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EXPATRIATE NEWSLETTER

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AUSTRALIA

CHANGES TO DEDUCTIONS FOR EMPLOYEES' TRAVEL EXPENSES

There has always been a lot of debate in Australia on the tax deductibility of travel and sustenance (accommodation, food etc.) expenses.

Such expenses have, until recently, been broadly classified as:

- Travelling and sustenance for work purposes – deductible;
- Travelling to work – not deductible;
- Sustenance when not travelling – limited deductions for qualifying 'Living Away From Home Allowance' (LAFHA) cases.

The Australian Taxation Office's (ATO) proposed tax treatment of travel expenses is now clearer since it revised and explained its view of the treatment of many common travel expenses earlier this year. When finalised, **draft tax ruling TR 2017/D6** (TR 2017/D6) on travel expenses deductibility, will replace previous guidance, albeit with a less clear cut distinction between travelling and living away from home.

The draft ruling steers away from providing 'rules of thumb' for determining whether travel expenses are deductible where the travel is undertaken in performing an employee's work activities and instead concludes that it will always be up to the facts of each situation as to whether an employees' travel costs will be deductible.

Based on the examples in TR 2017/D6, it appears the ATO is tentatively suggesting time away from home of less than three months may be deductible.

BDO has gone one step further and proposed a six month rule (with qualitative factors to safeguard against abuse) as outlined in this **BDO Australia submission** on 11 August 2017 (submission), to determine 'travelling' as being more consistent with international mobility industry standards around 'short term' and the general time limit for taxing employment income in Australia in most of Australia's double tax agreements.

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EDITOR'S LETTER

The BDO Expatriate Newsletter provides a brief overview of issues affecting international assignees, predominantly, but not exclusively, from a tax and social security perspective.

This newsletter brings together individual country updates over recent months. As you will appreciate, the wealth of changes across multiple jurisdictions is significant so to provide easily digestible information we have kept it to the key developments that are likely to affect your business and international assignees.

For more detailed information on any of the issues or how BDO can help, please contact me or the country contributors direct.

ANDREW BAILEY
andrew.bailey@bdo.co.uk
+44 207 893 2946

TR 2017/D6 also introduces a new concept of deductible 'special demands' travel considering the remoteness of the work location or the requirement to move continuously between changing work locations.

BDO notes however that TR 2017/D6 does not consider situations where an employee has a longer term arrangement where they live in one state and work in another state using employer provided accommodation in the work location, commuting weekly between the two. BDO has requested clarity around this quite common scenario in Australia.

We also note that whilst TR 2017/D6 includes numerous new and interesting examples of both deductible and non-deductible travel expenses, there needs to be more clarity on timing and location issues as well as further guidance on how travel between such locations should be treated.

Ultimately BDO welcomes the guidance which provides a range of modern workplace examples to illustrate how to determine whether travel expenses for an employee is otherwise deductible, but have still identified situations that need further clarification and examples of what we would like to see when the final ruling is issued including contain more examples to address flexible working and working from home arrangements which are becoming increasingly prevalent.

The main factors that are identified in the ruling for determining deductibility of transport costs are summarised below:

BDO comment

- *TR 2017/D6 will impact the tax treatment of any travel and living away from home costs provided in the current tax year.*
- *Employers will need to reassess whether their employees are travelling for work or relocating/living away from home and closely examine official start and finish times of rosters and precise terms of employment contracts.*
- *Employees will need to maintain work related travel records, as taxpayers must apportion travel expenses if there is a combination of work related and private costs, which will not be deductible to the extent they are private or domestic in nature.*
- *Historical treatment of travel and living away from home benefits will need to be considered to assist in identifying opportunities to obtain tax refunds from prior years, subject to whether the final version of TR 2017/D6 applies retrospectively and restructure for optimum tax efficiency going forward which is still undecided.*

KUMAR KRISHNASAMY
kumar.krishnasamy@bdo.com.au

Deductible travel	Non-Deductible travel
Special demands travel (i.e. travel to remote work locations)	Ordinary home-to-work travel
Requirement to move continuously between changing work locations	Relocation travel
Requirement to work away from home for extended period (e.g. temporary alternative work locations)	
Travel between co-existing work locations	

MEDICARE LEVY RATE INCREASE

Should the Australian government have their way, the Medicare levy is set to rise from 2% to 2.5% of taxable income for the year commencing 1 July 2019. The increase is primarily to help finance the Commonwealth's contribution to the National Disability Insurance Scheme (NDIS).

Those people who are exempt from the Medicare levy (such as those expats from countries Australia does not have reciprocal health cover), will continue to remain exempt.

As a consequence of the proposed Medicare levy increase, other related taxes such as the FBT rate would also increase for the 2019/20 income year and beyond (year commencing 1 April 2019).

DEBBIE COCHRANE
debbie.cochrane@bdo.com.au

KUMAR KRISHNASAMY
kumar.krishnasamy@bdo.com.au

ENG HUA NG
enghua.ng@bdo.com.au

ADELE TOWNSEND
adele.townsend@bdo.com.au

CANADA

SIMPLIFICATION OF QUEBEC RESIDENCY

On 29 September 2017, Revenue Québec released an updated version of its interpretation bulletin on determining the residence of an individual who leaves Quebec for another province as well as for an individual leaving Canada from Quebec (IMP.22-3/R2). This updated version of the interpretation bulletin explains Revenue Québec's position when determining an individual's Quebec residency status taking into consideration recent jurisprudence on the subject.

BDO observation on the update

Overview

For individuals who were leaving Canada from the province of Quebec there were times that an individual could be considered a non-resident of Canada, even though they would still be considered a resident of the province of Quebec. This created various issues with tax return filings as well as the taxation of certain sources of income. This new version of the interpretation bulletin provides new guidance of the factors to be considered in making a determination of tax residency according to Quebec's regulations. Revenue Québec now states that this interpretation bulletin may be used not only for taxpayers leaving Canada from Quebec but also for taxpayers leaving Quebec for another province.

Permanence of the stay

The previous version of the interpretation bulletin stated that in order for an individual to be considered as a non-resident of Canada and Quebec, his stay outside Canada must be characterised by a certain permanence. Indeed, if the individual left Canada for whatever reason for less than two years, Revenue Québec shall presume that the individual has retained his residence status while abroad, unless he clearly establishes his intention to permanently sever his residence. As a result of that concept and because Revenue Québec did not consider that some residential ties were more significant than others, it was difficult to prove that an individual ceased his Canadian and Quebec residency if he was abroad for less than two years.

The new version of the interpretation bulletin has removed the concept of permanence of the stay. Therefore, it appears that Revenue Québec no longer considers the length of stay outside Canada and Quebec as a determining factor in establishing tax residency, but will consider the facts as a whole. Moreover, in its Income Tax Folio-S5-F1-C1 Determining an Individual's Residence Status, the Canada Revenue Agency (CRA) indicates that there is no particular length of stay abroad that necessarily results in an individual becoming non-resident. This change in the interpretation bulletin leads us to believe that Revenue Québec has modified its criteria for determining residency status to become more similar to the CRA's.

Significant residential ties

In this new version of the interpretation bulletin, Revenue Québec includes the concept of significant residential ties. Beforehand, Revenue Québec only mentioned residential ties without weighting the importance of each residential tie. It appeared that all residential ties had the same importance.

The concept of significant residential ties was already used by the CRA. By categorising residential ties as significant, secondary or other ties; Revenue Québec's position is more similar to the one established by the CRA in its Income Tax Folio.

Dwelling place

Both versions of the interpretation bulletin indicate that keeping a dwelling place in Quebec while abroad constitutes a residential tie. The new version specifies that a dwelling place is a significant residential tie. Furthermore, the new version also highlights the circumstances under which Revenue Québec may not consider the dwelling place as a significant residential tie with Quebec, such as leasing to a third party on arm's-length terms and conditions. Therefore, both the Quebec Interpretation Bulletin and the CRA's Tax Folio are now similarly worded, aligning the tax positions of Quebec with Canada.

Secondary residential ties

The new interpretation bulletin includes a list of secondary ties that Revenue Québec would look at collectively in order to evaluate the significance of any one such tie. Therefore, no longer would a single secondary tie with Quebec to be sufficient on its own to lead to a determination that an individual is still a resident of Quebec while abroad. The secondary ties listed are the same found in the CRA's Tax Folio and used in Form NR73 Determination of Residency Status (leaving Canada) which CRA uses administratively to assess tax residency.

In the past, Revenue Québec would examine the reasons of having those ties while living abroad, evaluating every single tie as opposed to analysing them as a whole.

Other residential ties

The Quebec interpretation bulletin now includes a paragraph on other residential ties, which is worded exactly as the one found in the CRA's Tax Folio.

Residential ties elsewhere

The new version of the interpretation bulletin outlines the importance of establishing significant ties outside Quebec in order to become a non-resident of Quebec for tax purposes, making it more in line with the CRA's position.

BDO comment

The changes made by Revenue Québec in its updated version of Interpretation Bulletin IMP.22-3/R2 ensure that the guidelines used for determining the tax residency of an individual are the same as those issued by the CRA. Based on our comparison of the revised version of Quebec's interpretation bulletin and the CRA's Tax Folio, we believe there should be fewer situations where an individual is considered as a non-resident of Canada but would still be considered a resident of Quebec for tax purposes. The criteria used to establish tax residency will now be the same across all of Canada.

DEBRA MOSES
dmoses@bdo.ca

DENMARK

TAX RESIDENCE FOR INDIVIDUALS WITH A HOME AVAILABLE IN DENMARK

A recent binding ruling by the National Tax Board shows that the rules are complicated and that unforeseen results may easily occur without professional tax advice.

As described above, one of the proposed initiatives by the government is to modernise the rules concerning commencement of tax residence for individuals living abroad, also having a home available in Denmark.

A recent binding ruling by the National Tax Board shows that the rules are complicated and that unforeseen results may easily occur without professional tax advice. Hopefully, the intended modernisation of the rules also comprises simplification in order for taxpayers to be able to better predict their tax position when moving and/or working cross-border.

Generally, a non-resident individual becomes resident in Denmark for tax purposes, if he acquires a home in Denmark and takes up residence here.

In the recent binding ruling, a taxpayer living with his family abroad, rented a 15m^2 room with shared kitchen and bathroom in Denmark to use when working in Denmark. The National Tax Board considered this sufficient for the taxpayer to have a home available in Denmark, thereby triggering tax residence.

When reading the legal guidelines issued by the Danish tax authorities on what constitutes having a home available in Denmark in this respect, it becomes apparent that many factors can impact the assessment.

For example, the duration of the availability of the accommodation in Denmark, whether the taxpayer rents the accommodation himself, or whether the accommodation is made available to him by an employer, whether the home in the home country is still available to him, and whether he brings his family to Denmark, are all circumstances that may influence this assessment depending on the situation.

Consequently, professional tax advice is recommended if unforeseen tax implications should be avoided when moving and/or working cross-border.

FINN MADSEN
fnm@bdo.dk

IRELAND

KEY EMPLOYEE ENGAGEMENT PROGRAMME (KEEP)

The Bill confirms the introduction of a new share incentive scheme to facilitate the use of share-based remuneration by unquoted SME companies to attract key employees.

This new scheme is called 'KEEP' or 'Key Employee Engagement Programme'. Under the scheme, gains arising when employees exercise their KEEP share options will be liable to Capital Gains Tax on disposal of the shares, instead of Income Tax, Universal Social Charge (USC) and Pay Related Social Insurance (PRSI) on exercise (as is currently the case).

There are a number of qualifying conditions, including:

- The share options must be granted at not less than market value on the date of grant.
- The share options must be held for a minimum period of one year before exercise (subject to certain limited exclusions) and must be exercised within ten years of grant.
- Employer companies undertaking certain types of activities will not qualify (in accordance with State Aid rules).

This incentive will be available for qualifying share options granted between 1 January 2018 and 31 December 2023.

The introduction of the scheme is subject to Commencement Order, and EU State Aid approval.

BENEFIT IN KIND (BIK) ON ELECTRIC VEHICLES

The Bill confirms an exemption from BIK where an employer provides an employee with an electric vehicle. This exemption is provided for a one year period only as an interim measure to allow for a comprehensive review of BIK on vehicles.

The Bill also provides for an exemption from BIK where an employer provides an employee with a facility on their premises for the charging of electric vehicles.

PAYE MODERNISATION

The Bill introduces a number of technical changes to allow for the introduction of real-time reporting under the PAYE Modernisation Programme. PAYE Modernisation represents the most significant reform of the PAYE system since its introduction in 1960. It will result in new processes for employers, agents and Revenue.

Employers will update and report their employee's pay and deductions to Revenue as they are being paid and, in this way, Revenue will have the most up-to-date information possible. Real-time reporting is due to come into effect from January 2019.

The Bill also provides for the following changes, with effect from 1 January 2018:

- A change from an earnings basis to a receipts basis for PAYE employees; and
- New provisions for the recoupment, on a grossed up basis, of Income Tax where PAYE is not operated by an employer.

MARK HYNES
mhynes@bdo.ie

MALAYSIA

MALAYSIA 2018 BUDGET

Reduction of income tax rates for resident individuals

The income tax rates for resident individuals are to be reduced by two percentage points for the following income bands:

This proposal aims to increase the disposable income of the middle income group and to address the rising cost of living.

Chargeable Income (MYR)	Current Tax Rates (%)	Proposed Tax Rates (%)	Reduction in Tax Rates (%)
1 - 5,000	0	0	-
5,001 - 20,000	1	1	-
20,001 - 35,000	5	3	2
35,001 - 50,000	10	8	2
50,001 - 70,000	16	14	2
70,001 - 100,000	21	21	-
100,001 - 250,000	24	24	-
250,001 - 400,000	24.5	24.5	-
400,001 - 600,000	25	25	-
600,000 - 1,000,000	26	26	-
Exceeding 1,000,000	28	28	-

Tax exemption on rental income from residential homes

Currently, rental income received by a resident individual is subject to income tax based on progressive rates ranging from 0% to 28%.

It is proposed that 50% income tax exemption be given on rental income from residential homes received by resident individuals subject to the following conditions:

1. Rental income received not exceeding MYR 2,000 per month for each residential home;
2. The residential home must be rented under a legal tenancy agreement between the owner and the tenant; and
3. Tax exemption is given for a maximum period of 3 consecutive years of assessment.

This proposal aims to encourage Malaysian resident individuals to rent out residential homes at reasonable charges.

Tax incentive for women returning to work after career break

It is proposed that women who return to the workforce after being on a career break for at least two years are eligible to claim income tax exemption on their employment income up to twelve consecutive months in Year of Assessment (YA) 2018 to YA 2020.

Applications must be submitted to Talent Corporation Malaysia Berhad from 1 January 2018 to 31 December 2019 in order to claim this income tax exemption.

This proposal is to encourage women who have been on a career break to return to the workforce.

ELAINE HONG
elainehong@bdo.my

DAVID LAI
davidlai@bdo.my

MALTA

NOTIONAL INTEREST DEDUCTION RULES

On 5 October 2017, the Ministry of Finance enacted, through Legal Notice 262 of 2017, the long awaited Notional Interest Deduction Rules. For decades we have argued that from a tax perspective debt is more efficient than equity when financing a corporate vehicle, since our tax legislation allows a deduction for interest incurred on finance used to generate income. On the other hand dividend payments are considered to be a distribution of profits rather than an expense incurred in the production income, thereby resulting in no tax deduction being afforded by the Income Tax Act (ITA).

The Notional Interest Deduction Rules attempt to address this inconsistency by allowing a deduction for 'interest on risk capital'. For the purpose of the Rules, risk capital includes share or partnership capital of a company or partnership, any share premium, positive retained earnings, loans or other debt borrowed by the undertaking which do not bear interest (typically including shareholders loans), and any other reserves resulting from a contribution to the company or partnership. An equivalent deduction is permitted to a Maltese permanent establishment (PE) of a foreign undertaking (based on the capital attributable to the Maltese PE).

The substantive provisions of the Rules provide that in computing the chargeable income of a company or partnership, such undertaking may opt to take a deduction for interest on risk capital, at a rate established by reference to the current yield to maturity on Malta Government Stocks with a remaining term of approximately twenty years plus a premium of 5%. Such deduction is capped at a maximum of 90% of the chargeable income (before grossing up for Flat Rate Foreign Tax Credit (FRFTC)) with the excess being carried forward to be deducted in subsequent years. The deduction is claimed through the tax return and requires that on an annual basis, all shareholders or owners of the undertaking approve the claiming of such deduction.

Whenever a company or partnership claims the notional interest deduction, each shareholder or partner as applicable, is deemed to have received his proportional share (of the risk capital, that is equity, reserves, share premium, shareholders' loan, etc.) appertaining to him. For all intents and purposes, the receipt is classified as interest income for income tax purposes. However the Rules specifically preclude the application of the Investment Income Provisions (15% final tax option) on such interest income. On the other hand the classification of such income as interest income imply that receipt of income is exempt from tax in terms of Article 12 (1) (c) (i) when paid to a non-resident (except in the case of a permanent establishment). Since the deduction is classified as interest for all intents and purposes, the interest deduction limitation in Article 26 (1) (h) ITA will still disallows such deduction:

a. When the risk capital is used to finance the acquisition of immovable property in Malta; and
b. The shareholder or partner is a non-resident who has a relationship of more than 10% with the undertaking.

Finally, whenever a company takes the optional notional interest deduction, the company is required to allocate to the Final Tax Account (FTA) 110% of the deduction availed of, up to a maximum of the profits allocated to the other taxed accounts, with any excess being ignored. The application of this rule is explained in the example below assuming the shareholders of the company are registered for tax refunds.

	No Notional Interest Election	Notional Interest Election	Notional Interest Election
Chargeable Income	100,000	100,000	100,000
Notional Interest	Nil	20,000	60,000
Chargeable Income	100,000	80,000	40,000
Tax thereon at 35%	35,000	28,000	14,000
FTA Allocation	Nil	22,000 (20,000 × 110%)	66,000 (60,000 × 110%)
MTA Allocation	65,000	50,000 (80-28-2)	20,000 (40-14-6)
6/7ths refund	30,000	23,077	9,231
Tax leakage	5,000	4,923	4,769

Conclusion

The Notional Interest Deduction Rules provide new opportunities. Our specialised tax team can assist you with reviewing your corporate capital composition so as to establish what benefits your company can reap from the Notional Interest Deduction.

JOSEF MERCIECA
josef.mercieca@bdo.com.mt

THAILAND

17% FLAT TAX RATE FOR EMPLOYEES WORKING IN TARGET INDUSTRIES IN THE EASTERN ECONOMIC CORRIDOR (EEC)

Qualifying employees who work for a company that conducts business in targeted industries located in the EEC i.e. the Chachoengsao, Chonburi, and Rayong Provinces located on Thailand's Eastern seaboard, may now choose to pay personal income tax rate at a flat rate of 17%.

The employer must be a company located in the EEC that is exempted from corporate income tax under the law on enhancing the competitiveness of the country for targeted industries or the Investment Promotion Act.

The employer must notify the Revenue Department by filing the required documents before paying the salary for the first time.

The payment must be made in respect of employment at the company's place of business and must be paid entirely in Thailand.

The targeted industries are:

1. Next-generation automotive industry;
2. Smart electronics industry;
3. Tourism for wealthy people and health tourism industries;
4. Agriculture and bio-technology industry;
5. Food processing industry;
6. Robotics industry;
7. Aviation and logistics industries;
8. Eco-friendly petrochemical and bio-chemical industries
9. Digital industry; and
10. Medical hub industry.

The employee must meet certain conditions to qualify for the flat tax rate, including:

a. The employee must be a qualified executive, a specialist or a researcher in accordance with the conditions stipulated by the Revenue Department.

b. The employee must not have resided in Thailand in the calendar year before they first apply for the flat tax rate or if they did, they must have resided for less than 180 days.

c. The employee must stay in Thailand for 180 days or more in the calendar years that they elect to pay tax at the rate of 17%, except that for the first year and the last year they may stay in Thailand for less than 180 days in each of those years.

Four year visa for foreign experts

To attract foreign investors, especially in high technology and targeted industries and those working in EEC, the government proposes to offer smart visas to qualifying foreign professionals. Those eligible for a smart visa would be entitled to special benefits such as permission to stay in Thailand for 2-4 years at a time with their spouse and children, permission to work without a work permit and once a year reporting to immigration.

RASSAMEE ANGHATHAM
rassamee.a@bdo.co.th

THE NETHERLANDS

DRAFT COALITION AGREEMENT OF THE PROPOSED NEW GOVERNMENT

Last month, the long-expected (draft) coalition agreement of the proposed new government of the Netherlands was published. This agreement carries a large number of proposed new tax regulations. The majority of these proposed regulations should come into force as of 1 January 2019 or thereafter.

Amongst others, the most notable proposed tax regulations for individuals are:

Tax rates

Instead of the current four bracket tax rate system (effectively, this has already been brought down to three brackets) a two bracket system is introduced for personal income taxation for income from work and the first home (box 1). The higher tax bracket limit will be frozen during the coalition period. (*see table below*)

Employed or self-employed?

It is intended to 'abolish' the current DBA-act for self-employed persons. Contractors having a low income (a maximum of EUR 15 to EUR 18 per hour) for a longer period of time (longer than three months), would by definition have an employment relation with the principal. The same should apply for contractors with a low hourly wage that carry out regular business activities. As a consequence in these scenarios there will be a withholding obligation for the principal.

For contractors with a high hourly wage (EUR 75 per hour or more) it would become possible to opt not to be subject to Dutch wage tax and/or social security. In that case, the contract should be for a short period only (less than a year), or the activities should not be considered as regular business activities.

For self-employed persons with an hourly wage above the 'low' hourly wage, but below the 'high' hourly wage, a requirement to have a declaration from the principal will be introduced. This declaration will provide certainty in advance for principals when contracting self-employed personnel with respect to the withholding of Dutch wage tax and/or social security. Principals will obtain this declaration through filling out a web module.

30%-Regulation

The government intends to reduce the maximum period of the 30%-regulation from the current eight years to five years.

Unemployment and disability insurance

In addition to the limitation of the obligation to pay wages in case of sickness (for the duration of one year instead of two years for companies with fewer than 25 employees), the new government also intends to amend the regulations with regard to the insurance premium payments. It is intended to make the unemployment insurance premium dependent on the type of the employment contract. For employees with an employment contract for a limited time, the unemployment premium would be higher than for employees with an employment contract for a longer or indefinite period.

Secondly, the period during which the differentiated WGA premium (for partial disability) contributions are calculated will be reduced to five years instead of the current ten years. As a result, the period during which the employer carries the risk of disability for the employee will be significantly reduced.

First main residence

The maximum amount for which a mortgage loan can be obtained in order to buy a first main residence, the 'loan-to-value' ratio, will not be decreased any further. This should enable first time buyers to access the residence market and not be limited by more (tax) regulations.

The rate at which the mortgage interest can be deducted will be decreased by 3% annually, starting in 2020. The final result will be that as of 2023, the mortgage interest deductibility is limited at the first tax bracket (approximately 37%). This is accompanied by a decrease of the added taxable value of 0.6% (in most cases) instead of the current 0.75% with regard to the value of the first main residence.

Furthermore, as mentioned in the coalition agreement, as of 2020 all deductions in personal income tax will only be deductible at the same rate as the mortgage interest deduction.

Box 3 for income from savings and investments

The tax free allowance will be increased from EUR 25,000 to EUR 30,000 per taxpayer (EUR 60,000 for partners). At the same time the government is going to work on a taxation system based on the real gain on savings and investments instead of using a fictitious calculation percentage as a base for taxation.

If you have any questions, please do not hesitate to contact:

ROBIN SCHALEKAMP
robin.schalekamp@bdo.nl

FREDERIEKE DEN HARTOG
frederieke.den.hartog@bdo.nl

Taxable income from work and first home of more than	But not more than	Tax rate (under pensionable age), includes national social security premiums
-	EUR 68,600	36.93%
EUR 68,601	-	49.50%

UNITED KINGDOM

GENDER PAY GAP REPORTING

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 came into force on 6 April 2017. All private and voluntary sector businesses in Great Britain with 250 or more employees are now required to publish information annually stating the differences in average pay and bonuses of their male and female employees. Employers will be required to take a snapshot of gender pay data as at 5 April every year and publish it on both a Government website and their own website (where it must be kept for three years), with the first publication deadline being 4 April 2018. Failure to do so will be unlawful and, whilst there are no sanctions for non-compliance at present, the failure by an employer to report this data could clearly be of significant reputational risk. The Government has indicated it intends to create a 'league table' of results in due course.

Working through the calculations is likely to be complex, requiring detailed consideration. Different categories of employees are included for different assessments and when it comes to mobile employees, not just determining which expat employees are captured by the regulations and included in the figures will be important, but for those companies who have borderline numbers, whether the company is in fact caught by the regulations in the first place. In a group situation every employer is treated separately so a group with four subsidiary companies and 2,000 UK employees could be required to submit four separate reports.

Whilst publication of the data results is mandatory, the publication of an explanatory narrative is optional although strongly recommended – for example, a narrative highlighting anomalies, explaining a poor or emphasising a good result and also setting out the employer's policy on how it intends to address any gender pay gap going forward.

Managing market reaction and both existing and future employee reaction is likely to quickly become a factor in both recruitment and retention. Companies can publish their results at any point up to 4 April 2018 and of the several thousand entities in Great Britain that will be required to publish by 4 April 2018, just over 150 have done so as at today's date.

BDO comment

Large companies need to be thinking about this now, in advance of 4 April 2018, ensuring they have robust HR and payroll systems to deliver the data required in order to make the calculations set out in the legislation and to provide the time to seek professional assistance where necessary. Companies with complex pay structures, for example relating to equity awards and internationally mobile employees, could need specialist support. It may be necessary to consider and document a policy on how mobile employees who have workday presence in the UK are treated and then apply this on a consistent basis. For more information or guidance please do contact us.

DAVID GARDNER
david.gardner@bdo.co.uk

ANDY GOODMAN
andy.goodman@bdo.co.uk

UPDATE ON THE NATIONAL INSURANCE CONTRIBUTIONS BILL

The Government has announced that it will introduce the National Insurance Contributions (NICs) Bill in 2018. The measures it will implement will now take effect one year later, from April 2019. This includes the abolition of Class 2 NICs and reforms to the NICs treatment of termination payments. The Government has decided to implement a one year delay to allow time to engage with interested parties and Parliamentarians with concerns relating to the impact of the abolition of Class 2 NICs on self-employed individuals with low profits.

BDO comment

The Government is committed to the abolition of Class 2 NICs and this delay is to ensure they have enough time to fully consider the impact of this. We will follow up with more detailed guidance on the affect this will have on termination payments in a future edition of this newsletter.

ANDREW BAILEY
andrew.bailey@bdo.co.uk

UNITED STATES OF AMERICA

HOUSE TAX BILL RELEASED – NOVEMBER 2017

On 2 November 2017, the House of Representatives released a draft tax reform bill titled the 'Tax Cuts and Jobs Act'. Some of the key points arising from the bill are that it will reduce individual and business tax rates, will modify or eliminate a variety of itemised deductions as well as repeal the estate and alternative minimum taxes, and will change the taxation of foreign income. The Ways & Means Committee intends to formally mark-up the bill during the week of 6 November with full House floor consideration planned before Thanksgiving (23 November). Most of the provisions will be effective starting in 2018.

Details

Under the House bill, individuals would be subject to four tax brackets at 12%, 25%, 35%, and 39.6%. The 39.6% rate would apply at USD 1 million for married taxpayers filing jointly and USD 500,000 for all other filers. The standard deduction would be increased, from USD 6,350 to USD 12,200 for single filers and from USD 12,700 to USD 24,400 for married taxpayers filing jointly. Personal exemptions would be repealed; however, the child tax credit would be expanded.

Itemised deductions would be changed significantly by the bill. Deductions for state and local income and sales taxes would be eliminated for individuals, and the deduction for local property taxes paid would be capped at USD 10,000. Mortgage interest expense deductions would be limited to acquisition indebtedness on the taxpayer's principal residence of up to USD 500,000 for new mortgage indebtedness, reduced from the current limit of USD 1 million (however, an important point to note is that existing mortgages would be grandfathered and so the old rules should continue to apply). Home equity indebtedness would no longer be deductible.

Cash contributions to public charities would be limited to 60% of the donor's adjusted gross income, an increase from 50% adjusted gross income limitation under current law. Deductions for tax preparation fees, medical expenses, moving expenses, and personal casualty losses would be repealed, but the deduction for personal casualty losses would remain for relief provided under special disaster relief legislation. The overall limitation on itemised deductions would also be removed. The individual alternative minimum tax (AMT) would be repealed altogether. However, transition provisions would ensure taxpayers with AMT carry forwards could be able to use the remaining credits between 2018 and 2022.

Notably, most of the reform provisions are effective beginning after 2017; however, the changes to the mortgage interest expense deduction are effective for debt incurred on or after 2 November 2017.

The exclusion of gain from the sale of a principal residence would be phased out for married taxpayers with an adjusted gross income in excess of USD 500,000 (USD 250,000 for single filers) but the act changes the use requirements and calls for taxpayers to live in the residence for five of the previous eight years to qualify, up from the current requirement to use the residence for two of the previous five years. The bill further repeals the deduction for alimony payments effective for any divorce decree or separation agreement executed after 2017.

Estate, gift, and generation-skipping transfer (GST) tax exclusions for individuals would be increased after 2017 to an amount equal to USD 10 million (as of 2011) and then adjusted forward for inflation, and the estate and GST taxes would then be repealed after 2023 but would maintain the step-up in basis provisions. Beginning in 2024, the top gift tax rate would be lowered to 35% with a lifetime exemption of USD 10 million and an annual exclusion of USD 14,000 (as of 2017) indexed for inflation.

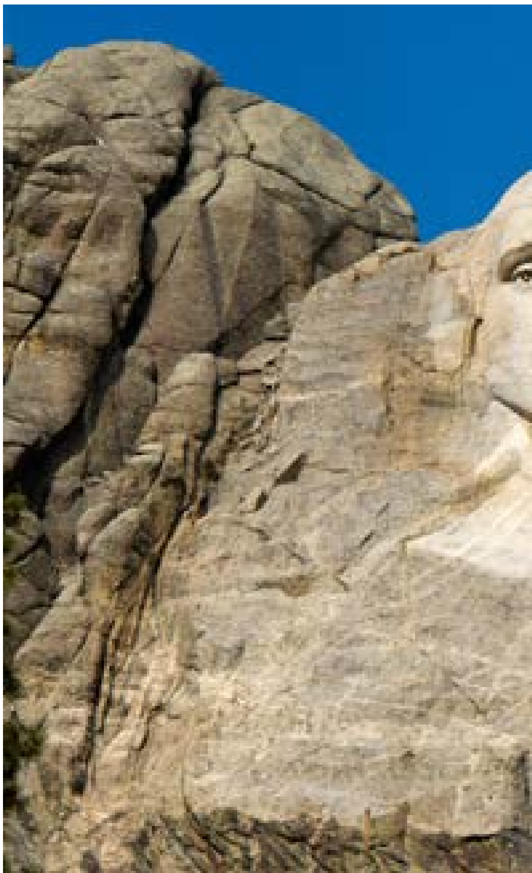
Impacting businesses, the corporate tax rate would be reduced from 35% to 20%, and certain 'business income' from pass-through entities would be taxed at 25% instead of an owner's individual rate.

BDO comment

The release of the House bill represents the first significant and detailed legislative step toward tax reform under the Trump Administration. As drafted, most of the provisions would be effective for the 2018 tax year. The House Ways & Means Committee is expected to formally mark-up the legislation the week of 6 November, with full House consideration planned before Thanksgiving.

There are additional provisions in the proposed legislation affecting education credits, retirement accounts, deferred compensation and private foundations, among others.

For any questions regarding the above please contact one of the following:



CALIFORNIA STATE – FOREIGN FINANCIAL ASSETS REPORTING FOR NON-RESIDENT ALIENS

Issue

Whether California's conformity to federal information filing requirements relating to certain foreign financial assets imposed by Internal Revenue Code (IRC) Section 6038D applies to non-resident aliens.

Law and analysis

Federal law requires specified individuals and business entities to file information with their federal income tax returns relating to their interests in specified foreign financial assets if the aggregate value of those assets exceeds USD 50,000 or a higher prescribed amount. IRC Section 6038D(h)(2) grants the Secretary the authority to promulgate regulations that are necessary or appropriate to provide appropriate exceptions from the application of the information filing requirement for non-resident aliens. Treasury Regulation Section 1.6038D-1(a)(2) provides that the specified individuals, who are required to file information with their federal income tax returns are:

(i) U.S. citizens;

(ii) Resident aliens of the United States for any portion of the taxable year;

(iii) Non-resident aliens for whom an election under IRC Section 6013(g) or (h) is in effect; or

(iv) Non-resident aliens who are bona fide residents of Puerto Rico or an IRC Section 931 possession (as defined in Treasury Regulation Section 1.931-1(c)(1)).

IRC Section 6038D(d) imposes a minimum penalty of USD 10,000 for failure to file the required information with the income tax return. The penalty is not imposed if the failure is shown to be due to reasonable cause and not wilful neglect.

In 2015, AB 154 (Stats. 2015, ch. 359) amended Revenue and Taxation Code (RTC) Section 19141.5 to add subdivision (d), which conforms California to IRC Section 6038D without any modifications. RTC Section 19141.5(d)(2) imposes a penalty determined in accordance with IRC Section 6038D.

RTC Section 17024.5(b)(11) provides that unless otherwise specifically provided, when applying any provision of the IRC for California purposes, any provision that refers to non-resident aliens shall not be applicable. RTC Section 19141.5(e), which provides that the information filed with the Franchise Tax Board (FTB) is a copy of the information filed with the Internal Revenue Service (IRS), is a specific exception to the RTC Section 17024.5(b)(11) general rule concerning non-resident alien provisions.

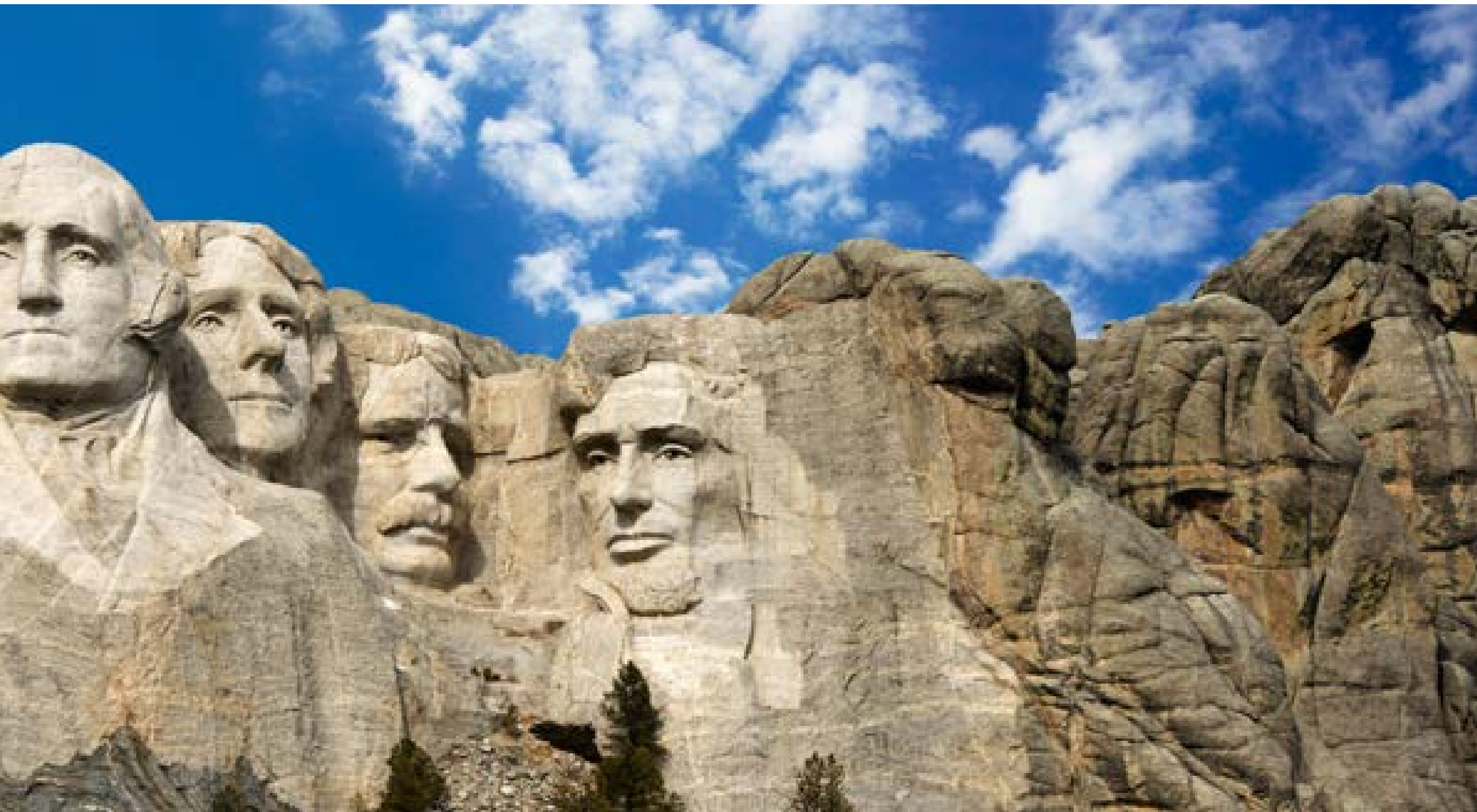
Additionally, it is reasonable to infer that the Legislature did not intend to impose a broader filing requirement under RTC Section 19141.5(d) than would be required for IRC Section 6038D because it was enacted as part of general federal conformity legislation, and the legislative history of AB 154 does not show any legislative intent to impose the filing requirement upon a broader class of individuals than it would be imposed under federal law.

Therefore, California follows the federal law regarding the application of the IRC Section 6038D information filing requirements with income tax returns for non-resident aliens.

BDO comment

An individual who has a California income tax filing requirement is also required to provide foreign financial account disclosures that match the federal filing requirement. Therefore, Form 8938 must be attached to a California return if it was required for federal income tax purposes beginning in 2017. A USD 10,000 penalty may be imposed by the FTB for failing to provide a copy of the Form 8938 with a California income tax return.

KEN GUILFOYLE
kguilfoyle@bdo.com



CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 14 November 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Malaysia Ringgit (MYR)	0.20457	0.23848
Euro (EUR)	1.00000	0.85782
US Dollar (USD)	1.16561	1.00000

CONTACT PERSONS

The BDO Expatriate Services Centre of Excellence consists of the following persons:

Kumar Krishnasamy	Australia	kumar.krishnasamy@bdo.com.au
Peter Wuyts	Belgium	peter.wuyts@bdo.be
Cleiton de Santos Felipe	Brazil	cleiton.felipe@bdobrazil.com.br
Debra Moses	Canada	dmoses@bdo.ca
Jacques Saint-Jalmes	France	jsaintjalmes@djp-avocats-bdo.fr
Christiane Anger	Germany	christiane.anger@bdo-awt.de
Wolfgang Kloster	Germany	wolfgang.kloster@bdo.de
Jiger Saiya	India	jigersaiya@bdo.in
Gianluca Marini	Italy	gianluca.marini@bdo.it
Joelle Lyaudet	Luxembourg	joelle.lyaudet@bdo.lu
Shohana Mohan	South Africa	smohan@bdo.co.za
Pilar Espinosa	Spain	pilar.espinosa@bdo.es
Robin Schalekamp	The Netherlands	robin.schalekamp@bdo.nl
Andrew Bailey (Chair)	United Kingdom	andrew.bailey@bdo.co.uk
David Gardner	United Kingdom	david.gardner@bdo.co.uk
Donna Chamberlain	United States	dchamberlain@bdo.com
Maurica Hodson	United States	mhodson@bdo.com
Jessica Pancamo	United States	jschuster@bdo.com
Ronii Rizzo	United States	rrizzo@bdo.com

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