Global Employment Taxes Newsletter

September 2022

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Introduction

Dear all,

I am pleased to share our second Global Employment Taxes Newsletter of 2022. In addition to wider employment tax updates, we have also focused on how a number of jurisdictions are currently approaching the issues and challenges presented by employment status. We have highlighted the latest developments in this area, particularly in the context of the ever growing gig economy.

In many jurisdictions, it continues to be the case that the determination of employment status is evolving based on case law (and /or negotiations at a local / industry level – for example in Austria) rather than through statutory intervention. Within that context, we refer to a number of important new cases including in Australia, Denmark, France, Ireland, the canton of Geneva in Switzerland and the UK. However, certain countries have introduced status legislation (for example the USA, at a State level, and Malta) or have extended employment – related reforms to certain individuals in the gig economy (for example in India and Italy).

We do expect to see greater statutory intervention (for example in Thailand) and enforcement (for example in the Netherlands) in the future. Largely this will be within the context of the protection of workers' rights, but potentially also as concerns grow in relation to the protection of the tax base, particularly during turbulent economic times. That said, in the UK, the Government consulted on the issue of creating a legislative framework for employment status as far back as 2018, but announced in July 2022 it would not be taking this proposal forward, due to the uncertainty and cost it would potentially cost business in the short term.

I also wanted to highlight that earlier this year PwC Legal Belgium published the results of its study on the employment status of gig workers across 13 European countries (Gig Study). The Gig Study also includes a summary of the tax treatment of gig workers in the relevant jurisdictions. It shows some interesting common themes in relation to status, such as the factors being used by the courts to categorise individuals.

In addition, the EU Directive on platform work (EU Platform Directive) is expected to have a significant impact on how the courts will determine status. Under the proposed new rules, there will be a presumption of employment status if certain tests are met. A number of countries, such as Belgium, Greece and Spain have already introduced or are introducing their own domestic laws seeking to regulate the position on status to a greater or lesser extent. Further commentary on the changes in those countries, and others, can be found in the Gig Study here.

As you will see from this edition of the newsletter, there is a great deal of activity across the world on employment status and employment tax matters more widely and we would be happy to help you with any of your queries. If you do have any questions or for more information, please contact any of my Employment Tax colleagues, or your usual PwC contact.

Best wishes

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Employment Status Developments

Australia

As we highlighted in the previous edition of this newsletter, two recent High Court decisions have clarified Australian law regarding the distinction between common law employment and independent contracting arrangements, by declaring the primacy of the written agreement (documented terms and conditions) in the classification. Please refer to the previous edition of this newsletter for further analysis of the impact of these decisions.

Worker classification in Australia has received constant attention in recent years. There are a number of strands to the debate, including questions over whether gig economy contractors are being denied their relevant entitlements from a Fair Work / Fair Pay perspective, whether workers are paying the correct amount of tax on payments received, whether organisations are paying the correct amount of tax / on – costs in relation to such workers and whether the relevant laws have been sufficiently modernised to cater for emerging worker classifications.

The rapid growth of the gig economy in Australia prompted the establishment of a "Black Economy Taskforce" in 2016, to address concerns regarding the risk of payments to such workers escaping the tax net. However, since then, there has been a relaxation of concerns. This is largely due to the realisation that the scope of existing laws are likely to apply, whether in an employment or independent contractor context. In particular, various employment tax laws have extended definitions of employee (or relevant contracts) to bring within scope workers who perform services akin to an employee. Accordingly, regulators have looked to test the extension of the laws within the gig economy and contractors within a broad range of industries. We expect continued activity in this area.

India

The Indian Government has introduced changes to the labour law compliance framework by consolidating 29 separate labour regulations into just 4 Labour Codes. This has been done with the aim of promoting the 'ease of doing business' in India, and to simplify complex compliance, with the overall goal of improving the business environment.

The new framework for labour laws in India will now be covered by the following 4 Labour Codes:

- Code on Wages (2019)
- Code on Social Security (2020).
- Industrial Relations Code (2020).
- Occupational Safety, Health and Working Conditions Code (2020).

Whilst the Code on Wages (2019) was notified in August 2019, the other 3 labour codes received the President's assent on 28 September 2020 and will become effective once corresponding rules for each of these Codes are notified by the government. The draft rules for these 3 labour codes have been issued for public consultation by the Government.

The new labour codes framework will apply to all companies in India, whether in the manufacturing sector, trading sector or in the services industry.

Code on Wages (2019)

This Code sets out provisions relating to the payment of wages, bonuses and equal remuneration for workers and amalgamates 4 labour laws – The Payment of Wages Act, The Minimum Wages Act, The payment of Bonuses Act, and The Equal Remuneration Act.

Key aspects include:

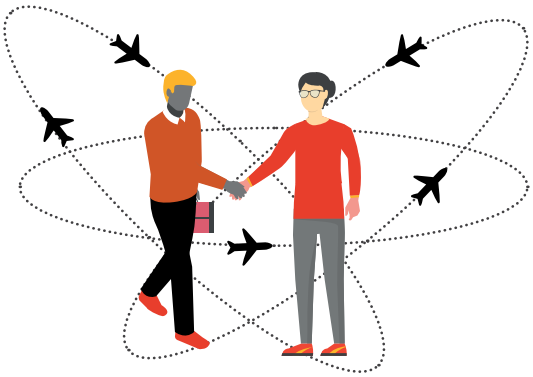
- A uniform definition of 'Wages'.
- Easier compliance in relation to the maintenance of consolidated registers, records and returns. Industrial relations code (2020).
- The introduction of the concept of a floor wage.
- Mandatory provision for the payment of wages before the 7th day of the succeeding month for all establishments.
- A conviction for sexual harassment has been included as a ground for disqualification of a bonus payment.
- A 3 year limitation period for the filing of claims by an employee or by their trade union.
- Enhanced penalties and compounding of offences introduced.

Code on Social Security (2020)

This Code sets out the provisions which will apply in relation to the provision of social security benefits to employees/ workers in both the organised as well as the unorganised sectors. It amalgamates 9 existing Labour Laws, including The Employees' Compensation Act, The Employees' State Insurance Act, The Employees' Provident Funds and Miscellaneous Provisions Act, The Maternity Benefit Act and The Payment of Gratuity Act.

Key aspects include:

- A widened definition of 'Wages'.
- The Provident Fund contribution to be made on wages as defined, and not on basic wages.
- Social security benefits to be extended to both organised and unorganised sectors.
- Aggregator companies (e.g. digital intermediaries, marketplace etc) to contribute to the Social Security Fund for the welfare of the unorganised workers, gig workers and platform workers.
- An establishment employing 100 or more persons is permitted to make an application to the Central Government to maintain its own provident fund account.
- Opt out provisions to be introduced for establishments which had sought voluntary coverage under the Employees Provident Fund and Employees State Insurance chapters.
- Fixed term employees will become eligible for a gratuity on a pro-rata basis.
- A 5-year limitation period for the initiation of an inquiry by the authorities for the assessment and determination of monies due from an employer.
- Establishments to be permitted to avail common crèche facilities.
- Enhanced penalties and compounding of offences to be introduced.



Industrial Relations Code (2020)

This Code sets out provisions relating to Trade Unions, conditions of employment in an industrial establishment or undertaking, investigation and the settlement of industrial disputes. It amalgamates 3 Labour Laws -The Trade Unions Act, The Industrial Employment (Standing Orders) Act, and the Industrial Disputes Act.

Key aspects include:

- Establishments employing 300 or more workers will need to comply with the retrenchment (termination of employment) provisions.
- Every industrial establishment employing 20 or more workers will be required to have one or more Grievance Redressal Committees for the resolution of individual grievances.
- The threshold for the application of Standing Orders (conditions of employment) to an industrial establishment has been increased from 100 or more workers to 300 or more workers.
- An investigation or inquiry into complaints or charges of misconduct against an employee will be required to be completed within 90 days.
- A 60-day notice period is to be provided before going on a strike.
- A worker re-skilling fund is to be set up by the Government, under which the employer will be required to contribute the equivalent of 15 days of wages last drawn by the worker before retrenchment.
- Enhanced penalties and compounding of offences is to be introduced.

Occupational Safety, Health and Working Conditions Code (2020)

This Code sets out the provisions relating to the safety, health and working conditions of employees/workers. It amalgamates 13 Labour Laws including The Factories Act, The Contract Labour (Regulation and Abolition) Act, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, The Working Journalist and other Newspaper Employees (Conditions of Service and Misc. Provision) Act.

Key aspects include:

- Centralised / uniform electronic registration for an establishment and the provision of a common licence in respect of a factory and for engaging contract workers.
- Common registers and records to be maintained for ease of compliance.
- A 5 year validity period for a licence obtained by a contractor.
- The threshold limit for coverage of premises as a factory is to be enhanced – 20 workers with the aid of power / 40 workers without the aid of power.
- The application of contract labour provisions where 50 or more contractual workers are employed.
- The contractor will be required to issue an experience certificate detailing the work performed by such contract labour.
- Employers will be mandated to require annual health examinations to such employees as may be prescribed.
- Enhanced penalties and compounding of offences to be introduced.

Japan

The gig economy in Japan is expected to contribute, in particular, to the expanding employment of older workers, in order to extend healthy life expectancy, and increase the number of social security supporters and workers through short-term, single-job contracts, and individual basis working styles via the internet.

Workers are also increasingly interested in diverse and new working styles, such as “side jobs” and working as freelancers. In relation to transactions between businesses and freelancers, the position of the business tends to be superior to the freelancer, which can lead to contractual and work-related issues. Therefore, the Japanese Government has published guidelines to provide better protection to freelancers, including establishing a ‘freelance safety net’. The Government has also published guidelines regarding the promotion of side jobs, as employers are required to comply with work regulations and develop rules to prevent workers from working long hours and to ensure their health.

New Zealand

Employment status is an area that is expected to receive increased focus in the short to medium term, particularly in relation to 'dependent contractors' and whether or not they should be classified as employees. In that regard, an important case is ongoing in relation to a major ride – hailing platform, which may set a precedent in relation to whether drivers are to be treated as independent contractors or employees.

Thailand

Thailand currently has no specific legislation in relation to the employment status of informal workers or those working through digital labour platforms.

As an informal worker typically receives remuneration upon completion of their work, the laws of Thailand classify such a worker as a contractor under a hire of work contract. Accordingly, the individual is not an employee protected under labour protection laws. Instead, contract law is applied to determine the rights and obligations of the worker. Therefore, the rights and obligations of the worker depend upon the particular contractual terms and conditions agreed with the relevant business.

However, a draft law is currently progressing in relation to the protection of informal workers. This draft law proposes to provide rights similar to that under labour protection laws. The protections will include fundamental rights and benefits, access to a retirement pension or saving funds, compensation in the event of injury or illness, disability, and death, etc. This draft law will be governed by the Ministry of Labour.

Europe, Middle East and Africa

Austria

Gig economy platforms are prevalent in Austria and this has prompted various discussions in both the media and between employment law experts, particularly in relation to the classification of gig workers under both employment law and for tax and social security purposes. Due to the prevalence of the gig economy and the number of gig workers, an increase in case law is expected in Austria, together with a broader discussion in legal literature.

Whilst the Austrian Government Program 2020-2024 commits to "modernise" employment law, it does not make specific reference to the gig economy or gig workers and it is not currently expected that there will be significant legislative developments in relation to employment status in the gig economy.

However, due to the increasing need to protect bike-riding employees (e.g. food delivery services) a collective bargaining agreement (which includes minimum wage requirements) for blue-collar workers in the business field of transportation of goods with bicycles has been concluded in Austria.

Further commentary on the tax and employment status of gig economy workers in Austria can be found in the Gig Study here.

Czech Republic

Whilst employment status represents the most common form of work in the Czech Republic, organisations do also engage with contractors. A self – employment arrangement (contractor) can be reclassified as a "hidden employment relationship" for Czech tax purposes if the activity performed by the individual meets the conditions of being classified as a 'dependent activity'.

Where the state authorities challenge the arrangement and determine that the contractor is in fact a deemed employee (i.e. a hidden employment relationship), there is a significant risk of penalties and underpayments for tax, social security, health insurance and possibly penalties from the Labour Office. As of 1 January 2022 the basic compensation rate for the use of private vehicles for company business purposes is increased to CZK 4.70/km.

Denmark

The population of gig workers continues to increase in Denmark. The classification of workers in Denmark is on a case – by – case basis, and depends upon the facts and circumstances of the relationship. A gig worker can be classified as self-employed or as an employee and, if the latter, will then be entitled to an employee's protection rights. If the gig worker can organise the performance of their work and their working time, and are not subject to a control (hierarchic authority), they will likely be considered self-employed.

The previous treaty between Denmark and France was terminated by Denmark in 2008, with effect from 2009, due to a dispute in relation to the taxation of pensions. Denmark is working to ensure that the new DTA can take effect from 1 January 2023.

According to current case law the following criteria should be taken into account when assessing whether the individual is a self-employed worker or an employee:

- Does the individual bear the overall economic risk of their own business?
- Under which legal status does the individual operate e.g. through a personal services company, have a VAT registration, be a fee recipient etc?
- Is the individual subject to the client's hierarchic authority? Does the client instruct the work and does the individual report to the client?
- Does the individual have several clients or does the individual depend on one client?
- Does the client put tools at the individual's disposal e.g. laptop / mobile phone / office facilities / access to client's IT systems etc?
- Does the individual receive a fixed monthly fee or is there an hourly or daily fee?
- What termination conditions have been agreed in the contract between the parties e.g. same length of notice period as would be provided for in an employment contract? Is compensation payable in the event of termination?
- Is the individual entitled to sick leave, paid leave or other similar, typical employee benefits?

On 25 January 2022, the Danish Tax Assessment Council found that a person working courier jobs for a digital gig platform should be considered an employee and not self-employed for Danish tax purposes. The fact that the platform had a significant power of instruction regarding the courier weighed heavily in the ruling. The Council found that the platform had laid down several general and specific instructions for the execution of the work. In addition a deciding factor was in relation to who bore the risk and main potential gain of the work carried out.

This ruling is the first in this area and could have an effect for other courier partners and the tax status for people working on platforms. Depending on the degree of supervision, digital labour platforms can be considered as employers of individuals, whose work they organise and control. From a Danish perspective, the degree of supervision is essential for the tax treatment which is reflected in the above mentioned ruling.

In the event that the EU Platform Directive is passed, Denmark will need to amend existing legislation.

The EU Platform Directive provides a list of criteria to determine if the platform is considered as an employer, and therefore, the workers categorised as employees will have similar employment rights as a "normal" employee. The criteria will likely result in many platform workers becoming employees in Denmark. The Danish Government has not yet taken any action in relation to implementing the EU Platform Directive, but as a separate matter is considering a presumption rule under which a gig worker, as a starting point, is presumed to be an employee, unless the platform can prove the gig worker is self-employed.

The Danish Tax Law Council published a report regarding the 'The third group in the labour market' on 7 April 2022. The report sets out recommendations to contribute to the simpler and more accurate payment of taxes and VAT but this did not make reference to the EU Platform Directive. The report recommends the extension of a reporting obligation to include digital platforms which provide services etc, but are not considered employers, to report on users' remuneration, and to introduce a withholding obligation for digital platforms if the remuneration is paid out directly through the platform.

Further commentary on the tax and employment status of gig economy workers in Denmark can be found in the Gig Study here.

France

After several court decisions and rulings reclassifying the link between self-employed workers andplatforms as an employment contract, it was the turn of the Criminal Court of Paris on 19 April 2022 to rule on the offence of undeclared work.

A prominent meal delivery platform has been prosecuted before the Criminal Court of Paris for having concealed a large number of jobs by intentionally omitting to file pre – employment declarations and failing to issue pay slips for the period 2015-2017. The prosecution suspected the platform of having used thousands of workers under a supposed independent status via commercial contracts, while they were in a permanent legal relationship of subordination to it.

Delivery workers, trade unions and the URSSAF (the French social security authority) had filed civil suits.

The Court found the platform guilty of undeclared work and sentenced it to pay:

- A fine of €375,000 (the maximum amount for such an offence).
- Damages of €50,000 for moral prejudice to each of the trade unions that were part of the civil action.
- Damages to the delivery workers and the URSSAF.

To characterise the offence of undeclared work, the judges identified several elements. The material element of the offence, in this case, being the existence of a link of subordination between the workers and the platform, and in particular the:

- Power of the management of the platform.
- Power of the platform to control the execution of its instructions.
- Power of the platform to sanction non-compliance with its instructions.
- Intentional element of the offence, i.e. the platform's intention to avoid its legal obligations.

The platform has indicated that it will appeal the court's decision

Further commentary on the tax and employment status of gig economy workers in France can be found in the Gig Study here.

Ghana

Employment status has traditionally been determined without clear guidelines or specific regulations in relation to the gig economy.

However, with the influx of ride hailing service providers and associated services, the expectation is that legislators will re-examine operators in the gig economy, albeit with a focus geared more towards expanding the tax net rather than clearly defining status. This is due to the perception that not all independent contractors are declaring and paying the appropriate taxes. This does not, however, detract from the expectation that case law from around the world will influence the Ghana Revenue Authorities to publish clear policy guidelines on the status of operators in the gig economy.

Ireland

A recent determination has been made by the Court of Appeal following assessments raised by the Irish revenue on the basis that individuals were deemed employees and not self-employed. This case questioned whether an employment relationship existed between a prominent pizza delivery company and the drivers who were engaged to undertake deliveries to their customers.

The key element in the outcome of the decision was that for an employment relationship to exist, there must be mutuality of obligation; the employer is obliged to provide work to the employee and the employee must in turn do that work. Based on current jurisprudence in Ireland on the issue of mutuality of obligation, it was determined from the contractual arrangements that this was absent in the current case. The Court of Appeal, although not a unanimous verdict, decided there was not an employment arrangement between the parties..

The importance of the mutuality of obligation is critical in any analysis of employed versus self-employed status in Ireland. This recent determination and the various facts reviewed as part of the case will be helpful when reviewing relationships in place with contractors.

Further commentary on the tax and employment status of gig economy workers in Ireland can be found in the Gig Study here.

Italy

In accordance with European parameters, on 29 July 2022, Legislative Decree No.104 of 27 June 2022 (the so-called Transparency Decree, or the Decree) was published in the Official Gazette. This transposes EU Directive 2019/1152 (the so-called Transparency Directive) and amends Legislative Decree No.152/1997. The measure came into force on 13 August 2022.

The Decree introduces, among other measures, specific information obligations for an employer (or the principal, as appropriate). The new disclosure obligations for the employer apply at the point the employment contract is signed. In addition, if an employee submits a written request, the employer is subject to 'review and update obligations' for any employment contract already in place as at 1 August 2022. Employers are required to amend the relevant employment contract no later than 60 days from the date of the request, or otherwise be subject to a penalty.

Employment contracts and employment letters must therefore comply with a series of information requirements regarding the employment relationship, including the length of the probationary period, training for employees, leave, scheduling of normal hours of work and any conditions relating to overtime and how this is remunerated. These new requirements apply to all subordinate employment contracts (fixed-term, open-ended, full and part-time) and, where applicable, to certain kinds of self-employed contracts (so called co. co.co. and occasional collaborations), including those already in force as at 1 August 2022.

In order to meet these information requirements the employer is required to deliver to the employee, at the time of the establishment of the relationship, and before the start of the activity, an individual employment contract drawn up in writing or, alternatively, a copy of the communication of the establishment of the employment relationship referred to in article 9-bis of the decree – law 1 October 1996, n. 510, converted, with modifications, by Law 28 November 1996, n. 608.

In any event the employer must provide the employee with any information not referred to in the hiring letter or a copy of the communication of the establishment of the employment relationship within 7 days of commencing work. Certain information may be provided at a later date, but in no case later than 30 days from the individual commencing work.

The impact of this new Decree is significant due to the compliance requirements for employers, both at the point of hiring an individual and during the course of the employment relationship, with the risk of the employer incurring heavy fines in case of errors. In case of a failure, a delay, an incomplete or an inaccurate fulfilment of the information obligations, the authorities may apply an administrative penalty of a minimum of €250 and up to a maximum of €1,500.

Malta

Malta does not currently have any specific legislation or guidelines designed to address the issue of the employment status of gig economy workers (although the expectation is that the EU Platform Directive will change this).

However, Employment Status National Standard Order (S.L. 452.108) (the Regulations) provide for the presumption of an employment relationship in certain circumstances. The Regulations provide that individuals who may not, on the face of it, be considered as employees or, who are nominally self-employed, may be deemed to be employees of the entity in receipt of the services where a number of conditions stipulated in the Regulations are satisfied. Where this is the case, employment rights may be applicable to such deemed employees.

Where at least five out of the eight criteria in the Regulation are satisfied, the parties may request a written exemption from the presumption of employment from the Director of the Department of Industrial and Employment Relations, prior to entering into such a relationship, subject to the satisfaction of certain conditions.

Netherlands

Under Dutch law, specific legislation (Deregulation of Employment Relations Act (DBA Act)) applies to assess whether there is an employment relationship with an individual or whether it is self-employment. Whether or not an employer-employee relationship exists depends on the actual facts and circumstances under which the agreement is performed. The conditions concluded in the agreement are not the primary factor in making this assessment (substance over form).

An independent contractor can be considered as an employee if the following cumulative criteria are met:

- The independent contractor is required to perform their activities under the (possible) authority/ supervision of the organisation.
- The organisation is obliged to pay for the labour of the independent contractor.
- The independent contractor is obliged to perform the activities personally.

If the relationship meets all of the above criteria, then this is considered to be an employer-employee relationship. As mentioned, the conditions concluded in the agreement are not the primary factor in making this assessment. This assessment is particularly important for platform workers as they are frequently involved in so-called 'false self-employment' scenarios. The assessment could also apply to an independent contractor who performs activities via their own personal holding company.

Enforcement moratorium ("Handhavingsmoratorium")

For the period from 1 May 2016 onwards transitional legislation is in place regarding the hiring of self-employed individuals. During this period organisations are in principle indemnified from Payroll tax enforcement measures regarding the hiring of self-employed individuals as the enforcement of the DBA Act is limited to 'malicious parties' for this period. From 1 July 2018, the definition of 'malicious parties' was broadened. As from that date, organisations are treated as a malicious party when three cumulative criteria are met:

- There is a (deemed) employment relationship.
- There is evident pseudo self-employment.
- There is intentional pseudo self-employment.

From 1 January 2020, there is also the risk of an additional assessment if the instructions from the Dutch Tax Authorities regarding the adjustment of the employment relationship are not, or are not sufficiently, followed within a reasonable period (being three months). In the event that a self-employed individual qualifies as an employee, the entity that employs the individual is required to withhold and remit payroll tax and social security.statement / Certificate of Coverage (CoC) are now defined as extraterritorial costs. Secondly, the specific exemption for applying for, or converting a work permit, will lapse. Thirdly, a maximum amount may no longer be used for the costs of preparing the income tax return. Finally, the DTA emphasises that the costs of tax advice for an employee are regarded as wages.

Enforcement moratorium from 1 January 2025

It is the Dutch Government's ambition to strengthen enforcement by the Dutch Tax Authorities and to completely lift the enforcement moratorium by 1 January 2025 or, if possible, by an earlier date.

Switzerland

In June 2022 the Federal Supreme Court decided that drivers in a prominent ride hailing platform should be considered to be employees and not independent contractors. The decision triggered discussions between the various parties and under a new agreement the relevant drivers in Geneva will now be employed by the platform's Swiss partner company, will be entitled to Geneva's minimum wage and the platform will be required to pay social security charges. It is not yet clear what impact, if any, the Court's decision will have in other Swiss cantons.

United Kingdom

The growth of atypical working in the UK has contributed to significant changes to case law on employment status, with the courts seeking to "catch up" on new ways of working, both within the gig economy and in other sectors. In the UK, a "worker" sits in an intermediate category between someone who is self-employed and an employee. Workers are entitled to certain employment – type rights such as National Minimum Wage (NMW) and paid holiday. But worker status does not oblige the engaging party to withhold employment income tax or to be liable to social security, as it would for an employee.

A recent UK case (June 2022) has re-opened the debate on the principles for determining worker status in the UK. In this case, the individual was a dentist and worked for a number of years as an associate at a dental practice. At the termination of her contract, the dentist brought claims against the dental practice alleging employment and worker status, which were rejected. In relation to being a worker, this was partly on the grounds that she had an unfettered right to provide a substitute which was inconsistent with the requirement of personal service contained in the definition of worker.

The dentist successfully appealed solely on the ground that she was a worker. In relation to the right to provide a substitute, previous cases have held that an unfettered right is inconsistent with worker status. A conditional right may or may not result in the same outcome depending on the conditionality. In this case, doubt has been cast on this principle. The employment appeal tribunal said that even where there was an unfettered right of substitution, where the purpose of the agreement was personal service, the individual could be a worker. For further commentary on the possible implications of this case please see here.

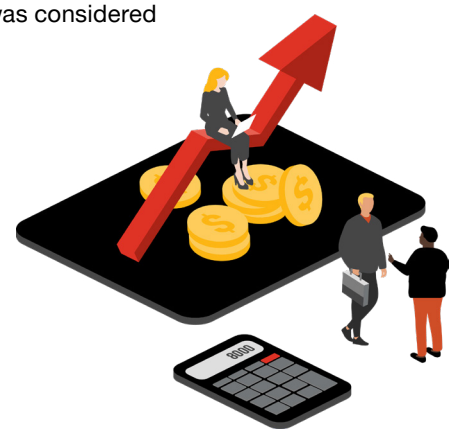
Notwithstanding the developing nature of case law, there have also been calls for statutory intervention. Employment status was one of the key areas looked at in the 'Taylor Review of Modern Working Practices' in 2017 (Review). The Review made a series of wide ranging recommendations, including that the definition of "worker" should be made clearer and in response, the UK Government issued a consultation in 2018 on employment status (Employment Status Consultation). The Employment Status Consultation asked many wide ranging questions about how status dictates the employment rights conferred on different groups of people and their tax liabilities. The questions included asking whether the current three tier system referred to above was appropriate and should be retained; whether there should be a statutory codification of the tests on status; and whether the definitions of status in the tax and employment rights systems should at least be more closely aligned.

In July 2022, the UK Government issued its response, which makes it clear that there will be no new laws changing the current system for the foreseeable future. The three tier status framework referred to above is to be retained. Also, there will be no new statutory framework for defining status. This was considered inappropriate because of the short term cost and uncertainty that may result from the introduction of a new set of rules. Although it is also recognised that there may be benefits to a closer alignment of the tax and employment rights systems, the UK Government has decided that now is not the time to achieve this.

In addition, in May 2022, the UK Government announced the establishment of a review into how it can best support a thriving future labour market. The review includes an examination of short and medium term barriers and challenges that a labour market might face. It will build on existing UK Government commitments, including those made in relation to the Taylor Review. The review was to be conducted over Spring / Summer 2022 but it remains to be seen what impact of the recent election of a new UK Prime Minister will be. Although on 23 September significant announcements were made in relation to the so called "off payroll working rules" - further details can be found here.

Although the UK is not obliged to implement the EU Platform Directive, UK based organisations will be mindful of the proposed new rules. Organisations may have exposure due to remote working contingent workers based in EU countries who may move from self-employed to employed status, and organisations may also need to reconsider their international supply chains.

Further commentary on the tax and employment status of gig economy workers in the UK can be found in the Gig Study here.



The Americas

Argentina

Labour law classification in Argentina is rigid and the provision of services under platforms has been analysed by a range of case law. In general, on the basis that labour law establishes the presumption that the provision of services is under an employment contract, and some typical characteristics of the gig economy are linked with a labour relationship under Argentinian law, the Courts generally find that the provision of such services is under an employment contract.

United States

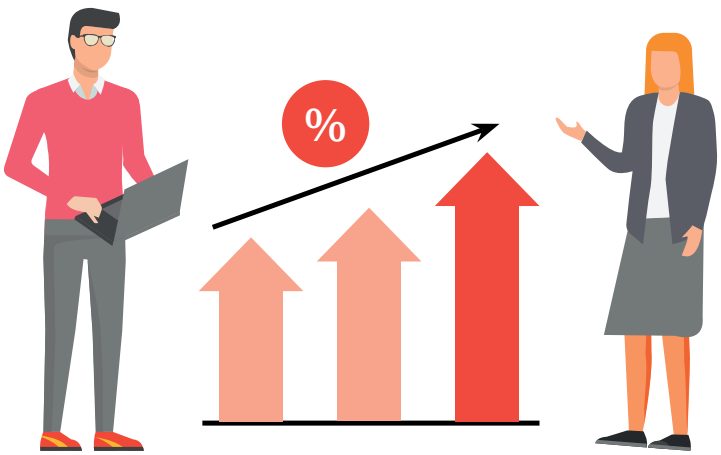
In the United States, Federal and State taxing authorities can scrutinise the engagement of service providers to determine whether an individual is properly classified as an employee or independent contractor. The appropriate classification of an individual as either an independent contractor or an employee is based upon a fact-intensive inquiry of the nature of the relationship between the service provider and the business.

In the context of the gig economy, many States have legal frameworks with respect to independent contractor classification determinations for gig economy workers. However, there is a level of uncertainty given that these rules are currently being challenged in the legal system.

For example, California enacted AB5 in 2019, which provided a strict test for determining whether workers were independent contractors (as opposed to employees) for employment tax purposes.

California subsequently passed Proposition 22 in response to AB5, which proposed to exclude certain gig workers from independent contractor classification. In 2021, a Superior Court judge declared that Proposition 22 was unconstitutional under California law, and the proponents of Proposition 22 are currently briefing the issue in the appellate court. Additionally, in New York, there's a 'Right to Bargain' Act that may potentially provide similar protections as California Proposition 22. However, this act has not yet been passed.

There are at least 27 States that impose strict "ABC" tests in making contractor determinations. While the application of ABC tests can vary by State, taxing authorities may determine that service providers are employees in the States with ABC tests unless certain criteria are met. Businesses that engage independent contractors in the US should carefully consider the proper classification and accompanying documentation in light of the State and Federal scrutiny of the gig economy industry.



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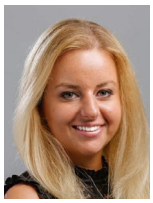

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Employment tax updates

Asia Pacific

Superannuation guarantee administration

In Australia, the Superannuation Guarantee (SG) system is one that predominantly operates with little regulatory intervention from the Australian Taxation Office (ATO), which is in contrast to most other taxes administered by the ATO. For example, there is no SG annual or periodic return required to be filed explicitly outlining an employer's "taxable" position. Notwithstanding this, the ATO is responsible for encouraging voluntary employer compliance, in addition to addressing instances of non-compliance.

With superannuation representing an employee entitlement which ultimately affects Australians' retirement incomes, the Federal Government has increasingly seen this to be a critical function of the ATO and the topic has been identified as a Parliamentary priority. As a result, the Australian National Audit Office (ANAO) has recently undertaken an audit of the ATO's performance as the SG administrator.

The Auditor-General has now released its report ("Addressing Superannuation Guarantee Non-Compliance") which assesses the effectiveness of the ATO's activities at mitigating and dealing with SG non-compliance.

Based on their findings the Auditor-General made three recommendations to the ATO to:

- Implement a preventative approach to SG compliance activity.
- Assess its performance against public accountability standards, introduce assessment targets (including against the SG gap), and explanations for performance results.
- Maximise the benefit to employees' superannuation funds, by making more use of their enforcement (and debt recovery) powers.

The ATO agreed with the first and third recommendations and agreed, with qualifications, to the second.

Employers should note that the ATO has committed to adopting a more preventative and proactive approach in dealing with SG compliance matters, and the specific call-out of Single Touch Payroll (STP) highlights the key role it has to play in any reframed approach.

Further information can be found here.

STP reach to extend to State and Territory-based payroll tax

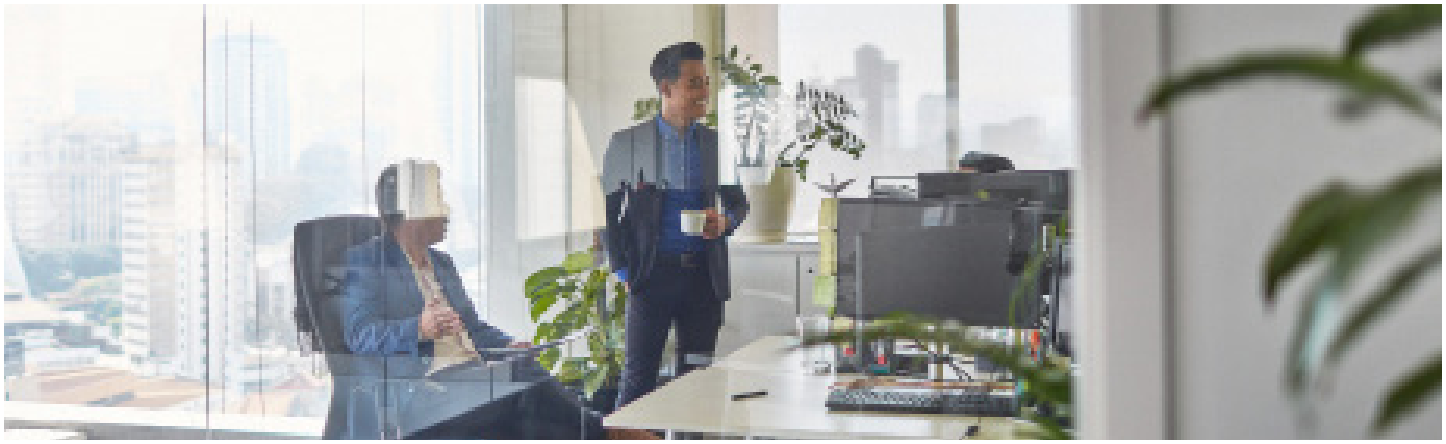
The Federal Government has expanded STP reporting requirements to further support the administration of the social security system and to reduce the reporting burden for employers that need to report information about their employees to multiple government agencies. As part of "STP Phase 2", employers are required to report the separate, granular components of an employee's earnings to the ATO.

In March 2022, the Federal Treasurer announced that the Federal Government will facilitate the sharing of STP data with State and Territory Governments to enable pre-filling of payroll tax returns. The proposed sharing of this STP data with the relevant Offices of State Revenue is intended to reduce compliance costs and save time for approximately 170,000 businesses with payroll tax reporting obligations. The Federal Government anticipates that the Government technology required to facilitate this measure will be developed and implemented by late 2023.

The use of data reported to the ATO to pre-fill payroll tax returns will be a major change, requiring employers to evaluate how their processes, procedures and broader governance should be adjusted to adapt and position their organisation for successful compliance. Therefore, it is imperative that employers have confidence in the integrity, completeness and accuracy of their payroll data in preparation for the additional level of scrutiny that will come with pre-filled payroll tax returns.

Whilst the details of the initiative and what the requirements will be for employers are uncertain at this stage, it is nonetheless advisable that organisations avoid leaving their evaluation of the necessary changes until the new reporting initiative goes live.

Further information can be found here.



Hong Kong

Salaries tax deductions fordomestic rent

The Inland Revenue (Amendment) (Tax Deductions for Domestic Rents) Bill 2021 (the Bill) was gazetted on 6 May 2022 to commence the formal legislative process. The Bill seeks to implement tax deductions for domestic rent paid by taxpayers liable to Hong Kong salaries tax (and/or tax charged under Personal Assessment) who do not own any domestic premises, as proposed in the 2022/23 Budget. The Bill sets out the deduction rules for domestic rent, and if enacted, will take effect from the year of assessment 2022/23 onwards.

Key points in the Bill include:

- A taxpayer liable to Hong Kong salaries tax (and/or tax charged under Personal Assessment) may be allowed a tax deduction for rent paid by them/ their spouse (provided the spouse is not living apart from the taxpayer) as a tenant under a qualifying tenancy of domestic premises.
- To qualify for the deduction, a tenancy (or a sub-tenancy) in writing must be procured in respect of any domestic premises. The tenancy must be stamped within the meaning of the Stamp Duty Ordinance.
- A deduction is only allowable in respect of rent paid under a qualifying tenancy of domestic premises used by the taxpayer as their place of residence. If the taxpayer has more than one place of residence, the relevant premises must be their principal place of residence.
- Where a qualifying tenancy is procured in respect of any domestic premises and a car parking space, and the car parking space is not sublet, the car parking space will be taken to be part and parcel of the domestic premises for the purpose of the deduction.
- And parcel of the domestic premises for the purpose of the deduction.
- The maximum amount of the deduction allowable to a taxpayer is HK$100,000 for each year of assessment, which will be reduced on the following basis:
  - If there is more than one tenant under the tenancy - in proportion to the number of co-tenants; or
  - If the period of the tenancy for which the domestic rents are paid covers only a part, but not the whole, of a year of assessment - in proportion to the period of the tenancy falling within the year of assessment.

In certain circumstances no deduction will be allowed, including where:

- The taxpayer or the taxpayer's spouse (who is not living apart from the taxpayer) is a legal and beneficial owner of any domestic premises in Hong Kong.
- The landlord of the tenancy concerned (or the principal tenant in the case of sub-tenancy) is an associate (such as spouse, parent/parent-in-law, child, sibling, a corporation controlled by the associate person, etc.) of the taxpayer or the taxpayer's spouse.
- The taxpayer or the taxpayer's spouse (who is not living apart from the taxpayer) is provided with a place of residence by their employer or an associated corporation of the employer; or the rents payable or paid by the taxpayer or the taxpayer's spouse in respect of a place of residence are wholly or partly paid or refunded by the employer or the associated corporation.
- The taxpayer or the taxpayer's spouse (who is not living apart from the taxpayer) is a tenant or an authorised occupant of a public rental housing flat in Hong Kong.
- The rent is allowable as a deduction under any other provision of the Inland Revenue Ordinance.

To prevent any excessive claims by a married couple, the total amount of the deduction allowable to the couple in respect of the rent paid by either or both of them as a tenant or co-tenants under a qualifying tenancy may not exceed the amount of deduction allowable to a person (who is not married) had the rents been paid by the person as a tenant under the same qualifying tenancy.

For the purpose of 2022/23 provisional salaries tax, eligible taxpayers can provide information about their expected domestic rent payable by them or their spouse in relation to the year of assessment 2022/23 in their 2021/22 Individual Tax Returns (Forms BIR60). Once the Bill becomes law, the Inland Revenue Department (IRD) will take into account the taxpayers' claim for deductions based on the information provided.

Taxpayers may also apply for holding over the payment of provisional salaries tax for the year of assessment 2022/23 upon receipt of their 2021/22 salaries tax demand note. The time limit for such an application is 28 days before the due date for payment of the provisional tax, or 14 days after the date of the notice for payment of the provisional tax, whichever is later.

The introduction of this new tax measure will no doubt be greatly welcomed as it will help alleviate the tax burden of individual taxpayers, particularly in light of high rental costs in Hong Kong. However, it will be important for taxpayers to understand their eligibility as well as the circumstances in which the deductions may be denied. In addition, employers are encouraged to revisit and update their rental reimbursement policy taking into account the new rules, once implemented.

India

Secondment arrangements

The Supreme Court of India, in a recent landmark decision (May 2022) in the context of service tax law, held that employees seconded by foreign entities to Indian group entities are to be treated as a manpower supply service provided by the foreign company and thus liable for service tax in India. The Supreme Court examined the agreements in detail and applied the principle of 'substance over form' to determine the relationship between the parties and nature of the services provided.

This decision has far-reaching implications for foreign multinationals seconding personnel to India. Companies are advised to evaluate the impact of the decision in relation to Indian secondment arrangements, not only under Goods and Service Tax law, but also under income tax law.

Japan

Working from home FAQs

The number of workers working remotely has been growing due to the COVID-19 pandemic. In January 2021, the National Tax Agency (NTA) published guidelines/ FAQs relating to cost sharing and taxable benefits provided during the working from home period.

The FAQs include specific examples, such as a case where a company uniformly provides each employee with a JPY5,000 working from home allowance. In this case, the allowance is subject to tax and needs to be included in the payroll as a taxable benefit. On the other hand, income taxed through payroll will not be required if the amount equivalent to the actual expenses are reimbursed to employees where the expenses are normally required for business use.

The FAQs also include formulas to reasonably calculate the non-taxable business use (and taxable personal use) of phone/internet charges used during remote working.

Employment insurance for holders of multiple jobs

Under the Employment Insurance Law in Japan, workers are covered by the employment insurance if their prescribed working hours per week at the "main business establishment" are 20 hours or more. Workers employed at multiple business establishments may not be covered by the employment insurance if their prescribed working hours per week at one business establishment is less than 20 hours, even if their overall working hours per day are close to full-time work hours.

However, as working styles become more diversified, "multiple job holders" who work for more than one employer at the same time are increasing at a relatively high rate. To address this issue, from 1 January 2022, a new system has been implemented for multiple job holders aged 65 and over as a starting point. These workers are covered by employment insurance upon their request when their total working hours in respect of two business establishments are 20 hours per week or more. The Japanese Government will review the effect of this implementation after five years.

Malaysia

Minimum wage order

The Minimum Wages Order 2022 (MW Order) was gazetted on 27 April 2022. The MW Order sets out that with effect from 1 May 2022 minimum monthly wages will be set at RM1,500. This applies to employers who employ five or more employees. It also applies to employers who carry out a professional activity classified under the Malaysia Standard Classification of Occupations as published officially by the Ministry of Human Resources, regardless of the number of employees employed.

Employers with less than five employees are exempt until 1 January 2023. The minimum wage for these employers is maintained at RM1,200 a month (City Council or Municipal Council area) or RM1,100 a month (other than City Council or Municipal Council area).

New Zealand

New 'pooled' alternate Fringe Benefit Tax (FBT) rate option

A new FBT calculation option, first referred to in the previous edition of this newsletter has now been introduced. This is intended to provide a better balance between the accuracy of the appropriate tax rate, and compliance simplicity. Under the new pooled alternate rate option, employers pay FBT on attributed benefits at the flat rate of 63.93%, but only in respect of those employees that:

- Earn more than $160,000 in gross cash pay.
- Receive more than $13,400 in attributed benefits over the year.

In respect of other employees, FBT is payable at the flat rate of 49.25% on benefits.

Employers may also choose to pay FBT at the 49.25% rate on benefits attributed to employees who receive less than $129,681 in all-inclusive pay, even if the employee receives more than $160,000 in cash pay or more than $13,400 in attributed benefits.

The new pooled alternate rate option does not change the treatment of non-attributed benefits. Non-attributed benefits provided to employees who are not major shareholders are still required to be pooled and taxed at the 49.25% rate, while non-attributed benefits provided to employees who are major shareholders or to their associates are required to be pooled and taxed at the 63.93% rate (the same treatment as currently applies under both the full alternate rate and short form alternate rate options).

BT rate for low interest loans

The Income Tax (FBT, Interest on Loans) Amendment Regulations 2022 (SL 2022/98) were notified in the New Zealand Gazette on 7 April 2022. The regulations increase the rate of interest that applies for FBT purposes in relation to employment-related loans from 4.50% to 4.78%. The new rate applies for the quarter beginning 1 July 2022 and for subsequent quarters.

FBT - Charitable and Other Donee Organisations

The Inland Revenue has recently finalised binding ruling BR Pub 22/06 'Fringe Benefit Tax - Charitable and Other Donee Organisations and Fringe Benefit Tax.' This ruling discusses the circumstances in which a benefit provided by a charitable organisation falls with the FBT exclusion. This ruling is an update and reissue of BR Pub 17/06 which expired at the end of June 2022.

The updated ruling includes additional guidance on a number of issues including in relation to the term "qualifying organisations" (used for ease of reference to apply to organisations that can rely on the FBT exclusion) and short-term charge facilities (as defined in the Income Tax Act 2007).

Kilometre rates updated for the 2022 year

The Commissioner is required to set and publish kilometre rates which can be used to calculate expenditure claims for the business use of a motor vehicle. They may also be used by employers as a reasonable estimate for reimbursement of expenditure incurred by employees for the use of a private motor vehicle for business purposes.

The Commissioner has recently updated the kilometre rates for the 2021/2022 income year to be used for motor vehicle expenditure claims. The tier one rates increase from 79 cents to 83 cents per kilometre, largely as a result of steeper fuel costs. The tier 2 rate (which is for running costs only and applies for the business portion of any travel in excess of 14,000 kms) increases from 27 cents to 31 cents (petrol and diesel), from 16 cents to 18 cents (hybrid) and from 9 to 10 cents (electric).

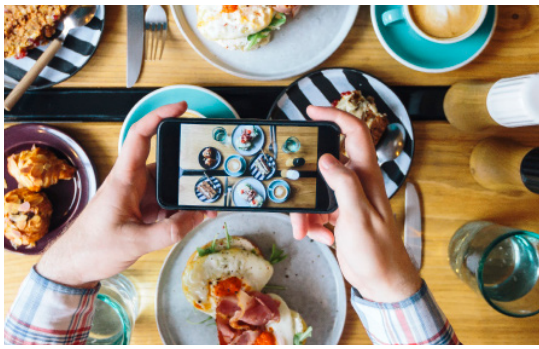
Employee allowances for additional transport costs

The Inland Revenue has released Exposure Draft ED0243 - 'When employee allowances for additional transport costs are tax exempt' for consultation. The consultation closed on 22 July 2022. The Exposure Draft currently reflects the proposed wording for an Operational Statement and discusses the application of section CW18 of the Income Tax Act 2007.

South Korea

Meal allowances

From 1 January 2023 the exemption limit for meal allowances provided in South Korea will double from KRW100,000 per month to KRW200,000 per month.



Thailand

Reduction of social security fund contribution rates

Social Security Fund contributions were reduced from 5% to 1% for both employers and employees, with effect from 1 May to 31 July 2022.

Tax exemption for a subsidy from the government sector

The following subsidies or "any other benefits" received from the Government sector are exempt from the calculation of income for tax purposes.

Any other benefits received for:

- Accommodation, food, tourism attraction entry fee, One Tambon One Product, spa or health massage, car rental or pleasure boat rental, or airfare, under the Rao Thiew Duay Kan Project.
- Buying a package tour from a tourism business operator under the Kam Lang Jai Project.
- Travelling expenses and buying package tours from tourism business operators under the Tour Thiew Thai Project.
- The buying of goods from Low Cost Blue Flag Shop for Local Economic Development (LCBFS) under the Project Increasing Buying Power for State Welfare Card Holder, Stage 2, and the buying of goods from LCBFS and buying of goods or services from shops or service providers participating in Khon La Krueng Project, Stage 3, under the Project Increasing Buying Power for State Welfare Card Holder, Stage 3.
- The buying of goods from LCBFS and buying of goods or services from shops or service providers participating in Khon La Krueng Project, Stage 3, under the Project Increasing Buying Power for Persons Requiring Special Assistance.
- Food, beverage, and buying of goods or services spent via the State electronic payment system under the Khon La Krueng Project, Khon La Krueng Project, Stage 2, and Khon La Krueng Project, Stage 3.
- In the form of electronic vouchers for food, beverages, and the buying of goods or services spent via the State electronic payment system under the Ying Chai Ying Dai Project.

Subsidies received under the:

- Rao Chana Project for living allowances.
- Mor 33 Rao Rak Kan Project.
- Project Providing Assistance to Employer and Insured Person under Section 33 Affected by State Measures within maximum and strict control localities.
- Project Providing Assistance to Insured Person under Section 39 and Section 40 Affected by State Measures within Maximum and Strict Control Localities.
- Project Providing Assistance to Insured Person in Entertainment Establishment Business and Freelancer Working in Connection with Entertainment Establishments Affected by State Measurers
- Project Promoting and Maintaining Employment in SMEs, however, the income earner must not deduct the expenses paid from the income received under said project for computation of natural person income tax.
- Project Providing Assistance to Taxi Drivers and Public Motorcycle Taxi Drivers Exceeding 65 Years of Age Affected by Coronavirus Disease 2019 (COVID-19) Pandemic.
- Project Providing Assistance and Alleviating Education Expenses Burden During COVID-19 Pandemic.
- Project on Measures Reducing Educational Expenses of State and Private University Students.

Europe, Middle East and Africa

Temporary increase to commuter allowances

In order to assist employees with high fuel prices, the Austrian legislature has decided to increase the commuter allowance by 50%. In addition, the commuter allowance surcharge per KM will be quadrupled from the current €2 to €8. These measures apply from 1 May 2022 and are initially slated to expire on 30 June 2023.

This change during a tax year creates a challenge for payroll accounting. If the employee has submitted a declaration to take into account the lump-sum commuter allowance and commuter euro (signed form L34), then the employer is required to take the changes into account for the first time in the payroll run for May 2022. If the increased values could not be accounted for in the payroll runs from May 2022, a retrospective roll-up must have taken place by 31 August 2022 at the latest.

Economic employers

Finland is introducing new legislation in relation to the economic employer principle. The draft legislation is currently being prepared and is intended to come into force, and apply to income earned, from 1 January 2023. The purpose of the legislation is to expand Finland's right to tax income which arises from work that is regarded as being performed for the benefit of a Finnish economic employer. In practice, this would mean that foreign employees could be taxed from their first working day in Finland. A further update will be provided once the final proposal has been introduced later this year.

New judicial practice on flexible pay
In July 2022 the Finnish Supreme Administrative Court delivered a majority decision (KHO 2022:72) confirming that tax-exempt reimbursements, paid in accordance with business travel expenses rules, may be treated as part of total compensation and therefore reduce the amount of taxable cash salary payable to an employee. This decision is contrary to previous guidance, which was based on long-standing tax practice, and which provided that tax-exempt reimbursements were not permitted to replace taxable compensation. In accordance with this new ruling, the monthly taxable cash salary which is payable may fluctuate, depending upon the amount of tax-exempt per Diems and Kilometre allowances paid during the same month.

The most common tax-exempt business related reimbursements in Finland are the Kilometre allowance, Per diem allowances and Meal allowances. These may be paid by the employer provided certain conditions are met in relation to the length and distance of the business trip or when otherwise working at a temporary place of work. The requirements and the maximum tax-exempt allowance amounts are published by the Finnish Tax Administration (FTA) each year.

As noted above, this decision changes the previous interpretation of various laws. The decision concerns the provisions in relation to income tax legislation and it is not yet clear what the impact will be in relation to social security legislation. Our initial view is that because this decision will also have an effect on the amount of income subject to different mandatory social security contributions relating to the employment relationship, it is not absolutely clear that an employer and employee can reduce the amount of pensionable salary subject to the mandatory pension insurances, notwithstanding that this is by mutual agreement.

It remains to be seen whether this decision will change the way in which total compensation is agreed within employment contracts in practice and whether the FTA will update its guidelines. It also remains to be seen whether other types of tax-exempt benefits, other than those mentioned in the decision, are permitted to replace taxable compensation and pave the way for greater flexible pay in Finland.

Germany

Statutory minimum wage and marginal employments

As part of the Coalition agreement by the new federal German Government at the end of 2021, action has now been taken to increase the statutory minimum wage and to reform marginal employment.

From 1 July 2022 the statutory minimum wage increased from €9.82 per hour to €10.45 per hour. The German Government has also approved a law to raise the minimum wage to €12.00 per hour from 1 October 2022.

In addition, from 1 October 2022, pay limitations for "mini-jobs" (marginal employment) will be increased from €450 to €520. From 2022, employers are required to notify the authorities not only of the tax number of the employer but also the tax identification numbers of the relevant employees via an electronic reporting procedure.

Similarly, to relieve the burden on low-wage earners, the so-called "midi-job" limit will be raised from €1,300 to €1,600.

New legislation enacted

The draft Tax Reduction Act 2022, as referred to in the previous edition of this newsletter, has now been enacted. Additional measures include new Articles to provide for a Government grant of a one-off energy price allowance of €300. The allowance is treated as taxable income. Employers should pay the amount, net of tax, to eligible employees in September 2022 and include the relevant amounts in withholding wage tax due on 10 September 2022, within a monthly wage tax report.

The fourth Covid Tax Relief Act has also been adopted and measures include:

- A tax exemption relating to an employer's grants of a short-time work allowance was extended until the end of June 2022.
- A new tax exemption for an employer's grants (of up to €4,500) applies in certain institutions in relation to COVID-19 pandemic prevention, e.g. hospitals, with regards to special work performance during the pandemic. This applies to grants made between 18 November 2021 and 31 December 2022.

Ghana

Personal tax income bands

In the first quarter of 2022, there was a widening of the resident personal income tax bands, with effect from 1 January 2022, to align them with the increased minimum wage. This change has resulted in some income tax savings of up to GH¢ 15 per month (GH¢ 180 per year) as compared to the previous bands.

The new income tax table for resident individuals is as follows:

Year	Annual	Monthly				
2022	Chargeable Income	Chargeable Income	Rate	Tax on Band	Cumulative Income	Cumulative Tax
	GH¢	GH¢		GH¢	GH¢	GH¢
First	4,380.00	365.00	0%	0.00	365.00	0.00
Next	1,320.00	110.00	5%	5.50	475.00	5.50
Next	1,560.00	130.00	10%	13.00	605.00	18.50
Next	36,000.00	3,000.00	17.5%	525.00	3,605.00	543.50
Next	196,740.00	16,395.00	25%	4,098.75	20,000.00	4,642.25
Exceeding	240,000.00	20,000.00	30%			

Gibraltar

Budget announcements

As part of the Chief Minister's Budget address on 28 June 2022, it was announced that there would be an increase in the statutory minimum wage from £7.50 to £8.10 (an 8% increase). It was also announced that tax rates on all bands under both the Allowance Based System and Gross Income Based System would increase by 2% for two years.

Under the Gross Income Based System, income over £105,000 will be taxed at a flat rate of 25%. The law to give effect to these changes was published in the Official Government Gazette on 1 July 2022.

Hungary

Simplified employment

Whilst the general rules of "simplified employment" (under which the employer is required to pay a daily fixed amount of tax in respect of agricultural labourers, tourist guides and ad-hoc employees (e.g. such as gardeners)), remain unchanged, the rates have changed.

The daily fixed tax doubled from 1 July 2022 to HUF1000 in the case of agricultural labourers and tourist guides, and increased to HUF2000 per day for ad-hoc employees.

Ireland

Staff entertainment

In general, an employer can provide staff with entertainment such as Christmas parties, sports days, special meals etc with no taxable benefit arising on the expenses incurred, provided the costs are reasonable and the event is open to all employees. Where an event is held virtually, reasonable costs will include costs which would typically be incurred in hosting a face-to-face party or event.

However, the Irish Revenue has recently been placing greater focus on staff entertainment costs and expenses in its recent audits and interventions. Staff entertainment remains a key focus of Revenue intervention and is likely to be further scrutinised in the future.

As employers look to hold staff social events in person again, it is timely for them to consider undertaking a review of staff entertainment policies, the associated costs and the controls in place.

Special Assignee Relief Programme

The Irish Revenue has released updated guidance in relation to the "Special Assignee Relief Programme" (SARP). One of the conditions to qualify for SARP is that the employee must have been employed by a relevant employer for 6 months prior to arriving in Ireland. Therefore, an individual who takes up employment with an associated company in Ireland immediately prior to their arrival in Ireland will not qualify for the relief.

The Irish Revenue updated its guidance to confirm this exclusion will not apply in circumstances where an individual intends to take up employment with the associated company, but is prevented from travelling to Ireland to commence duties due to unforeseen circumstances outside of their control (e.g. delays with the issue of an employment permit). In such cases, the performance of pre-arrival duties outside Ireland for the associated company may be permitted, assuming these do not exceed 5 working days in total in this 6 month period. The Revenue has also confirmed that:

- A brief holiday or look-see visits in the 6 month period prior to arrival will not prevent eligibility.
- Business travel spent working in Ireland in the 6 month period prior to arrival must not exceed 5 working days in total during this period.

The Revenue also reinforced (with examples) the requirement to spend at least 12 consecutive months working in Ireland after arrival in order to qualify.

Israel

Credit points to parents

On 18 May 2022 the Law for the increase in Credit Points to Parents for income tax purposes (Temporary Order) was published. (Credit points reduce a qualifying taxpayer's income tax bill by a certain amount each year and entitlement depends on personal circumstances).

In accordance with the temporary order, an additional credit point was given to a parent of a child who has not yet turned 13 (and is not a toddler) in the tax year, for 2022 only. Any parent of a child who has reached the age of 6 to 12 years in the tax year 2022 will be entitled to an additional credit point for the child.

Netherlands

Efficiency margin for director-major shareholders

A director-major shareholder (in Dutch: "directeur-grootaandeelhouder") may be obliged to pay themselves a monthly salary for their work which, in the Netherlands, is subject to certain rules. One of these rules, the customary wage regulation, requires a realistic salary to be paid.

Based on the current efficiency margin, the customary wage for the director-major shareholder is set 25% lower than the wage that is normal for the level and duration of the shareholder's work. It has been announced that as of 2023, this margin may be lowered to 15%, as a result of which the director-major shareholder may be required to pay themselves a higher customary wage and pay more income tax.

This proposed change has not yet been approved by the Dutch Government.

30% ruling scheme

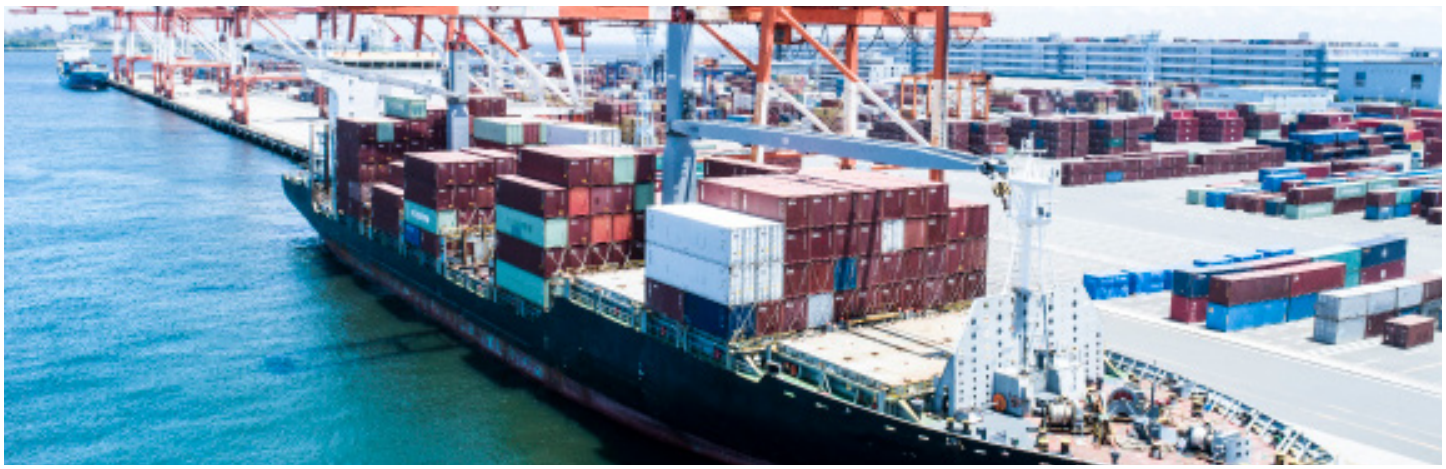
Certain employees who come to the Netherlands from another country to work can receive up to 30% of their salary untaxed with the "30% ruling". As a result of a proposed alteration to the current scheme, this will be capped at the income level which is the norm for directors of (semi) public institutions (for 2022: €216,000). This new measure will have a three-year phase-in period due to a transitional arrangement, although it is not yet clear how this will be implemented.

This proposed change has not yet been approved by the Dutch Government.

Increase to untaxed travel allowance

In the Netherlands, it is possible to pay an untaxed travel allowance to employees based on the business and commuting kilometres travelled. In advance notice of the annual tax plans, it has been proposed that the increase planned for 2024 will be brought forward and could take effect as early as 2023. Although the exact increase is not yet confirmed, it is assumed that in 2023 the increase will be to €0.21 per kilometre and in 2024 to €0.23 per kilometre.

This proposed change has not yet been approved by the Dutch Government.



Portugal

Tax regime for young workers (IRS Jovem)

The tax regime which applies to income earned by young workers aged between 18 and 26, who are not considered dependents, has been updated, with the following changes:

- It will now apply not only to Category A income (employment income), but also to Category B income (self-employment income).
- The upper age limit for a taxpayer to benefit from the regime has been increased to 30, provided the individual is completing a level 8 of the National Qualifications Framework (PhD).
- The exemption applies in the first five years after the year of completion of the eligible level of studies.
- The exemption applies to 30% of the income earned in the first two years, 20% in the following two years and 10% in the final year, with a limit of 7.5 x IAS (Social Support Index), 5 x IAS and 2.5 x IAS, respectively.
- The benefit of the exemption may take place either in subsequent or interpolated years, provided that the taxpayer does not exceed the age of 35.
- The Portuguese tax authorities will now start to make available the information that the taxpayer is eligible for this exemption on the automatic Personal Income Tax return or through the pre-completion of the tax return.

The new exemption rules apply to taxpayers whose first year of earning income, after completing a cycle of studies, is 2022 or later. Taxpayers who have already opted for the regime in 2020 and 2021, may benefit from the new rules, with necessary adaptations, for the remaining period.

Extension of the tax regime applicable to former residents

The tax regime which applies to former residents who returned to Portugal in 2019 and 2020 has been extended. The exemption from tax which applies to 50% of employment income and self-employment income will also apply to taxpayers who have become or will become residents in Portugal in 2021, 2022 and 2023. To be eligible for this tax relief, the taxpayer must have been considered a tax resident of Portugal prior to 31 December 2017, 2018 and 2019, respectively.

The remaining eligibility conditions remain unchanged, i.e.the taxpayer must not have been considered a tax resident of Portugal in any of the previous three years and must have their tax situation regularised.

The extension of this regime also applies to the tax withholding rules applicable to the paying entities.

General tax rates

The third and sixth income brackets will be split. There will be a reduction in the rate for the lower amount of those brackets. The table with the general personal income tax rates which will now include nine income brackets as follows:

Taxable income (Euros)	Rate (%)	Amount to deduct (Euros)
Up to 7,116	14.5	0.00
Above 7,116 up to 10,736	23.0	604.86
Above 10,736 up to 15,216	26.5	980.63
Above 15,216 up to 19,696	28.5	1,284.99
Above 19,696 up to 25,076	35.0	2,565.21
Above 25,076 up to 36,757	37.0	3,066.79
Above 36,757 up to 48,033	43.5	5,455.84
Above 48,033 up to 75,009	45.0	6,176.56
Above 75,009	48.0	8,426.51

Turkey

New repatriation scheme

The Turkish tax administration has introduced a new cash repatriation program that allows individuals who have foreign assets (cash, stock, bonds etc) to bring those assets into the country under an advantageous tax regime (i.e. no further tax inspections or exposure on income generated through these assets until a declaration date). In contrast to the three previous versions of the scheme, this version requires a 1%-3% tax on the total value of assets repatriated. Stock received through multinational companies' remuneration plans may also fall under this regime, depending on the incentive structure.

Sweden

New guidelines regarding home office and permanent establishments

The Swedish Tax Agency issued new guidelines in May 2022 which clarify when it considers an employee's home office may constitute a permanent establishment. The key criteria is if there is any demand or interest from the legal employer that the employee be required to work in Sweden and if an employer's office space is available in another location.

When an employee works from their Swedish home, an assessment has to be made as to whether or not there is any demand or interest from the employer for them to do so e.g. if the employee works for Swedish clients from their home office or if the employee conducts sales activities in Sweden with the aim of establishing a foreign company in Sweden. However, in accordance with the new guidelines, if the employee is working from home due to their own choice, without any involvement or interest from the legal employer, it should not constitute a permanent establishment.

The guidelines are a much welcomed clarification as to how permanent establishments are viewed, following changes to working practices following the COVID-19 pandemic. This will provide more predictability and less administrative work for foreign companies that want to offer employees the opportunity to work from home without having any business interest in the employee being in Sweden from the employer's perspective.

Possible exit tax in relation to capital gains

The possible implementation of an exit tax is currently being considered by the Swedish Government. The proposal is to make unrealised capital gains subject to tax in Sweden after an individual moves from Sweden and is considered non-resident. Currently, the OECD model tax treaty allows taxation at source 10 years after an individual moves from Sweden and breaks tax residency, but this is limited in current double tax treaties in practice. The limitation of taxing rights in double tax treaties reduces the possibility of taxing at source in Sweden, hence also reducing Sweden's taxable income on capital gains. To ensure the right to tax unrealised capital gains of individuals that move from Sweden, a group has has been appointed by the Government to:

- Evaluate if taxation at source for 10 years after moving from Sweden should be replaced with general rules of tax at exit when an individual becomes a non-resident.
- Provide a suggestion on how an efficient taxation of capital gains when leaving Sweden can be formed.
- Provide draft legislation regarding how the changes can be implemented in domestic law.

The result of the review is expected to be presented in February 2024 with the relevant legislation expected to enter into force in January 2025.

United Kingdom

September 2022 - Mini Budget

Following the recent appointment of Liz Truss as the new Prime Minister, the new Chancellor, Kwasi Kwarteng has delivered his first fiscal statement on behalf of the Government on 23 September 2022.

Employment

Health & Social Care Levy

As part of the Government's plan on health and social care reform, an additional 1.25% Class 1 National Insurance Contributions (NIC) rate for both employees and employers applied from 6 April 2022 (although from 6 July 2022 the threshold at which employees started to pay NIC increased from £9,880 to £12,570 per year). This increase in the rate of NIC was due to become a seperate "Health & Social Care Levy" (HSCL) from the 2023/24 tax year.

However, in advance of today's fiscal event, the Health and Social Care Levy (Repeal) Bill was introduced before the house in order to repeal the 1.25% NIC rate rise from 6 November 2022 and cancel the introduction of the HSCL.

Where NIC is payable on an annual basis, new blended rates are to be applied to deliver a similar economic effect. Specifically, for 2022/23:

- Class 4 NIC is payable at 9.73% at the main rate and 2.73% thereafter;
- Directors will pay primary Class 1 NIC at 12.73% at the main rate and 2.73% thereafter and their employers will pay 14.53% secondary Class 1 NIC;
- Class 1A NIC and Class 1B NIC will be payable at 14.53%.

The repeal of the NIC rate increase and related transitional provisions will require a number of changes to payroll systems and broader employer compliance processes.

We are recommending that all clients should engage early with their payroll providers and in-house teams and schedule adequate time for testing to ensure that changes are made to deliver the result intended by the legislation.

Today's announcement also confirmed that the 1.25% dividend tax rate increase due from April 2023 is also to be reversed.

Basic rate of tax and additional rate of tax

In his Spring Statement in March 2022 the former Chancellor, Rishi Sunak, announced plans to cut the basic rate of income tax from 20% to 19% from April 2024. However it has now been announced that this cut will take place a year earlier in April 2023. A 4 year transition period for Gift Aid relief will apply, to maintain the income tax basic rate relief at 20% until April 2027. There will also be one-year transitional period for Relief at Source pension schemes to allow them to continue to claim tax relief at 20%

More dramatically, it was announced that the additional rate of tax is to be abolished in entirety from April 2023, reducing the top rate of tax payable from 45% to 40%.

It should be noted that the changes in rates announced apply to non-savings, non-dividend rates in England, Wales and Northern Ireland and for savings and dividend rates UK wide. We await to hear whether the devolved administration in Scotland will follow suit and whether there may be some variation to the Welsh Rate of Income Tax on the basic rate of tax on non-saving, non-dividend income.

Thus far there is no indication that the change in rates will be accompanied by anti-forestalling measures to prevent the acceleration of tax reliefs or deferral of income. However, we await further details on the changes in the coming days.

Off payroll working rules/IR35

The 2017 and 2021 reforms to the off payroll working rules are to be repealed from 6 April 2023. From this date onwards, the responsibility for determining whether workers who provide their services via an intermediary (such as a personal service company) are employees for tax purposes will shift back from the client to the workers.

Organisations who have previously concluded that workers would have been caught by the the 2017 or 2021 rules and applied PAYE on the deemed employment income or who imposed blanket or targetted bans on the use of intermediaries as a result are advised to consider carefully any changes to engagement structure or price bearing in mind their broader regulatory obligations such as the offence of failing to prevent the criminal evasion of tax. This is because the obligation to undertake a status assessment and apply tax and NIC has not disappeared but merely shifted along the supply chain.

Investment Zones

The Government has stated that it will work to introduce Investment Zones across the UK with the aim of driving growth and unlocking housing. A number of time limited tax incentives will be attached to specified sites over 10 years including 0% employer's NIC on salaries of any new employee working on the tax site for at least 60% of their time on earnings of up to £50,270 per year with employer's NIC being payable at the usual rate above this level.

Office of tax simplification (OTS)

The Government has announced that the OTS is to be abolished and, instead a mandate is to be given to HMRC and HMT to focus on simplifying the tax code. It is uncertain, at this stage, whether the recently announced OTS call for evidence into the taxation of hybrid and distance working will be picked up by HMRC and HMT.

Reward

Company share option plans (CSOPs)

From April 2023, qualifying companies (broadly, independent companies and listed companies) will be able to award CSOP options to employees over shares worth up to £60,000 each, double the current £30,000 limit which has been in place since 1996. The restriction on which share classes can be used will be eased, better aligning CSOP with the Enterprise Management Incentive (EMI) regime that applies to smaller companies. While the increase in the limit will benefit all companies using CSOP, the relaxation of the restriction will particularly benefit smaller companies, making it easier for companies to move from EMI options to CSOP options and to continue to offer tax-advantaged options as they outgrow EMI (which is limited to companies with less than £30 million of gross assets and fewer than 250 employees).

Removal of banking bonus cap

The Government has announced that it will remove the so-called 'bonus cap' which originates in EU law and currently applies to UK banks, building societies and a handful of global investment firms. This will remove the limit on the ratio of fixed to variable pay that currently prevents these firms from paying senior executives and other high earners variable pay in excess of 100% (or 200% with shareholder approval) of fixed pay in respect of any one performance year. It will therefore give firms greater flexibility over the structure of their senior employees' pay packages.

Further detail may be provided as part of the forthcoming 'City package', which the Chancellor has confirmed will be put forward in the autumn, or the Government may proceed more quickly. In any case, the PRA and FCA rules containing the bonus cap will need to be amended, and the pace at which the Treasury expects the regulators to implement the change is likely to be decisive. It seems most likely that the relevant rules will be changed during 2023.

Impacted firms will now need to consider to what extent they wish to 'unwind' the changes they made to implement the bonus cap 8 years ago in order to rebalance fixed and variable pay. This will raise a number of policy, legal and operational challenges.

Calculation of holiday pay

A recent (July 2022) decision of the Supreme Court has a significant impact on how employers now need to calculate holiday entitlement and pay for workers who do not work all year round. This will particularly impact casual workers on zero hour contracts, seasonal contracts and term-time workers. It is important that action is taken to manage the cost, risk and operational implications of this decision.

The decision confirms that employees accrue holiday entitlement based on the period over which they are employed, irrespective of the work they have completed over the period. This is different to the approach employers often take to calculate holiday pay for workers without fixed hours, whereby holiday pay is calculated based on 12.07% of hours worked, or pay this out as holiday pay in addition to hourly rates (often termed 'rolled up' holiday pay) both of which have now been found to be unlawful by the courts.

Employers with employees who have atypical working patterns should:

- Review their approach to calculating holiday entitlement based on this decision.
- Review their approach to calculating holiday pay based on a week's average normal remuneration (over a 52/12 week lookback period).
- Make changes to processes and systems to calculate holiday pay on a compliant basis moving forwards.

Further commentary on the case can be found here.

Ferry operators and the national minimum wage equivalent

In June 2022 the UK Government confirmed that it will be introducing legislation (which was then published in July 2022) to grant protection to seafarers working on services that regularly use UK ports, by making access to UK ports conditional on operators of frequent services evidencing that the seafarers onboard are remunerated at a rate that is no less than the NMW equivalent while in UK waters services evidencing that the seafarers onboard are remunerated at a rate that is no less than the NMW equivalent while in UK waters (NMWe).

Services calling at UK ports no less than once every 72 hours on average throughout the year will be required to provide a declaration to the relevant Statutory Harbour Authorities (SHAs) that they are paying their seafarers at least at a NMWe, calculated according to regulations made using powers provided by the legislation. SHAs will be empowered to levy a surcharge where valid declarations are not made, and in the event the surcharge is not paid, suspend access to the service harbour. Powers to, amongst other things, direct SHAs to suspend access will also be put in place.

The UK rates of National Living Wage (NLW) and the NMW (which apply from 1 April 2022) are as follows:

- NLW (age 23+): £9.50
- NMW (age 21-22): £9.18
- NMW (age 18-20): £6.83
- NMW (under 18): £4.81
- Apprenticeship Wage: £4.81
- Accommodation offset rate: £8.70

Apprenticeship system

In May 2022 the UK Government announced a number of improvements and simplifications to the Apprenticeship System, which came into force in August 2022. The changes include a relaxation to the "20%" requirement for off-the-job training, which many employers found challenging.

Under the revised rules, the minimum volume of off-the-job training hours is no longer linked to total working hours. This has been replaced with a consistent baseline figure of six hours per week, irrespective of the hours worked by the apprentice. This means that apprentices who work more than 30 hours per week can now spend less than 20 percent of their week doing off-the-job training, reducing current inequality amongst peers due to contractual working hours.

These changes will be welcomed by employers, apprentices and training providers, with many employers looking to review their talent pipeline and better utilise the Apprenticeship Levy.

The Americas

Special rules for remote working and meal allowance

The Brazilian Government has published a new regulation (Provisional Measure nº 1.108, published on 28 March 2022) to deal with the payment of meal allowances, as well as a new regulation regarding remote working.

Regarding the regulation of remote working, the Provisional Measure provides clarification in relation to a number of issues including as follows:

- The equation of remote working to the hybrid model.
- The possibility of the remote worker being contracted per day or per task/production.
- That the control of working hours does not apply to a remote work regime where it refers to a contract signed per production/task.
- The remote working regime is not the same as, or to be confused with, the occupation of telemarketing or teleassistance operators.
- Where technological equipment is used outside the normal working day, the time spent does not count for the purpose of hours worked (unless there is a contractual provision to the contrary).
- The employer will not be responsible for the expenses incurred from a return to work in person, if the employee is performing their activities in a location other than the one provided for in the contract of employment.

In relation to the meal allowance, the Provisional Measure provides, amongst other things, that the amounts paid by the employer must be used exclusively for the payment of meals and/or the acquisition of food.

The Provisional Measure applies from the date of its publication, is effective for 60 days and is extendable for another 60 days, with the National Congress having responsibility to convert it into law or regulate its legal effects.

Rights from expired union norms

The Brazilian Supreme Court (STF) recently ruled on its interpretation of a ruling given by the Superior Labour Court (TST) on the issue of the effectiveness of expired union norms. In accordance with the previous understanding of the courts, the norms that depend on negotiation between unions but which have expired are incorporated into the relevant employment contracts until new ones are negotiated.

In this decision by the STF, if the union negotiation does not take place within the agreed deadline, the aforementioned norms lose their effectiveness and are not incorporated into the employment contract, and therefore only the minimum rights and guarantees provided for in labour laws and in the Brazilian constitution are applied.

The decision is binding on the lower courts of the Judiciary.

Validity of union negotiations under labour legislation

The STF has determined that union labour agreements and conventions that agree on limitations or the removal of labour rights are constitutional provided the certain unassailable rights (minimum guarantees defined in the Brazilian constitution) are respected. This is in accordance with legislation brought in by labour reform (Law nº 13.467/2017), which determines that union norms take precedence to ordinary legislation, provided that the list of subjects subject to negotiation is respected.

The decision is contrary to the understanding of the TST, as the TST invalidated a union labour convention that restricted commuting hours. It is important to note that commuting hours is a topic that, according to labour reform, can be subject to union negotiations. The labour courts have previously prohibited union agreements from prevailing where they deviated in any way from the current legislation and removed employees' rights.

The decision is binding on the lower courts of the Judiciary.

Employers must inform unions before making large scale redundancies

The STF has determined that prior to mass redundancies taking place there must be union intervention, as a procedural requirement. Prior to the implementation of mass redundancies, an employer must involve the relevant unions in order to pass on the terms of the redundancies. This is not to be confused, however, with the union having to provide e.g. authorisation or agreement to the proposals. Indeed, the STF decision is clear that the purpose of union participation is merely procedural and the employer does not require prior union authorisation for collective dismissal.

The relevant case related to the collective dismissal of more than four thousand employees in the aviation industry in 2009. In light of this proposed collective dismissal, the employees' unions filed lawsuits to the labour courts claiming its nullity on the basis there was no prior negotiation. The lawsuits proceeded to the TST, which recognised the need for union negotiation. The relevant employers, however, appealed to the STF on the basis that these decisions should be bound by the employer's autonomy of will.

The decision is binding on the lower courts of the Judiciary.

Chile

Senate approves double tax treaties with India, the Netherlands and the UAE

The Chilean Chamber of the Senate has ratified double tax treaties with the Netherlands, India and the UAE. The treaties eliminate double taxation between Chile and the Netherlands (Bulletin 14,740-10), India (Bulletin No. 14741-10) and the United Arab Emirates (Bulletin 14,742-10), have now completed their legislative process and are ready to be enacted into law.

New tax reform announced

On 30 June 2022 the Minister of Finance announced new tax reforms. The announcement follows extensive consultation with taxpayers in all regions of the country, as well as with civil society organisations, experts, and academics. The objective of the tax reform is to collect around 4% of GDP in extra taxes per year (12 billion dollars a year) once all the measures have been fully implemented.

The main impact for employees will be a modification to the highest brackets of employment income taxes:

- Tax rates proposed by the Chilean Government (annual basis on CLP):

From	To	Marginal Tax Rate	Maximum Effective Rate
0.0	9,324,000	0.0%	0.0%
9,324,000,01	20,724,000	4.0%	2.2%
20,724,000,01	34,536,000	8.0%	4.5%
34,536,000,01	48,360,000	13.5%	7.1%
48,360,000.01	62,172,000	26.0%	11.3%
62,172,000.01	75,972,000	35.0%	15.6%
75,972,000.01	96,684,000	40.0%	20.8%
96,684,000.01	96,684,000.01 +	43.0%	43.0%

It is important to note: the gaps expressed in Chilean Pesos are updated considering the inflation of the year.

More information and details are expected to be released shortly and the full tax implications will become more evident once the discussions in the Chilean Congress have taken place.

Monthly minimum wage increase

During May 2022 the Chilean Government's Monthly Minimum Wage Increase Bill was unanimously approved. From 1 May 2022 the monthly minimum wage will be CLP 380,000 (approx. USD380), rising to CLP 400,000 (approx. USD400) on 1 August 2022 and CLP 410,000 (approx. USD410) on 1 January 2023. Minimum wage refers to lowest gross monthly income and affects the payment of legal benefits such as the legal profit sharing.

Exit tax return

The Chilean Tax Authority has issued new instructions regarding domicile and residency for Chilean tax purposes, and the tax obligations that arise regarding both the loss and acquisition of domicile and residency.

Employees who leave Chile on a permanent basis must submit an administrative request to the Tax Authority under which they clearly and expressly state their willingness to lose their domicile status in Chile prior to leaving the country. The employee must also provide, at a minimum:

- A draft of the proposed annual tax return (Form 22) for the corresponding tax year of departure, determining the proportional tax between January and the date of departure and all the supporting background information
- Documentation that supports the new domicile of the individual abroad.
- A written letter providing an explanation for the change in domicile.

This documentation must be submitted at least three months prior to the individual's departure from Chile.

Remote working legislation

Law 2121 of 2021 and Decree 555 of 2022 implement a new form of execution of the employment contract denominated "remote work" in which the entire employment relationship, from commencement to termination, must be performed remotely using information and telecommunication technology or by other means or mechanisms. The purpose of the legislation is to make it easier for employees to work at home, in addition to the reduction of the employer's costs.

All pre-contractual and contractual stages of the process must be carried out virtually, as the employer and employee will not interact physically throughout the contractual relationship, except in exceptional circumstances.

The employment contract must contain terms in relation to the following:

- The work to be performed by the employee.
- The working conditions i.e. the physical condition of the workplace.
- The list of work-related equipment to be delivered to the remote employee in order for them to perform their role, which includes technology equipment, connections and programs.
- The responsibilities regarding the custody of the work elements/ equipment and the procedure for their delivery and return by the remote employee.
- The computer security measures with which the remote employee must be familiar, and comply with.
- The exceptional situations in which the employee may be required at the employer's facilities.

Progressive reduction of working time

Law 2105 of 2021 modified article 161 of the Colombian Labour Code (CLC), reducing the working week from 48 to 42 hours. The law provides that the reduction will be implemented progressively.

In 2023 and 2024, the working week will be reduced by 1 hour. In 2025 and 2026 it will be reduced by 2 hours per year, until the working week is 42 hours.

The 42 hours may be distributed (by mutual agreement between the employer and the employee) over 5 or 6 days a week, thereby guaranteeing the employee at least one rest day. The number of daily working hours may be distributed in a variable manner during the week - without any supplementary work (overtime) from a minimum of 4 hours to a maximum of 9 hours per day.

The reduction of the working week does not imply a reduction in salary nor does it affect the acquired rights or guarantees for employees. Once the working week is reduced to 42 hours, employers may be exempt from applying the provisions of Article 3 of Law 1857 of 2017 on family time and Article 21 of Law 50 of 1990 on spaces for recreational, cultural, sports and training activities. In the meantime, the reduction of these activities must be accomplished in a progressive manner

Parental leave

Law 2114 of 2021 extended paternity leave, created shared parental leave, and flexible parental leave. Once enacted paternity leave will be extended from eight days to two weeks. Under shared paternity leave, parents may distribute between them the final six weeks of maternity leave, provided they comply with the relevant legal conditions and requirements . In addition, part-time flexible parental leave allows the mother and/or father to exchange a determined period of their maternity or paternity leave for a period of part-time work, equivalent to double the time corresponding to the selected period.

Deduction for personal expenses

A tax reform, published in November 2021 and issued after the COVID-19 pandemic, sets out changes relating to personal expense deductions for individuals in Ecuador.

Until 2021, personal expenses could be deducted from taxable income with a limit equivalent to 1.3 times the tax-free threshold for individuals (USD14,575.60). Individuals with net income of less than USD100,000 were able to deduct personal expenses to determine their taxable income and therefore, the tax due.

For 2022, and following publication of the Organic Law for economic development and fiscal sustainability post COVID-19, personal expenses are considered as a reduction on the tax due (before allocating tax credits) as follows:

- If annual gross income (including exempt income) is less than 2.13 times the tax-free threshold for individuals (USD24,090 for 2022), the maximum amount of the reduction for personal expenses will be:
    - 20% * (the lower value between "personal expenses declared in the tax year" and the "value of the basic market basket* 7"); (719.65 * 7 = USD 5,037) applicable for 2022.
- If the annual gross income (including exempt income) is greater than 2.13 the tax-free threshold for individuals (USD 24,090 for 2022), the maximum amount of the personal expense allowance will be:
    - 10% * (the lower value between "personal expenses declared in the tax year" and the "value of the basic market basket* 7"); (719.65 * 7 = USD 5,037) applicable for 2022.

The result of the calculation as indicated above, will be the amount to be deducted from the tax due.

Tax adjustment for assets abroad regime

The following special regime applies to tax residents in Ecuador who, as of 31 December 2020, have maintained assets of any kind abroad which were generated by:

- Taxable income subject to income tax in Ecuador.
- Operations or transactions in relation to which the payment of the Remittance Tax (ISD) has been omitted; or
- Income that constitutes an unjustified increase in equity, as determined by the Tax Administration (SRI).

In order to regularise their tax affairs a sworn statement must be submitted by the taxpayer stating the irrevocable will to be subject to the special tax regime and acknowledging that there are no other assets, income or property abroad other than those declared.

For the declaration, the following must be taken into account:

- Money or any kind of assets, rights representing capital or assets where the origin has been income subject to income tax in Ecuador.
- Monetary or non-monetary operations or transactions tied to Remittance Tax, undeclared or subject to withholding and/or payment in Ecuador.
- Unjustified equity increase determined by the SRI.

This new regime does not represent a remission of tax or an amnesty, as a unique tax has been created in order to benefit from this regularisation. This tax cannot be used as a tax credit for any other tax payable or as a deductible expense by the taxpayer. Payment facilities may be requested for up to 6 months but 100% of the tax must be paid by 31 December 2022.

The filing dates / rates of payment are as follows:

Filing date and payment declaration	Rate
Until 31 March 2022	3.5%
Until 30 June 2022	4.5%
Until 31 December 2022	5.5%

United States

Tax equalisation policies

The US Internal Revenue Service (IRS) recently addressed tax equalisation policies and whether an employer may seek a refund of tax payments made on an employee's behalf. Tax equalisation is the process by which an employer compares an employee's tax obligations with respect to an international assignment to the amounts that would have been paid by the assignee absent the assignment. While tax equalisation policies vary across different industries and businesses, an employer may determine that it will pay to the IRS direct any additional taxes incurred by the employee by virtue of the assignment. In the course of calculating these taxes, errors occasionally occur whereby an employer overestimates the amount of taxes due to the US taxing authorities.

In a Chief Counsel Advice memorandum (CCA 20202010), the IRS determined that an employer that paid excess federal income taxes on the employee's behalf could not seek a refund of those taxes after the close of the calendar year in which the wages were paid. In this guidance, the IRS confirmed that it does not consider this issue to be an "administrative error" that can be corrected by an employer. Instead, only the employee is entitled to seek a refund from the IRS of the overpaid federal income taxes.

While this guidance only addresses federal income tax overpayments and does not apply to social taxes, including social security and Medicare taxes, it is critical for organisations to carefully review tax equalisation policies and payment procedures to avoid overpayments that cannot be later corrected.

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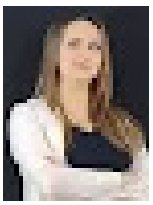

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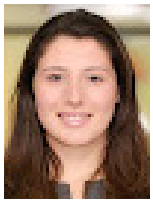

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