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THE NEWSLETTER OF THE BDO EXPATRIATE TAX PRACTICE

BDO KNOWS EXPATRIATE TAX

CONTENTS

EXPATRIATE TAX UPDATES

EXPATRIATE TAX UPDATES PROVIDE 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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ISRAEL

TAX AUTHORITY ISSUES CLARIFICATION ON RESIDENCY

The Israeli tax authority issued a circular on 13 January 2013, in order to clarify and improve procedures regarding tax residency status approvals for "New Immigrants" and "Veteran Returning Residents".

Following amendment 168 to the Israeli Tax Ordinance (ITO) substantial tax benefits were granted to individuals who were considered as "New Immigrants" or "Veteran Returning Residents". As a result of these amendments, many applications were submitted to the Israeli Tax Authorities (ITA) by individuals

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seeking approval of their particular status. Following the uncertainty and incoherency in the manner of obtaining approval to such applications, the ITA issued a circular aimed at addressing these issues.

The circular establishes two routes (the "Green Route" and the "Individual Route") to receive tax residency status which will be determined according to the particular individual's "centre of life test". Application for such approval from the ITA is available both for individuals who have not emigrated to Israel yet but are planning to do so, and also for individuals who are residing in Israel.

The Green Route – this route is for those individuals who have minimal ties to Israel. These individuals will receive their status approval under an accelerated process. Should the tax assessing officer not approve the requested residency status under this route, the individual will still be able to seek the approval via the Individual Route. Under the Green Route, the individual must meet all the conditions of either of the following two alternatives detailed in the relevant form relating to the days spent in Israel in a period of 10 years prior to his immigration, social security rights, medical care and other conditions. The individual applying for residency status approval under the Green Route must, inter alia, declare in the relevant form; the day he arrived in Israel, that he has met all the conditions required (whether under either of the alternatives) and that all the information filled out in the form is correct. In addition, the individual must attach all relevant documents as stated in the form.

The Individual Route – this route is for those individuals who have more substantial ties to Israel. These individuals will receive a residency status approval after a thorough review by a tax assessing officer.

Following this circular, it would appear that the stringent conditions of the Green Route denies residency status as "New Immigrants" or "Veteran Returning Residents" for those individuals who preserved their social security rights in Israel even if they did not maintain a permanent home in Israel and did not reside in Israel for even a single day prior to their emigration to Israel. Alternatively, new immigrants who visited Israel in the past for long periods will also be denied the residency status through the Green Route. Nevertheless, those individuals can seek their residency status approval through the Individual Route.

It should be noted that these residency status approvals are not considered as a Certificate of Residency for the purpose of benefiting from Israel's double taxation treaties which are usually given only after the individual proves a change of his "centre of life" to Israel and fulfils other criteria.

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AUSTRALIA

AUSTRALIAN "LIVING AWAY FROM HOME" TAX CONCESSIONS REMOVED FOR MOST EXPATRIATE EMPLOYEES

The proposed changes to LAFH tax concessions became effective on 1 October 2012. As a result the vast majority of expatriate employees in Australia will no longer qualify for tax exemptions on accommodation and certain food costs.

From 1 October 2012, employees will only be able to access the tax concessions for up to 12 months if they are required to live away from their "normal residence in Australia" and maintain that residence for their use whilst they are living away from it.

For example, an employee who has a normal residence in Sydney, but is required to live away from it for work purposes and live in Perth for 10 months, may qualify for tax concessions if he/she maintains the Sydney residence for his/her use whilst living away from it. It should be noted that not many expatriate employees will be in this situation.

Although transitional rules for current arrangements in place on 8 May 2012 may grandfather tax relief by extending tax concessions up to 30 June 2014, these rules will only apply to those expatriate employees in Australia who are living away from their "normal residence in Australia" and maintaining it for their use. Again, not many expatriate employees will be in this situation.

Going forward, benefits including accommodation and food allowances will be taxable for most expatriates in Australia. Moreover, these costs will be most likely be treated as fringe benefits and taxable to employers (not employees) at the Fringe Benefits Tax rate of 46.5% grossed up.

There is scope to reduce overall tax costs by restructuring expatriate remuneration packages to replace accommodation/food allowances and benefits with other items that are taxed at the progressive income tax rates.

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2012/13 (year ending 30 June 2013) resident income tax rates:

Taxable income (AUD)	Tax rate
0 – 18,200*	0%
18,201* –37,000	19%
37,001 – 80,000	32.5%
80,001 – 180,000	37%
Over 180,000	45%

*The tax free threshold level is pro-rated for part year residents.

Although a medicare levy of 1.5% can also be charged on taxable income, many expatriate employees are not liable to pay this.

Clearly, care needs to be taken in any remuneration restructuring to ensure that the employer's international assignment policy and tax policy objectives are met.

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BELGIUM

CHANGES TO TAXATION OF NON RESIDENTS

Following new legislation issued in December 2012, changes have been introduced to the taxation of non-residents in Belgium.

The defining of taxable income

As of 1 January 2013, when a tax treaty provides authority to tax to Belgium, Belgium will be able to tax non-residents on all income components taxable under Belgian income tax law.

When no tax treaty is in force, a non-resident who renders services to a Belgian resident or Belgian establishment, and who cannot prove that the income derived from such services has been or will be taxed in his country of residence, will be taxable on that income merely because the receiver of the services is a Belgian resident.

If because of this one becomes taxable in Belgium, one may also be liable for Belgian withholding tax. Such liability requires payroll formalities in Belgium.

Permanent establishments

Terminology used in Belgian legislation has been modified to increase conformity with the international treaties and the concept of a 'service permanent establishment' has been introduced.

A 'service permanent establishment' exists when a foreign company renders services in Belgium for one or more related projects through one or more individuals who are present in Belgium and who render these services for periods of time which exceed or will exceed 30 days in total in any period of twelve months.

As a result of this new concept, Belgium can tax income derived in Belgium when according to a tax treaty Belgium is authorized to tax income derived by a permanent establishment in Belgium, but technically there is not a classic "material or personal" permanent establishment present in Belgium. Such a 'service permanent establishment' can exist because of the presence of a non-resident in Belgium, but also because of a Belgian resident who works from home in Belgium for a foreign company. Consequently the income that can be appointed to such a 'service permanent establishment' will be taxable in Belgium and liability for Belgian professional withholding tax on employee income may arise.

Taxability in Belgium of salaries paid to non-residents

As of 30 December 2012 all salaries paid to non-residents where the financial burden lies directly or indirectly with a Belgian resident or Belgian establishment of a foreign company will be taxable in Belgium for the work physically performed in Belgium.

A new development is that salaries which financially burden a Belgian resident or Belgian establishment of a foreign company indirectly will be taxable in Belgium.

For example if personnel from a foreign company is put at the disposal of a Belgian company, but the salaries are still paid by that foreign company and then billed to the Belgian company, those salaries will be taxable in Belgium for the days of physical presence in Belgium because they will be considered to indirectly be paid by the Belgian company.

Another example would be where personnel of a foreign company works for the Belgian permanent establishment of the company, but isn't remunerated by the permanent establishment. The permanent establishment doesn't deduct remuneration expenses, but instead deducts internal service fees to the head office for 'services' provided to the permanent establishment by the head office. Because of this the personnel will be considered to be remunerated indirectly by the Belgian establishment and their remuneration will therefore be taxable in Belgium for the days during which they were physically present in Belgium.

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MODIFICATION OF THE DOUBLE TAXATION TREATY BETWEEN BELGIUM AND THE UNITED KINGDOM

Belgium and the UK have recently concluded and ratified the Paris Protocol of 24 June 2009 ("the Paris Protocol") with respect to the 1987 Treaty between the two nations regarding the avoidance of double taxation of income and capital gains ("the Treaty"). They have settled a number of difficulties in the application of certain provisions and modified others in accordance with developments in their respective legislation and practices. The Protocol came into force on 24 December 2012 and applies to taxable income paid out or attributed as of 1 January 2013.

Treatment of pensions

Pensions and other similar remuneration paid to a resident of a contracting state in consideration of past employment and paid for the first time up until 31 December 2012 is and will remain taxable in the state in which the receiver of the payment is tax resident.

If income comes from the other State rather than the State in which the receiver of the payment is tax resident and is paid for the first time from 1 January 2013 onwards, it will now only be taxable in the State from which the income has come from.

Pensions and other similar remuneration are considered to "come from a contracting state" when they are paid by this State (or by one of its political subdivisions or local authorities) or by a resident of that State.

This provision in the Paris Protocol refers to "income derived from a retirement scheme" which is defined in article 3 of the Treaty and will, with the exception of public pensions referred to in article 19 (Government service), in practice apply to "all pensions and other, similar remuneration, including that which is not paid in consideration of past employment (for example, the pensions of self-employed workers or life annuities which the recipient may have established directly using capital accumulated outside a retirement scheme linked to employment)".

Treatment of income not expressly mentioned

The Treaty declares income received by a resident of one of the States which is not otherwise referred to in the other provisions of the Treaty (and does not constitute income paid by trusts) to be taxable only in the State in which the receiver is tax resident.

Due to the Paris Protocol, in order to avoid the risk of a double exemption, this provision has been supplemented and now allows the Source State to tax the income if the State in which the receiver is tax resident does not "actually tax" it.

The income will be considered to be "actually taxed" when it is included in the gross taxable base by reference to which the tax is computed. Therefore, it is highly likely that the Belgian authorities will require the taxpayer to prove that the income has actually been taxed by providing them with a copy of his or her UK tax return and corresponding tax bill.

Belgian exemption method for UK Source income

Income that is received by a Belgian resident which according to the Treaty is "taxable" in the UK, used to be exempt in Belgian with progression, i.e. Belgium did not tax the income but the individual was required to declare the income on their tax return in order for the rate at which the taxable income would be taxed to be calculated.

For income paid out as of 1 January 2013, the exemption with progression will still apply but only if the income has "actually been taxed" in the UK. "Actually been taxed" is to be interpreted as income that has been subjected to the tax regime and therefore can be considered as having the same meaning as the concept "subject to tax".

In addition to the above, even if UK source income is exempt in Belgium with progression, Belgium is entitled to levy additional municipal and district (for the Brussels-Capital region) taxes on the exempt income paid as of 1 January 2013 to a Belgian tax resident. Taking into account a percentage of municipal taxes of, for example, 7% and a marginal income tax rate of 50% this will result in a tax supplement of 3.5% on the exempt UK income.

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SINGAPORE

HOW TO DEAL WITH TAX ADMINISTRATION!

The tax authorities in Singapore have announced that only 40% of taxpayers appear to need to file an annual tax return as the remainder is eligible for the No-Filing Service. Those who still have to file will have received a notification informing them to file paper returns by 15 April 2013 or via the website by 18 April 2013. These taxpayers will also have to file a tax return this year, even if their employers have sent their salary details to the tax authorities under the Auto-Inclusion of Employment Income Scheme.

All individuals who are tax resident in Singapore will receive a personal income tax rebate for the 2013 assessment year. However, they do not need to apply for this as the authorities will automatically incorporate the rebate within their tax bills.

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SPAIN

NEW REPORTING REQUIREMENTS FOR ASSETS AND RIGHTS SITUATED ABROAD

In October 2012 the Spanish Government incorporated into legislation new rules on reporting requirements for assets and rights situated abroad.

The main consequences of these rules are as follows:

Those required to file an annual report are legal entities and individuals resident in Spanish territory, permanent establishments of non-resident legal entities located in Spanish territory which hold any of the assets and rights situated abroad.

This reporting requirement is extended to those who hold any of these assets and rights at any time of year, not only at 31 December of that year. In these cases, the information to be provided shall correspond to the date of departure.

There are three categories of assets and rights for which certain information must be submitted to the Administration in the annual report, which must be filed during the first quarter of each year. It is important to note that the first period subject to the new reporting requirements is the 2012 business year.

1. **Accounts in financial entities situated abroad:** Information is required to be submitted on current and savings accounts, deposit accounts, credit accounts and accounts or cash deposits of any other nature, irrespective of the type of account or name used to describe it, even if such accounts are non remunerative. The annual report must be filed both by the account holders themselves and by any representatives, authorized persons or beneficiaries of such accounts. The reporting requirements extend to any party or parties meeting any of the descriptions given above as at 31 December or at any time during the year to which the report refers. The information to be submitted should include: the name of the financial entity, identification of the bank accounts, dates on which such accounts were opened or closed, the balance on the account as at 31 December of the year reported and the average balance for the last quarter of that year.

«Where individuals have ceased to be regarded as taxpayers during the year, they shall indicate the account balance on the date on which they ceased to have that status.

2. **Securities, rights, insurance and income deposited, managed or obtained abroad:** This category specifically includes the following securities owned by the reporting party as at 31 December or at any time during the year to which the report refers:
   - Securities or rights representing a stake in any time of legal entity.
   - Securities representing the assignment of equity to third parties.
   - Securities contributed for their management or administration to any

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legal instrument, including trusts or any other type of wealth management bodies, whether legal entities or otherwise, which may have an impact on financial trade.

The information to be submitted should include: identification of the company, the number and type of shares or securities and the value of such shares or securities.

Where individuals have ceased to be regarded as taxpayers during the year, they shall indicate the value of the assets at the time they stopped having that status.

On the matter of insurance and income, reporting requirements go as far as to include life assurance or disability insurance of which the parties required to report are policy holders, and also any temporary income or annuities of which they are beneficiaries as at 31 December of the year to which the report refers. Details of the insurance company or companies must also be included in the report.

3. **Real estate and any rights thereon:** The report must include identification of the property (type of property), its location and the date and value of acquisition. Those who have ceased to be regarded as taxpayers during the year shall indicate the transfer value of the property.

It is important to note that assets or rights not exceeding EUR 50,000 in any of the three categories mentioned above are exempt from this requirement.

Assets recorded individually and in sufficient detail in business accounts are likewise exempt to be reported if such assets belong to private individuals carrying on a business activity, companies and other entities resident in Spanish territory, or permanent establishments in Spain of non-resident parties.

Filing period

The period for filing the annual report is from 1 January to 31 March of the year following that to which the information relates. However, the obligation to provide information on assets and rights situated abroad for 2012 must be submitted between 1 February and 30 April 2013.

Reporting in successive years will only become compulsory if there is a variance in value exceeding EUR 20,000 in any of the three categories mentioned above. In any case, it is compulsory to submit the report when one ceases to be a taxpayer during any time of year, normally when ownership has extinguished to 31 December.

Specific penalty regime

A specific penalty regime has been established in the event of failure to report or for reports which are incomplete, inaccurate or contain false information.

- The penalty is EUR 5,000 for each detail or set of details referring to a particular asset or right which should have been included in the report or are incomplete, inaccurate, or false. The minimum penalty is EUR 10,000.
- For reports submitted beyond the timeline or by means other than electronically when the requirement is to use electronic means, the penalty will be EUR 100 for each detail or set of details referring to a particular asset or right. The minimum penalty is EUR 1,500.

Failure to comply with reporting requirements may entail consequences with regard to Personal Income Tax and Corporate Income Tax, i.e. should the Internal Revenue Service discover or gain knowledge of the existence of assets and/or rights abroad which the taxpayer has failed to report, these will qualify as "hidden assets".

Assumption of unjustified gains

In the area of Personal Income Tax, a new assumption of unjustified gains (which are taxed at a marginal rate) has been included, and which consists of the holding, reporting or acquisition of any assets or rights which have not been reported in the term provided.

In such cases, the legislator will assume that the unjustified gains were obtained in the last business year still open to audit and will therefore be subject both to the appropriate interest charges on late payment and a special increased penalty of up to 150% of the tax chargeable. All the above is without prejudice to the possibility of the taxpayer facing an accusation of tax fraud.

Notwithstanding the above, an unjustified gain will not be assumed to exist if the party required to report is able to prove that ownership of the assets or rights in question corresponds to the income declared or to income obtained in tax periods in which such party was not liable to Personal Income Tax in Spain.

Tax authorities around the world are increasingly looking to introduce measures to ensure that they are aware of a taxpayer's assets and that any taxes due are collected. Do expect similar measures in other countries.

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SWEDEN

CHANGES REGARDING PAYMENT OF SWEDISH SOCIAL SECURITY

A change has been introduced to the social security payment routine for foreign employers without a permanent establishment in Sweden. The new rules came into force on 1 January 2013.

Swedish employers and foreign employers with a permanent establishment in Sweden, report and pay social security contributions on remuneration paid to Swedish employees by filing a payroll (PAYE) return once a month with the Swedish Tax Agency.

Previously, a foreign employer without a permanent establishment in Sweden could agree with an employee that the employee took over the responsibility to report and pay the social security charges. Under this agreement the employee reported the fees in his/her Swedish tax return once a year. The employee was reimbursed by the employer for the social security charges paid since the Swedish social security system is wholly based on employer contributions.

Employees who operated social security reporting were regarded as self-employed for social security purposes. They were also subject to the social security rates applicable for self-employment income as compared to the standard rate for employer contributions, these contributions being slightly lower.

The changes mean that the possibility to enter into an "annual" social security agreement under the self-employed system as described above was abolished. Instead the employee is required to register with the Swedish Tax Agency and report and pay social security monthly in the ordinary "employer contribution system". This means that standard rates for employers will apply and that the employees will have to file monthly payroll returns. The employee should still be reimbursed by the employer for the social security charges paid.

Registration with the Tax Authority will be required within two weeks of entering into an agreement. A move to the new system is required in all cases.

This will increase both the cost and administration for employers with individuals working in Sweden in such circumstances.

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UNITED KINGDOM

STATUTORY RESIDENCE TEST (SRT) – UPDATED DRAFT LEGISLATION

The 2011 budget announced the Government's intention to introduce a statutory residence test. The rules are due to come into force on 6 April 2013. The July Expatriate Newsletter contained an update based on the initial draft legislation published in June 2012. In December 2012 further updates were made to the draft legislation. It is important to note that the legislation is still in draft form but it is not expected that there will be any major changes to the legislation before it comes into force in April. The updated draft legislation is outlined below.

Overview of the draft legislation

The tests

The test contains three key components - an automatic residence test, an automatic overseas test and a sufficient ties test.

The automatic residence test

An individual will be automatically resident for the year if they meet one of the following automatic UK tests and none of the automatic overseas tests. There are four automatic UK tests:

1. The individual spends at least 183 days in the UK in the year.
2. The individual has a home in the UK for more than 90 days; he is present there on at least 30 separate days in the year (for no matter how short a time on each day) and while he has that home there is at least one period of 91 consecutive days (at least one of which falls in the relevant tax year) when he either has no overseas home or has an overseas home or homes and is present at that home or each of those homes on fewer than 30 separate days in the year.
3. The individual works full time in the UK for a period of 365 days, all or part of which falls within the relevant tax year; there are no significant breaks from work and on more than 75% of those UK working days more than three hours of work was carried out in the UK.
4. The individual dies during the relevant tax year, was resident in each of the three preceding tax years and even if the

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individual was not resident in the year they die the preceding year would not be a split year and at the time of death their home or, if there is more than one home, at least one of them was in the UK.

An individual will be treated as being in the UK on any day when they are in the UK at midnight. However there will be a targeted anti-avoidance rule within the day count rule which will apply to individuals with three or more ties who are present in the UK on more than 30 days without ever being in the UK at midnight on those days and were UK resident in at least one of the previous three tax years. In this situation all days in excess of 30 when the individual is in the UK at any time will be counted as days of presence.

The automatic overseas test

An individual will be automatically not resident for the year if they meet one of the following automatic overseas tests. There are four automatic overseas tests:

1. The individual was resident in the UK for one or more of the preceding three tax years and spends fewer than 16 days in the UK in the relevant tax year.
2. The individual was resident in the UK for none of the preceding three tax years and spends fewer than 46 days in the UK in the year in question.
3. The individual works full time overseas for the year without significant breaks and during that time works in the UK (for more than three hours a day) on no more than 30 days and also spends fewer than 91 days in the UK in the relevant tax year.
4. The individual dies during the year, was not resident in the UK in either of the two preceding tax years and the number of days in the UK in the year is less than 46.

The sufficient ties test

If an individual is not conclusively resident or not resident when applying the above tests, it is necessary to turn to the sufficient ties test. Whether the individual is resident in the UK will depend on the number of ties they have with the UK together with the number of days spent here.

The ties are:

- A family tie
- An accommodation tie
- A work tie
- A 90 day tie and
- A country tie

The table for arrivers is as follows:

Days spent in UK	Number of ties that are sufficient for residence
Fewer than 46 days	Always non-resident
46 – 90 days	All four ties
91 – 120 days	At least three ties
121 – 182 days	At least two ties
183 days or more	Always resident

The table for leavers is as follows:

Days spent in UK	Number of ties that are sufficient for residence
Fewer than 16 days	Always non-resident
16 - 45 days	At least four ties
46 – 90 days	At least three ties
91 – 120 days	At least two ties
121 – 182 days	At least one tie
183 days or more	Always resident

Other key points

Other points of interest which were contained in the draft legislation and accompanying notes include:

Transitional rules

There will be transitional rules introduced which will apply to the years preceding the introduction of the test where the residence status is applicable in those years. Individuals shall apply the new rules to these years when determining residence although when determining actual residence status for those years the existing rule should be applied.

Split year treatment

A tax year may be split into periods of residence and non-residence if a person:

- starts full time work overseas;
- leaves the UK to live abroad;
- comes to live or work full time in the UK;
- starts to have a home in the UK.

There are detailed rules for each of these situations which must be studied to ensure that split year treatment applies. Split year treatment may also apply to an accompanying spouse where an individual starts full time work overseas.

Income tax avoidance

There will be a targeted anti avoidance rule to prevent individuals taking advantage of the certainty these rules provide to go non resident for a short period of time to receive income free of tax. The new rule is modelled on the existing capital gains rules and will apply to certain types of income including certain dividends from close companies, pension payments and gains on life assurance policies if the individual leaves the UK for less than five years.

It has been confirmed the rule will not apply to ordinary earnings from employment or regular types of investment income e.g. bank interest or dividends from non close companies.

Ordinary residence

Ordinary residence is to be abolished. Provision has been made to deal with this where it has been relevant up to now e.g. certain anti avoidance legislation which currently only applies to individuals who are ordinarily resident will now apply to all individuals who are tax resident. Overseas workdays relief for expatriates on short term secondment will be replaced with statutory relief which will work in a similar way.

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SHORT TERM BUSINESS VISITORS – PROPOSED PAYE REPORTING CHANGES

HMRC is proposing to make some important changes to the arrangements for PAYE for short-term business visitors (STBV) to the UK.

Importantly a new requirement has been proposed whereby employers will be required to apply for individual employees to be included in these arrangements as soon as they anticipate that the employee will be present in the UK for more than 150 days.

Background

Where employees based and employed outside the UK spend time working in the UK, a PAYE liability may be triggered for the associated UK business, even though the period involved is short.

To make PAYE administration easier, HMRC will allow employers to enter into STBV agreements, under which no PAYE is due provided that certain conditions are met and specific reporting and tracking processes are followed.

The current form of this agreement sets out increasing responsibilities depending on the length of time that the employee is present in the UK, with the most onerous requirements applying to visitors who are present for between 91 to 183 days. Currently, once the agreement is signed, there is no further pre-clearance required.

Business travellers, who work in multiple jurisdictions outside of a formal international assignment programme, have long been recognised as a risk area by both employers and authorities, as a result of their ability to slip beneath the radar of those parts of the business tasked with ensuring tax, social security and immigration compliance.

The new proposals

Under new proposals currently being considered by HMRC, there are various changes to the current STBV agreement.

The key points are as follows:

- As soon as it can be reasonably anticipated that an employee will be present in the UK for more than 150 days (but less than 183 days), employers must make an application to HMRC on an individual basis for authority to include the employee within the agreement. The application must include a statement by the employee giving reasons why they consider themselves to be resident in the overseas country.
- Following this application, HMRC will confirm whether or not PAYE should be applied.
- The current form of the agreement sets out various reporting requirements for visitors from 91 to 183 days. Under the new proposals this would be adjusted to set out the new requirement for 151 to 183 days. For those between 91 to 150 days, the reporting requirements would be reduced. There would no longer be a need to obtain a statement from the employee after the tax year end regarding various aspects including nationality and previous visits to the UK.

It is expected that HMRC will send a copy of the new agreement to all employers who currently hold an STBV agreement following receipt of their 2012/13 reports. The expectation is that all affected employers will begin operating the new arrangements immediately upon receipt of the notification.

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▶UNITED STATES

CCA FINDS US ROLLOVER OF PENSION TO UK SCHEME A TAXABLE EVENT

The IRS Office of Chief Counsel recently concluded that a UK resident individual could not make a tax-deferred transfer from their US pension to their UK pension. The lump-sum transfer was therefore treated as taxable in the US under the UK-US income tax treaty.

Background

The UK resident individual was a university professor who contributed to a UK pension scheme, which was an approved scheme for UK tax purposes. The individual then accepted a position at a US university where he lectured for a period of time. Upon finishing at the US University, the taxpayer moved back to the UK permanently. On his return to the UK, the individual wished to rollover his US pension contributions to his UK scheme. The US pension plan therefore issued a lump-sum cheque in the amount of his US pension contributions payable to the taxpayer's UK plan.

Issue

The main issue was whether the individual could rely on the language in the Pension Schemes Article of the UK-US tax treaty to make a tax-deferred transfer from a US pension scheme to a UK pension scheme that is not an "eligible retirement plan" under US legislation.

There was also the question of whether the lump-sum transfer from the US pension scheme to the UK pension scheme would be taxable as a distribution in the US.

Conclusion

The rollover did not satisfy the requirements for a tax deferred transfer to be made. In order for it to have qualified as a tax-deferred rollover to the UK pension scheme, the rollover would have had to satisfy requirements under both sets of domestic laws.

It was found that the rollover did not satisfy US requirements because the UK pension scheme was not an eligible plan as described in the relevant legislation. This meant that the distribution was taxable under the terms of the UK-US income tax treaty.

Rules in this area are complex and careful consideration is needed before funds are transferred.

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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 20 March 2013.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Australian Dollar (AUD)	0.80250	1.03781
Euro (EUR)	1	1.29312
US Dollar (USD)	0.77323	1

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