

# WTS Global Mobility Newsletter



## Editorial

Dear Reader,

We are pleased to present the **1st edition of our WTS Global Mobility Newsletter for 2022**. The Global Mobility environment is changing in a dynamic way.

Remote (cross border) work is still the HR hot topic no. 1 – no surprise that it was the main agenda item at our WTS Global Mobility Summit 2022 with our clients in Linz, Austria some weeks ago.

A HR head of a German based DAX company told us just recently:

*„For me, the HR world has changed completely. We used to work with established, clearly structured mobile instruments, such as short or long term assignments. And yes, for very senior persons, we made special efforts to give them comfort by a special organization set up. But now, the world is **not anymore an employer driven mobility**, it is an **employee driven mobility**. They intend to decide where and how to work. If we don't accept this, we lose the battle for talents .....*”

In addition to this topic, the Corona measures and of course the effects of the Ukraine crisis continue to dominate the headlines.

Therefore, to keep you up to date, our WTS Global Mobility Newsletter provides you with an overview of recent developments in selected countries.

We hope you find our newsletter useful and we welcome your feedback and suggestions. Our experts of the WTS Global Mobility team will be happy to answer any questions you may have regarding any aspect of this newsletter.

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## Australia



### Pacific Australia Labour Mobility (PALM)

The PALM scheme was first announced on 23 November 2021. The Australian Government consolidated the Seasonal Worker Programme (SWP) and Pacific Labour Scheme (PLS) and operated under the PALM scheme with one visa stream and improvements to cut red tape and improve worker welfare.

Labour hire entities, contractors, growers and trusts can apply to become SWP-approved employers, PLS-approved employers or both. Contractors and labour hire entities must have been in operation for the previous five consecutive years in order to participate in the PALM scheme.

#### PALM scheme countries

Businesses can recruit workers from the following countries:

- Fiji
- Kiribati
- Nauru
- Papua New Guinea
- Samoa
- Solomon Islands
- Timor-Leste
- Tonga
- Tuvalu
- Vanuatu

#### Short-term (seasonal) employment

Employers in the agriculture and accommodation sectors (in most regional and rural areas) can recruit workers for unskilled and low-skilled seasonal roles for up to 9 months through the SWP provided there is not enough local labour available.

#### Longer-term employment

Rural and regional employers looking for a longer-term solution can potentially recruit workers for low-skilled and semi-skilled roles for between one and four years through the PLS when there are not enough local workers available.

#### Business eligibility for PALM Scheme

PALM scheme employer must demonstrate that it:

- is an eligible business registered and operating in Australia
- is NOT an individual, sole trader or unincorporated company
- is an 'organisation' for the purposes of the Migration Regulations 1994
- has good immigration practices and a history of compliance with immigration legislation
- has a history of compliance with Australian workplace relations, work health and safety legislation and other relevant laws
- can demonstrate that its directors, partners or trustees have a history of compliance with the above laws

- has or can obtain a labour hire licence if applicable (not required for direct employers)
- is in a sound financial position, including:
  - › at least 3 years of financial solvency for a direct employer
  - › and 5 years of continuous operation – for a labour hire/contractor employer.
- is based on rural and regional postcodes, except for employers in the agriculture sector, where there are no postcode restrictions.

### **Residency for tax purposes**

Individuals who come to Australia under the short-term scheme are foreign residents for tax purposes.

Individuals who come to Australia under the longer-term scheme may be considered Australian residents for tax purposes.

### **Tax and withholding tax (WHT) in Australia**

#### **Foreign resident workers under the short-term (seasonal) PALM scheme**

Employer to WHT at a flat rate of 15% on all payments made to the employee if:

- the employee is a foreign resident for tax purposes
- the employee works under the PALM scheme
- the employer is an approved employer under the existing SWP deed of agreement

The employee is not required to file a tax return if they do not earn income from any other sources in Australia.

The PALM scheme income is NANE income, and the employee cannot claim any deductions against the income.

If the employer is not an approved employer, they will be taxed at foreign resident rates and the employee will need to file a tax return.

The taxation arrangements for the PALM scheme have not been passed by parliament. The information might be updated as any new tax arrangements for PALM scheme workers become law.

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#### **Australian resident workers under the longer-term PALM scheme**

Australian resident workers pay tax at the individual income tax rates. The employer is required to WHT when they pay the employee. The employee is required to file a tax return.

## Austria



### Establishment of a PE through home office activity

In a legal opinion, the "BMF" has explained under which circumstances a permanent establishment is triggered by home office activities.

If the private residence of the employee is used externally e.g. as a base for the performance of the contract (e.g. for physical meetings) or as a domestic address for service and repair work, then this triggers a permanent establishment for the employer irrespective of the time spent there (= external use case). The only exception would be that in this case, only preparatory or auxiliary work are carried out in the private residence.

If there is no such external use case, the home office activity triggers a permanent establishment if:

- this activity is carried out in agreement with the employer AND
- takes place over a sufficient period (a period of at least 6 months) AND
- the work is not only occasionally carried out in the home office. The tax authorities assume that if the work is carried out to the extent of less than 25% of the total working hours (e.g. one day per week) it is to be regarded as merely occasional; an exercise of more than 50%, on the other hand, is no longer merely occasional, AND
- the activity carried out in the home office is not merely preparatory or of ancillary nature.

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## Chile



### Global mobility in Chile

For more than a decade, Chile has constantly received foreign executives. This is directly related with the high salaries of Chile, among the highest in Latin America, and therefore it is convenient for international executives.

Currently, there is an inflation rate of more than 10% (the highest in 14 years), the crisis due to the pandemic continues to affect the country, the Chilean Peso has devaluated compared with the US dollar and there is a new migration regulation, among other situations. Even though these changes have occurred in the last months, the country is still well positioned worldwide and attractive for foreign investments and for doing business locally and with neighbouring countries. There are new possibilities for career developments, voluntary assignments and assignments for specific projects, which motivates the companies to hire foreign executives.

This way, foreign professionals and technicians who seek to take a stance in different markets have arrived in the country. Local companies can create attractive working environments in which the diversity of knowledge and culture are essential values. The intention to reduce costs, access to talent or improve the operational efficiency are also considered. The transfer of knowledge, experiences and good practices between branches, in general, are added as an advantage of the multinational companies based in the country.

This process applies to confront labour and migration challenges, along with complying with tax obligations considering the different jurisdictions in which the companies that hire foreign employees to their payrolls operate.

Therefore, the role of local advisors is to collaborate in a problem-free transition that benefits the company and the expatriate who is migrating. To help them get to know and understand the culture, the labour laws, tax compliances, applicable visas and family installation process, special support needs to be provided before the arrival of the foreign executive.

The advice is bespoke to the company and for the expatriate who will need to understand tax laws in the country, and how the rules of the new country interact with the laws of the country of origin and vice versa, in case the employee returns to the country of origin. It is crucial to also consider advice in the event that the employer decides that the foreign employee should become a local employee in Chile.

The services that support global mobility include tax and labour advice for individuals transferred into and outside of Chile and are part of a plan that must consider the evaluation of the tax residency, advice on the monthly and annual tax returns, analysis of social security and pension issues, assessing the tax implications related to stock-based incentive plans for both local employees and international assignees and advice on compliance with tax obligations in the country of origin and in Chile.

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We are facing the challenges of the globalisation of markets, and therefore also companies with an international presence and their advisors must plan strategically to guarantee success for the global mobility of jobs, people and knowledge.

## China



### Expatriates' tax position affected by staycation

#### Case recapped

Mr. B, a Brazilian citizen and an employee of a Brazilian company, was sent to work for a Chinese subsidiary from April 2021 onwards. Due to the travel ban caused by pandemic control measures, he had to work remotely from Brazil from April through July until arriving in China in August 2021.

From April 2021 onwards, he was remunerated and his China individual income tax (IIT) withheld by the Chinese employer.

Later, his Brazilian employer, when applying for the foreign tax credit, was surprised to learn from the Chinese tax authority that the tax refund was not available during the period when Mr. B was residing and being taxed in Brazil. As a result, the Brazilian company had to bear the IIT cost, being roughly 10% of his annual pay.

#### Policy revisited

One should refer to the Announcement [2019] No.35 released by the State Administration of Taxation (SAT) for assessing the taxability of non-residents in three scenarios: working for only a Chinese employer, only for a non-Chinese employer, or both (see the table below).

Accumulative stay in China and tax position		Taxable domestic income (acquired from physically working in China)		Taxable overseas income (acquired from physically working overseas)	
		Paid from a Chinese company	Paid from an overseas company	Paid from a Chinese company	Paid from an overseas company
Non-resident	< or = 90 days	✓	✗	✗	✗
	90 to 183 days	✓	✓	✗	✗
Resident	> 183 days under 6 years	✓	✓	✓	✗
	> 183 days over 6 years	✓	✓	✓	✓

Under China's current IIT regime, the source of remuneration of a non-resident is based on neither the place of payment nor the location of the payer, but on the actual place of work, meaning that his/her income would be considered China-sourced if his/her services are physically provided in China.

By the same token, though hired and paid by a Chinese company, Mr. B's income should be treated as foreign sourced due to his working outside China (from April to July 2021 in the example above). The four-month pay should not be subject to China IIT unless his accumulative stay in China during a single tax year has reached 183 days.

### **Ambiguity remained**

The Announcement further explains that, for a non-domiciled individual who is employed simultaneously both domestically and overseas, if he/she works both in China and overseas, his/her domestic-sourced and foreign-sourced salaries should be taxed proportionally per the ratio of the number of domestic days to overseas days.

Indicating that the said days-in / days-out allocation applies only to individuals either **employed both in China and abroad** or **employed only abroad but working both in China and abroad**, the Announcement has implicitly ruled out its application to those employed exclusively in China. Thus, theoretically for them, all income paid due to sole employment with the Chinese company should be taxed in China.

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### **Lesson reiterated**

A tax refund is a reasonable entitlement but it could be in vain when put into practice. Expatriates who are employed in China, if in a similar situation, are advised to clarify beforehand the feasibility of tax refunds in China or tax exemption in their home country.

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## Germany/China



### Treaty override regarding German assignees working for a Chinese company

#### Case

The individual here represents a treaty resident of Germany as defined by Art. 4 DTT Germany - China. He was seconded from Germany to China. Due to the restrictions referring to the Covid-19 pandemic, he was working (partially) remotely from Germany for the Chinese company. As soon as the employee starts his work for the Chinese company, there is an obligation to pay Chinese income tax, even if the work is not performed there. Art. 16, 18, 19, 20 and 21 DTT Germany - China are not applicable.

#### German legal perspective

Based on Art. 15 para. 1 DTT Germany – China, the right of taxation of employment income is basically allocated to the residency state of an individual (here: Germany). Only if the individual is performing their work in another country are the taxation rights reassigned to the country where the work is actually carried out. Consequently, Germany holds the taxation right regarding the portion of salary which is paid for their working days spent in Germany. Following this approach, the salary of the respective individual is liable to German tax starting from the first day of work in Germany. Para. 2 of the mentioned legal standard is not applicable to the scenario in question as it exclusively contains the regulation of the exception that the taxation right falls back to the residence state. This would also allow Germany to tax the corresponding working days.

**As a result, from a German perspective the Chinese taxation of the German working days performed during their assignment to China leads to a treaty override. This problem appears also on all comparable cases in Germany where working remotely for the Chinese company is not caused by the restrictions resulting from the Covid-19 pandemic.**

Only the application for a mutual agreement between both states on the basis of the DTT Germany - China or a request of a payroll tax ruling for these specific cases by the German tax authorities could be helpful to avoid the German taxation. These tedious procedures might take up to several years and are therefore not feasible.

We recommend reviewing those scenarios from the tax perspective of the foreign country in order to prevent double taxation. In our case, the treaty override could only be solved for **Chinese tax residents** by crediting the German taxes in China. For future cases, one of the following methods can be used for German residents:

- The assignment agreement should only be effective after the employee has obtained a valid work permit and resident permit in China. Prior to this date, their overseas contract must still be valid. The personal cost-bearing status also has to be in line with the mentioned timing of the assignment. This means that no cost is paid or borne by the Chinese entity unless the assignee's assignment agreement enters into force.
- The arrangement of an overseas position for the assignee at the same time that the Chinese assignment becomes effective. In that case, a time apportionment method could still apply and they will not be taxed in China unless they are physically in China.

## Czech Republic



### Flat tax in the Czech Republic

From 2021, self-employed persons with incomes up to CZK 1,000,000 might pay a flat tax of CZK 5,469 in the Czech Republic, which includes income tax, social security and health insurance. The conditions for registering for flat tax must apply as of 1 January of the given tax period:

- in the previous year, the taxpayer did not have income exceeding 1 million CZK, unless it was income exempt from tax, income that is not subject to tax, or income taxed with withholding tax;
- the taxpayer is not a VAT payer, but may be an identified person;
- the taxpayer is not employed in 2021, with the exception of income subject to withholding tax;
- the taxpayer is self-employed as their main activity; the taxpayer is also subject to Czech legal regulations in the field of social insurance;
- the taxpayer is not a partner of a public company or a general partner of a limited partnership;
- the taxpayer is not a debtor in insolvency proceedings,

To register for flat tax, it is necessary to submit an application to the relevant tax office at the beginning of each tax period (calendar year). If any condition is violated, the participation in the flat tax regime is immediately terminated and this fact must be reported to the tax administrator within 15 days. Voluntary withdrawal from the flat tax regime is possible only after the end of the tax period.

For 2022, it is being considered to expand the range of self-employed persons who could use the flat tax regime to all self-employed persons with income not exceeding CZK 2,000,000. However, the corresponding government amendment to the Income Tax Act has not yet passed the legislative process.

#### Reintroduction of two tax rates

At the beginning of 2021, the tax package prepared by the Ministry of Finance entered into force. It introduced changes in the method of taxation of the income of natural persons. The labour income tax base in the form of the so-called super-gross wage was abolished when the tax base included not only the gross wage, but also social and health insurance premiums paid by the employer. Furthermore, a second income tax rate of 23% was introduced. A basic personal income tax rate of 15% is applied to incomes up to 48 times the average wage, and an increased personal income tax rate of 23% is applied to all incomes above this threshold since 2021.

The introduction of the second tax rate affects the application of the method of avoiding double taxation subject to progression. While only one basic tax rate of 15% applied until 2021, excluding income taxed abroad did not increase the tax burden on Czech residents. From 2021, however, it is necessary to consider total income and take into account any increase in the effective rate of income tax.

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**Changes in conditions for tax exemption of income from the sale of immovable properties**

In the case of the sale of an immovable property in which the seller does not have a residence and does not use the income to solve their own housing needs, it is necessary to meet the time test so that the income from the sale of the property can be exempted from personal income tax. While there was a five-year time test until 2021, from 2021 the ownership period necessary for the exemption has been extended to 10 years. This extended period applies to immovable properties acquired after the end of 2020.

## France



### French pension "impatriate" regime: exemption from affiliation and from payment of pension contributions

In principle, every employee recruited from abroad to take up a position in France is affiliated to the compulsory French social security schemes for basic and supplementary retirement pension insurance.

However, by exception, these so-termed "*impatriate*" employees can, upon express and joint request with their employer, elect not to be enrolled therein. This pension "*impatriate*" regime can be jointly applied with the favourable income tax "*impatriate*" regime.

This exemption from affiliation, and accordingly from payment of the related pension contributions, is conditional upon:

- being able to produce proof of a minimal annual contribution of €20,000 paid by the employee and/or employer for one or more other French or foreign pension insurance schemes, provided that these schemes do not allow an early exit for reasons other than retirement, apart from in exceptional cases provided for by the pension insurance products concerned;
- being able to provide proof that the employee concerned was not, during the five calendar years prior to commencement of the new position, affiliated to a compulsory French pension insurance scheme (except for ancillary or seasonal activities or activities related to their presence in France to study there);
- being recruited from abroad to take up a position in France since 11 July 2018.

**Note:** disregard of the above-stated exemption conditions will entail cancellation of the exemption and payment by the employer of a sum equal to 1.5 times the amount of the contributions that would have been paid if the employee had not benefitted from the exemption.

This exemption is granted only once for the same employee for a period of three years and renewable once. The period covered by this exemption does not give entitlement to any benefit from a French statutory pension insurance scheme.

The exemption application, to be drawn up according to the model set by decree, must be sent to the URSSAF (French social security contribution collection body) at least 60 days before the employee's affiliation to the French social security system. Failing which, the employer may still request a reimbursement of the pension contributions paid during this period running from the date of affiliation to the date of the request.

The application should also contain:

1. Certificates of payment by the employer and the employee, or the contracts or documents attesting to the commitment to pay, a contribution of at least €20,000 per year on pension insurance products. The employer must be able to attest to this payment each year throughout the entire exemption period;
2. A sworn statement by the employee that he/she was not subject to the French statutory social security scheme at any time during the 5 calendar years preceding that of the commencement of the new position;
3. The employee's pay slips or equivalent documents for the five-year period of employment prior to entry into the exemption mechanism.

## Hungary



### Working days instead of calendar days and clarification of the concept of base salary

Changes are expected in social contribution tax regarding the determination of the taxable portion of income and the concept of the base salary in Hungary.

In the Hungarian personal income taxation system, working days must be considered as a basis when determining the portion of income taxable in Hungary in case a part of the employment income of the private person is taxable outside Hungary. By contrast, in the case of the social security contribution (employee part) and the social security tax (employer part), the proportional amount of the public burden has been determined by the calendar days spent in Hungary and abroad. Bill No. T/360 published in June 2022 (on the Foundation of Hungary's 2023 Central Budget) shall bring about changes in a number of laws, such as tax laws. According to the bill, proration will have to be carried out on the basis of working days instead of calendar days.

However, the legislation on social security contribution and social security tax also contains different provisions regarding the base salary in the case of foreign assignment. This difference, as well as the determination of days mentioned above, may have caused difficulties in determining the correct social security liability for posted workers and their employers.

If the employee has both taxable and non-taxable income in Hungary for the same tax assessment period, the basis of the social security contribution as well as the basis of the social security tax is the basic salary. The provision to be deleted from the Act on Social Security Tax defines the concept of basic salary applicable in the case of a foreign posting. This definition is in contradiction with the definition of basic salary (basis of the social security contribution of the employee) of the new Act on Entitlements to Social Security Benefits and on Funding These Services, which came into force in Hungary on 1 July 2020.

According to the social security tax concept, in the case of a foreign assignment, the basic salary is the average monthly amount of the salary accrued and paid in the year preceding the foreign assignment on the basis of the employment contract, directly depending on the employee's performance and hours worked. However, according to the rules of social security contribution of the employee, the actual base salary (but no less than the average national gross wage published by the Hungarian Central Statistical Office for full-time employees in July of the previous year) is the income forming the base of the contribution.

The new bill published in June will remove this definition from the Act on Social Security Tax. As a result, the determination of the income taxable in Hungary and the base salary in the case of foreign assignment become uniform, which may facilitate the monthly payroll and the preparation of tax returns.

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## Italy



### Italian source pensions paid to non-resident individuals

In a recent case<sup>1</sup>, Italian Tax Authorities have returned to the debated theme of taxation of Italian source pensions paid to non-resident individuals. The case concerned the taxation of a pension paid by the Italian State to a resident in France who had worked in Italy in the private sector.

Firstly, Italian Tax Authorities recalled that, generally, under Italian tax law pensions of all kinds and equated allowances are assimilated to employee income and are assumed to be produced in Italy, and therefore are taxed here, if they are paid from the Italian State itself, from Italian resident subjects or from an Italian P.E. of non-resident subjects.

The Treaty discipline of pensions was analysed.

Article 18, para. 1 of the OECD Model Convention for the avoidance of double taxation establishes that pensions are taxable only in the state of residence of the perceiver.

However, in most of the conventions concluded by Italy (including the one with France), a second paragraph is added to Article 18, stating as follows: *“Notwithstanding the provisions of paragraph 1, pensions and other amounts paid under the social security legislation of a state may be taxed in that state”*.

This means that pensions are taxable also (concurrent taxation) in the state of source (Italy in the case at hand) if they are considered as a social security service provided by the state. As mentioned above, the second paragraph of Article 18 of the Italian conventions raised many disputes.

First of all, the conventions do not always provide a precise definition of the term *“social security”*. In Italian Case Law and according to Article 3, para. 2 of the Model Convention, said term should have the meaning that it has under the law of the state in which the convention is being applied.

In the case of the convention with France, Italian Tax Authorities specified that reference should be made to the mutual agreement between the two countries dated 20 December 2000, which provided a list of bodies whose pensions should be considered having a *“social security”* nature for the purposes of application of Article 18, para. 2 of the Italy-France convention.

In other cases where there is no similar agreement, interpretation issues may arise. Under the prevailing view taken by the Italian courts, the term *“social security”* requires an extensive interpretation and includes every kind of non-voluntary pension and welfare provision. By consequence, both old-age and retirement pensions, even though subject to different regulations under domestic law, are considered social security provisions: that's their non-voluntary nature, in fact, which explains the social security purpose of pensions.

All the above suggests a careful analysis of Treaty provisions in the case of:

- Italian-source pension recipients willing to relocate outside Italy; or
- Holders of a foreign pension willing to transfer to Italy and to apply for the favourable special regime for foreign pension recipients moving to a city of Southern Italy with less than 20,000 inhabitants.

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## Luxembourg



### Luxembourg cross-border workers situation since 30 June 2022

Due to the COVID-19 pandemic, a lot of employees who used to work abroad have been forced to work from home. In order to mitigate the impact, [Luxembourg](#) concluded so-called 'COVID agreements' with its neighbouring countries in 2020. In a nutshell, these agreements provided that for tax purposes, home working days of employees are considered to have been spent in the country (abroad) where they would have worked without the COVID-19 measures. A similar measure was applied for social security matters at the [EU level](#).

Following several reconductions over the last 2 years of the pandemic, these COVID agreements concerning taxes ended on 30 June 2022. They were, however, extended until 31 December 2022 for social security purposes.

#### Taxation

Since 1 July 2022, the former 'normal' rules as provided by the relevant double tax treaties have applied again.

Therefore, cross-border workers are generally **taxed in their country of employment** (provided all other conditions are met) and thus exempt (or granted with a tax credit) in their country of residence, **unless they work from a location in another country** (for instance teleworking from home). If so, the employment income is generally taxable in the country of residence of the employee.

As an exception to the general rule above, it should be noted that Luxembourg concluded specific agreements with Belgium, France and Germany. According to these mutual agreements, cross-border workers that work from home (or abroad, for example during a business trip) benefit from a certain tolerance allowing for working remotely. The amount of days per year depends on the country of residence and applicable double tax treaty.

These thresholds are currently set as follows:

Country of residence	Belgium	France	Germany
Number of days allowed for working remotely	34	29	19

However, when the threshold is exceeded, the tolerance does not apply any more, and the country of residence is then entitled to tax the employment income on a pro-rata basis.

For 2022, the abovementioned thresholds should not be prorated and therefore, the full number of days should apply for the period from 1 July to 31 December.

### **Social security**

In case a person works in two or more countries (within the EEA or Switzerland), the applicable social security legislation is usually the one of the country where the employer is situated, unless the employee pursues a substantial part (25%) of his/her activity in his/her state of residence (in the latter case one is subject to social security in the country of residence).

The [Administrative Commission](#) for the coordination of the national social security of the EU agreed, however, to maintain the rules applicable during the COVID pandemic until 31 December 2022.

Therefore, until 31 December 2022, employees who reside in one country and (normally) work in another country can continue to work from home or another state within the EEA or Switzerland (more than 25 per cent of their time) without affecting the determination of the social security applicable (without becoming subject to social security in their country of residence).

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### **What about the future?**

Following important changes in work habits, efforts and adaptation, the return to old practice does create some discontent. Negotiations are ongoing...

It may take some time before these adjustments are agreed upon and implemented. We keep monitoring these developments and will inform accordingly.



## Netherlands



### Update on the 30% ruling and change in the share option tax regime

#### Update on the 30% ruling

The 30% ruling is a specific tax regime for foreign employees who meet certain criteria and who are temporarily assigned to, or hired from abroad by an employer in the Netherlands. When meeting certain requirements, 30% of the employee's salary can be paid out as a tax-free allowance to cover extraterritorial costs. The 30% tax-free amount is considered to cover extra-territorial expenses, regardless of the actual costs incurred. In addition, the employee may, at their request, benefit from a tax treatment as a non-resident taxpayer regarding income from a substantial interest and income from savings and investments.

It is expected that the 30% ruling will be capped over a three-year period at the so-called *Balkenende-norm*. The *Balkenende-norm* is the maximum remuneration for executives in the public and semi-public sector. The *Balkenende-norm* is currently set at EUR 216,000 (2022). As a result, the 30% ruling cannot be applied to amounts exceeding this salary. Further details are yet to be published.

#### Change in the share option tax regime

Employee stock options in the Netherlands are currently taxed on the "spread", which is the difference between the fair market value of the shares at exercise and the exercise price. In some cases, stock options are not marketable (i.e., not sellable) at the moment of exercise is particularly the case for start-ups. This may lead to taxation at a time when no cash is at hand, which is considered undesirable. Therefore, a change in the law is proposed with respect to the moment of taxation of share options for employees.

In this proposal, employees may opt to move the taxation date for employee stock options to the moment stock options are marketable. This would solve the issue of employees having no cash at the moment of taxation. As an overly long tax deferral needs to be avoided, stock option benefit is taxed no later than five years after the acquisition of the shares (of listed companies), or five years after the IPO (for initially unlisted companies).

If the Dutch Senate agrees to the proposal, it will enter into force on 1 January 2023.

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## Switzerland



### Swiss source tax revision – notable changes

On 1 January 2021, the revised law on the Swiss source tax came into force. The revision aims to eliminate the unequal treatment of persons subject to source taxation and persons subject to ordinary taxation. From a practical perspective, the most notable changes to be discussed are the introduction of the choice to voluntarily file a Swiss tax return for certain source tax subjects and the new regulations regarding the recalculation of the source tax. As the tax returns for the year 2021 must be filed now, this change becomes relevant in the tax practice.

#### 1. Changes regarding the voluntary tax return filing for source tax subjects

Swiss residents who are subject to source tax and have a gross compensation of CHF 120,000 or more are obliged to file a Swiss tax return. The revision has introduced the possibility for Swiss tax residents who are subject to source tax with an income below CHF 120,000 to file a voluntary tax return. This procedure offers the advantage that deductions for professional expenses, contributions to the voluntary occupational pensions etc. can be made via the tax return. However, once the choice to file a voluntary tax return has been made, the same procedure must be followed in the subsequent years. Since filing a tax return is not advantageous in all cases, it should be carefully assessed in advance as to whether this option should be selected.

This option has also newly been made available to so-called “quasi-residents”. These are non-resident source tax subjects whose worldwide family income originates at least 90% from Swiss sources. The 90% limit is determined according to the rules of Swiss tax law. It is suggested to have a calculation carried out before applying for this option to see if the threshold is reached.

Furthermore, the option to file a tax return is now available if the situation of the taxpayer is the same as that of a taxpayer residing in Switzerland or to claim deductions in accordance with a double taxation agreement. However, in these cases an application must be submitted annually.

Non-resident source tax subjects can be requested ex officio by the relevant cantonal authorities to file a Swiss tax return if there are “pressing circumstances”.

#### 2. Recalculation of the source tax

Under the new regulation, all source tax subjects who are not obliged to file a Swiss tax return or did not opt to do so, can request a recalculation of the source tax if one of the pre-defined criteria is met. The reasons allowing a recalculation are listed conclusively in Circular Letter No. 45:

- Incorrect determination of gross wages subject to the source tax
- Incorrect determination of tax rate-determining income
- Incorrect source tax rate application

The previous tariff correction is no longer applicable. The possibility that existed in the past to claim further deductions by means of the tariff correction no longer exists since the revision of the law.

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## Thailand



### Long-term Resident Program (LTR)

Today, Thailand is already home to multinational corporations from all over the world and one of the most important tourist destinations in Asia.

To strengthen this position and to attract new foreign residents, technologies and talents contributing to domestic spending and investment while supporting economic growth, the Thai cabinet passed a resolution on 10 May 2022 regarding the criteria for a new visa called “**long-term resident (LTR)**”.

The goal is to entice **up to 1 million wealthy foreigners and those with high levels of expertise** to stay or work in Thailand **within five years**. Therefore, a range of tax and non-tax benefits to enhance the country’s attractiveness as a regional hub for living and doing business for ‘high-potential’ foreigners was introduced.

#### **Initially, several incentives have been granted:**

1. 10-year visa;
2. Exemption from the four-Thai-employees-to-one-foreign national employee;
3. 90-day report extended to 1-year report and exemption of re-entry permit;
4. 17% personal income tax for highly skilled professionals;
5. Digital work permit;
6. Usage of the FastTrack privilege at airports.

#### **However, participation requires the fulfilment of certain obligations:**

**Wealthy global citizens** must hold at least USD 1 million in assets and must have had personal income of at least USD 80,000 a year for the past two years. The applicant must invest at least USD 500,000 in Thai government bonds or real estate.

**Wealthy pensioners** aged 50 years and older must have an annual pension or stable income in the amount of at least USD 80,000 a year. In the case of personal income of no less than USD 40,000 a year, the applicant must invest at least USD 250,000 in Thai government bonds, foreign direct investment or Thai property.

**Work-from-Thailand professionals** who want to work remotely from Thailand must have an employment agreement with a company abroad. The company must be either a listed company or a limited company that has been in business for over 3 years and has had total income of at least USD 150 million over three years prior to the application date. The applicant must have had personal income of at least USD 80,000 a year for the past two years, or income of at least USD 40,000 a year if having a master’s degree or higher, or if holding intellectual property or receiving series A funding.

**Highly skilled professionals** in targeted industries working for business entities, higher education institutes, research centres or specialised training institutions in Thailand, or Thai government agencies must have had personal income of no less than USD 80,000 a year for the two years prior to the application date.

If personal income is below USD 80,000 a year but not less than USD 40,000 a year for the past two years or before retirement, applicants must have a master's degree or above in science and technology or other special expertise relevant to the job assignment in Thailand.

When working for Thai government agencies, no minimum personal income is required.

For applicants requesting **dependant visas** (such as for a spouse and up to four children who are less than 20 years old), they must have at least USD 25,000 for each dependant in a Thai bank account or a bank account abroad for at least 12 months before the application date.

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All applicants need **health insurance** with coverage of at least USD 50,000 or social security benefits insuring treatment in Thailand, or a deposit of at least USD 100,000.

## Ukraine



### Taxation of individuals working remotely on Ukrainian projects

According to the UN, more than 6.5 million Ukrainians became refugees and temporarily left Ukraine. Also, many expatriates have left Ukraine since the active combat actions started. Many of these people continue working for Ukrainian companies remotely.

#### Resident status

Regardless of the duration of the presence of a Ukrainian citizen abroad, in most cases he/she should be considered as a Ukrainian tax resident, unless he/she has passed the procedure of departing for permanent residence abroad. Such individuals are liable in Ukraine for reporting and taxation of their worldwide income (both Ukrainian-sourced and foreign income).

Expatriates who stay and work in Ukraine mostly are considered to be non-residents for tax purposes, liable to report and have taxed only their Ukrainian-sourced income.

#### Existing problems in taxation

A Ukrainian employer as a tax agent of its employee pays taxes in Ukraine upon accrual of salary (i.e. on a monthly basis). And an employee pays taxes abroad mainly on an annual basis under the local legislation.

Such a mechanism for paying taxes on salaries in Ukraine makes it practically impossible to offset the amounts of taxes paid abroad against Ukrainian taxes and vice versa, **which causes double taxation.**

Ukrainian tax legislation does not envisage any possibility for reconsidering the current mechanism for payment of taxes by the Ukrainian employer.

And the mechanism of the offsetting of taxes paid abroad against Ukrainian taxes makes it impossible to offset taxes paid abroad against taxes paid by the employer. The taxes paid abroad might be offset against Ukrainian taxes only if a person receives another income which is to be taxed upon submission of an annual tax return.

When the issue concerns a non-resident of Ukraine, the offsetting of taxes paid in Ukraine shall be carried out against foreign taxes if it is allowed under the local legislation of a foreign country. Then the offset might be very complicated due to peculiarities of the form in which the Ukrainian tax authority confirms the amount of taxes paid by a Ukrainian employer.

#### Possible solution

Currently, the issue of avoiding double taxation has not been resolved at the international level, yet the international discussion on the matter has already commenced.

For instance, the issue was brought to the attention of the OECD, which was urged to issue formal recommendations somewhat like the ones related to COVID-19, providing that the stay in the host country because of force-majeure circumstances shall not be counted for the

purposes of double tax treaties implementation. So, we expect the issue to hopefully be resolved soon.

Meanwhile, to avoid double taxation, an individual who believes that he/she may be subject to double taxation might initiate a special procedure of mutual adjustment, envisaged by the double tax treaties of Ukraine and by the tax code of Ukraine.

Yet, to apply for such a procedure in Ukraine, the individual shall have on hand a decision of a foreign tax authority, which implies that he/she shall be taxed abroad regarding his/her Ukrainian income.

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To avoid double taxation for future periods the employee could officially work abroad. Then an individual receives remuneration from a foreign employer subject to taxation abroad under the local legislation. Such remuneration shall be deemed in Ukraine as the individual's foreign income. In this case, the individual can only offset taxes paid abroad against Ukrainian Personal Income Tax. Yet this does not solve the problem of previous periods.

## Germany/ Ukraine



## Treaty override regarding Ukrainian employees working in Germany

### Case

During the year a Ukrainian resident employed by a representative office of a German company in Ukraine has come to Germany and is working remotely for the Ukrainian office. His salary is still paid from Ukraine where tax withholding applies. The residence in Ukraine was kept and still represents the centre of his vital interests. As the relocation to Germany was caused by the ongoing combat activities in Ukraine, working from Germany is planned only as a temporary solution. Art. 16, 18, 19 and 20 DTT Germany - Ukraine are not applicable.

### German legal perspective

Based on Art. 15 para. 1 of the Double Tax Treaty between Ukraine and Germany, the right of taxation is allocated to the residence state (due to Art. 4 DTT Ukraine - Germany) of the individual who represents Ukraine in this scenario. In addition, para. 1 includes that the taxation right is reassigned to the other contracting country (here: Germany), if the employee is actually performing their work in this state. As a result, Germany holds the taxation right relating to the salary of the individual paid for their work performed in Germany. Following this approach, the salary of the respective individual is liable to German tax starting from the beginning of their activity in Germany.

However, there is the possibility that the taxation right applies to the residency state due to Art. 15 para. 2 DTT Ukraine - Germany. This legal standard indicates three requirements which must be fulfilled **simultaneously** in order to allocate the taxation right back to Ukraine.

- One of these requirements is that the employee is not present more than 183 days in Germany within the entire year which might be fulfilled.
- But another requirement stated in Art. 15 para. 2 DTT Ukraine - Germany is that the salary is not paid out from an employer who is located in Germany or **on the behalf of the German employer** (lit. b). The representative office of the German company in Ukraine does not have legal independence (= permanent establishment) from a German perspective. Thus, the Ukrainian office is not able to be considered as an employer from a legal perspective.

Due to the interpretation from a German tax perspective the representative office in Ukraine pays the salary on the behalf of the German employer. Thus, the requirements of the relevant standard are not fulfilled simultaneously and a review of the third condition is not required. As a result, the exception from para. 2 is not applicable to this case.

**This leads to the conclusion that Art. 15 para. 1 DTT Ukraine – Germany is decisive and implies that the salary relating to any working day performed in Germany is liable to German tax.**

Due to domestic tax law, the German employer has an obligation to withhold wage tax from the salary relating to German workdays of the employee. There is no possibility to avoid a double taxation from the German side and there is currently no jurisdiction applicable to cases which are caused by comparable exceptional circumstances (e.g. combat activities).

We recommend reviewing those scenarios from the tax perspective of the foreign country in order to prevent double taxation. In our case, the treaty override was solved by closing local contracts between the employee and the German employer.

## Vietnam



### Work permit issues

Decree No. 152/2020/ND-CP ("Decree 152") came into effect on 15 February 2021 and made the conditions for obtaining a work permit ("WP") stricter.

#### The procedure:

Only an enterprise or organisation registered in Vietnam (the "sponsor") can apply for the WP. The sponsor must:

1. publish the need for a specific recruitment on a website for around 3-4 weeks. This is not requested by all authorities.
2. apply for the approval letter on employing foreigners for the specific position at least 30 days before the commencement of employment. This approval letter mentions the specific positions, not the person.
3. apply for the WP at least 15 days prior to the commencement of the intended working time. Some of the required documents must be legalised in the country of issuance. This can be time-consuming.
4. apply for the working visa or temporary resident card.

#### The conditions are:

The foreigner wishing to work in Vietnam must be at least 18 years of age, have good health for working, currently have no criminal issues and meet certain requirements on qualification and working experience. These are the types of WP:

1. **Manager:** the person in charge of managing the organisation.
2. **Executive Director:** the person directly administering affiliated units of the organisation.
3. **Specialist:** has a bachelor's degree or higher and at least three years of relevant working experience. Or has a practicing certificate and at least five years of relevant working experience.
4. **Technical Labour:** has been trained in a technical or another relevant discipline for at least one year and has at least three years of relevant working experience. Or shall have at least five years of working experience that is suitable for the intended working position.

#### Work permit exemption

For some cases, no WP is required but a written confirmation on being exempted from the WP requirement. In the case of a complex technical or technological incident that affects or threatens to affect the business operation in Vietnam, the foreigner can work in Vietnam without a WP. The condition is that no foreigner who is already in Vietnam and no Vietnamese can handle the problem and the authority confirms the exemption. Regularly, this will be confirmed if the application has been drafted properly. The WP exemption is limited until the problem is solved but no longer than 3 months. This is practically the most important case.

#### No WP and no confirmation of WP exemption is required in these cases:

1. A foreigner working in Vietnam as a manager, executive director, specialist or technical labour for an assignment of less than 30 days and no more than 3 times in 1 year.
2. A foreigner working in Vietnam for offering but not providing services for up to 3 months.

#### Extension and new WP

The usual term of a WP is 2 years and it can be extended one time by 2 years. Whether a new WP for the same position can be obtained after that is not clear.



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