

# EXPATRIATE NEWSLETTER

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# SINGAPORE

## RAS AUDIT ON EMPLOYER'S REMUNERATION REPORTING

The Inland Revenue Authority of Singapore (IRAS) voluntary disclosure program (VDP) allows for companies who have made errors in their Form IR8E and IR21, to correct their errors for significantly reduced penalties.

An employer is required to report its employee's remuneration for the calendar year in an annual return Form IR8E or IR21 (if the employee ceased in the year).

The remuneration to be reported will include cash and non-cash items as required under the law and IRAS guidelines. Hence, an employer needs to know the law and practices regarding the taxation of remuneration to be certain of its correct reporting in the Form IR8E and IR21.

The IRAS has been and still is conducting audits on companies to assist them in accurately reporting their employees' remuneration as an employer. The most common method of audit is the Assurance Program Questionnaire, which is issued to the employer to collate the information on the reporting of the employee's remuneration. Based on the information collated, the IRAS will verify the information to ascertain if there is any potential under reporting and then will conduct a further audit on the employer's payroll records if applicable.

### IRAS Voluntary Disclosure Program (VDP)

The aim of IRAS VDP is to encourage taxpayers who have made errors in their returns or Forms IR8E/IR21 to come forward voluntarily, in a timely manner to correct their errors for reduced penalties.

Under the law, any incorrect reporting by an employer will face a penalty of up to 400% of tax undercharged depending on the reasons for the under reporting. There is also a maximum fine of SGD 50,000 and/or imprisonment for a term of not exceeding five years. However, under the VDP, the penalties will be reduced as follows, subject to meeting certain conditions: (see table below).

### BDO comment

#### Next steps

All companies should review its reporting process in the Form IR8E/IR21 to check that it is prepared accurately and to rectify any errors made under the VDP. This will avoid a situation where an IRAS audit is carried out and errors uncovered there will attract a penalty of at least 200% of the tax undercharged. More importantly, the company will avoid the reputational risk arising from the IRAS audit and rectify inherent process and knowledge gaps highlighted during VDP.

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Type of errors	VDP Penalty rate (%)	
	Disclosure made within a grace period of 1 year from the statutory filing deadline	Disclosure made after 1 year grace period
Errors due to negligence/ignorance	Waiver of penalty	5% of the tax undercharged, per year of delay
Errors due to willful intent to evade tax	200% of the tax undercharged	200% of the tax undercharged

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# EDITOR'S LETTER

**T**he 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.



# THE EUROPEAN UNION

## EMPLOYMENT CONDITIONS OF POSTED EMPLOYEES IN THE EUROPEAN UNION

Cross border posting of employees within the European Union is becoming increasingly popular. As free movement of employees is a fundamental principle within the EU, EU-legislation contains as limited restrictions as possible to enable employees to live and work in other EU-Member States.

The European legislator continues to seek and find a balance between free movement of employees and services on the one hand, and the social protection of employees and fair competition between resident and foreign employers on the other. In this respect the European Posting of Workers Directive (hereinafter: 'the Directive') aims at ensuring equal wages of the posted worker and a level playing field in the sending and the host country, whilst maintaining the principle of free movement of employees and services.

The Directive applies to companies that provide (EU or non-EU) employees to EU-Member States within the context of the cross-border service provision. The Directive stipulates that EU-Member States must ensure that employees who are posted temporarily to another Member State with regard to employment benefits are treated equally to employees of the host country. This equal treatment relates to specific terms and conditions of employment, such as minimum wages, maximum working hours, entitlement to a basic number of paid holidays, employment conditions regarding health, safety and equal treatment of male and female employees, irrespective of the law applicable to the employment contract.

Notwithstanding the above and due to the fact that wage differences in EU-countries is rapidly increasing, the current Directive has not been able to prevent temporary posting of employees unintendedly becoming a financially attractive alternative for employers to cut back on wage costs.

On 28 May 2018, the European Parliament adopted tightened legislation to prevent the above from happening and to ensure that posted workers receive all elements of remuneration applicable to employees in the host Member States.

In connection with this, the new Directive not only requires employers to pay posted workers the minimum wage of the host Member State, it also applies to all other regulations on wages in the broadest sense. It therefore includes all remuneration (also those agreed in collective labour agreements declared generally binding) such as fixed fees, bonuses, pension, mobility allowances (providing accommodation for the posted employee will have to meet local minimum standards of housing) as well as salary raises based on years of experience in the host Member State.

In the event of non-compliance with or abuse of the new regulations, Member States are obliged to impose sanctions on the relevant employers. Furthermore, the newly adopted Directive places limits on the currently unlimited period of the posting. The duration of a cross border posting of employees will be set at a maximum of twelve months, with a substantiated extension of a further six months. Employees posted beyond this twelve (or eighteen) month period in a host Member State will have access to all local employment regulations and therefore in those cases can derive rights from regulations against unfair dismissal, even though these protective employment regulations may not exist in their home state.

It is now up to the EU-Member States – They will need to bring national legislation into line with the Directive by the end of 2020.

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# HONG KONG

## LEGISLATIVE & PROPOSED CHANGES – WHAT MATTERS TO EMPLOYERS IN 2018/19 AND BEYOND?

### Controversy about the government's proposal to abolish the mandatory provident fund (MPF) 'offsetting arrangement'

In the Chief Executive's 2017 Policy Address, Mrs Lam pledged to abolish the rules that allow employers to offset severance payments (SPs) or long service payments (LSPs) against their MPF contributions. To facilitate a consensus among the various stakeholders on this controversial issue and eventually abolish the offsetting mechanism as Mrs Lam promised, the government has recently announced the following preliminary proposal:

1. An incremental subsidy amounting to at least HKD 17.2 billion to ease the additional burden on small and medium sized enterprises (SMEs) making SPs or LSPs following the ban on the offsetting arrangement.
2. The introduction of a two-tier government subsidy system. For the first three years, the government will subsidise up to 50% of employers' SPs or LSPs. After that, the subsidy will reduce by 5% a year until it drops to 0% from year thirteen onwards. (Details of the two-tier government subsidy system is shown in Table 1).
3. The calculation of SPs and LSPs will stay unchanged at two-thirds of an employee's salary for the final month, multiplied by their reckonable years of service, and capped at HKD 390,000.
4. The introduction of a designated saving account (DSA) to which employers will contribute the equivalent of 1% of an employee's salary as a reserve for SPs and LSPs. The contribution to the DSA is limited to 15% of an employee's total salary (which means employers would contribute for only 15 years per employee).
5. The government will provide a second layer of subsidy, to be used if a business's contributions to the DSA fail to cover its SPs or LSPs.

**Table 1**

**Details of the proposed two-tier government subsidy**

Number of years after abolition	Tier 1 of government subsidy (% of employers' SPs and LSPs)	Tier 2 of government subsidy (% of employers' SPs and LSPs)	Maximum government subsidy (Tier 1 plus Tier 2)
1	50%	25% (50% x 50%)	75%
2	50%	25% (50% x 50%)	75%
3	50%	25% (50% x 50%)	75%
4	45%	24.75% (55% x 45%)	69.75%
5	40%	24% (60% x 40%)	64%
6	35%	22.75% (65% x 35%)	57.75%
7	30%	21% (70% x 30%)	51%
8	25%	18.75% (75% x 25%)	43.75%
9	20%	16% (80% x 20%)	36%
10	15%	12.75% (85% x 15%)	27.75%
11	10%	9% (90% x 10%)	19%
12	5%	4.75% (95% x 5%)	9.75%
13	0%	0%	0%

### Notes

1. Employers are allowed to offset the pre-effective date SPs and LSPs with their MPF contributions made both before and after the effective date of abolition of MPF offsetting arrangement ('efficient date').
2. The abolition of the offsetting arrangement should also apply to occupational retirement schemes under ORSO. The employers concerned, and those who make voluntary contributions under the MPF system in excess of the compulsory 5%, can make use of the accrued benefits derived from their voluntary contributions to offset SPs and LSPs. Likewise, gratuity based on length of service as a voluntary payment by employers to employees should also continue to be used to offset SPs and LSPs.

The business sector has raised complaints about the government's proposal. Representatives from the sector have expressed concerns that those SMEs that hire a small number of employees would not be able to afford the extra cost of contributing to the new DSA, let alone the additional cost of the top-up payment for SPs and LSPs after the abolition. SMEs would have to dig into their own pockets or seek external finance to meet the cost of the top-up payment. Such extra costs may lead some SMEs to make the decision to close their business.

Representatives of the business sector have made alternative proposals to the government, calling for more subsidies as follows:

1. To consider the two-tier profits tax system and to further subsidise companies by matching 1% of the employers' contribution to the new DSA.
2. To extend the subsidy on SPs and LSPs beyond the twelve year grace period (or indefinitely).

Meanwhile, representatives from the employment sector have welcomed the government's proposal to stop this offsetting arrangement swallowing up employees' retirement funds. In addition, the employment sector finds the government's proposal acceptable, as it does not reduce the cap of HKD 390,000 on SPs and LSPs (despite the fact that the proposal still allows employers to offset the pre-effective date SPs and LSPs against MPF contributions made both before and after the effective date).

The government hopes that the proposed bill will be approved by 2020 and take effect by 2022. However, the business sector remains unconvinced, as demonstrated by its counter proposals. In view of the controversy surrounding the issue, government officials must study the counter proposals from the business sector and the employment sector to reach a consensus in both sectors, win support and move forward. It seems unlikely that the government will be able to proceed to legislation in 2018.

### Updates on proposed amendments to maximum and minimum levels of relevant income for contributions to the MPF

The Mandatory Provident Fund Schemes Authority (MPFA) has recently reviewed the minimum and maximum levels of 'relevant income' (the previous review took place in 2014). At present, the minimum and maximum relevant income levels are HKD 7,100 and HKD 30,000, respectively. According to the statutory adjustment factor, the MPFA proposes adjusting the above levels to HKD 8,000 and HKD 48,000 (the threshold would first be adjusted to HKD 39,000 and then to HKD 48,000 two years later), and will submit this proposal to the government in July this year. If the proposal is passed by the Legislative Council, the cap on the employer's contribution for an employee may increase from HKD 1,500 to HKD 2,400 when calculated at the 5% contribution rate.

### Updates on proposed amendments to the statutory minimum wage

The Minimum Wage Commission launched a six-week public consultation to invite views from the community, including members of the public and stakeholders, on the review of the statutory minimum wage. The consultation ran from 9 April to 20 May 2018.

The Labour leaders have called for the minimum wage to be raised to HKD 42 per hour from the current HKD 34.50 per hour, and claimed that such an increase is needed to guarantee a reasonable standard of living for people on low pay.

Since Hong Kong brought in the statutory minimum wage at HKD 28 per hour in 2011, it has gone up every two years; it is currently HKD 34.50 per hour. The government will announce the new rate on Labour Day, 1 May 2019.

The above proposals would have a significant impact on Hong Kong's entrepreneurs, employees and the wider economy; particularly the proposals for abolishing the offsetting arrangement. In view of the complexity of and controversy surrounding these proposals, further reviews and discussion among stakeholders are needed before the proposals can receive legislative approval.

### Proposal for increased statutory paternity leave

A proposal to increase statutory paternity leave (SPL) in Hong Kong from three days to five has formally put forward by the government and the relevant amendment bill has recently introduced into the Legislative Council for approval of the SPL legislation. The increment of SPL would expect to take effect in February 2019.

### Speak to our payroll professionals

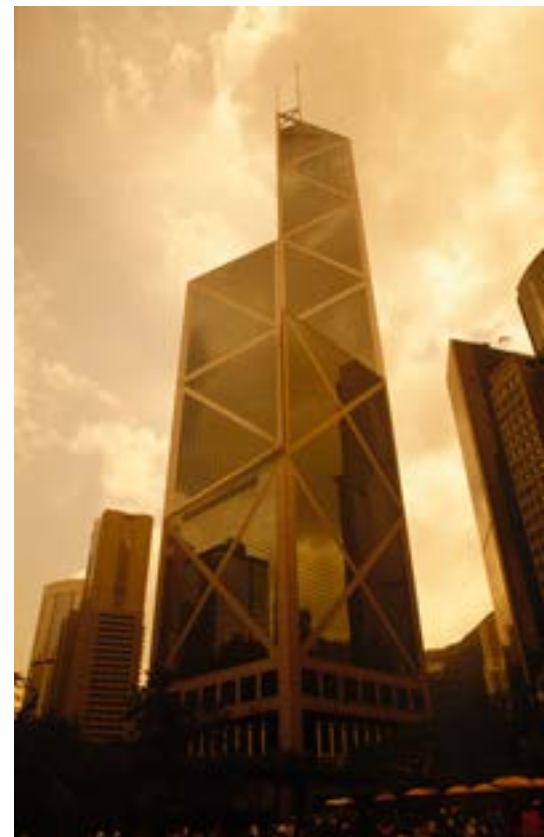
Get in touch to find out how we can help you with a tailored payroll outsourcing solution, or you just simply wish to ask a question about this topic, please feel free to get in touch with us.

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# INDIA

## TAX RETURN FILING REQUIREMENT FOR FOREIGN COMPANIES

**D**ue to recent amendments to the Indian tax law and a drive from the Indian Government for a tax compliant society, foreign companies transacting with Indian parties should consider tax return filing in India.

### Background

Under the Indian tax law, foreign companies are treated as non-residents and thus only income accruing, arising or received in India (including certain cases of deeming provisions) is taxable in India. The compliance provisions require every company to file its return of income, save certain exceptions for specified incomes like dividend, interest, etc. from which taxes have been withheld.

There has been debate before judicial forums as to whether tax return filing is obligated only in cases of foreign companies having income taxable in India or compliance is required by all foreign companies having transactions with India. While views are divided, the recent amendments in Indian tax law seem to have tightened the need for tax return filing compliance.

### What foreign companies need to consider

It is pertinent to note that non-compliance or delayed tax return filing will have the following implications:

- Fee ranging from INR 1,000 to INR 10,000 for tax return filed after due date;
- Income considered to be under-reported if tax return not filed – Penalty of 50% of the tax on income assessed (penalty of 200% if misreporting of income by taxpayer);
- Imprisonment and fine if wilful failure to file tax return (no threshold of tax liability on income assessed for this type of proceedings).

### Action Points

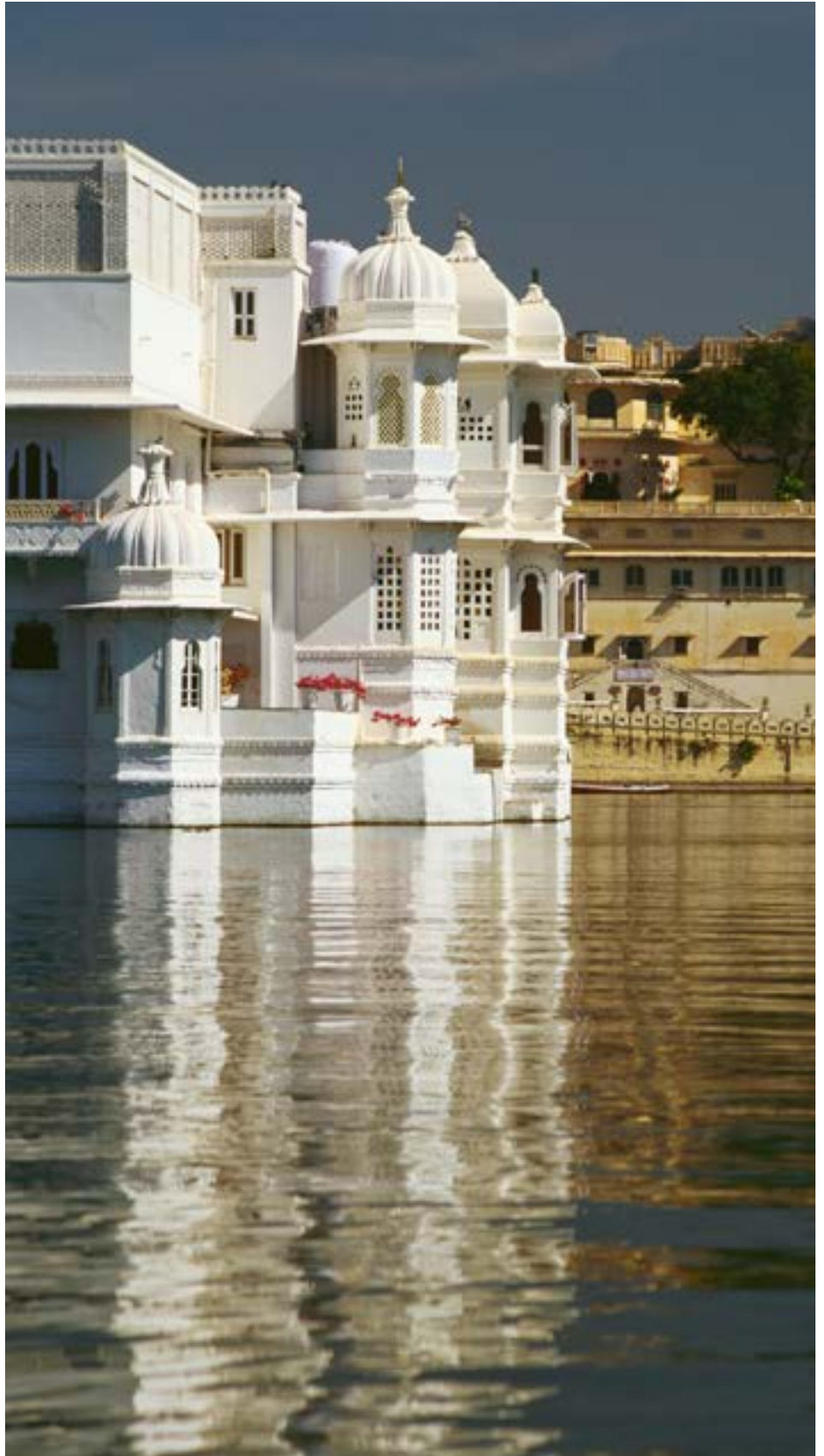
Considering the punitive provisions, foreign companies entering into transactions with Indian parties are well advised to keep note of their tax return filing requirement in India. The due dates for Indian tax return filings are:

- In case transfer pricing regulations are applicable – 30 November following the end of the fiscal year;
- In other cases – 30 September following the end of the fiscal year.

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# THE NETHERLANDS

## MAXIMUM TERM OF 30% RULING REDUCED

As you may be aware, changes will be coming into place as of January 2019 regarding the maximum period the 30% ruling can apply. This maximum of five years will apply to both existing cases as well as new cases. There will be no transitional provisions for existing cases.

This change extends to the scheme opting for partial non-resident taxpayer status for income tax purposes, since the right of option can only be applied during the term of the 30% ruling.

The Cabinet has decided to introduce transitional provisions for tuition fees payable for international schools with effect from 1 January 2019. Under these transitional provisions, once the term of the 30% ruling has been reduced, the tuition fees payable for international schools for the 2018/2019 academic year can still be reimbursed or defrayed, provided these tuition fees are reimbursed or defrayed before the end of the original term of the 30% ruling.

Interestingly, the existing transitional provisions for employees subject to the 30% ruling on 31 December 2011, under which the maximum term of ten years applies, will also end. This is because it is an established fact that the maximum term for these employees will have ended by 1 January 2019.

In June 2018, the Dutch tax authorities sent the affected employees and withholding agents a letter containing information about the planned change. No substantive changes are envisaged for employees who are posted abroad.

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# SWITZERLAND

## QUOTA SITUATION

On 28 September, the Federal Council set the quotas for the year 2019 for third country nationals and service providers from the EU/EFTA. The Federal Council has decided to increase the number of residence permits in view of the continuing demand for specialists from third countries, the substantial use of B residence quotas and dialogue with the cantons and social partners.

### Third-country nationals

Next year, 8,500 specialists from non-EU/EFTA countries can be recruited in Switzerland. Non-EU/EFTA countries are commonly referred to as 'third countries' in Switzerland. In 2019 there will be 4,500 (+1,000) B residence permits and 4,000 L short-term residence permits (-500) available. The 1,000 additional B quotas remain in the Federal Reserve and will be allocated to the cantons upon request.

### Service providers from EU/EFTA countries

The maximum number of service providers (i.e. expatriates) from EU/EFTA countries remains unchanged. In 2019, there will be 3,000 quotas available for L short-term residence permits and 500 for B residence permits. The total number of permits will remain unchanged. Quotas will be released quarterly.

## FEDERAL ACT ON FOREIGN NATIONALS – SECOND STAGE APPROVED

In August 2018, the Federal Council approved the second stage with corresponding amendments to the bylaws on the Aliens and Integration Act (AIG, until 31.12.18 still AuG Aliens Act) and decided to enforce this policy as of 1 January 2019. The integration of foreign nationals will be enhanced through positive incentives and appropriate measures. This essentially includes the following:

### Facilitated admission of refugees and provisionally admitted persons

As of January 2019, recognised refugees and temporarily admitted persons can take up gainful employment after registering with the labour market authority. This relieves the burden on employers and creates easier access to gainful employment. The aim is to promote the domestic work force potential and reduce expenditure on social assistance.

### Integration criteria

Integration criteria have been defined which will be taken into account in decisions concerning foreigners. These include language skills, which are required for the granting and extension of a permit. The level of linguistic requirements will vary depending on the type of permit in question. Parliament has specified measures that will be applied if there is a lack of willingness to integrate. The migration authorities can combine a residence permit with a binding integration agreement and sanction non-compliance accordingly. If the integration criteria are not met, a downgrading from a settlement permit (C) to a residence permit (B) can be imposed by the Migration authority.

### BDO comment

*BDO in Switzerland may support you in applying for work and residence permits for Switzerland and consult you on the changing quota situation.*

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# UNITED STATES

## IRS AND STATES RESPOND TO HURRICANE FLORENCE – EXTENSIONS, WAIVERS, AND MORE

The Internal Revenue Service (IRS) announced on 15 September that taxpayers affected by Hurricane Florence may qualify for relief from certain filing deadlines, tax payments, and other time-sensitive acts and applies to original and extended due dates occurring on or after 7 September 2018 and before 31 January 2019. As of the 17 September, the extensions apply to taxpayers in:

- Beaufort;
- Bladen;
- Brunswick;
- Carteret;
- Columbus;
- Craven;
- Cumberland;
- Duplin;
- Harnett;
- Lenoir;
- Jones;
- New Hanover;
- Onslow;
- Pamlico;
- Pender;
- Robeson;
- Sampson; and
- Wayne counties in North Carolina.

As a declared disaster area, the IRS is permitted to postpone certain deadlines falling on or after the 7 September 2018, and before the 31 January 2019, to file and pay any taxes due during this period. Such relief includes:

- Quarterly estimated income tax payments due on the 17 September 2018.
- Quarterly payroll and excise tax returns that would have been due on the 31 October 2018. Penalties on payroll and excise tax deposits due on or after the 7 September 2018, and before the 24 September 2018 are abated as long as the deposits are made by the 24 September 2018.
- Businesses that have extensions that end on 17 September 2018.
- Taxpayers with valid extensions to file their 2017 returns that end on the 15 October 2018.

### States' responses

#### North Carolina

With some exceptions, the North Carolina Department of Revenue (NCDOR) will waive any penalties assessed against taxpayers who fail to obtain a license, file a return, or pay tax by the due date (Late Action) and who are allowed federal tax relief as a result of Hurricane Florence. This applies for due dates occurring on or after the 7 September 2018, through the 31 January 2019. The waiver will be considered a waiver for automatic reasons, and not for good compliance (which can only be granted once every three years per tax type).

Taxpayers that are not located in one of the counties declared eligible for federal relief by the Internal Revenue Service can request a waiver of penalties for Late Action occurring within three months following the date of the natural disaster. Taxpayers must provide documents to support their claim that Hurricane Florence was the cause of the Late Action.

The NCDOR will assess interest on any tax due from the date the tax was due until the date the tax is paid for any Late Action.

The NCDOR generally expands relief from penalties for failure to file or failure to pay from federal relief to all quarterly, monthly, and semi-weekly filers who are 'Affected Taxpayers' (defined in the NCDOR announcement) that file withholding returns and pay the tax due by 31 January 2019. See the 17 September announcement for further details and to read about exceptions regarding relief.

#### South Carolina

The South Carolina Department of Revenue (SCDOR) will work with taxpayers on a case-by-case basis to waive penalties assessed against taxpayers who cannot meet their state filing or payment requirements as a result of Hurricane Florence. The relief does not apply to current collection matters, including payments due during the relief period under any payment plan previously entered into with the SCDOR. Taxpayers affected by the storm should submit their completed tax returns and payments, and should they receive a notice with penalties due, request a penalty waiver following the instructions in the SCDOR announcement.

#### Alabama

Alabama's Department of Revenue (ADOR) is offering tax relief in line with federal relief to taxpayers who have been affected by damage from Hurricane Florence. Alabama taxpayers have until the 31 January 2019, to file tax returns due on or after the 7 September 2018, and before the 31 January 2019, for which penalty relief will be available. Taxpayers should write 'Florence Relief - 2018' in red ink when filing any state paper return or report that relies on the Alabama tax relief.

#### Arkansas

Effective from the 12 September 2018, through to the 31 October 2018, the Arkansas Department of Finance and Administration has issued a temporary excise tax waiver for requirements associated with the International Registration Plan and International Fuel Tax Agreement for any motor vehicle travelling through Arkansas that is engaged in disaster relief efforts.

#### Georgia

As of the 16 September, Georgia has waived tax filings under the Georgia International Registration Plan and the International Fuel Tax Agreement.

#### Florida

Florida's Department of Revenue (FDOR) is offering tax relief to taxpayers on a case-by-case basis who 'despite good-faith efforts, are unable to file tax returns as required by law because of Hurricane Florence'. Filing deadlines for taxpayers who are able to file will remain unchanged. Florida will follow federal tax relief for corporate filers regarding the postponement of due dates. Florida corporate income/franchise tax returns originally due or due on extension on or after the 7 September 2018, and before the 31 January 2019, are now due by the 15 February 2019.

#### Idaho

The Idaho State Tax Commission is extending deadlines to file and pay taxes for victims of Hurricane Florence in North Carolina and elsewhere. Taxpayers from designated disaster areas have until the 31 January 2019 to send any completed tax returns and payments due from the 7 September 2018, to the extended deadline. Taxpayers should write 'HURRICANE FLORENCE' in red ink at the top of their tax return to qualify for the extension, or call the Tax Commission if they file electronically.

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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 19 October 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Singapore Dollar (SGD)	0.63093	0.72489
Hong Kong Dollar (HKD)	0.11098	0.12757
Indian Rupee (INR)	0.01183	0.01359

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