Compensating Mobile Executives

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

May 1, 2011

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A project initiated by:

Nishith Desai Associates
Legal & Tax Counseling Worldwide

93-B, Mittal Court,
Nariman Point,
Mumbai 400021, India

Tel: +91 22 6669 5000
Fax: +91 22 6669 5001

Email: nishith@nishithdesai.com
www.nishithdesai.com

No More Worries
Mr. Philip van Hilten

Jan van Goyenkade 7
1075 HN Amsterdam
Siena, Netherlands

Tel: +31 (0)20 6549602
Mobile: +31 (0)6 5391979
E-mail: philipvanhilten@nomoreworries.nl
www.nomoreworries.nl

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Pencil Point Designs
Mumbai.
Parag Bhuptani
parag@pencilpointdesigns.com

Trupti Parikh
Bangalore
M: +91 9591989778

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 a world centre for IT and so thousands and thousands of Indians work on their computers in India for companies all over the world. And so these persons earn their income because they work for many (foreign) companies. Moreover there are millions of Indians working abroad for foreign companies. That makes the topic of a salary split very Indian. In fact it is very global. When I started to practice international law in the 70's, salary splits were seen as a key tool to help multinationals and their key staff in working truly internationally. It enabled companies to have their key staff earn a higher net income without having to pay a (much) higher salary.

In this book leading professionals from a great many countries have shed their light on today's aspects of salary splits in their own country. What they show are many opportunities but also risks connected with salary split. That leads to the question whether it is truly advantageous to split?

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 each employer pays part of the total salary. Technically salary splits are also possible in the case of employers in the same country, but this book focuses on the split over employers residing in different countries. In spite of modern technology, a salary split requires that an employee works during a considerable period physically in more than one country. My question is whether tax and labour laws will ever provide for salary split scenarios 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. Is it 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? Salary split demands today a more than incidental physical presence in a country which is different from the country of origin.

Most countries adapt their laws and systems under the influence of financial and economic events. When things go bad they adapt their (tax) rules to optimise 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 such as Brazil and India enlarge their take by (re)defining notions such as (tax) residence of companies and individuals, for example by revising period of residence requirements to result in the said individuals becoming tax resident sooner. Other countries would of course have an opposite view which may create a real risk of double taxation.

In this ever more rapid changing world, it is difficult to plan long(er) term. For people willing to work in different places, it is even more complicated to know what to do in the various

different countries with different systems and rapidly changing laws. That is also why the initiative to produce an easy to adapt 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 very personal details, opportunities and risks.

If there is a wish to have a -tax efficient- salary split, then the reality of the matter is of key importance. Here more than ever it is relevant to note that most countries would hold the substance over form doctrine to prevail. 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 physically and for a considerable period, if a tax efficient salary split is desired. One must note that in case of (formal) directorships in different companies and countries, this approach is different. This publication however is restricted to situations of (ordinary) employees. For directorships as well as so-called independent professionals the salary split situation is offering more "split" opportunities as well as risks.

So the substance rather than the form of the matter is what really counts for "normal" salary splits, for which one must 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, his salary will not be considered "split(able)" for income tax. 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, but one must realise that such split may trigger additional social security payments (payments in 2 rather than 1 country), 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. And even if the tax advantages for the employee seem great then one should be mindful of the administrative costs of different tax returns and compliances as well as the tax consequences that it may have for the employer. Many reports mention also the tax treatment of allowances paid by an employer which may or may not be tax efficient in case of a salary split.

A variation to the salary split as described above, is the secondment of an employee by an employer in one country to an employer in another country. Several countries provide for 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 these elements play a role for the employee and the employer and it seems fair to say that a true salary split is only worthwhile if the tax advantages are substantial.

In looking at salary split one must also consider the position of the employer which plays obviously a big role. As an example one can mention the employee working for more 183 days in "the other country", who will (have to) be paid by a local employer. That influences the corporate tax position of such employer. Moreover he will have to comply with local labour law rules and restrictions. Permits and visa will play a role. The result of all of this may be that a situation arises which is completely different from the one which existed under the rules and original contract of the employee concerned. 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.

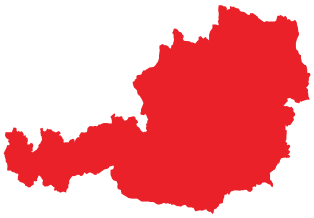
The book will show that there is no easy answer to the question "to split or not to split?". Salary splits mean that an employee is confronted with the tax systems of at least two countries. Working for a considerable period in different countries raise questions as to the overall tax residence of the employee and his family. Where will he be taxed on his income other than his salary 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 can influence his tax and employment position and all that must be looked at when planning for employees to work for a foreign employer. This book will no doubt help 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.

Contributors

Austria	**Wolf Theiss**	Niklas Schmidt and Eva Stadler
Belgium	**Tiberghien**	Gerd D. Goyvaerts and Brigitte Lievens
Brazil	**Barretto Ferreira, Kujawski e Brancher**	Celso Grisi Manuela Tavares and Luciana Gambi
China	**Ribeiro Hui**	Dominic Hui
Czech Republic	**White & Case LLP**	Ales Zidek
Denmark	**Kromann Reumert**	Lene Juel
Germany	**HAARMANN**	Prof. Dr. Wilhelm Haarmann and André Suttorp
Greece	**Zepos & Yannopoulos**	Costas Kallideris and Anna Paraskeva
India	**Nishith Desai Associates**	Vikram Shroff, Shreya Rao and Ajay Singh Solanki
Indonesia	**Ali Budiardjo, Nugroho, Reksodiputro**	Theodoor Bakker and Nafis Adwani
Italy	**Pontecorvi, Mannaerts & Triboldi and Di Tanno e Associati**	Angela Mannaerts Francesco Capitta
Israel	**Rosenberg, Keren-Polak, Epelman, Advocates**	Oded Oz
Malta	**PiscoPartners**	Ramona Piscopo
Mexico	**Basham, Ringe y Correa, S.C.**	Monica Schiaffino and Victor M. Barajas
The Netherlands	**Luminous Tax Matters N.V.** **The Legal Group**	Huub Laauwen Chris Zeevenhooven
New Zealand	**Buddle Findlay**	Neil Russ
Philippines	**PJS LAW**	Virginia B. Viray
Poland	**White & Case LLP**	Dr. Janusz Fiszer
Portugal	**Sérvulo & Associados**	Furtado Martins and Gonçalo Leite de Campos
Singapore	**TSMP Law Corporation**	Ian Lim and Nicole Wee
South Africa	**Edward Nathan Sonnenbergs (ENS)**	Hanneke Farrand
Spain	**Garrigues**	Mónica Sevilla and Albert Collado
Switzerland	**Poledna Boss Kurer AG (PBK)**	Walter H. Boss and Stefanie Monge
Syria	**Karawani Law Firm**	Raed Karawani

Contents

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-months 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-months 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.

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 "DTT state " 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 world wide 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 DTT state and for which the DTT state has obtained the taxing authority under the DTT, depend entirely upon the national tax laws of the DTT state. 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 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-days 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 worth while 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 nonresidents) 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 persons 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**[1] **- 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.

1 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[2] and as a representative will be treated as a company for tax purposes.[3]

Brazil has no specific Permanent Establishment rule, but according to Brazilian law,[4] 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**

2 According to article 398 of Decree 3,000/1999.
3 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.
4 Article 539 of the Brazilian Income Tax Code.

Estrangeiro[5]), through normative resolutions of the Ministry of Labor and Employment,[6] 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.[7] 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.[8] 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.[9]

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.

5 Law 6,815, of 19 August 1980.
6 Normative Resolutions 74, of 9 February 2007, and 80, of 16 October 2008.
7http://portal.mte.gov.br/data/files/FF8080812CF587A5012D03D4499220CD/cartilha_trabalho_mercosul_port.pdf
8 Normative Resolution 62, of 22 December 2003.
9 (i) evidence investments in Brazil of, at least, US$ 200,000.00 per foreigner, or the investment of, at least US$

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 nonresident 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.[10]

The hiring of a Brazilian worker by a foreign company, to work abroad is subject to prior authorization from the Ministry of Labor.[11] 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.[12] 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.

50,000.00; (ii) hiring of ten (10 new jobs, in the two (2) subsequent years, for each foreigner.

10 Also, Brazilians are considered nonresidents for tax purposes after 12 consecutive months outside of the country.

11 Law 11,962/2009 – Alters article 1 of Law 7,064, of 6 December 1982.

12 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.

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

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 numbers 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 of 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

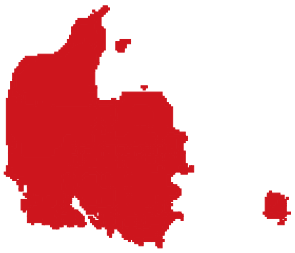
Employment income is subject to tax in the form of prepayments withheld by the Czech resident employer or a Czech branch of a foreign employer on a monthly basis from the employee's salary. The prepayments are subsequently subject to settlement on a yearly basis. Income tax applies at a flat rate of 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 in to 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.

For further information contact senior tax lawyer Lene Juel at lej@kromannreumert.com.

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

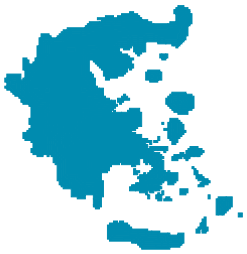
HAARMANN was founded in early 2006. The firm advises in the fields of M&A and private equity, tax law, corporate law, capital market law, banking and finance law, litigation and arbitration, as well as labour law. The firm focuses on tax law as well as M&A and private equity.

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 par. 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 para. 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.

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 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 Resident)

Residents 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 Residents 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

  A 28% income tax rate applies to corporate taxpayers for 2009 and 25% for 2010 onwards. 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 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) a 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 a 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.

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 holydays, 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. Weather 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 splits 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[14] 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

14 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 a Avoidance of Double Taxation Treaty was form 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.

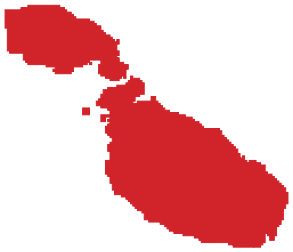
Additional notes

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.

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[15] 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

15 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[16] 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 resident-non-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;

16 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 thresholds mentioned in page 68 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 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, and
- 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 trough 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 world wide income of the employee. The pro rata part corresponds with the percentage of foreign income in relation to the total world wide 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 scope 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 under certain conditions apply on this agreement as well.

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 wit in 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.

About The Legal Group

The Legal Group is an independent law firm with both national and international specialized practices in the areas of employment, corporate and intellectual property law.

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 tax 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.

Phlippines

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[17] 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.[18]

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.[19]

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

17. Republic Act No. 7042, as amended.
18. Id., § 3(d).
19. 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.[20] 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.[21]

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.[22]

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.[23]

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

20. The National Internal Revenue Code of the Philippines [NIRC], PD 1158, § 25(A)(1) (1997).
21. Id., § 25(B).
22. Id., § 35(D).
23. Id., § 25(C)(D) & (E).

sources within the Philippines. Compensation for personal services performed in the country is income from Philippine sources[24] regardless of the residence of the payor, of the place in which the contract for services was made, or of the place of payment.[25]

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.[26] It also means, for withholding tax purposes, any person paying compensation on behalf of a non-resident alien individual, foreign partnership, or foreign corporation.[27]

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.[28]

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.[29]

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.[30]

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.

24. Id., § 42(a)(3).
25. Bureau of Internal Revenue Rev. Regs. 2. §155.
26. § 2.78.4, Rev. Regs. No. 02-98.
27. § 2.78.4(B), Rev. Regs. No. 02-98.
28. British Traders Insurance Co., Ltd. v. CIR, G.R. L-20501, April 30, 1965.
29. Labor Code of the Philippines, P.D. 442, §40.
30. 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,[31] 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.[32]

31. Fernandez v. NLRC, 203 SCRA 460, 1991.
32. 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)[33/34] , 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.

33. 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); Luxemburg (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).

34. 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 an 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 then 183 days an 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.[35]

  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. Thought 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,[36] 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, Portugese 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 then 183 days an 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.

35. 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.
36. 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")

Non-residents who work in Singapore for 60 days or less in a calendar year are tax-exempt[37]. 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.[38] 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").

37. Different considerations apply for non-resident directors, professionals and public entertainers which are not covered in this article.
38. See http://www.iras.gov.sg/irasHome/page.aspx?id=812 for list of countries and the respective DTAs

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 of 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-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 of 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 of 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 Africa 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 difference 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 nonresident 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 nonresident 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 an above the amount they would receive in their job. This exemption is incompatible with the exemption for income obtained abroad discussed above.

Nonresident taxation

Employees who qualify as nonresidents 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.

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 [39]	4.2%	4.2%
Invalidity[40]	0.7%	0.7%
Loss of income fund/maternity[41]	0.25%	0.25%
Unemployment[42]	1.1%	1.1%
Occupation accident[43]	-	0.89%
Non-occupational accident[44]	1.56%	-
Occupational pension fund[45]	4%-13%	4%-14% and Above
Family allowance[46]	-	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:

39. Uncapped.
40. Uncapped.
41. Uncapped.
42. Maximum insured salary: CHF 126'000 per annum.
43.Maximum insured salary: CHF 126'000 per annum.
44. Maximum insured salary: CHF 126'000 per annum
45. Rate depends on the regulations of the individual pension fund.
46. Rate depends on the regulations of the applicable canton.

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[47] 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

47. Foreigner in this document refers to any employee of no Syrian nationality, including those from any Arab nationality.

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[48]	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 establishedunder 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 30,000SYP
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

48. One US Dollar equal approximately 47 Syrian Pound.

Tax and Social Security Implications (Apply for both Syrians and non- Syrians)

Non-Syrian employees in Syria are mainly established inrelation 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 follow:

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 employee 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.

Participating Law Firms

Austria

Wolf Theiss

Contributors: Niklas Schmidt and Eva Stadler

Address: Schubertring 6
1010 Vienna
Austria
T +43 1 515 10 5410
F +43 1 515 10 665410
E niklas.schmidt@wolftheiss.com
eva.stadler@wolftheiss.com
W www.wolftheiss.com

Belgium

Tiberghien

Contributor: Gerd D. Goyvaerts

Address: Havenlaan - Avenue du Port 86C/419
BE-1000 Brussels
Belgium
T +32 2 773 40 00
F +32 2 773 40 55
E GerdD.Goyvaerts@tiberghien.com
W www.tiberghien.com

Brazil

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

Contributors: Celso Grisi Manuela Tavares and Luciana Gambi

Address: Rua Dr. Eduardo de Souza Aranha, 387 - 15º Andar, Edifício Juscelino Plaza
04543-121 São Paulo SP Brasil
T (55) (11) 3897-0300
F (55) (11) 3897-0330
E grisi@bkbg.com.br
tavares@bkbg.com.br
gambi@bkbg.com.br
W www.bkbg.com.br/

China

Riebiro Hui

Contributor: Dominic Hui

Address: 906A - 907A Floor, Lippo Plaza, 222 Huai Hai Zhong Road, Shanghai, China
T +86 21 63866110
F +86 21 63866112
E d.hui@ribeirohui.com
W www.ribeirohui.com

Czech Republic

White & Case

Contributor: Ales Zidek

Address: Advokátní kancelář
Na Příkopě 8
110 00 Prague 1, Czech Republic
T + 420 255 771 293
F + 420 255 771 122
M + 420 731 992 293
E azidek@whitecase.com
W www.whitecase.com

Denmark

Kromann Reumert

Contributor: Lene Juel

Address: Sundkrogsgade 5
2100 Copenhagen
T 70 12 12 11
F 70 12 13 11
E lej@kromannreumert.com
W www.kromannreumert.com

Germany

HAARMANN Partnerschaftsgesellschaft

Contributors: Prof. Dr. Wilhelm Haarmann and André Suttorp

Address: Neue Mainzer Strasse 75
D - 60311 Frankfurt a. M., Germany
T +49 (0) 69 92059 - 550
F +49 (0) 69 920 59 - 990
E Wilhelm.Haarmann@haarmann.com
Andre.Suttorp@Haarmann.com
W www.haarmann.com

Greece

Zepos & Yannopoulos

Contributors: Costas Kallideris and Anna Paraskeva

Address: 75, Katehaki & Kifissias Ave.
115 25 Athens, Greece
T (+30) 210 6967000
F (+30) 210 6994635
E c.kallideris@zeya.com
a.paraskeva@zeya.com
W www.zeya.com

India

Nishith Desai Associates

Contributor: Vikram Shroff, Shreya Rao and Ajay Singh Solanki

Address: 93-B, Mittal Court, Nariman Point,
Mumbai 400021. India
T +91 22 6669 5000
F +91 22 6669 5001
E vikram@nishithdesai.com
shreya@nishithdesai.com
ajay@nishithdesai.com
W www.nishithdesai.com

Indonesia

Ali Budiardjo, Nugroho, Reksodiputro

Contributors: Theodoor Bakker and Nafis Adwani

Address: Graha CIMB Niaga, 24th Floor
Jl. Jend. Sudirman Kav. 58, Jakarta 12190
T 62 21 250 5125 / 5136
F 62 21 250 5001 / 5121 / 5122 / 5392
E nadwani@abnrlaw.com
tbakker@abnrlaw.com
W www.abnrlaw.com

Italy

Pontecorvi Mannaerts & Triboldi
Piazza dell'Orologio 7 00186 Rome Italy
T: +39 06 4201 1868
F: +39 06 4239 2103
www.pmtlex.com
Contributor: Angela M.H. Mannaerts
E: angela.mannaerts@pmtlex.com
and
Di Tanno e Associati
Via G. Paisiello 33 00198 Rome Italy
T: +39 06 845661
F: +39 06 8419500
www.ditanno.it
Contributor: Francesco Capitta
E: f.capitta@ditanno.it

Israel

Rosenberg, Keren-Polak, Epelman, Advocates

Contributors: Oded Oz

Address:1 Azrieli Center, Round Bldg.,
17th Floor, 67021 Tel-Aviv, Israel
T 972-(0)3-608 1451
F 972-(0)3-608 1452
E oded@rosok-law.com
W www.rosok-law.com

Malta

PiscoPartners

Contributor: Ramona Piscopo

Address: 239/2 Tower Road,
Sliema, Malta

T +41 44 586 57 99

F +41 79 290 86 92

M + 420 731 992 293

E ramona@piscopartners.com

W www.piscopartners.com

Mexico

Basham, Ringe y Correa, S.C.

Contributors: Monica Schiaffino and
Victor M. Barajas

Address: Paseo de los Tamarindos 400-A 9° Piso
Bosques de Las Lomas, México D.F.

T (52) (55) 5261 0400

F (52) (55) 5261 0496

E Masierra@basham.com.mx

W www.basham.com.mx

The Netherlands

Luminous Tax Matters N.V.

Contributors: Huub Laauwen and
Chris Zeevenhooven

Address: D Tower 11 th floor
Schiphol Boulevard 339, 1118 BJ Schiphol
The Netherlands

T +31(0)20 6549600

F +31(0)20 6549601

E Huub.Laauwen@luminoustax.com

W www.luminoustax.com

and

The Legal Group

Address: Willemsparkweg 34
1071 HG Amsterdam

T 020 - 3792321

E chris@thelegalgroup.nl

W www.thelegalgroup.nl

New Zealand

Buddle Findlay

Contributors: Neil Russ

Address:PricewaterhouseCoopers Tower,
188 Quay Street, PO Box 1433,
Auckland 1140

T +64 9 358 2555

F +64 9 353 2040

E neil.russ@buddlefindlay.com

W www.buddlefindlay.com

Philippines

PJS LAW

Contributors: Virginia B. Viray

Address:12/F VGP Center
(formerly Manilabank Building)
6772 Ayala Avenue, Makati City 1226
Philippines

T +(632) 840.5025 to 28

F +(632) 810.0890 or 817.5969

E vbviray@pjslaw.com

W www.pjslaw.com

Poland

White & Case LLP

Contributors: Dr. Janusz Fiszer

Address:W. Daniłowicz, W.
Jurcewicz i Wspólnicy
- Kancelaria Prawna sp.k.,
ul. Marszałkowska 142
00-061 Warszawa, Poland

T + 48 (22) 50 50 100 or 50 50 106

F + 48 (22) 50 50 400

E jfiszer@whitecase.com

W www.whitecase.com

Portugal

Sérvulo & Associados

Contributors: Furtado Martins and Gonçalo Leite de Campos

Address: Rua Garrett, 64 1200-204
Lisboa – Portugal
T (+351) 21 093 30 00
F (+351) 21 093 30 01/02
E lt@servulo.com
W www.servulo.com

Singapore

TSMP Law Corporation

Contributors: Ian Lim and Nicole Wee

Address: : 6 Battery Road #33-01
Singapore 049909
T +65 6534 4877
F +65 6534 4822
E ian@tsmp.com.sg
nwee@tsmp.com.sg
W www.tsmplaw.com

South Africa

Edward Nathan Sonnenbergs (ENS)

Contributors: Hanneke Farrand

Address:1 north wharf square
loop street, foreshore, cape town
South Africa 8001
T +27 (0)21 410 2700
M +27 (0)82 567 9070
E hfarrand@ens.co.za
W www.ens.co.za/defaultInt.asp?iC=0)

Spain

Garrigues

Contributors: Mónica Sevilla and Albert Collado

Address: . Diagonal, 654 - 08034
Barcelona
T +34 93 369 37 00
F +34 93 369 30 12
E Monica.Sevilla@garrigues.com
albert.collado@garrigues.com
W www.garrigues.com

Switzerland

Poledna Boss Kurer AG (PBK)

Contributors: Walter H. Boss and Stefanie Monge

Address: Bellerivestrasse 241
Postfach | P.O. Box 865
CH-8034 Zürich
T +41 44 220 12 12
F +41 44 220 12 13
E Boss@pbklaw.ch
Monge@pbklaw.ch
W www.pbklaw.ch

Syria

Karawani Law Firm

Contributors: Raed Karawani

Address: Farabi St., Farra Bldg. #15
Mezzeh, East Villas, P. O. Box: 4440
Damascus – Syria
T + 963 11 612 7680 / 81 / 82 / 83
F + 963 11 612 7684
E R.Karawani@karawanilaw.com
W www.karawanilaw.com

◂ Cover

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Legal & Tax Counseling Worldwide

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