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Expatriate News

This issue of Expatriate News provides summaries of the Budget changes in a number of countries, as they affect expatriates and their employers. Two cases in the European Court (ECJ) have resulted in requests to Belgium and Germany to revise legislation that discriminates against non-resident artists and sportspeople. In Switzerland the cantonal administrative court has overruled the tax relief given to expatriates by the Zürich tax authorities.

The UK tax authorities have for the first time announced benchmark accommodation and subsistence rates for employees working in many locations around the world. In Australia the Administrative Tribunal has reached an interesting decision regarding what can be considered to be a hardworking individual's private residence.





AUSTRALIA

Temporary shed is main residence

The Australian Administrative Tribunal decided in the case of *Summers and Commissioner of Taxation* ([2008] AATA 152) that a temporary shed, which was erected by the builder for storage, used as his lunch room and left standing, qualified as the taxpayer's main residence. As a result, the taxpayer was entitled to exempt a proportion of the gain on the disposal of the shed and the adjacent land from capital gains tax.

In reaching this conclusion, the Tribunal noted that the taxpayer was "an interesting lady with somewhat

unusual working and living habits". She regularly worked 14 hours a day, she did not cook and bought all her meals, she always showered using the facilities at work, and she never had a rubbish bin. The shed in question contained only the bed used by the taxpayer and there was no electricity or lighting (candles were used at night). However, she claimed that her living conditions were no worse than several other places in which she had lived over the years. On this basis the Tribunal found no obstacle to treating the shed as the taxpayer's main residence.

EUROPE

Belgium: discrimination against foreign nurseries, foreign artists and sportspeople

The European Commission has sent Belgium formal requests to end two instances of tax discrimination in its domestic law. The first concerns income tax relief for foreign nursery costs. The second relates to foreign artists and sportspeople, who can pay higher taxation than that payable by artists and sportspeople resident in Belgium. The requests take the form of 'reasoned opinions' under Article 226 of the EC Treaty. If Belgium does not reply satisfactorily to these reasoned opinions within two months, the Commission may refer the cases to the European Court of Justice (ECJ).

Nurseries

Income-tax relief is available under the Belgian domestic legislation for the nursery costs of children in Belgian nurseries only. No relief is available for children in foreign nurseries. According to the Commission, this may restrict the freedom to provide foreign nursery services (as guaranteed by Article 49 of the EC treaty). It may also restrict the free movement of persons, which is guaranteed by Articles 18, 39 and 43 of the EC Treaty and the corresponding Articles of the Agreement on the European Economic Area (EEA, which is the EU plus Iceland, Norway and Liechtenstein). In particular, this denial of tax relief affects frontier workers who are liable to income tax on their earnings in Belgium, but who live outside Belgium and therefore place their children in a nursery in the State in which they live.

Artists and sportspeople

Artists and sportspeople who are resident in Belgium are taxed at progressive income tax rates and can deduct their professional expenses. However, non-resident artists and sportsmen are taxed at a fixed rate of 18% and cannot deduct their professional expenses. This can lead to a higher tax burden on foreign artists and sportspeople than on their Belgian-resident counterparts with comparable earnings.

According to the Commission, this is both contrary to Articles 49 and 50 of the EC Treaty, as confirmed by the European Court of Justice in the *Gerritse* case (Case C-234/01), and to the corresponding provisions in the EEA Agreement.



Germany: artists and sportspeople

By means of a supplementary reasoned opinion under Article 226 of the EC Treaty, the European Commission has formally requested Germany to modify the tax withholding system that applies at source to the income of certain categories of non-resident taxpayers. This relates in particular to artists, journalists and sportspeople.

German-resident taxpayers declare their income annually, but a flat-rate tax withholding at source of up to 25% is applied to the income of certain categories of non-resident individuals (artists, sportspeople, journalists and similar categories). Non-residents can obtain a refund of any tax overpaid through the withholding procedure only by a claim after the end of the tax year.

After the Commission's initial reasoned opinion on this point in March 2007, Germany introduced the following changes on 5 April 2007:

- The deduction of business expenses from the non-resident's gross income in the withholding-tax procedure, where the expenses exceed 50% of that income.
- An increase in the withholding-tax rate for non-residents from 25% to 40% when business expenses are deducted in this way.

In the Commission's view, these amendments are an obstacle to the cross-border provision of services which is guaranteed by Article 49 of the EC Treaty. The limitation of the business-expenses deduction from gross receipts to the situation where those expenses exceed 50% and the increased 40% withholding-tax rate can result in an objectively unjustified higher taxation of non-residents, by comparison to resident individuals.

HONG KONG

Budget 2008-09

The Budget for the financial year 2008-09 was presented by the Financial Secretary on 27 February 2008. In general the following Budget proposals, when passed, will take effect on 1 April 2008.

Special tax reduction for 2007-08

A one-off reduction of 75% of the 2007-08 final tax liability in respect of salaries tax, profits tax, property tax and tax under personal assessment is proposed. The reduction is subject to a ceiling of HKD 25 000.

Personal tax

The following changes have been proposed with regard to the personal-tax régime which applies to individuals who elect to be subject to salaries tax, or to be taxed under the personal assessment system:

- An increase in the basic and the single parent allowances from HKD 100 000 to HKD 108 000
- The married person's allowance will be increased from HKD 200 000 to HKD 216 000

The tax base will be increased, and the standard tax rate reduced, as follows, for individuals electing to be taxed under the personal assessment system. All amounts are in Hong Kong dollars (HKD):

2008-09

<i>Marginal tax base</i>	<i>Tax rate (%)</i>
First 40 000	2
Next 40 000	7
Next 40 000	12
Balance	17

Other proposals announced in the Budget are as follows:

- The ceiling for the deduction of approved charitable donations will be raised from 25% to 35% of adjusted assessable income
- A reduction in the standard property tax rate for property owners from 16% to 15%

NB: At the time of publication, the exchange rate of the Hong Kong dollar against the euro and the US dollar was HKD 12.4078 = EUR 1 and HKD 7.7946 = USD 1 respectively.



ISLE OF MAN

Budget 2008

The Budget for 2008-09 was presented on 19 February 2008 by the Minister for the Treasury. The Budget changes apply with effect from 6 April 2008.

Tax allowances

The personal allowance credit has been increased to GBP 500 for 2008-09 (GBP 420 for 2007-08).

However, changes are proposed regarding the operation of the credit.

An age allowance of GBP 2000 has been introduced for resident individuals aged at least 65 at the start of the tax year. The allowance is reduced proportionately where the individual commences or ceases residence during the tax year. Jointly assessed married couples are entitled to two allowances and in certain circumstances they can transfer any excess allowances between them.

Tax rates 2008-09

The income tax rates for 2008-09 are set out in the following table. All amounts are in pounds sterling (GBP).

<i>Individual status</i>	<i>Tax rate (%)</i>
Resident single: first 10 500	10
Married joint assessment: first 21 000	10
Resident single/married: higher rate on balance	18
Non-resident (all income)	18

Other changes

Qualifying charitable donations will be eligible for tax relief, up to a maximum of GBP 7000 (6000 for 2007-08). The maximum permitted deduction for nursing expenses has also been increased from GBP 8500 to GBP 9200.

Income tax relief was withdrawn for life insurance premiums paid after 5 April 2008 and training relief was abolished with effect from 6 April 2008.

The Budget confirmed that with effect from 6 April 2008 mortgage and loan interest relief is capped at GBP 15 000 annually per individual.

Company cars

The Budget included proposals for a new régime for the taxation of company cars and car fuel provided to employees. The new rules will take into account the environmental impact of these particular benefits and also align the income tax charge with the bands that apply for the annual vehicle duty.

It is intended that the new company car rules will come into force on 6 April 2009.

Social security contributions

The national insurance contribution rates for 2008-09 are as follows (all amounts are in pounds sterling (GBP)):

<i>Total weekly earnings</i>	<i>Employee contributions</i>	<i>Employer contributions</i>
Up to 105	Nil	Nil
Over 105	10% of weekly earnings from 105.01 - 695	12.8% of weekly earnings above 105

SWITZERLAND

In a decision on 23 October 2007, the Zürich Cantonal Administrative Court (*Verwaltungsgericht*) of first instance decided to overrule the practice of the Zürich tax authorities giving numerous forms of tax relief to expatriate employees. This decision was made on the basis that the Zürich authorities' actions are contrary to the Swiss constitution.

This lower court decision has been appealed to the Court of Appeal. At the present time the Zürich tax authorities are continuing to apply their previous practice. However, there is considerable uncertainty regarding whether and how the regulations of the Zürich tax authorities will apply in the period up to the date that the Court of Appeal publishes its judgment in this matter.

UKRAINE

Budget 2008

The 2008 State Budget made the following changes to the tax legislation with effect from 1 January 2008.

Individual income tax

Interest on securities issued by the Ministry of Finance is not taxable in 2008. At the same time, the exemption from taxation of other income from transactions involving securities issued by the Ministry of Finance was abolished.

Social security contributions

The payroll ceiling for 2008 for contributions to the Unemployment Fund, Disability Fund, and Pension Fund was established at the level of 15 times the cost of living for an employable person. This set the ceiling at UAH 9495 from 1 January 2008, UAH 9705 from 1 April 2008, UAH 9735 from 1 July 2008, and UAH 10 035 from 1 October 2008.

The minimum monthly salary for 2008 has been increased to UAH 515 from 1 January 2008, UAH 525 from 1 April 2008, UAH 545 from 1 October 2008 and UAH 605 from 1 December 2008.

The Pension Fund contribution rates payable by employers remain unchanged. However, a 2% minimum employee contribution has been introduced. This is payable by all employees, regardless of the amount of their earnings.

NB: At the time of publication, exchange rates for the Ukrainian hryvnia against the euro and US dollar were UAH 7.8144 = EUR 1 and UAH 4.9090 = USD 1 respectively.

UNITED KINGDOM

2008 Finance Bill

The March issue of *BDO Expatriate News* provided further information regarding the proposed changes to the residence rules and to the remittance basis of assessment for both non-UK domiciled and for not ordinarily resident individuals, which took effect from 6 April 2008.

The Finance Bill containing the draft legislation has now been published and includes the following important revisions to the original proposals:

Residence

A day on which the individual is in the United Kingdom at midnight will be counted as a day of UK presence in determining individual residence and ordinary residence from 6 April 2008 onwards.

The exception to this rule has been widened in the draft legislation to include an in-transit passenger who either:

- has to change UK airport or the terminal within an airport; or
- changes his or her method of travel in the United Kingdom.

In these circumstances the individual will not be present for the purposes of the UK residence rules (even if present in the United Kingdom at midnight), as long as the individual does not engage in activities that are substantially unrelated to his or her passage through the United Kingdom. This means that attendance at a business meeting in the United Kingdom, or a visit to family or friends in the United Kingdom, will normally make the in-transit exemption unavailable.

Remittance basis

The lower limit has been increased for the purposes of the GBP 30 000 Remittance Basis Charge (RBC), which applies to an individual aged at least 18 in the tax year and who is non-UK domiciled or not ordinarily resident, who has been UK-resident in more than seven out of the ten years including the current tax year, and who wishes to use the remittance basis

of assessment. The RBC will now apply where the individual's unremitted foreign income and gains for the tax year are equal to or greater than GBP 2000 (compared to the limit of GBP 1000 in the original proposals).

The same GBP 2000 lower limit will apply for the purposes of the rule under which all individuals who are either non-domiciled or not ordinarily resident in the UK and who use the remittance basis of assessment for any year will forfeit their UK personal tax allowances and capital gains tax (CGT) exemption for the year.

Although HMRC originally stated that the RBC was a tax charge, in the initial proposals it was not available as a credit against any UK tax liability. There was also doubt whether the RBC would be accepted for foreign tax credit purposes by other countries. These difficulties have now been eliminated and the draft legislation requires the taxpayer to nominate the specific remittance-basis income or gains to which the RBC applies.

However, if the nominated RBC income or gains are remitted to the UK, special rules determine the order in which the individual's various remittance-basis income and gains are treated as remitted. The rules mean that the income or gains to which the RBC is nominated may be treated as being remitted after other remittance-basis income or gains (which may not in fact have been remitted to the UK at all).

The effect is that if the individual has more than one category of remittance-basis income or gains, the nominated income and gains should ideally never be remitted or should be remitted last of all. Where the

individual is treated by the special rules as remitting the nominated income or gains to the UK, that income or gains will be treated as having suffered tax of GBP 30 000, which will be available to set against the related UK tax liability.

Benchmark rates for foreign accommodation & subsistence

The UK tax authorities (HMRC) have for the first time published internal guidance that sets out benchmark rates for the tax-free accommodation and subsistence costs of employees travelling on business outside the UK. The main foreign locations in which UK employees work are covered, including Europe, Africa, the Middle East and the various states and cities of the United States.

The HMRC guidance confirms that where the employer pays an employee's foreign accommodation and subsistence costs within the benchmark amounts, no income tax or social security contribution liability will arise on the employee (and the employer does not need to include the details on the usual form P11D year-end report of employee expenses and benefits).

The benchmark rates cover:

- A room rate per night
- A subsistence-only rate, which covers the meals and travel costs between hotel and office for a 24-hour period abroad
- A 24-hour rate, which covers both the meals and travel for one day and one night's accommodation
- An over 10 hours rate, which covers the subsistence costs for a period abroad of more than 10 hours but less than 24 hours

- An over 5 hours rate, which covers the subsistence costs for a period abroad of more than 5 hours but less than 10 hours

The benchmark rates cover the foreign costs, but do not cover any other allowable amounts incurred on the trip (such as the cost of a taxi to the UK airport and refreshments at the UK airport). These expenses can be reimbursed by the employer in addition to the amounts shown in the benchmark rates.

With regard to certain locations, no benchmark rates are available. In this case, the guidance indicates that the employer can pay the employee a daily amount of GBP 4 to cover travel costs between hotel and office in addition to meeting the employee's actual accommodation and subsistence costs.

Further guidance in the HMRC internal manual covers the situations in which the employee stays with a private individual when abroad or is the guest of another company. In these circumstances, the employer can reimburse 10% of the relevant daily subsistence rate tax-free.

ZAMBIA

Budget 2008

The Budget for 2008 was presented to the National Assembly by the Minister of Finance and National Planning on 25 January 2008. Details of the Budget changes, which in general took effect from 1 April 2008, are summarised below.

Personal tax

The income tax bands and rates from 1 April 2008 are set out in the following table. All amounts are in Zambian Kwachas (ZMK).

<i>Taxable income</i>	<i>Rate (%)</i>
Up to 7 200 000	0
7 200 001 - 14 820 000	25
14 820 001 - 48 000 000	30
Over 48 000 000	35

Other changes

The tax exemption for part of the interest on individual bank and building society savings and deposit accounts has been abolished. However, the withholding tax on this type of interest has been reduced to 15% (25% for 2007).

Interest on a loan secured by a mortgage for the construction or purchase of a residential property will be deductible for personal income tax purposes for 2008.

The tax credit for disabled persons has been increased to ZMK 600 000 for 2008 (ZMK 144 000 for 2007).

NB: At the time of publication, the exchange rate of the kwacha against the euro and US dollar was ZMK 5567.50 = EUR 1 and ZMK 3497.50 = USD 1 respectively.



More information

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