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Expatriate News

In this issue of Expatriate News we examine the latest news on the incentives offered to expatriates living or working in Denmark, Israel or Switzerland. Temporary residents of Australia often fail to reclaim their superannuation contributions when they leave the country and the authorities have announced new measures for unclaimed sums, which are estimated to total AUD 12 000 million. Higher tax charges are proposed in the Netherlands for excessive redundancy and pension payments and private-equity and hedge-fund managers' profit participations.





AUSTRALIA

Minimum salaries

The Minister for Immigration and Citizenship has recently announced an increase in the Minimum Salary Level (MSL) for temporary skilled overseas workers who are working in Australia on a 457 visa.

The increase is the first in two years and it will apply to all temporary skilled overseas workers, both existing 457-visa holders and new employees. The increase is expected to be effective from 1 August 2008, pending the issue of a Gazette Notice.

The MSL table for non-regional occupations for a normal 38-hour week is as follows:

	General employees	IT Professionals
Up to 31 July 2008	AUD 41 850	AUD 57 300
From 1 August 2008	AUD 43 440	AUD 59 480

The new MSL must be factored into salary reviews for the financial year 2008-09. It should be noted that where an industrial award or agreement prescribes a level of salary that is higher than the MSL, that higher salary must be paid.

Temporary residents & superannuation

Temporary residents are currently able to reclaim their superannuation contributions when permanently departing Australia, by applying for a 'departing Australia superannuation payment' from their superannuation fund.

Despite the ability to reclaim the superannuation that has been paid in Australia, many temporary residents do not do this. This has resulted in a significant number of small and lost balances in the superannuation system.

According to the Annual Report of the Australian Taxation Office (ATO) for 2006-07, there are over 6 million lost superannuation accounts on the Lost Member Register maintained by the ATO, and these accounts have an aggregate value of approximately AUD 12 000 million.

The ATO has proposed that all superannuation contributions and superannuation balances held for former and current temporary residents be paid to the Australian Government. This would apply to both existing balances and those that accrue in future.

Employers will have the option of sending the employer contributions to a superannuation fund to meet their Superannuation Guarantee (SG) obligations (as they do currently) or of sending them directly to the ATO.

The Australian government will match the relevant data on an annual basis through the ATO and the Department of Immigration and Citizenship. Data will be matched using superannuation-contribution information and temporary-resident information. This will identify superannuation funds that hold balances for temporary residents.

The ATO will notify the superannuation funds accordingly and the funds will then be required to pay the balances to the ATO within a specified timeframe.

Temporary residents who permanently depart Australia will be able to claim back the superannuation that has been paid to the ATO by making a claim to the ATO within five years of their permanent departure. Amounts that are not claimed by the five-year time limit will be forfeited.

The ATO has issued a consultation paper on this proposal and is seeking feedback and comments. The

new arrangement is expected to be legislated before the end of 2008.

DENMARK

Expatriate régime: non-Danish workdays

A recent ruling by the Danish National Tax Tribunal has greatly extended the number of days that an expatriate can work outside Denmark and still qualify for the special 25% expatriate tax régime.

Foreign nationals who are resident and working in Denmark for a limited period can qualify for a 25% flat rate of income tax on their Danish earnings. A number of conditions must be met, one of which is that the work must be performed in Denmark. However, this does not preclude work-related trips outside Denmark, provided that the time spent working abroad is not 'significant'.

There is no statutory definition of 'significant', but the accepted practice until now has been that a maximum

of 70 days or one-third of the days worked in the year could be spent outside Denmark. However, the National Tax Tribunal has now found in favour of an individual working for a Danish company that was part of a multinational group with its headquarters in the United States.

The individual had spent 136.5 days working outside Denmark for the Danish company in the relevant year (out of a total working year of 255 workdays). The Tribunal ruled that the requirement to perform work in Denmark could not be interpreted as limiting the number of days spent travelling abroad, provided that the absence abroad was closely connected to the ordinary performance of the employee's duties in Denmark.



ISRAEL

Tax benefits for new immigrants and returning residents

In an effort to remove significant tax barriers in Israel for new immigrants and returning residents, the Israeli Ministry of Immigrant Absorption and the Israeli Tax Authority have proposed increasing the tax benefits granted to new immigrants and returning residents. These changes are subject to the necessary legislative process and are now being urgently promoted in the Israeli parliament.

The proposed benefits are designed to encourage investment in Israel and bring in human resources, thus helping both the Israeli economy and Israeli society to flourish.

The proposed benefits include exemptions from tax and from the normal reporting requirements for the non-Israeli source assets and income of new immigrants and of certain returning residents (see below).

These exemptions will apply for a ten-year period commencing from the individual's immigration or return to Israel. The tax exemptions will be all-inclusive, and as such they will apply to all types of income and assets, including amongst others foreign interest and dividends, rental income from property situated outside Israel, foreign employment income, foreign business income, and capital gains from the sale of assets located outside Israel (including securities portfolios).

At present, tax exemptions are granted to both new immigrants and returning residents for a five-year period and this only applies to passive income (for example, interest, dividends, annuities, royalties and rents) derived from assets held outside Israel and acquired prior to immigration to Israel. Other exemptions are only granted to new immigrants, in particular a four-year tax exemption for business income if the business was held by the new immigrant for at least five years prior to immigration. In addition, a ten-year tax exemption is granted for capital gains on the sale of assets located outside Israel and which were held prior to immigration. It should also be noted that currently a new immigrant is required to report all his or her income in Israel, whether or not it is ultimately exempt from tax.

Under the new proposals, former residents returning to Israel will be given a new tax status, to be known as 'a returning resident classified as a new immigrant for tax purposes'. This status will be granted to individuals who have resided abroad for at least ten years before their return to Israel. This will expand the tax benefits that are currently granted to returning residents and make them equivalent to the tax benefits that are granted to new immigrants. It has also been proposed that the ten-year foreign residence rule be reduced to five years for former residents who return to Israel during the tax years 2008 and 2009. This would be a temporary measure in honour of Israel's 60th year of existence as an independent state.

A further tax measure relates to foreign companies managed and controlled by new immigrants and returning residents. Subject to certain conditions, these companies will not be deemed to be resident in Israel merely as a result of their being managed and controlled by the new immigrant or returning resident. This treatment will apply for a period of ten years after the individual's immigration or return to Israel.

The proposed tax-benefits package will undoubtedly increase Israel's attractiveness to high-net-worth individuals who wish to enjoy a low-tax régime. This is particularly true at the present time, when other popular locations may no longer provide the required tax advantages.



NETHERLANDS

Excessive payments

New tax proposals in the Netherlands relate to excessive redundancy and pension payments, and to private-equity and hedge-fund managers' 'profitable participations'. The Netherlands government has announced that the new tax legislation will be introduced to increase the tax burden on 'profitable participations' such as carried interest, on certain redundancy payments, and on certain pension grants.

It is proposed that the following tax changes will take effect from 1 January 2009:

- The managers of private equity or hedge funds will be considered to be entrepreneurs (i.e. deriving personal business income) with respect to their profitable participations. The managers may be company employees, or possibly they may not be employed by the business, and they will typically receive property rights to reward their efforts in increasing the shareholder value of a company (thereby achieving a higher sale price for the business).

A profitable participation is in general a participation by an employee (or possibly a person other than an employee) that gives an irregular high return. Whether a participation qualifies as a profitable participation under the proposals is dependent on the character and diversity of, and the conditions attaching to, all the shares issued by the company involved. The draft legislation includes extensive rules to determine whether there is a profitable participation, but one of the

most important conditions is that it must represent remuneration for the work performed by the manager.

The income and the gains received from the profitable participation not already taxed as employment income will be taxed in the Netherlands in a similar way to 'personal business income'. This means that progressive tax rates will apply up to a maximum rate of 52% (Box 1 income), instead of an effective rate of 1.2% of the economic value (Box 3 income).

The legislation will apply to profitable participations granted after 31 December 2008 and also to participations that have already been granted at that date.

- A penalty tax of 30% will be imposed on employers who pay excessive redundancy payments to certain employees. The penalty tax will apply where the employee's annual salary exceeds EUR 500 000 and the redundancy payment exceeds the annual salary.

The individual's salary for the two calendar years prior to the year in which the employment is terminated will be taken into account to determine whether the penalty tax applies. The penalty tax will be imposed on the amount by which the redundancy payment exceeds EUR 500 000. The penalty tax must be paid by the employer in addition to the normal regular wage tax payable by the employee on the amount of the redundancy payment.

A further tax change is planned, which will come into effect from 1 January 2010. The Government

will introduce a penalty tax of 15% where pension entitlements are granted on the basis of the employee's final pay and the pension is based on an amount in excess of EUR 500 000. The penalty tax will also apply where the employee changes employer, receives an increase in salary, and the new employer grants pension entitlement for years prior to the start of that employment.

The 15% penalty will apply only to the amount by which the salary on which the pension is based exceeds EUR 500 000, and it will be calculated by

reference to a 'past-service premium'. A fixed past-service premium of four will be taken into account for this purpose. As an example, if the employee's previous salary was EUR 400 000 and the new salary for pension purposes is EUR 550 000, penalty tax in the amount of EUR 30 000 will be payable (15% x 4 x [EUR 550 000 - 500 000]).

It should be noted that the proposed tax changes must be approved by the Netherlands Parliament before they can take effect.

SWITZERLAND

Lump-sum tax régime

The Swiss lump-sum tax régime offers an interesting alternative tax base for expatriates who are based in Switzerland, but who neither perform any employment duties in Switzerland nor have any other gainful activity there.

The régime applies both at the federal and the cantonal tax levels. Instead of paying tax under the normal Swiss income tax and wealth tax system, an individual taking up residence in Switzerland can opt to pay lump-sum tax. The right to pay tax in this way expires when the individual takes up a gainful activity in Switzerland or becomes a Swiss citizen.

Lump-sum taxation is based on a calculation of the worldwide living expenses incurred by the taxpayer and the dependants who live with him or her in Switzerland. The computation takes into account the family's actual expenditure, including the costs of accommodation, food and clothing, expenditure on

education, culture, entertainment, expensive domestic animals (such as horses), travel costs and direct taxation. However, the basis of the calculation varies from canton to canton.

The calculation of the living expenses normally determines the individual's tax base and no deductions are given in charging tax at the normal tax rates on this sum. However, a higher amount of tax can apply, which is calculated at the normal rates by reference to the individual's Swiss-source income and assets (limited deductions apply in calculating the tax charged on this basis).

An individual using the lump-sum basis of taxation may be unable to access certain tax treaties that require the relevant income or gains to be taxed in full in Switzerland at the normal federal, cantonal and communal income tax rates in order for the treaty benefits to apply. Examples are the treaties with Austria, Belgium, Canada, Germany and Italy.

However, this difficulty can be avoided if the individual opts to be taxed at the normal Swiss rates on all his or her income from sources in the other treaty country. This is known as modified lump-sum taxation. Foreign tax exemption or tax credits should then be available under the treaty in respect of the relevant income or gains.

Normally, a preliminary meeting is held with the Swiss authorities in order to determine whether the individual is eligible for the lump-sum basis of taxation and to outline the associated compliance requirements.



More information

For more information, please contact your local expatriate contact or one of the Expatriate Services Centre of Excellence contacts below.

G S Choong	Sydney, Australia	gs.choong@bdo.com.au
Jan Van Langendonck	Brussels, Belgium	jan.vanlangendonck@bdo.be
Muriel Sivasankaran	Paris, France	m.sivasankaran@bdo-taxlegal.fr
Gerlinde Seinsche	Frankfurt, Germany	gerlinde.seinsche@bdo.de
Robin Schalekamp	Rotterdam, Netherlands	robin.schalekamp@bdo.nl
Kemp Munnik	Johannesburg, South Africa	kmunnik@bdo.co.za
Ramon Portela	Madrid, Spain	ramon.portela@bdo.es
Linda Petruzzello	New York, USA	lpetruzzello@bdo.com
Andrew Bailey	London, UK	andrew.bailey@bdo.co.uk

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