

EXPATRIATE NEWSLETTER

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UNITED KINGDOM

HMRC CONSULTING ON EXTENDING THE APPLICATION OF THE SHORT TERM BUSINESS VISITOR AGREEMENT

For a number of years now, companies have been able to put a business visitor agreement in place with the UK tax authority (HMRC) to ease the strict Pay As You Earn (PAYE) regulations for overseas employees coming to work in the UK. This covers those employees that would ultimately be exempt from UK tax under a double tax treaty, including employees of overseas subsidiaries but not those employed by an overseas branch of a UK company.

The government is looking to simplify the tax and administrative treatment of visitors from overseas branches and this is currently being consulted on by HMRC until 6 August 2018. Two broad options have been proposed:

1. Extending the availability of the annual PAYE scheme to those coming to work for up to 60 days in a tax year.
2. Implementing a new exemption under the business visitor arrangements such that branch employees would be treated in a similar fashion to employees of overseas subsidiaries.

Practical points

It is welcome news that the UK government and HMRC is looking at ways to simplify the tax and administrative burden for overseas branch employees. This should encourage further inward travel and investment to the UK, especially with the backdrop of Brexit to consider and the ever increasing scrutiny on international businesses to ensure they are compliant. As we progress through the consultation period we will provide any relevant updates.

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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.

ECUADOR

ANNEX OF MONETARY ASSETS ABROAD

Natural persons who have the below assets outside of Ecuador which amount to USD 100,000 or more at the end of the fiscal year must report them to the Internal Revenue Service:

- Deposits in savings;
- Checking accounts;
- Term deposits;
- Investment funds;
- Managed funds;
- Fiduciary rights.

This information must show: the type of asset, account number, country in which the asset is located and its value. This information must be reported by February of the following year.

The concealment of information regarding the assets of natural persons abroad will be subject to a fine. This will be equivalent to 1% of the total assets of the taxpayer, or 1% of the income of the previous fiscal year of the concealment, whichever is greater, for every month or fraction of month of delay in the declaration, without exceeding 5% of each item.

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THE NETHERLANDS

DUTCH TAX TREATIES WITH THE GULF STATES

Tax exemption instead of tax credit

According to current tax treaties between the Netherlands and some Gulf States (such as Bahrain and Oman), a tax credit must be taken to ensure there is no double taxation on employment income. For Dutch tax residents this means it is possible to deduct the actual taxes paid in the foreign country.

As the income relating to the activities carried out in those countries may not be taxed, there would be no reduction of Dutch taxes and the income relating to the duties performed would be fully taxed in the Netherlands (maximum tax rate in 2018 is 51.95%).

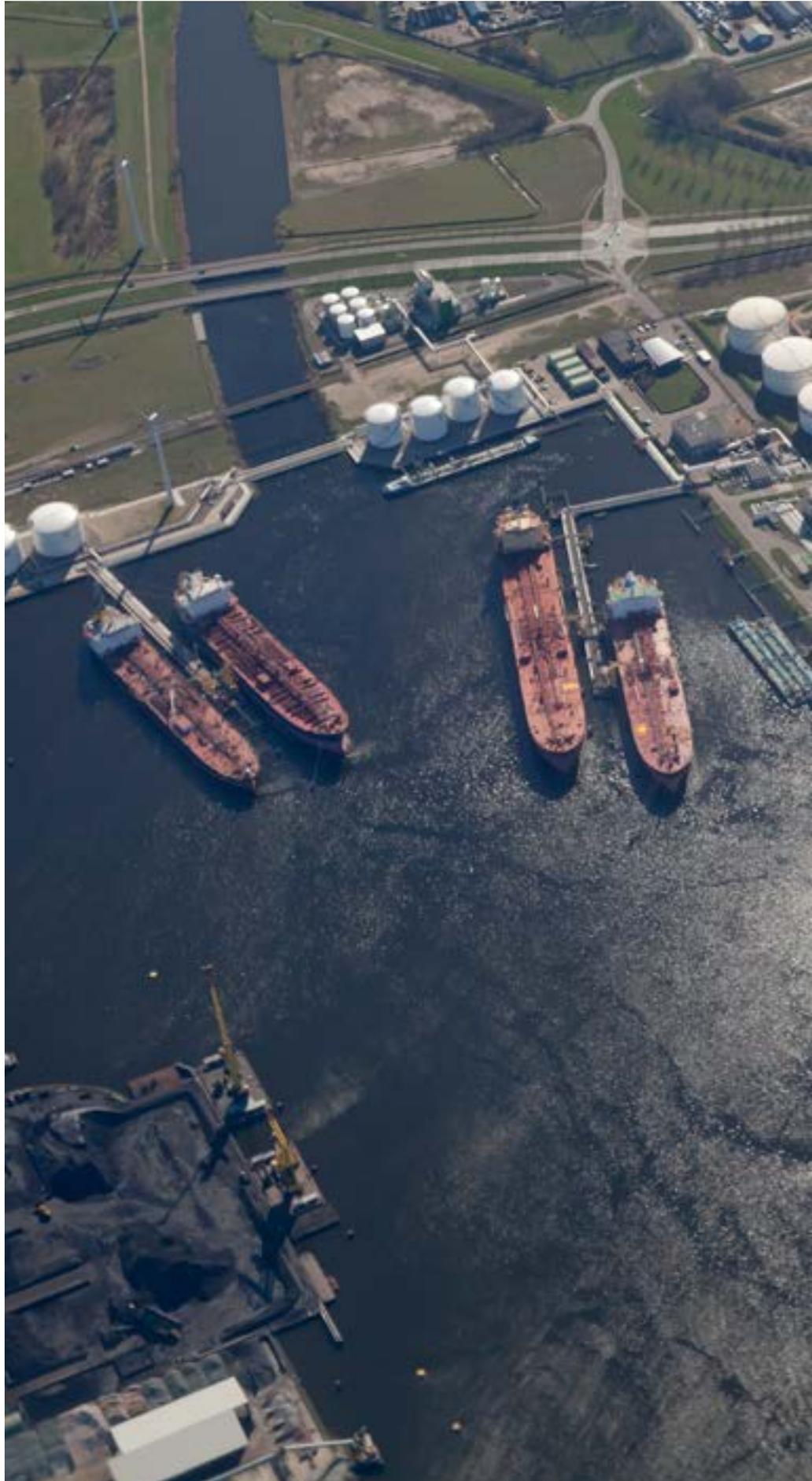
In 2017 the Dutch State Secretary of Finance issued a decree which includes an approval for Dutch residents to use the tax exemption method instead of the credit method on certain employment income relating to activities in the Gulf States. By using the tax exemption method, the income relating to the activities in the Gulf States is relevant and not the actual tax paid. By using this method these employees benefit from the fact that there may be no taxes due in the other country.

Recently the Dutch State Secretary of Finance informed the parliament that it is an exceptional situation that there is low or no taxation in these countries. He mentioned that the decree only applies to Dutch residents with income relating to employment performed in these countries.

The State Secretary does not foresee any tax-constructions on this point because there must be real employment relationships. However, the Dutch tax authorities are alert to signals of possible abuse.

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SWEDEN

JUDGMENT IN CARRIED INTEREST-PROCESSES ANNOUNCED



Supreme Administrative Court finally announces judgment in carried interest-processes

The issue of taxation of carried interest for a number of key personnel working in venture capital structures has been decided by the Supreme Administrative Court (SAC). The decision means that the taxation provided for closely held business rules stand.

The decision in question relates to the Swedish taxation of a person; however, there are a number of processes that deal with key personnel who are active with investment advice, decision-making or similar within private equity funds. This essentially means that carried interest is taxed partly as income from employment in accordance with the special provisions on the taxation of dividends and capital gains on qualified shares in closely held companies.

Key personnel in the carried interest processes have historically reported their income (carried interest) as capital income in the tax return in the form of dividends or capital gains on non-qualified shares in closely held companies. In general, such dividends or capital gains are taxed with a flat tax rate of 25%. However, the Swedish Tax Agency has considered that the carried interest should be taxed under the provisions on the taxation of dividends and capital gains on qualified shares in closely held companies, i.e. with taxation to some degree of income as employment income.

The question in the case was whether a person can be considered to be active to a significant extent in a closely held company when he is employed in another company, and within the framework of this position performs services for a closely held company.

The SAC found that such an individual may be deemed to be of considerable importance on a significant scale in a closely held company even where they are an employee of another company and in the framework of this position perform services for a closely held company.

BDO comment

Taxation of carried interest has been the subject of review by the administrative courts for almost 10 years, originally in rulings on compensation and if this could be part of the basis for the Swedish employer's contributions. Carried interest was not considered remuneration for work and therefore did not form a basis for the Swedish employer's contributions.

In the decision on 5 June 2018, the SAC has determined that carried interest should be taxed according to rules for closely held companies. The Supreme Administrative Court has determined that the individual has been active to a significant extent in a closely held company, despite the fact that they have not been employed or had any position of management in the companies.

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SWITZERLAND

NEW OBLIGATION TO REPORT JOB VACANCIES – THE ESSENTIALS IN BRIEF

The obligation to notify job vacancies is the implementation of the national priority light and the result of the initiative vote 'Against Mass Immigration' which was adopted by the Swiss electorate in February 2014. In order to maximise the domestic work force potential, vacancies in professions with a certain unemployment level should be reported to the relevant Regional Employment Agency Centre (RAV) before being advertised or offered elsewhere.

Implementation of the obligation to report a job

- Coming into effect 1 July 2018, job vacancies in professions with at least 8% unemployment rate throughout Switzerland must be reported by employers, private employment agencies, head hunters and temporary employment agencies. This also applies if the employer does not belong to a reportable industry segment but is looking for an employee from a mandatory reportable profession.
- As of 1 January 2020, this threshold will be lowered to 5%.

Exceptions to the obligation to report a job

No reporting is needed if:

- The employer recruits and employs a job applicant registered with the RAV.
- The position is filled internally – within a company, a group of companies or a concern by a person that has been employed for at least six months.
- The employment duration is for a maximum of 14 calendar days.
- A person is employed who is related or related by marriage to an authorised signatory in the company by marriage or registered partnership in a straight line or first-degree in the sideline.

Procedure for job reporting

The procedure for job reporting is divided into four steps.

1. Open positions must be announced to the responsible RAV in person, online or by phone.
2. Confirmation of registration from the RAV will be sent upon successful job registration. From the day after receipt of the registration confirmation, further advertising is prohibited for five working days.
3. Within three days of publishing of the position, the RAV will confirm whether there are suitable candidates and will send appropriate profiles or a notification concerning the unavailability of suitable candidates.
4. After examination of the candidate profiles received, the RAV must be notified whether:
 - (a) A candidate is considered suitable and invited to an interview or aptitude test.
 - (b) A candidate is hired.
 - (c) The position remains open.

There is no obligation to justify to the RAV whether or not a proposed candidate is being considered. Nevertheless, it is mandatory to examine suitable candidates through either an interview or an aptitude test. Fines can be levied where there is a violation of the obligation to report a vacant position.

It may prove more difficult for companies to second foreign nationals into Switzerland from July 2018. Employers will need to ensure they offer roles to the local workforce first and they may have to review their recruitment procedures to ensure they are compliant with this decree.

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UNITED KINGDOM

UK-UAE DOUBLE TAX TREATY

A double tax treaty entered into force between the two countries in December 2016 and came into effect from January 2017 for taxes withheld at source. This allows for UAE residents to claim exemption from UK tax whilst working in the UK where they meet the criteria under the Short Term Business Visitor (STBV) rules and conditions.

Recent developments

HMRC have recently agreed that income earned before the tax treaty came into force but paid after 31 December 2016 may still be covered by the STBV agreement.

Practical points

Companies must ensure that they are clear on the criteria that must be met for an individual to be exempt from UK tax under the terms of the UK-UAE tax treaty. There must also be a relevant agreement in place with HMRC otherwise PAYE is due.

BIOMETRIC RESIDENCE PERMITS AND NATIONAL INSURANCE NUMBERS

From August 2018, a National Insurance (NI) number will be issued alongside UK residence permits regardless of an expatriate's liability to pay NI contributions. This will not automatically mean all expatriates will now be liable to NI – this will still be determined by the underlying social security legislation. HMRC has advised that a NI number will assist them in tracing expatriate records.

Practical points

Employers should be aware that NI numbers will now be issued even where no liability to NI contributions arise. They still need to understand the relevant social security legislation to ensure NI is paid where due.

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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 15 June 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
US dollar (USD)	0.85364	1.00000

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