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EXPATRIATE NEWSLETTER

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INDONESIA

STEPS TO OBTAIN A WORKING PERMIT

Expatriates working in Indonesia are referred to as foreign workers according to Indonesian Law No. 13 Year 2013 concerning Manpower (Labour Law). Further, a foreign worker is defined as a visa holder with foreign citizenship, who has the intention to perform work in Indonesia. Both expatriates working in Indonesia and the companies employing such expatriates are subject to permitting requirements and restrictions set by the Government. Below are the steps to obtain a working permit in Indonesia:

1. As a start, an employer must submit a Foreign Manpower Employment Plan (RPTKA) which is a plan to hire foreign workers in certain positions made available by the employer for a certain period of time authorised by the Ministry of Manpower. RPTKA serves as the basis for the issuance of working permit (IMTA). In general, RPTKA may be granted to the employer for a maximum period of five years and can be extended for the same period depending on the domestic labour market conditions. Under certain conditions, RPTKA will be granted for a short period of time and cannot be extended depending the nature and types of work required by the employer.
2. After obtaining RPTKA, the employer needs to obtain the Approval Recommendation Visa (TA01) which will be used for the IMTA application. TA01 is only used for a new work permit and is not required for the renewal. The period of TA01 is two months, therefore if within this period the expatriate does not enter Indonesia the employer shall request a new TA01 or request cancellation of the RPTKA.
3. An employer needs to apply for IMTA after obtaining TA01. IMTA is provided for a maximum period of one year and may be extended in accordance with the validity period of the RPTKA, each for the period of maximum one year. There is an exception for directors and commissioner, their IMTA may be extended for a maximum period of two years.
4. After all of the processes above have been approved, an expatriate will be required to apply for limited stay visa (VITAS) or called as Telex Visa. VITAS can be issued when there is approval from the Indonesian immigration authorities and it can be issued by the Indonesian embassy in the respective country. The Indonesian embassy will grant a VITAS stamp for the expatriate to enter Indonesia.
5. Once all documents have been completed, the expatriate will be granted a limited stay permit card (KITAS). With KITAS, the expatriate will also obtain a Blue Foreigners Registration Book, which records the expatriate's immigration status. The KITAS card and Blue Foreigners Registration Book both grant permits to stay in Indonesia for one year and can be renewed annually, up to two times without leaving Indonesia.

BDO comment

Companies employing foreign workers must understand their visa and immigration obligations. There are specific, set processes that must be followed.

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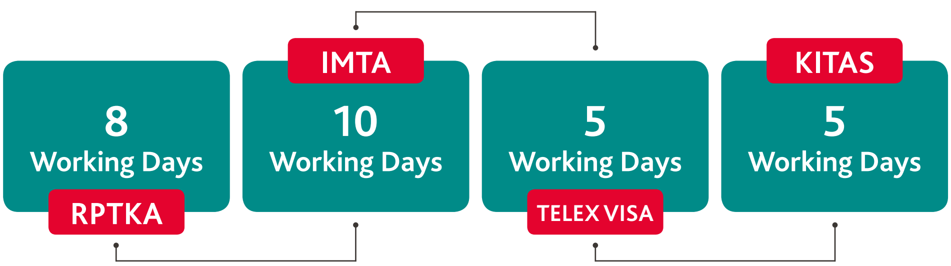

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EDITOR'S LETTER

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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BELGIUM

KEY ASPECTS OF THE PROPOSED BELGIAN COMPANY CODE REFORM

On 20 July 2017 the Belgian Government approved a draft bill for a new Belgian Company Code. The draft bill seeks to make Belgian company law more straightforward, more flexible and more attractive for, amongst others, foreign investors.

Although the draft bill is not yet final, below is a brief overview of the key aspects of the proposed Belgian Company Code reform that might be relevant for a foreign investor.

1. Reform of the limited liability company

The proposed Belgian Company Code reform creates a flexible limited liability company which should become the preferred legal form for non-listed companies:

- Abolition of the concept 'share capital' – A limited liability company no longer has a 'share capital' (and thus neither a minimum 'share capital'). A limited liability company should be established with sufficient equity, but this is no longer linked to a minimum amount of EUR 18,550.
- Abolition of the required bank certificate for the establishment of a limited liability company.
- More flexibility regarding securities of a limited liability company:
  - Issuance of convertible bonds, warrants and other types of securities.
  - Creation of classes of shares with different voting rights, different profit rights…
  - Limitations on the transfer of shares become optional.
- Management – Possibility to delegate day-to-day management.
- Distribution of profits and assets to shareholders will be subject to a double test:
  - Net asset test – The net assets of the company should remain positive after the distribution.
  - Liquidity test – The directors of the company should ensure that the company will be able to pay its due debts in the 12 months following the distribution.
- Financial assistance – No longer an obligation to publish the financial assistance in the Belgian Official Gazette.
- There will be an optional regime for a flexible entry and exit of shareholders in a limited liability company.

2. Public limited company

As the public limited company is subject to the European Company Law Directives, the proposed Belgian Company Code reform will have a smaller impact on public limited companies. There will be four changes concerning the public limited company worth mentioning:

- A public limited company can be incorporated by only one shareholder and it will be possible to have only one director.
- Abolition of the required bank certificate for the establishment of a public limited company.
- It will be possible to implement a dualistic system of administration consisting of a supervisory board and an executive board.
- It will be possible to introduce multiple voting rights in non-listed companies and a double voting right for loyal shareholders (shareholders who held their shares for at least two years without interruption) in listed companies.

3. Cap on directors' liability

Depending on the annual turnover and the balance sheet total of a company, the new Belgian Company Code will introduce a cap on the total liability of directors (between EUR 125,000 and EUR 12,000,000).

4. Adoption of the incorporation theory

The new Belgian Company Code will abolish the 'real seat theory' and adopt the 'incorporation theory'. On the one hand, a company which has its registered seat in Belgium will be subject to Belgian company law, irrespective of its real seat (management and control centre of the company). On the other hand, a company which has its registered seat outside Belgium will be subject to the company law of its country of origin, even when its real seat is located in Belgium.

It is important to note that the adoption of the incorporation theory has no direct impact on the tax position of Belgian companies. The criteria to assess whether a company is a Belgian tax resident or not, are not affected by the draft bill for a new Belgian Company Code.

The new Belgian Company Code will furthermore introduce a procedure for inbound and outbound transfers of the registered seat of a company.

5. Timing and applicability of the new Belgian company code

The draft bill for a new Belgian Company Code is currently at the Council of State for an advisory opinion. The timing is unclear, but it can be expected that a legislative proposal will be submitted to parliament by the end of 2017 or the beginning of 2018.

Once the legislative proposal is approved, the new Belgian Company Code will apply to existing companies as of the first day of the financial year beginning one year after the publication of the new Belgian Company Code in the Belgian Official Gazette. The existing companies will however have a long transition period (probably ten years) to bring their articles of association (and legal form if applicable) in line with the new Belgian Company Code. The new Belgian Company Code will be applicable on companies established as of ten days after the publication of the new Belgian Company Code in the Belgian Official Gazette.

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LONG AWAITED TAX REFORM AS OF 2018 – PERSONAL INCOME TAX ASPECTS

In their annual budgetary review, the government recently announced new measures changing Belgian tax legislation in a number of areas, including personal tax. Below we have highlighted some of those new rules as they may also impact your Belgian employees or expatriates.

Not all of the new rules have already been formally implemented at the date of publication of this article and many of the legislative texts are still in draft. We have therefore made a distinction between approved legislation and proposed rules.

Approved legislation

New benefits in kind as of 1 January 2018 for electronic devices
On 13 November, the Belgian Gazette published the Royal Decree of 2 November 2017 regarding the new valuation rules for benefits in kind (BIK) for the personal use of company tablets, smartphones, laptops, etc.: (*see table below*)

The aim of the revision of the existing benefits in kind was to align them more with modern communication methods and to reflect the changed pricing for these devices and services.

Draft legislation

1. **Tax reduction for child care**
   A tax reduction of 45% can be claimed for costs incurred for child care (limited to EUR 11.20 per child per day up to the age of 12) when all relevant conditions are met.

   Single parents with a maximum taxable income of EUR 18,000 can now claim a tax reduction of 65%, when they submit their income tax return for 2017 (assessment year 2018). If the tax reduction cannot effectively be used in full, it will be converted into a refundable tax credit.

2. **Collective profit bonus**
   To allow employees to share in the profits of the company, current legislation already includes a few possibilities to grant collective profit sharing 'bonuses' in a tax optimised way. They were however not very popular as the tax benefits were generally considered not to be significant enough to outweigh the administrative burden: a formal plan needs to be in place, which can only be organised through a collective labour agreement or a collective acceptance procedure.

   As of 1 January 2018 companies will now be able to let employees share in the company profits by means of the 'collective profit bonus', more easily. Only employees will be eligible to partake in this new favourable regime and the bonus must be granted to all employees within the company. The bonuses paid may not exceed 30% of the total wage mass and are not allowed to replace the existing salary.

The employee will have to pay 13.07% social security contributions and 7 % income tax. For the employer the collective profit bonus will not be a deductible expense.

Employers can also elect to grant a collective profit bonus in light of an 'investment saving plan', which means that the bonus will not be paid out immediately, but will be considered a loan to the company. The company will pay the amount and interest after a minimum period of two years and a maximum period of five years. This amount will be taxed at 15%.

Two types of collective profit bonuses:

a. Identical collective profit bonus:
   All employees will receive an equal cash bonus or an equal percentage of the wage mass. For this category, a decision by simple majority by the general meeting of shareholders will be sufficient.

b. Categorical collective profit bonus:
   All employees will receive a cash bonus. The amount of the cash bonus depends on objective criteria determined per category of employee. This category of bonus can only be entered by a CLA or a Collective Acceptance procedure when no union delegation exists within the company.

3. **Collective net bonus**
   The favourable tax regime of the collective net bonus (CLA 90) will exclude forthwith employers who start the procedure of collective redundancy due to the closing of the company.

4. **Tax on securities account**
   The Federal Government decided to introduce a 0.15% tax on securities accounts. The first tranche of EUR 500,000 will be tax exempt.

5. **Reduced withholding tax on dividends by introducing a tax free amount**
   Dividends will, from 1 January 2018 onwards, be tax exempt on the first EUR 627 of dividends received. The received dividends in excess of this amount will be taxable at a tax rate of 30%. Currently no exemption on dividends is available.

6. **Decrease of tax exemption on saving deposits**
   The withholding tax exemption on interests on saving deposits will be reduced from EUR 1,880 to EUR 940.

7. **Contributions to a pension saving fund**
   People who contribute to a private pension saving fund will have two options:
   – The current tax scheme: 30% tax reduction on a maximum of EUR 940 deposits;
   – New tax scheme: 25% tax reduction on EUR 1,200 deposits.

8. **Harmonisation of fixed professional costs for self-employed**
   The lump sum deductible professional expenses when calculating the personal income tax liability for employees and self-employed will be harmonised in favour of the self-employed. Currently, the lump-sum deduction for business expenses available for self-employed (e.g. company directors) is significantly lower than that for employees.

PC/laptop	EUR 72 per annum per device
Tablet/mobile phone/smartphone (device)	EUR 36 per annum per device
Mobile phone subscription (connection)	EUR 48 per annum
Mobile Data	EUR 60 per annum
Internet connection	EUR 60 per annum (limited to one benefit in kind per employee)
Fixed telephone subscription	EUR 48 per annum per subscription

9. **Tax free supplementary income**
Supplementary income can be gained free of tax and social security contributions up to a limit of EUR 6,000 per year. This tax regime can be used by employees and self-employed persons that already have a main occupation of at least 80%. This tax exempt supplementary income is limited to income from activities ordinarily performed during personal leisure time in the non-profit sector (i.e. work for charitable organisations, services amongst civilians and in light of the sharing economy: AirBnB, Über, etc…).

10. **Car expenses as business expenses**
To reduce the taxable professional income, people can choose to claim a lump-sum cost deduction or their actual expenses. When one elects to claim actual expenses, it is possible to claim a deduction for car expenses.

    Currently, the deduction for car expenses for physical persons is limited to 75% of the car expenses related to the professional use of the car. From now on the deduction will be limited taking into consideration the CO_2 emissions of the vehicle. The new formula to calculate the deduction percentages will change to 120% - (0.5% x gram CO_2/km). For petrol cars the result of this formula is to be multiplied by 0.95.

BDO comment

The above rules regarding car expense deductions will mostly affect self-employed. Employees usually use the option of claiming lump sum business expenses. Employers can also make a tax free payment of EUR 0.3460 per kilometre for the use of a private car for business purposes (not including commuting).

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FRANCE

FRENCH NATIONAL ASSEMBLY APPROVES FINANCE BILL

On 24 October 2017, French deputies adopted at first reading the 2018 Finance Bill, which includes several of the new government's key tax measures, including the abolition of the wealth tax and the introduction of a final 30% flat tax on capital income. The final version is due to be enacted by the end of December 2017.

French wealth tax (ISF) is currently assessed on all a taxpayer's assets if net wealth exceeds EUR 1.3 million. This includes the worldwide assets of taxpayers domiciled in France and French real estate for non-resident taxpayers.

The draft Finance Bill provides that the ISF would be repealed and replaced, from 1 January 2018, with a new real estate wealth tax – *Impot sur la Fortune Immobilidre* (IFI) – to be assessed only on the real estate owned by the taxpayer valued at over EUR 1.3 million. All other assets would be excluded. The IFI will have the same taxation scale as the former ISF and similar rules will apply.

Financial income (dividends, interests, capital gains on sale of shares) earned by individuals is currently subject to social taxes at a cumulative rate of 15.5% plus income tax assessed at progressive rates (up to 45%, but with certain abatements which reduce the amount subject to tax for dividends and capital gains, depending, for the latter, on the length of time during which the taxpayer has owned the investments).

The draft Finance Bill introduces, from 1 January 2018, a flat tax rate (PFU) on income from capital (interests, dividends, capital gains, director fees, carried interests), which is set at 30% (12.8% income tax and 17.2% social taxes). Taxpayers with smaller incomes will be allowed to use the progressive rates for personal income tax by election rather than using the flat tax rate. The exceptional contribution on high income (3% or 4%) remains.

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THE NETHERLANDS

APPLICATION OF THE 30%-REGULATION IN CASE OF GARDEN LEAVE

Recently, a Dutch lower court decided in an interesting case regarding the 30%-regulation. In this case, the employee Mr. X has US nationality and he started working for the employer A. B.V. on 1 November 2011. The 30%-regulation was requested and granted until 31 October 2021 under the 'old' regulation. In August 2013 Mr. X and his employer agree that the employment of Mr. X will be terminated as of 1 September 2014. As of 1 December 2013 until 1 September 2014 Mr. X was not required to fulfil any employment activities, while keeping his salary. As of 1 December 2013 the employer no longer applied the 30%-regulation via the Dutch payroll. Mr. X did not agree and filed a letter of objection against the Dutch wage tax returns.

The Dutch court decided that Mr. X could only make use of the 30%-regulation as long as he actually performed employment activities for the employer. Dutch wage tax law determines that the 30%-regulation ends as soon as the employment ends, and can only be applied one month following the end of the employment. As Mr. X was no longer required to fulfil any employment activities as of 1 December 2013, the 30%-regulation ended on 31 December 2013, the last day of the month following the month in which the employment activities ended. Therefore, the law will follow the actual performance of the employment activities, and not the formal end of the employment contract.

BDO comment

The decision will also have an effect on the application of the 30%-regulation with a subsequent employer in the Netherlands. According to law, in order to be able to be able to apply the (remaining of the duration of the) 30%-regulation with a subsequent employer, the employee should have entered a new employment within three months after the old employment ended.

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ROMANIA

UPDATES ON MICROENTERPRISES AND PERSONAL INCOME TAXES AND SOCIAL SECURITY CONTRIBUTIONS

The main amendments in the field of income tax on microenterprises are

- The increase of the revenues cap up to which the income tax on microenterprises system is mandatory, to EUR 1,000,000.
- The income tax on microenterprises will also be applicable to Romanian legal entities which record more than 20% of the income from consulting and management activities, banking activities, insurance and reinsurance activities, capital markets and gambling activities which are currently excluded from the application of this regime.
- Elimination of the possibility to opt for the corporate income tax regime for microenterprises which have subscribed a share capital of at least RON 45,000.

The main amendments in the personal income tax field are

- Decrease of the general taxation rate to 10%. As an exception to the general personal income tax rate, we mention income from gambling activities, income from the association with a legal entity, income derived from the transfer of properties, some categories of income obtained from Romania by non-residents and income whose source cannot be identified.
- For income obtained from intellectual property rights, advance payment tax rate decreases to 7%, the rate being applied to the gross income. Nevertheless, for final taxation system, the tax rate decreases to 10% and is applied to the gross income from which the flat rate of 40% of the gross income is deducted.
- Personal deductions used for salary income tax calculations increase both in value and in the limit in which they are granted.
- It is clarified that the single payment made under the Law no. 441/2004 and 204/2006 represents pension income payments and are subject to the same taxation rules as the pension income, to which the non-taxable amount (RON 2,000) is applied only once.

The main amendments in the mandatory social security contributions field are

- Increase of individual social security contribution rate to 25% and decrease of the rate which is due by employers for special working conditions to 4%, respectively 8% for outstanding working conditions. For normal work conditions, the employers will no longer be liable to pay mandatory social security contributions.
- Increase of individual health insurance contribution rate to 10% and elimination of health insurance contribution due by employers.
- With some exceptions, individuals who earn salary income below the minimum gross salary will pay the individual social security contribution and the individual health insurance contribution to the level of the minimum gross salary.
- Introduction of a new social security contribution due by employers, the insurance contribution for work. The rate for this contribution is set at 2.25% and is applied to income from salary and assimilated to salary.
- The other current contributions of the employer are eliminated, namely: unemployment contribution, contribution for medical leave and health insurance allowances, contribution of insurance for work accidents and occupational diseases, contribution to the guarantee fund for the payment of salary claims as well as the individual unemployment contribution due by employees.
- For individuals who obtain income from independent activities, including income from intellectual property rights, the taxable basis for individual social security contributions becomes the chosen income, which cannot be lower than the gross minimum salary.
- Excluding salary income, the individual health insurance contribution is due by individuals who have made in the previous tax year or who expect to obtain in the current tax year cumulative annual income of at least 12 gross minimum salaries from independent activities, rental income, income from the association with a legal entity, investment income, income from agricultural, forestry and fishery activities and income from other sources.

The new provisions will apply to income obtain after 1 January 2018. For income obtained before this date, the provisions in effect during the period in which the income was obtained will apply. In the specific case of salary income, the new rules will apply starting with the salary income related to the month of January 2018.

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SPAIN

EMPLOYEE HANDBOOKS IN SPAIN

Awareness of employee handbooks arose in Spain around a decade ago. For the past ten years, they have gained presence in the public and private corporate spheres – they have become an undisputed essential element for managing human resources and for improving the image of any company brand.

The Code of Ethics, Code for Behaviour and the Employees' handbook are among the most frequently implemented codes or handbooks in Spanish companies. Often pushed by their mother companies abroad, domestic companies have gradually become aware of the importance of codes, which has led to their integration into companies' strategic policies. The implementation of codes has resulted in economic profits for companies, as they can now compete in the market with a better image of their brand as socially aware corporations. Additionally, code implementation has meant benefits for employees, since handbooks have allowed a more objective performance evaluation, which eventually lead to financial gain (bonuses), in comparison with the traditional problems in Spain regarding subjective performance evaluations which are deeply discouraging for employees.

Without prejudice of the above mentioned, the reality is that we still have a long path to walk in Spain. As a matter of fact, the two other main handbooks which are even considered compulsory under Spanish law have a lower implementation rate than the rest. These are the Equality Plan and the Harassment Prevention Protocol. On the one hand, the situation can be interpreted as evidence of a lack of awareness regarding the implications and responsibilities connected to both handbooks (i.e. an economic sanction imposed by the Spanish Labour Inspection which could amount up to EUR 187,515, plus civil liability). On the other, the situation might also be explained by the fact that the Equality Plan (which usually includes the Harassment Prevention Protocol) has to be negotiated with the employees' representative under all circumstances – note that, due to the lack of employees' representatives in the company or to traditional conflicts between the Company and the work council, this is typically an issue.

Some companies follow handbooks which are not worth the paper they are written on, since they portray simply a content less shell or skeleton, drafted in order to fulfil legal obligations in a merely formal way. This is sometimes due to the fact that the handbooks include direct translations of handbooks envisaged by the mother companies abroad which have not been adapted to the reality and legislation in Spain, thus reporting on limitations and provisions, which are unlawful or unnecessary in the target country. Therefore, we have to emphasise the advantages of working on the adaptation of handbooks of international companies to the laws and customs of each target country in which their branches and subsidiaries are located. For the specific case of Spain, it would be highly advisable to include a translation into Spanish (in a double column document, for instance) in order to make defence of the handbook easier in the event of a trial (since they have to be translated into Spanish for them to be presented in front of a Labour Court).

The ideas discussed above highlight one of the major dangers for companies working with 'shell' handbooks: even though they believe that they are fulfilling their legal obligations, their hand-books are not effective – Labour authorities will not take them into consideration, which is bound to entail several negative consequences for the companies.

It is vital to underline the need to review the handbooks drafted in any company, so as to check that they could be considered effective and suitable because they take into account the company's real circumstances. Such a review should be made by adapting the content to the ongoing changes in legislation and in case law.

In this regard, the recent judgment of the Grand Chamber of the European Court of Human Rights (ECHR), dated 5 September 2017 (Case Bărbulescu vs. Romania), proves the need to review handbooks. Following this case, it would be convenient to check the IT handbooks and their provisions since the judgment contradicts the current jurisprudence of the Spanish Constitutional Court. This relevant judgment reinforces Judge Pinto's dissenting point made in the context of a prior ECHR sentence (dated 12 January 2016): 'Workers do not abandon their right to privacy and data protection every morning at the doors of the workplace.'

Additionally, in Spain it is necessary to draft or review the labour handbooks taking the Instruction 1/2016, dated 22 January, of the State Attorney's office (the so called, *Fiscalía General del Estado*) into account. This document analyses the last Spanish criminal code reform, in accordance with which companies are susceptible to being punished by the criminal code. The rule states that, in order for companies to have an effective criminal compliance system, a functional and effective disciplinary regime is needed. Thus, the rule assumes the availability of a code for behaviour in companies, including a specific disciplinary regime.

To conclude, labour handbooks, codes or protocols (whatever name we use) are here to stay and are objects of a value recognition process. The future urges Spanish companies to work on comprehensive compliance systems (including labour compliance with criminal, commercial and administrative areas) and to design labour handbooks to manage the personal diversity of organisations in an effective manner. A company is a living entity in which legal areas are interconnected as vessels of communication.

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SWEDEN

THE NEW SWEDISH PAYE RETURN

Sweden is implementing a new type of PAYE tax return (employer tax return) from 1 July 2018. Currently an employer reports salaries, taxes and social contributions for the employees in lump sums in monthly PAYE returns. The employer is also liable to file annual income statements on a yearly basis for each employee. In the income years 2018 and 2019, an employer will be liable to declare all the payments made to each employee individually, every month. The new employer PAYE return will replace the yearly income statements and the employees will be able to track their own individual employer tax return via the Swedish Tax Agency´s website.

The new employer tax return will be enforced in two steps. Companies that are liable to keep a personnel ledger (Sw. personalliggare), such as the ID06, with more than 15 employees needs to implement the new employer tax return by 1 July 2018. Remaining companies have to start reporting accordingly by 1 January 2019.

BDO comment

The new way of reporting in the employer tax return will increase the transparency for the employee regarding the employee's own PAYE information, since the employee will be able to follow the reporting online. The new type of tax return will also help the Swedish Tax Agency to detect discrepancies in the reporting and correct errors during the income year. However, it will initially require more administration to implement the new way of reporting.

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UNITED KINGDOM

AUTUMN BUDGET 2017

Personal allowances and tax rate bands

For the 2018/19 tax year the personal allowance will increase by GBP 350 to GBP 11,850 and the basic rate band will increase by GBP 1,000 to GBP 34,500, meaning individuals will only pay 40% tax once their income surpasses GBP 46,350. These changes will result in a tax saving of up to GBP 70 for basic rate taxpayers, GBP 340 for higher rate taxpayers and GBP 200 for 45% taxpayers. Income tax rates are unchanged.

The Government has reaffirmed its manifesto commitment to increase the amount at which 40% tax becomes payable to GBP 50,000 by the end of this Parliament.

Capital Gains Tax (CGT) annual exemption rises

The CGT annual exemption will increase by GBP 400 for 2018/19. From 6 April 2018 the first GBP 11,700 of gains will, for most individuals, be exempt from CGT. The maximum exemption for most trustees will increase by GBP 200 to GBP 5,850. The rates of CGT will not change.

Non-UK domiciles and trusts

Non-UK domiciled individuals may be affected by a number of changes introduced in Finance (No. 2) Act 2017 (which received Royal Assent on 16 November 2017) but no further direct changes were announced in the Budget.

The key changes to the non-dom rules which are now effective from 6 April 2017 are:

- The introduction of the deemed domicile rule for all tax purposes for those who have lived in the UK for 15 of the last 20 tax years;
- The ability to rebase foreign sited assets for CGT purposes for those deemed domiciled individuals;
- Specific measures for those born in the UK with a UK domicile of origin to treat them as UK domiciled;
- The ability to cleanse mixed funds for all non-doms who have previously claimed the remittance basis of assessment;
- Certain protections for offshore trusts as well as 'tainting provisions'; and
- The introduction of 'look through' inheritance tax rules where UK residential property is held within a corporate, partnership or trust structure.

Offshore trusts

A number of further proposals, such as rules to tax payments from offshore trusts that are routed through an overseas beneficiary (or remittance basis user) to a UK resident individual, are expected to take effect from 6 April 2018. Draft legislation is expected to be published in Finance Bill 2017-18. While this should ultimately provide more clarity, unfortunately it adds a further layer of complexity for the 2017/18 tax year as trustees and their beneficiaries will now need to take into account two sets of rules when deciding whether and when to make a distribution or take benefits from an offshore trust.

Non-resident gains on UK immovable property

The Government announced that from April 2019 tax will be charged on gains made by non-residents on the disposal of all types of UK immovable property (including commercial property), extending existing rules that apply only to residential property.

Since April 2015, non-resident CGT applies to gains accruing on disposals of UK residential property interests by non-resident individuals, trustees and personal representatives and by certain companies. The measure announced in the Budget expands the scope of the UK's tax base to disposals of immovable property by non-residents in two key ways:

1. All non-residents who make gains on disposals of direct interests in UK land will be chargeable;
2. Non-resident gains made via indirect disposals of UK land will also be chargeable.

These measures will have a wide reaching impact for both individual and corporate non-residents.

However, the Government has announced that property values will rebased at April 2019 so that only the gains attributable to changes in value from 1 April 2019 (for companies) or 6 April 2019 (for other persons) will be chargeable.

The overall aim of the policy is that any gain made by a non-resident on a disposal of UK immovable property will be chargeable to UK tax. The Government has pointed out that UK tax legislation is out of sync with most other major jurisdictions who already tax the disposal of real property situated in their country.

Although non-residents have been getting to grips with the regime introduced in April 2015 for disposals of UK residential property, the impact of these rules to tax commercial property will be far reaching and we expect there to be significant lobbying during the consultation on these rules.

Delay to the 30 day time limit for paying CGT

The proposed change to the due date for payment of CGT on the sale of UK residential property has been put back by one year. From April 2020, CGT will be payable to HMRC within 30 days of completion.

Currently, CGT is due by 31 January following the tax year of disposal. The change will result in the due date for CGT being brought forward by up to 635 days. The 30-day time limit already applies to non-resident individuals paying CGT on the sale of UK residential property.

Pension lifetime allowance rises

Despite speculation over the possible restriction of pension tax reliefs, the Chancellor confirmed that the lifetime allowance (the maximum amount individuals can put into their pension pots), will increase in line with CPI to GBP 1,030,000 for 2018/19.

The allowance has decreased significantly over the last few years from GBP 1.8 million in 2010/11 to GBP 1 million in the current tax year. Individuals have been able to submit claims to protect themselves against these reductions. Exceeding the lifetime allowance can lead to a tax charge of up to 55% on the excess when withdrawals are made.

Off payroll working reform – Extension to the private sector

The Government will consult on the extension of off-payroll working rules to the private sector.

The success of the Intermediaries legislation (commonly called IR35) has prompted the possible extension but the Government is keen to understand the impact on businesses and individuals. As widely anticipated, there will be a consultation on extending the off-payroll working rules to the private sector.

IR35 ensures that an individual who provides their services via an intermediary body (usually a company) but is in effect working as an employee, is taxed as an employee.

The issue of non-compliance with IR35 legislation has been an area of concern for the Government since it was introduced in 2000. The Government will build proposals for extending the public sector reforms to the private sector and consult on them during 2018.

The Government has drawn on the experiences of the public sector reforms which came into effect from 6 April 2017, on external research due to be published in early 2018 as well as on commentaries such as 'Good work: The Taylor review of modern working practices'.

The potential for extending the off-payroll working rules to cover private sector arrangements was clear from the day the public sector reforms were introduced in April 2017. The Budget documents recognise the need to understand the views of the businesses and individuals who would potentially be affected by any changes.

All forms of off-payroll labour have been subject to a wide array of anti-avoidance legislation in recent years affecting business of all sizes and in all sectors. Great care will be needed to ensure full compliance with the complex tax rules surrounding the use of off-payroll labour.

Reforms to Benefits in Kind for cars and vans

Standard amendments to the van and fuel benefit charges have been announced. However, the main emphasis is on incentivising employees to move towards vehicles with lower emissions.

Calculating the Benefit in Kind – the Budget brings increases to the benefit in kind charges for both vans and cars:

- Fuel benefit charges will increase by RPI for 2018/19 onwards. The multiplier for the car fuel benefit charge will rise to GBP 23,400 whilst for vans, the charge will move to GBP 633.
- The van benefit charge will also increase by RPI from 6 April 2018 to GBP 3,350.

For the car benefit charge, the Government has clarified which CO_2 figures compatible with the existing test (the 'New European Driving Cycle' test) must be used until April 2020. The current legislation is unclear and has created uncertainty following the introduction of a new emissions test in September 2017.

Encouraging the move from diesel to electric cars

As part of plans to improve air quality, the Government announced two measures to incentivise the use of electric cars.

First, there will be no benefit in kind charge if employers provide workplace electric charging points for electric or hybrid vehicles for employees. This will apply from April 2018 and is part of the Government's wider plans to invest in an electric charging infrastructure to support the transition to zero emission vehicles.

The second measure is a rise in the diesel supplement used in company car and car fuel benefit calculations. The supplement will increase from 3% to 4% from April 2018 for diesel cars which do not meet the Real Driving Emissions Step 2 (RDE2) standards. This change will not affect diesel vans and the diesel supplement does not apply to hybrid cars. The diesel supplement will also be removed entirely for cars which meet the RDE2 standard.

Employers may want to use these changes as an opportunity to consider the types of cars on offer to employees, especially in light of the new optional remuneration arrangement rules.

NIC Bill delayed

The Government has announced a 12 month delay in the NIC Bill which will affect the self-employed, employers making termination payments to employees and sportsmen and women who have a testimonial. Measures which were to be introduced on 6 April 2018 will now not take effect until 6 April 2019.

OVERSEAS SCALE RATE PAYMENTS FOR ACCOMMODATION & SUBSISTENCE

For a number of years now, HMRC has allowed companies to use the published FCO rates as a benchmark for their employees claiming overseas travel and subsistence expenses. As announced at Autumn Budget 2017, the government will legislate in 'Finance Bill 2018-19' so the existing concessionary travel and subsistence overseas scale rates will be placed on a statutory basis on and after 6 April 2019, to provide clarity and certainty.

Employers will only be asked to ensure that employees are undertaking qualifying travel. This follows the call for evidence on the taxation of employee expenses published on 20 March 2017. There will no longer be required to check receipts when making payments to employees for subsistence using benchmark scale rates. This administrative easement applies to standard meal allowances paid in respect of qualifying travel and the newly legislated overseas scale rates.

The change will have effect from April 2019. Abolition of receipt checking does not apply to amounts agreed under bespoke scale rates or industry wide rates.

BDO comment

This is a welcome move to putting the accepted practice of using FCO rates on a legislative footing. This can significantly simplify companies' expense claim procedures not only for those on short business trips but also employees covered by temporary workplace relief rules.

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UNITED STATES OF AMERICA

HOUSE AND SENATE PASS THEIR OWN VERSIONS OF TAX REFORM – NEXT STEP IS CONFERENCE COMMITTEE ACTION

On 16 November 2017 the House of Representatives voted 227 to 205 to pass the 'Tax Cuts and Jobs Act'. The Senate Finance Committee on 16 November 2017 approved by a vote of 14 to 12 a Senate version of tax reform legislation that was released on 9 November 2017. And, in the very early hours of Saturday morning on 2 December 2017 the Senate passed its version of the proposed tax reform legislation by a vote of 51-49. The Senate version differs from the House tax reform bill in several respects, including individual tax rates, itemised deductions, retaining the estate and GST taxes, the timing of changes to the corporate tax rate, and pass-through tax rates. As of 7 December 2017 while both the House and the Senate voted to form a conference committee no official meeting of the 29 member committee has taken place. On 7 December 2017 the Joint Committee on Taxation released the official side by side comparison of the House and Senate bills. The two chambers (House and Senate) must reconcile differences between the two bills and then vote to pass a final bill in identical form before tax reform legislation can be signed into law by President Trump. Republicans have indicated that they hope to approve a tax proposal by Christmas.

Details

The House bill proposes four individual tax brackets at 12%, 25%, 35%, and 39.6%, while the Senate bill would keep the existing number of rates at seven but lower them to 10%, 12%, 22%, 24%, 32%, 35%, and 38.5%. Under both proposals the highest rates apply at USD 1 million for married taxpayers filing jointly and USD 500,000 for other filers. Both plans would repeal personal exemptions but the Senate bill increases the standard deduction to USD 24,000 for married couples filing a joint return which is slightly lower than the House bill's USD 24,400 for married taxpayers filing jointly. The House and Senate bills differ on the child tax credit, which would increase to USD 1,600 or USD 2,000, respectively.

Itemised deductions for mortgage interest, property tax, and medical expenses are treated differently under both bills. While both bills would eliminate any mortgage interest deduction based on home equity indebtedness; the House bill would cap acquisition indebtedness at USD 500,000 (effective for debt incurred on or after 2 November 2017) with respect to indebtedness on a taxpayer's principal residence whereas the Senate version would retain the current USD 1 million limitation.

Individuals could no longer deduct personal state and local income or sales taxes under either proposal. The Senate bill would also eliminate the local property tax deduction while the House bill would permit a deduction of up to USD 10,000. Unreimbursed medical expenses that exceed 10% of a taxpayer's adjusted gross income would remain deductible under the Senate plan, though any deduction for medical expenses would be repealed under the House proposal. The House bill repeals the individual Alternative Minimum Tax (AMT) while the Senate bill retains the AMT but raises the exemption amount. The Senate bill also repeals the Patient Protection and Affordable Care Act individual mandate; the House bill does not contain this provision.

Regarding the estate, gift, and generation-skipping (GST) taxes, the House bill would increase the individual estate and gift tax exclusion to USD 10 million (indexed for inflation from 2011) and then adjust for inflation annually before repealing the estate and GST tax after 2023. The Senate bill includes an inflation-adjusted USD 10 million exclusion for individuals as well but would not repeal the estate and GST taxes.

The House and Senate bills also handle business taxes differently. Both plans present the same decrease in the maximum corporate tax rate from 35% to 20%, but the Senate bill delays that reduction for one year until 2019 which is one year later than the House's proposal of 2018. Furthermore, the House bill would tax certain 'business income' from pass-through entities at 25%, while the Senate bill provides a 23% deduction for income from pass-through entities. The Senate version would permit certain small service businesses to take advantage of the pass through deduction; the House version does not permit service business from applying their proposed lower pass through rate. Further, the Senate pass through deduction would not apply to trusts and estates, the House version permits trusts and estates to take advantage of the lower pass through rate.

While the House bill repeals the corporate AMT, the Senate bill retains the corporate AMT. With the new 20% rate on corporations, retention of the corporate AMT may reduce or eliminate many of the remaining deductions for corporations.

The treatment of deferred foreign earnings and profits is yet another area where both bills take a similar approach but with different rates. The House proposal would tax certain accumulated earnings and profits represented by cash and cash equivalents at a 14% rate and would tax earnings and profits represented by illiquid assets at a 7% rate, while the Senate rates would be 10% and 5%, respectively. Additionally, the Senate bill includes proposals to address similar base erosion concerns as the proposals in the House bill but, in some cases, such proposals operate in a different manner to achieve a similar objective. The Senate bill also includes certain other proposals that were not included in the House bill, such as the repeal of the special rules for DISCs and IC-DISCs and the denial of interest or royalty deductions for certain related party amounts paid or accrued pursuant to certain hybrid transactions, or by, or to, a hybrid entity.

Some of the key international tax provisions contained in the Senate bill relating to the establishment of a participation exemption for taxation of foreign income include rules relating to:

(i) A dividend exemption system which generally provides for a 100% dividend received deduction for the foreign-sourced portion of dividends received by a domestic corporation from specified 10% owned foreign corporations with respect to which the domestic corporation is a US shareholder when certain conditions are satisfied;

(ii) Certain sales or transfers involving specified 10% owned foreign corporations (including rules designed to limit losses on certain sales or exchanges of such foreign corporations in situations involving a domestic corporation eligible for the dividends received deduction);

(iii) Requiring branch loss recapture when substantially all of the assets of a foreign branch are transferred by a domestic corporation to specified 10% owned foreign corporations with respect to which the domestic corporation is a US shareholder; and

(iv) A transition tax requiring US shareholders of certain foreign corporations to include as subpart F income their deferred foreign income of such foreign corporations (the tax rates for such inclusion have changed in the final Senate bill – for instance, a US corporation with the mandatory inclusion would be taxed at a 14.5% rate with respect to E&P represented by cash or cash equivalents and a 7.5% rate with respect to illiquid assets).

There are also provisions in the Senate bill addressing passive and mobile income, including rules relating to:

(i) Taxing US shareholders of CFCs on their portion of amounts treated as 'global intangible low taxed income' through a complex calculation;

(ii) Permitting a deduction for domestic corporations for certain specified percentages of foreign-derived intangible income of the domestic corporation and global intangible low-taxed income, which is included in income of such domestic corporation (subject to limitations); and

(iii) Permitting transfers of certain intangible property from CFCs to US shareholders in a tax efficient manner for a three-year period of time.

Additionally, the Senate bill includes a number of significant modifications to the CFC subpart F rules, including:

(i) The elimination of an inclusion of foreign base company oil-related income;

(ii) An inflation adjustment of the de minimis exception for foreign base company income;

(iii) The repeal of an inclusion based on the withdrawal of previously excluded subpart F income from qualified investment;

(iv) The modification of the stock attribution rules for determining status of a foreign corporation as a CFC (this modification would make it more likely for a foreign corporation to be treated as a CFC as a result of stock of certain related foreign persons being attributed downward to a US person);

(v) The modification of the definition of US shareholder by incorporating a 10-percent value test in determining who is a US shareholder (thus, making it more likely for a person to be a US shareholder and a foreign corporation to be a CFC);

(vi) The elimination of the requirement that a corporation be a CFC for 30 days before subpart F inclusions apply;

(vii) Making the CFC look-thru rule of Section 954(c)(6) permanent; and

(viii) The modification of Section 956 (which deals with investments in US property) to provide that corporations that are eligible for a deduction for dividends from CFCs will be exempt from a subpart F inclusion for investments in US property.

Moreover, the Senate bill includes a number of provisions designed to address base erosion, including rules relating to:

(i) Limiting the deduction for interest expense of domestic corporations that are members of a worldwide affiliated group with excess domestic indebtedness when certain conditions apply;

(ii) Limiting income shifting through intangible property transfers (including treating goodwill and going concern value and workforce in place as Section 936(h)(3)(B) intangibles):

(iii) Disallowing a deduction for certain related party interest or royalty payments paid or accrued in certain hybrid transactions or with certain hybrid entities under certain circumstances;

(iv) Not permitting shareholders of surrogate foreign corporations to be eligible for reduced rates on dividends under Section 1(h); and

(v) Providing for a base erosion and anti-abuse tax which requires a corporation to pay additional corporate tax in situations where the corporation has certain 'base erosion payments' and certain conditions are satisfied (a complex formula is used for determining this tax). Very generally, these rules can apply to corporations (other than a RIC, REIT or S corporation) where the average annual gross receipts of which for a three tax year testing period are at least USD 500 million and the 'base erosion percentage' for the tax year is 4% or higher. Base erosion payments generally are certain deductible payments to related foreign persons and certain amounts paid or accrued to related foreign persons in connection with the acquisition of depreciable or amortizable property, as well as certain payments to expatriated entities. There are several definitions, special rules and exceptions in applying this provision.

BDO comment

For now it's up to the conference committee to meet and work to reconcile the House and Senate bills. Once they have done this then the House and Senate must vote to pass this joint bill before it can be sent to the President and signed into law. It's not just the holidays we'll be looking forward to during the month of December 2017 we might even see tax reform legislation enacted too. Speaking of looking forward to things it's important to remember that under the Byrd Rule all of the individual income tax changes that will be enacted under this tax reform legislation will expire on 31 December 2025 and revert back to the current law in effect during 2017. All corporate tax changes enacted by the legislation are permanent.

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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 8 December 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	1.17892
Romanian New Lei (RON)	0.21567	0.25429
British Pound (GBP)	1.13702	1.34058
US Dollar (USD)	0.84814	1.00000

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