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Expatriate News

Welcome to the latest issue of Expatriate News. We lead with a review of recent anti-avoidance measures taken by tax authorities around the world, and continue with a reminder about the working of the EU Savings Directive, which addresses the taxation of interest from deposits placed by individuals in Member States other than their own. The treatment of share options in Belgium and Australia is discussed, as are recent tax changes of relevance to expatriates in France, India, Indonesia, Ireland and Serbia. Finally, we note that European Health Cards issued by the United Kingdom may soon be expiring, and report on a new IRS publication for foreign nationals in the United States.





GLOBAL TAXATION UPDATE

Additional measures to ensure collection of tax

Various measures have recently been introduced in a number of countries to counter avoidance and evasion. International assignments do give rise to the greater possibility that individuals may open bank accounts in other countries and receive payments that later go undeclared. Whilst most companies advocate compliance not all assignees comply. Governments across the globe are increasingly searching for extra revenue and have recently taken additional steps to secure this, such as:

- **France** — A new service has been introduced to assist French taxpayers in regularising their tax position where there has been prior non-disclosure, providing that the assets were legally acquired. Tax, interest and penalties remain due but criminal prosecution will not be sought.
- **Germany** — A draft bill has been introduced to assist in combating tax evasion. The draft provides powers to disallow the application of certain tax provisions or make them conditional on increased documentation and cooperation. The proposals will not apply to countries with which Germany has a tax treaty.
- **Switzerland** — With effect from 1 January 2010 it will be possible voluntarily to disclose previously evaded tax in relation to both deceased and living individuals but only on first disclosure. Whilst tax and interest will remain due, penalties will be waived.
- **United Kingdom** — Discussions are under way regarding a second offshore 'facility' to collect UK tax due on previously undeclared amounts held in non-UK bank accounts.
- **United States** — The United States plans to reach an agreement with **Switzerland** to share information between the respective tax authorities. This will bring the existing tax treaty into line with the OECD Model Convention. This follows well publicised issues that the Internal Revenue Service (IRS) has had with a large Swiss bank. Additionally, the IRS has released a list of Frequently Asked Questions in respect of its voluntary disclosure programme for offshore bank accounts.

EUROPEAN UNION

Savings Directive – a reminder given anti-avoidance measures outlined above

Most double taxation agreements state that interest received by a resident of one contracting state from a source in another contracting state may be subject to taxation in both states. The interest received is subject to a withholding tax (possibly at a preferential, reduced rate) in the source state, and is also included as taxable income in the state of residence.

In the past, the tax authorities had very little means to verify whether taxpayers had properly reported foreign interest in their resident income tax returns. If taxpayers intentionally or accidentally omitted the foreign interest from their resident income tax return, that interest often remained untaxed.

In order to ensure that foreign interest received by a taxpayer is properly declared in the taxpayer's resident tax return, the European Union Savings Directive (EUSD) came into effect on 1 July 2005. The EUSD aimed to introduce a single procedure whereby countries freely disclose information on interest received by non-residents to their respective tax authorities. This exchange of information provides the tax authorities with an effective tool to verify whether taxpayers have declared foreign interest received.

However, in some countries this principle of exchange of information could not be reconciled with the national bank-secrecy legislation. For that reason, it was agreed that during a transition period countries with national bank-secrecy legislation preventing an automatic exchange of information could adopt an

alternative system. **Austria, Belgium, Luxembourg** (and also **Switzerland**, which has entered into an agreement with the European Union to abide by the Directive) have elected to make use of this alternative.

Under this alternative system, the paying agents established in the abovementioned countries will apply a European withholding tax (currently at 20%) on the interest paid, in addition to the national withholding taxes. This European withholding tax is subsequently passed on anonymously to the tax authorities of the country of residence of the beneficiary of the interest. This beneficiary can offset the European withholding tax against any national tax due on the interest income. Taxpayers are exempt from the European withholding tax if they voluntarily waive their rights to secrecy and authorise the disclosure of their interest information to the tax authorities in their country of residence.

While **Belgium** has implemented and applied the European withholding tax since the EUSD came into effect, the Belgian Minister of Finance has recently announced that Belgium will change its bank-secrecy legislation so that it no longer prevents the disclosure of account details of non-residents of Belgium to the tax authorities of their country of residence. As a result, Belgium will fully adhere to the exchange of information procedure included in the EUSD and no longer apply the European withholding tax.

This new legislation is expected to enter into force on 1 January 2010.

Tax authorities across the European Union are concerned to ensure that the EUSD achieves its aim. Where they believe avoidance is occurring they will adjust the provisions.

AUSTRALIA

Employees working overseas

Budget amendments have proposed changes to the current exemption for Australian residents working overseas. At present income earned during a continuous 91-day period working overseas is not subject to Australian tax as long as foreign tax is incurred. It is proposed that this exemption will in future apply only to income earned by an aidworker or charitable worker and certain government employees or from projects defined as being in the national interest. In all other cases, individuals will need to include the relevant income, unless exempt under a double tax treaty, although they can claim a foreign tax offset. Whilst tax may be due in both locations there may be a mismatch in terms of timing.

Employee share schemes

Currently an employee who acquires shares or rights at a discount under a qualifying scheme can either:

- elect to be taxed up-front on the discount and obtain an exemption from assessable income of ASD 1000 or
- make no election and defer the taxing point until a later cessation time such as the date the restrictions cease and the employee can sell his or her share or rights

Under amendments announced in the Budget, shares or rights acquired after 19:30 on 12 May 2009 are subject to the following amended rules:

- the ASD 1000 exemption will only be available where the employee has an adjusted taxable income of less than ASD 60 000; and
- in all other cases, the full discount will be included as assessable income of the employee in the year in which the employee receives the shares or rights. The taxing point cannot be deferred until a later time.

These changes will make employee share schemes less attractive.



BELGIUM

Share Options

Belgium's tax law provides for taxation on the grant of share options. As a result of the financial and economic crisis, many beneficiaries today hold options with an exercise price far above the current value of the underlying shares. As it is unlikely that these options will be exercised, the beneficiaries will have incurred a loss since the taxes that have been paid at the time of the grant cannot be recovered.

In order to remedy this situation, the Belgian Parliament has passed new legislation enabling companies to extend the exercise period of options by a maximum of five years. The extension is subject to certain conditions and has to be requested following a defined procedure. Do note that a change of the exercise period that does not fall within the scope of the new law would be considered as a grant of new options and would result in additional taxation for the beneficiaries.

The possibility of extending the exercise period for share options is open to Belgian companies as well as non-resident companies with Belgian beneficiaries.

Clients who implemented a share option plan with Belgian beneficiaries need to take action prior to 30 June 2009.

Tax treaties

In common with those of many countries, Belgium's tax treaties in relation to employment income vary, particularly when looking at 183 days and the period to which this relates. This period may be a calendar year, fiscal year or period ending or starting in the year concerned.

With effect from 1 January 2009, Belgium has changed the wording of domestic legislation by no longer referring to the 'taxable period' in order to check the 183-day limit. Instead, a non-resident of Belgium will now be taxed on the income received from his or her non-Belgian employer for activities performed in Belgium if that taxpayer's physical presence in Belgium for that professional activity exceeds 183 days during any 12-month period.



FRANCE

French income tax season 2008

Taxpayers should have received their pre-completed income tax forms from the tax administration by the end of April. Wages and earnings such as dividends and interest received during the calendar year 2008 (only from French sources) are already mentioned and the taxpayer has only to confirm/amend and to complete the forms.

French residents had until 29 May 2009 to submit their returns. This deadline was extended to between 11 and 18 June for taxpayers who file their returns online via the French tax administration website.

For non-residents, the deadlines are 30 June for those who live in Europe, in Mediterranean countries, in North America or in Africa and 15 July for the other geographical zones.

Lastly, the French income tax is a progressive tax. This year an exceptional reduction (crisis measure) of the amount normally due is provided for taxpayers who remain in the 5.5% tax band. They will enjoy a reduction of two-thirds of the amount of income tax that they should have paid.

New government service for non residents and expatriates

A new government service has been introduced to provide information about French tax for non-residents and expatriates. Additionally they will also be able to obtain binding rulings regarding their tax position.



france

INDIA

Extension of withholding tax on employment income

A recent Indian Supreme Court decision has ruled that withholding tax needs to be deducted on employment income relating to Indian duties, even where the remuneration is paid by a non-Indian entity. In a series of cases the Court ruled that where organisations were working on a joint-venture basis and the individuals had a single employment with duties

undertaken in India but salary paid partly by an Indian entity and partly by a foreign entity, Indian withholding tax also applies to the part of the salary paid by the foreign entity. Tax was already being paid in advance in the cases in question but the Court determined that withholding tax and the related withholding regime should apply instead.

INDONESIA

Employment income tax to be borne by government

The government has announced that for a period of one year to December 2009 tax on employment income of resident individuals will be borne by the government providing the following conditions are met:

- the employees work in agriculture, hunting, forestry, fishery or manufacturing industries; and
- the employee's gross income exceeds exempt income but is less than IDR 5 million per month
- a further condition applies from July 2009, this being that the individuals must have tax registration numbers

The withholding obligation still exists and the measure does not negate this. The incentive is paid by the government to the employees in cash.



IRELAND

Higher rates of tax to apply

Budget measures have sought to raise additional taxes. The income levy (a supplementary tax on income introduced on 1 January 2009) has doubled and from 1 May 2009 is 2% on income between EUR 15 028 and EUR 75 036, 4% between EUR 75 037 and EUR 174 980, and 6% on income in excess of EUR 174 980. The effect of this and other changes is that those earning in excess of EUR 50 000 will pay 4% extra and those earning in excess of EUR 300 000 will pay 9% extra.



SERBIA

Expat allowances abolished

With effect from 8 May 2009, the tax allowance in relation to additional employment expenses of expatriates is abolished.

UNITED KINGDOM

European health cards & expiry dates

European Health Cards (EHIC) introduced in 2005 to replace former E111 and E128 forms have an expiry date on them. Many individuals are unaware of this fact. The cards, which allow the holder to receive state-provided medical treatment free or at a reduced cost during temporary visits to other EU Member States or Switzerland, were issued for periods up to five years and many have either expired or will do so soon.

They can be renewed online via the link:

<http://www.nhs.uk/NHSEngland/Healthcareabroad/Pages/Applyingandrenewing.aspx>

Do remember that separate EHICs are issued for each family member.



UNITED STATES

New IRS publication for foreign nationals

The Internal Revenue Service (IRS) has issued a revised version of Publication 519 (US Tax Guide for Aliens).

This is available on the IRS website through the link:

<http://www.irs.gov/pub/irs-pdf/p519.pdf>

The publication provides guidance for resident and non-resident aliens (who are essentially non-US citizens or greencard holders) in determining their US tax-residence position and their US tax-filing obligations. Residents are generally taxed on worldwide income, non-residents are generally taxed on US-source income or income effectively connected with a US trade or business.



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