TAXMANN

Compensating Mobile Executives

A cross-country report

on international salary apportionment arrangements - 2011

A comparative law study led by Nishith Desai Associates and No More Worries

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Compensating Mobile Executives

A cross-country e-report
on international salary split arrangements

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Nishith Desai Associates

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore and Basel. NDA specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. NDA focuses on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. NDA's key clients include marquee repeat Fortune 500 clientele.

Core practice areas include International Tax, Fund Formation and Investments, Corporate & Securities Law, Employment and HR, Intellectual Property, Mergers & Acquisitions, JVs & Restructuring, General Commercial Law, Litigation and Succession and Estate Planning. NDA's specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

NDA believes strongly in constant knowledge expansion and have developed dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs, conducted both in-house and for select invitees. KM and CE programs cover key events, global and national trends as they unfold and examine case studies, debate and analyze emerging legal, regulatory and tax issues, serving as an effective forum for cross pollination of ideas.

NDA's Employment and HR Law practice group assists its domestic and international clients on various aspects including employment and labour laws, employment agreements, training bonds, non-disclosure and inventions assignment agreements, termination, severance and release arrangements, company policies and employee handbooks, employee stock option / share purchase plans, employment litigation matters and employment immigration laws. The team has also been advising clients on compensation structuring and salary split arrangements from a legal and tax perspective.

No More Worries

Philip van Hilten is the owner of No More Worries, a small boutique firm based in the centre of Amsterdam with a further office in Tuscany. No More Worries works for and with individuals and so it acts as counselor primarily long-term for families and their businesses. After more than 30 years as partner with Loyens & Loeff, Philip now concentrates on helping persons who have legal and tax worries and wishing to find a good, personal solution. As listener and "trusted friend" help is given anywhere in the world if and when needed. For complex situations Philip will find the right professionals helping to solve the worries and fulfill the wishes. By working for and with individuals, Philip advises on ad hoc problems, small and big, as well as planning for the stable and tax efficient future for families and their businesses. Philip is proud to be a trusted friend and advisor to Nishith Desai Associates in which capacity the salary split publication has been developed jointly.

A Foreword: Philip van Hilten

Salary: to split or not to split?

It is no coincidence that a leading Indian law firm has taken the initiative to produce a digital book on what is often called: salary split. India is known as the global centre for IT and so thousands and thousands of Indians work on their computers in India for companies all over the world. They earn their income because they work for many (foreign) companies. However they remain in their home country. There are also many Indians working abroad for foreign companies, making salary split very topical for Indians. And yet salary splits are global, since millions work in countries other than their home country.

When people are posted abroad, salary splits may be so tax focussed that one forgets that such moves have many more aspects. They certainly affect the terms and conditions of employment as agreed between employer and employee. For the employee and his family drastic changes are likely to occur when moving and thus leaving the old home(town), schools, clubs and shops. That raises many questions and concerns in the minds of the mobile executives and their families, as well as the companies they work for. To deal with those issues makes No More Worries the logical choice as partner to Nishith Desai & Associates in helping to identify and highlight such worries and solve them.

In the 1970's, salary splits were seen as a pure tax friendly instrument helping multinationals and their key staff in working truly internationally. The general idea of salary split was and still is that it enables companies to have their key staff earn a higher net income without having to pay a (much) higher salary. In this publication nearly 40 experts from as many countries describe some of the most important aspects in their home country for the mobile employee, his family and the company he works for.

When reading the various chapters, it will become clear that working abroad is a mixed blessing and certainly an adventure for which one needs to be prepared. When moving abroad, the employee leaves in essence his well known nest. By being posted in another country, the laws and rules of that country will become important and often override the laws and rules as they applied until then to his employment and more general to his live and that of his family. Apart from income tax consequences, I mention local legislation on terms of employment which may supersede the laws and rules as they applied to the original (contract of) employment. A moving employee and his family have to consider more different taxes such as VAT and import duties when shipping their household to the other country or back again. Another key component is relating to social security premiums and entitlements for all concerned. In the various chapters of this publication attention is given to these aspects. It is impossible to deal with all relevant parts that play a role. So the mobile employee will have to do some further investigation once he has read the chapters in this book. He will have to think about how his work situation is affected regarding working hours, health and safety rules at work, treatment of pension-rights, fringe benefits, and what happens if the new -foreign- company is closed or sold or wants to dismiss him. And then in the area of income tax, the question is whether it is truly advantageous to split given his other income or -tax deductible-expenses? However there may not even be a choice when an employee works abroad and so he will have to consider the entire tax and otherwise situation with the help of this publication.

Reading the various contributions in this book, you will find that there are many different forms of salary split. A salary split occurs when an individual, the employee (not being director or an independent professional), works for different companies/employers in different countries whereby more than one employer pays part of the total salary. Salary splits require an employee to work during a certain period physically for more than one employer in more than one country. In passing I wonder whether tax and labour laws will ever provide for salary split possibilities for employees such as the IT service centre workers who are based in 1 country and who are working for companies in many different countries, remains to be seen. One may ask if it is not appropriate for authorities and employers to consider a more modern perception of cross border work which is after all the key element of salary split?

Today salary split demands a more than incidental physical presence in a country different from the country of original employment. When being posted abroad, there are at least 3 different options in that the original employment contract remains valid and the employee is formally seconded to a foreign employer, or the original contract is terminated while a new employment contract is made with the foreign employer (with a "return guarantee"!), or the original contract remains in place and a further new contract is made with the foreign employer. As one can read, the countries under report differ in allowing these options as well as the attractions thereof.

Countries adapt their laws and (tax) systems influenced by financial and economic events. When things go bad they change their (tax) rules to increase their tax take which has far-reaching consequences for (international) business and their employees. Regulations regarding the treatment of those active in more than one country, become then more "selfish" so as to increase the tax revenues for individual countries. New economic superpowers like Brazil and India enlarge their take by (re)defining notions such as (tax) residence of companies and individuals. Thus they qualify more quickly as a (tax) resident even if other countries would have an opposing view thereby creating a real risk of double taxation.

Somewhat related to tax, are the social security positions. While in the area of taxation thousands of tax treaties aim to prevent double taxation, there are much fewer social security treaties. As you will read this can have expensive consequences of double (or more) payments for social security as well as non-coverage for social security for the employee or his family members!

In a rapidly changing world, it is difficult to plan long(er) term. For people willing to work in different places, it is complicated to know what best to do in the various different countries with their different rules, systems and laws. That is also why the initiative to produce an easily adaptable book on salary split, is such a worthwhile idea. This book holds up to date answers to questions about employment in many countries whereby one must realise that the right, tailor-made answer can only be found when individual aspects are discussed with local experts. Put differently, the reader can find many practical general answers which help to clarify the starting points, risks and opportunities. However one will still have to look at the personal details.

For a -tax efficient- salary split to work, the reality of the matter is key. Here more than ever the substance over form doctrine prevails. If someone living and working in country A, starts to work (also) for an employer in country B, then one must be sure that such employee really works there for a period of at least several months, if a tax efficient salary split is desired. In the case of (formal) directorships in different companies and countries, this may be different. For directors(hips) as well as so-called independent professionals the salary split situation is offering more "split" opportunities as well as risks.

So substance rather than form is what really matters for "normal" salary splits, for which one must start to look at the actual number of days during which an employee works in a country. In most countries it is true to say that if the employee works less than 183 days in a year in a country and his "old" employer still pays his salary, his salary will not be considered "split(able)" for income tax. That does not mean however that in such case there are no significant non-tax aspects to consider. The shorter term seconded employee may be considered nonetheless employed by the foreign company in which case foreign employment laws and regulations apply.

The object of a salary split is to benefit from different tax regimes in different countries whereby the total income tax on the entire salary is less if split between 2 countries and employers rather than one. If planned and executed properly, a salary split may result in an income tax advantage. However such split may trigger a.o. additional social security payments, pension scheme difficulties (e.g. reduced basis for contributions, allocation of taxing rights on future annuities), and labour law issues (e.g. in Mexico employees having a Mexican and a foreign employment fall under severe Mexican labour law rules). Salary splits are generally only truly advantageous if the employee is tax resident in a country applying the so-called exemption method rather than the credit system such as is the case in the USA, the UK and many other countries. Even if the tax advantages seem great then one should be mindful of the administrative costs of different tax returns and compliances not forgetting the tax consequences for the employer. Many reports mention the tax treatment of allowances paid by an employer which may or may not be tax efficient in case of a salary split.

In case of secondment of an employee to a foreign employer several reports mention interesting income tax incentives or allowances for example in case of research and scientific staff being seconded. Secondments often lead to questions as to the continuation or termination of the original contract of employment. If it is preferred to terminate, then local law may prevent that while it may -also- have adverse consequences in areas such as benefit plans and pension schemes.

All the above elements and more play a role for the employee and the employer and it seems fair to say that for a salary split to be worthwhile, if the tax advantages must be substantial.

When being posted abroad, the tax position of the employer plays obviously a big role. Think of an employee working more than 183 days in "the other country", and being paid by a local employer. That influences the corporate tax position of such employer, while he will also have to comply with local labour law rules and restrictions. Several reports mention work and residency permits and visa restrictions which all play a role. The posting abroad is likely to result in a legal and tax situation which is completely different from the one existing under the rules and original employment-contract. Certain countries do not allow deviations or terminations of employment contracts, which can be a real obstacle if for substantive reasons a separate, new contract with a -foreign/new- employer abroad is needed.

The book shows that there are no easy answers to the question "to split or not to split?". Salary splits mean that an employee is confronted with the tax systems of at least two countries. Working for a considerable period in different countries raise questions as to the overall tax residence of the employee and his family. Where will he be taxed on his income other than his salary particularly if under the rules of different countries he is considered resident in more than one country? Will tax treaties offer relief? Clearly a salary split influences his tax, social security and employment position and all that must be looked at when planning for employees to work for a foreign employer. This book helps employees and employers on the difficult road and surely all contributors to the book are happy to help you further in finding the right answer to the question with which I started. I finish by congratulating Nishith Desai & Associates for creating this book which will be a useful tool for everyone in the business.

And so I finish by thanking everyone again for their work. I hope that we will all remain in contact with each other and if you ever have a serious worry and need a friendly hand, then please call me.

With kind regards,

No More Worries B.V.

Philip van Hilten

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Australia

This report sets out the general Australian taxation implications for Australian tax residents working overseas and for non-residents (including temporary residents) working in Australia.

Given that Australian residents are taxed on their worldwide income and that Australia applies the credit method (as opposed to the exemption method) for the relief of double taxation, there are limited planning opportunities for Australian residents to lower their overall taxation liability by working in different countries. Further, given that Australia's marginal taxation rates are high (compared to other jurisdictions), it is unlikely that salary splitting in and of itself, would necessarily be the key driver for a non-resident deciding to relocate to Australia for employment purposes.

Australian tax residents working overseas

The general rule for Australian tax residents (excluding "temporary residents") is that they are taxed on all of their foreign and domestically-earned employment income. Under Australia's domestic taxation legislation, a foreign income tax offset (FITO) is generally available in respect of any foreign tax paid on an amount included in a taxpayer's assessable income. The amount of the FITO is however, capped at a specified limit.

An individual will be resident for Australian tax purposes if:

(a) the individual is a resident according to "ordinary concepts";

(b) the individual's domicile is in Australia, unless the Commissioner of Taxation (the Commissioner) is satisfied that the individual's permanent place of abode is outside Australia;

(c) the individual has been in Australia (continuously or intermittently) for more than 183 days of the relevant income year, unless the Commissioner is satisfied that the individual's permanent place of abode is outside Australia and the individual has no intention of taking up residence in Australia; or

(d) the individual is a member of certain Commonwealth Government superannuation schemes or is the spouse or child under 16 of such an individual.

Broadly, an individual will be a resident according to "ordinary concepts" if they live in Australia. Factors relevant to this determination may include the individual's intention or purpose of presence, family and employment ties to Australia, the maintenance of a house in Australia, social ties and the period of physical presence or length of time in Australia.

The following table sets out the individual tax rates that apply for Australian tax residents from 1 July 2010:

Taxable income	Tax on this income
0 to $6,000	Nil

Income in EUR	Income tax in EUR
$6,001 to $37,000	15c for each $1 over $6,000
$37,001 to $80,000	$4,650 plus 30c for each $1 over $37,000
$80,001 to $180,000	$17,550 plus 37c for each $1 over $80,000
$180,001 and over	$54,550 plus 45c for each $1 over $180,000

In addition, Australian resident employees are generally required to pay an additional 1.5% levy to fund the public health care system.

Limited exemption of income earned in overseas employment

- Foreign earnings derived by an Australian tax resident individual from at least 91 days of continuous service or employment in another country may be exempt under Australia's domestic taxation legislation in limited circumstances. This exemption is limited to periods of employment directly attributable to:

  - the delivery of Australia's overseas aid program by the individual's employer;
  - the activities of the individual's employer in operating a developing country relief fund or a public disaster relief fund;
  - the activities of the individual's employer being a prescribed institution that is exempt from Australian income tax;
  - the individual's deployment outside Australia by an Australian government (or an authority thereof) as a member of a disciplined force (for example, the Australian Defence Forces or the Australian Federal Police); or
  - an activity of a kind specified in the regulations.

If an Australian tax resident individual does not satisfy the relevant criteria for exemption under this provision, they may nevertheless be entitled to a FITO in circumstances where foreign tax has in fact been paid.

Treaty application

It is possible for an individual to be a resident of Australia and a resident of a foreign country according to that country's domestic taxation legislation. Where relevant, Australia's Double Taxation Agreements **(DTAs)** contain tie-breaker provisions which operate to allocate 'residency' to either Australia or the other contracting state for the purposes of the application of the treaty. The usual tie breaker provision determines residency by taking into account the location of the individual's permanent home, the location of the individual's habitual abode and the location in which the individual's personal and economic relations are closer.

The elimination of double taxation article within Australia's DTAs generally provides relief from double taxation using the credit (as opposed to the exemption) method. Broadly, this article operates to reduce the domestic taxes payable by an Australian resident on foreign source income, by the amount of foreign tax paid.

Foreign residents working in Australia

Non-residents who do not become Australian residents (temporary or permanent) are generally not taxed in Australia on their foreign employment income. They will however, be subject to tax on their Australian sourced income. Employment income will have a source where the services are performed.

The following table sets out the individual tax rates that apply for non-residents from 1 July 2010:

Income in EUR	Income tax in EUR
0 to $37,000	29c for each $1
$37,001 to $80,000	$10,730 plus 30c for each $1 over $37,000
$80,001 to $180,000	$23,630 plus 37c for each $1 over $80,000
$180,001 and over	$60,630 plus 45c for each $1 over $180,000

Temporary residents

Similar treatment may apply to individuals who are or who become "temporary residents" of Australia for tax purposes (regardless of the time spent in Australia). That is, a temporary resident will be subject to tax on all of their Australian sourced income, plus all Australian and foreign sourced employment or personal services income earned while a temporary resident.

Broadly, a temporary resident is an individual who holds a temporary visa granted under the Migration Act 1958 (for example, a subclass 457 visa) and is not an Australian resident for the purposes of the Social Security Act 1991. An individual will be an Australian resident for these purposes if they reside in Australia and are an Australian citizen, if they hold an Australian permanent resident visa, of if they hold a special category visa and are a "protected special category visa holder".

In addition, to qualify as a temporary resident, the individual's spouse cannot be an Australian resident for the purposes of the Social Security Act 1991. A spouse includes a person who, although not legally married to the individual, lives with the individual on a genuine domestic basis as the individual's husband or wife.

Treaty application

Australia's DTAs contain an article that allocates source and residence country taxing rights in respect of income derived from dependent personal services (or where relevant, income from employment).

Pursuant to this article, employment income is generally subject to tax in the contracting state of residence, unless the employment services are performed in the other contracting state. However, employment income will be taxed only in the contracting state of residence if:

- the employee is present in the other contracting state for a period or periods not exceeding in the aggregate of 183 days in a specified 12 month period (for example, an income year);
- the remuneration is paid by, or on behalf, of an employer who is not a resident of the other contracting state; and
- the remuneration is not borne by a permanent establishment which the employer has in the other contracting state.

Therefore, in respect of non-residents, this article may operate to exempt from Australian tax the employment income of short term visitors to Australia (generally, persons that have worked in Australia for a period of less than 183 days during a specified 12 month period).

It should be noted that the precise conditions to be satisfied in respect of the allocation of exclusive taxing rights to the country of residence differ depending on the particular DTA that Australia has negotiated. By way of example, the period of employment in Australia may not be 183 days (for instance, it is 120 days in the DTA with Indonesia and 90 days in the DTA with Papua New Guinea). Accordingly, the summary of the abovementioned conditions is intended to be a general guide only.

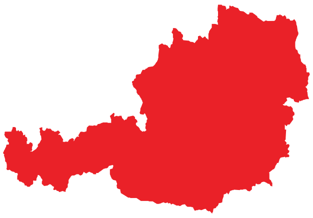
About Clayton Utz

Clayton Utz is one of Australia's largest and most successful law firms, with teams of highly skilled and dedicated lawyers working in Sydney, Melbourne, Brisbane, Canberra (the Federal Capital), Darwin, Perth and Hong Kong. We have a track record for providing consistent and commercial legal advice and a large base of loyal clients who have chosen the firm as their trusted legal advisers.

Our team of internationally experienced partners, our strong relationships with leading firms around the globe and out membership of high-profile international legal bodies mean our clients receive the best possible advice and support, wherever they do business.

Clayton Utz is a full service firm that represents some of Australia's biggest companies and intermediaries as well as significant public sector organisations and multi-nationals with business interests locally and overseas. Clayton Utz is dedicated to providing quality legal services and building long-term client relationships.

Austria



General

Due to a variety of reasons, in the last few years hundreds of leading international companies have established regional headquarters for their CEE/SEE operations in Austria. Consequently, the number of Austrian residents working abroad and of non-Austrian residents working in Austria is increasing. Thus, both outbound and inbound cross-border salary split arrangements are becoming more and more relevant.

Please note that in the following we will only be discussing the situation of individuals earning income from employment pursuant to art. 15 of the OECD Model Convention ("OECD-MC"). Finally, work permits, employment law matters and social security issues are not covered in this report.

Tax residency in Austria

Whether an individual qualifies as a resident or as a non-resident under Austrian income tax law depends on the existence of a territorial nexus to Austria:

- Individuals having a domicile (Wohnsitz) and/or their habitual abode (gewöhnlicher Aufenthalt) in Austria are subject to unlimited income tax liability (unbeschränkte Einkommensteuerpflicht). Such residents are taxable – subject to applicable double taxation treaties – on their worldwide income.
- All other individuals (non-residents) are only subject to limited income tax liability (beschränkte Einkommensteuerpflicht), i.e. they are taxable – again, subject to applicable double taxation treaties – only on their Austrian-source income.

The terms "domicile" and "habitual abode" are defined as follows:

- A domicile in the legal sense is maintained where a taxpayer has a dwelling place under circumstances which permit the conclusion that the taxpayer intends to keep and use it. Such dwelling place must consist of one or more rooms which are furnished for the purpose of living. Not the legal title to the dwelling place is decisive, but rather the factual possibility to make use thereof.
- An habitual abode is maintained where a taxpayer stays under circumstances which permit the conclusion that the taxpayer intends to dwell there not only temporarily. Staying in Austria for more than six months irrefutably leads to an habitual abode, even for the first six months.

Unlimited income tax liability of individuals in Austria

Residents are subject to Austrian income tax on their worldwide income; they are therefore taxable on income from employment wherever such employment is carried out.

Austrian income tax is levied at a marginal rate of up to 50%. In general, the applicable income tax is calculated as follows:

Income in EUR	Income tax in EUR
Up to and including 11,000	0
over 11,000 up to and including 25,000	$\frac{(\text{income} - 11{,}000) \times 5{,}110}{14{,}000}$
over 25,000 up to and including 60,000	$\frac{(\text{income} - 25{,}000)}{35{,}000} \times 15{,}125 + 5{,}110$
over 60,000	(income – 60,000) x 0.5 + 20,235

Concerning employment income, please note that in Austria it is common for employees to receive not twelve monthly salary payments, but rather 14 (one additional payment each in June and in November); these two additional payments are subject to a linear tax rate of only 6%.

The Austrian income tax is generally levied by way of assessment (Veranlagung). However, exceptions to this rule exist, inter alia, for income tax on employment income. Such tax is levied by way of withholding (Lohnsteuer) if the employer has a permanent establishment in Austria.

Limited income tax liability of individuals in Austria

Non-residents are subject to Austrian income tax only on Austrian-source income; as an example, employment income is only encompassed if such employment is carried out in Austria.

The applicable tax rates are the same as for residents, except that when determining taxable income an amount of EUR 9,000 shall be added to the tax base.

Austrian double taxation treaties

Most double taxation treaties concluded between Austria and other countries closely follow the OECD-MC. In the case at hand, in particular the provisions of art. 4 (on residency), art. 15 (on income from employment) and art. 23 (on the methods for elimination of double taxation) are of interest.

Pursuant to art. 4 of the OECD-MC, an individual is generally resident in the state in which, under the laws of that state, he/she is liable to tax by reason of his/her domicile, habitual abode or any other criterion of a similar nature. In case an individual is, by reason of this provision, a resident of both Austria and the other state, then his/her status shall be determined as follows:

- The individual shall be deemed to be a resident only of the state in which he/she has a permanent home available.

- If such individual has a permanent home available in both states, he/she shall be deemed to be a resident only of the state with which his/her personal and economic relations are closer (center of vital interests). Pursuant to Austrian case law, in case of doubt, personal relations (and here in particular family ties) take priority over economic relations.
- If the state of the individual's center of vital interests cannot be determined or if the individual has a permanent home available in none of the states, he/she shall be deemed to be a resident only of the state in which he/she has an habitual abode.
- If the individual has an habitual abode in both states or in neither of them, he/she shall be deemed to be a resident only of the state of which he/she is a national.
- If the individual is a national of both states or of neither of them, the competent authorities of the contracting states shall endeavour to settle the question by mutual agreement.

Pursuant to art. 15(1) of the OECD-MC, salaries, wages, and other similar remuneration derived by a resident of one state in respect of an employment shall be taxable only in the state of residence, unless the employment is exercised in the other state. If the employment is exercised in the other state, the remuneration which is derived therefrom may be taxed in that other state.

Notwithstanding these provisions, remuneration derived by a resident in respect of an employment exercised in the other state shall be taxable only in the state of residence, if:

- the recipient is present in the other state for a period not exceeding in the aggregate 183 days in any 12-month period; and
- the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state; and
- the remuneration is not borne by a permanent establishment which the employer has in the other state.

In line with art. 23A of the OECD-MC, the Austrian double taxation treaties use the exemption method in relation to employment income. The exemption method generally applies with progression, i.e. the foreign income which is to be exempted from the domestic income tax base may nevertheless be taken into account when calculating the amount of tax on the remaining income. Only a handful of the Austrian treaties (in particular those with the United Kingdom, Italy, Japan and the USA) use the credit method.

Salary splits

Salary split arrangements aim at splitting an employee's income among two separate employment contracts concluded with employers in two countries. The idea is that employees with a high level of income (e.g., more than EUR 100,000 a year) resident in one state may benefit from the fact that part of their total remuneration will be taxed in the other state at a marginal tax rate lower than that in their state of residence.

Salary split arrangements only work if the following conditions are fulfilled (this equally applies to inbound and outbound situations):

- The pertinent double taxation treaty utilizes the exemption method, rather than the credit method.
- The other state may tax the employment income carried out there, which is the case if:

  - the employee is present in the other state for more than 183 days in any 12-month period; and/or

  - the remuneration is paid by, or on behalf of, an employer resident in the other state; and/or

  - the remuneration is borne by a permanent establishment which the employer has in the other state.
- The employee concludes employment contracts with an employer in his/her state of residence and with an employer in the other state.
- The salary split is effected in a way that reflects the actual circumstances. In particular, the employment based on the contract with the employer in the other state is factually and physically performed in the other state.
- The payments for the employment in the other state are not charged back to the state of residence.
- Proof of actual taxation in the other state is available (in particular, in those cases where the treaty stipulates that employment shall only be deemed to be exercised in the other state if the remunerations were taxed there according to the treaty).
- The employee (e.g., by establishing residency in the other state) does not become subject to a proviso safeguarding progression in the other state.

Please bear in mind that the tax advantages of a salary split can sometimes easily be outweighed by disadvantages resulting from social security contributions. In Austria, for example, the basis for social security contributions is capped at a certain amount (currently EUR 4,200 per month). If an Austrian resident becomes liable to pay social security contributions also in the other state, then this in essence equals an additional cost of the structure. Also, a few countries do not even provide for a cap.

About Wolf Theiss

Wolf Theiss is a regional law firm, described by The European Legal 500 as "arguably the best Austrian firm in Central and Eastern Europe." It's a reputation the firm has earned over 50 years. Since starting out in Vienna, Wolf Theiss has grown into one of the largest firms in Central and Eastern Europe and South-Eastern Europe (CEE/SEE) and now employs over 300 lawyers, working across numerous practice areas in 12 countries (Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Romania, Serbia, the Slovak Republic, Slovenia and the Ukraine).

Wolf Theiss was one of the first Austrian law firms to advise on national and international tax law – and has been setting the standards ever since. The team brings together detailed knowledge of national and international tax law in many countries throughout CEE/SEE. Its experience covers a wide range of disciplines – such as tax aspects of M&A and corporate restructuring, financial products and, last but not least, executive compensation structures.

Argentina

In general terms, a salary split scenario arises whenever an individual simultaneously works for two or more employers and each employer pays part of the total salary. In a cross-border context, salary splits may involve:

- A resident individual working for an employer in its residence country and an employer from another country.
- A foreign individual moving to a country to perform services in favour of an employer of that country while maintaining a labour relationship in the country of origin.

The following is a summary of the principal implications derived from the abovementioned scenarios.

A resident individual working for an employer of its residence country and an employer from another country.

Argentine labour law governs all matters related to labour services rendered within the Argentine territory.

Argentine resident individuals are subject to income tax in Argentina on a worldwide system at a progressive tax rate ranging from 9% to 35%.

As regards social security taxes, Argentine law requires employers and employees to contribute a percentage of salaries to the social security system (this includes pension fund, social services for pensioners, national employment fund and family subsidy fund) and to a medical care fund. For that purposes, employers must contribute 23% to 27% of the gross salary and also withheld the 17% from the employee's gross salary.

Local Portion of the Salary

Salary income is subject to withholding at source at the progressive tax rate of 9% to 35%. Income tax is completely withheld by the employer who is also required to make all social security's withholdings and contributions. There is no further income tax return filed by the employee (the employee is only required to file certain informative tax returns).

Foreign Portion of the Salary

The salary paid by foreign employer may relate to services rendered locally or abroad. If the services are rendered outside Argentina, the salary will still be subject to income tax pursuant to the worldwide taxation system to which the employee is subject.

Although there is no specific rule stating how the tax is paid in these circumstances, it is reasonable to sustain that in addition to the withholding at source suffered on the local portion of the salary, the employee is required to file an income tax return including as foreign source income the salary paid by the foreign employer.

If the celebration of the labour contract and performance of the services in favour of the foreign employer takes place completely abroad, the employee will not be required to pay social security taxes.

If, in turn, services in favor of the foreign employer are performed in Argentina, Argentine labor law would give rise to a complete different analysis.

Employers must register locally all employees rendering services within Argentina, and they must also register themselves as employers.

Registration of foreign companies as Argentine employers is rather unusual. From our perspective, this alternative not only lacks practicality most of the cases but also increases risks of PE to the foreign employer.[1]

As a result, and in order to avoid the abovementioned risks and practical problems, it is generally advised to substitute the labor relationship with the foreign employer by (i) an inter-company services agreement with a local related company and the registration of the employee in the payroll of this local company; or (ii) an independent services agreement between the foreign company and the resident individual, as an independent contractor. Please bear in mind that, in the event of conflict, the Argentine labor courts are free to ignore the characterization of the relationship given by the parties. Thus, if the court concludes that, as a factual matter, the parties operated under an employment relationship, it will disregard the parties´ attempt to treat that relationship as that of an independent contractor and Argentine labor law will be applied.

If and independent services agreement is put in place, the resident individual would be required to file an income tax return including the compensation received abroad. As from a social security perspective, the resident individual who renders services as an independent contractor will be required to pay social security contributions as a “self employee”.

In addition, services performed would be subject to VAT. However, if certain conditions are met, the services may be deemed exported, and therefore not subject to tax. That would be the case, if the foreign company utilized the services abroad.

The existence of a truly independent services relationship may help to avoid risks of permanent establishment. However, under certain treaties signed by Argentina, the performance of services in the country by foreign enterprises through independent services providers may constitute a PE in Argentina. Therefore, PE risks should be thoroughly analysed.

Treaty Considerations

Most of the treaties signed by Argentina have an income from employment clause patterned following the OECD model convention. Some Argentine treaties also have an independent services clause under which tax jurisdiction is granted to the source country but subject to a ceiling tax rate applicable on gross fees. If a fixed place of business is deemed to exist,

1. If notwithstanding the risks, the foreign company files its registration it will be required to fulfill all the

taxation in the source country is governed by the regular tax rules.

A foreign individual moving to a country in order to work for an employer in that country while maintaining a labour relationship in the country of origin.

Foreign Individuals Working in Argentina: General Rules

According to the Argentine income tax law, an individual is considered to be an Argentine resident if: (i) a permanent residence permit has been obtained in accordance with the immigration laws (permanent residence test); or (ii) the individual is present in Argentina with a temporary authorization during an uninterrupted period of twelve months (substantial presence test).

A legal exception is provided for those individuals who may be deemed Argentine residents by reason of any of the abovementioned tests, but evidence that they stay in the country (i) for an employment reason; and (ii) for less than five years (the "Legal Exception"). These individuals are not deemed Argentine residents and are subject to income tax solely on their Argentine source income (notwithstanding they receive the treatment of Argentine residents for purposes of their Argentine source income).

The income tax law also provides special rules for foreign residents performing activities in Argentina for a maximum period of six months. These individuals are deemed foreign beneficiaries and are not required to register before the Argentine tax authorities and file income tax returns; instead their income tax is collected through a withholding mechanism performed by the Argentine payer of the income. The withholding tax rate in these cases currently stands at 24.5% on gross salaries.

The regulations state that foreign beneficiaries temporarily performing activities in Argentina and deriving salaries, fees and similar remunerations for a period exceeding six months are required to file tax returns and the tax is determined on a real net basis. Thus, after the first six months a foreign beneficiary, although not yet being considered Argentine resident, would have to obtain a taxpayer identification number before the tax authorities and file his annual tax return including the Argentine source income on a real net basis.

In all circumstances, Argentine labour law will govern the labour relationship and the employee will be registered in the payroll of the Argentine employer.

From a social security's perspective, social security exemptions are applicable (on a one time basis) to foreign professionals, researchers, technicians and scientists hired abroad to render services in Argentina for no more than two years, provided (i) they are not Argentine residents and (ii) they are covered against age, disability and death contingencies under the laws of their country of origin or permanent residence.

There are also social security treaties (i.e. with Spain, Chile, etc.) relating to social security matters, under which employees who are carrying out activities in a treaty country other than of their nationality or permanent residence are exempt from social security contributions in that country, provided they are making such contributions in the country of origin or permanent residence.

Both exemptions are not automatically granted and may only be applied for upon completion of specific administrative procedures.

Local portion of the Salary

An strict application of the income tax rules explained in the previous paragraphs would require the application of a different assessment and collection system depending on the stage of the foreign employee stay in the country (i.e., during the first six months, the second six months, and after the twelve-month period). During the first six months, the employee will be treated as foreign beneficiary and subject to withholding tax on a gross salary (24.5%), during the second six months, he will be obliged to register in Argentina and file an income tax return, and after a twelve-month period, assimilated to an Argentine employee on his Argentine source income.

However, in practice, what is generally done is that if the employee is aimed at staying in the country for more than six months, he is assimilated to an Argentine resident from the beginning of the labor relationship with regard to its Argentine source income. Therefore, the Argentine portion of the salary is subject to withholding at source by the Argentine employer on a net basis and under the regular progressive tax rates.

If, in turn, the employee is not aimed at staying for more than six months, he is treated as a foreign beneficiary subject to withholding tax on a gross basis at a flat 24.5% tax rate.

The social security considerations will be those exposed above in the general rules.

Foreign Portion of the Salary

As long as the salary paid by the foreign employer compensates activities or services performed outside Argentina, this portion of the remuneration would not be subject to income tax in Argentina. If instead, the salary relates to activities performed in Argentina, the salary --as Argentine source income—would subject to income tax.

In this scenario, the same labor law consequences described above for Argentine residents working for a foreign company would apply. Thus, the foreign employer would be required to be registered as such in Argentina unless this labor relationship is substituted by an inter-company services agreement with a local related party and the incorporation of the foreign individual in the payroll of this local related party, or an independent services agreement between the foreign company and the individual.

If the foreign national is incorporated in the payroll of the local related company, the consequences would be similar to those explained for the Argentine portion of the salary.

The case may derive certain difficulties if an independent services agreement is established. For instance, if the foreign individual stays in the country for less than six months, he will be deemed foreign beneficiary subject to tax through a withholding mechanism on his Argentine source income. As result, since the compensation will be paid by the foreign company, although theoretically taxed in Argentina, it would not be practically subject to withholding based on the absence of an Argentine payer.

About Negri & Teijeiro Abogados

Negri & Teijeiro is a full-service law firm with over 50 legal professionals. N&T offers high-quality advice and services commensurate with international standards. The firm's culture is largely defined by professionals trained abroad and used to working with international clients. The firm provides comprehensive legal services focused on business activities in Argentina. The Tax Department combines local savvy with expertise in the areas of tax planning, general tax advice and tax litigation.

Tax planning services emphasize advising clients on federal and local Argentine taxes and developing efficient structures for business activity in Argentina. The group has vast experience in advising on cross-border investments, transfer pricing and qualifying businesses for special sector regimes (e.g., software, mining, agricultural, infrastructure projects). The tax litigation practice involves representing businesses and individuals in disputed federal, provincial and municipal claims for the payment and collection of taxes as well as the reimbursement of taxes paid in excess at every level of government.

Belgium

Situation In Which A Salary Split Will Arise

In order to determine whether or not a salary split situation (a split taxation) exists, the provisions as set out in the double taxation treaties (hereafter: 'DTT') are to be taken into consideration.

Please note that we will only discuss the rules applicable to employees (salaried workers) which are generally covered by Article 15 of the OECD Model Tax Convention.

These provisions state that, in general, all remuneration perceived by an individual will be taxable in his state of residence. If however professional activities are performed in another state, the remuneration attributable hereto is only taxable in that other state (hereafter: 'work state').

For outbound as well as inbound activities, it can be stated that a salary split will occur in case an individual simultaneously exercises professional activities in his residence state and one or more other countries. In principle, each country is then granted the right to tax the remuneration paid with respect to duties performed on its territory.

The DTT's foresee an important exception to this rule. If three conditions are simultaneously complied with, all taxation rights regarding this professional income remain with the resident state (the so-called 183 days rule).

The provisions of the respective DTT's are to be checked in each individual case since the wordings may differ from the general rules mentioned above.

Outbound Situations

Salary splits are very popular on account of Belgian tax residents. Taking into consideration the high marginal income tax rates applicable on professional income (amounting up to 50%, increased with municipal surcharges at an average of 7%), a salary split may result in a tax saving on account of the employee.

In addition, the employer will have the possibility to grant a higher net salary at no additional cost in comparison to the situation where the activities are only performed on Belgian territory.

Tax implications

The specific tax implications will depend upon the national income tax legislation of the tax competent states involved.

In Belgium

In principle, a Belgian tax resident's worldwide income is taxable in Belgium. This tax liability may however be limited by the provisions of the DTT's, which Belgium has concluded with many countries.

In case professional activities are performed in states which have not entered into a DTT with

Belgium it may not be possible to avoid double taxation. In these situations the domestic tax law of the states involved will fully apply.

In the situation where a Belgian resident simultaneously exercises professional activities in Belgium and in another "DTTstate " and Belgium obtains the taxing authority under the DTT Belgium has to exempt the revenues attributable to the activities performed in the other state(s). Such exemption is an exemption with progression which means that the individual's worldwide professional income will be taken into consideration when determining the tax rate applicable on the part of the remuneration that is subject to Belgian taxation.

Under Belgian tax law, the progressive tax rates are as follows :

Taxable income	Applicable tax rate
€ 0 - € 8.070	25%
€ 8.070 - € 11.480	30%
€ 11.480 - € 19.130	40%
€ 19.130 - € 35.060	45%
⩾ € 35.060	50%

Please note that an amount of € 6.570 (amount for income year 2011) is free of taxes. This amount is increased in case persons are at charge.

In addition, municipal surcharges (at an average of 7%) are due.

In the DTT State

The tax implications with respect to a Belgian resident's professional income attributable to activities performed in a DTTstate and for which the DTTstate has obtained the taxing authority under the DTT, depend entirely upon the national tax laws of the DTTstate. It is thus advisable to have this foreign tax aspect verified before entering into a salary split situation.

Social security implications

Cross border activities performed within the E.U.

- As of 1 May 2010 application of the new EU directive 883/2004 on social security and cross-border labour implies that Belgian residents who find themselves in a salary split situation will be affiliated to Belgian social security legislation if:
- they pursue a substantial part (25%) of their activities, remuneration or profits of their activities in Belgium; or
- in case they are active for different employers whose registered office or place of business is in different Member States.

The Belgian social security regime is rather expensive but provides for a very complete social security coverage. The contributions equal 35% employer's and instead of 13,07% employee contributions (uncapped). They are computed on the employee's gross income .

Cross border activities performed outside the E.U.

In case a Belgian resident performs cross-border activities in Belgium and one or more countries not subject to the above mentioned EU directive 883/2004, the provisions of the bilateral social security treaties, if any, are to be taken into consideration. In case no such treaty has been concluded, double social security affiliation cannot be excluded.

These treaties generally determine that the person concerned will be affiliated to the social security legislation of his resident state in case a part of his professional activity is exercised on the territory thereof.

Point of attention

In a salary split situation, one should keep documentary proof relating to the professional presence abroad. In case of an audit, the Belgian tax administration may request proof of each day of activities abroad.

Inbound Situations

Tax implications

If a resident of a DTT state simultaneously exercises activities in his home country and in Belgium, the part of his remuneration attributable to his Belgian activities will be solely taxable in Belgium, except in the situation where the 183-day rule applies (see above).

In case professional activities are performed in states having not entered into a DTT with Belgium it may not be possible to avoid double taxation. In these situations the domestic tax law of the states involved will fully apply.

If Belgium is granted the taxing authority for income obtained by a tax non-resident, this person will need to file a non-resident income tax return. The same income tax brackets and rates as for Belgian residents apply .

If a foreign employer employs an employee who is taxable in Belgium, certain (formal) obligations may rest upon the employer (such as salary withholding tax, drafting certain tax slips,…).

Social security implications

Cross border activities performed in Belgium by an E.U. resident

In this case, the E.U. resident will remain subject to the social security legislation of his resident state upon condition that he performs an substantial amount (25%) of his activities in that state, or in case he performs activities for different employers whose registered office or place of business is in different Member States.

Cross border activities performed in Belgium by a non-E.U. resident

Similar as for inbound situations, the provisions of the bilateral social security treaties, if any, are to be taken into consideration.

These treaties generally determine that the person concerned will be affiliated to the social security legislation of his resident state in case a part of his professional activity is exercised on the territory thereof.

Special tax regime

It is important to mention that Belgium has a special tax regime for foreign executives which is particularly beneficial if the executive travels regularly abroad. As a rule, the income attributable to days worked outside of Belgium remain tax exempt in Belgium. When exercising activities in different countries it may be worthwhile to investigate if the special tax regime can be applied. This tax regime is subject to several formal conditions and needs to be individually applied for with the tax authorities.

Employment Law Aspects

As previously mentioned, all rules explained above refer to a split taxation situation irrespective of the fact if there is (are) one or more employment contracts. In respect of a salary split, two possibilities arise:

Single employment contract

An employee has one employment contract with one employer, but performs activities in two or more countries ('factual salary split'), possibly leading (see above) to a split taxation situation.

Even though this is a rather common situation, the risk at forbidden posting exists.

Posting entails the situation in which a worker is lent out by his employer to a user who makes that worker work within his undertaking and exercises over that worker a part of the employer's authority that is normally exercised by the legal employer. Such situation may give rise to abuse and is generally prohibited in Belgium (some exceptions exist though). This issue needs careful attention.

Dual employment contract

An employee has two or more employment contracts with two or more employers in different countries ('formal salary split'), possibly leading (see above) to a split taxation situation.

If there is a Belgian entity or a Belgian subsidiary to conclude the second employment contract, this is often the most advisable option.

This generally entails that the employee concerned will be working on a part time basis in the different countries involved. Hence, the specific rules on part-time work (if any) will apply.

In Belgium these rules are very strict and part-time work contracts entail a lot of formalities, reason why part time contracts are often avoided (for example : one working period may not be less than three hours; the weekly working time may not be less than 1/3 of the weekly working time of a full-time employee; the working time and schedule must be fixed and indicated in the contract).

About Tiberghien

Tiberghien is a leading tax law firm specializing in providing client focused solutions to complex and legal tax issues. The firm is noted for its entrepreneurial and business oriented approach. Its operational relationship with a number of international (tax) law firms has resulted in the creation of a powerful network that is able to offer seamless cross-border tax advice to its clients.

Tiberghien (in cooperation with Altius Lawyers with whom it maintains an operational relationship for all non-tax related matters) has a Tier 1 ranking in the 2011 edition of the Legal 500 Europe, Middle East & Africa (EMEA). The firm is particularly praised by clients for expertise on tax structuring, cross-border financing structures, seeking clarificatory rulings from tax authorities, and the tax aspects of M&A deals. The Firm has a very large private client tax practice focusing on HNWI confronted with domestic and international tax issues, wealth structuring and voluntary disclosure of undeclared assets.

Tiberghien has two offices in Belgium (Brussels and Antwerp) and one in Luxembourg.

Brazil

Nowadays, more and more investors are willing to diversify investments across the globe, while their family members are internationalizing their lifestyles in multiple jurisdictions. In this context, it is becoming increasingly more common to see situations where foreign employees (Brazilian non-residents) are required to work in Brazil, and Brazilian employees to move and exercise their professional activities in different jurisdictions.

In such situations, companies may have to enter into different agreements to provide for the international establishment of their employees, which may have different tax consequences. This paper aims to briefly analyze such situations.

General remarks

First of all, it is important to mention that Brazil is not an OECD member. Therefore, though some domestic rules may be inspired on the OECD models, Brazil has its own rules for international taxation purposes.

Brazil adopts the worldwide income principle. Therefore all profits earned by its resident individuals and corporations will be taxed, whether such profits come from domestic or international sources. This means that for the situation described above, the employee will be taxed according to Brazilian rules, after acquiring his resident status.

In this regard, and for tax purposes, an individual is considered to be a resident in Brazil when he or she has a permanent residence in Brazil, arrives in Brazil with a permanent visa or with a temporary visa with an employment contract, or when this person stays in Brazil for more than 183 days (without interruption or not) during a 12-month period.

All employment contracts executed in Brazil, whether by Brazilian or foreign employees, must be strictly regulated by local constitutional and infra-constitutional laws, among which the Brazilian Labor Code (**Consolidação das Leis do Trabalho**[2] **- CLT**). Besides the labor rights stipulated in Law, many of which are not, as a rule, negotiable by the parties, such as the 13th salary and the Length of Service Guarantee Fund (FGTS), the “collective bargaining” rules, which are those entered into between an employers' organization/association (**sindicato patronal**) and an employees' organization or trade union (**sindicato profissional**) (the collective bargaining convention) or between a company or companies and a trade union (the collective bargaining agreement) must also be observed.

An employee is construed as any natural person (**intuito personae**) who provides services of a non-casual nature to an employer, under its dependence and subordination and subject to a salary.

2. Decree-Law 5,452, of 1 May 1943.

Inbound Arrangements

First of all, when an employee carries out business in Brazil on behalf of a company, he will be considered a representative of the company, subject to tax in Brazil[3] and as a representative will be treated as a company for tax purposes.[4]

Brazil has no specific Permanent Establishment rule, but according to Brazilian law,[5] a foreign resident is subject to income tax in Brazil if such resident (i) sells in Brazil through an agent, and (ii) directly invoices the buyer. According to article 539 of the Brazilian Income Tax Code:

> (i) Income tax will be levied only if the agent in Brazil has powers to contractually bind the seller in relation to the purchaser in Brazil;
>
> (ii) Income tax shall not be levied on sales in which the agent acts simply as a business intermediary, collecting and placing orders or proposals, or performing other acts necessary to commercial mediation, even if these services are remunerated with commissions or other types of fees, provided the agent does not have powers to contractually bind the seller;
>
> (iii) The fact that the seller participates in the capital of the agent in Brazil does not cause the agent to have powers to contractually bind the seller;
>
> (iv) The fact that the legal representative or attorney-in-fact of the seller signs agreements in Brazil on behalf of the seller, on a non-regular basis, is not enough to determine the application of the provisions set forth in this Article.

In this regard, the main aspects considered by the Brazilian “permanent establishment” rules are that (i) the non-resident entity sells products or services in the Brazilian market through an agent, and that (ii) such agent has powers to contractually bind the foreign party in relation to Brazilian buyers/customers.

In the event that a Brazilian “permanent establishment” is characterized, as mentioned before, it will be subject to Corporate Income Tax calculated by the tax authorities (generally a 34% rate applicable to an arbitrated tax basis as established by the competent law) with the addition of the interest and fees according to the applicable law.

However, the Brazilian tax law provides for taxation whenever a foreign company carries out business in Brazil, through a branch or subsidiary, or even when a representative of the company carries out the company's business, as mentioned above. In such situations, the branch or subsidiary will be considered a company, and will be taxed accordingly.

A foreigner who intends to work, temporarily or permanently, in Brazil, under an employment contract, must first obtain a temporary work visa. The Foreigner Law (**Estatuto do**

3. According to article 398 of Decree 3,000/1999.
4. The employee will be considered a representative of the company by reason of his powers to represent and bind the company in its business. Therefore, his profits will be treated as the company's profits, being subject to corporate income tax, according to article 147, III of Decree 3,000/1999.
5. Article 539 of the Brazilian Income Tax Code.

Estrangeiro[6]), through normative resolutions of the Ministry of Labor and Employment,[7] determines the requirements that an entity interested in foreign labor – and legally incorporated in Brazil, must satisfy to obtain the respective visa.

There are also reciprocity treaties between Brazil and other countries with specific guidelines for foreign labor, as is the case of the member countries of the Mercosur block.[8] Another condition imposed for the regularity of the foreign worker relates to the entity interested in the foreign labor, which, in principle, must be legally incorporated in Brazil.

It is also possible to obtain a temporary work visa in cases of special activities that are not bound by an employment relationship, such as: a technician without an employment relationship, artists and sportspersons, journalists, crew-members (in chartered ships, hired to provide services or leased), interns, research scientists and religious or social assistants. In these situations, specific requirements exist to obtain authorization to work in Brazil.

In relation to the remuneration to be paid to the foreign worker, the law determines that it cannot be less than the highest remuneration paid in Brazil for the performance of the same function. If the foreigner is transferred to work in a company established in Brazil, belonging to the same economic group for which he worked abroad, his remuneration, plus any portion still received abroad, cannot be less than the last remuneration received by the foreigner before his transfer.

Another permitted form of foreign labor in the country is in the capacity of administrator, manager, officer or executive with management powers, who comes to Brazil to represent a Civil Company (service, non-trading) or Commercial Company (commercial, trading) or economic Group or Conglomerate.[9] In this situation, besides satisfying the necessary requirements for the obtainment of the temporary work visa, the represented company must comply with the legal requirements.[10]

Apart from the aforementioned possibilities, the foreigner who wishes to come to Brazil to participate in meetings, trade shows, seminars, conferences, visit customers, conduct market research or any other similar activities, must obtain a visa for short-term business trips, which should be requested at the Brazilian Consulate in his country of origin. This situation is different from the work visa and does not require authorization from the Ministry of Labor and Employment.

It is important to mention that in this capacity the foreigner cannot provide any kind of service or receive any remuneration in Brazil, under penalty of the foreigner's deportation and the application of a fine on the applicant company.

6. Law 6,815, of 19 August 1980.

7. Normative Resolutions 74, of 9 February 2007, and 80, of 16 October 2008.

8. http://portal.mte.gov.br/data/files/FF8080812CF587A5012D03D4499220CD/cartilha_trabalho_mercosul_port.pdf

9. Normative Resolution 62, of 22 December 2003.

10. (i) evidence investments in Brazil of, at least, US$ 200,000.00 per foreigner, or the investment of, at least US$ 50,000.00; (ii) hiring of ten (10 new jobs, in the two (2) subsequent years, for each foreigner.

Outbound Arrangements

First of all, and in general terms, work remuneration paid by a Brazilian source to a nonresident is subject to a 25% withholding income tax rate. However, if the beneficiary of such payments is considered a Brazilian resident, he will be subject to Brazilian taxes on a worldwide basis.

In order to be considered a Brazilian non-resident for tax purposes, the Brazilian must leave the country and submit a specific Tax Form [**Declaração de Saída Definitiva do País**] to the Tax Authorities.[11]

The hiring of a Brazilian worker by a foreign company, to work abroad is subject to prior authorization from the Ministry of Labor.[12] According to the regulations of the Ministry, the authorization request should be formulated by the company to the General Immigration Coordination (**Coordenação-Geral de Imigração**), in Portuguese and accompanied by various documents.[13] The authorization for the hiring, by the foreign company, will be valid for up to three years, and may be extended.

Double Tax Conventions

In the event that Brazil has a Double Tax Convention signed with the employee's country of origin or destination, there is usually a provision establishing the taxation rights of each Country. Double Tax Conventions may also be used to determine the residence of an employee in a possible dual residence situation.

Practical Considerations

The general Income tax rate applicable to Brazilian companies is 34%, while individuals are subject to a rate of up to 27.5%. Payments made by companies to individuals are subject to withholding tax. An employer in Brazil will also have to comply with social security requirements.

11. Also, Brazilians are considered non-residents for tax purposes after 12 consecutive months outside of the country.
12. Law 11,962/2009 – Alters article 1 of Law 7,064, of 6 December 1982.
13. Evidence of its legal existence, according to the laws of the country in which it is based, legalized by the Brazilian Consulate and translated into Portuguese, by a certified translator; evidence of the equity interest in a Brazilian company of, at least, five percent of its paid up capital; constitution of an attorney-in-fact, with special representation powers, including that of receiving service of process; and an individual employment contract, in Portuguese, contemplating the precepts of Law 7.064, of 1982; excluded from the regime of this Law are the employees who are designated to provide services of a transient nature for a period of no more than ninety (90) days, provided that: (a) they are expressly aware of this transiency; (b) in addition to the return fare, they receive travel expenses during the period of work abroad.

About Barretto Ferreira, Kujawski e Brancher – Sociedade de Advogados (BKBG)

Barretto Ferreira, Kujawski e Brancher – Sociedade de Advogados (BKBG) is a Law Firm that brings together a team of leading professionals in the area of legal business services. The legal experience of the members of BKBG, coupled with their insight to understand the business aspects of the needs of its clients, distinguish BKBG in the legal market. The combination of these qualities enables this firm to be prepared to create adapted strategic planning and accomplish the specific objectives of each of its clients. BKBG professionals have eclectic backgrounds and experience, enabling them to meet the needs of Brazilian and foreign companies that directly or indirectly maintain commercial relations in Brazil, in many and varied areas. This legal expertise is sustained by extensive knowledge of corporate and tax law, and the fact of having participated in some of the largest transactions that have ever taken place in the country.

Chile

A. General

In Chile any remuneration paid to a foreign employee for its services rendered in Chile is considered as Chilean source income. The foregoing even if the remuneration is paid abroad provided it is related to its employment in Chile.

B.Residence For Chilean Tax Purposes

Based on the above, the Chilean Income Tax Law ("ITL") provides that for the first six months of permanence in Chile, a foreign employee will be subject to a 35% withholding tax ("Additional Tax") on its Chilean source income. The tax rate may drop to 15% if the activities were considered as technical services. Regarding the qualification of "technical", it should be noted that in accordance with instructions issued by the Chilean Internal Revenue Service, "technical consultancies" are defined as "those professional or technical services that a person with the knowledge of a science or technique renders through an advice, a report or a drawing".

If a foreign employee remains more than six continuous months during a calendar year or six continuous months during two consecutive years, the foreign employee will be considered as a Chilean resident for tax purposes. Once considered as a Chilean resident, foreign employee's remuneration will be subject to the Sole Labor Tax provided that the services are rendered by virtue of a labor contract. The latter is a tax with a current progressive rate from 0 to 40% applicable at different stages.

The Sole Labor Tax must be withheld and paid by the employer. However, if the employer is a non Chilean resident entity, the aforementioned taxes must be withheld and paid by the own employee.

Please note that the Chilean Revenue Service has interpreted that the fact that foreign employees move to Chile with their family, that they rent a house, that their children study in schools in this country, and that they enter as a result of a labor contract, is enough to consider that they have established a domicile in Chile from the very first day they entered the country. In that case, all remunerations will be subject, from that same day, to the Sole Labor Tax and not to Additional Tax.

Please note that the first three years of permanence in Chile a foreign individual is subject to taxes in Chile only on its Chilean source income and as from the third year of permanence in Chile, foreigners are subject to taxation in Chile on a worldwide basis.

C. Foreign Employee's Additional Allowances

1. Tax treatment for the employee

Sole Labor Tax is applied over salaries, bonuses, premiums, wages, allowances, participation and any other allowances that increase the remuneration paid for personal services.[14]

Below we review the tax treatment applicable regarding some additional allowances:

In this regard, please note that the personal use of goods belonging to a company by its employees will be considered as additional remuneration provided that such use thereof is customary.

The use of goods that are related to the employer's business and goods devoted to the recreation of personnel, provided their use is not customary, such as gyms, summer cottages, etc., will not be considered as additional remuneration.[15]

Use of vehicles

In the case of vehicles, the following must be distinguished:

1. In the case of cars, station wagons and similar vehicles, the Law presumes income equivalent to 20% of the value of goods for tax purposes;

2. Regarding any other vehicles, such as jeeps, pickup trucks and similar, 10% of the value of the goods is assumed as higher remuneration for tax purposes

Housing allowance

Disbursements made by a company for renting a house for foreign employees is considered extra remuneration for the employee and is added to any normal income received during each month.

The same tax treatment applies to any amounts paid to the employees related to housing expense; i.e. electricity, water, etc.

Exceptionally the Chilean Internal Revenue service has interpreted that lodging granted to employees only in the employer's interests and provided it is a reasonable amount will not be considered as part of the employees' remuneration. The foregoing provided that it is necessary given the special nature or characteristics of the employment to be undertaken; for example, because it is carried out in places that are far from urban centers.

D. Summary

- The remuneration that a foreign employee receives shall be subject to Additional Tax during the first six months of permanence in the country. After this term is over, the remuneration shall subject to Sole Labor Tax.
- Notwithstanding this, if the foreign employee proves he/she is domiciled in Chile as from the first day of arrival to the country, the remuneration shall be subject from that first moment to the Sole Labor Tax.

14. Article 42 Nº1 of the Income Tax Law.

15. Circular of the Internal Revenue Service Nº37 of 1995 and Notice of the Internal Revenue Service Nº407 of 1996.

- In the event the remuneration is subject to Additional Tax, the rate of this tribute shall be 20% or 35%, depending on if the activities that are developed by the employee are qualified as technical or not.
- If the remuneration is paid from abroad it will also be subject to tax in Chile, provided it is related to the service it renders in Chile.
- If the employer is not domiciled in Chile, then the foreign employee shall withhold and pay its taxes.
- In general complementary allowances granted by the employer to its foreign employees shall be considered an additional remuneration subject to tax, unless requirements that authorize the exclusion of these complementary allowances from the remuneration received by the employee are complied.

About Barros & Errázuriz Abogados Ltda.

Founded in 1988 by Fernando Barros Tocornal and José Tomás Errázuriz Grez, Barros & Errázuriz Abogados is one of the largest firms in Chile.

Since its foundation, Barros & Errázuriz Abogados has developed a strong full service practice, with a good mix of local and international clients, advising multinational corporations, financial institutions and formerly state-owned companies on a broad range of matters.

The Firm specializes in banking and financing, securities, mergers and acquisitions, tax, project finance, real estate, privatization, environmental, energy, telecommunications, infrastructure, antitrust, trust and states, litigation, arbitration, and dispute resolution. It has close links with firms in Latin America, the US and Europe.

Its members have broad expertise and skills, many of which have been gained from study and work experience overseas, as well as from academic practice in national universities.

As part of Barros & Errázuriz Abogados institutional policy, our lawyers are provided with continuous educational programs in order to maintain the highest standards and quality required in sophisticated markets.

The People's Republic of China

Introduction

There are many reasons for operating a splitting of salary for expatriates working in China, e.g. tax, foreign remittance control and so on, and there are specific local rules and Double Taxation Treaties in this respect.

The progressive tax rate in China is between 5% and 45%, and therefore there is sufficient incentive to establish tax structure to control the tax exposure:

Amount (RMB)	Rate
500 or less	25%
The part in excess of 500 to 2,000	30%
The part in excess of 2,000 to 5,000	40%
The part in excess of 5,000 to 20,000	45%
The part in excess of 20,000 to 40,000	50%
The part in excess of 40,000 to 60,000	30%
The part in excess of 60,000 to 80,000	40%
The part in excess of 80,000 to 100,000	45%
The part in excess of 100,000	45%

Another aspect is foreign exchange control. There are limits and circumstances on how much and when the monies earned or received in China can be remitted out of the country. Therefore, many foreign expatriates prefer to receive part of his or her incomes out of China, especially when the appointment in China is short-term.

Social security is generally not available to foreign expatriates, as currently the system does not allow participations by foreign expatriates.

Inbound Arrangements

Before we go into the details, it is necessary to understand the relevant tax rules here because the period of stay in China is a highly relevant element (Articles 4-7, Individual Income Tax Law Implementation Rules, and Paragraphs 1-4, Circular No. Guoshuifa 148 of 1994):

1. The starting point is that China-source employment income should be taxed under IIT pursuant to the relevant laws and regulations.

2. Incomes generated from non-Chinese individuals with no residence in China who has stayed in China for less than 90 days (or 183 days if a tax treaty applies) in a tax year is generally not subject to Individual Income Tax ("IIT") in China if such incomes are not responsible and paid by any permanent establishment owned by the individual's employer in China.

3. China-work related incomes generated from non-Chinese individuals with no residence in China who has stayed in China for less than 365 days but more than 90 days (or 183 days if a tax treaty applies) in a tax year is subject to IIT in China, no matter such incomes are paid by any permanent establishment owned by the individual's employer in China or outside China.

4. China-work related incomes generated from non-Chinese individuals with no residence in China who has stayed in China for less than 5 years but more than 365 days in a tax year is subject to IIT, no matter such incomes are paid by any operation owned by the individual's employer in China or outside China. Incomes generated from temporary stay out of China paid by any permanent establishment owned by the individual's employer in China shall be taxable as well.

5. For non-PRC individuals who have stayed in China for more than 5 years, all incomes are taxable under IIT.

Therefore, length of stay is usually one of the most important considerations of tax planning for cross-border services involving China. Many multi-nationals operating in China usually have a system to calculate the length of stay in China to avoid excessive and unnecessary stay to minimize the tax exposure.

In addition, the usual salary split structures involve a representative office of a group company or a subsidiary. It can be consisting of a secondment arrangement and providing the tax authority with a splitting confirmation. The employee's salary can be divided into two parts, being the China-part, and the offshore part. Alternatively, dual employment contract can be signed with the salary split. Then, the Chinese tax authority will calculate the tax by reference to such splitting, provided that such division is reasonable (there are some internal statistics and benchmarks for this purpose). Further, there are situations where if a senior management of a representative office does not stay in China regularly, the tax can further be calculated on an actual days spent in China basis, especially for cases where the respective period of stay are likely to be below the 90 days or 183 days. Any tax paid in China in such circumstances should be subject to double taxation relief under tax treaties, if available.

Consultancy or other service arrangements are not uncommon as well, but care should be taken into account whether the consultancy or other service providers may be required to pay business tax (5%); and/or enterprise income tax (25%), if permanent establishment is deemed to exist in China.

The role of a Hong Kong employment should be mentioned. The specific reason of using Hong Kong employment in the structure is Hong Kong is known for its low-tax environment (progressive salary tax rates system with a flat rate at 15% to be applied if the taxable income exceeds certain level, which is lower than the rates in China in general), another reason is there is a mini-tax treaty between Hong Kong and Mainland China. Apart from the above, the statutory Mandatory Provident Fund payments in Hong Kong is just 10% (5% by employer, and 5% by employee, with a ceiling of HK$1,000 or US$128 for each side), and the employment law in Hong Kong is similar to that of UK, which means termination is relatively easy.

Outbound Arrangements

A PRC resident is generally taxable in China for his or her worldwide income, subject to specific provisions in the relevant tax treaty between China and the country where the PRC resident generates income. If tax treaty applies, usually, the income from a jurisdiction out of China shall be taxable only in such jurisdiction if the individual: (a) has stayed less than 183 days in that jurisdiction, (b) the remuneration was not paid to the employee for and on behalf of the individual's employer in China, and (c) the remuneration was not paid to the employee by a permanent establishment of the individual's employer in China.

One may ask how far dual employment contract (with salary split into two) can be used in such case, because the employee can have a contract out of China to deal with certain part of his or her income. The answer is that the income is offered by an associate company, the taxpayer is still under an obligation to report the details to the tax authority. In such case, no specific tax advantage can be obtained in such case, especially for those arrangements involving a jurisdiction which has a tax treaty with China with mutual exchange of information. However, the enforcement is relatively rare up this moment, and it is expected that the tax authority will tighten the rules or take further initiatives to enforce the rules in the future (at this moment, the focus of the tax authority is more on the enterprises, not individuals).

About Ribeiro Hui

Ribeiro Hui is a corporate law firm which emphasizes on delivery of timely and practical solutions. The partners of the firm have extensive experiences in representing multi-nationals in China and Hong Kong, covering the aspects of corporate establishment, employment, tax and intellectual property, and they have been constantly nominated as leading practitioners in different regional and international surveys. The firm's teams in Shanghai and Hong Kong are acquainted with western business practices and legal approaches and speak the business language.

Czech Republic

Czech Republic as a member of the EU and an open, export oriented economy has experienced significant cross-border flow of employment, both inbound (consisting mainly of smaller number of higher management of multinational companies seconded to the Czech Republic on the one end of spectrum and larger number of blue-collar workers provided to the Czech Republic by employment agencies on the other end of the spectrum) as well as outbound (consisting mainly of Czech management and technical staff sent to other EU and foreign countries).

Inbound Arrangements

Usually, foreigners are active in the Czech Republic based on the (i) Hire-Out-Of-Labour arrangement, or (ii) Management Service Agreement, or (iii) employment agreement with a local entity.

Hiring-Out-Of-Labour Agreement ("HOLA")

Under the HOLA, individuals would be employed by a foreign employer and would be assigned to the Czech Republic to work based on the Hiring out of Labour Agreement concluded between the Czech entity and the legal employer, covering the relationship between these two entities in respect of the assignment of the individual to the Czech Republic, including the recharge of related costs to the Czech entity.

Generally, there are no limitations regarding the period for which the individuals may be seconded based on the HOLA.

The Czech entity will be treated as an "economic" employer for Czech personal income tax purposes. The individual would be viewed as an "economic" employee.

Under the HOLA, the Czech entity would qualify as a payer of personal income tax in respect of the seconded expatriates. It would be required to include the individuals in its monthly tax withholdings.

Generally, an economic employer is viewed as an employer for social security and health insurance ("SSHI") purposes, unless the EU regulation or a relevant bilateral treaty regarding the SSHI (if applicable) stipulates otherwise (e.g. in case of a secondment not exceeding 12 months, the individual stays in a foreign SSHI system), and, therefore, should be liable to withhold SSHI contributions from the individual's salary on a monthly basis.

Under Czech tax law, at least 60% of the total payment to the foreign employer is deemed to represent employee's remuneration.

Under the HOLA arrangement, a permanent establishment of a foreign legal employer in the Czech Republic should not be created.

Generally, for the hiring out of labour within one multinational group no permission from the Ministry is needed for the HOLA structure. Therefore, should this not be the case, the foreign entity would need to obtain a licence as a so-called labour agency and register its branch for these purposes.

Management Service Agreement ("MSA")

Under the MSA, individuals employed by a foreign employer are assigned to the Czech Republic to provide services to the Czech entity. The service agreement covers the scope of services provided by the foreign employer to the Czech entity via the individuals and the fee paid for these services.

Generally, the Czech service recipient would not be required to account or withhold taxes in respect of the individuals' salaries.

Instead, the individuals would become responsible for reporting part of their employment income (which is subject to Czech tax) and potentially making the payment of tax advances, and would be obliged to file a Czech personal income tax return after the end of each tax period (calendar year) and pay tax.

A permanent establishment of the foreign service provider will likely be created in the Czech Republic (e.g. branch, office, point of sale); a permanent establishment is also deemed to exist if the duration of services or activities provided by Czech tax non-residents on the territory of the Czech Republic exceeds six months within any twelve consecutive calendar months. Such permanent establishment is generally taxable on income attributable to it, decreased by corresponding tax deductible expenses.

Split (dual) employment

Under the dual employment arrangement, the individuals are employed directly by the Czech entity while he/she also maintains an employment relationship with a foreign employer. The duties performed under the foreign agreement should be performed abroad to avoid permanent establishment risk. There is formally no need for the foreign entity and the Czech entity to conclude any agreement with regard to the individual's work for the Czech entity but often there is an agreement on discharge of administrative matters, payments of social security and health insurance, etc.

Practical considerations for inbound employees

EU Nationals are permitted to stay in the Czech Republic without restrictions and to perform any activity without first having to obtain a visa or any other kind of permit. Generally, nationals of EU and EEA countries and Switzerland do not need a work permit for work in the Czech Republic.

Other foreigners may obtain (i) a 'short-term' visa for residence up to ninety days, which can be Schengen unified, or (ii) a 'long-term' visa for residence over ninety days, which is issued as a type of national residence permit. A 'long-term' visa is granted for a maximum period of two years and is renewable. The holder is not authorized to freely enter other Schengen countries.

The modification of the latter kind of visa is a 'combined long-term' visa (C+D) based on which the holder of such a 'combined long-term' visa is entitled to enter any Schengen country during the first ninety days.

Within three working days from arrival in the Czech Republic, the foreign national must register with the local Foreign Police office nearest their place of residence.

Generally, a foreign national other than from EU or EEA countries and Switzerland need a work permit for work in the Czech Republic, provided that she/he has been granted a valid visa (the work permit is an enclosure to the visa application).

Outbound arrangements

Outbound arrangements are essentially the same as inbound arrangements.

Taxation of Employees in the Czech Republic

Tax residency and taxation of income from employment performed in the Czech Republic

Taxation of individuals in the Czech Republic primarily depends on their tax residency status. Under Czech tax laws, individuals are considered resident in the Czech Republic for tax purposes if they have a permanent place of residence in the Czech Republic or if they spend more than 183 days in the Czech Republic in any 12 consecutive months. Where a double taxation treaty with another state applies, the determination of the tax residency is primarily subject to the rules of that treaty (tie breaker test).

Czech tax residents are liable for personal income tax in the Czech Republic on their worldwide income; however, income from employment performed abroad is exempt from Czech tax provided that the employment is performed in the state which has a double tax treaty with the Czech Republic and such income was liable to tax in such state.

Czech tax non-residents are liable only on their Czech source income such as income from employment performed in the Czech Republic. However, individuals' income allocable to their activities performed in the Czech Republic would generally be exempt from the Czech personal income tax provided that the period of such performance does not exceed 183 days in any 12 month period. However, this does not apply to income generated through a permanent establishment.

Migrating residents of EU or treaty countries are subject to specific EU or bilateral treaty regulations on coordination of social security and health insurance systems. In accordance with general rules of these regulations, a person should be subject to social security and health insurance system only in a single state and, generally, it should be (i) the state in which a person performs his/her employment activities, or (ii) the state of the employee's residence if he/she performs activities in this state or has two or more employers in different member states, or (iii) the state of the employer's residence if he/she does not perform activities in the state of his/her residence. Special rule applies to employees seconded to other EU member state – such employees continue to be subject to the legislation of the state from which they are seconded provided that the duration of such secondment does not exceed twenty-four months and they are not sent to replace another person. From January 2011, such rules also apply to third country nationals provided that they legally reside in the territory of an EU member state and they are in a situation which is not confined in all respects within a single EU member state.

Employment Income Taxation in the Czech Republic in brief

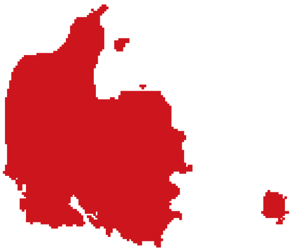
Employment income is subject to tax in the form of prepayments withheld by the Czech resident employer or a Czech branch of a foreign employer on a monthly basis from the employee's salary. The prepayments are subsequently subject to settlement on a yearly basis. Income tax applies at a flat rate of 15% on a tax base which is the sum of gross salary and social security and health insurance contributions and value of employment benefits. There are annual tax credits available for each taxpayer, supported family members and other reliefs exist in the form of deductions from the tax base, e.g., mortgage interest, life insurance premiums, supplementary pension insurance premiums and gifts. Employment income is subject to social security and health insurance contributions which are partly borne by employees (11% of gross salary) and partly by employers (34% of gross salary).

The base for social security and health insurance contributions is currently capped at CZK 1,781,280 (EUR ~71,300) per year.

About White & Case LLP

The Prague office has been providing a wide range of Czech and cross-border legal and tax advisory services in the Czech Republic since early 1991. The Prague office is a leading international law firm, and is the only law firm fully capable of providing clients with comprehensive tax services in the Czech Republic. We offer our clients full support on all corporate and commercial issues arising in the course of their business and/or investment activities in the country. Our core practices include: Corporate & Commercial Law, Labor Law, Mergers & Acquisitions, Banking & Finance, Financial Restructuring & Insolvency, Tax & Customs, Real Estate & Development, Capital Markets & Securities, Energy, Dispute Resolution, Criminal Law, Private Equity, and EU Law.

Denmark



Cross border salary split arrangements and other cross border employee arrangements have been the subject of increasing attention in Denmark during the last decade on account of rapid globalization and increased inflow and outflow of personnel, global organizations desiring to station employees to and from Denmark for shorter or longer periods etc.

Denmark has relatively high marginal taxation on salaries; however some tax schemes that will lower taxation are available. At the same time, Denmark has fairly low social contributions paid by employer and is in this respect considered attractive. The costs resting with the employer (Danish or non-Danish) are maximized at approximately DKK 10,000-12,000 (2011) per year per full time employee.

The Danish Tax system imposes extensive withholding and reporting obligations on the employer and the Danish Tax Authorities (SKAT) recognize the concept of International Hiring-out of Labour and the concept of real employer rather than the formal employer. This report broadly examines the arrangements and addresses the most important issues regarding tax, social contributions and registration obligations to be aware of when employees are stationed to and from Denmark.

Inbound Arrangements to Denmark

In general, employees will be subject to unlimited taxation to Denmark according to internal Danish legislation if the employee establishes a residence in Denmark or if the employee stays in Denmark for more than 183 days in a given year.

If the employee is considered also to be resident in another country for tax purposes, it will depend on the tax treaty with the country in question, which country will be deemed as the country of domicile for tax purposes, cf. the OECD model.

Employees not subject to unlimited taxation will be taxable to Denmark on salaries earned while working in Denmark for a Danish employer, or if the employee is considered to be hired to a Danish employer as part of international hiring-out-labour etc.

Regarding social security, Denmark is part of the European Union (EU) and regarding employees living and working in the EU countries, the EU regulation will establish in which country (only one) the employee is considered to be subject to social security. Regarding employees from other countries working in Denmark, Denmark has entered into bilateral agreements regarding social contributions with some countries.

An employer - Danish or non-Danish - with employees in Denmark is in general obliged to register with the Danish tax and social security authorities. Furthermore, foreign employers stationing employees to Denmark will have to register in the register for Foreign Service providers ("RUT"). Non-compliance with said regulation, which has been tightened recently, may cause fines, also to the foreign entity's end-customer in Denmark.

In addition to this base information, please refer to our specific comments regarding the typically used arrangements when non-resident companies have employees present in Denmark.

Set up of Danish subsidiary/branch-PE:

The non-resident company sets up a Danish subsidiary/branch-PE (Danish Sub), which employs the employees who work in Denmark. The employees will be subject to Danish taxation, unlimited or limited.

It will be possible to use a favourable taxation regime for foreign scientists and key employees for 5 years, provided a number of conditions are met. Furthermore, it is possible to pay tax exempted allowances to all employees stationed temporarily in Denmark.

The Danish Sub will have to withhold and report salary paid by the Danish Sub to the employees, to SKAT.

There is no statutory requirement that salaries to employees employed by a Danish Sub have to be paid by the Danish entity; however salary paid to employees working for a Danish Sub, but paid from a non-resident (group) company, may lead to the Danish Sub being taxable on the cost as a taxable income if the Danish entity is not re-invoiced the cost. The Danish Sub risk non-compliance with statutory withholding obligations if re-invoicing is carried out. Furthermore, there is a risk SKAT will deem a set up where salaries are paid from a foreign group company as tax evasion etc.

Dual Employment:

An employee of a non-Danish company is employed by a Danish company as well as a non-Danish (group) company. The employee will have an employment agreement with both companies.

Such an arrangement is only recommendable if the employee is going to actually perform work for both the non-Danish company outside Denmark and for the Danish company in Denmark. A variety is secondment from one non-Danish group company to a Danish company. We advise to clarify for which company the employee is actually going to perform his/her work while stationed to Denmark. There is a risk the non-Danish entity will be deemed to have established a Danish PE. Any applicable tax treaty will have to be considered.

Employee leasing/International Hiring-out of Labour:

The employee is employed by the non-Danish company and hired from the non-Danish company to a Danish company to perform services. The term is used when the employee is not employed with or paid by a Danish company, but the powers of instruction and the responsibility/risk associated with the performance of the employee rests with the Danish company.

Employees working in Denmark under such an arrangement will in general be subject to Danish taxation from day one on all remuneration, including allowances for housing and boarding, paid by the foreign employer, due to special regulation. The tax is a gross tax of

30% plus labour market contributions of 8%, combined tax rate effectively 35.6%.

It is important to clarify whether the special regulation on International Hiring-out of Labour is applicable. If so, the Danish entity will for tax purposes be considered the "real employer" and the Danish entity will be responsible for withholding and reporting regarding the salary; if withholding on salary has not been carried through, SKAT will hold the Danish entity liable for taxes regarding the foreign employees.

Employed directly with a non-Danish company:

A Danish employee is employed directly with a non-Danish company and is working in Denmark for the non-Danish company. If the employee becomes resident in Denmark or the employee stays in Denmark for 6 months consecutively, the employee will be subject to unlimited tax liability to Denmark.

The non-Danish company will in general be obliged to register as an employer with the Danish Social Security Authorities and will be obliged to pay social security contributions.

It is important to establish whether the activities of the Danish employee will establish a Danish Permanent Establishment (PE) for the non-Danish company.

If so, the Danish PE will at company level be taxable on net income ascribable to the Danish PE.

Furthermore, the Danish PE will be obliged to withhold preliminary taxes on the salary to the employees. If the foreign company establishing a Danish PE is domiciled in a country outside EU and no mutual agreement regarding charging and collection of taxes exists, the salary to the employees in Denmark have to be paid through a Danish domiciled company/person authorized to act on behalf of the foreign company.

Consultancy services to the foreign company:

Within certain limits it is possible to have Danish personnel render consultancy services etc. to a foreign company outside the frame of employment. However, this is only possible if the services rendered are of the nature of self-employed business activities. As the main rule, VAT will then be applicable on the remuneration for the services rendered.

Outbound Arrangements from Denmark

Individuals or companies, who are domiciled for tax purposes in Denmark, are taxable in Denmark on their worldwide income. This is subject to the provisions of applicable tax treaties.

When moving from Denmark to another country in order to work there, Danish unlimited tax liability will only be waived if no Danish residence is available for the employee and his/her close family, when the employee is staying and working abroad.

However, internal Danish regulation also ensures that foreign salary income is exempted from taxation in Denmark if the employee does not stay in Denmark for more than 42 days in any 6 months period provided a number of conditions are met.

When working abroad, a Danish employee will also, provided certain conditions are met, be eligible for tax-exempt allowances.

A few facts and practical considerations

The applicable tax rate on Danish domiciled companies and Danish PE's etc. is 25% (2011).

Marginal tax rate on salary etc. is 56% (2011) including employee labour market contribution, exceeding a threshold of DKK 423,800 (2011), and 42% (2011) including employee labour market contributions on salary below the threshold.

As described above, both Danish and non-Danish entities with employees in Denmark will as the main rule have to register regarding tax and social security and is obliged to comply with withholding and reporting obligations. However, registration, withholding and reporting can in most cases be handled electronically and is usually done quite easily, when handled correctly from start.

Employees subject to tax liability in Denmark are required to obtain a personal identification number with the Danish authorities.

About Kromann Reumert

Kromann Reumert is the leading law firm in Denmark, employing almost 600 dedicated people working together to provide quality services for our clients. Kromann Reumert's legal advice is practical, relevant and individually tailored. A collaborative approach enables us to provide workable, operational and value-adding solutions for both the short and long term.

Tax

Kromann Reumert offers a dedicated tax group of lawyers working exclusively with tax, VAT, customs and duties matters. The Kromann Reumert tax group offers a broad, yet focused range of tax services within advisory, compliance and tax litigation services. It enjoys a strong position as a preferred Danish tax partner of many international groups and law firms. The group is very active internationally and participate in all relevant professional networks and venues.

Germany

Cross border employee delegation is a field with many specific problems. From a German point of view the Employee Assignment Act (Arbeitnehmer-Entsendegesetz) as well as the German tax law have to be observed. The following text focuses on tax law related implications (social security issues are not subject of this memorandum). From a national point of view, in particular the obligation of German employers to withhold wage tax is to be observed. In the international context the respective double taxation conventions (tax treaty) are to be observed.

In order to outline the legal situation we have to distinguish between the assignment of employees to Germany (so-called inbound-case) and the assignment of employees from Germany to another country (so-called outbound-case).

Inbound-Case

The assignment of employees to Germany involves the risk that these employees become subject to unlimited tax liability in accordance with German tax law. The precondition is that either a residence or a habitual abode of more than 6 months is established in Germany. In case the delegated employee moves into an apartment of his own in Germany, he becomes subject to unlimited tax liability in Germany on the very first day. Should the employee at the same time maintain his apartment in his home country where his family lives, from a tax treaty perspective he is generally considered as domiciled in his home country, as the centre of his vital interests should remain there with the consequence that only income from German source (according to the tax treaty) is taxed; however income which is exempt from taxation in Germany can become relevant for the German tax rate (so-called progression clause).

Provided neither a residence nor an habitual abode of more than 6 months is established in Germany, the employee delegated to Germany generally has a so-called limited income tax liability for his employment income received in Germany.

In case the delegated employee works in both countries, in Germany and in his home country, the relevant tax treaty is to be observed. Should the tax treaty correspond with the Model Tax Convention on Income and on Capital of the OECD, the income received as an employee is generally taxed in the country of employment (i.e. in inbound-cases in Germany). An exception from this country-of-employment principle is made, if

- the employee stays in another country (in inbound-cases: Germany) for no longer than 183 days within a period of 12 months, and
- the remuneration is paid by or on behalf of an employer that is not based in the country of employment (in inbound-cases: Germany), and
- the remuneration is not paid by a permanent establishment the employer maintains in the country of employment (in inbound-cases: Germany).

Provided the requirements for an exception from the country-of-employment principle are at hand, the home country retains the right to tax the employment income, also with regard to income obtained as an employee in Germany.

Thus, in case an employee is being delegated to Germany for a period of no more than 183 days within a period of 12 months, he is generally subject to limited tax liability. However, the employee's income obtained in Germany is not subject to German income tax under the tax treaty, in case his salary was neither paid by or on behalf of an employer with its seat in Germany nor by a German permanent establishment of the employer. In this case, he is solely subject to taxation in his home country.

However, German tax law applies in cases in which the delegated employee works less than 183 days in Germany but the employee's salary is paid by or on behalf of an employer with its seat in Germany or by a German permanent establishment. From a German tax perspective this is already assumed if a German company (subsidiary or permanent establishment) compensates the company in the employee's home country for the costs arising for the delegated employee. In this case the German subsidiary or permanent establishment is to be regarded as the so-called economic employer. The economic employer is then obliged to withhold wage tax plus solidarity surcharge from the wage of the assigned employee and to transfer the wage tax plus solidarity surcharge to the tax office. The wage tax is an advance payment of the German income tax which the employer withholds and transfers.

Outbound-Case

The delegation of German employees to a foreign country either leads to an exclusive taxation right for Germany or to a partial exclusion of the German taxation right. The requirements depend on the relevant tax treaty; hence, the aforesaid applies accordingly. As a principle the country of employment has the right of taxation. Only insofar as the requirements for an exception from this rule are met the exclusive taxation right remains in Germany.

Salary Split

Due to the fact that normally different income tax rates apply in Germany and the respective country of employment, it can be favorable for the delegated employee if in outbound-cases a part of his income is taxed in the foreign country (e.g. in India) and in inbound-cases no taxation takes place in Germany. Such an allocation of income to two countries is called a salary split. From a German tax perspective the split of the delegated employee's salary is necessary if the part of the income which was obtained in the foreign country is exempted from German taxation under the tax treaty. However, this exemption is only granted if the employee proves towards the German fiscal authority that he has paid taxes for his income in the country of employment. This proof is generally made by presenting a tax assessment and a record of payment. Otherwise, exemption is not granted. The income taxable in Germany is subject to a so-called progression reservation (Progressionsvorbehalt), i.e. the tax rate to be applied to the domestic income is being calculated as if the part of the salary exempted from German tax had also been obtained in Germany.

First the salary obtained due to the delegation to the foreign country which is to be exempted in Germany, is to be calculated by means of a direct allocation. The salary components directly relating to the delegation are allocated to the salary to be exempted. Typically these are costs of travel and accommodation which were borne by the employer; a paid cost-of-living allowance can also be included in this list. The remaining salary is to be split in accordance with the working days owed by the employee under his working contract, resulting in the remaining salary to be exempted (indirect allocation method). In addition, the regulations for specific special cases are to be considered.

Should, in an outbound-case, the delegated employee receive subsequent bonus payments in relation with the delegation, these are allocated to the income to be exempted and to be taxed in Germany in accordance with the ratio for the regular compensation payments.

Structural Alternatives

From a German tax perspective a salary split with regard to the delegation of employees can be structured within a specific framework. For the establishment or prevention of a salary split various reasons and structures come into consideration.

One possibility to reach a salary split is to extend the delegation over a period of more than 183 days within the 12-month period. The reverse conclusion is that by a reduction of the delegation period to no more than 183 days, a salary split can be avoided. For the calculation of the limit of 183 days the stay in the country of employment does not have to ensue in one single continuous period, as the stays in the country of employment are summed up, provided they took place within the 12-month period. Dependent on the respective tax treaty the 12-month period is either the calendar year, a special tax year or a coherent period of 12 months.

In case a salary split shall be reached for an assignment of an employee for a period of no more than 183 days, the following structures are possible:

Within a group a second employment contract between the delegated employee and the subsidiary located in another country can be concluded. In doing so, the subsidiary becomes the employer of the delegated employee and the right of taxation shifts to this country.

If the company delegating the employee so far does not have any foreign presence (subsidiary or permanent establishment), it is possible to establish a subsidiary or permanent establishment in the other country in order to employ the delegated employee. Hence, a salary split in favour of the employee can be reached. With regard to the delegating company one has to take into account that, when taking a tax treaty corresponding to the Model Tax Convention on Income and on Capital of the OECD as a basis, the foundation of permanent establishment generally results in a tax liability in the country in which the permanent business establishment is set up. Moreover, setting up and maintaining a permanent establishment or a subsidiary would cause additional efforts and expenses for the delegating company.

In order to avoid a salary split in case of a delegation to Germany (inbound-case) for a period of more than 183 days or in case of an economic employer in Germany, a service contract or a contract to produce a work (Werkvertrag) can be concluded between the parent company and the subsidiary. Thus, the withholding of wage tax to be carried out in Germany can be avoided. With regard to this structure, however, one has to verify in each individual case whether a sham contract is at hand. The fact that the delegated employee is bound by directives, for example, could be an indication for a sham contract. It needs to be taken into consideration that such a structure in certain cases could result in a permanent establishment in the other country.

Review of individual cases

The tax-related consequences of an employee delegation from and to Germany have to be reviewed and assessed for each individual case. The present memorandum merely serves the purpose of giving a short introduction into the employee delegation matter and cross-border salary split from a tax-law point of view.

About Haarmann

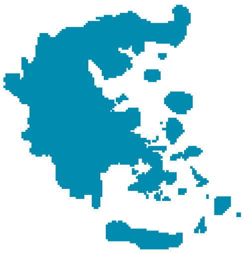
HAARMANN was founded in early 2006. The firm advises in the fields of M&A and private equity, tax law, corporate law, capital market law, banking and finance law, litigation and arbitration, as well as labour law. The firm focuses on tax law as well as M&A and private equity.

Our clients are national and international enterprises ranging from start-ups to DAX-30 companies, venture capitalists, major banks, financial service providers, insurance companies, family offices, affluent private individuals, athletes, artists, and non-profit organisations.

We pool all our strength at a single location in Frankfurt am Main. Working from this base, we are able to serve our clients everywhere. Internationally, we cooperate with premium law firms with which we maintain longstanding personal relationships.

Our partners have comprehensive international experience gained largely in major UK and US law firms. Acting in our clients' best interests, they apply their skills effectively within our lean organization.

Greece



General

The Greek economy has been adversely affected by the global financial crisis. Against the background of the financial crisis and the rescue deal, Greece has adopted a series of austerity measures, mainly in order to cut down public expenses and increase tax revenues.

Greek law does not provide for specific provisions regulating the cross-border salary splits. This paper briefly analyses the tax implications related to employment exercised by employees assigned in Greece and employment exercised by a Greek resident outside Greece.

Greek Tax Residency

A recently introduced tax law expanded the tax residence definition for individuals. In specific, an individual's tax residence is to be determined in principle based on the number of days spent in Greece. In this context, an individual spending more than 183 days in Greece during the same calendar year shall, be presumed to be a Greek tax resident, thus being liable for Greek income tax on his/her worldwide income, unless he/she can rebut the said presumption.

Furthermore, the new tax law provides that individuals relocating to non-cooperating jurisdictions, as these are defined in the Greek Income Tax Code (including most of the jurisdictions with which Greece has not concluded a treaty), shall be treated as Greek tax residents. Also, individuals with material financial interests in Greece (as these are defined in the Greek Income Tax Code), who relocate to countries with preferential regimes, as these are defined in the Greek Income Tax Code, and who were subject to Greek income tax on their worldwide income for five years prior to such relocation, will remain subject to Greek income tax on their worldwide income for a period of five years, starting on the date of declaration of their relocation.

The above rules also apply to employees who exercise their employment in two countries (Greece and a foreign country) within a period of a calendar year.

General remarks on Greek employment income

The Income Tax Code (ITC) (Art. 45 para. 1) provides that employment income is the income deriving every fiscal year from salaries, daily wages, subsidies, allowances, pensions and generally every benefit paid periodically in any form, either in cash or in kind or in any other values, for a current or previous service or for any other reason, and acquired by salaried employees generally or by pensioners.

Resident and non-resident employees are normally subject to withholding tax on their salary income provided that they exercise their employment in Greece. The employer is liable to withhold the said tax upon payment and remit it to the competent tax office on a bi-monthly basis. The withholding tax scale is the same with the income tax scale and has as follows (applicable for income earned in the calendar year 2011):

Bracket of income (EUR)	Tax rate of bracket (%	Tax on Bracket (EUR)	Total income (EUR)	Total tax (EUR)
12,000	0	0	12,000	0
4,000	18	720	16,000	720
6,000	24	1,440	22,000	2,160
4,000	26	1,040	26,000	3,200
6,000	32	1,920	32,000	5,120
8,000	36	2,880	40,000	8,000
20,000	38	7,600	60,000	15,600
40,000	40	16,000	100,000	31,600
Excess	45			

As regards non-resident employees, they do not obtain the above tax-free bracket of the income tax scale, which is taxable at 5% rate and currently results in an additional tax burden of Euro 600.

To prevent the effects of double taxation, Greece has executed double taxation treaties, which mostly follow the OECD Model Tax Convention ("OECD Model").

Article 15 of the OECD Model governs remunerations for employment. Pursuant to article 15, para. 1 of the OECD Model the salary derived by a resident of a contracting state is taxed only in that state unless the employment is exercised in the other contracting state. Pursuant to article 15, para. 2 of the OECD Model the salary derived by a resident of a contracting state in respect of employment exercised in the other contracting state is taxed only in the country of residence if the following three cumulative conditions are met:

- the recipient is present in the other state for a period or periods not exceeding an aggregate of 183 days in any twelve months' period commencing or ending in the fiscal year concerned;
- the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state;
- the remuneration is not borne by a permanent establishment which the employer has in the other state.

Assignment of employees in Greece

Tax residence status of employees exercising their employment in Greece for a short period of time (i.e. less than six months)

Foreign employees exercising their employment in Greece for a short period of time (less than 183 days) are not qualified for becoming Greek tax residents. The salary paid to those employees during their stay in Greece shall not be subject to Greek income tax if (i) the employee is a resident of a contracting State and (ii) the above conditions set in article 15 par. 2 of the OECD Model are met.

If this is not the case, the salary paid to those employees during their stay in Greece will be subject to Greek income tax on the basis that they exercise their employment in Greece, and, therefore, they acquire Greece sourced income

Greece: tax residence status of employees exercising their employment in Greece for a period of time exceeding six months

Based on the analysis regarding the Greek tax residence criteria, employees who exercise their employment in Greece for more than 183 days are qualified to become Greek tax residents and be taxed as such.

However, please note that contrary to what the general tax residence criteria provides, the Greek tax law provides for an exemption which could apply for one time only. The new tax law provides that the individuals who have their habitual abode in Greece and are subject to income tax in jurisdictions with which Greece has not concluded a DTC may be taxed in Greece only on their Greek source income for a period of three years beginning from their relocation to Greece (unless they opt for becoming Greek tax residents).

Withholding tax obligations from the employer's perspective

Pursuant to the Greek income tax law every employer (Greek or foreign) who occupies an employee in Greece is obliged to withhold tax on the salary paid for work performed therein. This obligation applies irrespective of the existence or not of a permanent establishment in Greece through which the employment is exercised. Furthermore, salary income payable to resident and non-resident employees is subject to withholding tax provided that they exercise their employment in Greece.

PE issues

Pursuant to article 5 par. 1 of the Model Double Taxation Convention (“DTC”), a foreign tax resident enterprise shall be considered as having created a permanent establishment (“PE”) in Greece, if such enterprise holds a “fixed place of business” therein, through which it conducts all or part of its business. As regards the interpretation of the term “fixed place of business”, the Greek Ministry of Finance has taken the view in individual rulings, that a foreign tax resident enterprise may be considered as having a PE in Greece, if such enterprise (cumulatively) conducts its business activities (i) through a specific place (fixed place) (ii) through specific persons, including members of its personnel and (iii) with a certain degree of permanency. As regards this latter point, the term “permanency” has not been clearly determined although it seems to describe an activity that is not temporary (i.e. carried out just for a short period of time). It should be noted in this respect, that the Greek Tax Authorities do not follow, as a rule of thumb, the six months test included in the OECD Commentary on article 5 of the OECD Model Tax Convention on Income and on Capital (used to interpret the application of Double Tax Treaties), in order to judge the degree of permanency, whereas they seem to consider even shorter periods of time as sufficient in the context of determining the "permanency" element.

Assignment of Greek employees to foreign countries

Greek companies assign personnel to foreign countries for a period of time and the parties involved usually conclude a secondment agreement. In principle, salaries received in relation to an employment which is offered outside Greece are not subject to Greek withholding tax.

Greek employees working outside Greece for less than 183 days would be still qualified as Greek tax residents. Taking into consideration that Greek tax residents are subject to Greek income tax on their worldwide income, they would be subject to Greek income tax on their salary received in exchange for their work exercised outside Greece. If a double tax treaty is in force, a tax credit is provided in Greece for the foreign tax paid on the employment income. A social security exemption may also apply according to EU regulations or Bilateral Social Security Treaties.

About Zepos & Yannopoulos

Founded in 1893, Zepos & Yannopoulos is one of the longest established law firms in Greece. Throughout its history it has consistently been one of the most prominent law firms in the country. Zepos & Yannopoulos focuses in the provision of comprehensive legal and tax services to foreign legal entities, financial institutions and individuals with business interests in Greece.

The firm's tax practice has specialized for over 40 years in advising clients on tax matters arising from trading and investment in Greece. Our firm was voted by the International Tax Review in London as Tax Firm of the Year for Greece for 2010, 2009 and 2008.

Hungary

General remarks

Hungary, located in Central Europe with a land surface of 93,000 km, has a population of 10 million people, 2 million of whom live in Budapest, the capital of Hungary. The neighbouring countries are Austria, Croatia, Romania, Serbia, Slovakia, Slovenia and Ukraine. Member state of the European Union since 1 May 2004, Hungary has traditionally been preferred for many international corporate structures due to its investment friendly tax legislation and, thus has attracted a significant number of foreigners.

The effective personal income tax rate is 20.32% as of 2011 in Hungary which is considered to be reasonably low compared to other European countries. For this reason, the application of salary split schemes as tax optimization tool may not seem to be sensible from Hungarian tax perspective. Should salary split prove to be reasonable for any other reason, the general Hungarian legal framework makes it possible to set up and operate structures where the individual works for different employers residing in different countries and receives remuneration from both employers.

However, in practice, salary split structures are usually accompanied by two difficulties. On one hand, the parties should be able to justify the service in return of the separate payments from the employers. On the other hand, the salary split related formalities need to be performed in such a way that they do not create room for any challenge by the tax authority.

The Hungarian labour law and tax law regulations do not provide for specific provisions on salary split schemes. Consequently, the general Hungarian tax laws and the double taxation treaties apply for the taxation of foreign individuals deriving income from employment exercised in Hungary or Hungarian individuals gaining income from foreign sources. This article is aimed at introducing the main rules of taxation applicable to individuals earning income from employment.

Taxation matters of income derived from other services, work permits and employment law aspects are not covered in the present summary.

Tax residence in Hungary

To assess tax consequences of the employment, the country of the employee's tax residence should be determined first of all. Tax residence is relevant because individuals are, in general, liable to personal income tax in the country of their tax residence on their worldwide income (unlimited tax liability). Meanwhile, if an individual is considered as non-resident in a certain country, he/she may be liable to personal income tax in such country only to the extent he/she derives income from that country.

For the determination of Hungarian tax residence, various aspects should be examined under the Hungarian Personal Income Tax Act:

· Hungarian citizens are as a general rule considered residents unless they have a second citizenship and do not have a permanent home or habitual abode in Hungary.

· Citizens of the European Economic Area states who spend more than 183 days in the calendar year in Hungary also qualify as tax residents.

· Foreign nationals with a valid permanent residency permit (or settlement permit) are considered residents.

· Furthermore, foreign individuals are regarded as tax residents if they have a permanent home exclusively in Hungary. In this respect, any home is permanent if it is permanently available for the individual's use.

· If the individual has no permanent home in Hungary or in any country or has more permanent homes, then the decisive criterion should be where the individual's "centre of vital interests" is, i.e. where his personal, social and economic relations are closest, e.g. family, employment, bank accounts, etc.

· If this test also fails, residency is determined by habitual abode, i.e. where the individual spends more than 183 days in the calendar year.

Taxable income and tax rate under Hungarian domestic law

Resident employees are subject to income tax on their worldwide income regardless of whether or not the funds are transferred into Hungary and regardless of the place where the employment is exercised.

Non-residents are taxed on income sourced from Hungary. If the non-resident employee's normal place of work is in Hungary, the source of the employment income is considered to be Hungary. Therefore, such income is subject to Hungarian personal income tax.

The income earned from an employment relationship (Hungarian or foreign) qualifies as employment income. The individual's salary and, in general, his fringe benefits are regarded as employment income and, as such, they are taxable as part of the individual's consolidated tax base. Directors' fees are subject to tax in the same way as employment income (irrespective of whether directors perform the activity in the context of a mandate or an employment relationship). The directors' fees are considered to be sourced in Hungary if the company paying the directors' fees is resident in Hungary.

According to the so-called "supergrossing" rules, the individual's taxable basis is increased by the amount of the 27% social security contribution paid by its employer on the individual's income. The so grossed taxable basis is then taxed at a 16% flat tax rate, which results in an effective personal income tax rate of 20.32%. "Supergrossing" is expected to be abolished as of 2013, thereafter the effective personal income tax rate will be 16%.

General tax filing and payment procedures in Hungary

Hungary operates a self assessment system which means that resident and non-resident employees must generally declare their income, compute their tax, file tax returns and pay the tax. The tax year is the calendar year. The personal income tax returns for the tax year must generally be filed by 20 May of the year following the tax year.

Employers resident in Hungary must withhold report and pay the monthly tax advance payments by taking into account the items that may reduce the employee's total income. In general, employees receiving income from a non-Hungarian employer must make quarterly advance tax payments and file their own tax returns.

Hungarian double taxation treaties

Double taxation treaties are a key factor in determining the tax consequences of cross-border employment as their provisions override domestic legislation with absolute supremacy.

Hungary entered into income tax treaties with over 65 countries spanning the globe including the Member States of the EU, most of the European countries outside the EU and with several American, Asian, Australian and African countries. In this respect Hungary is ahead of several other countries that operate investment friendly tax legislation and attract foreigners.

As a general rule, the income tax treaties follow the OECD Model Convention. Accordingly, under Article 15 of most of the double taxation treaties concluded by Hungary, income derived from employment may be generally taxed by the state where the work is exercised (work state), except for the cases where (i) the employee is present in the work state not exceeding in the aggregate 183 days in a year; (ii) the employer is not a resident of the work state; and (iii) the remuneration is not borne by a permanent establishment which the employer has in the work state.

As regards directors' fees, in line with Article 16 of the OECD Model Convention, Hungarian double taxation treaties generally provide for directors' fees received for the position in the board of directors of a company to be taxed in the country where the company is resident.

Social security

As a general rule, the key factor to determine the applicable social security legislation is the place of work. Consequently, in principle, an individual working in Hungary for a foreign employer is subject to the Hungarian social security regime.

However, in line with the exceptional provisions of the EU coordination rules, if an individual is posted to a member state for not more that 24 month and certain other conditions are met, he/she continues to be subject to the social security legislation of the country in which he was covered person for social security purposes prior to the posting.

About Gide Loyrette Nouel

Founded in Paris in 1920, Gide Loyrette Nouel is a premier international law firm with 650 lawyers drawn from 40 different nationalities. Operating out of 19 offices in 15 countries, the Firm offers some of the most respected specialists in each of the various sectors of national and international finance and business law.

The Budapest office is a regional "hub" of the Firm and provides legal services for several Central and Eastern European jurisdictions. Our extensive knowledge of the Balkans and the CEE region allows us to build closer ties with key local players and provide high quality advice to our clients in this region.

GLN Budapest advises clients on all areas of business law and has developed particular expertise in privatisations, mergers and acquisitions, banking and finance law, real estate transactions, competition law, employment law, taxation, intellectual property and litigation.

India

Cross border salary split arrangements have been gaining attention in India in the last few years, especially on account of rapid globalization, the consistently high growth of the Indian economy and increased inflow and outflow of personnel. As it is important to structure these compensation arrangements, within the framework of applicable laws, including especially tax laws and exchange control regulations, these arrangements can adopt a unique shape in the Indian context. These are relevant to non-resident employees who work in India, as well as Indian employees who are required to work or be present in other countries.

Inbound Arrangements

Generally, inbound salary split arrangements would involve an Indian company/establishment of presence such as a branch or representative office in India. The Indian exchange control regime requires a non-resident to establish presence in India if it wishes to engage employees in the country. This is also a preferred approach from an Indian tax perspective as a non-resident could have tax consequences in India, if it has its employees present in India and acting on its behalf in India, so as to result in the creation of a permanent establishment ("PE", if the company is situated in a country with which India has a tax treaty) or a business connection (under the Indian domestic tax provisions, where a tax treaty does not exist). It is important to note that if the non-resident personnel are present in India for long periods of time, they may be considered Indian residents and subject to Indian tax on the worldwide income unless they are eligible to the benefits of a tax treaty and considered resident in the foreign country on account of a so-called tie breaker provision.

Separately, if such personnel are present in India for a period of more than 183 days in a year, they may be considered Indian resident under the exchange control regulations and subject to exchange control requirements applicable to Indian residents, such as currency repatriation requirements. This means that they may have to bring their salary into India irrespective of whether it is received outside India from a non-resident company. It is important to note that such repatriation requirements may not apply under a secondment (deputation) arrangement (see below), or if it is possible to demonstrate that the person is present in India for a temporary period of time, under a fixed term or similar employment arrangement with an Indian entity.

Against this broad background, non-resident entities typically prefer the following salary split arrangements:

Set up of Indian subsidiary

The foreign entity sets up an Indian subsidiary company to employ the relevant personnel. The employees receive their entire remuneration in India, from the Indian company. While it may be possible for the non-resident company to make payments "on behalf" of the Indian subsidiary, this may result in deductibility issues with the non-resident not being able to claim the payments as expenses. Further, notwithstanding the identity of the payer, the Indian company would continue to remain obligated to withhold taxes on the entire payment made to the employee (Indian and non-Indian components included), towards employment. Further, the exchange control regulations mandate that the employee would need to bring the entire sum into India if she begins to be considered an Indian resident. The Indian resident employee would however be permitted to make outbound remittances of up to USD 200,000 in a given year, under the Liberalised Remittance Scheme ("LRS") of the Reserve Bank of India. These remittances would not require approval to be obtained although the personnel may be required to provide documentary support with the relevant authorized dealer (bank) at the time of making the remittance.

Secondment/Dual Employment

The non-resident company would enter into a secondment (deputation) arrangement with an Indian company, as per which non-resident employees could be seconded to the Indian company. Such personnel would enter into an employment agreement with the Indian company during the period of secondment, and could receive remuneration from both companies – from the Indian company for employment in India and from the foreign company or companies for work performed outside India. It is important to ensure that such salary payments are documented as being remuneration for services rendered offshore and onshore respectively, so as to mitigate the risk of a PE being formed in India on account of the presence of the non-resident company employee in India. Under such arrangement, the employee may be permitted to receive all of his remuneration outside India, provided that she has sufficient funds to pay his taxes in India – salary payments received for Indian employment would be taxable in India (subject to tax treaty provisions).

Employee Leasing

If it is not feasible to have the relevant person render part services offshore and onshore, as described in Option 2, the non-resident company may employ such persons and lease them out to the Indian company for a temporary period of time. Nominal remuneration would be paid by the non-resident (employer) entity while salary would be paid by the Indian company, which would also pay the non-resident company a lease fee for use of the employee. From an Indian tax perspective, the person should be considered to be employed by the Indian company during the period of the lease agreement, thus mitigating potential PE risk. Salary payments received for Indian employment would be taxable in India (subject to tax treaty provisions).

Consultancy services to the foreign company

An alternative is for the individual in India to render consultancy services to the foreign company, in consideration for which he could receive remuneration outside India. However, if the recipient is an Indian resident under exchange control regulations, there would be a requirement to repatriate, unless such person demonstrates that she is present in India for a temporary period of time.

Outbound Arrangements

Indian residents, whether individuals or companies, are taxable in India on their worldwide income. This is subject to the provisions of a tax treaty entered into between India and the other country where the taxpayer has income. Therefore, if an Indian company sends its personnel to other countries, such arrangements should be looked at from the perspective of tax exposure for the company and individual in such other countries, during such time that the persons are considered to be resident in India.

If the personnel are required to spend substantial periods of time outside India (at least in excess of 183 days in a given year, although this number could be variable depending on the number of years spent outside the country), they may begin to be considered non-resident in India in terms of the Indian income tax provisions. However, if there is a tax treaty between India and the country in which such persons are present, such persons may still be considered Indian residents if they satisfy the requirements of a tie breaker provision in the treaty on account of their family being present in India, their center of vital interests in India etc. In such case, they would only be taxable in India on their Indian source income. Assuming that they do not render employment in India, this tax exposure should be restricted to Indian source income such as income from Indian investments, property etc. There should be no repatriation requirements for non-residents with respect to sums earned by them as a consequence of their employment outside India. Further, it may be possible to structure this remuneration so as to ensure deferral for such individuals in a situation where they foresee themselves returning to India at a subsequent point in time.

Practical considerations

The tax rate applicable to Indian companies and maximum rate applicable to individuals is the same, at 30%. Persons entering into salary split arrangements are likely to be considered under the highest slab. The corporate tax rate for non-resident companies is over 40%. Payments to personnel are deductible but could be subject to withholding taxes and filing requirements in India. If the employer engages more than twenty employees, this could also involve Indian social security requirements (aside from social security requirements applicable in the home country of the foreign employee). Further, employees may also be required to obtain a taxpayer identification number on entering into these arrangements, irrespective of whether they are considered taxable in India (or not).

Social security

It is important to consider social security contributions as well. While the individual would prefer to continue receiving salary in her home country, the employer needs to consider whether any social security contributions arise in the host country. India has signed Social Security Agreements with some 10 countries, although only a few of them are currently in effect.

Immigration

Salary split arrangements need to be structured based on applicable immigration laws. For example, currently, a foreigner is required to earn a minimum salary of US$25,000 per year in order to be eligible to obtaining an Indian employment (work) visa. If a larger portion of the salary is being earned in a foreign country (especially in secondment arrangements), it may be difficult for the foreigner to obtain an Indian employment visa.

Indonesia

The Indonesian economic growth and increased foreign investments in Indonesia have caused a rise in the number of expatriate employees working in Indonesia. From a taxation point of view, the situation gives raise to cross-border employment and tax issues. This article outlines our views on these issues from the legal as well as taxation point of view.

Status of Expatriates Working in Indonesia

Typically, the employment of expatriates for the performance of work in Indonesia falls under the category of "employment for a definite period". The reasoning behind such categorization is the following: (i) such expatriates will need to obtain a valid permit for working in Indonesia (ii) such work permit, in general, is only issued with a maximum validity of 12 months (even though there is an extension possibility).

Under Labor Law No. 13 of 2003 ("Law No. 13 of 2003") an employment contract for a definite period can, in general, be made for (a) maximum 2 years period, at the end of which the contract can be extended only once for a period that does not exceed the initial contract period with a condition that the total contract period is not longer than 3 (three) years. This means that the initial period of the contract and its extension (once only) may not be longer than 3 (three) years. However, after a break period of at least 30 days following the total contract period of three years, a renewal of the contract may be made with a maximum contract period of 2 (two) years. The renewal of the contract following the conclusion of the total 3 (three) years period without observing the break period requirement will, under Law No. 13 of 2003, result in the automatic transformation of the category of the contract from "employment contract for a definite period" to "employment contract for an indefinite period".

While an expatriate's work contract would normally fall under the category of "employment contract for a definite period" (Perjanjian Kerja Waktu Tertentu/"PKWT"), not all of the provisions of the PKWT apply to expatriates. For example, the provision of the PKWT on the extension period that stipulates that the contract can only be extended once (1 time) does not apply to expatriates employees and therefore may be ignored or does not have to be complied with. This is because the expatriate employment is an employment for a specific position and a specific period of time. As a matter of fact, the applicability of the PKWT's provisions to an expatriate employment is not specifically stated in the existing labor laws and regulations.

For an expatriate employee who is hired directly in Indonesia and if the employment contract's governing laws is Indonesia, such expatriate employment contract will be subject to Indonesian Law.

Income Tax (Residents and Non Residents)

Resident Employees

An individual is a tax resident if he either (Law No. 7 of 1983, as amended by Law No. 36 of

2008/"ITL"):

- Resides in, or is present in, Indonesia for more than 183 days within any 12-month period.
- Is present in Indonesia during a taxable year and intends to reside in Indonesia.

An employee's tax residency is dependent upon the applicable tax treaty .

A corporate taxpayer is a tax resident if it is incorporated or has a domicile in Indonesia. A permanent establishment is used by an individual not residing in Indonesia or present in Indonesia for not more than 183 days in any 12-month period, or by a body which is not established or domiciled in Indonesia, to conduct business or engage in activities in Indonesia.

Resident taxpayers (including resident employees) are taxed at the normal rate on taxable income, that is, worldwide gross income less allowable deductions (excluding non-taxable income and final tax income).

- The income tax rates for Indonesian residents are (Article 21, ITL):
- Income up to IDR50 million (about US$5,175): 5%.
- Income above IDR50 million to IDR250 million (about US$25,875): 15%.
- Income above IDR250 million up to IDR500 million (about US$51,750): 25%.
- Income above IDR500 million: 30%.

The national rate for a corporate tax payer is 28% for the fiscal year 2009 and 25% for 2010 and after. A public company satisfying a minimum listing requirement of 40% and other conditions is entitled to a tax discount of 5% of the standard rate.

Non Resident Employees

If a non-resident has a permanent establishment in Indonesia, the permanent establishment is subject to Indonesian taxation as imposed on a resident taxpayer.

A non-resident individual taxpayer is an individual who does not reside in Indonesia or is present in Indonesia for not more than 183 days within any 12-month period.

Non-resident taxpayers must pay tax in Indonesia on any income effectively connected with Indonesia. Non-tax resident employees, having no permanent establishment, are subject to Article 26 income tax on income paid in Indonesia (Article 26, ITL), where income is defined as compensation for employment services and activities.

The tax rate payable by non-resident individuals is a flat rate of 20% unless an applicable tax treaty requires otherwise.

Employers

Employers are required to withhold and deposit Article 21 income tax from the salaries payable to their employees and pay this to the state Treasury on their behalf. The same withholding tax applies to other payments to non-employee individuals (such as fees payable to individual consultants or service providers). Resident individual taxpayers without a taxpayer code number (Nomor Pokok Wajib Pajak) (NPWP) are subject to a surcharge of 20% in addition to the standard withholding tax rate.

Employers also must report tax on remuneration earned by individual resident and non-tax resident taxpayers regarding their employment or the provision of services, or for any other similar activities. Employers must also make social security contributions for their employee.

Business Vehicle

A business vehicle's tax residency status can be either resident or non-resident. A corporate taxpayer may be regarded as resident if it is incorporated or has its seat (domicile) in Indonesia (Article 2(3)(b), ITL). The ITL does not explicitly define the place of seat or domicile.

- A non-resident taxpayer business vehicle can be an entity.
- Neither established nor domiciled in Indonesia but conducting business or carrying out activities through a permanent establishment in Indonesia.
- Neither established nor domiciled in Indonesia but deriving income from Indonesia other than from conducting business or carrying out activities through a permanent establishment.

Business vehicles in the following forms are considered permanent establishments (Article 2, para 5, ITL):

- Places of management, branch office, representative offices and office buildings.
- Factories and workshops.
- Areas of mining and extraction of natural resources.
- Fisheries, places of animal husbandry, farms, plantations or forests.
- A construction, installation or assembly project.
- Rendering services in any form if conducted for more than 60 days in any 12 months.
- An individual or a body acting as an agent, other than an agent of independent status.
- An agent or employee of an insurance company that is not established or domiciled in Indonesia and that receives insurance premiums or covers risks in Indonesia.

Main Tax Apply to Tax Resident Business Vehicle

- Corporate income tax

  Resident corporate taxpayer with gross income up to Rp 50.000.000.000,00 (fifty billion rupiah) receives facilities in the form of reduction of the rate by 50% (fifty percent) of the rate imposed on taxable Income from the part of the gross revenue of Rp 4.800.000.000, 00 (four billion, eight hundred million rupiah). A 28% income tax rate applies to corporate taxpayers for 2009 and 25% for 2010 onwards. A public company satisfying a minimum listing requirement of 40% among other conditions is entitled to a tax discount of 5% of the standard rate.

- Value added tax (VAT) and luxury sales tax (LST)

  VAT is charged at the rate of 10%. LST on the import and/or delivery of luxury goods and services is charged at the rate of between 10% and 75% (depending on the type of good or service).

Typical Salary Split Situations

A typical salary split situation arises in one of the following two scenarios: (i) a foreign resident employee is transferred by his foreign resident employer to an Indonesian domiciled group company (so-called inbound situation), or (ii) an Indonesian resident employee is transferred by his Indonesian resident employer to a foreign group company (so-called outbound situation). In either scenario the employee works in two jurisdictions, namely for the employer and the group company. Before the transfer, his salary was subject to income taxes in his country of residence only. Upon transfer to the group company only the portion of his salary which is attributable to the employer remains subject to the income taxes of his country of residence. The remaining portion of his salary respectively the portion that is attributable to the group company is subject to income taxes in the country of residence of the group company. It is also conceivable that the employee enters into a separate part time employment contract with the group company. The employee then receives a salary from the employer and an additional salary from the group company.

Inbound Situation

In a typical inbound salary split situation, Indonesia is entitled to tax the Indonesian portion of the employee's salary as well as of other remuneration the employee earns during his stay in Indonesia. The Indonesian portion of the salary is subject to salary source tax. The Indonesian group company is obliged to withhold the tax. It is important to note that a salary split inbound situation leads to a tax saving for the foreign resident employee due to the low Indonesian personal income tax rates[13] only if the country of residence applies the exemption method with respect to the Indonesian portion of the salary.

Outbound Situation

In a typical outbound salary split situation Indonesia exempts from taxation the portion of the employee's salary that is attributable to the foreign resident group company. As an Indonesian tax resident the employee is subject to income tax on the other portion of the salary that is attributable to the Indonesian resident employer as well as any other worldwide income of the employee that is not exempt from taxation based on an applicable double taxation treaty or a unilateral exemption. Additionally, the Indonesian resident employee is subject to net wealth tax on his worldwide assets that are not exempt from taxation based on an applicable double taxation treaty or a unilateral exemption. Indonesia provides Indonesian tax residents with foreign tax credit per country limitation for any tax paid in another country.

13 20% withholding tax rate upon salary paid to non-resident employee. Progressive income tax rate (up to 30%) upon salary paid to expatriates who are tax resident.

About Ali Budiardjo, Nugroho, Reksodiputro

Ali Budiardjo, Nugroho, Reksodiputro was established in Jakarta in 1967. It presently consists of 85 Indonesian lawyers, two Dutch lawyers and one Australian lawyer. The firm, often called "ABNR," is one of Indonesia's largest independent full-service law firms. ABNR is principally engaged in the provision of legal services to foreign companies, banks and international institutions operating or setting up business in Indonesia, as well as to Indonesian enterprises contracting with foreign companies and institutions or with other Indonesian companies. The commitment we make to clients is to provide broad-based, personalized service from top quality teams of lawyers with international experience that includes groundbreaking deals and projects. ABNR's reputation has been recognized around the world by independent industry surveys and law firm guides. The firm maintains an office in Singapore to extend its Indonesian legal services to foreign clients with regional headquarters in Singapore.

Ireland

Introduction

Individuals who are both resident and domiciled in Ireland are subject to Irish tax on their worldwide income, including employment income, whether derived from an Irish or foreign employer, and whether in respect of Irish or foreign employment duties. Foreign tax may be relevant, in which case any applicable treaty relief will be relevant, generally either by reference to the foreign charge being overridden by the treaty or the foreign tax being credited against Irish tax.

Individuals who are resident in Ireland but not domiciled in Ireland such as foreign executives on assignment in Ireland are subject to Irish income tax on income arising in Ireland, which includes remuneration from employment duties performed in Ireland even if for a foreign employer, and on foreign income to the extent remitted into Ireland. They can therefore control their exposure to Irish income tax on their foreign income. Individuals who are not resident in Ireland are only subject to Irish income tax on income arising in Ireland.

Residence and domicile

The income tax year in Ireland is the calendar year.

An individual will be resident in Ireland for a particular tax year if:

- he is present in Ireland for 183 days or more in the year, or
- if he is present in Ireland in the year for 30 days or more, and the aggregate number of days for that year and the previous year is 280 or more.

Presence in Ireland for a day means presence at any time during that day.

Domicile is a less clear concept, but it generally means the case of the individual's permanent home connection. A migrating employee, either from Ireland to a foreign jurisdiction, or from a foreign jurisdiction to Ireland, on a short to medium term basis would be unlikely to change his domicile in this context.

Double Tax Treaty provisions

Ireland's double tax treaties generally adopt the OECD model and provide that the primary charge to tax on employment income lies with the country of residence, and restricts the charge to that country where the employee is present in the other country for a period not exceeding 183 days, the remuneration is paid by, or on behalf of an employer not resident in that other country and the remuneration is not borne by a permanent establishment which the employer has in that other country. Where the other country is permitted to tax employment income, Ireland is required to give a credit where double taxation would otherwise arise.

Income tax and other contributions

Income tax is charged at two rates. For the tax year 2011, the standard rate is 20% and the higher rate is 41%. For the year 2011, the amounts (in euro) beyond which the higher rate is relevant are as follows:

	(EUR)
Single person	32,800
Married couple (one earner)	41,800
Married couple (two earners)	65,600

A universal social charge is payable on gross income of individuals in addition to income tax. For the year 2011 the following rates apply:

(EUR)	%
First 10,036	2
Next 5,980	4
Remainder	7

Pay related social insurance is payable by individuals aged between 16 and 66 on their income.

Contributions in respect of employed individuals are as follows:

Payable by employer: 10.75% of pay

Payable by employee: 4% of pay

Contributions in respect of self employed individuals are made at 4% of all non employment income, i.e. self employed income and investment and other income.

Payroll deductions

Irish source employment income is subject to Irish payroll tax deductions. Irish source employment income would include employment income paid in Ireland by an Irish employer wherever the employment is exercised, and employment income paid by a foreign employer in respect of employment duties exercised in Ireland.

Foreign source employment income, meaning income paid abroad by a foreign employer in respect of foreign exercise of employment, is not subject to Irish payroll taxes.

An exclusion order can be obtained by an Irish employer from operating Irish payroll tax deductions where an employee is not resident in Ireland and all duties are performed abroad.

Place of exercise of employment

Until 2006, the place of exercise of employment duties was not determinative of the place of source of the remuneration for those duties, so foreign executives could work in Ireland under foreign contracts and foreign payments of remuneration, and only bear Irish tax on amounts remitted out of that foreign remuneration into Ireland. As the remuneration was foreign, Irish payroll taxes did not apply either.

Since 2006, the position is that remuneration for performance of duties in Ireland is regarded as Irish source employment income and will be subject to Irish income tax and to Irish payroll deductions, which apply to any Irish employer or intermediary who pays remuneration on behalf of a foreign employer.

A limited form of remittance taxation continues to be permitted for individuals coming to work in Ireland from a treaty country, for their pre-existing treaty country employer, and as a result, individuals in such circumstances should remain employed and paid by that pre-existing foreign treaty employer. The quantum of remittance qualifying remuneration is the excess derived from the Irish exercise of duties over €100,000 plus 50% of the balance for any year, so is limited to higher paid executives and is of limited actual benefit. Furthermore, the remuneration is fully taxable under the Irish payroll tax system and with the benefit being achieved by year end reclaims.

Split contracts

Split contracts are appropriate to prevent unnecessary Irish tax consequences which would follow from an Irish employer employing and remunerating employees both in respect of their Irish portion of their employment and the foreign portion of their employment. All such remuneration would be Irish source employment income, and would be payable subject to Irish payroll taxes, and would cause unnecessary Irish taxation for an employee who is either resident but not domiciled in Ireland, and hence taxable only on remittances of foreign income, or not resident in Ireland, in respect of the portion referable to the foreign portion of their employment. Splitting the employment into a separate Irish contract with the Irish employer for the Irish portion, and a separate foreign contract with a foreign employer for the foreign portion would achieve the following result for the different categories of Irish tax payer:

1. Irish resident and domiciled employee

   The employee would remain liable to Irish income tax on all employment income, albeit with the benefit of any applicable treaty relief, but the foreign portion would not be subject to Irish payroll taxes. This would be particularly relevant where there might otherwise arise an exposure to payroll deduction on a portion of the remuneration in both Ireland and a foreign country, or at least the need for an administrative application for an exclusion to avoid double deductions.

2. Irish resident but not domiciled employee/Employee not resident in Ireland

   In addition to the avoidance of potential double exposure to payroll taxes mentioned above, the split would ensure that the foreign portion would not be subject to Irish income tax in the hands of an employee who was resident but not domiciled in Ireland, unless he remitted it into Ireland, and would not be subject to Irish income tax at all in the hands of an employee who was not resident in Ireland.

Any use of split contracts will need to be genuine. For example, it would not be appropriate for Irish duties to be indirectly remunerated under a foreign split contract as a means of avoiding Irish payroll taxes, and Irish underlying tax liability for a non resident, or remittance based employee. Where it is difficult to predetermine the amount of split in any given case, the contracts can provide for payment by reference to time actually spent performing duties in Ireland as opposed to performing duties abroad. This could be a daily rate or a weekly rate depending upon the circumstances applicable.

Irish payroll taxes permit an apportionment of remuneration paid by a foreign employer as between the portion referable to exercise by the employee of duties in Ireland, and the remainder. Where this is ascertainable, Irish payroll taxes may be applied only to the portion referable to the Irish exercise of duties. Where it is not ascertainable, this is only permitted where a Revenue direction is obtained on the relevant amount. This apportionment system may in a given case obviate the need for split contracts, provided any foreign payroll taxes applicable to the remuneration can exclude the portion subject to Irish payroll taxes. If this is not possible, a separate Irish employment contract with an Irish employer may be appropriate.

About A & L Good body

A&L Good body is one of Ireland's leading corporate and commercial law firms. We offer breadth and depth across every facet of business law, providing the full range of specialist services including: tax, contract and commercial law; mergers and acquisitions; private equity; employment; EU and competition law; property; environmental; IP/IT; litigation and risk management & dispute resolution. In addition to the main office in Dublin, we also have offices in Belfast, London and New York.

Our dedicated Tax Group advises Irish and international companies on a broad range of corporate transactions, ranging from domestic company acquisitions to the most complex cross-border mergers and reorganisations, investment structures and asset financings, inward and outward investment projects, and executive remuneration.

Italy

The following is a summary of the main general consequences for Italian income tax and labour law purposes in relation to (i) resident employees working abroad and (ii) non-resident employees working in Italy.

Resident employees

Domestic Tax Regime

Under Italian domestic rules, as a general rule employment income received on a worldwide basis by a resident employee is included in the taxable base for individual income tax purposes and subject to the applicable marginal rate (maximum rate 43%).

As an exception to the general rule, employment income in relation to employment actually carried out in a country other than Italy is determined on the basis of certain parameters annually updated by the Ministry of Labour (instead of the employment income actually received) if the following conditions are met: (i) the employment is exercised abroad permanently; (ii) it constitutes the sole object of the employment agreement; and (iii) the employee spends more than 183 days in the foreign country in a 12-month period. Typically, the taxable amount determined on the basis of such parameters is lower than the income actually received by the employee (for instance, the determination of taxable income on the basis of the ministerial parameters does not include the value of fringe benefits). The "permanent employment" requirement is met when the employment is exercised not temporarily, but with a certain degree of permanence.

With regard to the employment agreement, the foreign employment must constitute its sole object and therefore the regime does not apply if the employment agreement provides indeterminately for activities to be performed both in Italy and abroad. In relation to the 183-day rule, it has to be noted that such period does not need to be continuous and includes national holidays, days of rest and sickness.

Tax treaty aspects

The article on employment income included in tax treaties concluded by Italy is generally based on Art. 15 of the OECD Model Tax Convention.

In particular, based on the OECD Model Convention, employment income is taxed only in the State of residence of the employee, unless the employment income is exercised abroad. In such a case, employment income may be taxed in the source State and in the residence State.

However, the OECD Model Convention also provides that, in case of employment exercised abroad, the power to tax is attributed exclusively to the residence State if the following conditions are met: (i) the employee is present in the source State for a period not exceeding in aggregate 183 days in a 12-month period (limited to the days of effective physical presence in the source State); (ii) the remuneration is paid by (or on behalf of) an employer who is not resident of the source State; and (iii) the remuneration is not borne by a permanent establishment of the employer's company located in the source State. If such conditions are not met, the employee may be taxed in the country where the employment is carried out.

With specific reference to Italy, it should be noted that, when a resident of Italy is subject to tax on certain items of income in the other contracting state on the basis of the provisions of an applicable tax treaty, such income is included in the taxable base for Italian income tax purposes and double taxation is avoided through the granting of a tax credit for foreign taxes paid abroad (if any) up to the amount of the corresponding Italian income taxes and provided that the foreign taxes are paid as final taxes.

In the light of the above-mentioned tax regulations, employees sent abroad by an Italian company under a secondment agreement might be eligible to tax exemption provided that the above requirements are met. In addition, secondment agreements are subject to specific labour and social contribution rules as explained below.

Secondment agreements

From a labour law point of view, secondment takes place when an employer makes temporary one or more employees available to another party for the execution of a determined labour activity. This is a mechanism often used for temporary missions outside the employee's country of origin. The secondment is considered legitimate when i) the employer who provides the employees has a productive interest in the secondment (which cannot be only an economical one, for instance solely to ensure the highest possible remuneration of the employee) and ii) the secondment is temporary and non definitive.

Please note that the productive interest must exist for the entire duration of the secondment, otherwise the seconded employee could claim that a labour relationship existed with the user company.

As a matter of fact, secondment can be used between an Italian company and a foreign company either within the context of a services contract to be performed outside the Italian territory or within the context of a group companies, where the employees are seconded to a production unit of the same company or to another subsidiary of the same group. In practice, secondment often takes place between group companies in order to improve the development of all the enterprises of the group.

In both cases, the labour relationship between the seconding company and the seconded employee must continue to exist. In addition, the labour conditions provided by the secondment contract are subject to the Italian applicable laws, regulations and Collective Labour Agreements. For instance, if the secondment implies a change in the duties of the seconded employee (which cannot be, in any case, inferior to the ones already granted to him/her under his/her labour contract) the secondment can be carried out only with his/her consent. If the secondment implies a transfer of the employee to a unit located more than 50 km from the one where the employee is usually working, the secondment can be made only provided that technical, organizational, productive or substitutive reasons exist.

Secondment can also be made on a part-time basis: for instance, the employee could work half time for his employee and half time for the company where he/she is seconded.

Payment of social contributions

Normally, such contributions must be paid in the State in which the labour activity is performed, independently from the citizenship of the employee and/or of the worker. However, many bilateral treaties and EU regulations provide the possibility for the employee, within a certain period of time, to maintain his social coverage in his State of origin. This maximum period varies from 6 to 60 months, depending from the country where the employee is seconded to.

In order to benefit from this possibility, the following requirements must be fulfilled: i) the employment relationship between the seconding employer and the seconded employee must continue to exist during the secondment period; and ii) the seconding employer shall remain responsible for the management and termination of the labour contract as well as the definition of the duties to be performed abroad.

In countries with which no treaty regulates the social contribution payment, the employee might be exposed to double contribution payment duty.

Non-resident employees

Domestic regime

Under Italian domestic rules, non-resident employees are subject to individual income tax (maximum rate 43%) in Italy on the remuneration for employment carried out in Italy.

The employer has to levy withholding tax on employment income paid to non-resident employees.

Tax treaty aspects

As noted, under the tax treaties concluded by Italy, Italy would not be entitled to tax employment income in relation to non-resident employees if the following conditions are met: (i) the employee is present in Italy for a period not exceeding in aggregate 183 days in a 12-month period; (ii) the remuneration is paid by (or on behalf of) an employer who is not resident of Italy; and (iii) the remuneration is not borne by a permanent establishment of the employer's company located in Italy. If one of the conditions mentioned above is not met, Italy is entitled to tax non-resident employees in relation employment income carried out in Italy.

Secondment agreements

The same rules described above for resident employees apply to secondment of non-resident employees. In particular, the labour relationship between the seconding company and the seconded employee must continue to exist. In addition, the labour conditions provided by the secondment contract are subject to the Italian applicable laws, regulations and Collective Labour Agreements which apply to the employees who are carrying out the same duties in the same place where the employee is going to be seconded.

Therefore, the economical treatment and the payment of social security premiums remains the responsibility of the employer who makes the employees available. A reimbursement by the receiving company of the economical treatment is allowed, in particular with respect to the expenses incurred because of the secondment abroad (housing, travel expenses, etc.).

The employer which is seconding his employee is also responsible for the payment of the contributions due for accident at work coverage pursuant to the rates applying to the receiving company. Please note that these payments must be made by the employer to the Italian National Institute for the Insurance of Work Accidents (INAIL).

As far as social contributions are concerned, reference should be made to bilateral treaties or EU regulations in order to ascertain the extent of the payment duty in the country of origin.

Employee Leasing

Please note that leasing of employees is forbidden by Italian legislation unless the manpower supply is made through manpower agencies duly authorized by the Ministry of Labour.

About Pontecorvi Mannaerts & Triboldi

The Italian contribution to the salary split project has been prepared by the Italian civil law firm Pontecorvi Mannaerts & Triboldi and the Italian tax law firm Di Tanno e Associati.

Pontecorvi, Mannaerts & Triboldi is an Italian law firm which offers its clients comprehensive legal representation and advice, primarily in the fields of corporate, commercial and labour law. It is one of the few Italian firms which has a highly developed Italian practice, as well as a sophisticated international practice. In order to respond to the needs of its international clients, its team includes lawyers admitted and trained not only in Italy, but also in the United States, France, the Netherlands and Belgium. Such experience, together with the knowledge of the legal systems, languages and cultures of various nations, makes the firm's lawyers particularly adept at serving foreign clients operating in Italy, including providing advice in their own language.

About Di Tanno e Associati

Di Tanno e Associati is a leading Italian tax law firm, ranking first tier according to primary international publications, which supplies legal services in the area of tax law. The firm, established in 1986 and composed of more than 50 professionals, has become a structure unique in Italy's tax consulting scene, where expertise in fiscal issues is enhanced by skills in company and finance law. In particular, Di Tanno e Associati has, inter alia, developed a long-standing and appreciated practice in the field of international taxation, with a wide network of relations with leading foreign tax law firms.

Israel

Since the early 90's, Israel became famous for its highly developed start up industry. Whether by initial public offerings or by acquisitions made by multinational corporations, Israeli companies increasingly became a leading factor in the global market for emerging technologies.

The most popular exit strategy of Israeli emerging growth companies (or start-ups), is to aim for an acquisition by or merger with, a multinational industry leader, and to maintain the Israeli entity as a local R&D center as a subsidiary (in case of an acquisition) or local branch (in case of a merger). It is common practice in such events to maintain key employees in the newly formed structures, especially executives and researchers. While most researchers remain employed by the Israeli entity, executives may transfer to the foreign parent entity, remain within the Israeli entity, or divide their time between several entities within the group. These situations formed different kind of contribution models and payment methods – some made to properly divide the financial cost of contribution between the different entities in accordance with the benefit such entity gains from the said executive, while others divide the cost based on time spent by the executive in each entity. Most commonly known contribution split models divide different types of contributions between different entities. Such in the case where the executive working for the local R&D center receive financial contribution (as a monthly wages) while options based contribution will be granted by the parent company. Before or after an initial public offering ("IPO") or M&A, Israeli companies may use foreign residents related or unrelated to their foreign parent\subsidiary company as directors, advisors or executives, and partially or entirely bear the cost of contribution related to their operation in Israel. In several events, especially where Israeli companies made IPO's in foreign markets or Israeli holding groups operating worldwide, you may find foreign residents being employed by local entity, while partly contributed by the Israeli parent company.

Salary splits between two or more entities located in different jurisdiction requires careful planning for tax efficiency purposes. Under Israeli Tax Reform of 2003, when Israel shifted from territorial tax regime to personal tax regime, all Israeli residents must pay tax on a personal basis for their worldwide income while under the Israeli Tax Ordinance[16] all foreign residents generating income in Israel have to pay tax in Israel; therefore one must consider the tax consequences in Israel, together with the tax regime where his non-Israeli component of his consideration was generated, the existence or non-existence of Double Tax Treaty between Israel and such jurisdiction, his tax residency, and the particular type of consideration.

Foreign residents generating income in Israel

Israeli entities may also use world known foreign experts as directors, consultants, or

16. Israeli Income Tax Ordinance [New Version] 1961 (the "Ordinance")

researchers. Israeli companies may also appoint foreign residents as directors – this is a common event after an acquisition of an Israeli Start-Up company by a foreign multinational corporation. Following such acquisition, the multinational corporation may keep local management as key employees, or to replace it with its own executives (relocating to Israel or operating from abroad as supervisors over the local management team). These are all good examples of different situations where it is financially justified to split the cost of employment between the local entity and the foreign one. Once such split actually takes place, and a foreign resident receives part of his wages from an Israeli entity, such component paid by the Israeli entity for work made in Israel will be deemed as income generated in Israel, and consequently may be subject to tax in Israel.

The following analysis regarding tax implication of salary splits, so one component of one's consideration is generated in Israel, is based on the assumption that the residency of the subject is foreign (non-Israeli resident), and it is undisputed by the ITA. In such cases, only the component of the income generated by such foreign resident in Israel will be subject to Israeli taxation. However, if the foreign individual or corporation will be deemed as an Israeli resident, its total worldwide income will be subject to Israeli taxation, whether generated in Israel or abroad. When dealing with a person of non-treaty country operating in Israel, his tax residency will be determined in accordance with each country's domestic laws. Obviously, the risk in such case is that both countries will consider such person as its own tax resident and double taxation may be applied. When an Avoidance of Double Taxation Treaty was formed between two countries, such events should be avoided by the tie breaking rules included within the treaty.

Under Israeli domestic laws, an individual is deemed to be resident in Israel, and therefore subject to Israeli tax on his/hers worldwide income if his/hers center of vital life is in Israel. Under the Tax Ordinance's "rule of thumb", one is considered as tax resident of Israel if he/she spend in Israel 183 days (or more) during the given tax year; or 30 days (or more) during the given tax year, and a total of 425 days (or more) during the given tax year and the two previous years. However, the said rule of thumb is a refutable presumption, if one can prove that his center of vital interest is abroad, by showing that the location of the personal affiliations is not in Israel (the Objective Test) and that under the individual's own point of view, he does not consider himself as a resident of Israel (the Subjective Test). A corporation is deemed as an Israeli tax resident company if it was incorporated in Israel and registered with the Israeli Registrar of the Companies or it was incorporated elsewhere, and its management and control is conducted from Israel.

Foreign residents generating income in Israel are subject to normal tax rates applicable to Israeli residents for that certain component of income generated in Israel, unless the country of origin of the foreign resident has a double tax treaty with Israel, in which case, tax rates and obligation will be determined in accordance with such treaty. Under the current government tax policy, tax rates in Israel will gradually decrease until 2016. Tax rates in Israel during 2011 and under the government tax reduction plan applicable to Israeli residents and to that certain component of the income generated in Israel by foreign residents of a non-treaty country are as follows (Table 1):

Tax Year / Taxable income in ILS	2011	2012	2013	2014	2015	2016
0- 55,080	12,000	0	0	12,000	12,000	0
55,081-97,920	4,000	18	720	16,000	16,000	720
97,921-147,000	6,000	24	1,440	22,000	22,000	2,160
147,001-240,000	4,000	26	1,040	26,000	26,000	3,200
240,001-454,680	6,000	32	1,920	32,000	32,000	5,120
Every additional shekel	8,000	36	2,880	40,000	40,000	8,000

In many events, foreign residents operating in Israel through corporate entity. Corporate Tax rates in Israel during 2011 and under the government tax reduction plan are as follows

(Table 2):

Tax Year	Tax Year
2011	0
2012	720
2013	1,440
2014	1,040
2015	1,920
2016	2,880

Such amounts (for individuals and/or companies) will be deducted at source and withheld by the paying Israeli entity.

The type if consideration usually has no tax effect under Israeli law, as long as its paid as employment related consideration i.e, the foreign resident may be paid for his work in cash, options or other assets, and the tax obligation remains; however in case of options grant, the timing of the tax event may very - when granted options under certain terms of an Israeli Tax Authorities ("ITA") approved employees option plan under section 102 of the Ordinance, managed by a trustee in Israel, an employee will be subject to capital gains tax at the rate of 20% rather than income tax or corporate tax under the rates specified in the tables above, and such tax obligation will take effect upon sale of the shares granted following exercise of such options; however, grant of options without such an approved option plan, or grant to independent service providers or consultants under section 3(9) of the Ordinance (unlike grant of options to employees) will be subject to income tax (under individual or corporate tax rate as shown in tables 1 and 2), and tax obligation will become effective upon exercise of options to share.

When a resident of a "treaty country" generate income in Israel, taxation will be determined in accordance with the terms of that particular tax treaty. Usually, tax obligations are determined in accordance with residency rules, and the classification of the income. After tax residency is established (either by determination which was not disputed by either country's tax authorities or by the tie breaking rules), withholding tax will be applied by the opposite country in accordance with the classification of the income as determined by the applicable tax authority in such country (e.g, dividends withholding tax is usually between 5% to 15%, business profits are taxed only in the country of residency unless permanent establishment is used in the treaty country, real estate gains will be tax in the treaty country, etc.).

Israeli residents generating income abroad

As mentioned above, it is common for Israeli executives working for multinational groups with operation in Israel, to receive some form of contribution from two entities within the group – one is the Israeli entity and the other a foreign one. In many cases, the said Israeli individual is employed by an Israeli R&D Center paying his wages as part of the R&D budget, while such individual also entitles to receive options to purchase shares from the foreign parent company, holding the I.P of the group (in cases where the local R&D center provides development services) or where the foreign entity is the target company for IPO. In any event, it is clear that though one can be indifferent regarding the entity paying his cash component of his compensation, options/shares based component will preferably be granted by the "value center" entity (the company owning the I.P or the parent company).

As covered in previous paragraphs, each Israeli resident (individual and/or company) is subject to Israeli tax on his/hers/its worldwide income. The general rule is that one can receive acknowledgement on foreign taxes paid. Therefore, when an Israeli resident is subject to withholding tax on income received abroad, such Israeli resident will also pay tax in Israel for such income, but only the remainder amount to the maximum tax rate he would have paid in Israel, if such income was generated in Israel. When the foreign tax rate is higher than the tax rate in Israel, the full amount will be deductable, and no additional tax will be paid in Israel.

When payment received by an Israeli resident from a resident of treaty country, withholding tax rate may be reduced in accordance with the applicable treaty.

Additional notes

It is important to note that although one can be subject to tax obligations in Israel, whether it is due to the fact that some of his income was generated in Israel or due to the fact that he is deemed as an Israeli resident subject to tax in Israel on his worldwide income, it does not negates the potential tax obligations on the same component of income in other jurisdictions. Such double tax obligation may be mitigated by a double tax treaty, domestic laws acknowledging tax paid to foreign jurisdictions, or classification of income. Either way, tax consultation is recommended in any case where one's income is generated from different jurisdictions.

About Rosenberg, Keren-Polak, Epelman, Advocates

Proactive and responsive, Rosenberg, Keren-Polak, Epelman, Advocates - a boutique international law firm ranked by Legal500 as one of Israel's leading law firms in taxation and venture capital.

Japan

Resident tax liability.

Japan taxes individuals on the basis of residency. Residency is judged based on various object facts such as location of close family members or location of residence.

Permanent resident individuals are taxed on a worldwide income basis. Non-Japanese citizens residing in Japan are presumed to be a permanent resident at the time they have resided in Japan for a cumulative period of five years (measured within a ten year time period). Japanese citizens are presumed to be permanent residents from the moment they reside in Japan.

Non-permanent resident individuals are subject to Japan taxation with regard to Japan source income and non-Japan source income paid or remitted to Japan. Persons who have resided in Japan for less than five years on a cumulative basis (measured within a ten year time period) are treated as non-permanent resident individuals.

Permanent and non-permanent resident individuals are subject to national taxation at graduated rates of tax.

Taxable income (¥)	Marginal rate (%)
Up to 1,950,000	5
1,950,000 - 3,300,000	10
3,300,000 - 6,950,000	20
6,950,000 - 9,000,000	23
9,000,000 -18,000,000	33
Over- 18,000,000	40

In addition, prefectural and municipal income levy is levied at 10%

Non-resident tax liability.

All individuals who are not treated as residents of Japan are considered to be non-residents for income tax purposes. Non-residents are subject to Japanese tax on their Japanese-source income, with such tax generally imposed through withholding taxation imposed at source on a gross basis at the time of payment.

Salary Split

As permanent resident individuals are taxed on its worldwide income, salary split tax planning is challenging. However, a non permanent residents and non-residents are generally taxed only on Japanese source income, there may be an opportunity for salary split tax planning.

Inbound Situation

Japan is entitled to tax the non-resident employee's salary if the employment is exercised in Japan.

Under the tax treaties with Japan, Japan would not generally be entitled to tax employment income in relation to non-resident employees if the following conditions are met:

- The employee is present in Japan for a period not exceeding in aggregate 183 days in a 12-month period;
- The remuneration is paid by, or on behalf of, an employer who is not a resident of Japan; and
- The remuneration is not born by a permanent establishment which the employer has in Japan.

Thus, a tax efficient salary split arrangement may be possible, if the employee is a resident of a country which concludes a tax treaty with Japan and exempts foreign employment income.

Outbound Situation

Permanent resident individuals are taxed on their worldwide income. If a Japan permanent resident individual works outside of Japan and foreign taxes are imposed on their salary, such permanent resident individual can claim a credit for foreign taxes paid, subject to certain foreign tax credit limitation.

Non-permanent resident individuals are generally not taxed on salary earned for the services rendered outside of Japan (unless it is paid or remitted to Japan). Thus, a tax efficient salary split arrangement may be possible by increasing the services rendered outside of Japan.

If a Japanese resident employee who has an employment contract with an employer in Japan, also enters employment contract with an employer in other state which has a tax treaty with Japan and terminates Japan residency, then the employee is no longer subject to Japanese tax if the employee meets the requirements under the tax treaties discussed above. However, as the tax residency status of in individual is based on fact and circumstances, it may be factually difficult for the individual to break tax residency, especially if they are a Japanese citizen.

About Morrison Foerster

Morrison & Foerster is the largest international law firm in Japan, with over 130 Japan and international law qualified legal and and tax experts. The firm was selected as the Japan international law firm of the year by Chambers Asia for 2011. The Morrison & Foerster Japan tax practice is one of the most experienced transactional tax groups in Japan. Formerly the transactional tax group at White & Case, it is distinguished by the complexity and breadth of the cross-border transactional tax matters in which its members (all of whom each have over 20 years of tax practice), the ability to offer coordinated advice on tax matters under Japanese, US and other foreign tax laws, and the capacity to provide integrated tax and legal advice. This service and capability cannot be matched by any of the other law or accountancy firms in Japan. The tax group is highly ranked for the quality of its tax expertise in Japan in major tax publications and leading legal directories. In the transactional area, we have been involved in a wide spectrum of high profile and unique projects.

We advise several Japan multinational companies on foreign merger and acquisition deals, and project finance (mining) transactions. We also advise leading international fund groups with regard to the legal and tax aspects of their real estate, private equity, and leasing investments in Japan and the Asia region and guide major Japan and foreign multinational companies with regard to the Japan tax aspects of corporate reorganizations and real property investments. In addition, we provide assistance with respect to litigation matters, including tax aspects of litigation settlements and litigation involving tax issues. There is no domestic or international transactional tax issue, individual or corporate, that our versatile full service tax group is not equipped to address.

Kenya

Salary splitting is an option that is increasingly being adopted by multinational companies with employees required to work or render services to their employers in more than one country in order to cushion such employees from the implications of double taxation on their salary.

Ordinarily, in practice a salary split arrangement is entered into (i) where an employee who is resident in another country and is employed by a multinational in his country of residence also works for the multinational's office in Kenya (an “inbound” scenario), or (ii) where a Kenyan resident employee employed by a multinational in Kenya also works for the multinational's office in another country (an “outbound” scenario).

In this article, we briefly consider the relevant employment laws, the tax treatment of employment income of resident and non-resident employees, the residency test and the effect of DTAs on salary split arrangements.

Employment and remuneration under the Employment Act, 2007 (the “EA”)

Under the EA, remuneration is defined as consisting of the wages and the benefits provided to the employee. An employee's wages are required to be paid in Kenyan currency (Kenya Shillings (KES)). This would need to be taken into consideration when entering into a contract for employment in Kenya.

In addition to wages, housing allowance is a mandatory benefit. Other benefits would depend on the agreement between the employer and the employee (e.g. car allowance, pension, medical benefits and hardship allowance). Both wages and benefits are taxable income.

The tax treatment of employment income

For purposes of taxation, under the Income Tax Act (Cap 470) (the “ITA”), an amount paid to:

- A person who is or was at the time of employment or when the services were rendered a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or
- A non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment in Kenya of an employer who is not so resident,

shall be deemed to have accrued in or to have been derived from Kenya and therefore subject to tax in Kenya.

Tax rates applicable to the taxable income of individual taxpayers are based on a graduated scale. The lowest bracket on the scale (an annual taxable income of up to KES 121,968 (approximately US$ 1,500) is taxed at 10% and the highest bracket on the scale (an annual taxable income of over KES 466,752 (approximately US$ 5,800) is taxed at 30%. There is an annual personal relief granted of KES 13,944 (approximately US$ 175).

The tax treatment of an employee's income depends on whether the employee is deemed resident or non-resident for tax purposes in a particular fiscal year under the ITA.

The residency test

Employees deemed to be resident in Kenya for purposes of the ITA are taxed on their worldwide employment income. A resident person is taxed on any employment or services rendered by him whether in Kenya or outside Kenya. A non-resident person on the other hand is taxed on any employment with, or services rendered to, an employer who for tax purposes is resident in Kenya. A person is resident in Kenya for purposes of income tax if:

1. He has a permanent home in Kenya and was present in Kenya for any period in a particular year of income under consideration; or
2. He has no permanent home in Kenya but:
   - Was present in Kenya for a period or periods aggregating 183 days or more in that year of income; or
   - Was present in Kenya in that year of income and two preceding years for a period or periods aggregating to 122 days in each year of income.

Conversely, a person is non-resident where he does not satisfy the criteria set out above.

The following points relating to taxation of employment income should be noted:

- A tax deduction equal to one-third of the total gains and profits from employment is granted to a resident non-Kenyan citizen where: (1) the resident non-Kenyan is employed by a non-resident company, (2) is in Kenya solely for the performance of his duties in relation to his employer's regional office and (3) who is absent from Kenya for periods exceeding 123 days in a year, provided that (4) the employer does not obtain a deduction for tax purposes on that employee's salaries and wages. The regional office should be approved by the Commissioner of Domestic Taxes in that respect.
- A resident Kenyan citizen who earns income from another country can enjoy tax credits for taxed charged in the other country on his income earned in the other country. If the resident citizen proves the tax charged and paid in the other country on income earned in the other country to the satisfaction of the Commissioner of Domestic Taxes, a tax credit would be granted and can be set-off by way of credit of the same tax against tax charged in Kenya on such income.

Double Tax Agreements (DTAs)

Currently, Kenya has signed double tax agreements with Canada, Denmark, Germany, India, Norway, Sweden, the United Kingdom and Zambia. A treaty with France has been signed, but is not yet in force, while a treaty with Uganda and Tanzania has been negotiated, but not yet ratified by each of Kenya, Uganda and Tanzania. These double tax treaties follow closely the OECD Model Tax Convention ("OECD Model").

Article 15 of the OECD Model governs the tax treatment of remuneration for employment. Pursuant to Article 15, paragraph 1 of the OECD Model the salary derived by a resident of a contracting state is taxed only in that state unless the employment is exercised in the other contracting state. Pursuant to Article 15, paragraph 2 of the OECD Model the salary derived by a resident of a contracting state in respect of employment exercised in the other contracting state, is taxed only in the country of residence if all the following three conditions are met:

- The employee is present in the other state for a period or periods not exceeding an aggregate of 183 days in any twelve months' period commencing or ending in the fiscal year concerned; and
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state; and
- The remuneration is not borne by a permanent establishment which the employer has in the other state.

Article 4 of the OECD Model provides for the various tests in determining the residency of a person for purposes of double taxation where under local tax laws, a person qualifies as a resident of both contracting states.

The double tax treatment of pensions and annuities varies depending on the respective DTAs.

Salary Split arrangements

By way of illustration, the taxation of employees is discussed below. In order to illustrate the effectiveness of salary splitting, we have assumed that the inbound or outbound employee will be resident in Kenya for tax purposes.

- Inbound scenario

  Where an employee spends such number of days in his home country and in Kenya so as to be resident for tax purposes in both countries in a particular tax year, his income derived from Kenya would be taxed in Kenya and may also be taxable in his home country (depending on the domestic tax laws in his home country), and would therefore suffer double taxation in respect of the income earned in Kenya.

  A salary split arrangement would have significant benefits where there exists a double tax treaty between Kenya and the employee's home country. Under the OECD Model, the employee's income earned in Kenya would be taxable only in Kenya and he would not suffer double taxation in his home country.

- Outbound scenario

  Where an employee who is resident in Kenya for tax purposes derives income from another country, under normal circumstances, his income derived from the other country would be taxed in the other country and would also be taxed in Kenya (as employment income earned in Kenya or outside Kenya is taxable in Kenya). The employee would therefore suffer double taxation in respect of the income earned in the other country.

Salary splitting in such circumstances would not reduce the employee's tax liability, as where there is a DTA between Kenya and the other country, the income earned in the other country would only be taxable in the other country and would not be taxable in Kenya.

One key benefit that could arise from salary splitting where a DTA exists is that where income is taxed on a progressive scale, then depending on the tax scales of the particular country, an employee can make further tax savings because a split salary would mean that more of the employee's income is taxed at a lower tax bracket, unlike a situation where there was no salary split resulting in all of the income being taxed at the higher tax bracket. By way of illustration, in the case of an inbound employee whose home country is the United Kingdom (which has a DTA with Kenya), salary splitting would usefully result in the Kenya income being taxed in Kenya at the rate of 30% and the United Kingdom income being taxed in the United Kingdom at a lower rate of say, 20% instead of a higher rate of say, 40% if the Kenya income was included as part of worldwide income in the United Kingdom.

Conclusion

As noted above, salary splitting can be a tax efficient way of handling employment income where an employee undertakes employment in two countries. However, the advantages of salary splitting can only be realised when there is a DTA between the countries the employee is engaged in. As we mentioned earlier, Kenya has concluded DTAs with only eight (8) countries and this point should be considered when a multinational employer is considering a salary split in relation to Kenya.

About Anjarwalla & Khanna Advocates

A&K is Kenya's largest corporate law firm with a complement of 44 lawyers.

A&K has an outstanding reputation for matters relating to infrastructure projects, corporate and commercial law, banking, capital markets transactions, project financing, privatisation law, public procurement law and energy, property development and conveyancing and intellectual property. A&K is ranked first in Kenya by various legal guides, including Chambers Global, Legal 500 and Euromoney Guide to the World's Leading Project Finance Lawyers.

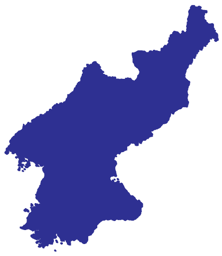
"It might share the top tier, but Anjarwalla & Khanna is close to becoming Kenya's sole leading firm" – 2010 Edition of IFLR 1000

"Anjarwalla & Khanna continues to develop its status as a leading firm, through its involvement in complex commercial transactions and reputation for excellent client service" – Chambers Global 2010.

The firm has offices in both Nairobi and Mombasa and is unique in providing a broad range of legal services in Kenya's main commercial centres.

A&K is a member of ALN. ALN is an organisation whose members currently include ten (10) leading law firms in Eastern and Southern African countries - Botswana, Burundi, Ethiopia, Kenya, Mauritius, Mozambique, Rwanda, Tanzania, Uganda and Zambia.

Korea



Residency In Korea

Korean tax law

Korean tax law defines a resident as an individual (i) who has a domicile in Korea or (ii) who has a residence in Korea for a period of one year or longer. Domicile in Korea is found based on relevant factual circumstances such as having an occupation that would customarily require him to reside in Korea for a year or longer or having the immediate family residing in Korea or substantial assets in Korea. Accordingly, a foreign executive who comes to Korea with the family to take a position in a Korean company (or a Korean subsidiary or branch of a foreign company) would likely constitute a Korean resident for tax purposes.

Also, even if an individual has an occupation outside of Korea and resided outside of Korea for a period over one year, he could still be considered a resident of Korea if he still maintains the family, property and other general living arrangements in Korea.

On the other hand, where an individual takes a job outside of Korea that requires him to stay outside of Korea for one year or longer and does not have the family, property or other general living arrangements in Korea, he would not be considered a resident of Korea for tax purposes. Nonetheless, in an outbound situation, Korean tax law specifically stipulates that a Korean government official stationed outside of Korea or an employee dispatched to an offshore branch or 100% subsidiary of a Korean company is still regarded as Korean resident notwithstanding the foregoing rule.

As discussed in a more detail below, residents are subject to Korean income tax on their worldwide income whether domestic or foreign source and are generally allowed to take a credit for foreign income tax paid. On the other hand, non-residents are subject to income tax only on income derived from sources within Korea, subject to certain special tax benefits for expatriate employees (i.e., employees of a foreign national).

Tax treaties

Korea currently has bilateral tax treaties with 77 countries, which include China, Canada, France, Germany, Japan, the Netherlands, Singapore, the U.S. and U.K.

Many tax treaties concluded by Korea provide a tax exemption for a portion or all of the employment income if certain conditions are satisfied. For instance, the Korea-U.S. tax treaty provides an exemption that employment income of an employee who is a resident of the U.S. is not subject to tax in Korea if all the following conditions are met: (i) the employee stays in Korea less than 183 days during the tax year; (ii) the service is provided by the employee of a U.S. resident; (iii) the earned income is not born by a permanent establishment of a foreign corporation; and (iv) the amount of the income is USD 3,000 or less. Many other tax treaties, including the Netherlands and Germany, provide for a similar exemption with less strict conditions such as: (i) the employee stays in Korea less than 183 days in Korea during the relevant year; (ii) the income is not paid by a Korean resident; and (iii) the earned income is not borne by a permanent establishment of a foreign corporation.

In addition, many tax treaties concluded by Korea contain an article on directors' fees providing that a Contracting State may tax the fees paid by a company which is a resident of that State for services performed by an individual resident of the other Contracting State in his capacity as a director of the company. Under Korean tax law, director compensation paid by a Korean corporation is treated as Korean-source income. Thus, a foreign resident of a country with such a treaty with Korea who serves as director of a Korean corporation would be subject to tax in Korea in respect of the director fee.

Taxation Of Residents

Individuals who are residents of Korea are subject to tax on their worldwide income regardless of source. To avoid double taxation, Korea provides for a foreign tax credit on foreign-source income, which may be credited against Korean income tax liability. However, the amount of credit is limited to the lower of the foreign income taxes paid and the additional tax payable in Korea resulting from the inclusion of the foreign-source income and is subject to certain other restrictions. Unutilized credits may be carried forward for up to five years.

In the case of a resident who has a foreign national, however, if such resident has been a resident for a period of 5 years or less in the aggregate during the past 10-year period (from the last day of the tax year at issue), he is not taxed in Korea on the worldwide income, but only on Korean-source income or, in the case of foreign-source income, only if such income is paid in Korea or remitted to Korea.

Income of individual taxpayers is subject to tax reporting either on a consolidated basis or separately depending on the type. Employment income (wages and salaries), business income, pension income, and "other income"[17] are reported and taxed on a consolidated basis at gradual marginal rates (please see the table below for the details of the gradual marginal tax rates). In the case of financial income (i.e., dividends and interest), income is subject to withholding tax at 15.4% (including surtax) and no additional tax return is required; however, if the aggregate amount of financial income exceeds KRW[18] 40 million for the year, it has to be included in the consolidated tax return and subject to tax at gradual marginal tax rates as well. Capital gains and retirement income are reported and taxed separately at tax rates that vary depending on the types of underlying assets and other factors.

Employment income can be classified into Class A or Class B income depending on the party that pays or bears the burden of such income. Generally speaking, Class A employment income is income received from (or borne by) a domestic corporations or a Korean branch of

17. The term "other income" denotes specifically designated categories of income other than interest, dividends, real estate rental income, business income, wages and salaries, pension income, retirement income, and capital gain
Examples of other income are prize money awards, lottery winnings, royalties for films and tapes, rent from a temporary lease of real estate or personal property and goods.
18. Korean won.

a foreign corporation, whereas Class B employment income is income received from a foreign corporation located outside Korea. The following table sets forth Korea's personal income tax rates.

Gradual Marginal Tax Rates for Consolidated Tax Return of Individual Income

Tax Base	Tax Rates (including surtax)
KRW 12 million or less	6.6%
KRW 12 million - 46 million	16.5%
KRW 46 million - 88 million	26.4%
Over KRW 88 million	38.5%[19]

Class A employment income is subject to the payroll withholding tax on a monthly basis, and the employer must withhold and remit the tax by the 10th days of following month. A taxpayer who receives only Class A employment income is generally not required to file an annual consolidated income tax return (which is due May 31 of the following calendar year). However, even in that case, the employer (as withholding agent) is required to adjust any discrepancy between the withheld tax amount and the final tax amount on an annual basis for the employee by calculating the final tax amount by the end of January of the following calendar year and collect an additional tax from the employee or obtain a refund from the tax office for the employee.

On the other hand, for Class B income, the employer is not required to withhold any Korean tax at the time of the payment; instead, the employee is required to file a tax return and pay income tax on Class B income himself. The employee can elect to pay Class B income taxes through a licensed taxpayers' association, which collects income tax from members each month and pay it to the government by the 10th day of the following month.

Special Expatriate Tax Regime

Several special tax rules apply under Korean tax law, which are intended to attract highly skilled foreign works and foreign executives of multinational companies to Korea. Expatriate workers[20] (excluding day laborers) is taxed at a flat income tax rate of 16.5% (including resident surtax) on their employment income rather than the standard gradual marginal tax rates up to 38.5% (including resident surtax). This special tax concession is applied to employment income received on or before December 31, 2012, which may be further extended by the Korean legislature. However, any deductions, exemptions and credits would not be applicable.

19. Top marginal rate is scheduled to be lowered to 36.3% (including the surtax) for 2012 and onwards.
20. I.e., workers of a foreign national.

Social Security Taxes

There are four types of social security taxes in Korea and are deducted from employees' wages as part of the payroll taxes: (i) national pension, (ii) national health (medical) insurance, (iii) employment (unemployment) insurance, and (iv) worker's compensation (casualty) insurance.

National Pension

Under the national pension system, the employer is required to contribute an amount equal to 4.5% of wages to the national pension fund. Employees are also required to contribute an amount equal 4.5% of their wages. As such, the total contribution rate is 9%, shared by both the employer and the employee. However, in the case of Class B income, the employee would be required to pay the entire 9%.

Employees' contribution to the national pension contributions to the national pension scheme is deductible in calculating the taxable income. The national pension contribution is capped at a monthly salary of KRW 3,680,000; thus, the maximum monthly pension contribution to be paid by an employee is KRW 165,600.

Foreigners working in Korea are required to contribute to the national pension system unless there is a social security agreement between Korea and their home country that provides for an exemption for the individuals remaining under the home country social security system. Currently, Korea has a social security agreement in effect with several countries, including Australia, Belgium, Canada, China, France, Germany, Ireland, Italy, Japan, Netherlands, Poland, the U.S. and the U.K. Foreign participants, except for those withdrawing from the national pension system due to the permanent departure from Korea, cannot get a refund unless their home country has a social security agreement with Korea, or applies the same treatment to Korea on a reciprocal basis. Generally, social security contributions paid to a foreign county are not deductible against Korean income under Korean income tax law.

National Health Insurance

In principle, subscription to the national health insurance program is mandatory for all employees, including foreign expatriates. The applicable premium rate including long term care insurance is 6% of the monthly wages, and employers and employees each share 3% equally with a cap at a monthly salary amount of KRW 65,790,000; however, in the case of Class B income, the employee would be required bear the burden of the entire 6%.

However, by submitting relevant documents, certain foreigners can exempt themselves from the mandatory national health insurance system if they are already covered by insurance from their home country, foreign insurance company, or an employer that provides them with the equal level of medical coverage as prescribed in the Korean National Health Insurance Law.

The employee's contributions to the national health insurance program are deductible in calculating taxable income.

Employment Insurance

The rate of employment insurance is 0.45% and is imposed on the employee. In the case of foreign employees, depending on their visa status, an exemption from the employment insurance may be available.

Worker's Compensation Insurance

Worker's compensation insurance premium is imposed on the employer. The contribution rate is determined by the social security office and is different for each employer, depending on the working environment.

Taxation Of Nonresidents

In principle, non-residents are subject to income tax in Korea only on income derived from sources within Korea. With respect to Korean-source income, they would generally be subject to withholding tax; under Korean tax law, the withholding tax rates vary depending on the type of income (2.2% for business income; lower of 11% of the gross proceeds or 22% of the net gain for capital gains; 22% for most other types of income).

Employment income received by a non-resident would generally be treated as Korean-source if it is paid for employment services provided in Korea; such income would be classified as Class A or Class B income and taxes in the manner discussed above.

About Yulchon, Attorneys At Law

Yulchon is a full-service international law firm headquartered in Seoul, Korea. With over 220 professionals, including more than 50 attorneys licensed to practice outside Korea, Yulchon represents clients from six continents and has helped companies expand around the globe. Our attorneys have diverse experience in all major business-related practice areas, including corporate, finance, tax, litigation and intellectual property.

Yulchon's tax group, which consists of approximately 50 tax specialists, is widely regarded as the best tax practice group in Korea. The tax group advises clients on all aspects of domestic and international taxation, including some of the most sophisticated tax planning, compliance, and dispute resolution matters. Our tax professionals have extensive expertise and experiences in tax litigation and have obtained many favourable tax rulings for our clients in administrative and court proceedings, resulting in satisfactory settlement of tax controversies and procurement of special credits, deductions, and tax holidays. Also, Yulchon's wealth management practice provides sophisticated legal and tax advice to high net-worth individuals and families, and owners of closely held businesses in connection with their worldwide investments.

Luxembourg

General

Luxembourg, well know for the high quality of life, is one of the largest International Financial Centres of the world. Logically, that attracts many people towards the Luxembourg labour market, resulting in more than half of the working population in Luxembourg being foreigners. A large part of these foreigners live just across the borders and commute every day to Luxembourg: les frontaliers.

Nonetheless, Luxembourg is generally considered a high tax jurisdiction for individuals, but several possibilities to lower the effective tax rate can be obtained. A salary split has always been one of these arrangement as well as the recently adopted expatriate tax regime.

Domicile and residency requirements

Luxembourg residents are subject to tax on their worldwide income, whereas Luxembourg

Non-residents are only subject to Luxembourg tax on Luxembourg-source income. An individual is considered a resident of Luxembourg provided that he has his tax domicile or usual abode in Luxembourg. The tax domicile is defined as the permanent place of residence that the individual actually uses and that he intends to maintain. Nationality is irrelevant in order to determine tax residence. A usual abode is deemed to exist after a continuous presence in Luxembourg of six months (that can overlap two calendar years).

Taxable income

Income subject to tax includes professional, employment, investment and real estate income, and capital gains. The categories of income, after deduction of related expenses, are aggregated in order to determine the "net" total income. The "net" income is then reduced by various deductions (inter alia, (i) deductions and allowances for interest payments, for alimony payments paid to a former spouse, for insurance premiums, for qualifying old-age pension plans, for qualifying house-savings plans, for domestic help or care of children, etc. and (ii) exemption for certain capital gains, half-exemption on qualifying dividend income, etc.) so as to determine the taxable income.

Taxable employment income generally includes all benefits in cash or in kind received within the context of an employment activity. The taxable value of benefits in kind is in principle assessed at the fair market value. The law provides for a lump sum valuation method or exemptions for certain benefits in kind such as, inter alia, luncheon vouchers, company cars, free accommodations, interest-free loans granted by the employer, interest subsidies, qualifying stock option plans or qualifying supplementary pension plans. Professional expenses related to the acquisition of employment income are tax deductible, either as a lump sum or based on actual expenses.

Non-resident taxpayers are in principle not entitled to the whole range of deductions available to Luxembourg resident taxpayers. Non-resident individuals taxable in Luxembourg on at least 90 percent of their worldwide professional-source income can opt to be treated as if they were Luxembourg residents. Concerning Belgian residents, the option regime can be applied as soon as a threshold of 50 percent of the professional income is reached. Also special rules apply towards Germany.

Rates

Income tax rates are progressive. They vary from 0 percent up to 39 percent. In addition, a: surcharge for the employment fund is levied at 4 percent or 6 percent depending on the individual status and the level of taxable income of the tax payer; and 0.8 percent "crisis tax" will be levied for the years 2011 and 2012. The combined measures imply that the maximum aggregate tax rate is set at 41.36 percent or 42.14 percent depending on the individual status and the level of taxable income of the tax payer

The effective Luxembourg income tax liability is based on the individual's personal situation (e.g. family status). For the latter purpose, individuals are granted a tax class. Three tax classes have been defined: tax class 2 (the most advantageous), tax class 1.a (intermediate), and tax class 1 (the least advantageous).

Tax classes

No.	Residents	Non-residents
2.	Married taxpayers (even if married or divorced during the calendar year)	Same as residents if not living apart and taxable in Luxembourg on more than 50% of their household's total professional income
	Persons widowed in the three years preceding the tax year	Persons widowed in the three years preceding the tax year
	Divorced or separated individuals in the three years preceding the tax year	Divorced or separated individuals in the three years preceding the tax year
	Civil partners and married same-sex couples who live together for a full tax year and elect to be jointly-taxed	Same as residents if the Luxembourg professional income derived by either partner exceeds 90% of his/her professional income in Luxembourg over the tax year
1a	Widowed persons not included in tax class 2	Widowed persons not included in tax class 2
	Individuals aged at least 65 on January 1	Individuals aged at least 65 on January 1
	Single parents	Married taxpayers not living apart and taxable in Luxembourg on 50% or less of their household's total professional income
1	Taxpayers not included in tax classes 2 or 1.a	Taxpayers not included in tax classes 2 or 1.a

Examples of tax liability (year 2011)

Yearly net taxable income				
	EUR 25,000	EUR 50,000	EUR 100,000	EUR 150,000
Tax class	Tax liability (year 2011)			
2.	EUR 2,031	EUR 10,630	EUR 30,910	EUR 51,190
2.	EUR 345	EUR 9,355	EUR 29,635	EUR 49,915
2.	EUR 204	EUR 4,062	EUR 21,261	EUR 41,541

Social security/national insurance payments

Regular Luxembourg social security contributions consist of an employer's (12.67 percent – 14.69 percent) and an employee's portion (11.05 percent). Both are computed on a yearly gross remuneration capped at EUR 8,787.81 per month from January 1, 2011. Mandatory social security contributions borne by the employee are deductible for Luxembourg income tax purposes.

In addition to the above-mentioned regular social security contributions, employees are subject to a monthly contribution (contribution dependence) assessed on the yearly gross remuneration decreased by EUR 5,272.68 per year for 2011. This contribution amounts to 1.4 percent. Contrary to regular social security contributions, the dependency contribution is assessed on a basis that is not capped and it is not tax deductible.

Expatriate tax regime

A special regime has been adopted in 2011 providing for significant tax savings for high skilled expatriates and their employers.

The most important conditions are that the expatriate needs to be highly skilled (university degree or specialized professional experience) and would need to be seconded by a foreign company part of an international group or recruited from abroad to work temporarily in Luxembourg and be sufficiently remunerated (approx EUR 100,000 per year or more). Also the Luxembourg company must have at least 20 employees on the payroll and the regime only applies for maximum six years.

The benefit of the special regime is that reasonable expenses and allowances (e.g. moving expenses, housing expenses, schooling fees, cost of living allowances) paid by the Luxembourg company to the high skilled expatriate do not constitute employment income for the expatriate and are therewith not taxed in the hands of the expatriate but remain deductible for the Luxembourg company.

Avoidance of Double taxation

When an employee is resident in one state (taxed on worldwide income) but working in another state (taxed on state source income), the risk of double taxation occurs.

Double taxation treaties override domestic law. In order to avoid the double taxation of the individual's income, the tax treaties concluded between Luxembourg and other countries determine who has the right to tax and how to provide for tax relief to avoid double taxation. There are two methods; the tax exemption method and the tax credit method.

With respect to the tax exemption method: The tax treaties which Luxembourg has concluded generally follow the OECD MC. Following the OECD MC, employment income is to be taxed in the working State in case more than 183 days have physically been spent in the working state or the remuneration is paid by a resident company or a permanent establishment in the working state. The residence state would need to avoid double taxation by using the rate progression tax exemption method, ensuring that the rate remains progressive. Under such rate progression method the exempt income is taken into account when calculating the Luxembourg income as to determine the effective progressive tax rate in Luxembourg. Such effective tax rate is than applied to the taxable income in Luxembourg (not including the exempt employment income).

The tax credit method reflects the underlying concept that the resident remains liable to tax in its country of residence on his global income, however credit for tax paid in the source country is given by the residence country against his domestic tax, generally up to the amount of domestic tax that is due in respect of the income concerned.

Typically Luxembourg applies the per country method as to avoid double taxation, but within certain limits a global exemption method is also accepted.

Salary Split

The general concept of a salary split consists of splitting the employee's income by a dual employment contract or a split payroll between two or more different countries in such a way that the tax exemption applied in the country of residence exceeds the actual tax burden in the other countries resulting in an overall lower global effective tax rate. The effect of the progressive income tax rates will be spread over the two countries.

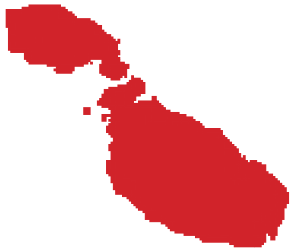
A salary split would thus only work in case of the tax exemption method and not a tax credit system would be used as to avoid double taxation.

The elements for a tax efficient salary split are quite precise and setting it up successfully requires some careful planning. The question if a salary split may be beneficial depends on the relevant facts and circumstances taking into account all tax and non-tax elements (e.g. tax treaty, social security charges, tax compliance, pension schemes, labour law issues, etc) and needs to be determined on a case-by-case basis. The most important elements are that the employee must actually work abroad based on a dual employment contract or split payroll so as to benefit from a salary split and be effectively taxed in both jurisdictions.

About Stibbe

Stibbe was founded 100 years ago in Amsterdam. Stibbe's Luxembourg office opened summer 2010 with Dirk Leer makers as lead partner. Ayzo van Eysinga heads the tax department. Our practice covers all areas of corporate, commercial funds and national and international tax law. Clients are mainly private equity firms, multinationals and investment funds. Stibbe's Luxembourg office is the sixth Stibbe office around the globe. Stibbe is a member of an Alliance comprising UK firm Herbert Smith and German firm Gleiss Lutz.

Malta



Malta's success in the financial services industry as well as its efficient tax regime results in a very large influx of foreign owned companies being established in Malta with the added implication that a large number of non-Maltese residents are now also working for Maltese companies. Malta's geographical location in the middle of the Mediterranean sea and easy access to all European countries as well as many countries in the Middle East allows for easy access for non-Maltese residents to work in Malta and for Maltese resident individuals to work in third-country jurisdictions.

As a result of the internationalisation of today's businesses these cross-border tax situations are becoming very common. Salary splits are also an occurrence that are as a result more widespread. This paper briefly analyses the tax implications for salary splits for Inbound employees i.e. when a non-Maltese resident works in Malta and Outbound employees i.e. when a Maltese resident works outside Malta.

General remarks

Malta taxes individuals and companies on worldwide income only when that person (natural or corporate) is both ordinarily resident and domiciled in Malta. If an individual is only ordinarily resident in Malta or only domiciled[21] in Malta, he would be taxed only on (i) income and capital gains arising in Malta and (ii) income remitted to (received in) Malta. There would be no taxation on any non-Maltese capital gains that are received in Malta.

This reduction of tax base is imperative in the effective low tax that Malta offers for foreign nationals (non-Maltese domiciled) individuals who choose to be based and reside in Malta whilst working in Malta or working in another country.

For purposes of this paper, it is assumed that the employees are not domiciled in Malta. Focus is made on residence. There is no hard-and-fast rule as to when a person becomes ordinarily resident in Malta. The definition is rather broad, referring to an individual that "resides in Malta except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta". The Maltese tax authorities tend to treat as a resident of Malta whoever is physically present in Malta in the aggregate 183 days or more in a tax year.

Employment is not defined in Maltese law, however modern cases equate employment with a contract of service. The distinction between employment (contract of service) and trade or profession (contract for service) is important to determine the location of the source of income. This will be discussed in more detail in scenario A.

Practically all the sixty Double Tax Treaties ("DTTs") concluded by Malta are based on the OECD Model Convention ("OECD MC"). Income from Employment is covered by article 15 of

21. Domicile is a principle of private international law. Maltese Courts follow British rules of private international law (G. Spiteri v E. Soler et, 22.10.1937, Court of Appeal).

the OECD MC. Specifically when more than one country is involved in terms of residence and employment, the departing principle is that salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State are taxable in the Residence state. If the employment is exercised in the other contracting state (the "Work State"), the Work State may also tax the employment income. A reading of article 15.2 OECD MC in the negative concludes that the Work State may only tax the employment income if (i) the employee is present in the Work State for more than 183 days in any 12 months or in any fiscal year; (ii) the remuneration is paid by an employer who is resident in the Work State; or (iii) the remuneration is borne by a permanent establishment which the employer has in the Work State.

Inbound Arrangements - non-Maltese resident working in Malta

Scenario A - employee resident in treaty country

If the employee is resident in a treaty country, under the OECD MC, the Work State (Malta) would be restricted from taxing except if the requirements in article 15.2 of the treaty are met. In principle, such a scenario could result in nil taxation in Malta.

Article 15.2(a) states that the Work State (Malta) is restricted from taxing the employment income if the employee is present in Malta for less than 183 days in any calendar/tax year.

Malta as a Work State would not be restricted from levying tax under the treaty only if the employee is present in Malta for more than 183 days (or alternatively with either the second and third conditions of article 15.2 being met). In such a situation, under domestic law, the individual would then also be considered a resident[22] of Malta and thus taxable on income arising in Malta and/or income received in Malta.

In the scenario that the individual spends over 183 days in Malta and is considered a resident, the determination of "Income Arising in Malta" then becomes relevant. Any income which is not arising in Malta and not remitted to Malta would still not be taxable in Malta for residentnon-domiciled individuals.

The factors normally taken into account to determine whether the income is arising in Malta are:

- place where the work is performed;
- on behalf of whom the work is performed (Maltese company or foreign company);
- where payment comes home to the employee (where is the payment received);
- where the contract of service has been finalised;
- duration and nature of the work;

22. We note that there is no hard and fast 183 day presence rule in Malta. Each case depends on the facts and circumstances. However, generally speaking the tax authorities have in the past considered a 6-month presence on the island as resulting in residence. We do not go into the nuances of Habitual Residence and Ordinary Residence for purposes of this paper.

- any other factor particular to the case in question.

The income arising in Malta or received in Malta by a person resident in Malta would be taxed at a progressive rate between 0% - 35% depending on the amount of income in the tax year. The same income rates as Maltese resident-and-domiciled individuals applies.

For basis year 2010, the applicable rates are:

In the case of a married couple resident in Malta:	In the case of any other individual resident in Malta:
0% for income between €1 and €11,900;	0% for income between €1 and €8,500;
15% for income between €11,901 and €21,200	15% for income between €8,501 and €14,500;
25% for income between €21,201 and €28,700;	25% for income between €14,501 and €19,500;
35% for income above €28,701.	35% for income over €19,501.

Scenario B - employee resident in non-treaty country

If the employee is resident in a non-treaty country, domestic provisions apply without restriction. In this case, special income tax rates and brackets apply. Income sourced (arising) in Malta by non-residents would be liable to tax in Malta at the following rates:

- 10% for entertainment activities exercised in Malta for a period not exceeding fifteen days;
- 0-35% for entertaining activities exercised in Malta for periods exceeding fifteen days;
- 25% where payment is made to any non-resident individual to which the above rates do not apply.

Outbound Arrangements - Maltese resident working outside Malta

The situation of a Maltese resident individual deriving income payable under a contract of employment requiring the performance or work mainly outside Malta is specifically addressed in Maltese law. Such income is deemed to constitute the first part of that individual's total income for the year and is charged to tax at the flat rate of 15% unless the individual opts to have the said income charged to tax at the 0%-35% tax rates (mentioned in 2.1.1) above.

If the non-Maltese sourced income would have suffered tax in the Work State, double tax relief is available in Malta whether the Work State is a treaty country or not. If a double tax treaty is in force, the relief from double taxation would apply under the treaty. Alternatively, if no tax treaty is in force, the Maltese Income Tax Acts provide for Unilateral Relief.

Under the Unilateral Relief, the amount of tax which is payable in the foreign Work State is allowed as a credit against the tax chargeable in Malta in respect of the foreign income. The amount of income tax chargeable in Malta is reduced by the amount of the credit. Any allowable credit must be set-off only against the tax charged on the foreign income, any excess is lost. Depending on the amount of tax suffered in the foreign jurisdiction, this could result in an effective very low or nil taxation on the employment income in Malta.

About PiscoPartners

PiscoPartners is a tax and corporate lawfirm specialised in tailor made cross-border tax planning and all related legal services. Our client base consists of international businesses as well as private clients worldwide.

Our core business is advising clients in innovative and complex transactions, cross-border financing structures, representing them in obtaining tax rulings as well as regulatory proceedings. Typically the members are involved in reorganisations, M&A, joint ventures, structuring for trading companies (oil and other commodities) and IPOs.

All the team members have a solution oriented approach and are keen to provide it in an efficent manner with care for detail and dedication to the issue at hand. The members of the team collectively speak five languages: English, French, Italian, Dutch and Maltese.

Mexico

The number of expatriate employees working in Latin America is increasing due to the large quantity of multinational enterprises doing business in this part of the world. However, employers that contemplate having expatriates working in Mexico should be aware of the strict regulations applicable to the employment relationships in this country and of the employees' rights, which are greater rights than those existing in other countries. Also, both employers and employees should take into account the tax implications of their presence in the country. This article outlines our views concerning the issues arising from retaining expatriates in Mexico.

Basis of the Employment Relationship in Mexico

The first point to note is that Mexico's Federal Labor Law (the “FLL”) applies to any employment in Mexico, regardless of the employer's and the employee's nationality, the place where the salary is to be paid, or where the employment agreement is to be executed; therefore, Expatriates will have the same minimum fringe benefits as any Mexican employee under the FLL, such as vacation, vacation premium, Christmas bonus and profit sharing.

Taxation in Mexico

From a tax perspective, individuals and legal entities are required to pay income tax, either as residents in Mexico on worldwide basis, regardless of the location of the source of wealth; or as foreign residents, but only with respect to the income from sources of wealth located in Mexican territory. Foreign residents are also required to pay the income tax in Mexico if they create a permanent establishment (“PE”) in this country.

The current Income Tax rate for business entities and individuals engaged in business activities and residing in Mexico is 30%, and for salaried employees, there is a progressive tariff that rises easily to the same maximum rate of 30%.

Salaried foreign residents are taxed in Mexico when the service is provided in the country. Income tax is calculated by applying the following rates to the income:

- The first US$10,500.00 roughly obtained in a calendar year is tax exempted;
- The 15% rate applies to income received in a calendar year above US$10,500.00 and up to US$83,300.00 roughly;
- The 30% rate applies to the income received in a calendar year above US$83,300.00 roughly.

The employer paying the salary must also withhold income tax if such employer is a Mexican resident or a foreign resident with a PE in Mexico where the services are provided. Otherwise, the taxpayer will pay the corresponding tax by filing a tax return with authorized offices within fifteen days following the date that the income was obtained.

It is important to keep in mind that although Mexican residents are not required to withhold the income tax from expatriates providing services in the country when they are paid by a foreign resident employer; Mexican residents are jointly and severally liable to the expatriate for up to the amount of the tax incurred by them in Mexico, unless Mexican residents file a notice before the tax authorities fulfilling certain formalities.

Another tax that applies to Mexican residents and PEs is the Single Rate Business Tax ("IETU" an acronym based on the Spanish terms), which applies to business entities and individuals doing business in Mexico with a current tax rate of 17.5%. This tax does not apply to salary.

Individuals may become residents in Mexico by establishing its dwelling in this country or such individuals who also have a dwelling in other country will be considered Mexican residents if the center of vital interest is located in Mexican territory. For such purposes, the center of an individual's vital interest is in Mexican territory, among others, in any of the following cases:

- When the source of wealth of more than 50% of the total income obtained by the individual in a calendar year is in Mexico.
- When the individual's center of professional activities is located in Mexico.

It is important to keep in mind that individuals who are Mexican nationals and support that their new residence for tax purposes is in a country or territory where their income is subject to preferential tax treatment (tax heaven) according to the Income Tax Law, do not lose their status as Mexico residents at least during the three fiscal years following the date they left the country, unless the country where such new residence is located, has entered into a broad agreement for the exchange of tax information with Mexico.

In addition to the domestic rules of residence, Mexico has entered into more than 30 Double Tax Treaties with several countries, based on the standard OECD breaking rules which have to be considered in order to determine the tax residence of individuals in case of dual residence conflicts.

Possible Dual Employment Relationship

It is very important to be aware of the danger of Expatriates being considered as having a dual employment relationship, in other words, being employed by both the Mexican subsidiary and the non-Mexican parent company, either resulting from a secondment type arrangement under which the parent lends an existing employee to the Mexican subsidiary or from the structuring of the payment of salary and benefits so that the Mexican subsidiary's Expatriate employees are also, in whole or in part, paid by the parent. If such a dual employment relationship were found to exist, under Mexican law not only the Mexican subsidiary, but also the parent "employer" would be required to comply with Mexican labor law and give to the Expatriate all the benefits accorded under the employment legal framework, such as social security (which would in turn require registration as an employer by the parent company and payment of social security fees jointly with the Mexican subsidiary), and payment of severance on the Mexican scale, among other benefits. Again, it should be pointed out that employee benefits under Mexican law may not be waived by the Expatriate.

Under this type of arrangements, usually the Mexican subsidiary is required to withhold the income tax on the salary payments made to the expatriate. In addition, the expatriate is required to file tax returns with authorized offices and pay the income tax on salary paid by the foreign parent company, unless the individual remains in Mexican territory less than 183 calendar days, whether consecutive or otherwise, in a twelve-month period; provided that, the salary is paid by a foreign resident that do not have a PE in Mexico or that do have such an PE but provides a service not related to said establishment. If the aforementioned requirements are met, the individual is not required to pay the income tax in Mexico with respect to the salary paid by its foreign parent company.

Also, it should be noted that it is common for Expatriates, upon dismissal, to file a claim against the parent company and the Mexican subsidiary for severance pay under the FLL.

Suggested Approaches

There are several possible approaches to dealing with this issue; however, we recommend one of the following:

Termination of Employment by Parent Company

To limit exposure under the FLL, ideally the parent company should terminate its employment relationship with the Expatriate before he/she begins working in Mexico. Such termination should be carried out and documented according to the requirements of the law applicable to the employment relationship between the parent company and the Expatriate. Then, the Expatriate should enter into a new employment agreement with the Mexican subsidiary covering the full salary and benefits to be paid.

Mirror Payroll

A further alternative is the concept of "Mirror Payroll" in which the following documents will be executed: (1) the parent company and the Mexican subsidiary will enter into a secondment agreement whereby the parent agrees to let the Mexican subsidiary hire the Expatriate for certain period of time and to deposit the salary of the Expatriate in a bank account designated by the Expatriate (as directed by the Mexican subsidiary, since it is the business entity being obligated to pay the salary to the Expatriate), and to continue including him/her in its benefit plans and, (2) the Mexican subsidiary and the Expatriate will enter into an employment agreement setting out the terms of employment according to Mexican legal framework. The parent company charges back to the Mexican subsidiary the amounts paid for salaries and benefits. The Expatriate must be registered as an employee with the Social Security System and all documents for registration must match to the data furnished in the employment agreement.

In this case, the Mexican subsidiary paying the salary to the Expatriate will have to withhold the income tax either by applying the rate available to foreign residents (See B (I) (II) and (III) above), or the regular rate applicable to salaried individuals residing in Mexico.

Split Contract

This option requires the execution of three separate agreements to clearly delineate the relationships among the Expatriate, the Mexican subsidiary, and the parent company: (i) a "disruption contract" between the parent company and the Mexican subsidiary, whereby the parent company allows the Mexican subsidiary to hire the Expatriate, and the Mexican subsidiary assumes the obligation to pay a fee to the parent; (ii) a "sleeping employment contract" between the Expatriate and the parent company to suspend the employment relationship; and (iii) an employment agreement between the Expatriate and the Mexican subsidiary, which should comply with the FLL and clearly establish the date on which the Expatriate will begin to work at the Mexican subsidiary, as the Expatriate's date of employment and his/her total salary and fringe benefits. This limits the benefits paid directly by the Mexican subsidiary.

By virtue of the above strategy, a strong argument can be held that is to say that the FLL is not applicable to the parent company and that the Mexican Conciliation and Arbitration Boards do not have jurisdiction over the employment agreements of the parent-company employer in case an Expatriates files a wrongful dismissal action against the parent company in Mexico.

In this case, the Mexican subsidiary paying the salary to the expatriate is also required to withhold the income tax from the individual as mentioned in point 2 above.

Finally, it is important to consider potential double taxation issues that Expatriates may face as a result of the change of residence. Those issues sometimes are solved by filing notices of change of residence before leaving the country and crediting the income tax paid during the tax year in which the change of residence occur. However, this must be addressed case-by-case depending on the country in question.

About Basham, Ringe y Correa

Basham, Ringe y Correa is a leading full-service Mexican law firm with nearly a century of experience gained in serving clients based on superior ethics, quality and professionalism.

Established in Mexico in 1912, Basham is one of the largest law firms in Latin America. The firm´s clients include prominent international corporations, many of them on the Fortune 500 List, medium-sized companies, financial institutions and individuals.

The firm´s large group of lawyers and support staff are committed to maintaining the highest professional and ethical standards. Constantly exposed to the international legal system, many of Basham´s lawyers and other professionals have completed graduate studies at foreign universities and have worked at companies and law firms abroad.

The specialization and development of each department, the coordination and support among the different practice areas, and the in-depth knowledge of markets and economic trends provides its clients with innovative, complete and timely solutions to their concerns.

The Netherlands

Introduction

Dutch resident employees are in principle subject to Dutch taxation on their world-wide employment income. However, in case employment is performed in another (work) state the employment income may also be subject to taxation in this other state. Non-Dutch residents working in the Netherlands are subject to Dutch taxation on employment income earned for work physically performed in the Netherlands and other Dutch sourced income. However, their income from Dutch employment is often also subject to taxation in their home state. In both cases (international) taxation rules - often based on tax treaties concluded by the Netherlands and many other states - determine in which state the employment income may be taxed. To optimize the taxation of cross-border employment income, salary splits may be an effective tool.

Taxation of employment income

The general rule is that income from employment performed in the Netherlands is in principle subject to Dutch (wage) tax (and social security). The following exception however applies. In case the following three cumulative conditions are met, the employment income is taxable in the home state even though the work is performed in another state:

- The employee does not physically spend more than 183 days in the tax year, the calendar year or any 12-month period beginning or ending in the tax year or calendar year in the work state, and
- The remuneration is not being paid by or on behalf of an employer who is a resident of the work state,
- The remuneration is not being charged to a permanent establishment of the employer in the working state.

General tax aspects of a salary split

In case an employee works in two or more states, it can be tax efficient if the employment income is split between the two working states. Under a salary split arrangement, employees can benefit from lower tax rates, tax exemptions and tax free amounts in both countries. The home state will provide the employee with an exemption for double taxation. As long as this exemption exceeds the taxes actually due in the respective work states, a salary split can be beneficial in terms of taxation. The method on the basis of which the home state provides an exemption for double taxation however is important as well. In case the home state provides the exemption by way of a tax credit, a salary split offers no tax benefit.

Inbound salary split

A salary split can be achieved by concluding separate employment agreements with both respective employers. Alternatively a salary split can be achieved by ensuring that either the employee spends more than 183 days in the Netherlands or that the employee's salary is paid directly or indirectly (e.g. through a cross charge) by an (economic) employer in the Netherlands. In that case the salary split is formalised through a secondment letter.

Depending on whether there is a formal Dutch employer or whether the foreign employer has a (deemed) permanent establishment in the Netherlands or has registered as a wage tax withholding agent, an employee working in the Netherlands is not only subject to Dutch income tax but to Dutch wage tax as well. Taxation than takes place through the Dutch payroll. In case the (seconded) employee is subject to Dutch employee's insurance, the home state employer is legally obliged to register in the Netherlands as a withholding agent for Dutch social security purposes. In that case it is usually practical to arrange for the withholding of both Dutch insurance premiums and wage tax through the Dutch payroll administration. In case none of the above situations apply, the seconded employee is only subject to Dutch income tax and should file a Dutch income tax return annually.

30% allowance ruling

For employees seconded or recruited from abroad a special tax facility is available for employees with a specific expertise scarcely available on the Dutch labour market. Under this tax facility, employees are eligible for a tax free allowance for (extra) costs incurred in relation to their employment or stay outside the home country (so called extra-territorial costs). The tax free allowance amounts to 30% of the taxable salary. The allowance is granted by way of a tax ruling and can be applied for a maximum of 10-years. A reduction of this 10 year period will however apply for any period of prior employment or stay in the Netherlands.

The ruling must be applied for jointly by employer and employee within four months from the start date of the employment in the Netherlands. If the ruling request is filed after this four-month period, the ruling will only be applicable as of the first day of the month following the month in which the application was filed.

Social security

Foreign employees working in the Netherlands may become subject to Dutch social security. The Netherlands distinguish between national insurance ("volksverzekeringen") and employee's insurance ("werknemersverzekeringen").

Foreign employees seconded to the Netherlands are in principle subject to Dutch national insurance in case they are either a resident of the Netherlands or in case they are subject to Dutch wage tax for current employment performed in the Netherlands. National insurance covers old age pension (AOW), widowers pension (ANW), special medical costs (AWBZ) and child benefits (AKW).

Foreign employees are subject to Dutch employee's insurance in case they are under employment with a Dutch employer. Employee's insurance covers disability benefits (WIA), unemployment benefits (WW) and benefits in case of illness (ZW). In addition, an income related premium for the mandatory Dutch health insurance system is levied.

In case, on the basis of local rules, the seconded employee also remains subject to social security in his home state, double social security coverage may occur. Whether or not this can be avoided depends on whether or not a specific social security treaty is applicable between the Netherlands and the employee's home state. Alternatively, the EU regulation on social security may apply.

Outbound salary split

In case of outbound salary splits a Dutch employee becomes subject to taxation in the foreign work state. Whether taxation is levied through a foreign payroll administration or whether the employee has to file a foreign income tax return, depends on the foreign national legislation.

Dutch residents are subject to Dutch taxation on their world wide income. For income from employment in another country, the Netherlands may under circumstances provide an exemption to avoid double taxation. This exemption is calculated as a pro rata part of the taxation over the worldwide income of the employee. The pro rata part corresponds with the percentage of foreign income in relation to the total worldwide income.

However, the Netherlands do not provide such an exemption if the Dutch employee works abroad without a formal employment agreement with the employer in the work state and if this employment does not exceed 60 days in any 12-month period. This may result in double taxation. In case the employee has a formal employment agreement in the work state, the Netherlands will, regardless of the number of work days in the work state, provide an exemption to avoid double taxation.

An outbound salary split may influence the ability of Dutch resident employees to effectuate certain tax deductions which are normally available to employees in case of employment in the Netherlands only. A Dutch resident employee can for example deduct the full mortgage interest for his principal home. In addition there are other tax deductions such as deductions for alimony payments to the former spouse and deductions for life annuity premiums in case of a pension deficit.

30% allowance ruling

The 30% allowance ruling mentioned above also applies to outbound secondments to a limited number of foreign countries (mainly developing countries). However, the benefits of the allowance are effectively only beneficial to employees whose income from the foreign employment remains taxable in the Netherlands. Consequently, the 30% allowance will not result in a tax benefit for the employee in case of a genuine salary split whereby part of the income is taxable in the work state.

Social security

Dutch resident employees seconded abroad in principle remain subject to Dutch social security. In case of outbound secondments compulsory coverage under the work state social security system could also occur. Whether or not this can be avoided depends on whether or not a specific social security treaty is applicable between the Netherlands and the work state. Alternatively, the EU regulation on social security may apply. On the basis of a treaty it may, under conditions, be possible to stay socially insured in the Netherlands. The Netherlands also offer the possibility of voluntary insurance for both national insurance and employee's insurance.

Statutory directors

Under most tax treaties the taxation of the salary of a statutory or supervisory director is allocated to the country where the company has its tax residence, irrespective of where the director performs the activities. Consequently, for tax purposes a salary split is always present in such case. Statutory directors and supervisory directors can in principle also apply for the 30% allowance ruling when subject to Dutch taxation. Statutory directors and supervisory directors are only subject to Dutch national insurance and not to Dutch employee's insurance.

Legal aspects

General Dutch employment law

Under Dutch law there are generally two legal institutes pursuant on which a natural person could work for a company, namely 1) by entering into an employment agreement according to the Dutch Civil Code or 2) entering into a services agreement with a principal.

The scoop of this document focuses on the employment agreement only. The legal statutory requirements of such an agreement are – in short and limitative – 1) payment of salary,

2) working during a certain period of time and 3) a relationship of authority.

Since salary payment is one of the statutory requirements of an employment agreement, one could conclude that under Dutch civil law a salary split could only be achieved by concluding two separate employment agreements. Employee leasing (or a secondment arrangement) is quite common and might result in different salary and tax structures, but as long as there is one employer paying the salary to the employee, the contract will be considered one employment agreement.

Dual employment situations are possible. Either it concerns two (or more) independent employment agreements with different employers or it concerns 2 employment agreements within a company (intra-concern), although the experience is that in this situation intra group secondment arrangements are made.

In the event of 2 formal employment agreements in different countries, two different legal systems will apply to one legal employment relationship. This means that two different systems are applicable with regard to – amongst others – termination of the agreement, suspension, severance payment requirements, holidays, holiday allowance, illness, working hours, conditions of employment resulting from a (compulsory rendered) collective employment agreement etc.

Under Dutch law employees are very well protected. Not only with regulations, such as Working Hours Act, the duty of due care of the employer, pension, continuance of salary payment (although not fully) for 2 years during illness etc; but the Dutch system furthermore provides for a so called preventive system of terminating the employment contract. This means that an employer under no circumstances (except for urgent cause) could terminate the employment contract without a court decision or without the permission of the Employee Insurance Agency (UWV).

Without such decision or permission no successful notice of termination to the employee could be given. Until the court decision has been taken or permission is granted, the employer will have to continue to pay salary and benefits.

Note that employer and employee can terminate the employment agreement any time with mutual consent.

Inbound dual employment

In case separate employment agreements are concluded with both the employer in the home state and the employer in the Netherlands, the following applies.

When entering into an employment with an employer in the Netherlands parties are subject to Dutch law. Even when the employment agreement provides for another law jurisdiction, Dutch law might be applicable since the work is performed in the Netherlands. Furthermore the employee will be released from foreign law systems in the event Dutch law provides more protection for the employee.

The choice of jurisdiction for the Dutch Court can – under Dutch law – not be done before the conflict between employer and employee has arisen, parties will have to make this choice after there is a conflict about the employment. In short: even when a foreign jurisdiction is agreed upon between parties, the Dutch court might be competent.

In the event employee will be stationed from the home state in the Netherlands pursuant to a leasing and/or secondment arrangement, the employee could – even without a "formal" Dutch employment contract according to the Civil Code – still be protected by the Dutch statutory regulations, such as the requirement of a permit to terminate the employment contract. These regulations have a more extensive scope then the employment agreement only.

Outbound dual employment

In case separate employment agreements are concluded with both the employer in the Netherlands and the employer in the work state , the following is relevant.

For splitting up the employment agreement, the employment agreement under Dutch law will have to be terminated, at least partly. Partial termination is however formally not possible, as a result of which the employment agreement has to be terminated in full together with a part time job offer. Without mutual consent the termination route as described above will have to be followed. This will take (from beginning to termination date) at least 2-4 months.

In case of a dual employment it is advisable to agree upon the new contract in which the employees protection under Dutch law will remain valid. To be able to agree on a new contract consent of the employee will be required.

In the event of employee leasing/secondment from the Netherlands to another state the Dutch employment agreement will remain intact. However the foreign rules and regulations might

About Luminous Tax Matters

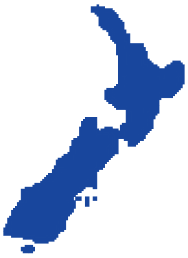
Luminous Tax Matters N.V. is an independent tax law firm providing high-quality tax consultancy and compliance services to domestic companies, (listed) multinationals and (wealthy) private individuals.

Luminous is fully independent of any law or audit firm. This independence guarantees objectivity and prevents conflicts of interest. Luminous provides seamless cross-border tax advice through its informal network of law and tax firms abroad. Through our network we also closely monitor international tax developments.

We offer our clients a personal, proactive approach, high quality advice and short communication lines, always ensuring prompt tailor-made services. Our professional objective is to identify and create optimal tax solutions within the context of our clients' overall business objectives.

Luminous Tax Matters is a member of the Dutch Association of Tax Advisors (NOB), is recommended by The Legal 500 and has been included in the annual publication of the International Tax Review's World Tax since 2010.

New Zealand



A "salary split" is a tax planning opportunity that expatriates working in different countries can sometimes use to split their employment income between the countries in which they work and, where possible, benefit from a lower overall tax liability. Whether a lower overall tax liability can be achieved will depend on the domestic tax rules of the relevant countries, and the operation of the relevant double tax agreement (where applicable).

In general, a "salary split" arrangement is more effective for expatriates resident in a country with a progressive tax rate system, and where that country ignores employment income derived by the expatriate in other countries when determining the applicable tax rate for calculating the tax liability of the expatriate in that country, whether by operation of the domestic laws and/or double tax agreement.

Limited opportunities in New Zealand

New Zealand is not a favourable jurisdiction for salary split arrangements because:

New Zealand residents:

In respect of New Zealand tax resident expatriates, they are required to account for tax in New Zealand on all their employment income, whether derived in New Zealand or overseas. This is because New Zealand taxes its residents on their worldwide income, in common with many other OECD countries.

New Zealand non-residents:

in respect of non-New Zealand tax resident expatriates who come to work in New Zealand, most of the current double tax agreements that New Zealand has with other countries do not allow the other country to ignore income derived in New Zealand, and/or do not allow a lower tax rate to apply by ignoring New Zealand income.

It follows that salary split opportunities are generally limited to non-resident expatriates from countries which only tax residents on employment income derived from services performed in the resident country (mostly relevant to non-OECD countries). However, given New Zealand tax rates are relatively higher than most non-OECD countries, the economic benefit that could be achieved from a salary split arrangement may be limited.

Accordingly, the opportunities for creating an effective salary split arrangement for non-resident expatriates working in New Zealand may be limited.

New Zealand courts have held that a person deriving personal services income in New Zealand cannot, among other things, assign their income for income tax purposes (see Hadlee and Sydney Bridge Nominees Ltd. v. Commissioner of Inland Revenue (1993) 15 NZTC 10,106). This further limits opportunities to structure an employment arrangement to achieve a similar economic outcome.

New Zealand tax residents working overseas

New Zealand tax residents are generally taxed on their worldwide income. It follows that New Zealand tax residents are taxed on any employment income that they derive from services performed in New Zealand and overseas. Under New Zealand domestic legislation, a tax credit is generally allowable for any tax paid overseas to prevent double taxation. If a credit is insufficient to cover New Zealand tax payable in relation to the overseas income (because the overseas income is taxed in New Zealand at a higher rate), further tax would be payable.

This means that where overseas employment income is taxed in the overseas jurisdiction at a lower rate, the New Zealand resident will have to "top up" to the extent that the tax credit arising from overseas tax paid is not sufficient to satisfy the resident's New Zealand tax liability on the overseas income. Accordingly, in most cases, New Zealand tax residents cannot effectively lower their individual tax rate by splitting their employment income between countries.

The above principles which underlie the New Zealand tax system are also reflected in the transitional resident regime which was introduced a couple of years ago. This regime allows New Zealand migrants or certain returning New Zealand residents to be exempt from their foreign sourced income for a 4-year period after they become tax resident in New Zealand. However, the regime specifically excludes employment or service related income from taking advantage of the exemption. This further limits the opportunities to create an effective "salary split" arrangement in New Zealand.

Therefore, at a practical level, in general, no salary split opportunities exist for New Zealand tax residents working in different countries.

For completeness, we note that some New Zealand tax residents may be able to lower their overall tax liability, but the circumstances are very limited. Members of the New Zealand Defence Force, for example, are not taxed on an allowance that has essentially been paid to them for being deployed overseas for a specific mission.

Non-residents of New Zealand for tax purposes working in New Zealand

Like New Zealand tax residents, non-residents of New Zealand for tax purposes may be taxed in their country of residence on their worldwide income.

Some countries which tax their residents on their worldwide income, have double tax agreements that allow them to exempt a tax resident's overseas income from tax in that country and to disregard the overseas income in calculating the tax to be imposed on the rest of the tax resident's income in the country of residence. This allows the resident to be taxed at a lower progressive tax rate in their country of residence, resulting in a lower overall tax liability. This method of preventing double tax is commonly known as "full exemption".

Most of the double tax agreements which New Zealand has do not allow for the "full exemption" method. Accordingly, resident expatriates from a country which tax on worldwide income will generally not be able to lower their overall tax liability under a salary split arrangement. Even if the overseas jurisdiction may allow a credit for New Zealand tax paid, this only means that resident would, at the minimum, be subject to the same overall tax liability, regardless of whether a salary split arrangement has been implemented.

It follows that salary split opportunities are likely to be limited to non-resident expatriates from countries which only tax residents on employment income derived from services performed in the resident country. This is generally only relevant to non-OECD countries.

In this regard, it should be noted that New Zealand tax rates are relatively higher than most non-OECD countries. Non-resident expatriates may therefore be taxed in New Zealand at a higher rate than they would have otherwise been subject to in their country of residence. The economic benefit that could be achieved from a salary split arrangement may be limited. Any salary split with New Zealand in such circumstances should be carefully considered.

The following table sets out individual tax rates that apply in New Zealand from 1 October 2010:

Taxable income	Tax per $1 of taxable income
Up to $14,000	10.5 cents
From $14,001 to $48,000	17.5 cents
From $48,001 to $70,000	30 cents
$70,001 and over	33 cents

About Buddle Findlay

Buddle Findlay is one of New Zealand's leading commercial and public law firms. Buddle Findlay offers specialist industry knowledge and the ability to provide a full range of services to clients including corporate and commercial, employment, dispute resolution and litigation, commercial property and taxation advice. Buddle Findlay has a team of dedicated tax specialists who advise on all aspects of New Zealand direct and indirect taxation including income tax, GST and duties. The team has extensive experience advising on and documenting structures for domestic and international business operations, as well as inbound and outbound investment. The team provides structuring and tax advice to private and public companies, individuals and partnerships at every stage of their development.

Nigeria

Salary Split Arrangements for Expatriate Employees

Split salary arrangements - i.e. an arrangement where the salary of an employee is divided into two components, one payable in Nigeria and the other payable in another country, will arise primarily in the following scenarios:

Inbound:

- when an expatriate (non-Nigerian) employee is seconded by a company based outside Nigeria to perform duties in Nigeria; or
- when an expatriate is employed by a Nigerian registered company

Outbound:

- when a Nigerian employee is seconded by an employer to work outside Nigeria.

1. The relevant legal framework

Most expatriate employees working in Nigeria are employed as professionals/senior employees and, therefore, the terms of their employment are governed primarily by their contracts of employment and Nigerian common law. This category of employees is not regulated by the Labour Act (Chapter L1) Laws of the Federation of Nigeria ("LFN") 2004 (the "Labour Act") which only prescribes minimum terms and conditions for employment of manual and clerical workers. Nigerian law and judicial decisions do not suggest that salary split arrangements are prohibited. Such arrangements, which are governed by the terms of the employment contract, are permissible provided all taxes due to Nigerian taxing entities are paid in full.

Taxation of individuals (including Nigerian and expatriate employees) in Nigeria is governed by the Personal Income Tax Act (Chapter P8) LFN, 2004 ("PITA") which imposes personal income tax, subject to very limited exemptions, on the worldwide income of every taxable person in Nigeria. Resident expatriate employees are, subject to the exception discussed below, liable to Nigerian personal income tax on remuneration payable for duties performed wholly or mainly in Nigeria. No special provision is made for expatriate employees physically working in Nigeria.

• Tax Rates

PITA provides that any salary, wage, fee, allowance, gratuity, compensation, bonus, premium, benefit or other gains, profits and perquisites allowed, given or granted by an employer to an employee, whether in cash or kind, is liable to tax. After deducting any allowances, reliefs and allowable deductions from total emoluments, tax is charged on a progressive scale with the lowest rate being 5% of the first =N=30,000.00 and the top marginal rate of 25% being chargeable on income from =N=160,000.00 and above.

Pension Contributions

Any expatriate employee of a company registered in Nigeria may choose to join the contributory pension scheme established under the Pension Reform Act ("PRA") Chapter P4 LFN 2004, whether or not he has pension arrangements elsewhere. The PRA requires, among other things, that 15% of the monthly remuneration of every employee employed by a private employer having five or more employees, must be paid to a pension fund administrator of the employee's choice. The employer's obligation is to contribute a minimum of 7.5% (although it can be more) of such remuneration and, typically, an equivalent contribution of 7.5% will be made by the employee. If an expatriate employee chooses to join the scheme, the employer is obliged to deduct the relevant sum from his total remuneration irrespective of any agreed 'salary split' arrangement.

2. Inbound Arrangements

PITA's primary focus is on whether or not the gains or profits (i.e. the remuneration) from an expatriate's employment are deemed to be derived from Nigeria. Remuneration under inbound arrangements is deemed to be derived from Nigeria:

- If the duties of the employment are partly or wholly performed in Nigeria, unless:

(i) The duties are performed on behalf of an employer who is in another country;

(ii) The employee is outside Nigeria for a period or periods of 183 days or more in any twelve month period (PITA provides that employees are resident in an assessment year if domiciled in Nigeria for 183 days or more in any twelve month period - the Nigerian employment 'source' rule); and

(iii) The remuneration of the employee is liable to tax in that other country; or

- If the employer is in Nigeria, unless the employment duties are wholly performed and the remuneration paid in another country, except during a temporary visit or leave in Nigeria.

Remuneration for employment duties undertaken in Nigeria is deemed to be derived from Nigeria even if not received in Nigeria; as is remuneration for duties wholly or mainly undertaken in Nigeria during any leave period or temporary absence from duty.

If, therefore, an expatriate employee resides and performs most of his duties in Nigeria then, unless the statutory exceptions listed above apply, the employee will be subject to tax in Nigeria. Where an expatriate employee is resident for a period of 183 days or more in any twelve month period, and performs his duties wholly or mainly in Nigeria, the entire remuneration for that employment will be taxed in Nigeria irrespective of where the remuneration is actually paid - i.e. any 'salary split' arrangement with the employer will be disregarded for tax purposes.Remuneration from any employment will be deemed to be derived from Nigeria only to the extent that those duties are performed in Nigeria.

pay the amount of tax due together with a penalty of 10% of the amount per annum and interest at prevailing commercial rates; and these sums are recoverable from the employer as a debt due to the relevant tax authority.

Deemed Income Assessment

A further practical consideration is the operation of the deemed income assessment basis. PITA empowers a tax authority, where it has reason to believe that the taxable income of an employee (including expatriate employees) is understated and no, or insufficient, tax has been paid, to use its discretion to determine the tax liability of an employee on a best of judgment basis. This permits the relevant tax authority to disregard the actual salary declared by an individual and assess him to tax on a deemed income assessment basis.

In practice, the Nigerian tax authorities have set a minimum amount which an expatriate employee is deemed to earn, depending on the expatriate's nationality and the industry of employment in Nigeria. The major drawback for the employee is that he may well be liable to pay a higher tax than might otherwise be payable even where there is no 'salary split' arrangement.

Where, however, an expatriate is able to prove his actual income with valid documents, the relevant tax authority may accept the expatriate's actual income as the basis of assessment even where this is less than the deemed income assessment. The burden of proving the expatriate employee actual income is on the employer.

Where, however, an expatriate employee performs his duties on behalf of an employer who is not in Nigeria; and provided the employee is not in Nigeria for a period or periods amounting to 183 days or more in any twelve months period and the remuneration is liable to tax in another country, the expatriate employee will be deemed to have derived his income from that other country.

3. Outbound Arrangements

Where the duties of a Nigerian employee employed by a Nigerian domiciled employer are wholly performed outside Nigeria, and the remuneration is also paid outside Nigeria, the tax status of the employee will be dependent on the law of the country where the duties are performed. The Nigerian employer is not required to make deductions for tax and, provided there is a double taxation treaty with the other country, any tax paid on such remuneration in the other country will be credited against any income tax payable in Nigeria.

Where an employee is resident in Nigeria, any remuneration received by such employee will be taxable in Nigeria even if the duties of the employment are mainly performed outside Nigeria.

4. Treaty Considerations

Nigeria currently has double tax treaties with 8 countries. All these treaties include a standard Article providing that where a resident of a contracting State A earns remuneration in respect of employment in the other contracting State B, such remuneration is taxable in State A only if:

- The recipient is present in State B for less than an aggregate of 183 days in a year of assessment;
- The remuneration is paid by, or on behalf of, an employer not a resident of State B; and
- The remuneration is not borne by a permanent establishment or fixed base which the employer has in State B.

5. Practical Considerations

Tax Payments

A Nigerian domiciled employer must be concerned to ensure that any 'salary split' arrangements comply with the provisions of Nigerian law. PITA requires an employer to register with the relevant tax authority for the purpose of deductions and remittances; to deduct tax from the remuneration of its employees (including expatriate employees)under the 'pay as you earn' scheme; and to make remittances to that authority within 10 days after the end of every month.

Penalties

An employer that fails to make deductions, or fails to account for deductions made, is liable to

About Udo Udoma & Belo-Osagie

Udo Udoma and Belo-Osagie ("UUBO") is described in international rankings as one of Nigeria's "Magic Triangle" law firms – a description underscored by one of the highest ratios of internationally recognised partners per firm in Nigeria's legal market. The firm seeks to provide timely, practical, sophisticated and responsive legal solutions based on a philosophy of consistently striving to structure accessible, commercially oriented advice tailored to the needs of each client.

Although a full service firm, UUBO is especially well regarded in its niche specialisations which include private equity; energy, electric power and natural resources; banking, finance and capital markets; corporate restructuring (including mergers and acquisitions); project finance; foreign direct investments; telecommunications; taxation; labour and employment. Together with its litigation, alternative dispute resolution and company secretarial departments UUBO is able to provide pro-active and cost effective legal services throughout Nigeria and, in conjunction with its associate office, also to clients in Ghana.

Philippines

The growth in the economy and the increased foreign investments in the Philippines have brought about not just an increase in employment for the locals, but also a surge in the number of non-resident aliens (NRA) working in the Philippines. Many of these aliens are sent to the Philippines in furtherance of the business of their foreign employers, without having any local base; or are seconded by their foreign employers to local entities.

We discuss briefly the legal implications of these arrangements.

Doing Business

A non-resident foreign corporation who sends any of its employees to the Philippines in furtherance of its business objectives may be deemed as doing business in the Philippines. 'Doing business' is defined in the Foreign Investments Act[23] as any act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization. It includes soliciting orders, service contracts, opening offices, whether called liaison offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for an aggregate period of one hundred eighty (180) days or more; and participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines.[24]

A foreign corporation doing business in the Philippines without a license cannot be permitted to maintain or intervene in any action, suit, or proceeding in any court or administrative agency of the Philippines. It can, however, be sued or be proceeded against before any court or agency in the Philippines.[25]

For tax purposes, a foreign corporation will be considered a non-resident foreign corporation in the absence of convincing proof of residence; and as such, unless there is a tax treaty applicable, it will be taxed in general at the rate of 30% of its gross income from Philippine sources, without any allowable deductions. On the other hand a resident foreign corporation, such as one that is registered to do business in the Philippines, is taxed in general at 30% of taxable income (gross income less allowable deductions) from Philippine sources.

Thus, it is advantageous for foreign corporations with continuous business dealings in the Philippines, and who require their employees to be present in the Philippines for an extended period, to secure a license to do business. A foreign corporation may register a branch, representative office, regional headquarters, or regional operating headquarters, depending

23. Republic Act No. 7042, as amended.

24. Id., § 3(d).

25. Corporation Code of the Philippines, § 133.

on the nature of its activities in the Philippines. In the alternative, it may incorporate a Philippine subsidiary/domestic corporation. Once the local entity is established, the foreign corporation's NRA employees may be seconded to that entity.

Taxation of Seconded Employees

The terms and conditions of the secondment arrangement vary depending on the agreement between the foreign employer, the Philippine entity, and the NRA employee. Thus, the NRA may stay in the Philippines for a few weeks, or longer; or he may travel in-and-out of the Philippines during an agreed period. The tax consequences of the secondment differ based on the source of the income derived by the NRA, and the NRA's length of stay in the Philippines – and this will have to be determined based on the arrangement in each case.

For tax purposes, the NRA may be a considered as either 'engaged' or 'not engaged' in trade or business in the Philippines. The decisive factor for these two classifications is simply the NRA's length of stays in the Philippines.

A NRA who shall come to the Philippines and stay for an aggregate period of more than one hundred eighty (180) days during any calendar year shall be deemed a NRA engaged in trade or business (doing business) within the Philippines.[26] Conversely, a NRA who does not stay in the Philippine for more than the stated period is deemed a NRA not engaged in trade or business (not doing business) within the Philippines. The classification affects the tax base and the tax rate applicable.[27]

If the NRA is doing business in the Philippines, he is taxed in general based on his taxable income at the graduated rates ranging from 5% to 32%; the maximum rate of 32% being applied to annual income over PhP500,000.00. Taxable income means the pertinent items of gross income less the allowable deductions and/or personal and additional exemption. However, while entrepreneurs and professionals are allowed certain deductions from their gross income plus personal and additional exemptions, employees can only avail of personal and additional exemptions. Further, for NRAs doing business in the Philippines, the exemption is subject to their State of residence granting a similar exemption to Filipinos working therein.[28]

On the other hand, if the NRA is deemed not doing business in the Philippines, he is taxed in general at the rate of 25% of gross income, without deductions and/or personal and additional exemption.

Regardless of the length of stay, however, aliens employed by regional or area headquarters or regional operating headquarters of multinational companies, offshore banking units, or foreign contractors or subcontractors engaged in petroleum operations are subject to 15% tax on their gross income.[29]

NRAs, whether or not doing business in the Philippines, are taxable only on their income from

26. The National Internal Revenue Code of the Philippines [NIRC], PD 1158, § 25(A)(1) (1997).
27. Id., § 25(B).
28. Id., § 35(D).
29. Id., § 25(C)(D) & (E).

sources within the Philippines. Compensation for personal services performed in the country is income from Philippine sources[30] regardless of the residence of the payor, of the place in which the contract for services was made, or of the place of payment.[31]

The Philippines has tax treaties with thirty-seven (37) States as of June 2010, under which the NRA may enjoy exemption from income tax under certain conditions. The tax exemption can be availed of subject to the proper submission of an application for tax treaty relief with the Bureau of Internal Revenue's International Tax Affairs Division (ITAD).

Withholding Tax

The local entity to which the NRA is seconded may be deemed the latter's employer under tax regulations. The term 'employer' means any person for whom an individual performs or performed any service, of whatever nature, under an employer-employee relationship.[32] It also means, for withholding tax purposes, any person paying compensation on behalf of a non-resident alien individual, foreign partnership, or foreign corporation.[33]

It is the duty of the local employer to withhold taxes arising from the compensation of the NRA. The obligation to withhold is compulsory, as it makes such withholding agent personally liable for payment of the tax.[34]

Labor Aspect of Inbound Secondment

Any alien seeking admission to the Philippines for employment, and any employer who desires to engage such alien, is required to obtain an employment permit from the Department of Labor. The employment permit may be issued after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.[35]

The indicia used for determining the existence of an employer-employee relationship, commonly referred to as the control-test, include (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the result of the work to be done and to the means and methods by which the work to be done and to the means and methods by which the work is to be accomplished.[36]

As an employee, the NRA shall be entitled to the benefits of an employee, and are likewise subject to all obligations, including compulsory coverage under the Social Security System.

Regular employees are entitled to security of tenure and the employer shall not terminate the services of an employee except for a just cause or when authorized by law. The NRA employee enjoys security of tenure within such period as agreed in the employment contract.

30. Id., § 42(a)(3).
31. Bureau of Internal Revenue Rev. Regs. 2. §155.
32. § 2.78.4, Rev. Regs. No. 02-98.
33. § 2.78.4(B), Rev. Regs. No. 02-98.34.
34. British Traders Insurance Co. Ltd. v. CIR, G.R. L-20501, April 30, 1965.
35. Labor Code of the Philippines, P.D. 442, §40.
36. Zanote v. NLRC, G.R. No. 100665, February 13, 1995.

If the NRA is a 'project employee,' his services are coterminous with the project and the employer has no obligation to pay separation pay upon expiration of the employment,[37] unless the agreement says otherwise. However, if the employee's employment is terminated without just cause or is illegally dismissed, he may then be entitled to separation pay from the local employer.[38]

37. Fernandez v. NLRC, 203 SCRA 460, 1991.

38. Pacific v. Schonfeld, G.R. 166920, February 19, 2007.

About PJS Law

PJS LAW is a full service law firm offering a comprehensive range of legal services in the areas of Corporate and Commercial Law, Banking and Securities, Litigation, Labor, Immigration, Taxation, Intellectual Property and Information Technology, Energy and Special Projects. Established in 1997, PJS LAW has earned a reputation for delivering quality work through the technical competence of its people and the Firm's extensive transactional experience. PJS Law has been consistently cited by the International Financial Law Review (IFLR1000) and the Legal 500 as one of the leading Philippine law firms recommended for Project Finance, Capital Markets, Mergers and Acquisitions, Restructuring and Insolvency, and Energy.

Poland

General

Poland is the largest country of all 10 new member states, which joined the European Union on May 1, 2004, both in terms of territory (312,000 square kilometres, the 9th largest in Europe) and population (currently approx. 38 Million). Already since late 80's and particularly after the EU accession Poland attracted a significant number of foreigners, mostly coming from the OECD member states, to work in Poland, usually in foreign-owned companies, banks and other international institutions.

This article will address the tax position situation of individuals earning income derived from employment pursuant to art. 15 of the OECD Model Convention or from directors' fees. However, this article will not address taxation of income derived from independent personal services or matters related to work permits, employment law or social security matters, including international agreements on social security coverage.

As commonly understood, a salary split takes place if: (i) a foreign resident employee is transferred by his foreign resident employer to a Polish domiciled group company (inbound transfer), or (ii) a Polish resident employee is transferred by his Polish resident employer to a foreign group company (outbound transfer). In both scenarios the employee works in two jurisdictions, i.e. for the employer and the group company. Quite often the employee enters into separate employment contract with the group company or is directly appointed to the management board of the group company. Then such an employee receives a “basic” salary both from the employer and an “additional” salary from the group company or, alternatively, a “basic” salary from the employer and a director's fees from the group company

There is no special employment law or tax law regulation regarding cross-border salary split in Poland, and therefore the taxation of foreign residents deriving income from employment exercised in Poland or Polish residents deriving income from foreign sources is governed by the general rules of Polish tax law and the applicable double taxation treaties. Poland is a full member of OECD since November 22, 1996 and has currently some 85 OECD Model Convention-based double taxation treaties in force.

There are only very few limited foreign exchange restrictions in force and none of them limit the ability to obtain and transfer abroad funds related to employment income or directors' fees.

Tax residency in Poland

Whether an individual qualifies as a resident or as a non-resident under Polish personal income tax law depends on the appropriate link to Poland:

- Individuals having a residence in Poland (defined as persons having a center of vital interests, or having a permanent residence abroad but present in Poland for more than 183 in any tax year [in Poland being a calendar year]) are subject to unlimited income tax liability, in which case such residents are taxable – subject to applicable double taxation treaties – on their worldwide income.

- Other individuals (non-residents) are only subject to limited income tax liability, in which case they are taxable – again, subject to applicable double taxation treaties – only on their Polish-source income.

Unlimited personal income tax liability of individuals in Poland

Residents are subject to personal income tax in Poland on their worldwide income, which includes income from employment wherever such employment is exercised.

Polish personal income tax is levied according to progressive tax rates of up to 32%.

In general the personal income tax is calculated as follows:

Taxable Income in PLN*	Personal Income Tax in PLN
up to and including 85,528	18% less 556.02
over 85,528	14,839.02 + 32% of excess over 85,528

* The current exchange rate is approx. 1 EUR = 4 PLN

The tax pre-payments must be calculated on an ongoing basis and withheld by the employer from each payment.

When calculating the personal income tax, certain expenses related to the income (such as mandatory social security contributions, including pension funds contributions, and mandatory health care contributions) are deducted from the tax basis or, respectively, tax. Also, in case of an employment income and in case of sole-earners with dependent children certain amounts may be deducted from the resulting tax as a child allowance. As a general rule, the taxpayers are obliged to prepare and file an annual tax return by the end of April of the consecutive tax (i.e. calendar) year. A simplified procedure is available to such employees who do not have other taxable income besides employment income and request the tax return be prepared and filed by the employer.

Limited personal income tax liability of individuals in Poland

Non-residents are subject to Polish personal income tax only on Polish-source income. As a result, in case of employment income, such income is subject to tax only if such employment is exercised in Poland. If salary is paid by the Polish employer i.e. Polish domiciled group company, personal income tax is levied by way of withholding. If salary is paid by a foreign employer, personal income tax is levied by way of self-assessment and respective monthly tax pre-payments must be made and monthly reports filed by the respective employee.

With respect to employment income, the applicable tax rates are the same as for residents. However, with respect to certain categories of personal income, other than employment, including inter alia, directors' fees paid out by the Polish domiciled group company, a flat rate of 20% applies. Such income is not subject to mandatory social security contributions, including pension funds contributions, and mandatory health care contributions, however, there are no deductions from the tax base, so the tax is levied on gross income. With respect to such income personal income tax is levied by way of withholding.

Polish double taxation treaties

Most of some 85 double taxation treaties concluded by Poland to-date in general follow the OECD Model Convention. Following Article 23A of the OECD Model Convention, most of the Polish double taxation treaties use the exemption with progression method in relation to employment income, thus exempting income obtained and subjected to income tax in the other state from income tax in the state of residence, i.e. Poland, but taking such foreign income into consideration when assessing tax on the other income, taxable in Poland. Currently only a few Polish double taxation treaties, including, inter alia, the ones with Australia, Belgium, Denmark, Japan, Korea, Malaysia, The Netherlands, Russia and the United States, use the ordinary tax credit method for avoidance of double taxation for Polish residents. The ordinary tax credit method is also applied by Poland in cases where there is no double taxation treaty in force.

Practical considerations

Due to the fact that the tax rate applicable to directors' fees is only 20% flat and that directors' fees are not subject to mandatory social security contributions, including pension funds contributions, and mandatory health care contributions, the popular salary-split scheme in Poland involves a combination of (i) an employment income from foreign resident employer – subject to tax in Poland and in the foreign residence country and (ii) a director's fee payable in Poland by a Polish domiciled group company – also subject to tax in Poland and in the foreign residence country, but exposed to a lower tax rate and not subject to the aforementioned mandatory contributions.

It is also worth mentioning that due to a combination of a very favorable current double taxation treaty with Cyprus, and a generous taxation rules in force in Cyprus, a directors' fees-based scheme is often applied, under which directors' fees paid by a Cyprus company to a Polish director, spending only a limited time in Cyprus, are fully exempt from personal income tax in Poland, while exposed to taxation in Cyprus only with respect to time effectively spent in Cyprus.

About White & Case LLP

White & Case LLP is a leading global law firm with 37 offices in 25 countries, with 2,100 lawyers worldwide. White & Case was among the first US-based law firms to establish a truly global presence, working with the world's most established and respected companies, including 75 percent of the Global Fortune 100 and 25 percent of the Fortune 500.

The Warsaw Office of White & Case has been active in Poland since 1991. As a part of White & Case LLP, with 85 lawyers, it is one of the leading international law firms in Warsaw, providing a full scope of legal services, offering comprehensive support for all business matters, including transactions, disputes and tax, as well as corporate law.

The Tax Practice of White & Case in Poland is consistently ranked as "Leading" (Tier 1) by Chambers Global, European Legal 500, as well as by numerous Polish law firms' rankings.

Portugal

General remarks

- Portugal is a member of both the European Union and the OECD and disposes of a vast network of double tax treaties (hereinafter DTT)[39/40] , generally based on the OECD model convention.

- Portuguese marginal tax rates on work income are in line with other European countries (up to 46.5% on income over € 153.300, 00) and are reasonably high compared with most non European states, which, theoretically, makes it possible for salary splits by which a part of the salary is paid abroad to represent a significant tax saving.

- On the other hand, Portugal is part of the Euro zone, which rules make capital repatriation (especially amongst European countries) effortless.

- A salary split system may be implemented in Portugal either in situations where a single employment contract exists or when the employee is simultaneously hired by two different companies (national or foreign). However, two essential points must be assured: the overall amount of the wage paid must be, at least, equal to the minimum wage (€ 485,00 for 2011) and all payments made must be subject to social security contributions.

- A salary split plan raises, essentially, two problems: the need to justify the payments and the difficulty in deducting them, and the fulfilment of the legal foreseen formalities to assure the payment of social security contributions.

39. Portugal concluded DTTs with Algeria (in force since 2006); Austria (in force since 1972); Barbados (still not in force); Belgium (in force since 1971, revised in 2001); Brazil (in force since 2001); Bulgaria (in force since 1996); Canada (in force since 2001); Cape Verde (in force since 2001); Chile (in force since 2008); China (in force since 2000); Colombia (still not in force); Cuba (in force since 2005); Czech Republic (in force since 1997); Denmark (in force since 2003); Emirates (still not in force); Estonia (in force since 2005); Finland (in force since 2005); France (in force since 1972); Germany (in force since 1982); Greece (in force since 2003); Guinea-Bissau (still not in force); Hong Kong (still not in force); Hungary (in force since 2000); Iceland (in force since 2003); India (in force since 2000); Indonesia (in force since 2007); Ireland (in force since 1994, revised in 2006); Israel (in force since 2008); Italy (in force since 1983); the Netherlands (in force since 2000); Slovakia (in force since 2005); Slovenia (in force since 2005); Spain (in force since 1995); Kuwait (in force since 2011); Latvia (in force since 2003); Lithuania (in force since 2003); Luxembourg (in force since 2000); Macau (in force since 1999); Malta (in force since 2003); Mexico (in force since 2001); Moldova (in force since 2010); Morocco (in force since 2000); Mozambique (in force since 1994); Norway (in force since 1971); Pakistan (in force since 2007); Panama (still not in force); Poland (in force since 1998); Romania (in force since 1999); Russia (in force since 2003); San Marino (still not in force); Singapore (in force since 2001); South Africa (in force since 2008); South Korea (in force since 1997); Sweden (in force since 2000); Switzerland (in force since 1975); Tunisia (in force since 2000); Turkey (in force since 2006); Ukraine (in force since 2003); Uruguay (still not in force); USA (in force since 1996); UK (in force since 1969); and Venezuela (in force since 1998).

40. The full text of these DTTs can be found in the official tax authorities' website: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/.

Inbound

General rules (internal regime):

- Portuguese residents are, in principle, taxed on their worldwide income.
- A physical person qualifies as a resident if (i) he or she spends at least 183 days a year in Portuguese territory; (ii) he or she maintains a permanent home available in Portugal intended to be used as a residence; (iii) he or she is a crew member of an aircraft or a ship at service of a Portuguese entity; or (iv) he or she works abroad as a public commissioner.
- Non residents will be taxed only on income obtained in Portugal, including on the remuneration of work provided in Portuguese territory.
- Provisions determining the taxable amount concerning wages and other work remunerations are reasonably broad. Also, income obtained by independent workers is either taxed under specific rules or considered work income.
- Portuguese law foresees the possibility of having a dual employment relationship, either with national or foreign companies, provided that both companies are inserted in a group relationship. In this type of relationship provisions allow the split of the salary by both employers, being each one able to justify the payments made and to deduct them as well to assure the fulfilment of their social security obligations.
- When in presence of a single employment relationship, a salary split is also possible, since labour laws do not forbid a third party, either Portuguese or foreign to fulfil the employers obligations, namely in what concerns salaries. As a result, though, it may be difficult to justify these payments and to deduct them for tax purposes of the employer, as well as to assure the payment of the due social security contributions in each country.
- Also, employer and employee may agree on the payment of salaries abroad, either in Euro or in other currencies. Nonetheless, if these salaries concern work provided in Portugal, the employee will be taxed under the general rules described above (worldwide income).
- When implementing a split salary plan it is necessary to take into consideration that, if the work is rendered within Portuguese territory, Portuguese labour provisions will apply, being the most important the one's related with the determination of a minimum wage (€ 485,00 for 2011), the establishment of a maximum period of working hours, as well as the regulations regarding safety in the work place and security in the employment relationship.

DTT regimes:

- Portuguese DTT's regimes usually follow the OECD model convention. Therefore, under article 15 of most of these conventions, work income may be generally taxed by the state in which the work is provided (work state), except in those cases where (i) the recipient is present in the work state for less than 183 days a year; (ii) the employer is not a resident of the work state; and (iii) the remuneration is not borne by a permanent establishment which the employer has in the work state.

- Director's fees, artists and sportsmen, pensions, annuities, government service, alimony and child support and trainees salaries usually have specific rules applicable.

Special internal regime applicable to incoming new residents

- In 2010, a special regime was introduced in Portugal, reducing the tax rate to 20% on the professional income (and partially on other classes of income) to physical persons that have not been residents over the last 5 years, and whose professional activity consists in a high value added one, as qualified by a government ruling.[41]

  This special regime makes it possible for either foreign or non resident Portuguese workers to benefit from a reduced tax rate for a period of 10 years even if they do not spend 183 days a year in Portuguese territory. Though it is necessary to become a resident in order to benefit from the special regime, any of the residence criteria stated above will make it possible for them to be qualified for this purpose.

Social security rules

- In principle, a physical person working in Portugal, either as a common immigrant or as a displaced worker, working for a foreign employer, is subject to the Portuguese social security regime, since the relevant element to determine the applicable law is the place where the work is rendered. Nonetheless, some exceptions are to be considered.
- Within the European Union, the harmonization and coordination of social security regulations is provided by EU law. Generally, a European worker is still subject to the Portuguese regime while working in Portugal. However, in case of a displacement that does not last more than 24 months, the residence state rules will apply. International social security treaties are also to be considered,[42] and it must be pointed out that the majority of these treaties establish similar rules to the one's in force within the EU.

Outbound

- As stated above, in the absence of a DTT, Portuguese residents shall be taxed on their worldwide income. Non-residents, on the other hand, are only taxed on the income obtained in Portugal.
- Considering article 15 of the OECD model convention, on which most Portuguese DTTs are based, and, as referred, residents in Portugal working abroad will be taxed in Portugal, except in those cases where the (i) recipient is present in the work state for less than 183 days a year; (ii) the employer is not a resident of the work state; and (iii) the remuneration is not borne by a permanent establishment which the employer has in the work state.

41. Currently, this ruling qualifies the following professionals: Architects; Engineers; Geologists; Singers; Sculptures; Musicians; Painters; Tax Consultants; Dentists; Physicists; College Professors; Psychologists; Archaeologists; Biologists; Computer Programmers; News Agents; Scientific Researchers; Designers; Investors; Executive Administrators; and other Business Managers.
42. Portugal concluded social security agreements with Andorra, Argentina, Australia, Brazil, Cape Verde, Canada, Chile, Morocco, Channel Islands, Tunisia, Uruguay, USA and Venezuela.

About Sérvulo & Associados

Sérvulo & Associados is a mid-sized legal firm that has developed a highly specialised project within the field of advocacy: we cover strategically significant business-related areas; we offer premium quality legal services; we are professionally managed and guided by merit-based policies.

This strategy has driven Sérvulo to a leading position and brought a significant degree of recognition to a number of our individual lawyers, on both national and international stages.

Singapore

Background

This article provides an overview of Singapore's tax framework concerning mobile executives (the "Executive") travelling into and out of Singapore for work, where the Executive's compensation may be split and taxed in more than one country ("salary splits").

Singapore generally imposes tax on a territorial basis – tax will be imposed when the employment income has a Singapore source (i.e. work done in Singapore). The default position is the Executive who works in Singapore will be taxed on income from the Executive's period of work in Singapore. Taxable income in Singapore includes salary, commission, bonus, allowance (accommodation, transportation, etc.) and the value of benefits-in-kind (e.g. share options) provided by an employer to the Executive.

Resident and Non-Resident Tax Rates

The extent of tax liability depends on whether the Executive is a tax resident or non-resident. A foreigner (i.e. non-Singapore citizen or Permanent Resident) who has stayed or worked in Singapore for less than 183 days in the year preceding the year of assessment is a non-resident (while one that has worked for 183 days or more is a tax resident). There are also two-year and three-year administrative concessions available where the Executive will be regarded as a tax resident if certain criteria are fulfilled. Tax residents are taxed progressively from 0% to 20% of their income, according to the table below (valid from the 2012 tax assessment until further notice):

Chargeable Income (S$)	Tax Rate (%)	Gross Tax Payable (S$)
First $20,000	-	0
Next $10,000	2	200
First $30,000	0	200
Next $10,000	3.5%	350
First $40,000	0	550
Next $40,000	7%	2,800
First $80,000	-	3,350
Next $40,000	11.5%	4,600
First $120,000	-	7,950
Next $40,000	15%	6,000
First $160,000	-	13,950
Next $40,000	17%	6,800
First $200,000	-	20,750
Next $120,000	18%	21,600
First $320,000	-	42,350
Above $320,000	20%	-

(Collectively referred to as "Resident Tax Rates")

The ARS allows a time apportionment of employment income for the Executive who is (1) based in Singapore for geographical convenience; (2) required to travel outside Singapore in the course of duties; and (3) paid his or her remuneration by the foreign (non-resident) employer (with such remuneration not being charged to the accounts of a permanent establishment in Singapore).

Under the ARS, the qualifying Executive's taxable income for the relevant year of assessment is reduced pro-rata based on the duration of the Executive's time outside Singapore during the calendar year, so that the Executive pays tax in Singapore only on the reduced income for the time actually spent working in Singapore (according to the applicable Non-Resident Tax Rates). This excludes benefits-in-kind.

A non-resident Executive working for a non-resident employer in Singapore may also qualify for Singapore's Not Ordinarily Resident ("NOR") Scheme (explained below).

Non-Resident Executive working for Resident Employer in Singapore

A non-resident Executive working for a resident employer is again subject to the Non-Resident Tax Rates above and the provisions of any applicable DTA.

If a non-resident Executive has to work outside Singapore for periods of time under his Singapore employment (whether for a resident or non-resident employer), the Executive may be eligible to pay less Singapore tax under Singapore's Not Ordinarily Resident ("NOR") Scheme (which is similar to the ARS above).

NOR status is granted to an employee who fulfills the following criteria: The employee must (1) be a tax resident for that year of assessment; and (2) have been non-resident for three consecutive assessment years immediately before that year. Benefits under the NOR Scheme apply for five consecutive assessment years, starting from the year in which the employee first meets the criteria, and may be reapplied for subsequently.

An Executive qualifying for the NOR Scheme will not be subject to Singapore tax on the portion of employment income (including benefits in kind) corresponding to the number of days spent outside Singapore for business reasons pursuant to his Singapore employment. This is provided (a) the Executive spends at least 90 days outside Singapore for business reasons; and (b) has a total Singapore-sourced employment income of at least S$160,000 in that year. The Executive will in any event still be subject to a minimum floor rate tax of 10% of his total employment income though. Director's fees and any amount of income tax payable in Singapore that is borne by the employer are also not apportionable.

A qualifying Executive will also be able to enjoy tax exemption on contributions made by his employer to non-mandatory overseas pension funds or social security schemes (which would otherwise be taxable), provided that the employer only claims a tax deduction on contributions made to non-mandatory overseas contribution schemes in excess of a cap. This cap is computed based on Singapore's Central Provident Fund ("CPF") capping rules, and applies as if the employer had made the contribution to the CPF for a Singapore citizen as required under the Singapore CPF Act. Currently, an employer may contribute up to a maximum amount of S$697.50 per month to the CPF (depending on the age and monthly salary of the employee).

Non-residents who work in Singapore for 60 days or less in a calendar year are tax-exempt[43]. Non-residents who work in Singapore between 61 to 182 days are taxed at a fixed rate of 15% or the applicable Resident Tax Rate (whichever is higher), and are not eligible to claim tax relief (e.g. for charitable contributions). Director fees, consultant fees and all other incomes besides employment income (e.g. on share options schemes) are taxed at 20% (collectively referred to as "Non-Resident Tax Rates").

Tax Treaties

Singapore has entered into double taxation tax treaties with various other countries, and endorses the Organisation for Economic Co-operation and Development ("OECD") Standard. To date, Singapore has comprehensive Avoidance of Double Taxation Agreements ("DTAs") with 64 countries.[44] Under these DTAs, Singapore tax residents (and those of a DTA partner) can claim relief from double-taxation. Although specific terms vary across different DTAs, the taxing rights of each country for different types of income are delineated in the respective DTAs, and they have provisions regarding the provision of tax credits or exemptions to avoid double-taxation in Singapore and the respective DTA partners. Singapore law provides for the ordinary credit method to avoid double taxation for Singapore tax residents. While credit is given for foreign tax paid against any Singapore tax payable on the same income, if the foreign tax paid is higher than the Singapore tax, complete relief for the foreign tax will not be available, as the extent of credit is restricted to the lower Singapore tax payable on the same income. The credit method therefore differs from the exemption method practiced in other countries.

Under Singapore's DTAs, the employment income source is defined as where the employment is exercised (carried out). In many DTAs, where the duration of stay or work in a source country is short, exemption of tax will be granted by the source country if (a) the recipient is present in the source country for only a certain period (which varies across DTAs); (b) the services are rendered for an employer who is a resident of the recipient's country of tax residence; and (c) the remuneration is not borne by a permanent establishment (fixed base) which the employer has in the source country. A "permanent establishment" means a fixed place of business, which includes a place of management, branch, etc.

Against this background, four broad employer-employee relationships and their accompanying tax considerations are considered below.

Non-resident Executive working for Non-resident Employer in Singapore

A non-resident Executive posted by a non-resident employer to work in Singapore will generally be taxed in Singapore on income earned for the period the Executive works in Singapore (subject to the Non-Resident Tax Rates). This also applies where the non-resident employer sends the non-resident Executive to Singapore for training, or for meetings.

If the non-resident Executive is required to perform duties for a non-resident employer that are regional in nature requiring frequent and extended periods of work outside Singapore, the Executive may qualify for tax savings in Singapore on employment income earned during time spent outside Singapore, under Singapore's Area Representative Scheme (the "ARS").

43. Different considerations apply for non-resident directors, professionals and public entertainers which are not covered in this article.

Non-Resident Executive working for Resident Employer outside Singapore

A non-resident Executive in this category will be taxed at the Non-Resident Tax Rate unless the Executive is eligible for benefits under the NOR Scheme (if he becomes a resident for a particular year of assessment). Also, all foreign-sourced (as opposed to Singapore sourced) income which is received in Singapore after 2003 is generally tax-exempt. This includes overseas income paid into a Singapore bank account. However, tax would still be payable on the overseas income if: (a) the overseas income is received through partnerships in Singapore; (b) the overseas employment is incidental to the Executive's Singapore employment; (c) the overseas income is for services rendered in Singapore; (d) the Executive is employed outside Singapore on behalf of the Government of Singapore.

Resident Executive working for Employer outside Singapore

For resident Executives having to work outside Singapore, they may also qualify for the ARS or the NOR Scheme (as the case may be) and enjoy time apportionment on Singapore sourced employment income.

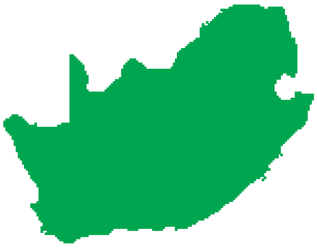
Conclusion

Given that Singapore has a lower personal tax rate compared to many other countries, depending on the relevant laws of his country of tax residence and the relevant DTA (if any), there are often tax advantages for an Executive to have his salary and employment contract(s) structured so that more employment income is sourced (and therefore taxed) in Singapore.

About TSMP Law Corporation

TSMP Law Corporation is a commercial law practice, specialising in dispute resolution and corporate transactions. Founded in 1998 by partners from some of the largest and most established law firms in Singapore, the law corporation focuses on traditional values of providing trusted and effective legal solutions in today's world where timely responsiveness is crucial. A medium-sized law corporation with approximately 40 fee earners, TSMP consistently punches above its weight in its principal areas of specialisation, as demonstrated by its rankings in legal publications.

South Africa



This report considers the South African income tax implications of foreign nationals (or non-residents) working in South Africa and nationals of South Africa (or residents) working abroad.

Tax residency

In South Africa, taxation is based on residence. South Africa taxes the world-wide income of South African tax residents, and the South African sourced income of non-tax residents. A natural person will be considered to be tax resident in South Africa if he is either “ordinarily resident” here, or if he qualifies as a resident in terms of the so-called “physical presence test”.

Ordinary residence

The Income Tax Act 58 of 1962 ("Act") does not define “ordinarily resident” and therefore the interpretation given by the South African courts must be followed. The courts have interpreted the concept to mean the country to which a person would naturally and as a matter of course return from his wanderings. It might therefore be called a person's usual or principal residence and it would be described more aptly, in comparison to other countries, as the person's “real home”.

Physical presence

Where an individual has not been “ordinarily resident” in South Africa for any part of a particular year of assessment, the individual may still be considered to be tax resident in South Africa if he is present in South Africa for the following time periods:

- More than 91 days in the relevant tax year (the South African tax year runs from 1 March to the last day of February of the following year);
- More than 91 days in each of the five preceding tax years; and
- More than 915 days in total during the five preceding tax years.

Therefore, an individual who is not ordinarily resident in South Africa will only become tax resident in South Africa in the sixth tax year in terms of the physical presence test.

An individual who becomes tax resident in terms of the physical presence test will no longer be considered to be tax resident in South Africa from the date of his departure from South Africa if he spends a continuous period of 330 full days outside South Africa.

Furthermore, if an individual is deemed to be exclusively a resident of another country for purposes of the application of any double taxation agreement (“DTA”) entered into between South Africa and another country, then he will not become tax resident in South Africa in terms of either the ordinary residence or the physical presence tests.

Foreign nationals working in South Africa

Foreign nationals who work in South Africa but are not tax residents are therefore only subject to South African income tax on their South African sourced income. The South African sourced income of non-residents includes all income received in respect of services rendered for employment in South Africa only. The place where a non-resident's services are rendered is typically treated as the location of the source of this income.

Non-residents are therefore subject to South African income tax on their income received in respect of services that they render in South Africa (subject to any available relief under any applicable DTA).

South African nationals working abroad

South African nationals working in a foreign country remain subject to tax in South Africa on their worldwide income, which includes income received in respect of services rendered outside South Africa. However, a South African resident will be exempt from tax in South Africa on remuneration received for services rendered offshore if he qualifies for the foreign earnings exemption contained in section 10(1)(o)(ii) of the Act.

In order to qualify for the foreign earnings exemption, the South African resident must be outside South Africa:

- For a period or periods exceeding 183 full days in aggregate during any period of 12 months; and
- For a continuous period exceeding 60 full days during that period of 12 months.

If the employee does not qualify for the foreign earnings exemption, he might qualify for relief from tax (if any) imposed by revenue authority of the jurisdiction within which he is rendering the services, if there is an applicable DTA between South Africa and such jurisdiction.

Exchange control

All South African residents are subject to the exchange control measures. For exchange control purposes, a South African resident is considered to be a person, whether of South African or any other nationality, who has taken up residence, is domiciled or registered in South Africa.

In particular, South African exchange control residents are not permitted to remit any capital from South Africa without permission from the South African Reserve Bank. However, there is an exemption available in this regard, namely the foreign investment allowance which is currently the amount of ZAR 4 million per private individual per annum for purposes of investment abroad.

Furthermore, South African residents who acquire foreign currency are obliged to remit such funds to South Africa within 30 days. However, where an individual renders services outside South Africa, the remuneration derived from such activities may be retained offshore.

Taxation of employment income in South Africa

Tax rates are progressive in South Africa. The lowest bracket (an annual taxable income of up to ZAR 150,000 is taxed at 18% and the highest bracket (an annual taxable income of over ZAR 580,000) is taxed at 40%. The following annual rebates are available to individuals:

- A primary rebate of ZAR 10,755 to individuals under the age of 65;
- A secondary rebate of ZAR 6,012 to individuals aged 65 or older; and
- A third rebate of ZAR 2,000 to individuals aged 75 or older

These rates and amounts are for the 2012 tax year, which runs from 1 March 2011 to 28 February 2012.

A South African resident employer must deduct employees' tax on a monthly basis and pay it to the South African Revenue Service (SARS).

There is no social security as such in South Africa. However, a South African employer is liable:

- To make contributions to the Unemployment Insurance Fund (“UIF”);
- To pay a Skills Development Levy (“SDL”), and
- To make contributions to the Workmen's Compensation Fund

UIF contributions are payable by both the employer and the employee, and the UIF provides, inter alia, unemployment benefits to the employee.

Split employment contracts

In principle, an employee who is required to render services for the benefit of more than one employer could enter into separate employment agreements with each employer. The benefit of a split contract is that it clearly sets out the scope of the services rendered within and outside South Africa, and specifically the amount of remuneration received in respect of the services rendered offshore, as opposed to the amount of remuneration rendered in South Africa. This would assist a foreign national in proving that only a portion of his income is sourced in South Africa (and thus subject to tax in South Africa). However, if the services rendered offshore are incidental to (i.e. form part of) the South African services, there is a risk that the remuneration for those services would also be deemed to be sourced in South Africa.

Furthermore, split contracts assist South African residents in proving that a portion of their remuneration has been received for services rendered offshore and thus is not subject to tax in South Africa (if the resident qualifies for the foreign earnings exemption) and that the resident may also retain this amount offshore in terms of South African exchange controls

About Edward Nathan Sonnenbergs

ENS (Edward Nathan Sonnenbergs) is Africa's largest law firm, with over 400 legal, forensic, tax and IP practitioners. ENS benchmarks itself according to international standards, but retains a uniquely African focus. With South Africa being an obvious point of entry into the rest of the African continent, ENS' substantive cross-border expertise and project management skills are augmented by the know-how of its African Department making it well-equipped to advise clients wherever they may choose to do business. ENS is proud to be a level 3 BBBEE contributor.

Whilst ENS is a full service firm offering the complete range of Corporate Commercial and Litigation advice and support to its clients, what sets the firm apart, is its range of specialist dedicated departments which include Africa, Banking and Finance, Tax, Competition, Employment, Mining, Construction, Immigration, Insolvency, Business Rescue and Debt Recovery, IP, Oil and Gas, Sport, Private Equity, Projects, Real Estate / Property, Environment, Shipping and Logistics, Public Sector, Private Client and Forensics.

Spain

As a result of the international expansion of companies, international assignments among group companies are becoming a common occurrence, and for employees in multinational groups to carry out functions at several group enterprises in different countries. Both of these cases make it important to analyze the implications this has for the employee's personal income tax.

Set out below is a brief analysis of the taxation in Spain of assigned employees and of the mechanisms existing in Spanish tax law to reduce the tax burden of employees performing their work for more than one enterprise resident in Spain and in other countries.

Tax residence in Spain

The first step to determine the employee's taxation is to find out his tax residence. In the Spanish Personal Income Tax Law (Ley 35/2006, de 28 de noviembre) personal income taxpayers are defined as individuals having their primary residence in Spain.

A person has his primary residence in Spain where any of the following circumstances are met:

- He spends more than 183 days in a calendar year in Spain.

  Any sporadic absences are included as part of the length of time a person spends in Spain, unless evidence can be provided of tax residence in another country.

- His core activities or the basis for his activities or his economic interests are in Spain, directly or indirectly.

- Lastly, unless proved otherwise, it will be presumed that the individual has his primary residence in Spain where the above tests show that his spouse not legally separated and offspring under legal age have their primary residence in Spain.

In addition, Spanish nationals who evidence that they have a new residence in a tax haven will continue to be tax resident in Spain in the tax period in which they change their residence and in the following four years.

Lastly, it must be noted that if the domestic law of the host or source country gives rise to a conflict in determining tax residence, the tests provided in the tax treaty between both countries, if any, must be used.

Taxation of Spanish tax residents

Ordinary regime

Employees who are tax resident in Spain must be taxed in Spain on the whole of the income they obtain in the tax period, regardless of where in the world it was obtained and regardless of the residence of the payer.

Taxpayers who are tax resident in Spain will be taxed on their worldwide income at the progressive tax rate (in 2011 the marginal rate is 45%, and can go up to 49% according to the region in which the taxpayer establishes his domicile). Income from savings, however, (investment income and increases in wealth) will be taxed at 21%.

Special regime

The Spanish Personal Income Tax Law contains a special regime, known as the "impatriates regime", applicable to workers assigned to Spain who, as a result of their assignment, acquire tax residence in Spain, provided they satisfy the following tests:

- They must not have been resident in Spain in the ten years preceding their new assignment.
- The assignment to Spain must take place as a result of an employment contract.
- Their work must actually be performed in Spain. This test is considered to be satisfied even where a portion of the work is performed abroad if the sum of all of the compensation relating to that work does not exceed 15% of all of the compensation received for work in each calendar year. That percentage rises to 30% if the employee takes on functions at another group enterprise outside Spain.
- The work must be performed for a resident company or a company with a permanent establishment in Spain.
- The earned income received must not be exempt from non-resident income tax.
- The compensation expected to be received under the employment contract in each of the tax periods in which this special regime is applied must not exceed 600,000 euros per annum.

The tax advantage of this special regime, where it is elected by the assigned employee, lies in the fact that, in the tax period in which they change their residence and in the following five tax periods, employees assigned to Spain can be taxed for non-resident income tax, which is only charged on income exclusively from a Spanish source and at a fixed tax rate of 24%, as opposed to the standard progressive personal income tax rates of up to 45% (which can be pushed up to 49% according to the employee's domicile).

Ways to save tax

Described below are some of the ways in which salaries can be paid to reduce the tax burden of employees performing functions at more than one enterprise in a multinational group by splitting their salaries among the various group companies at which the employee performs his work.

Exemption for the income obtained abroad

Under the Personal Income Tax Law, any earned income received for work actually carried out abroad can be tax-exempt in Spain, up to a limit of 60,100 euros per year, subject to the following requirements:

- The employee must be treated as tax-resident in Spain.
- As a result of the functions he performs, the employee must perform part of his work outside Spain.
- In the territory in which the work is performed, a tax identical or similar to personal income tax must be charged (this requirement is considered to be satisfied if there is a tax treaty).
- The work must be performed for the benefit of a company not resident in Spain. In other words, it must create added value at that company (it must be the beneficial owner of the

services provided by the employee). This point would be evidenced if the services are paid and/or borne primarily by the foreign company.

Exemption with progression

The split payroll mechanism that would be applied to amounts exceeding the 60,100 euro threshold mentioned in the preceding point could be implemented if the employee provides his services physically to group companies resident in other countries, and is paid directly by those companies without any charge being made by them to the Spanish company. Those companies must reside in a country with which Spain has signed a tax treaty with an exemption clause. The way in which this mechanism of exemption with progression works is that, where under the provisions of the tax treaty signed between Spain and the country of residence of the payer of the income, the income can be taxed in the other State, that income would be exempt in Spain, although it will be taken into account to determine the personal income tax applicable to the other income taxable in Spain, and only for this purpose.

This mechanism is therefore beneficial in tax terms if the tax rate on the income in the payer's country is lower than the marginal tax rate that would be applicable to it in Spain.

The countries with which Spain has currently signed a tax treaty with an exemption clause are: Austria, the Czech Republic, China, Slovakia, the Netherlands, Japan, Morocco, Poland, Norway, Switzerland and Germany (although this clause is being reviewed and could be replaced by the allocation clause).

Although there are no specific legal requirements to apply this mechanism it would be recommendable to prepare a document proving the actual work performed by the employee for each of the group companies involved in the split-payroll mechanism.

Expatriate incentives

The law contains a tax incentive for employees assigned abroad by treating as exempt the extra amount they receive as a result of their assignment abroad over and above the amount they would receive in their job. This exemption is incompatible with the exemption for income obtained abroad discussed above.

Non-resident taxation

Employees who qualify as non-residents for tax purposes in Spain are taxed only on the income obtained in Spain in the tax period, at a fixed tax rate of 24 percent.

Social security implications

Employees hired by Spanish or foreign companies to carry on their activities in Spain will be subject to the Spanish social security legislation.

In the case of employees assigned temporarily to Spain, however, if the EU regime applies to them, the law of their country of origin may be maintained on the terms and subject to the requirements in EU law. Similarly, for employees on assignment from other countries that have signed a bilateral social security agreement with Spain the social security legislation of their country of origin will continue to be in force where the agreement so provides

About Garrigues

Garrigues is the leading global services firm in the Iberian Peninsula, having maintained constant growth throughout its history in terms of both revenues and number of clients and professionals.

A track record which is borne out by our extensive network of offices, present in 29 cities in Spain and Portugal and nine abroad. Garrigues also promotes the Affinitas network, a Latin American alliance of lawyers made up of distinguished firm working from 14 countries in Europe, America, Asia and Africa. Garrigues is also a founding member of Taxand, another independent global a network of specialist tax firms.

The firm has a broad, well-established client portfolio and a multidisciplinary professional team of over 2,000 professionals.

Garrigues Human Capital Services department could render, among other, the following services:

- Design and implementation of compensation structures,
- Definition of HR management policies, strategic plans and organizational models,
- Variable compensation systems and incentive plans,
- Expatriates employees,
- Labor force planning, team integration and competency profiles and
- Board Compensation.

Sweden

Swedish tax residents can achieve tax exempt status in only a few situations – by the few double tax treaties which still are in effect and are based on the exemption principle, or if the person is sent out on an assignment for a period exceeding six or twelve months. The latter two are based on the idea that a Swedish tax resident who is either sent out for a period exceeding six months to one and the same country and that he is subject to taxation in that country on his earned income there – if so he will be fully exempt in Sweden from taxation on the same income. Alternatively, the Swedish tax resident is sent out to another country for a period exceeding twelve months in which case – when certain criteria's are met – he will be exempt from Swedish taxation on the earned income regardless of taxation in the assignment country or not.

As a very general comment cross border salary split arrangements and other cross border employee arrangements was creating some attention some years ago but is today not high on the priority list of the Swedish tax authorities. The reason is that Sweden as a general rule applies the credit system which means that it is difficult for the (honest) taxpayer to create an effective system by splitting income between many jurisdictions. Instead the individual will try to split current income between himself and a company controlled by him which essentially means that part of the tax payer´s income is deferred from taxation at the individual's level.

It is a well known fact that Sweden is a high tax society – the top marginal tax rate on earned income for an individual is 57 % (2011) which is a combination of municipal (varies between 25 to 32 %) and state tax. In addition, earned income attracts tax deductible social security taxes of 32 % paid by the employer or 29% (paid by the self-employed). Thus, the “effective” marginal tax rate is as high as 79%. The fact that capital gains (interest income, dividend and gain on securities) are taxed at a flat rate of "only" 30 % obviously attracts more interest by the resident Swede. In addition, special rules for closely held companies inadvertly creates the possibility to reduce the tax even further.

Partly as a result of the high taxes on earned income, the Swedish Tax system imposes extensive withholding and reporting obligations on the employer including an indirect demand on the directors of a company to secure that income taxes withheld are properly paid.

Inbound Arrangements to Sweden

Swedish tax residents are taxed on their worldwide income. According to the domestic rules a person is tax resident when he establishes a residence in Sweden or if the he stays in Sweden for more than six months during any twelve month period.

If the employee is considered also to be resident in another country for tax purposes, it will depend on the tax treaty with the country in question, which country will be deemed as the country of domicile for tax purposes, cf. the OECD model.

Non-residents in Sweden will be subject to a limited taxation - on salaries earned while working in Sweden for a Swedish employer and in case of foreign artists, on income earned from performances in Sweden. In these cases the taxation is based on a simplified method – 25 % of the gross income. Furthermore, income from Swedish real estate is taxed as well as dividends on shares in Swedish companies. In the latter case the withholding tax is 30 %, however, often reduced under the relevant tax treaty?

As regards social security, Sweden is part of the European Union (EU) and regarding employees living and working in the EU countries, the EU regulation will establish in which country (only one) the employee is to be subject to social security. Regarding employees from other countries working in Sweden, a number of bilateral social security agreements are in place.

An employer – Swedish or foreign with a permanent establishment in Sweden - with employees in Sweden is required to register with the Swedish tax authorities for both income and social security purposes.

Set up of Swedish subsidiary/branch

The classic scenario is where the non-resident company will establish a Swedish subsidiary or branch, which will employ the employees working in Sweden. The employees will be unlimited subject to Swedish taxation. The Swedish employer will also have to pay social security taxes. The Swedish employer will have to register in Sweden as an employer and tax payer and to withhold and pay to the tax authority on a monthly basis preliminary taxes based on standard scales and also report salary paid and taxes withheld by it to the Swedish tax authorities.

In case salaries or reimbursements are paid by a non resident group company on behalf of the Swedish employer the effect will be exactly the same as if payment was made by the Swedish employer. The employee will also be taxed in the same way as if the Swedish company had paid the compensation. Incidentally, the same will apply with regard to employee stock options issued by the foreign parent company to an employe in Sweden.

Foreign experts and key personnel may apply for tax relief – 25 % of gross income is excluded from taxation and social security taxes, and certain income (moving, travels home, tuition etc) paid by the employer will be exempt. However, to attain this status is very difficult and in practice rare. These rules are subject to a review and we expect the government to present a revision focused on scientists during 2012.

Dual Employment

In case where a Swedish tax resident is employed also by a non-resident employer the tax implications of the employee will depend on where the employment is physically performed and the relevant tax treaty. With the exception of only a few tax treaties Sweden applies the credit of tax system which means that the employee will be granted a credit against his

Swedish taxes for any foreign taxes paid up to an amount corresponding to the Swedish taxes on the foreign income. In the absence of a tax treaty Sweden provides for the possibility to deduct the foreign taxes paid. So in these cases it is not an attractive proposition to split income – in addition it is likely to create further complexities with regard to pension rights, social security etc.

However, in case of the few treaty countries which are based on exemption (with progression), there is a real possibility to obtain a positive effect by a split arrangement as the income will be taxed in the other country only and only the progressive effect will give a slightly higher Swedish tax than on a comparable "Swedish only" level. Since Sweden is updating its tax treaties continuously it is recommended that this possibility is explored only on a case by case basis and with the assistance of Swedish and local counsel.

It is important to keep in mind that these types of arrangements may entail other issues such as permanent establishment of the employer in other jurisdictions.

Employed directly with a non-Swedish company

A Swedish employee is employed directly with a non-Swedish company and is working in Sweden for the non-Swedish company. If the employee becomes resident in Sweden or the employee stays in Sweden for 6 months during a twelve month period, the employee will be subject to unlimited tax liability in Sweden.

The non-Swedish company will in general be obliged to register as an employer with the Swedish tax Authorities and will be required to pay social security taxes.

It is important to establish whether the activities of the Swedish employee will establish a Swedish Permanent Establishment (PE) for the non-Swedish company. If so, the foreign company will have to register a branch in Sweden and the branch will be taxable on its net profit as calculated under Swedish rules.

Furthermore, the Swedish branch will be obliged to withhold preliminary taxes on salaries paid to the employees.

Consultancy services to a foreign company

Within certain limits it is possible to have Swedish personnel render consultancy services etc. to a foreign company outside the frame of an employment. However, this is only possible if the services rendered are of the nature of self-employed business activities. As the main rule, VAT will then be applicable on the remuneration for the services rendered.

Outbound Arrangements from Sweden

Individuals or companies, who are domiciled for tax purposes in Sweden, are taxable in Sweden on their world-wide income. This general rule may be modified by applicable tax treaties.

When leaving Sweden for residence in another country, Sweden applies a system for establishing whether the move is accepted for tax purposes or not. To the extent the person has an “essential attachment” (by way of house, finances, family) to Sweden he will be regarded as a tax resident despite of the move. Only to the extent he can prove during the first five years from leaving Sweden that the attachment is stronger to the new country will Sweden give up its unlimited right to tax. After five years it is for the tax authorities to prove that the person has such an attachment to Sweden. This rule is subject to modification in the relevant tax treaties.

About Delphi

Delphi is one of the leading full-service commercial law firms in Sweden, employing almost 200 people offering expert knowledge in all areas of commercial law. Delphi´s legal advice is always of high quality, tailor-made and focused on results. In addition, the firm is noted for its entrepreneurial and pro-active approach.

Delphi has offices in Stockholm, Gothenburg, Malmo, Linkoping and Norrkoping.

Delphi's tax department

Delphi offers a group of dedicated tax lawyers with a focus on international and domestic, corporate and individual, taxation and also VAT. Delphi's tax lawyers have substantial business experience and know-how, which enables us to find the optimal tax structure. Delphi's tax department offers tax services within advisory, compliance and litigation. The lawyers of Delphi´s tax department are very active internationally and are also frequent writers of books and articles.

Switzerland

Introduction

In the wake of globalisation it has become increasingly common for multinational enterprises to transfer their employees for a limited or unlimited period of time to a foreign group company.

Due to its attractive tax system and its stable political system Switzerland has attracted in the last decades a considerable number of foreign investors and still does. As a consequence, many multinational enterprises have established their headquarters in Switzerland or have set up Swiss subsidiaries. Switzerland's location in the heart of Europe facilitates commuting for foreign residents working in Switzerland as well as for Swiss residents working in a European country.

Typical Salary Split Situations

A typical salary split situation arises in one of the following two scenarios: (i) a foreign resident employee is transferred by his foreign resident employer to a Swiss domiciled group company (so-called inbound situation), or (ii) a Swiss resident employee is transferred by his Swiss resident employer to a foreign group company (so-called outbound situation). In either scenario the employee works in two jurisdictions, namely for the employer and the group company. Before the transfer, his salary was subject to income taxes in his country of residence only. Upon transfer to the group company only the portion of his salary which is attributable to the employer remains subject to the income taxes of his country of residence. The remaining portion of his salary respectively the portion that is attributable to the group company is subject to income taxes in the country of residence of the group company. It is also conceivable that the employee enters into a separate part time employment contract with the group company. The employee then receives a salary from the employer and an additional salary from the group company.

Due to the relatively low Swiss income tax rates – especially compared to the income tax rates of the neighbouring countries – inbound salary spilt situations are very popular and may result in considerable tax savings for the non-Swiss resident employees.

This paper shall shortly analyze the Swiss tax and social security consequences of an outbound and an inbound situation.

Tax Consequences

Swiss resident individuals are subject to personal income and net wealth tax. Personal income taxes are levied by the Swiss Confederation as well as the 26 cantons and their municipalities. There is no federal net wealth tax.

Non-resident individuals deriving income from certain Swiss sources are subject to income tax on the Swiss-source income. The income tax is normally levied at source.

An individual is considered a Swiss resident for tax purposes if the centre of his vital interests is in Switzerland. The key factors are the location of his permanent home, where his family lives and where the majority of his personal and economic contacts are. Furthermore, tax residence may arise if an individual works in Switzerland during a period of at least 30 days or, if he stays in Switzerland without engaging in a gainful activity, for a period of at least 90 days.

Swiss resident individuals are subject to tax on their worldwide income and assets, subject to unilateral exemptions and prevailing tax treaty provisions. The main unilateral exemptions are foreign real estate and permanent establishments abroad.

Swiss tax law applies a broad concept of income. Income tax is levied on the total income, i.e. earned income, ancillary income, substitute income, investment income, etc. Expenses directly linked to earning the income, including social security premiums, are deductible from the gross income. Net income is taxed at progressive rates. Depending on the canton and within a canton the municipality of residence, different tax rates apply. The marginal income tax rates range between 20% and 40%.

To prevent or alleviate the effects of double taxation, Switzerland has executed over seventy double taxation treaties, which in their overwhelming majority follow the OECD Model Tax Convention ("OECD Model"), whereby Switzerland uses the exemption method. The following comments are limited to inbound and outbound salary split situations concerning jurisdictions with which Switzerland has concluded a double taxation treaty following the OECD Model.

Article 15 of the OECD Model governs remunerations for employment.

Pursuant to article 15, para. 1 of the OECD Model the salary derived by a resident of a contracting state is taxed only in that state unless the employment is exercised in the other contracting state. Pursuant to article 15, para. 2 of the OECD Model the salary derived by a resident of a contracting state in respect of employment exercised in the other contracting state is taxed only in the country of residence if the following three cumulative conditions are met:

- The recipient is present in the other state for a period or periods not exceeding an aggregate of 183 days in any twelve months' period commencing or ending in the fiscal year concerned
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state;
- The remuneration is not borne by a permanent establishment which the employer has in the other state.

Inbound Situation

In a typical inbound salary split situation Switzerland is entitled to tax the Swiss portion of the employee's salary in accordance with article 15, para. 1 of the OECD Model. The Swiss portion of the salary is subject to wage withholding tax. The Swiss group company is obliged to withhold the tax.

It is important to note that a salary split inbound situation leads to a tax saving for the foreign resident employee due to the low Swiss personal income tax rates, only if the country of residence applies the exemption method with respect to the Swiss portion of the salary.

Outbound Situation

In a typical outbound salary split situation Switzerland exempts from taxation the portion of the employee's salary that is attributable to the foreign resident group company in accordance with article 15, para. 1 of the OECD Model. As a Swiss tax resident the employee is subject to income tax on the other portion of the salary that is attributable to the Swiss resident employer as well as any other worldwide income of the employee that is not exempt from taxation based on an applicable double taxation treaty or a unilateral exemption. Additionally, the Swiss resident employee is subject to net wealth tax on his worldwide assets that are not exempt from taxation based on an applicable double taxation treaty or a unilateral exemption.

Social Security Consequences

Swiss employers are fully liable for social security premiums in respect of their employees. The Swiss social security system applies to Swiss resident employers and non-resident enterprises having a permanent establishment in Switzerland. Non-Swiss enterprises without a permanent establishment in Switzerland are not liable to Swiss social security even if they send employees to work in Switzerland. In such cases, the employees are directly liable for their Swiss social security premiums.

The mandatory social security premium rates for 2011 are the following:

Insurance	Premiums in favour of the employee	
	Employee	Employer
Old Age[45]	4.2%	4.2%
Invalidity[46]	0.7%	0.7%
Loss of income fund/maternity[47]	0.25%	0.25%
Unemployment[48]	1.1%	1.1%
Occupation accident[49]	-	0.89%
Non-occupational accident[50]	1.56%	-
Occupational pension fund[51]	4%-13%	4%-14% and Above
Family allowance[52]	-	between 0.1%-4%

The agreement on the free movement of persons between Switzerland and the European Union ("Agreement") contains provisions coordinating the social security systems in Switzerland and the EU member states. These provisions are based on EU regulations. The Agreement determines which social security system applies. Under the Agreement, social security premiums are due only in one country at the time for all insurance schemes covered by the Agreement, even if the individual works in several countries. The following provision of the Agreement governs the typical salary split situations:

44. See http://www.iras.gov.sg/irasHome/page.aspx?id=812 for list of countries and the respective DTAs
45. Uncapped.
46. Uncapped.
47. Uncapped.
48. Maximum insured salary: CHF 126'000 per annum.
49.Maximum insured salary: CHF 126'000 per annum.
50. Maximum insured salary: CHF 126'000 per annum
51. Rate depends on the regulations of the individual pension fund.

Employees who are simultaneously employed in two or more countries are subject to the social security legislation of the country of residence of the employee, if they perform part of their employment in that country.

In case of a salary split situation involving Switzerland and a non-EU country the above Agreement does not apply; however, the provisions of a bilateral social security treaty, if applicable, must be taken into consideration. If no bilateral social security treaty applies, a double social security affiliation may result.

Inbound Situation

In case the inbound salary split situation involves Switzerland and an EU country, the foreign resident employee remains subject to the social security system of his country of residence. If the inbound salary split situation involves Switzerland and a non-EU country, the provisions of a bilateral social security treaty, if applicable, must be taken into consideration. If no bilateral social security treaty applies, a double social security affiliation may result.

Outbound Situation

In case the outbound salary split situation involves Switzerland and an EU country, the Swiss resident employee remains subject to the Swiss social security system. If the outbound salary split situation involves Switzerland and a non-EU country, the provisions of a bilateral social security treaty, if applicable, must be taken into consideration. If no bilateral social security treaty applies, a double social security affiliation may result.

About PBK

PBK is a law firm which provides traditional legal advice and representation in legal enforcement by employing an approach and devices which are adequate to today's challenges.

PBK consists of experts who, rather than being simply a collection of resources unrelated among themselves, see beyond the traditional limits of their areas of expertise.

We view the law as a tool to control risk. Based on this premise we help our clients create contractual and organizational structures that give them control over relevant processes.

We participate in shaping our clients' business activities. This involves establishing corporate, legal and tax-related structures which are in line with their goals. We work in a process- and goal-oriented manner.

Even the largest law firms cannot provide the best services in all areas of speciality. We therefore deliver the best services in our areas of expertise, while acquiring the rest from our best sources, i.e. our clients and our network.

Syria

Since 2001, Syria has been under a full legal reform where substantial steps have been taken towards the opening of the Syrian market, the improvement of the economic environment, and the development of relationships with different countries and regions.

Syria has opened up to the outside world only the last decade, numerous steps have been taken to improve the Syrian business climate and attract international investors. As a result, different projects for major international companies have been established, and led to the creation of different employment opportunities. This was resulted in the exchange of employees between Syria and other countries.

Syria in the past five years joined The Greater Arab Free Trade Area GAFTA, signed on the Syrian-Turkish FTA in 2007 and in the final stages of the negotiations to sign the EU Association Agreement.

Syria also submitted an application to join the WTO and the government is working on the preparations and amendments necessary for this joining.

Working in Syria

A foreigner[53] who intends to work, temporarily or permanently, in Syria, under an employment contract, must first obtain a temporary visa (only one type of Visa to Syria is available).

After being in Syria, he/she should apply for work permission and a residency card.

The Ministry of Labour has issued several rules identifying what is required from foreigners to be able to work in Syria. But before we go into details we must mention that Syria is one of the countries that have strict rules to grant work permissions for foreigners, especially those un-experienced labour.

Syria support only experienced foreign labour to work in the country, manager's positions, and some special projects with special labour requirements. Other than those categories, it is difficult to get an approval for work in Syria.

Work permission fees (Apply only to non-Syrians)

According to the Ministry of Social Affairs and Labour's decision No. 23 issued on 30/8/2010, and according to articles (27-28-29-30) of the Labour code in Syria, every foreign employee must obtain work permission.

In order to get such permission, the employee must pay;

- Deposit (to be refunded when the employee cancels his work permission).
- Annual work permission fee.

The above two payments varies depend on the nature of the work, the capital and whether the

52. Rate depends on the regulations of the applicable canton.
53. Foreigner in this document refers to any employee of no Syrian nationality, including those from any Arab

employee is a manager, shareholder, etc.

The deposit amount and the annual fee is stated in the below table:

Type of work	The capital of project	The deposit SYP	Annual work permission fee
Shareholder in a private project	500,000 to 1,000,000 SYP[54]	300,000	15% of the annual income, not to exceed 35,000 SYP
	1,000,000 to 5,000,000 SYP	400,000	20% of the annual income, not to exceed 1,000,000 SYP
	More than 5,000,000 SYP	500,000	25% of the annual income, not to exceed 2,000,000 SYP
Shareholder in a private company established under the investment laws in Syria	N/A	Non	5% of the annual income, not to be less than 10,000 SYP and not to exceed 25,000 SYP
Employee in the Private Sector companies in Syria (not including banking sector):	N/A	300,000	15% of the annual income, not to exceed 300,000 SYP
Employee of the Banking Sector	N/A	500,000	20% of the annual income, not to exceed 350,000 SYP
Employee of the Public Sector	N/A	Non	10% of the annual income, not to exceed 25,000 SYP
Expert in a company dealing with Public Sector to execute public related projects	N/A	Non	20% of the annual income, not to exceed 30,000 SYP
Those employees born in Syria from Syrian mother and not holding Syrian nationality	N/A	Exempted if his continuous residence in Syria is more than 15 years, provided that the maximum duration of leaving Syria is one year.	5% of the annual income, not to exceed 25,000 SYP

nationality.

Tax and Social Security Implications (Apply for both Syrians and non- Syrians)

Non-Syrian employees in Syria are mainly established in relation to a foreign company establishing an entity in Syria (any type of company) or setting up a branch office of its parent company.

According to the Syrian tax laws, foreign employees working in Syria shall be taxed as Syrians, same for the social security contributions.

The amount due by foreign employee working in Syria is as follows:

Income Tax (Wages Tax)

According to Law No.24 for the year 2003, any employee (Syrian or foreigner) shall be entitled to pay the wages tax based on the net salary and the employment contract.

The percentages of such tax, is paid in progressive module, based on the net wages (after deducting the social security contribution) as per the following table:

The part of the wages that is	The tax percentage
Less than 10.000 SYP	Exempted
Between (10001) and (15000) SYP	5%
Between (15001) and (20000) SYP	7%
Between (20001) and (25000) SYP	9%
Between (25001) and (30000) SYP	11%
Between (30001) and (38000) SYP	13%
Between (38001) and (50000) SYP	16%
Between (50001) and (75000) SYP	19%
over (75000) SYP	22%

Social Security Contribution

The Main Principle

Employers are requested to register every employee with the social security department. This registration is mandatory in Syria (even if the employer does provide private insurance services for the employees).

This registration will entitle the employees for different privileges during their work life and after work termination or retirement.

The social security contribution is a monthly payment to be delivered by the employer to the social security department as follow:

- (7%) of the employee salary to be deducted from the salary and this is on the employee account.

- (17.1%) of the employee salary to be on the employer account. Usually the agreed salary with the employer does not include this percentage and therefore this is an additional amount to the agreed salary to be paid by the employer to the social security department.

Practical example

Employee with salary of 100.000 Syrian Pound, all categories of wages tax above apply on his/her salary, every part of the salary will be taxed as above.

Social security contribution will be 7000 SYP to be deducted from the salary and the rest 93000 SYP will be subject to wages tax.

The wages tax on the amount of 93000 SYP will be

250 + 350 + 450 + 550 +1040 + 1920 + 4750 + 3960 = 13270 SYP

Therefore on the salary of 100.000 SYP, the employee will pay:

- 7000 SYP Social Security Contribution
- 13270 SYP Wages Tax

Exception of social security implications

In the case of employee working in a branch of foreign company in Syria and the employment contract is signed out of Syria, he/she will be exempted from being registered in social security department according to the law no.34/2008.

Special cases

There are some exceptions to the above bases; the main one is the case of a contractor for a project.

The social security department has a special section for contractors and projects and the registration of the employees of contractors goes through different process, easier and cheaper, to register the contractor's employees for specific project with the social security department.

Instead of registering every employee for a project, that may have 1000 employees and this number keep changing in and out during the life of the project, the contractor can register the civil works contract as a whole at the social security department despite of the number of employees.

The social security contribution and the coverage will be based on a fee to be paid as a percentage (Average 1%) of the total value of the civil work contract signed between the contractor and the owner of the project.

Then the contractor must submit to the social security department a regular list of the employee's names reflecting any changes happening during the life of the project, and this way proofed to be more flexible and cheaper for the contractor and the employees.

Typical recommendations:

For mobile executives, the legal tax aspects for salary splits must be examined on case by case basis, especially when a treaty for the prevention of double taxation is in force, for examples the following can be considered:

- If the mobile executive will work in a branch of a foreign company in Syria, it will be better for him/her to sign the contract in the country of the parent company and avoid social security payment in Syria.
- If the mobile executive will work in a Syrian company, it might be better for him\her to terminate his/her contract in the parent company and sign a new one in Syria.

About Karawani Law Firm

Karawani Law Firm is one of the leading law firms in Syria. The firm was founded in 1994 by attorney Osama Karawani.

Our firm is a commercial practice law firm, specialized mainly in Commercial Law, Banking and Finance, Islamic Banking & Insurance, Investment, Real Estate, Infrastructure, Oil & Gas, Construction, Stock Market and Intellectual Property.

Our firm is available to advice, draft, negotiate, and interpret documents in English as well as Arabic. We handle transactions of all sizes and all levels of complexity. The firm serves many of the most successful companies from all over the world.

We have advised on setting up the first brokerage and financial services company in the country; the granting of the first port management contract to a foreign private sector operator; the first not-for-profit micro finance bank; and ground-breaking environmental projects in the Middle East.

UAE

The United Arab Emirates, commonly referred to as the UAE, is a federation of seven emirates, of which Dubai and Abu Dhabi are the largest and most prominent. The UAE has the second largest economy in the Gulf Cooperation Council (GCC) region, after Saudi Arabia and has in the past ten years positioned itself as a trading hub for the GCC and wider Middle Eastern region. In order to attract foreign direct investment a number of free zones have been established across the UAE (with the greatest number being in Dubai) in which 100% foreign ownership is permitted; elsewhere a foreign investor requires a UAE national partner holding 51% of the shareholding of a local company or to be sponsor of a registered branch.

The UAE's oil reserves rank as the world's sixth's largest and it has a high per capita GDP. The IMF classes it as a high income developing country. It was a founding member of the GCC and joined the World Trade Organisation in April 1996.

Working in the UAE

Historically the UAE national population has been small with approximately 2 million UAE nationals (out of a total population of approximately 5 million), most of whom work within the public sector. The labour force is therefore characterized by its expatriate nature. Although, increasing numbers of UAE nationals are entering the workforce each year, a large number of foreign nationals are expected to continue to be required for the foreseeable future.

Every employee (whether or not he is a UAE national, GCC national or expatriate) must be registered with the Ministry of Labour or the free zone authority; depending on where the employer is established. A non UAE or GCC national must be sponsored by a UAE based employer for work permit and residency visa purposes. Such sponsorship is employer specific and the employee may only work for this sponsor. Work for third parties is permitted in exceptional circumstances and with permission from the Ministry of Labour or the free zone authority, as appropriate.

The sponsorship application is subject to a labour market test (increasingly enforced) in that it should only be approved if no UAE national is available to fill the role. Work permits and residency visas are granted for two years and individuals over the age of 65 must be able to demonstrate exceptional skills and competencies to be granted sponsorship. An employer must pay a bank guarantee for each sponsored employee (released when the sponsorship is cancelled) and a fee determined according to its classification. Classifications are determined according to the employer's compliance with labour legislation and regulations relating to the employment of UAE nationals.

Wages Protection System

The payment of remuneration is coming under increasing regulation by the UAE authorities. The Ministry of Labour introduced the Wages Protection System (WPS) in 2009 which provides for the payment of remuneration by direct electronic transfer from the employer to the employee through a financial institution regulated by the UAE Central Bank. The system is essentially administered by the banks or financial exchanges in the UAE with employers entering into service agreements with the bank or organization through which their payroll payments are made. There is a prescribed form spreadsheet with key employee information which must be completed by the employer, sent to its bank and which the bank then passes on to the WPS team within the Ministry of Labour. Failure to comply with the WPS renders the employer liable to a fine and an adverse registration in its file with the Ministry of Labour. Further, providing false information to the WPS team can be a criminal offence for which the employer signatory providing the information could be liable.

The WPS compliance requirement has proved problematic for those employees on secondments or international assignments whereby they would usually have continued to be paid in the home country. Permission to pay an employee outside of the WPS is only rarely granted and on an exceptional basis. Many employers have dealt with the issue by splitting employee remuneration payments, making part payment in the home country and part payment in the UAE.

The WPS does not apply in the free zones but free zone authorities may request proof of employees being paid in full and on time. Also there is an increasing trend to standardize regulation across the UAE and the expectation is that the Ministry of Labour could soon be given jurisdiction in the free zones.

Tax and Social Security

The GCC member states currently comprise the Kingdom of Saudi Arabia, Kingdom of Bahrain, Emirate of Qatar, UAE, Sultanate of Oman, and the Emirate of Kuwait. The GCC is free of personal income tax. The UAE does not generally impose corporate tax and there is no withholding tax although most of the individual emirates have issued tax decrees, which in practice are not enforced, except that there are a handful of industries which are taxed for example foreign oil companies and foreign banks.

The UAE has over fifty dual taxation treaties with a variety of countries. From a UAE national's perspective dual taxation treaties hold less significance when it comes to income tax as a UAE national does not pay income tax in the UAE, so a UAE national's overseas income (or its treatment by foreign tax authorities) is of no interest to UAE fiscal authorities. The dual taxation treaty does however have benefits for the expatriate worker in the UAE who might, but for a dual taxation tax treaty, be liable for income tax in his home country or country of residence with respect to his UAE earnings. This more favourable tax treatment to expatriate workers benefits the UAE in making it a more attractive place for expatriates to work. This is particularly important when one considers that approximately 85% of the UAE work force is made up of expatriates.

Social Security

The UAE has a state social security system providing for a number of benefits including free medical care, incapacity benefit, pensions, ill health retirement and unemployment benefits. This system is restricted to UAE nationals and there are agreements with other GCC member states providing for reciprocity for GCC nationals working in another GCC member state. Education is also fee for UAE nationals.

An employer employing a UAE or GCC national is obliged to register as an employer with the state pension authority. It must also register the employee within one month of him starting employment and make both employer and employee deductions at source on a monthly basis; 5% by the employee and 12.5% by the employer. There are also a number of administrative reporting requirements on an annual basis. The Emirate of Abu Dhabi has a separate emirate specific pensions law under which monthly contributions are 5% by the employee and 15% by the employer.

A GCC national must be registered for social security in his home country and also the secondary GCC country in which he is working. There are variations in the employer and employee contributions required in each GCC country. However, the employer's obligation is to make contributions according to the requirements of the GCC country in which the GCC national is working, e.g. an employer in the UAE employing a Saudi Arabian national will make contributions in the UAE as required by UAE regulation.

End of Service Gratuity

End of Service Gratuity (Gratuity) is a minimum statutory entitlement and is designed to be in lieu of a pension/social security payment for non UAE and non GCC nationals.

The statutory formula for calculating Gratuity is as follows:

- The payment is conditional on the employee having at least 12 months' continuous service;
- Once that service is accrued the entitlement is to 21 days' basic salary (not taking into account cash allowances such as housing or transport) for each complete year of service for the first 5 years;
- The daily rate of basic salary is calculated by taking the basic monthly salary (assuming the employee is paid monthly) and dividing by 30 days as under the UAE labour law a month is defined as being 30 days;
- The entitlement goes up to 30 days' basic salary for each complete year of service over 5 years;
- The employee is entitled to a pro-rata payment for part years worked;
- Gratuity is capped at 2 years' basic salary;
- If an employee resigns in the first 5 years of employment there is a reduction in Gratuity to (i) 1/3 of the entitlement otherwise due if the resignation is in the first 3 years of

employment, so to 7 days for each complete year of service; or (ii) 2/3 of the entitlement otherwise due if the resignation is in the third or fourth year of employment, so 14 days for each complete year of service;

- there is no reduction in Gratuity if the employee resigns with 5 years' service or more;
- if an employee is engaged on a fixed term contract and resigns without completing the term of the contract he is not entitled to Gratuity unless he has accrued 5 years' continuous service;
- an employee can be dismissed without payment of Gratuity if the termination is under article 120 of Law No 8 of 1980 on the Regulation of Labour Relations (as amended) which sets out an exhaustive list of circumstances in which an employee can be dismissed for gross misconduct, ie without the payment of notice or Gratuity; and
- the standard practice is for Gratuity to be calculated on the basis of basic salary only and not to take into account cash allowances, commission or bonus. However, where an employee is able to show that commission or bonus were integral parts of the remuneration package then he can argue that these payments should be taken into account when calculating Gratuity by taking an average for the commission payments over the last 12 months of employment and including this in the calculation of the employee's daily remuneration rate.

About Clyde & Co

Clyde & Co is one of the largest law firms in the Middle East with over 150 specialist lawyers and paralegals. Our offices operate as one unit across Abu Dhabi and Dubai in the UAE, Doha in Qatar and via our associated office in Riyadh, Saudi Arabia. We also have alliances with AKO Law in Tanzania and Clasis Law in India giving us additional footprint in the wider MENA region.

Clyde & Co's first Middle East office was established in 1989 following many years of regional involvement. Our approach in the region is based on a successful combination of in-depth local expertise and combined with international law firm standards and best practice. We provide advice to clients based both locally and internationally and work with them on a variety of matters key to their business.

UK

Under UK domestic law, an employee who is ordinarily resident, but not domiciled, in the UK and who is a "remittance basis" user may benefit from tax savings by using a split contract to isolate earnings from an overseas engagement as "chargeable overseas earnings" ("COE").

The following table shows how earnings are taxed in the UK, according to the residence position of an individual under UK law. This position may be overridden by a suitable double tax treaty ("DTT") (see below).

UK tax status	UK earnings (earnings from employment duties performed in the UK)	Foreign earnings (earnings from employment duties performed outside the UK)
Non-resident	Taxable on the arising basis	No employment income tax
UK-resident, non-UK ordinarily resident	Taxable on the arising basis	Taxable on the remittance basis (if available and claimed) for income paid outside the UK, else taxable on the arising basis.
UK-resident, UK-ordinarily resident, non-UK domiciled	Taxable on the arising basis	If COE, taxable on the remittance basis (if available and claimed), else taxable on the arising basis.
UK-resident, UK-ordinarily resident, UK-domiciled	Taxable on the arising basis	Taxable on the arising basis

The advantage of the remittance basis is that income tax will only arise if and to the extent that affected income is remitted to the UK (the concept of "remittance" and the cost of entering into this regime are discussed further below). Earnings outside the remittance basis are taxed when the employee receives them (the "arising basis" of taxation).

It will readily be seen that:

- An individual who is not resident in the UK will always be taxable in the UK only on UK-source income and a split contract is not necessary.
- An individual who is resident but not ordinarily resident in the UK will be liable to UK income tax to the extent the income relates to UK duties, and on any income relating to non-UK duties that is remitted to the UK. Performance of the duties of an employment in the UK will not render all the earnings of that employment taxable in the UK. Only earnings that relate to UK duties or that are remitted to the UK will be taxable in the UK.

There is therefore no need for such an individual to make split contract arrangements. However, one practical difficulty is that it is very easy for an individual to become UK ordinarily resident without intending to do so, inadvertently becoming liable to UK tax on worldwide employment income. Individuals potentially at risk of becoming ordinarily resident in the UK might therefore consider a split contract arrangement as a preventative measure.

It follows that a split contract is only useful to a UK resident and ordinarily resident but non-UK domiciled employee with foreign earnings which can be categorised as COE.

Legislation

Employees who are ordinarily resident in the UK but non-UK domiciled will benefit from the remittance basis of taxation on their non-UK earnings if those earnings qualify as "chargeable overseas earnings" ("COE") (ss. 22-24 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA")).

Earnings will only be COE if:

- In the relevant year, the employee is resident and ordinarily resident in the UK;
- The remittance basis applies to the employee for that year;
- The employment is with a foreign employer; and
- The duties of the employment are performed wholly outside the UK (there is an exemption for duties which are "merely incidental" to the duties under the contract, but this is given a very narrow definition).

The last requirement presents problems for foreign-domiciled employees required to work partly in the UK and partly abroad. Earnings from an employment with duties performed both in and outside the UK cannot be COE and would be taxable on the arising basis. The potential solution is for the employee to be engaged under two separate employment contracts, one for the UK and one for the foreign duties – a "split contract".

The amount of earnings treated as COE is restricted if an employee has employments that are "associated" with the foreign employment. "Associated" means that one employer has control over the other or both are controlled by the same person. Where there are associated employments, the amount of COE is limited to a reasonable proportion of the aggregate earnings from the associated employments. This prevents an uncommercial allocation of remuneration to the non-UK contract.

Domicile, residence and ordinary residence under UK law

An individual's domicile is broadly where he has his permanent home. It is not the same as nationality, residence or ordinary residence. A "domicile of origin" is inherited from an individual's father (or in some cases mother) at birth, and may be changed before the age of 16 by following the domicile of the person on whom an individual is legally dependent. After 16, an individual is capable of acquiring a new domicile ("domicile of choice") by leaving the current country of domicile and settling in another country with the intention to live there permanently or indefinitely.

An individual's residence for UK tax purposes is generally determined by his connection to the UK in a particular tax year. There is no statutory test to determine residence under UK law, although the government has announced its intention to create a statutory residence test. Until it does so, there are a number of different ways in which residence might be established. Residence may be established by looking at the number of days of physical presence, although there is no strict day-counting test and other factors may be relevant. An individual will certainly be treated as UK resident if he is physically present in the UK for 183 days or more during a tax year (an individual is treated as present on a particular day if he is physically present in the UK at midnight). Residence may also be established if the individual is present in the UK for an average of 91 days a year over three consecutive tax years. Depending on the individual's intention as to how long he or she will remain in the UK, residence can be established at any time between the individual initially coming to the UK and the end of the three-year period. Other lifestyle factors should also be considered. Evidence that an individual is UK resident in a year would include having family in the UK, owning substantial property in the UK, or having significant business or social connections in the UK, even if the individual was physically present for 183 days or less.

An individual will be treated as ordinarily resident in the UK for UK tax purposes if he is resident "year after year", i.e. if UK residence is part of his regular and habitual mode of life. In particular, an individual will be treated as ordinarily resident from the date he arrives in the UK if his home has been abroad and he intends to come to the UK to live in the UK permanently or to remain in the UK for three years or more. An individual is likely to be treated as ordinarily resident in the tax year of his or her first arrival in the UK if, referring to the 91-day "test" mentioned above, he or she intends to visit the UK for an average of 91 days per year over the next three years.

There has been, and remains, some discrepancy in this area between decided case law and HM Revenue and Customs' ("HMRC") published guidance. An individual should always take UK tax advice to determine his residence, ordinary residence and domicile.

Remittance basis

Split contracts can only benefit remittance basis users. The remittance basis is only available to individuals who are non-UK domiciled or not ordinarily resident in the UK (though, as shown by the table at the start of this chapter, an individual who is not ordinarily resident will not derive any additional tax benefit from a split contract arrangement because they can access the remittance basis for earnings that relate to non-UK duties without needing those earnings to be COE). A remittance basis user is not taxed in the UK on his or her worldwide income, but only on income that arises in the UK and non-UK source income to the extent the individual enjoys the income in the UK in a way which is defined as a "remittance". "Remittance" has a wide meaning but, very broadly, income will be remitted to the UK if it is brought into the UK (directly or indirectly through the purchase of another asset) or used to satisfy a UK debt. There are some circumstances in which a remittance can occur unintentionally and individuals relying on the remittance basis should always be careful to take their own UK tax advice.

In order to claim the remittance basis, it is necessary that one of the following conditions is met:

- An individual has been resident in the UK for fewer than seven of the previous nine tax years immediately preceding the year in question; or
- If an individual has been resident in the UK for seven or more of the previous nine tax years, the "remittance basis charge" of £30,000 must be paid to qualify for the remittance basis. From April 2012, if the individual has been resident in the UK for 12 or more of the last 15 tax years, the remittance basis charge will be £50,000.

If an individual has non-UK source income or gains of less than £2,000 in a tax year, the remittance basis will apply automatically to that income or gains to the extent they are remitted to the UK.

Anyone wishing to claim the remittance basis must do so on a year-by-year basis. If the employee is entitled to claim the remittance basis and does not do so, he or she will not be able to use the remittance basis in that year and will be taxable to UK income tax in that year on his or her worldwide income as it arises.

Split contracts in practice

In principle, there is no objection to an individual being employed by two different employers under two different contracts of employment. In the case of a UK-resident, ordinarily resident and non-UK domiciled individual, if one employment is with a non-UK employer and the duties are carried on entirely outside the UK (other than merely incidental duties), then the income from that employment will be taxed under the remittance basis (assuming that basis is available and claimed).

However, HMRC currently take a very strict line on split contracts. HMRC's guidance is emphatic that the roles undertaken under each contract must be different, and it is clear that they will challenge split contract arrangements where a single engagement has been divided based purely on where the activities are carried out. HMRC will examine the commercial realities of the situation to ensure a split contract is not being used to split a single employment. It is therefore necessary that HMRC is satisfied of two things: that the split contract is not one single employment; and that, where there is a real commercial reason underpinning a split contract, none of the duties of the foreign employment is carried out in the UK.

Where a single role is divided into two contracts, one dealing with activities carried on in the UK and one dealing with activities carried on outside the UK, it is not inconceivable that a proper group re-charge might return such arrangements to a proper commercial basis, although HMRC do not accept that approach. While it may be possible to make a respectable argument based on a re-charge approach and a division of activities based purely on geography, we would expect HMRC to challenge such arrangements vigorously.

As a practical matter, it will be important for the employee to keep careful and accurate records of the work done and where it is done. Ideally a diary will be kept showing the matters attended to and the employee's location on each day. Travel receipts and phone records should be retained.

If HMRC were to investigate the legitimacy of a split contract (which should, cautiously, be assumed to be likely), evidence would be required of all phone calls (including mobile phone calls) made and emails sent (including any sent from a mobile device), and the location of all meetings. Therefore, anyone wishing to benefit from a split contract will need to be rigorous in ensuring that no aspects of the foreign employment are carried out in the UK and that the evidence is consistently supportive of that conclusion. It should be noted in passing that the inconvenience of an HMRC inquiry would extend to translating any emails into English and that some clients have found the scrutiny of personal emails distressing.

Double tax arrangements

Double tax arrangements between the two countries in which an individual carries out employment duties may affect the operation of split contracts.

The double tax treaties concluded by the UK with other states generally follow the OECD model tax treaty, with some minor variations between treaties. The treaty residence "tie-breaker" will settle an individual's residence for treaty purposes, using a test of residence that differs from UK law concepts of residence and ordinary residence. It may therefore be the case that an individual who is resident and ordinarily resident on the UK's test will be treaty resident in another jurisdiction.

The model treaty gives primary taxing rights over employment income to the state of treaty residence, unless the employment is performed in the other contracting state, in which case that other contracting state will retain taxing rights over income from duties performed in that state. The usual exception to this is that primary taxing rights will remain with the state of treaty residence where the individual is present in the other contracting state for 183 days or fewer in a 12-month period, and the individual's employer is neither resident in that other contracting state nor has a permanent establishment in that other state through which the individual's employment remuneration is borne (the "183-day rule").

It follows that a double tax treaty may benefit an individual who is not treaty resident in the UK, but is resident and ordinarily resident in the UK. Such an individual can claim treaty protection on all employment income except income from employment duties exercised in the UK. As can be seen from the introduction to this chapter, this would put a resident and ordinarily resident non-domiciled individual into the same position as a UK-resident but non-ordinarily resident individual, and would therefore preclude the need for a split contract (except, as discussed above, as a precautionary measure to guard against the risk of becoming ordinarily resident in the UK).

Of course, the tax benefits could be greater (assuming lower tax rates in the other contracting state) if the individual met the 183-day rule, as the treaty would then protect the individual from UK income tax on all employment income (including income earned from the performance of duties in the UK).

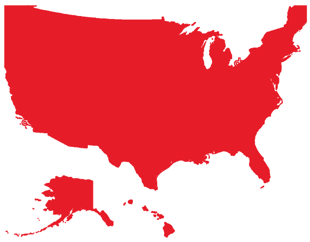
About Macfarlanes LLP

From our base in London, we offer discerning clients an alternative to the world's legal giants.

We are recognised for the quality of our work, not just in dealing with the full range of corporate and commercial matters, but in advising our clients on their private affairs. They trust our judgment and we are in a unique position to advise on their most complex matters, whilst at the same time remaining smaller than our competitors. That means that we can maintain the very highest levels of service and partner involvement that our clients expect.

The nature of business today is such that we are usually advising on matters that reach across multiple jurisdictions. By working with other leading independent firms and lawyers around the world in each relevant jurisdiction, we provide a seamless service, wherever and whenever our clients need it.

USA



The world is becoming more and more globally mobile. Managing a globally mobile workforce involves many considerations, one of which is the tax implications. The method used by a multinational employer to pay compensation to its employees working abroad is an important consideration and can affect tax consequences to the employee as well as the employer. Methods include employment solely by the home country employer, the loaning, or "secondment," of an employee to an offshore affiliate, and the use of a salary split arrangement under which a part of the employee's wages is paid by the home country employer and a part is paid by a host country affiliate.

This report is focused on the split of an employee's wages over employers residing in different countries. There are many tax and non-tax related factors a multinational employer must consider in choosing and implementing a salary split arrangement for its employees working abroad. Splitting payroll between both home and host country payrolls may make it easier to simultaneously comply with the tax withholding requirements of both the home and host countries. It may also ensure that an employee can continue to participate in his company's retirement plan even while working abroad. Split pay may make it easier for companies and their employees to comply with the host country's regulations for work and for transferring money out of the country. In limited cases, splitting payroll may even result in a lower overall tax rate on the employee's compensation. However, for foreign nationals working in the United States and U.S. persons working abroad, for which the applicable double tax treaties utilize tax credits rather than exemptions from tax, this opportunity generally, is not available.

The following discussion is intended to address the U.S. income tax and social security tax considerations of a mobile employee and his employer.

Inbound Taxation

U.S. citizens, regardless of their residence, and U.S. tax residents are subject to U.S. federal income taxes on their worldwide income.

Residency

A foreign individual is considered to be a resident of the United States if he meets one of two tests: the green card test or the substantial presence test. Under the green card test, an individual is treated as a U.S. resident for a calendar year if, at any time during that calendar year, the individual is a lawful permanent resident of the United States. An individual meets the substantial presence test if he is present in the United States for at least 31 days during the current year and at least 183 days for the three year period ending on the last day of the current year using a weighted average. This weighted average is calculated as follows: days of presence in the United States in the current year multiplied by 1 plus days of presence in the preceding year multiplied by 1/3 plus days of presence in the next preceding year multiplied by 1/6.

A foreign individual who meets the substantial presence test may nonetheless be considered a non-resident for the current year if the individual is present in the United States on fewer than 183 days during the current year and has a “tax home” in a foreign country for the entire current year to which the individual has a “closer connection” than to the United States. A “tax home” generally is considered to be where the individual's regular and principal place of business is located, or, if there is no such place, where the individual's regular place of abode is located. The individual must have a closer connection with the country in which he has maintained a tax home than the connection maintained to the United States. The factors used for determining the closer connection include the location of the individual's permanent home, family, personal belongings, and personal bank accounts, the location of the individual's current social, political, cultural, and religious organizations, where he obtained a driver's license, where he votes, and the country of residence designated on documents filed by the individual.

Depending on the total length of stay in the United States, planning can be done before the beginning of a U.S. assignment to minimize the risk of resident status. For example, if a foreign individual is in the United States for at least 183 days during the calendar year in which he moves to the United States, he would meet the substantial presence test for such year. However, if the number of days is less than 183 during that first calendar year, he would be a non-resident for such year. Then, if he is present in the United States for less than 183 days in the following calendar year, he may continue to be a non-resident for the following calendar year, even if his presence in the following calendar year would cause him to meet the substantial presence test in that year, if he meets the tax home and closer connection test after leaving the United States.

A double tax treaty between the U.S. and the home country may allow a foreign individual who would otherwise be a U.S. resident under either the lawful permanent resident or substantial presence test to claim to be a U.S. non-resident under the treaty's “ tie-breaker rules.” Such claim often exempts, in full or in part, the individual's compensation for services performed in the United States from U.S. income tax if the following three requirements are met:

- The foreign individual is present in the United States for a period or periods not exceeding in the aggregate183 days during any twelve month period commencing or ending in the taxable year concerned,
- The wages are paid by, or on behalf of, an employer that is not a resident of the United States, and
- The wages are not borne by the employer's U.S. permanent establishment.

The foreign individual making such a treaty claim must be prepared to substantiate its residency under the tie-breaker rules, as well as the applicability of the exemption, to the U.S.

Internal Revenue Service.

Non-resident Employees

A non-resident employee is subject to U.S. federal income tax only on (1) income that is from sources within the United States and (2) income that is "effectively connected" with a trade or business carried on within the United States. Salaries, wages, bonuses and any other pay for personal services, except for certain non-taxable fringe benefits, (referred to herein as "wages") performed within the United States are considered to be "effectively connected income." As effectively connected income, the wages are subject to U.S. federal income tax at graduated tax rates (current maximum rate of 35%) as well as state and/or local income taxes, as applicable, and social security taxes, as discussed further below. The non-resident employee is allowed deductions for unreimbursed employment related expenses, although such deductions are limited.

Under a de minims exception, compensation for services rendered within the United States is not treated as U.S. source income (and therefore is not subject to U.S. federal income tax) if (1) the services are performed while the individual is temporarily present in the United States, (2) the individual is present in the United States for no more than 90 days during the taxable year, (3) the compensation for the services in the United States does not exceed $3,000 and (4) the employer is not engaged in a trade or business within the United States or a foreign office of a U.S. person. Because of the limited amount of compensation involved, the de minims exception rarely provides relief to foreign employees who work for any length of time in the United States.

As discussed above, a resident of a treaty country under the applicable treaty's residency definition would be exempt from U.S. federal income tax on wages from employment in the United States if all of the following are met: the individual is present in the United States for no more than 183 days during any twelve month period commencing or ending in the taxable year concerned, the wages are paid by, or on behalf of, an employer that is not a resident of the United States, and the wages are not borne by the employer's U.S. permanent establishment. If the home country employer pays the employee's U.S. source wages, care must be taken so that the activities in the United States of the employees of such employer do not create a U.S. permanent establishment for such employer.

Wages paid to a non-resident for services performed outside the United States are not subject to U.S. federal income tax.

A non-resident's non-wage U.S. source income that is not effectively connected with a U.S. trade or business generally is subject to a flat 30% tax rate, which may be reduced by an applicable double tax treaty.

A non-resident employee is required to file a U.S. individual income tax return reporting his wages for services performed in the United States and any other U.S. source income.

U.S. Social Security Tax Considerations

U.S. social security taxes (referred to herein as "FICA" tax) generally are imposed on wages received by non-resident individuals working as employees in the United States, and the employer must pay a matching excise tax. For 2011, employees pay 5.65% and employers pay 7.45% on wages up to $106,800, and both employees and employers pay 1.45% on wages in excess of $106,800.

FICA tax generally applies no matter how short a period of time the employee is present in the United States, how small an amount is attributable to services performed in the United States, who pays the wages or whether the wages are exempt from U.S. federal income tax. When a foreign government also imposes a social tax on the U.S. source wages of a non-resident, because the FICA tax is imposed on both the employee and the employer, a potential double taxation problem arises for the employee, the employer, or both.

A totalization agreement between the United States and the home country may provide relief from the potential application of double social security tax. The U.S. agreements (24 are currently in force) generally maintain the employee's coverage under the system of the country where the work is performed and exempt the employee from coverage and taxation in the other country. A special ("detached worker") rule applies, however, to employees who are transferred by their employers in one country to work in the other country for a temporary period that is expected to last for nor more than 5 years. With the exception of the agreement with Italy, each totalization agreement to which the United States is a party provides that such employees will continue to be covered under the system of the home country and are exempt from coverage and taxation in the host country so long as the employee obtains a "Certificate of Coverage" from the applicable home country's governmental authority and submits it to the appropriate parties.

Employers of Inbound Employees

Every employer, whether a home country (foreign) employer or a U.S. affiliate employer, must withhold U.S. federal income and FICA taxes (as well as any applicable state and/or local income or employment tax) from the wages paid to a U.S. non-resident for personal services performed in the United States. A foreign employer that pays the wages to the non-resident employee while working in the United States has the practical difficulties of setting up a U.S. payroll system, as well as opening itself up to potential U.S. federal and state income tax exposure. For this reason, using a split payroll system may be beneficial in that it generally makes it easier to comply with the U.S. withholding and reporting requirements and reduces the risk that the foreign employer is subject to U.S. taxes. Alternatively, companies with foreign nationals working in the United States who remain on their home country payroll may employ a "shadow payroll" in the United States so that the company can perform appropriate tax reporting and make remittances for federal income, state, and social security purposes.

With the limited exceptions described above, a foreign national working in the United States generally would not benefit from a lower overall tax rate under a salary split arrangement unless the home country exempts from its tax base the U.S. source wages.

Outbound Taxation

Citizen and Resident Employees

Wages paid to a U.S. citizen or resident, whether for services performed within or outside of the United States, are subject to federal income tax and FICA tax (as well as state and/or local income and employment taxes, as applicable).

A U.S. citizen or resident who is temporarily employed (such that he does not lose his U.S. residency status) in a country that has a double tax treaty with the United States may exclude his foreign source wages from the host country's taxable income if the183-days-of-presence exemption, as discussed above, applies. To exclude the foreign source wages, the individual can be present in the host country for no more than183 days during any twelve month period commencing or ending in the taxable year concerned, the wages must be paid by, or on behalf of, an employer that is not a resident of the host country, and the wages cannot be borne by the employer's permanent establishment in the host country. If the U.S. employer pays the employee's host country source wages, care must be taken so that the activities of the U.S. employer's employees in the host country do not create a permanent establishment in the host country for the U.S. employer.

The United States applies a foreign tax credit system to address the potential double taxation of an item of foreign source income. Under a credit system, the U.S. employee generally will pay overall tax in an amount equal to the highest rate of tax that applies as between the host country and the United States (and adding to that any U.S. state or local income tax).

As a substitute for the foreign tax credit, U.S. tax laws allow certain qualified U.S. residents and citizens to exclude from income a statutory, inflation-adjusted amount of foreign earned income and a foreign housing cost. An individual who excludes an amount of earned income or housing costs cannot take a credit for, or deduct, foreign income taxes paid on the excluded income.

The maximum earned income exclusion for 2011 is $92,900 and the maximum housing exclusion for 2011 is $13,006. The total of the foreign earned income exclusion and the housing cost amount may not exceed the individual's foreign earned income for the year. An U.S. citizen qualifies for the exclusions if he has a foreign “tax home” and is a “bona fide resident” of a foreign country or countries for an uninterrupted period that includes an entire taxable year. Alternatively, a U.S. citizen or resident qualifies for the exclusions if the individual has a foreign “tax home” and during a period of 12 consecutive months, the person is present in one or more foreign countries for at least 330 full days. Whether a taxpayer is a bona fide resident of a foreign country is based on the individual's intent with regards to the length and nature of his stay.

U.S. Social Security Tax Considerations

Absent the application of a totalization agreement, a U.S. citizen or resident who is employed outside the U.S. by an "American employer" is subject to FICA tax on wages paid for services performed in the United States. An "American employer" for this purpose includes a domestic corporation (one that is created or organized in the United States or under the law of the United States or of any state therein). When a foreign government also imposes a social tax on the foreign source wages of a U.S. citizen or resident, because the FICA tax is imposed on both the employee and the employer, a potential double taxation problem arises for the employee, the employer, or both. A U.S. citizen or resident abroad who does not work for an American employer normally generally is exempt from FICA tax.

A totalization agreement between the United States and the host country may provide relief from the potential application of double social security tax, as discussed above.

Employers of Outbound Employees

U.S. wage withholding, including FICA tax as applicable, is required on wages paid to a U.S. citizen or resident for personal services performed both within and outside of the United States. In an outbound split salary context, the foreign host country affiliate that would pay the foreign source wages may be able to utilize the U.S. employer's payroll system in order to meet its U.S. withholding and reporting obligations.

A salary split arrangement generally provides no opportunity to reduce the U.S. employee's overall tax liability because his worldwide income is subject to U.S. income tax and double tax relief is in the form of a foreign tax credit.

Splitting the pay between a U.S. (home country) employer and a host country employer would not be beneficial if a U.S. citizen or resident intends to claim the treaty exemption for the foreign source wages, since in order to do so the employer cannot be a resident of the host country, or have a permanent establishment in the host country.

Some U.S. Employer Considerations

Tax planning is an important factor when structuring the employee's compensation package. A U.S. employer's cost of sending an employee on an international assignment is generally a multiple of the employee's U.S. compensation, much of which is due directly or indirectly to increased tax costs. The increased tax costs are caused in part by the fact that foreign tax rates (combined income and social taxes) often are higher than such U.S. tax rates. Secondly, U.S. employers often provide incentive allowances such as a Foreign Service premium or bonus, a mobility premium, and hardship or danger pay. Allowances to keep employees "whole" can include relocation and/or housing costs, a cost of living allowance, tax reimbursements, education expenses, a spouse allowance, home leave expenses, and automobile expenses. These allowances may be taxable both in the United States and in the foreign country. Both the added incentives and allowances are included in taxable income, often in the home and host countries. The taxes increase the taxable income, which in turn increase the taxes, thereby resulting in a pyramiding effect. The tax reimbursement can become the most costly element of a relocation package.

Because of the tax costs involved, U.S. employers planning for expatriate employees must consider the internal tax laws of the host country for tax savings planning opportunities. For example, some countries include tax provisions that exempt income earned by expatriates during certain time periods. Several countries provide expatriates favored tax treatment for various allowances and benefits, such as autos, housing, moving expenses and children's education.

A corporation that sends an employee overseas can unintentionally create a "permanent establishment" for itself, exposing itself to taxation in the host country. An employee that is paid by and performs services for the home country employer in the host country may create a permanent establishment in the host country. This can occur even when the company has an affiliate in the host country.

Normally deductible corporate expenses may not be deductible when an employee is sent abroad. For example, a home country employer would not be entitled to a deduction for the expatriate employee's salary if the home country employer is not directly benefiting from his services. The home country employer must charge its foreign affiliate for the compensation and then the foreign affiliate would be entitled to the deduction. Also, it is important to remember that in any cross-border transactions with foreign affiliates, one must treat the transaction as if it were an arms-length transaction so as to avoid transfer pricing exposure.

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Loeb & Loeb LLP is a multi-service law firm with more than 300 attorneys in five offices in the US, including Los Angeles, New York, Chicago, Nashville, and Washington, DC, as well as a representative office in Beijing, China. The firm focuses on select core industries and practice areas, rather than endeavouring to be all things to all clients. We represent multi-national, Fortune 100 companies in their mid-market transactions and litigation matters, and serve as primary outside counsel to a multitude of mid-market clients, as well as high net worth individuals and families.

The firm has a recognized reputation in the areas of corporate and tax law, and provides traditional business and individual organizational and transactional tax counselling, in addition to subspecialty work in partnership, corporate, international, entertainment and real estate taxation. We advise clients on a broad range of tax matters, including tax aspects of cross-border transactions and investments; partnerships and limited liability companies; mergers, acquisitions, dispositions and spin-offs; executive compensation and employee benefits; and tax controversies and litigation.

Venezuela

General Remarks

Venezuela has always been an importer of technology and a recipient of foreign investment. There is a large number of foreign corporations established in the country through local subsidiaries or branches. Our economy is mostly based on Oil & Gas and other roe minerals industries. Thus, foreign companies transferring technology and rendering technical assistance has always played an important role within our energy industry and other industrial sectors.

The country is currently in a period of general economic decline, with signs of recession and one of the highest rates of inflation in the world, which for the year 2010 was 27.2%.

Despite the present economic situation, the number of expatriate employees working in Venezuela is important.

Due to the above mentioned, most corporations enter into different arrangements (salary split) in order to grant the international establishment of their expatriates employees.

In this paper we will briefly analyze those cases making special emphasis on the tax implications.

General Aspects About Tax on Individuals

Venezuelan resident individuals are subject to taxes on a worldwide basis. All revenues received, whether in cash or in kind, derived from an employment or freelance professional activities are subject to taxation. Foreign, nonresident individuals are taxed over Venezuelan source income.

Wages, salaries, emoluments, diets, pensions and other similar compensations, other than travel expenses, obtained for rendering personal services under a relation of dependence, are considered as net income.

The applicable rate is progressive from a minimum of 6%, for an annual taxable income of up to 1,000 tax units (TU); to a maximum of 34%, for an annual taxable income of over 6,000 TU.

The Tax Law defines as non-residents those individuals who have not stayed in the country for more than 183 days during the calendar year or in the year before. Non-residents are taxed with a proportional rate of 34% of their gross income.

Individuals, who are residents of the country, shall have the following reductions:

- Amounts paid to educational institutes in the country, for the education of the taxpayer and the descendants of the taxpayer under twenty five (25) years of age. Such age limit shall not be applied to the cases of special education.
- Amounts paid by the taxpayer to companies domiciled in the country for health and medical insurance premiums.

- Amounts paid for medical, dental and hospitalization services, rendered in the country to the taxpayer and any persons under the care of the taxpayer.
- Amounts paid for interest installments in the cases of loans obtained by the taxpayer for the acquisition of his main residence or any amount paid for the lease of the house that is his permanent place of residence. The authorized reduction may not be higher than one thousand TU (1,000 TU) for each year in the case of interest installments for loans obtained by the taxpayer for the acquisition of his main residence or eight hundred TU (800 TU) for each year for the case of amounts paid for the lease of the house that is his permanent place of residence.

Personal allowances for taxpayers, spouses, children, and other dependents are in the form of tax credits. Tax credits are as follows: 10 TU for the tax payer, the spouse and each direct ascendant or descendant that is resident in Venezuela. Children who are disabled are eligible for the tax credit above regardless of age. Children, between the age of 18 and 25 years old, who are students, are also eligible for the tax credit.

Expatriates Tax Regime

If the expatriate remains in the country for a continuous or discontinuous period longer than 183 days in one calendar year, he/she will be considered a resident and will be subject to all tax obligations applicable to individuals residents, thus subject to taxation on a worldwide basis.

If the employee does not remain in Venezuela for a 183 day period in one calendar year, he/she will only be taxed over Venezuelan source income, subject to withholding tax of 34% on the paid amount.

Only tax resident expatriates may apply the allowances applicable to individual residents.

Currently Venezuela has executed Double Taxation Treaties with Barbados, Belgium, Belarus, Czech Republic, Canada, France, Germany, Indonesia, Italy, Korea, Kuwait, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom, the United States, Denmark, Austria, Iran, Qatar and Russia. Additionally, Venezuela has subscribed income tax treaties, which will enter into force with the exchange of the corresponding diplomatic notes, with Brazil and Mexico.

The majority of treaties establish the general principle that the income of the expatriate will be taxable in the country of resident, unless the job is being execute in the other country. However, in order to tax in the country of residence, it is necessary to meet the three conditions mentioned in the next chapter.

When there are no double treaties subscribed by Venezuela with a given country, the Income Tax Law provides the tax credit method to avoid double taxation issues.

General Tax Remarks on Salary Split

Inbound salary split

Venezuelan resident employees are subject to taxation in Venezuela on their worldwide income. However, in case employment is performed in another country the employment income may also be subject to taxation in that state. Non-Venezuelan residents performing employment activities in Venezuela are subject to taxation on Venezuelan source income. However, income obtained from Venezuelan employment is often also subject to taxation in their home state. In such cases (international) taxation rules mostly based on Double Taxation Treaties, determine in which state the employment income may be taxed. To reduce the taxation of cross-border employment income impact, salary splits may be an effective arrangement.

The general rule, when a Double Taxation Treaty applies, is that income from employment performed in Venezuela is subject to taxation within the country. Notwithstanding, the following exceptions applies.

If the following concurrent conditions are met, the employment income will be taxable in the home state even though the job is performed in another state:

- The employee does not physically spend more than 183 days in the tax year, the calendar year or any 12 month period beginning or ending in the tax year or calendar year in the work state,
- The remuneration is not being paid by or on behalf of an employer who is a resident of the work state, and
- The remuneration is not being charged to a permanent establishment of the employer in the working state.

If an employee works in two or more states, it can be tax efficient if the employment income is split between the two working states. Under a salary split arrangement, employees can benefit from lower tax rates, tax exemptions and tax free amounts in both countries. The home state will provide the employee with an exemption for double taxation. As long as this exemption exceeds the taxes actually due in the respective work states, a salary split can be tax convenient. The exemption method to avoid double taxation provide by the home state is also important as well, since if the exemption is provided by means of a tax credit, a salary split offers no tax benefit, whatsoever.

Gross Up Arrangements

Another common inbound salary arrangement is the grossing-up method. Most employers assume the Venezuelan tax impact when expatriating employees as a part of revenue and foreign establishment conditions. However, this method represent and additional liability and cost for the foreign employer.

Secondment Arrangements

Another common arrangement is to enter into a secondment agreement with a Venezuelan corporation. The foreign corporation would execute a secondment (deputation) arrangement with a Venezuelan company (commonly a related party), as per which non-resident employees could be seconded to the Venezuelan company.

Expatriate employees would enter into an employment agreement with the Venezuelan entity during the period of secondment, and could receive salary payments from both companies.

It is important to make sure that such salary payments are documented as being remuneration for services rendered offshore and onshore respectively, in order to reduce the risk of a permanent establishment in Venezuela.

General taxation rules on expatriate employees, mentioned above, are applicable.

Immigration Requirements

Visas

Immigration and visa requirements in Venezuela are subject to Migration and Immigration Law and to regulations from the Administrative Service for Identification, Migration and Immigration (SAIME, from its Spanish acronym).

Venezuelan authorities are allowed to issue several kinds of visa, but only two are relevant to business: Labor Visa (visa de transeunte liberal) and Business Visa (visa de transeunte de negocios).

The Business Visa is granted to merchants, executive employees, industry or corporate representatives and micro-entrepreneurs, no-migrants, who wish to enter the country in order to carry out activities and/or commercial transactions, mercantile, financial or other lucrative activity related with his or her business. It is obtained directly by the interested person before the Venezuelan Consulate in his or her country of origin or residence. It is granted for one year for multiple entries. The holder of this visa is not entitled to work for any local company. Therefore is not entitled to receive any remuneration as salary and or professional fee. This visa is normally use by representatives of foreign companies that have to travel to Venezuela periodically for short periods of time either for business development, supervision of activities of their local subsidiaries or branches and also by technicians assign by their companies executing transfer of technology or technical assistance agreements.

The Labor Visa is the visa require for expatriates that will work in Venezuela on permanent for a foreign or local company. It is granted for one year and it can be renewed on a yearly basis. It is advisable to obtain the visa before the employee enters Venezuela. If the employee needs to come to Venezuela before obtaining the visa, the employee shall enter in Venezuela with the Business Visa. Once the Labor Visa is authorized, the employee shall get it at the Venezuelan Consulate in his country of origin or residence.

The Business visa is obtained in the country of origin or residence before the Venezuelan or foreign company hiring the expatriate. All documents required for obtaining the labor visa must be file with the application and those issued in the foreign country must be certified with Apostle or legalized.

The procedures and granting of labor visa may be troublesome due to the number of documents to be filed and the need to obtain a work permit before the labor authorities which is a previous procedure to be done before filing the application to obtain the labor visa.

The procedure to obtain the authorization to enter the country and the labor permission of the employee may take from three (3) to four (4) months. The expatriate holder of a labor visa can bring his family to Venezuela with a Family Visa.

Work Contracts

The law does not require any labor contract to be in writing, but it is advisable to do so as this serves as evidence of the terms of the engagement, its duration, salary and payment structure, and all other circumstances which may later need proof. Besides, a work contract is required in order to obtain the Labor Visa.

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Hoet Pelaez Castillo & Duque is one of the oldest and largest firms in the country, offering a full range of legal services in the areas of Banking & Finance, Corporate/ M&A, Dispute Resolution, Energy & Natural Resources, Exchange Control Regulation, Intellectual Property, Labour & Employment, Public Law, Real Estate and Tax.

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