# Global Tax Update

## FRANCE

*Withholding tax system*

The French parliament has adopted the 2018 finance law which confirms that the withholding tax at source will be implemented with effect from 1 January 2019.

The withholding tax system will apply to French source compensation whether paid by French or foreign entities. French employers are responsible for withholding on a monthly basis the tax on the amounts of salaries they pay. For compensation paid by non-French employers, monthly or quarterly income tax prepayments will be required.

The withholding tax rate will be based on the average income tax rate that applied for the individual taxpayer in the previous year. However, individual taxpayers will be able to elect to apply a 'neutral rate' that is based only on the compensation paid to them by their employers. Individual taxpayers will be required to remit to the tax collector monthly pre-payments of income tax with respect to income such as rental income, business profits, etc.

Taxpayers will still be required to file an income tax return, and pay any additional amounts due or seek a refund of any excess tax paid.

### 'White Year' Mechanism

Up to now, individual income tax was due with a one-year lag so income tax on 2018 is due in 2019. As of 1 January 2019, the French government will put in place a withholding tax operated by the employer in order to withhold income tax directly on wages. There is an actual risk of double contribution during 2019, which would create a cash flow issues for tax payers.

In order to avoid this issue, French authorities have set up a mechanism of tax credit on ordinary 2018 income so that during 2019, income tax will be due on current wages received during 2019 and exceptional income received during 2018 only.

So strictly speaking, French taxpayers will have to pay income tax in both 2018 (on 2017 income), and in 2019 (on 2019 income + exceptional 2018 income), but from an economic perspective most of the 2018 tax theoretically due on income for that year will not be effectively recovered. This has been named 'the White Year' in France.

### Replacement Of The Wealth Tax By A Real Estate Property Tax

Until 2018, taxpayers with net assets above €1.3 M were liable to a wealth tax through a progressive tax scale based on the value of their net assets.

Every item of assets was included, such as real-estate properties, balance on bank accounts, shares, vehicles etc.

The new tax follows the same mechanism as the previous one, but the tax is only assessed on real estate properties (and shares of real estate companies) assets above €1.3M. Others assets of the taxpayers are no longer subject to this tax.

The tax scale remains the same and is as follows:

| Part of the taxable net assets | Rate applicable |
|---|---|
| Up to 800 000 € | 0% |
| From 800 001 € to 1 300 000 € | 0.5% |
| From 1300 001 € to 2 570 000 € | 0.7% |
| From 2 570 001 € to 5 000 000 € | 1% |
| From 5 000 001 € to 10 000 000 € | 1.25% |
| Above 10 000 000 € | 1.5% |

### BDO Comment

The switch to regular withholding at source will be a major change to taxation in France and requires organisations and taxpayers to consider how they will be impacted and to plan ahead.

Odd scenarios can arise as a result of the new rules, for example, consider the interaction with US taxpayers. Since there will essentially be no 2018 French income tax liability with respect to 2018 ordinary income, and because US persons continue to be taxed on worldwide income regardless of physical residence, it is critical that US citizens and green card holders living and working in France review their 2017 taxes and consider their 2018 US Federal income tax withholdings if they are paid on a US payroll, or make 2018 US Federal estimated tax payments to cover their expected 2018 US Federal income tax liability.

While French PAYE withholding will not be implemented until 1 January 2019, there are many things that US citizens, green card holders, French nationals working as local hires in the US and programme managers with US assignees in France and/or French nationals on an equalised assignment in the US should be thinking about and addressing during 2018.

## IRELAND

*Key changes to PAYE rules in Finance Act 2017*

### Revenue Given Powers To Gross Up

Finance Act 2017, has given the Revenue a statutory basis for the re-grossing of emoluments where an employer makes a payment of emoluments to an employee but fails to operate PAYE on any of the emoluments, or where the employer has disguised or omitted the emoluments in its books or records. In such cases, the employer is liable for the tax that would have been deductible from the employee, on the basis that the amount paid to the employee was the net amount of emoluments after deduction of tax i.e. income tax is calculated on a re-grossed figure.

Where an employee receives emoluments without the deduction of tax and the relevant provisions apply, the employer is liable for the tax that would have been deductible from the employee. The amount paid to the employee is treated as the net amount of emoluments after deduction of tax. This amount is re-grossed, and tax is calculated on the re-grossed figure.

### Emoluments To Be Assessed On A Paid Basis

PAYE income is to be assessable on a paid basis, rather than an earnings basis for 2018 onwards. However, this does not apply to directors holding 15% or more of the shares in their employer or to emoluments where an exclusion order is in place.

Transitional rules apply with respect to emoluments earned in 2017 but paid in 2018. Where emoluments fall chargeable to tax for the year 2017, (on the earnings basis of assessment), but also fall chargeable to tax in the year 2018 or a subsequent year (on the receipts basis of assessment), an individual can apply to Revenue to have the emoluments for the year 2017 charged to tax on the basis of the actual emoluments paid to the individual in 2017 (i.e. on the receipts basis of assessment).

### BDO Comment

As ever, employers should ensure they withhold where required to do so, to avoid the grossing up of income and the increased tax liabilities that then arise. Don't forget you can generally get a refund of excess withholding from tax authorities.

## SRI LANKA

*Key changes to expatriate taxation*

The taxation of expatriates in Sri Lanka is to be revised within the Tax Framework following the introduction of the Sri Lankan Inland Revenue Act No. 24 of 2017 ("NEW Act"). As a result, the tax treatment of expatriates has undergone a number of significant changes which take effect from 1 April 2018.

As per the Sri Lankan Inland Revenue Act No. 10 of 2006 ("CURRENT Act"), all profits or income that are earned within Sri Lanka are subject to Income Tax. Thus, an expatriate who comes to Sri Lanka on a casual basis would also be captured in this system during every Year of Assessment. This is principally by way of the PAYE scheme, where all payments to expatriate employees including wages, salaries and other benefits are taxed. However, under the CURRENT Act, an expatriate who does not maintain a physical presence in Sri Lanka for at least 183 days in a year of assessment (i.e. a twelve-month period from 1 April to 31 March), is deemed to be a non-resident. Under the NEW Act, the 183 days to constitute residency does not refer to a year of assessment and could even cut across two such years, making the expatriate liable in Sri Lanka as a resident for both periods.

The CURRENT Act provided a worthwhile exemption for expatriates employed in Sri Lanka through Section 13 (zz). The relevant Section provides that, profits and income of any individual who is not a citizen of Sri Lanka and who is employed in Sri Lanka in any undertaking, being profits and income arising or derived from outside Sri Lanka during the period commencing from 1 April 2008, and ending on the date of cessation of such employment, would be exempted from being taxed in Sri Lanka. This exemption, that was exclusively provided for expatriates, is not followed by the NEW Act. Consequently, any expatriate employed in Sri Lanka as a resident for more than 183 days will be liable to pay income tax in Sri Lanka on their global income. Double Tax Avoidance Agreements however, will come into play to assess the eligibility of that specific employee to be taxed in Sri Lanka instead of the jurisdiction in which the citizenship is held or the respective income is earned.

Additionally, with regard to the procedural aspect of the CURRENT Act, the overall obligation of compliance of an expatriate's tax liability is with the employer of the expatriate. The employer shall deduct the Income Tax as PAYE from the overall remuneration of the expatriate and remit such sums in the Commissioner General's favour. The NEW Act maintains the same outcome, where the tax on employment income is deducted by the employer as withholding tax.

A comparative analysis on the tax rates is as above.

A special mention should be made about qualifying payments on employment income currently available to all employees as these are not available for non-citizens, non-resident employees of Sri Lanka under the new law.

| CURRENT Act | | NEW Act | |
|---|---|---|---|
| Taxable Income (LKR) | Tax Percentage | Taxable Income (LKR) | Tax Percentage |
| On the first 500,000/- | 4% | On the first 600,000/- | 4% |
| On the next 500,000/- | 8% | On the next 600,000/- | 8% |
| On the next 500,000/- | 12% | On the next 600,000/- | 12% |
| On the balance thereafter | 16% (max rate for employment income) | On the next 600,000/- | 16% |
| | | On the next 600,000/- | 20% |
| | | On the next 600,000/- | 24% |

### BDO Comment

The new rules are likely to increase expatriates' liability to tax in Sri Lanka. Do review the position for any assignees to understand the impending impact of the changing rules.

## SWEDEN

*New exit tax for Swedish residents*

The Swedish Tax Agency has put forward a proposed bill to introduce an exit tax for unrealised capital gains for Swedish residents leaving Sweden. The bill has been submitted to the Swedish Finance Ministry and it has been suggested that it should come into force by 1 January 2020.

### The Proposal

The proposal from the Swedish Tax Agency recommends the introduction of an exit tax for residents who are moving from Sweden. The proposal suggests a tax on unrealised capital assets on the move from Sweden. There would be no time limit to the Swedish claim for the exit tax. Capital losses on assets would be credited against the capital gains that would be taxed as a result of the new law.

The new legislation would only be applicable to individuals that have been resident in Sweden for 5 of the 10 years prior to the move from Sweden. The capital assets that will fall within the new legislation are shares and equities in Swedish partnership companies, where the capital assets exceed SEK 100 000.

Individuals moving to a state within the EEA or to a state which Sweden has a tax treaty with, may claim a deferral of the exit tax payment until the assets are sold and the gain is realised. If the asset value has decreased between the exit from Sweden and the eventual sale, this could be taken into account when the assets are realised.

Once the new exit tax is introduced, it is suggested that the current Swedish ten-year rule would be abolished. The ten-year rule states that Sweden may tax the sale of shares and equities deriving from the individual's time in Sweden or from a Swedish source, up to ten years after an individual has left Sweden. The domestic ten-year rule may be limited by double tax treaties.

### Background, Reception And Future Introduction

The purpose of the new legislation is to protect the Swedish tax base and prevent tax avoidance. The Swedish Tax Agency estimate that the new rule would have affected between 1,000 to 2,000 individuals in previous years and that the future yield is estimated to be 1 billion SEK per year.

The proposal has received a positive response from the Swedish Minister of Finance.

### BDO Comment

The proposal from the Swedish Tax Agency is in accordance with recent Swedish discussions regarding tax avoidance. The new legislation could be in conflict with the EU principals of free movement for individuals. We will follow the future progress of the proposal with great interest.

## UK

*Immigration Health Surcharge set to Double*

The UK Government has announced they intend doubling the charge to temporary migrants in the UK later this year, although they have not yet set a date for the change. This will increase the fee for most immigration categories to £400 per year. Students and individuals applying for a Tier 5 (Youth Mobility) visa currently pay £150 per year - this cost is also set to double.

### Who Is Liable To The Immigration Health Surcharge?

Nationals of a country outside the European Economic Area (EEA), applying for a visa or leave to remain to work, study or join their family in the UK for more than 6 months (but not those applying to remain in the UK permanently).

### BDO Comment

Employer's should be aware of the extra cost of bringing non EEA nationals to work in the UK. It also remains to be seen whether these charges will extend to nationals of EEA countries following Brexit. Advance planning is recommended to minimise the impact of the increased fees on individuals coming to the UK.

### Scottish Income Tax Rates – A Variation From The Rest Of The UK

The introduction of the Scottish income tax rates and rate bands was effective from 2016/17, but in that tax year, the rates and rate bands were not varied by the Scottish Government and so are exactly the same as for the rest of the UK.

The ability to vary the rates and bandings came into legislation on 6 April 2016, but the first tax year where there are different rate bands from the rest of the UK is 2017/18. An added complication is that the Scottish bands only apply to non-savings income, so dividends, interest, capital gains etc., are all taxed as they would be in the rest of the UK.

> Employer's should be aware of the extra cost of bringing non EEA nationals to work in the UK

To be liable for the Scottish tax, you must be a UK resident for tax purposes and 'live in' Scotland, so any non-resident individual that has a correspondence address in Scotland may have been flagged as liable for the Scottish rate by HMRC. This is because all taxpayers with a Scottish address were automatically flagged for it without any consideration made of their residence status. The easiest way to fix this would be for the address at HMRC to be changed to the overseas address, but if that is not practical, a 'white space' note should be added to the tax return (2017/18 onwards) to make sure that HMRC is aware of the taxpayers' non-resident status. As many non-residents only have rental and savings income, this might not have a great impact, but if there are any self-employed or employed earnings subject to UK tax, HMRC may recalculate that tax when they process the tax return.

The HMRC web page on Scottish income tax is confusing, as it states that the Scottish rate of income tax is effective 2016/17, and shows a table of rates and bands at the foot of the page. The rates shown at the bottom are 2017/18 rates, not 2016/17.

### BDO Comment

Failure to recognise Scottish residents correctly, or to account for the extra tax that will now be due, could give rise to unexpected extra – Scottish - tax liabilities.

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