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EXPATRIATE NEWSLETTER

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BELGIUM AND THE NETHERLANDS

NEW DISCUSSION ON TAX ENTITLEMENT BETWEEN BELGIUM AND THE NETHERLANDS ON CROSS-BORDER PENSIONS

During the past year, there has been numerous discussions and issues between Belgium and the Netherlands with respect to cross-border pension regulations. This is because of complex stipulations and regulations in the domestic tax legislation of both countries and examples of real-life cases.

Recently a new issue has arisen with respect to the taxation of pension income derived from extra-legal pension schemes in the Netherlands, the so called 'second pillar pensions'.

Based on the stipulations of the double taxation agreement between Belgium and the Netherlands, the state of residence in principle holds the entitlement to impose taxes on the pension income received from an extra-legal pension scheme. However, the source state is also entitled to impose taxes on this same pension income in specific circumstances.

The Dutch tax authorities recently announced that as of 1 January 2018 they would impose taxes on pension income derived from extra-legal pension schemes in the Netherlands that are paid to Belgian tax residents. As a result, the exemption of Dutch withholding tax for the pension income paid to Belgian tax residents is no longer applicable.

The Dutch tax authorities based their decision on recent case law in Belgium in which they concluded that there is no longer certainty that Dutch pension entitlements that have been taxed against the Belgian progressive tax rates in the past will continue to be (fully) subject to these tax rates in the future. Therefore, one of the conditions mentioned above is not met, as Belgium possibly does not tax the pension income the same way as income from employment. Furthermore, the cancellation of the exemption in principle will only be applied where the amount of the annual pension income exceeds EUR 25,000.

In practice, it is indeed possible that Dutch pension income is not subject to Belgian progressive tax rates if it has been built up while the taxpayer was working and living in the Netherlands.

Given the fact that the recent case law refers to tax and pension legislation that is applicable since 2004, it is not expected that the Belgian tax authorities will adjust the current taxation from Dutch pension income.

BDO comment

As a result, it is expected that in a lot of cases double taxation (Dutch withholding tax and Belgian income tax) will arise. If this situation occurs, we suggest a claim is filed against the Dutch withholding tax by proving that the Dutch pension income has been subject to Belgian progressive tax rates in the past and will continue to be so.

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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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AUSTRALIA

FOREIGN RESIDENTS AND CGT

Update to 'Foreign residents and Capital Gains Tax (CGT)' previously reported in Expatriate newsletter issue 29 in June 2017

Further to the Federal Budget announcement in May 2017 concerning the removal of the Main Residence Exemption for foreign and temporary residents of Australia, the recent Bill introduced to Parliament earlier this month contains some significant changes from the Budget announcement.

As previously reported, your home will generally cease to be your main residence when you stop living in it. There are however, circumstances where you can choose for it to continue to be treated as your main residence for Capital Gains Tax (CGT) purposes.

More specifically, if you do not use the dwelling to produce income, it can be treated as your main residence for an unlimited amount of time, for example, where it is left empty or a relative is living there rent-free. If you use the dwelling to produce income (e.g. lease the home or list the home on Airbnb), the dwelling can continue to be treated as your main residence for a period of up to six years from the date the property begins to derive income.

What this means from a tax perspective is that when you decide to sell the dwelling, the sale may not attract CGT i.e. you will not pay tax on any gains made on the property in relation to the period that the dwelling is taken to be your main residence.

The new measure announced in the 2017 budget propose to disallow a main residence CGT exemption for foreign and temporary residents of Australia.

However, there are grandfathering rules for any gains on properties that were already owned as at 7:30pm 9 May 2017 and were currently being treated as the owner's main residence. These properties will continue to be exempt from CGT under the existing provisions until 30 June 2019. However, if the dwelling is sold after 30 June 2019 whilst a foreign resident, there will be no relief available.

The Bill for the non-resident CGT changes has now passed the House of Representatives and contains some significant changes from the Budget announcement.

As a response to the significant consultation period following the original announcement, there was a small win for temporary residents, who will now not be subject to the new changes.

However, where it was first thought that property owner individuals who are becoming non-residents of Australia might be able to obtain a market valuation as at their date of departure to help identify a main residence exempt portion of any future capital gains on disposal of the dwelling, this is not the case.

The Explanatory Memorandum of the Bill clearly states that if you are a non-resident on the date your contract of sale is signed (as opposed to settlement date) you will be subject to CGT on 100% of the capital gain.

BDO comment

Your expatriate employees need to fully understand the rules implemented on the sale of property. If they have not received the appropriate advice they may face a CGT charge they were not expecting.

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BELGIUM

LIMITATION OF FEDERAL TAX BENEFITS

Every taxpayer can claim tax reductions in his or her Personal Income Tax Return for certain expenses they have made. In addition, every tax payer is eligible for a lump sum tax free allowance, and this allowance is even increased for certain dependents.

The Belgian Government has now introduced new legislation with respect to Belgian resident taxpayers who are not subject to resident income tax during a full tax year. This new legislation comes into force as of 1 January 2018 and applies to taxable periods relating to tax year 2018.

Proration of federal tax benefits

When a resident tax payer departs from Belgium during a tax year, or arrives during a tax year, he or she will only be subject to income tax on their worldwide income earned during the part of the tax year during which they were Belgian tax resident. On the other hand, full federal tax benefits may be claimed to reduce the overall tax liability.

As of tax year 2018 (income relating to the 2017 calendar year), this will no longer be possible. The newly introduced legislation stipulates that certain federal tax benefits will have to be pro-rated according to the period of Belgian tax residency during the taxable period under review.

Other measures

When an employee receives professional income for his overtime, he is entitled to a tax reduction. In addition, when an employee receives professional income relating to foreign working days, he is also entitled to a tax reduction under certain conditions. One of the new measures is that the tax reduction for overtime will no longer be granted if the income is already tax exempt as foreign income.

The new legislation also introduces and abolishes specific measures for non-residents who earn less than 75% of their professional income in Belgium:

1. Tax reduction for the contributions paid for individual life insurance;
2. Tax reduction for the contributions paid for pension savings;
3. Tax reduction for interests paid for a loan to cover energy saving expenses.

They will still be entitled to the following benefits as of the 2017 income year if there is a specific relationship between the tax reduction and the professional income:

1. Tax reduction for the personal contributions for the additional pension (i.e. group insurance, pension fund, additional pension for independents);
2. Tax reduction for the acquisition of employer shares;
3. Tax reduction for overtime.

BDO comment

This new legislation relates to both elements that impact the (withholding) taxes on professional income as well as elements that are not related to professional income and only emerge in the annual income tax returns.

With regard to the latter, such as contributions to private life insurance, it will be important for individuals who know that they will leave Belgium during the year to evaluate whether or not it makes sense to continue to pay full contributions.

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HONG KONG

BUDGET HIGHLIGHTS

Salaries tax and tax under personal assessment

– One-off reduction of salaries tax and tax under personal assessment for the year of assessment 2017/18 by 75%, subject to a ceiling of HKD 30,000 per case;
– Proposed tax concessions for deferred annuity products meeting guidelines to be issued by the Insurance Authority and Mandatory Provident Fund voluntary contributions;
– Introduce tax deductions for qualified premiums for eligible health insurance products under the Voluntary Health Insurance Scheme for taxpayers or their dependents. The annual tax ceiling for deduction is HKD 8,000 per insured person;
– Relax the requirement for personal assessment election by allowing married persons the option to elect personal assessment separately;
– Expand tax bands and adjust marginal rates;
– Increase child allowances and dependent parent and grandparent allowances;
– Introduce the personal disability allowance;
– Raise the deduction ceiling for elderly residential care expenses.

Others

– Waive in full the first registration tax (FRT) for electric commercial vehicles, electric motor cycles and electric motor tricycles until 31 March 2021;
– Waive the FRT for electric private cars of up to HKD 97,500 and launch a 'one-for-one replacement' scheme to allow eligible private car owners who buy a new electric private car and scrape an eligible private car they own to enjoy a high FRT concession of up to HKD 25,000;
– While the Budget speech did not mention the Tax Policy Unit (TPU) set up after Mr Chan's maiden Budget speech last year, we look forward to the Government's update on the progress of the TPU's work in respect of long term measures to address Hong Kong's narrow tax base. We hope to see concrete proposals with details and specific implementation timelines soon.

BDO comment

In 2017/18, profits tax, salaries tax, stamp duties and land premium account for approximately 74% of total government revenue. Mr Chan recognises that the tax base is narrow and not rooted in recurrent revenue. While Mr Chan vows to be proactive, innovative and bold in investing for the future of Hong Kong, the Budget speech would have been more encouraging had it proposed more creative and tangible approaches to incentivise different businesses in Hong Kong and more sustainable measures to broaden the Government's source of revenue.

Although the proposed two-tiered profits tax rates regime, once enacted, will no doubt lower the tax burden of enterprises, in particular small and medium ones, the attractiveness of our once low tax regime will continue to diminish in the wake of global trends of reducing income tax rates. Further reduction in tax rates and enhancement in tax certainty by reducing the general statute of limitation from six to four years, as proposed in our budget submission letter dated 14 February 2018, will help foster Hong Kong's international competitiveness.

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INDIA

IS YOUR OVERSEAS TAX ELIGIBLE FOR FOREIGN TAX CREDIT?

It is common for globally mobile individuals on assignment (generally more than three years) to qualify as Resident and Ordinarily Resident (ROR) in India. Consequently, they are subject to tax in India on the global income. For some it could also mean being subject to taxation in their home country as well.

The Indian tax laws provide for claiming relief under a Double Tax Treaty where one is in existence. Considering the nature of global assignments and the salary costs at stake, it is worthwhile for taxpayers to take benefit under the relevant Tax Treaty and ROR taxpayers generally tend to claim a foreign tax credit (FTC) in their Indian tax returns. It is worth noting that an Indian tax return including a claim under a Double Tax Treaty is more likely to be audited by the Indian tax authorities.

Recently, the Ahmedabad Income Tax Appellate Tribunal (ITAT) had allowed a taxpayer the tax credit for both Federal as well as State taxes paid outside India. This article discusses the ruling in more detail.

Brief background

The individual taxpayer received salary from a US based entity on which taxes were paid in the US (Federal tax and Maryland State taxes). Being ROR in India, the salary was also taxed in India and a FTC was claimed against Indian taxes for US Federal and State taxes.

The India/US Tax Treaty allows an Indian resident to claim a FTC on doubly taxed income; however, this only allows a credit for Federal income taxes and therefore the assessing tax officer rejected the FTC claim for State taxes. The Commissioner of Income tax (first level of appellate authority in India) also rejected the FTC claim.

Aggrieved by the above rulings, the taxpayer further appealed the matter before the ITAT.

The ITAT ruling

On reviewing the facts, the Ahmedabad ITAT made the below observations:

- Indian tax legislation is to be treated as general in application and it does not discriminate between taxes levied by Federal and State Governments.
- The provisions of Tax Treaties cannot be utilised to deny benefits to taxpayers which are available under Indian law.
- There can't be a tax payment which is neither treated as admissible expenses because it is treated as income tax, nor is it taken into account for tax credits because it is not to be treated as income tax.
- The matter of allowing credit for US State taxes was provided in a judicial precedent by the Mumbai ITAT.

Hence, credit for US State taxes paid by the taxpayer was allowed in this case. This was subject to a rider that the credit for all taxes paid abroad in any case cannot exceed the Indian tax liability in respect of the same income.

BDO comment

While the above ruling is a welcome one for globally mobile expatriates coming to India from the US, the context should also be considered for expatriates from other countries.

Taxpayers qualifying as global tax residents in India should ensure they have a strong basis in claiming a FTC and retain back-up documentation. A tax return claiming Tax Treaty benefits is more likely to be selected for tax audit by the Indian tax authorities.

IMMIGRATION UPDATE

Launch of online Visa and Immigration Services

With an intent to digitise the visa and immigration processes, the Indian Government has introduced electronic visa and immigration services for foreign nationals.

Foreign nationals coming on a visa valid for more than 180 days need to register with the Foreigners' Regional Registration Office (FRRO) within 14 days of the first arrival, irrespective of the duration of their stay in India.

The online e-FRRO portal offers services such as:

- Creation of online account for the individual;
- Submission of application for FRRO registration, visa extension / conversion, exit permit, etc.;
- Uploading of documents as per prescribed guidelines;
- Fee payment;
- Status tracking;
- Related online communication from the authorities.

With the introduction of the e-FRRO service, foreign nationals are not required to visit the FRRO office for such services. In certain exceptional cases, the authorities may specifically insist on a personal visit. These services would initially be available in Delhi, Mumbai, Chennai and Bengaluru.

SOCIAL SECURITY UPDATE

Mandatory online submission of Provident Fund claims

The Employees' Provident Fund Organisation (EPFO) issued a Circular providing clarification on claims for fund withdrawals from the Employee Provident Fund (EPF) and Employee Pension Scheme (EPS) accounts. The EPFO had earlier launched an online facility for such withdrawals from such funds.

In the recent notification, the EPFO has made it mandatory to make online submissions for claims above INR 1 million for EPF and INR 0.5 million for EPS. They no longer accept any other form of claim where these limits are exceeded.

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SINGAPORE

BUDGET HIGHLIGHT 2018

Foreign domestic worker levy

Current treatment

Married women and divorcees/widows with school going children may claim relief of twice the levy paid in the previous year on total Foreign Domestic Workers (FDWs).

For households with young children below 16 years of age or elderly persons (aged 65 years or above) or persons with disabilities (subject to fulfilling the relevant qualifying conditions), the monthly concessionary levy is SGD 60 whilst the levy is SGD 265 per month for others.

Currently, the amount of FDWs levy relief claimable is:

YA2018	Normal	Concessionary
Total levy paid	SGD 3,180 (SGD 265 x 12 months)	SGD 720 (SGD 60 x 12 months)
Maximum FDW relief	SGD 6,360 (2 x SGD 3,180)	SGD 1,440 (2 x SGD 720)

New treatment

Effective 1 April 2019, the government will make an adjustment to the FDWs levy quantum and concession qualifying criteria as follows:

For the first and second FDW employed without levy concession, the monthly levy will be raised from SGD 265 to SGD 300 and SGD 450 respectively.

The qualifying age for levy concession under the aged person scheme will be raised from 65 to 67 years. However, all households with persons aged 65 and 66 years, which are enjoying or have enjoyed the levy concession under the aged person scheme before 1 April 2019, will continue to pay the monthly levy rate of SGD 60 hereafter.

BDO comment

As the tax deduction is available for the levy paid in respect of only one FDW, it would be welcome if clarification is issued by the Government on whether a taxpayer can now opt to claim a tax deduction in respect of the higher levy paid for the second FDW (SGD 450) rather than for the first FDW (SGD 300).

Further details will be issued by IRAS.

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SWITZERLAND

IMMIGRATION UPDATE

Amendments to the Federal Act on Foreign Nationals

After the vote for the mass immigration initiative, the parliament decided to refer the legislation draft of the Federal Act on Foreign Nationals back to the Federal Council with the request to revise.

In December 2016, the Parliament approved the adaption to the regulations. The implementation of the amendments takes place in two packages – January and summer 2018. The aim of the amendments is to strengthen integration of foreign nationals by giving positive incentives enhanced with appropriate measures.

Implementation in two packages

First package

As per January 2018, the first step of the amendment became effective. It includes the abolition of the special levy on earned income for refugees and asylum-seekers. Until the end of last year, aforementioned persons had to accept a deduction of 10% of salary in addition to a possible withholding tax.

Second package

In a second step, the Federal Act on Foreign Nationals FNA is renamed as the Federal Act on Foreign Nationals and Integration from the summer of 2018.

At the same time, the Ordinance on Admission, Stay and Employment was amended and the Ordinance on the Integration of Aliens completely revised. With these amendments, the criteria for the integration of foreign nationals is more clearly defined. Specifically, the local language skills of the individual have to be profound and solid in order to get an existing residence permit extended.

Measures will be firmed up for those foreign nationals who are not prepared to show the will to integrate within Swiss culture and the way of life. An extension of an existing residence permit may depend on a binding integration agreement and sanctions can arise if these are not fulfilled.

Additionally, today's approval procedure for the purpose of a gainful employment activity from provisionally admitted foreigners and recognised refugees will be replaced by a simple notification. This should promote the resident labour force and reduce social welfare.

Summary

With the first package – the abolition of the special levy on earned income for persons in the asylum sector – the Federal Council gave further incentive to integrate within the labour market. In addition, an administrative obstacle for a possible employer disappears.

With the amendments of the second package to the Federal Act on Foreign Nationals the principle of 'demand and promote' within the integration policy is better implemented.

Job vacancy reporting obligation – Priority of nationals

In December, the Federal Council decided on the law implementing the constitution article on the control of immigration. The law provides the introduction of a job vacancy reporting obligation in those types of professions in which the unemployment rate reaches a certain threshold. The Federal Council has decided on a tiered approach: From 1 July 2018, a threshold of 8% and from 1 January 2020 a threshold of 5% will apply.

Quotas for 2018

In November 2017, the Federal Council of Switzerland decided to increase the existing quota for foreign national employees as per 1 January 2018. In the coming year it will be possible to recruit 8,000 highly qualified specialists of non-EU/EFTA countries.

Swiss Citizenship Act – Amendments from 1 January 2018

Amendments to the Swiss Citizenship Act entered into force on 1 January 2018. The new law ensures that only well integrated foreigners may acquire Swiss citizenship.

The amended Act specifies that people can only become naturalised provided they meet a number of criteria, including having the necessary residence permit, living for a long enough period in Switzerland and having an unblemished reputation (including a clean criminal record).

Before submitting an application for naturalisation, a person must have lived for a minimum of two years in the same community. The application must be submitted to the cantonal or municipal authority. From the date of submission, it takes between one and two years to process naturalisation requests.

Cantonal differences

The revised Federal Act also has an effect on the cantonal law. The cantonal differences have been repealed and replaced by uniform and transparent rules in all Swiss cantons.

Simplified naturalisation of third-generation foreigners

As of 15 February 2018, a simplified naturalisation process has been available to young foreigners, under 25 years of age, and third generation foreigners. The naturalisation process takes significantly less time than in the past and is less costly. An interim arrangement applies to applicants between the ages of 26 and 35 years old. They can apply for a facilitated naturalisation within five years as of 15 February 2018 if certain conditions are met.

BDO comment

The Swiss system for granting permits and naturalisation is evolving. Employers of foreign nationals who require their services in Switzerland must be clear on the process and parameters set out by the Swiss authorities and adhere to these; otherwise, they may find they do not have the necessary skill set within their Swiss business.

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UNITED KINGDOM

SOCIAL SECURITY

The European Union (EU)

With BREXIT now just one year away, one of many subjects that needs to be addressed is that of social security liabilities for internationally mobile employees working within the EU and moving in and out of the UK. The EU social security rules are effective in all EU countries plus Norway, Iceland, Liechtenstein (EEA) and Switzerland (single market).

The fundamental EU rule is that an individual will always be subject to the social security legislation of only one country and that country is where they actually work irrespective of where they live or where their employer is based. There are additional rules surrounding assignees and individuals working in numerous EU countries (multi state workers).

The UK may continue to adopt the current regulations if terms are agreed as part of the BREXIT negotiations. Alternatively, if the UK cannot agree terms or does not wish to, then a new social security agreement could be negotiated. Failing that, the pre-existing social security agreements with individual EEA countries could be resurrected and either updated or replaced. Note that the UK does not currently have an underlying agreement with all member states.

At this time, it is far from certain as to what the results of the BREXIT negotiations will be in terms of social security coverage. Consequently, some EU countries including Germany have stated that they will treat the validity of any UK-related A1 certificate as expiring on 29 March 2019 (BREXIT day).

With the UK having relatively low rates for social security contributions compared with other EU countries – 13.8% for employers and up to 12% for employees – there may be winners and losers depending on the outcome of the negotiations. Whilst the social security costs associated with assigning a UK employee to work elsewhere in the EU may increase, the reverse may be true of a non-UK employee being assigned to work in the UK if they are not permitted to remain in their home-country social security system.

Due to the current uncertainty, employers can only proceed on the basis of the current EU rules and hope for a sensible conclusion to the negotiations; that is a conclusion that does not adversely impact on the ability of employers to assign their employees across the EEA and Switzerland when needed.

Bilateral agreement countries

In common with many other counties, the UK has a network of bilateral social security agreements that operate in a similar way to the EU agreement. Using these bilateral agreements, exemption from host country social security costs can generally be obtained for up to five years with extensions possible in certain circumstances.

Rest of the world

Countries not covered by the EU social security rules and with which the UK does not have a bilateral social security agreement fall into the 'Rest of the World' group of countries for UK social security purposes. This means that, for example, an Australian employee being assigned to work in the UK for a limited period who remains employed by his Australian employer, can be exempt from paying UK NIC for the first 52 weeks of his UK assignment. Conversely, a UK employee being assigned by his UK employer to work in Australia for a limited period, will have a continuing liability to pay UK social security costs for the first 52 weeks of his Australian assignment.

BDO comment

International social security rules are complex and a detailed understanding is necessary to ensure they are applied correctly. The UK's exit from the EU is likely to add further complexity to this area and there is a level of uncertainty to this at the moment. Companies should be aware that there could be a significant increase in social security costs for assignees currently moving and working within the EU.

ABOLITION OF CLASS 2 NIC – IMPACT ON EXPATS

On 2 November 2017, the Government announced that the National Insurance Contributions (NICs) Bill was delayed until 2018. This means that the measures in the Bill will now take effect from April 2019. At present, many individuals assigned outside the UK who are outside the scope of Class 1 NIC instead pay voluntary Class 2 contributions and they will be impacted.

Presumably, once Class 2 NIC is abolished, expats will need to pay Class 3 Voluntary NIC instead if they wish to maintain coverage. Does HMRC have any plans to remind those currently paying Class 2 contributions of this? Will there be any simple mechanism whereby those who wish to continue coverage may change to pay Class 3 automatically or will all affected individuals need to make a formal application to pay Class 3?

Due to the Government's decision to delay Class 2 abolition by one year, the need for customers to change to pay Class 3 voluntarily will also be delayed until that time. There is currently no intention to remove any of the current methods of payment available to customers to pay Class 3. HMRC is also exploring how best to utilise the digital Personal Tax Account as a means of making payment.

Those currently paying Class 2 will be informed, but HMRC's Communications Strategy is currently under development. HMRC has advised that information about these reforms will be communicated in sufficient time to allow individuals to change over to Class 3 should they wish to do so.

When does HMRC anticipate being in a position to issue more detailed guidance on this?

Due to the Government's decision to delay the NICs Bill to allow for further consultation, HRMC cannot issue any detailed guidance at this time. Guidance would be issued, at the earliest, once the Government has responded to the further consultation but more likely, nearer the time the delayed NICs Bill is laid before parliament.

BDO comment

Although the abolition of Class 2 NIC has been delayed for a year, this change and how to address any ongoing concerns for your employees who may be affected are still relevant and need to be considered.

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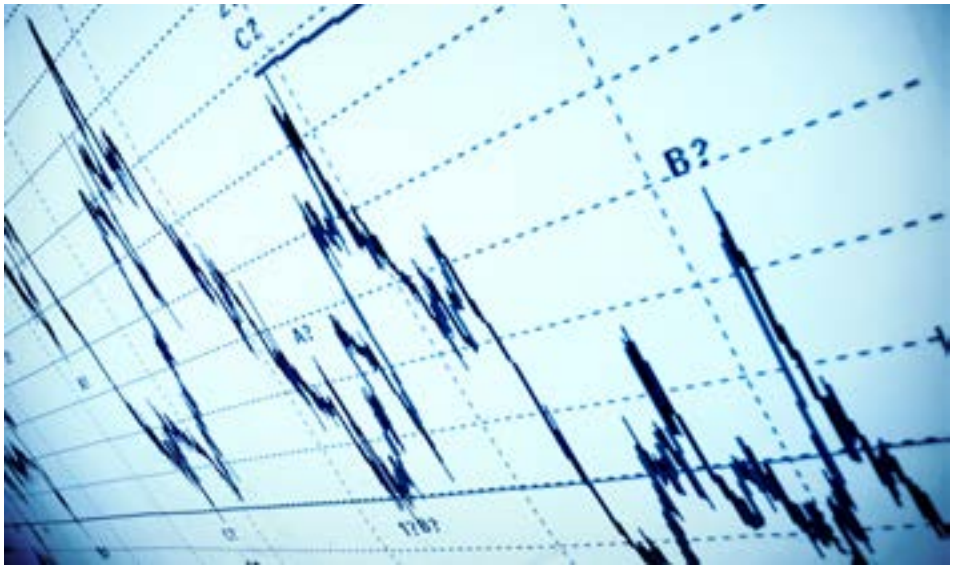

CURRENCY COMPARISON TABLE

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 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	0.81281
Hong Kong Dollar (HKD)	0.10363	0.12749
Indian Rupee (INR)	0.01245	0.01532
Singapore Dollar (SGD)	0.61685	0.75890

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