bracket.

In addition, we see a risk for those individuals who do not ultimately decide to purchase a home for some time, or decide to invest elsewhere. Given the vast changes to superannuation over the past number of years, there is concern that some people who would be eligible will be wary of committing to this scheme.



Removal of expensive deductions for rental properties

As part of the Government's agenda to facilitate affordable housing, the Budget proposes removal of a number of deductions in relation to investment properties, which have allegedly been exploited.

Travel expenses for residential rental property

From 1 July 2017, the Government will disallow deductions for travel expenses relating to inspecting, maintaining, or collecting rent for a residential rental property.

The Budget papers describe this as an integrity measure to address concerns that many taxpayers have been claiming travel deductions without correctly apportioning costs, or have claimed travel costs that were for private travel purposes. This measure will not prevent investors from engaging third parties such as real estate agents for property management services. These expenses will remain deductible. The Treasurer's related press release describes this as a deductible expense that is seen as being 'abused'.

The Government also makes the point that inspection costs undertaken by third parties will be permissible, meaning that inspection costs are seen as legitimate, but only if genuinely incurred for pure inspection purposes.

Travel expense deductions will still be permitted for non-residential investment property, so presumably investments in more 'active' property assets such business facilities, farming, factories and so on should still be claimable.

Restriction on depreciation deductions

From 1 July 2017, the Government will also limit 'plant and equipment' depreciation deductions to outlays actually incurred by investors in residential real estate properties.

The Budget papers state that these plant and equipment items are usually mechanical fixtures or those which can be 'easily' removed from a property such as dishwashers and ceiling fans. The associated Treasurer's press release also includes carpet as an item that will be affected by this measure.

This is described as an integrity measure to address concerns that some 'plant and equipment' items are being depreciated by successive investors in excess of their actual value.

Investors who purchase plant and equipment for their residential investment property after 9 May 2017 will be able to claim a deduction over the effective life of the asset. However, subsequent owners of a property will be unable to claim deductions for plant and equipment purchased by a previous owner of that property.

The net result of this measure is that only the person who actually pays for the asset will be able to claim a depreciation deduction for it. Subsequent owners will not be able to inherit the written-down value of any such assets, nor presumably will taxpayers be entitled to a depreciation deduction for assets for which they have not provided any consideration.

Once again, this measure only applies to residential property, and not to other forms of business related property investment.

CGT implications

However, there will still be some tax benefit with these asset items, but investors will need to be patient to benefit from them. Acquisitions of existing plant and equipment items will be reflected in the cost base for CGT purposes for subsequent investors. Therefore, the cost of these items will have some tax benefit when the property is ultimately disposed of. However, there will not be an immediate tax benefit claimed each year until the end of the assets' effective life.

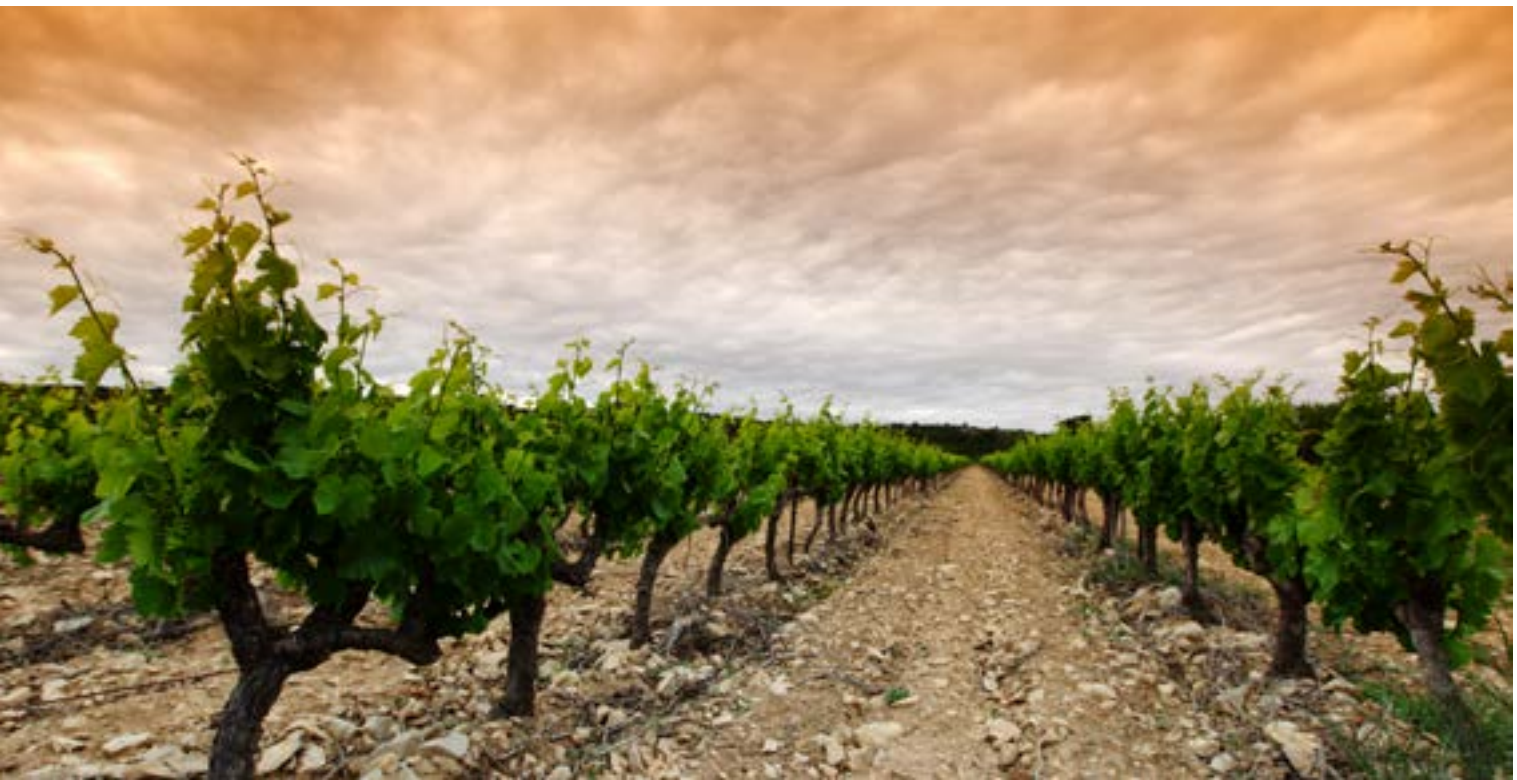
Grandfathering

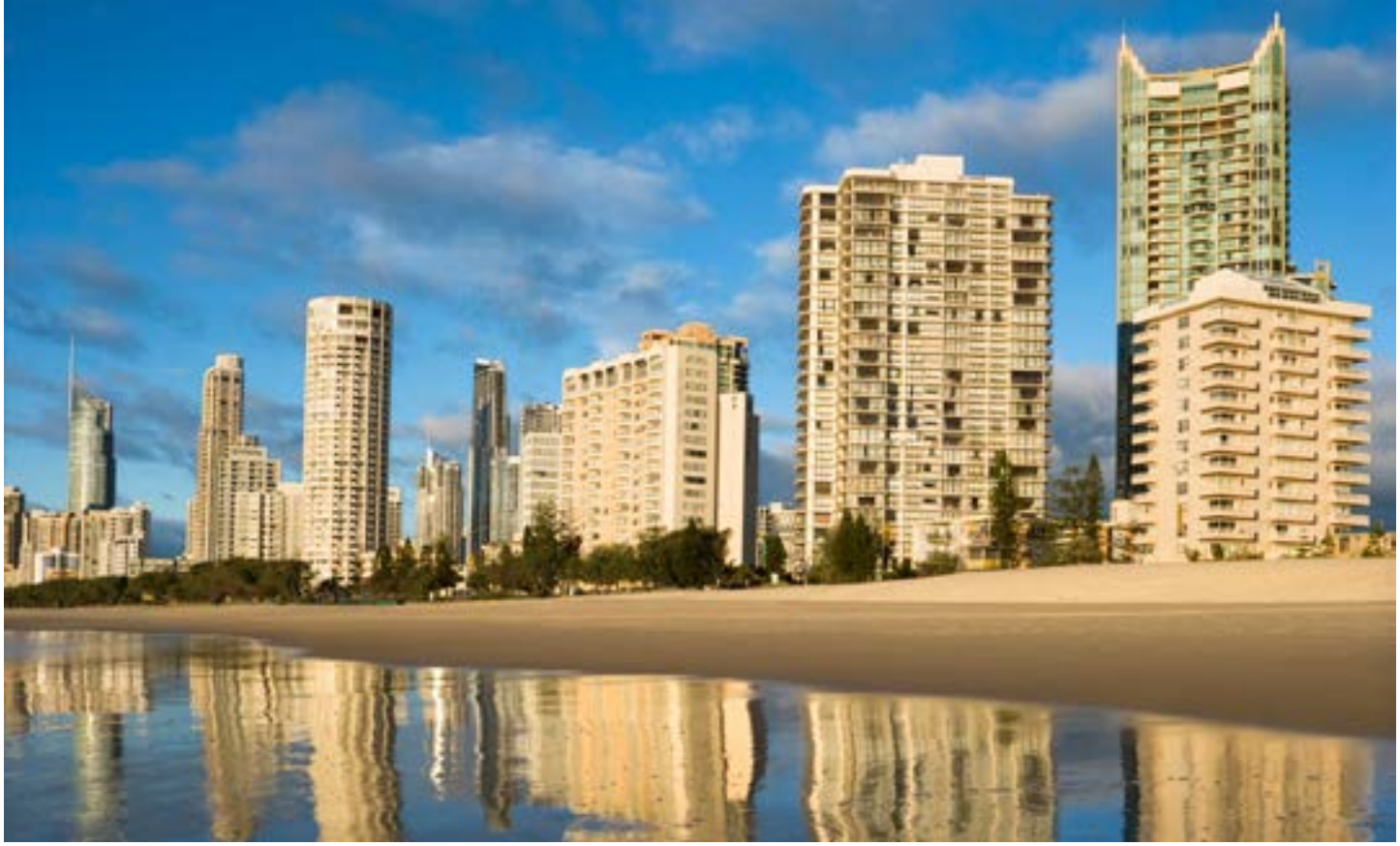
These changes will apply on a prospective basis, with existing investments grandfathered.

Plant and equipment forming part of residential investment properties as of 9 May 2017 (including contracts already entered into at 7.30 pm on 9 May 2017) will continue to give rise to deductions for depreciation until either the investor no longer owns the asset, or the asset reaches the end of its effective life.

BDO comment

The Government has been true to its word and not removed negative gearing. However, it has curtailed some of the large discretionary expenditure deductions which can add to negative gearing losses. By announcing these as integrity measures designed to 'improve taxpayer confidence in the negative gearing system' the Government has managed to stay true to its word while reducing the cost of negative gearing to the Budget.





Increase in the Medicare levy

As of 1 July 2019 the Government will increase the Medicare levy by 0.5% from 2.0% to 2.5% of taxable income to ensure the National Disability Insurance Scheme (NDIS) is fully funded. Not only will the Medicare levy be subject to this increase, but other taxes linked to the top personal tax rate, such as the fringe benefits rate, will also increase.

BDO comment

The increase to the Medicare levy, combined with the abolition of the 2.0% deficit levy from 1 July 2017, creates a set of circumstances in which those paying the top personal tax rate receive the greatest net benefit. By 2019, those earning over AUD 180,000 will have received an effective tax cut of 1.5%, being taxed at 47.5%, compared to the current effective tax rate of 49%. As the 2% deficit levy was not applied to those outside of the top tax bracket, those earning less than AUD 180,000 face a 0.5% increase in their rate of income tax (other than those in the low-income exemption brackets).

New student loan HELP repayment thresholds and rates to be introduced

The Government has announced changes to personal taxation measures centred on accelerating Student Loan Higher Education Loan Program (HELP) debt repayment, and increasing the availability of Higher Education Contribution Scheme (HECS) eligible courses as the main changes to education.

The Government has announced that it will widen the repayment thresholds in a bid to accelerate HELP debt repayment from 1 July 2018.

The current minimum repayment threshold for the 2017/18 year of AUD 55,874 with a repayment rate of 4% is set to decrease to AUD 42,000 and 1% respectively. Conversely, the maximum band will be increased from the 2017/18 year threshold of AUD 103,766 with a repayment rate of 8% to AUD 119,882 and a repayment rate of 10%.

Changes to maximum student contributions will also be introduced from 1 July 2018 to allow an incremental yearly increase in contribution levels of 1.8% each year, totalling a 7.5% increase by 2021.

HECS eligibility has also widened with support places now being offered to students in sub-bachelor courses. Courses with a focus on industry and a probable pathway into related bachelor programs will meet the requirements and students will be excluded from the scheme if they have completed a prior higher education qualification.

Additional funding to toughen up the ATO

Serious and organised crime taskforce

As part of the Government's tax integrity measures, AUD 28.2 million will be provided to the ATO in order to target serious and organised crime within the tax system. This extends an existing measure by a further four years to 30 June 2021.

The Government estimates that organised crime costs Australia between AUD 10 billion and AUD 15 billion annually. The additional funding is intended to ensure that the ATO works closely with federal, state, and territory agencies to combat serious and organised crime.

Black economy taskforce

The Government will also provide AUD 32 million for one year of additional funding for ATO audit and compliance programs to better target black economy risks.

This measure provides further funding to ATO programs that focus on businesses with a turnover between AUD 2 million and AUD 15 million that have disengaged from the tax system. These programs are directed at changing black economy and related behaviours such as non-lodgement, omission of income, and non-payment of employer obligations.

In recent years, the ATO has targeted businesses that are not declaring cash revenues with a focus on businesses in high risk industries such as cafes and restaurants, building trades, beauty and nail specialists, and cleaners.

BDO comment

Additional funding to the ATO to target non-compliance should be welcomed by businesses that do the right thing. However, experience says that the ATO will need to be careful to discriminate carefully between those who actively disengage from the system and those who try, but fail, to comply with their obligations.

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HONG KONG AND MACAU

UPCOMING AMENDMENT TO THE STATUTORY MINIMUM WAGE RATE IN 2017

The Chief Executive in Council has adopted the recommendation of the Minimum Wage Commission to increase the statutory minimum wage (SMW) rate and the Legislative Council has approved the subsidiary legislation relating to SMW. The SMW rate will be raised from the prevailing level of HKD 32.50 per hour to HKD 34.50 per hour with effect from 1 May 2017.

The SMW rates before and after the amendments are summarised in ***Table 1***.

Table 1

Details	Upcoming amendment to statutory minimum wage rate in 2017	
	Prevailing level of statutory minimum wage before amendment since 1 May 2015	Will come into force from 1 May 2017 (subject to the approval of the Legislative Council)
Minimum hourly wage rate	HKD 32.50 per hour	HKD 34.50 per hour
Monetary cap on keeping records of hours worked by employees	HKD 13,300 per month	HKD 14,100 per month

How is the evolution of Macau's economy impacting investors' business strategies?

There have been some big changes since the opening of the gambling industry in Macau some 15 years ago. Today, Macau's casino market is the largest in the world; it is thought to be seven times bigger than that of Las Vegas and it is still the only place in China where gambling is legal.

Macau has been transformed into a gaming hub, which is being powered even further by the development of major hotels, shopping centres and residential complexes. With the development of the Hengqin New Area (one of China's special economic zones located within walking distance of Macau) and the completion of the Hong Kong-Zhuhai-Macau Bridge scheduled for the end of 2018, Macau is connecting the nearby cities of the Pearl River Delta, potentially broadening its target market. In recognition that Macau's huge gaming sector is dominating the city's economy, the government of the Macau Special Administrative Region (SAR) has already made considerable efforts to diversify the economy; for example, through the development of non-gaming industries to evolve the economy into one that focuses on gambling, tourism, entertainment, culture and creativity. Likewise, the city's simple and low taxation regime and its free port, with no foreign exchange controls, contribute to creating a business environment that attracts overseas corporations to incorporate companies in Macau. Macau has become an offshore financial centre, a free port and a tax haven.

The latest Macau rates for profits (complementary) tax and salaries (professional) tax, in addition to tax-relief measures approved in the government budget for the 2017 Financial Year, are shown in ***Tables 2 and 3***.

Table 2 **– Latest profits tax (complementary tax) rates in Macau**

Annual assessable profits (MOP)		Profits tax rate
From	To	
0	600,000	0%
600,001	and above	12%

Notes

Companies incorporated in Macau are separated into two groups. Companies in Group A must adhere to proper accounting requirements and maintain capital levels of at least MOP 1,000,000. Companies in Group B are either companies that are filing their tax returns for the first time or companies that do not meet capital requirements for businesses in Group A. Companies in Group B are taxed based on assessed profits, whilst those in Group A are levied on certified tax returns submitted to the Macau Finance Bureau.

Table 3 **– Latest salaries tax (professional tax) rates in Macau**

Assessable annual income (MOP)		Salaries tax rate
From	To	
0	144,000	0%
144,001	164,000	7%
164,001	184,000	8%
184,001	224,000	9%
224,001	304,000	10%
304,001	424,000	11%
424,001	and above	12%

Notes

1. *The amount of the salaries tax due each year is calculated based on the statutory tax rates and is subject to a 30% waiver in accordance with the tax-relief measures announced in the budget of the government of Macau for the 2017 Financial Year.*
2. *60% of the salaries tax paid for 2015 assessment year will be refunded to taxpayers who held a Macau Resident Identity Card on 31 December 2015, up to a limit of MOP 12,000.00. Salaries tax reduction for the 2016 Assessment Year has not yet been announced by the Finance Services Bureau (DSF).*

Table 4 **– Monthly Macau Social Security Fund (FSS) contributions (1 January 2017)**

	Employer's contribution for local employee (MOP)	Local employee contribution (MOP)
Amount per month	60.00	30.00

Notes

Non-resident employees are exempt from FSS contributions, but employers are required to pay a monthly government levy of MOP 200 per non-resident employee to the FSS bureau.

However, there are factors that could threaten Macau's current prestige: mainly the shortage of professionals available to meet the ever-increasing demand amongst existing and new corporations in various industries and government departments. According to the statistics, there is only a small pool of qualified professionals and the supply of fresh graduates from local universities and technical institutes in the most sought after disciplines, such as IT, accounting and finance, business and management, law and engineering, is far lower than required to meet demand. The economy lacks a dynamic and broad based supply of labour to satisfy the high demand for professionals in the booming industry sectors; in particular, tourism, gaming and hospitality. In response to these challenges, some multinational corporations are considering alternative solutions, such as hiring non-resident employees from mainland China and other countries, automating certain processes and procedures, and outsourcing back-office work to external service providers.

To ease the difficulties caused by the long-term shortage of professional manpower, the government of the Macau SAR has implemented an e-filing system for certain recurring statutory requirements.

With effect from 1 November 2016, employers in Macau SAR can report and pay Social Security Fund (FSS) contributions through the e-filing system. (The latest monthly FSS contribution amounts for employers and employees, with effect from 1 January 2017, are shown in ***Table 4***) In order to use the e-filing system, employers must apply for an e-Pass account. Once they have an e-Pass account, they can file and pay employee FSSs online. The sole master e-Pass account must be registered by a permanent resident of the Macau SAR.

The Finance Services Bureau (DSF) in Macau has also made available an e-filing system through which employers can submit salaries (professional) tax returns for employees. To use the e-filing system, the employer's legal representative must apply to the DSF for an account and submit the relevant tax returns online using the designated user ID and password. For organisations involved in the banking and finance industry, the entity's legal representative must apply for an enterprise qualified electronic signature pack under eSign Trust through the Macau Post & Telecommunications Bureau.

On the one hand, the implementation of the e-filing system gives Macau employers more flexibility, enabling them to comply with the statutory requirements related to employment and to process the relevant payments online for their local employees. Alternatively, employers can engage outsourcing service providers to carry out such processes, inside or outside Macau's border.

On the other hand, the official languages of the Macau SAR are Chinese and Portuguese and all statutory forms and documents are provided in these two official languages. This may trigger demand amongst multinational corporations from English speaking countries for local professionals or outsourcing service providers who are proficient in the official languages to ensure compliance with local statutory requirements on their behalf.

BDO comment

The business environment in Macau is likely to remain complex and challenging, and it will stay this way in the medium to long term. On the one hand, the evolution of the Macau economy is creating business opportunities for local and overseas investors; in particular, hospitality-related services and consumables, retail, gaming equipment, building and architectural services, entertainment and recreation services, sports equipment, IT infrastructure and security equipment, exhibitions and conference services.

To fulfil the requirements of investors, the government of the Macau SAR has already put in place appropriate short, medium and long term strategies and development plans from 2016 to 2036. On the other hand, investors are concerned about the current situation and should readjust their investment strategies to the city so as to appeal to a wider target market in the future.

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INDIA

INDIA – GERMANY SOCIAL SECURITY AGREEMENT

The Comprehensive Social Security Agreement (SSA) between India and Germany has come into force from 1 May 2017. India had entered into two SSAs with Germany, namely:

- Limited SSA signed on 8 October 2008 and in force from 1 October 2009 to 30 April 2017;
- Comprehensive SSA signed on 12 October and in force with effect from 1 May 2017.

While both SSAs were signed, only the Limited SSA was in force until April 2017. The Comprehensive SSA has come into force only now; thereby the Limited SSA will cease to be in effect from the specified date.

Some of the key features of the Comprehensive SSA are listed below:

- Unlike the Limited SSA which covered only the detachment benefit, the Comprehensive SSA is aimed at providing all three general benefits of a SSA i.e. detachment, totalisation of periods, exportability of benefits.
- Employees working in the other country for a period up to 48 calendar months could avail the benefit of detachment. A detached employee on obtaining a valid Certificate of Coverage (COC) from the home country would be required to contribute only to the home country social security scheme and detach himself from the social security scheme of the host country.
- The Comprehensive SSA covers only the below social security schemes:
  - In India: Employees' Provident Fund, Employees' Pension Scheme, Employees' Deposit Linked Insurance Scheme;
  - In Germany: Statutory Pension Insurance (excluding Health Insurance and Nurse Care Insurance), Steelworkers' Supplementary Insurance and the Farmers' Old Age Security.

Hence an employee holding a valid COC would be excluded from making contributions to the aforesaid mandatory social security schemes of the host country.

- There are certain additional conditions to the detachment qualification included in the Comprehensive SSA. Some of them are:
  - The work of detached employees should correspond to the employer's business operations in the sending country;
  - The employee has worked in the sending country for more than 6 months after termination of the last detachment period; etc.

It is imperative that such conditions are read in detail prior to application of COC.

- The benefits of the Comprehensive SSA shall also be available if the home country company sends its employees to the host country from a third country. For instance, an Indian company sending employees to Germany from Singapore.
- The process for application of COC remains the same as compared to the Limited SSA.
- For persons who have already availed the detachment benefit under the Limited SSA, the period of coverage shall be later of the below:
  - Date of detachment; or
  - Date of force of Limited SSA (1 October 2009).

The Comprehensive SSA additionally includes the totalisation and exportability features which play an essential role at the time of withdrawal of contributions under the SSA.

BDO comment

Globally mobile employees can continue to avail themselves of the social security benefits of detachment while moving on an assignment to India or Germany. The terms of the secondments should be reviewed to ensure it is clear whether a COC is applicable.

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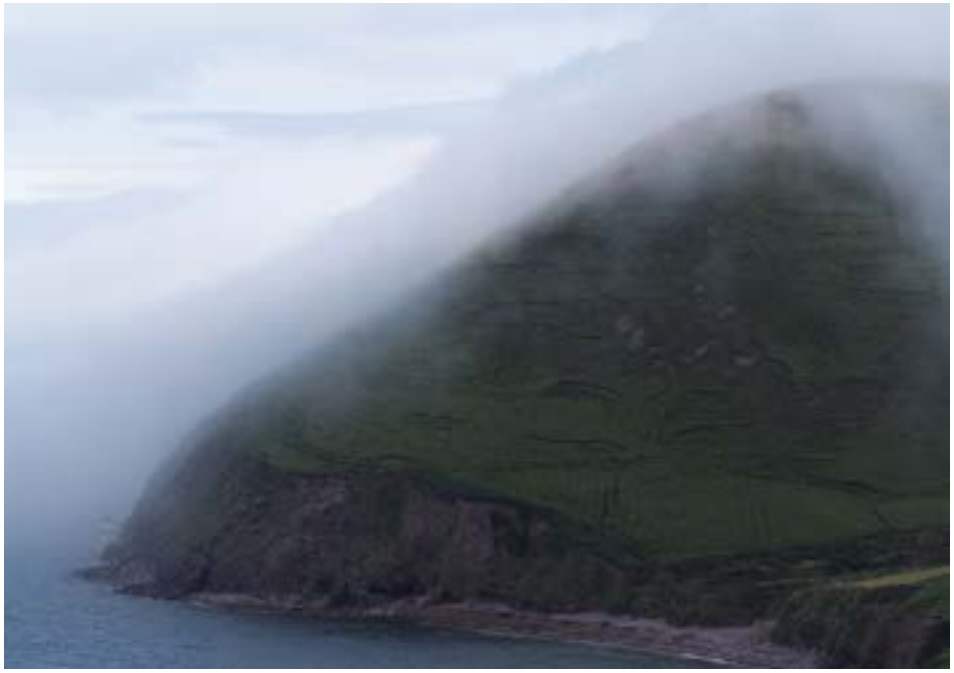
IRELAND

TRAVEL AND SUBSISTENCE



Significant changes effective 1 April 2017

The Department of Public Expenditure and Reform has made significant changes to motor travel and subsistence rates for civil servants with effect from 1 April 2017. Revenue Guidance IT51 (Motoring Expenses) and IT54 (Employee Subsistence Expenses) have been updated to reflect these changes.

Subsistence Rates

Domestic Subsistence Rates effective from 1 April 2017Profits tax rate				
Day Allowances		Overnight Allowances		
5 hours (but <10 hours)	10 hours or more	**Normal Rate** payable up to 14 nights	**Reduced Rate** payable for each of next 14 nights	**Detention Rate** payable for each of next 28 nights
EUR 14.01	**EUR 33.61**	**EUR 133.73**	**EUR 120.36**	**EUR 66.87**

The flat rate day allowance remains unchanged. A day allowance applies to continuous absence of 5 hours or more, provided the absence is not at a place within 8 km of the employee's home or normal place of work. There are two categories of day allowance, namely, 5 to 10 hours absence and over 10 hours absence.

The overnight allowance has increased with effect from 1 April 2017. The overnight allowances covers business related absences for a period of up to 24 hours which is necessarily spent overnight at least 100 km away from the individual's normal place of work. The overnight allowance is expected to cover the cost of accommodation and meals during the absence.

Introduction of a Vouched Accommodation (VA) rate for Dublin

A new rate was introduced which acknowledges the difficulties in sourcing suitable accommodation within the standard overnight allowance in the Dublin area. A new vouched rate for Dublin will be applied which will allow the employer to provide or reimburse the cost of accommodation up to the limit of the standard overnight allowance rate of EUR 133.73 plus provide the day rate of EUR 33.61 for meals.

Foreign subsistence rates

There have also been a number of changes to the subsistence rates for employees on business trips outside of Ireland. A full list of the Foreign Subsistence rate can be obtained from your BDO Tax Adviser.

Motor travel rates

With effect from 1 April 2017, the new schedule of rates applies to reflect changes in advanced technology, road conditions and commuter behaviour. The rates used are still dependent on the business kilometres and the engine capacity, however, the business kilometres categories have increased making it more difficult for employers to administer. The new system will result in more stringent verification checks for the employer.

Effective from 1 April 2017

Distance Bands		Engine Capacity (cc)		
		Up to 1200cc	1201cc to 1500cc	1501cc and over
Band 1	0 – 1,500 km	37.95 cent	39.86 cent	44.79 cent
Band 2	1,501 – 5,500 km	70.00 cent	73.21 cent	83.53 cent
Band 3	5,501 – 25,000 km	27.55 cent	29.03 cent	32.21 cent
Band 4	25,001 km and over	21.36 cent	22.23 cent	25.85 cent

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ITALY

ITALY WELCOMES NEW RESIDENTS WITH AN ANNUAL FLAT TAX FOR FOREIGN INCOME

Main features of the new regime

The Italian Budget Law for 2017 n° 232/2016 approved by the Parliament (so called '*Legge di Bilancio 2017*') introduced a significant tax incentive regime to encourage foreign workers and investors to transfer their residence to the 'Bel Paese'.

A main pillar of the Budget Law has just become reality by introducing a significant opportunity for those 'high-net-worth individuals' who might be interested in obtaining Italian Tax Residence.

According to the above mentioned tax regime, introduced by the new article 24-bis of the Italian Income Tax Act (D.p.r. 917/1986 - hereinafter ITA), starting from 1 January 2017 a new Italian tax resident may opt to pay a yearly flat tax of EUR 100,000 related to his foreign income, instead of the ordinary progressive tax rates.

An individual who opts for this tax regime will pay the ordinary income taxes for all income sourced in Italy, while the flat tax of EUR 100,000 is due on income sourced abroad. However, no foreign tax credit will be granted against the flat tax for taxes paid abroad.

The new provision, which represents an exception to the general principle of worldwide taxation for Italian tax residents, may substitute the State Income Tax (Irpef – 23%-43%) and the Regional and Municipal Income Taxes on income earned abroad and Wealth Taxes on financial assets and properties held abroad (Ivafe – 0.2% and Ivie – 0.76%).

Furthermore, by opting for the new tax regime individuals will be exempt from donations and inheritance taxes relating to assets owned abroad, with the clear benefit of tax optimisation for those individuals.

The flat tax also exempts the individuals from filing the RW reporting form (disclosure form to be attached to the Italian tax return with respect to any assets held abroad).

The flat tax regime can be extended, upon request, to one or more family members (when these satisfy the same conditions provided for the main taxpayer) with an additional payment of EUR 25,000 per year for each member (as defined by art. 433 of the Italian Civil Code).

The flat tax is not applicable to capital gains from qualifying shareholdings realised in the first five year period after election. This has the clear purpose of contrasting potential abuse of the law to avoid taxation of conspicuous capital gains obtained just before transferring tax residence.

The conditions for the new tax regime

In order to benefit from the tax measure, the individual who transfers their tax residence to Italy is required to have not been tax resident in Italy for at least 9 out of the past 10 years.

Italian tax residence for ITA purposes

According to art. 2 of ITA, an individual is deemed to be an Italian tax resident if, for the greater part of the year:

– They are registered in the Register of the Italian Resident Population (called '*Anagrafe della Popolazione Residente*' in Italian); or

– They have their residence in Italy (habitual abode); or

– They have their domicile in Italy (main place where his vital interests are carried out, including business, economic, social interests, e.g. the family).

The above requirements are alternative among themselves so the occurrence of only one of them would be sufficient in order to consider an individual as being tax resident in Italy.

Foreign income for ITA purposes

According to art. 24-bis and 23 of ITA, income is considered as sourced abroad when, for example, the asset generating such income is located abroad, or the business is carried out abroad, or the person remitting it is resident abroad, or the work is carried out abroad.

How to apply

On 8 March 2017, the Italian Tax Authorities (*Agenzia delle Entrate*) issued the regulation n° 47060, dealing with guidelines concerning the implementation of such a tax regime.

The Tax Authorities have confirmed that the election of such a regime must be made respecting the deadline for submitting the income tax return for the fiscal year during which an individual has become an Italian tax resident (by 30 September 2018 for the fiscal year 2017) or during the following fiscal year.

The taxpayer may present to the Italian Tax Authorities a formal request of advance tax ruling ('*interpello ex art.*' art. 11, par. 1, let. b L. 212/2000), reporting the following:

a) The taxpayer's personal data, including their Italian tax code;

b) The jurisdiction (or jurisdictions) under which the taxpayer has been tax resident during the previous fiscal years;

c) The jurisdiction (or jurisdictions) that the taxpayer wants to exclude from the flat tax.

According to the recent guidelines, it has been clarified that a formal advanced ruling with the Italian Tax Authorities is not strictly mandatory; however it seems to be advisable.

Furthermore, the advanced ruling could be requested before the taxpayer moves to Italy; this is important because the Italian Tax Authorities have up to 120 (180) days to approve or deny such request and such time could be spent to plan the move to Italy.

The eligible taxpayer must also file a check-list document (with about 30 questions) which has the aim of providing evidence that the requested conditions to access the regime are fully met (specifically, information regarding personal and economic interests in Italy – and abroad – for the previous 10 years).

Renewal and duration

The option is automatically renewed every year, unless one of the following conditions takes place:

– Termination of the option's effect;

– Revocation of the option; or

– Withdrawal.

This optional regime may not last for more than 15 years (termination of the option's effect). Where the Italian tax residence is moved back abroad before the term of 15 years, no exit tax is due.

The option for the flat tax regime cannot be combined with other favourable regimes (such as the regime for the repatriation of scientists and researchers and/or the 50% tax regime for employees and self-employees moving the residence to Italy).

Ruling for residents in tax havens

The new tax regime is also applicable to individuals who are resident in so called 'tax havens'. In this case, the submission of the request for an advance tax ruling is strictly recommended, considering that the burden of proof about the foreign residence is reversed on the side of the taxpayer.

Start the plan

The new tax regime starts in 2017, even if eligible taxpayers moved their tax residence to Italy in 2016.

The first chance to opt for the regime will be through Italian tax returns for 2017 (submission is generally due by 30 September 2018).

Non-resident taxpayers who want to move to Italy can immediately start the procedure to opt for the new tax regime, considering that the Tax Authorities will have about 4-6 months to approve the advanced ruling.

Payment of the Italian flat tax does not exempt eligible taxpayers from paying taxes in all other countries from which the foreign income derives.

BDO comment

The entire procedure for the tax regime requires detailed tax and legal planning. Eligibility requirements, domestic tax law and current assets should be carefully analysed in order to assess how the new rules may effect each individual's tax position and overall tax costs.

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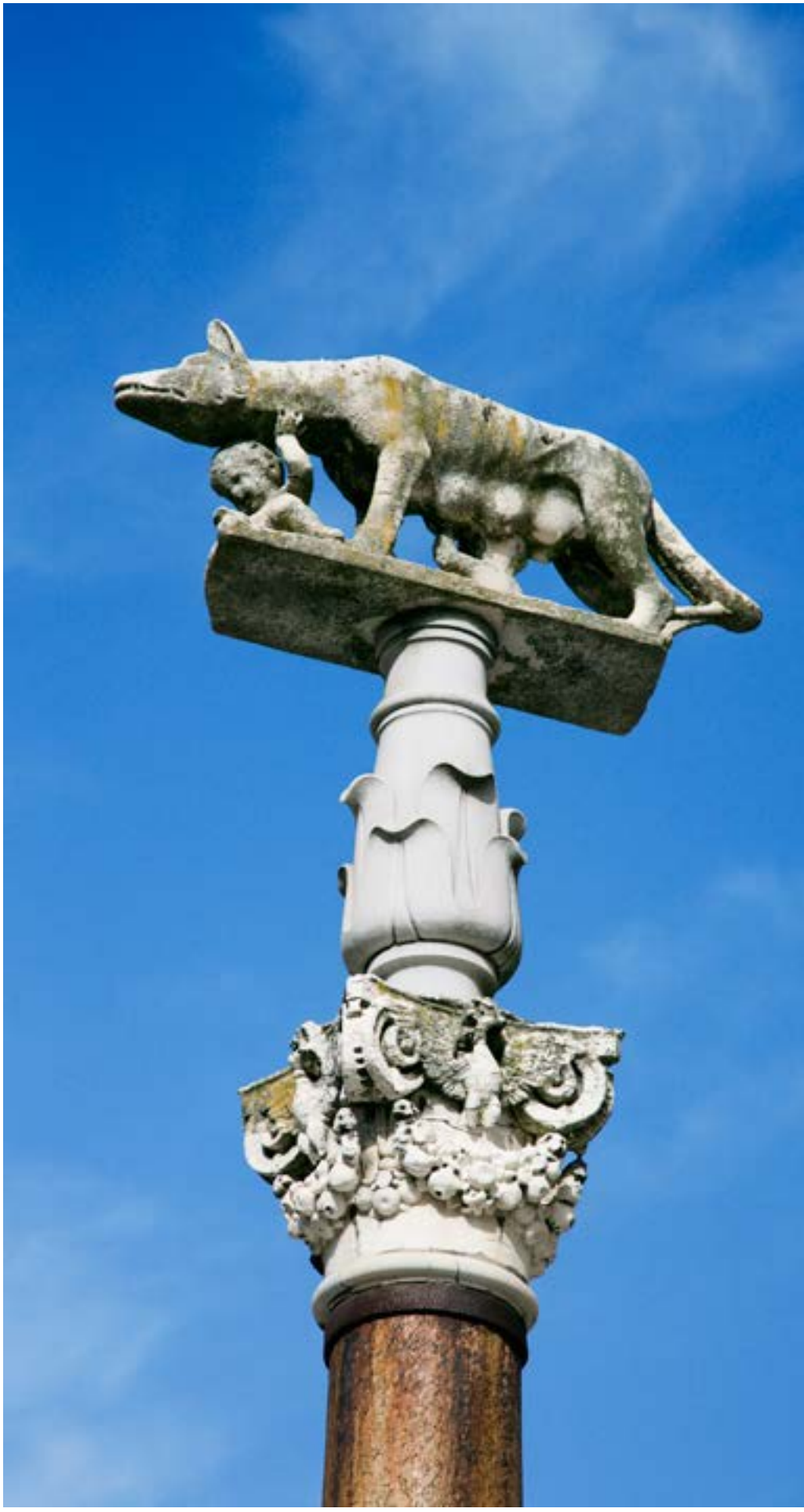

THE NETHERLANDS

30% RULING – DISCOUNT AFTER 10 YEARS AWAY OR AFTER 25 YEARS AWAY?

The maximum duration of the Dutch 30% ruling is 8 years. This duration could be shortened by periods of prior residence or employment, unless these periods ended more than 25 years before the start of the activities in the Netherlands. Before 2002 this period was 10 years instead of 25 years.

Recently a tax payer has brought a case to the Supreme Court in which the 25 year term was the issue. The Supreme Court ruled that the Court of Justice had ruled correctly that the rebate scheme was correctly applied. As a consequence – because the person involved had been living in the Netherlands for more than 8 years, while this period ended less than 25 years before the start of the activities in the Netherlands – this leads to a complete shortening of the 30% ruling and the person cannot make use of this beneficial ruling.

In the opinion of the Court, a conflict with the purpose and scope of the 30% ruling was not considered. Neither does this amended condition, in the opinion of the Court, lead to a barrier or unequal treatment prohibited by the European Union. Finally, the Court ruled that even if there was an infringement of European Union law, there was an objective justification for this.

BDO comment

The 30% ruling is beneficial to expats coming to work in the Netherlands. Prior periods of Dutch residence/employment must be considered however and it is not an automatic relief.

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NETHERLANDS DAYS OF PHYSICAL PRESENCE TEST

Recently, the Dutch lower court made an interesting decision with regard to the 183 day rule, and more specifically, the interpretation of the physical presence of non-resident employees in the Netherlands.

Based on the OECD model convention, most double tax treaties will give the right to tax employment income to the country in which the employment activities are performed. An exception is made to this rule, with respect to the income from employment when the employee does not spend more than 183 days (in a calendar year, tax year or period of 12 months beginning or ending in the tax year). Where other conditions are also fulfilled, only the country of residence of the employee will be entitled to tax the income.

Counting days of presence seems straightforward. If at any moment, a tax payer is present in the host country, this is considered as a full day of physical presence and needs to be included for the test; however, based on the recent Dutch court case, there might be exceptions to this rule.

In the recent court case, a resident of Belgium had been working 181 days in the Netherlands in the reference period for calculating the 183 days. Besides these working days, the tax payer was present in the Netherlands for private purposes on several other days. Therefore, the total number of physical days of presence had exceeded 183 days. The Dutch court decided that the number of days the tax payer was present in the Netherlands for private purposes should not be included for the physical presence test. As a result, since it was determined there was no material employer or permanent establishment in the Netherlands, the Dutch court decided that only Belgium had the right to tax the income relating to the Dutch working days.

BDO comment

This is a welcome ruling from the Dutch court and gives clarity on the distinction between workdays and days spent in the Netherlands purely for personal reasons.

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SWITZERLAND

APPEAL FOR THE SAFETY CLAUSE CONCERNING EMPLOYEES FROM EU-2 COUNTRIES (BULGARIA AND ROMANIA)

As of 1 June 2016 the full Free Movement of Persons (FMP) for EU-2 nationals is in force. In the FMP, a safety clause was defined which allows Switzerland to reintroduce quotas for a limited period if a certain threshold is exceeded. Between June 2016 and May 2017, the threshold was significantly exceeded for the granted residence permits B. Due to this fact, the residence permits B granted to Bulgarians/ Romanians will now be limited to 996 units during the next 12 months and released quarterly. For the short-term residence permits L, the prerequisites of this safety clause are not fulfilled; L-permits can still be applied for without a limitation.

Social security agreement with China

On 19 June 2017, the social security agreement between Switzerland and China will enter into force. The agreement was concluded already in 2015 but the approval process in both countries was time consuming.

The agreement is very similar to other social security agreements Switzerland has recently concluded (e.g. India and South Korea) and follows international standards regarding the coordination of social security systems. Its main benefit for global mobility practitioners is the option that posted workers can remain in the home social security system for up to 72 months and are excluded from the host country system.

Previously it was often a requirement to pay social security contributions in both countries when workers were assigned from Switzerland to China or vice versa.

Action required:

If workers are currently on assignment from China to Switzerland (or from Switzerland to China), it is necessary to apply for a Certificate of Coverage from the home country social security authority within 3 months of the agreement entering into force (i.e. until mid-September). Such a certificate issued by the competent Swiss or Chinese authority, will allow an exclusion from the host social security system.

The agreement will not apply for Hong Kong and Taiwan.

BDO comment

Many companies have waited a long time for this agreement to enter into force. It is now imperative that the required actions are taken in a timely manner in order to benefit from the new rules.

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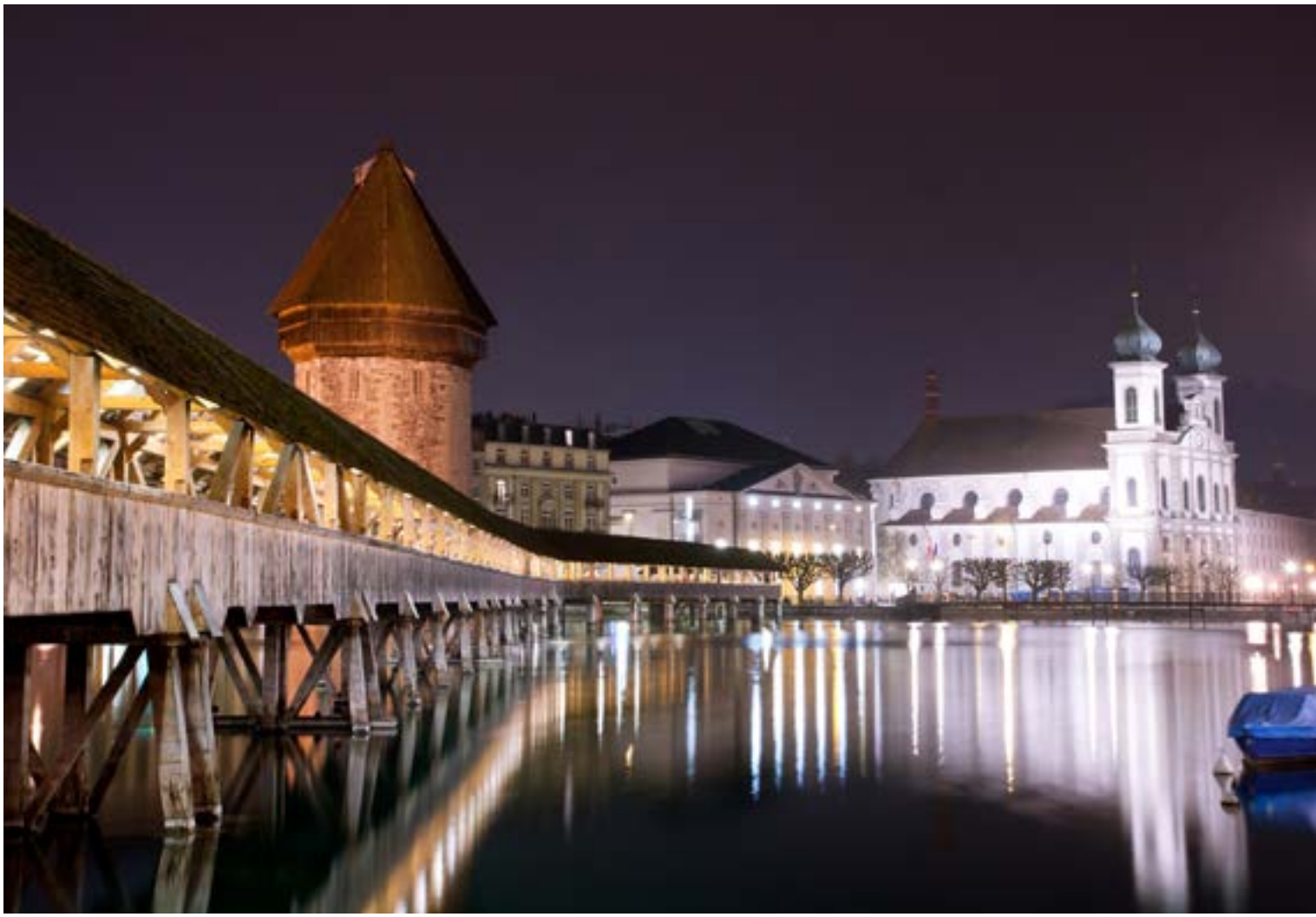

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 18 May 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Australian Dollar (AUD)	0.66739	0.74175
Hong Kong Dollar (HKD)	0.11553	0.12841
Macau Pataca (MOP)	0.10992	0.12217
Euro (EUR)	1.00000	1.11134

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