

WTS Global Mobility Newsletter

Editorial

Dear Reader,

We are pleased to present the 1st edition of our WTS Global Mobility Newsletter for 2023.

Every year, the tax/legal environment changes – naturally also in the area of Global Mobility. And the topic of (cross-border) Remote Work continues to have a lasting impact on the Global Mobility sector.

No wonder – after all, the legacy of the COVID pandemic is "Remote Work" – working from home.

The work-from-anywhere culture among younger professionals has become the standard expectation and demands flexibility from companies. Legal framework conditions must of course be met, so there are numerous implications for Global Mobility and international assignments.

With this newsletter we would like to inform you about the current developments and upcoming trends on the Global Mobility scene and market in selected EU and third countries. Therefore, to keep you up to date, our WTS Global Mobility Newsletter provides you with an overview of recent developments.

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 expansion

The Pacific Australia Labour Mobility (PALM) scheme is available for eligible businesses to recruit workers for seasonal jobs for up to 9 months or for longer-term posts between one and four years in unskilled, low-skilled and semi-skilled positions.

The Australian government has committed to expand the Pacific Australia Labour Mobility (PALM) scheme as follows:

- › The scheme allows the longer-term PALM workers to bring their families into the country. It is expected to commence in 2023–2024 for up to 200 families of PALM scheme workers. The families will not have access to the Australian health system, and the employer will need to arrange additional social support.
- › The government will expand the existing aged care pilot programme to support 500 PALM scheme workers in completing their Certificate III in Individual Support (Ageing).
- › The government will reimburse employers for upfront travel costs that cannot be recouped from seasonal workers, minus a \$300 employer contribution for workers' flights, through no fault of the employer (e.g. due to unexpected flight changes, cancellations or where workers disengage).
- › Reallocate the former Australian Agriculture Visa (AAV) programme under the PALM scheme by adjusting the scheme's settings to reflect key features of the AAV.

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Austria



Income Tax – exemption with progression for non-residents

The Administrative Court recently decided that an exemption with progression is to be applied to persons with unlimited tax liability in Austria even if they are resident abroad. The decision is of great importance, as the application of the exemption with progression for non-residents is contrary to the previous administrative practice. The ruling is expected to lead to a greater tax burden and increased compliance costs for those affected.

Natural persons who have a residence or habitual abode in Austria are subject to unlimited tax liability in Austria. The unlimited tax liability extends to the entire world income, thus to all domestic and foreign income. Based on this tax claim, the tax rate to be applied to the domestic income is calculated according to the world income, in which the exemption with progression finds its legal basis within the country.

In Austria, the exemption with progression is not explicitly anchored in the law, but it necessarily results from the provisions in the Austrian Tax Act. Insofar as a double taxation treaty grants the state of residence the right to levy taxes from the income remitted to it for taxation at the rate corresponding to the world income, it is therefore mandatory to take the foreign income into account when determining the applicable tax rate.

In the present case, there is a cross-border situation between the Republic of Turkey and the Federal Republic of Austria, thus the double taxation agreement of 2009 concluded between the two states (DTA Austria-Turkey) applies. The taxpayer receives

income from employment, which is partly earned in Austria, in Turkey and in other countries. The person had a residence in Austria, which resulted in unlimited tax liability in Austria. However, based on the centre of vital interests in this case, residency was clearly in Turkey.

Due to the unlimited tax liability, the part of the income that was taxable in Turkey under this DTA was included in the calculation of the average tax rate in Austria for the 2018 assessment, applying the exemption with progression. The taxpayer filed an appeal against this procedure, arguing that Austria, as the source state, was not entitled to an exemption with progression on the foreign income.

The Administrative Court decided that the DTA Austria-Turkey does not prohibit the application of the exemption with progression for the source state (or in this case, the state in which the activity actually takes place). The DTA Austria-Turkey does not contain any regulations on the question of the exemption with progression for the source state. Subsequently, the Administrative Court ruled that when assessing the tax liability of cross-border situations, it must first determine whether the tax claim exists under domestic tax law. To establish the tax rate, the foreign income must also be taken into consideration, as the use of Turkish income for the determination of the tax rate is not prohibited in this DTA.

Typical cases that will be affected by the new ruling are, for example:

- › Posting to Austria, with residence in Austria and income taxable both in Austria and abroad
- › Taxpayers resident abroad with an Austrian second/holiday residence and foreign and domestic income (e.g. rental in Austria, non-self-employed activity in Austria)
- › Domestic permanent establishment of a German trade or business that is subject to income tax

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Belgium



Belgian expat tax regime now extended to foreign non-profit organisations

The 1 January 2022 a **new expat tax regime** introduced in **Belgium** that provides for a favourable income tax (and social security) treatment for employees, directors and researchers recruited abroad or seconded to Belgium.

Under this regime, an allowance of up to **30%** of the gross annual salary (capped at EUR 90,000) can be granted **free from tax and social security contributions**. In addition, certain expenses such as **school** and **moving costs** can be reimbursed free from tax and social security contributions.

The application of the expat regime therefore enables employers to attract skilled personnel from abroad with an advantageous salary package at a reduced employer cost.

The scope of application was (for the non-profit sector) originally limited to non-profit organisations in the Belgian legal form of VZW's and IZVW's, excluding e.g. foundations or foreign non-profit organisations operating in Belgium.

Following an **appeal** (against this omission) to the Belgian constitutional court introduced by Tiberghien, **the legislator has now extended the scope of application**.

From now on, every **enterprise** registered with the Belgian Crossroads Bank for Enterprises, regardless of its legal form, place of incorporation or tax residence, can benefit from the new tax regime for expats in Belgium (provided of course that all other conditions are met).

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For foreign non-profit organisations, the expat regime can apply to personnel hired or seconded to Belgium **as of 1 January 2023**.

To apply the expat tax regime, a **written application** should be filed ultimately within **3 months** following the date of entry into service of the expat in Belgium.

For any questions, contact the authors of this article.

China



IIT benefits continue for another year

The Chinese tax authority confirmed to the public, at short notice at the beginning of the new year, that the following decade-long preferential individual income tax (IIT) treatments, which should have ended on 31 December 2022, will continue for another year.

1. IIT benefits for stock-based rewards for employees

Under a special IIT filing policy, stock-based rewards are taxed separately from the consolidated income for IIT filing purposes, resulting in a lower IIT rate and burden. This policy has been renewed twice, from 2019 to 2022.

It was just announced that the stated preferential policy on stock rewards will continue for another year, until the end of 2023. Following the same treatment as before, stock-based rewards can be taxed independently from the consolidated income.

2. IIT benefits for the special programmes between the mainland and Hong Kong (HK)

Capital gains from the disposal of HK-listed stocks by individual investors in the Mainland under the Shanghai-HK Stock Connect or the Shenzhen-HK Stock Connect programmes, and the capital gains from the trading of HK fund units under the mutual recognition programme will still be IIT-exempt through 31 December 2023.

3. New IIT treatments on bonuses and perks at work

- › Under the current policy, a bonus can be filed for IIT separately from the consolidated income, so as to enjoy a lower IIT rate and IIT burden. However, the policy is supposed to expire by the end of 2023.

Thus, starting from 2024, if no further renewal is granted for the policy, all bonuses will be taxed together with wages on a consolidated basis, and will therefore be subject to a higher IIT rate.

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- › Moreover, the current IIT exemption treatment for expatriates' perks (i.e. rental, child education and meal allowances) is supposed to expire by the end of 2023.

The concern that the expatriates' IIT burden might surge after 2023 may revive again. Expatriate employees in China, uncertain if the policy would be granted another period of renewal, would be put on edge again. If a renewal does not take place, the mentioned perks would be taxed for IIT at a rate much higher than that under the current policy, even though some minor deductions are still allowed.

France



Switzerland



Agreement on the taxation of home office income

On 22 December 2022, France and Switzerland reached an agreement on the taxation of home office income. Thus, the declaration of 29 June 2022 on the introduction of a provisional agreement on telework applicable to cross-border workers was revised and has resulted in amendments on sustainable tax arrangements for home office in existing agreements, which entered into force on 1 January 2023.

The main changes concern two agreements:

- 1.) The agreement concluded in 1983 between the Swiss Federal Council, acting on behalf of the cantons of Bern, Solothurn, Basel-City, Basel-Country, Vaud, Valais, Neuchâtel and Jura, and the government of the French Republic is extended to include the following:

Telework limited to 40% of the annual working time has no effect on:

- › the cross-border worker status
- › the associated income taxation regulations from employment in the employee's country of residence

- 2.) The agreement signed in 1966 between Switzerland and France for the avoidance of double taxation for taxes on income and assets contains the addendum that (in practise the employees who are not covered by the cross-border status):
 - › Taxation takes place in the employer's state of establishment if the telework performed in the state of residence does not account for more than 40% of the working time.
 - › A compensation in the favour of the employee's state of residence is provided for.

The entry into force of the addendum is subject to signature and subsequent ratification. In the meantime, France and Switzerland have agreed to apply the terms and conditions in connection with telework by mutual agreement. This agreement can be applied until 31 December 2024 at the latest if the amendment is signed by 30 June 2023, and whilst taking into account the progress of the ratification process.

Article 3 of the 2023 Finance Bill provides for an adjustment of withholding tax for foreign employers with employees resident in France for tax purposes. It will particularly help cross-border workers to use teleworking. The regulation will apply to income received from 1 January 2023.

General rule from 1 January 2019

- › Income tax received by French taxpayers is subject to a pay-as-you-earn system (PAYE or PAS in French)
- › Tax due by a taxpayer resident in France can be withheld by the debtor or paid in 'instalments' which the French tax authorities can directly withhold from the taxpayer's account, depending on the source of the wages and the location of the employer

Main changes

Adjustment to the PAYE system

- › Foreign employers will no longer be subject to withholding tax procedures (PAYE)
- › Instead, a system of advance tax payments will be applied where the French tax administration can directly deduct a certain amount of income tax from the taxpayer's bank account on the basis of the employee's last income

Applicable if

- › The employer is established in an EU member state or in a state that has concluded an administrative assistance agreement with France to combat fraud and tax evasion, as well as an administrative assistance agreement for the collection of tax and;
- › The employer is not established in a non-cooperative state or territory as defined by Article 238-0 A of the French tax Code (Code général des impôts)
- › The employees carry out their activities **occasionally** in France and:
 - are not subject to the compulsory French social security system (EU social security regulations or bilateral agreement). In practise, this concerns employees residing in France and receiving remuneration from a foreign employer for an activity carried out in France for less than 25% of their total working time, or
 - are dependent on a compulsory French social security scheme in accordance with the provisions of article I L. 380-3-1 of the social security code. Therefore, this simplification also applies to cross-border commuters living in France and working in Switzerland who have opted to join the compulsory social security system in France.

Obligation of the foreign employer

- › Annual report to the French authorities declaring the amount of net remuneration taxable in France determined according to French tax law and within a timeline that is yet to be specified

Failure to comply with the obligation to report will be punishable with fines ranging from EUR 500 to EUR 50,000 per declaration, corresponding to the following amounts:

- › 5% of the amounts that should have been declared in the case of omissions or inaccuracies
- › 10% of the amounts that should have been declared if the declaration is not submitted within the prescribed time limit

The fine does not apply if there has been no breach of the duty to declare during the three years preceding the year in which the declaration should have been made and the person concerned has spontaneously corrected their errors by the end of the same year.

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Germany



New Framework for telework between Germany and Austria

Working life has changed as a result of the Covid-19 pandemic. Telework and hybrid work are present as never before. In the case of multi-state workers, this can unfortunately bring about a mandatory social insurance in the other country.

Therefore, the administrative commission of the EU finalised a special agreement which will expire soon. This has motivated Germany and Austria to conclude a framework for telework. This newsletter informs you about the impacts of the framework.

Current status: guidance note on telework

In June 2022, the administrative commission agreed to pass a "No Impact Policy", which resulted in a pandemic-conditioned special agreement that would have expired on 31 December 2022 and was extended until 30 June 2023.

What is going to happen on 1 July 2023?

The regulations of the Regulation 883/2004 will apply from 1 July 2023, resulting in mandatory social insurance in the domicile country if the employee performs a significant part of the work there. A significant part of the work is performed in the domicile country if it amounts to at least 25%.

Framework between Germany and Austria

In connection with the possibility for Member States to conclude bilateral derogation agreements as indicated in the Guidance Note on telework, Germany and Austria have taken this as an opportunity and concluded a framework agreement. The framework allows a share of **telework** up to 40% in the domicile country without application of the social security scheme of the domicile country.

Requirements for the application of the framework

The framework is only applicable between Germany and Austria. Therefore, it only applies if the permanent establishment where the employee works is in one of the two states and the teleworking domicile is in the other state. Furthermore, the employee is only permitted to have one employment, and the telework is usually recurring in the home office and using information technology.

Application procedure with the competent social insurance institutions

If the previously mentioned requirements are fulfilled, the employer, in agreement with the employee, may submit an application to the competent authority of the state. These authorities are the "GKV-Spitzenverband, DVKA" in Germany and the "Dachverband der Sozialversicherungsträger" in Austria.

Temporal application

The framework already became active on 1 January 2023. Since the "No Impact Policy" is applicable until 30 June 2023, the Guidance Note primarily applies. Therefore, the regulations of the framework are valid as of 1 July 2023.

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The application of the framework can be agreed for a maximum of two years, with an extension possible. As of now, there is no further information about the conditions and the period for which the extension can be requested and if there is any maximum period.

We will of course keep you up to date about the further progress.

Hungary



Tax allowances and leave in 2023

2023 is starting with significant changes for employees and employers in Hungary: the introduction of new tax allowances, a new type of leave and the minimum wage increasing.

Minimum wage

Just like the end of each year, a new wage agreement was reached between the Hungarian government and employers last December. Accordingly, from 1 January 2023, the amount of the lowest wage, i.e. the minimum wage, has been increased to HUF 232,000 gross, while the amount of the guaranteed minimum wage has been increased to HUF 296,400. At the same time, the basis for the personal allowance has been increased to HUF 77,300, which means a monthly tax allowance of HUF 11,595.

Increasing tax allowances

However, from 2023, the amount of the family tax allowances enforceable from the tax base remains unchanged; this amount in the case of a dependent beneficiary who is permanently ill, or a severely disabled person is HUF 66,670 higher per month, so the amount of the allowance for these children increases by HUF 10,000 in tax terms. Employees will be able to request the validation of this allowance on the tax advance declaration.

Looking at the tax allowances, the benefit for young people under 25 also increases: in 2023 the amount of the allowance is HUF 499,952 per month of entitlement, which means a tax savings of HUF 74,993.

Newest element of tax allowances

A new allowance for mothers under the age of 30 has been introduced in Hungary starting this year. A young mother is entitled to the allowance if she became entitled to the family tax allowance after 31 December 2022 regarding her unborn child, biological child or an adopted child. This allowance is therefore available to young mothers who have reached the age of 25, are under 30 at the start of their entitlement and became eligible for the family tax allowance after 31 December 2022, for example they have reached the 91st day of pregnancy after 31 December 2022 or their child is/was born after 31 December 2022. The maximum monthly allowance amount in 2023 is HUF 499,952 per month of entitlement, which means a tax savings of HUF 74,993.

Leave

A new type of leave has been added to the Hungarian Labour Code. Employees are entitled to 44 working days of parental leave up until their child reaches the age of three, subject to at least one year of employment. This leave must be granted at the time requested by the employee. For the duration of the parental leave, the employee is entitled to 10% of the absence pay, reduced by the amount of the childcare benefit or childcare allowance paid for this period. A decision awarding benefits must be requested.

The regulation on paternity leave is also changing. Upon the birth of a child, in 2023 the father shall be entitled to ten working days' leave – instead of the five granted previously – no later than by the end of the second month following the birth of the child or, in the case of adoption, no later than the end of the second month following the

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finalisation of the decision authorising the adoption, granted when requested, in no more than two parts. The employee is also entitled to paternity leave if the child is stillborn or dies. The employee is entitled to absence pay for five working days of paternity leave, whilst from the sixth working day onwards they are entitled to 40% of the absence pay.

Italy



New interpretations of recurring cross-border tax issues

With a series of recently published rulings, the Italian Tax Authorities have provided some helpful interpretations of recurring cross-border tax issues.

Split-year clause in Italian Double Tax Treaties

In Ruling 17.1.2023 No. 54, the Italian Tax Authorities returned to the application of the concept of the "split year" in cases where a residence conflict has arisen. The case concerned a transfer of an employee from Switzerland to Italy, but the conclusions reached by the Italian Tax Authorities may be of particular interest also in transfers from and to Germany.

In fact, under Italian rules, the residence of individuals is ordinarily assessed on a calendar year basis, as the domestic tax law does not provide for the concept of a "split year". Such a concept, however, is provided by the Double Tax Treaties signed by Italy with Switzerland and Germany. The Italian Tax Authorities confirmed that, in the case of a residence conflict with one of these two countries, the "split-year" clause of the respective treaties is fully applicable. This means that, for example, in the case of a transfer from Switzerland or Germany to Italy in the first half of the year, the individual becomes a tax resident in Italy only from the date of transfer of the domicile and not for the entire year. This clearly simplifies the tax compliance for the individual in the year of transfer to Italy, as generally only Italian-sourced income produced after the transfer would be taxable in Italy.

Cross-border tax treatment of Italian source pensions

Ruling 17.1.2023 No. 53, concerned the debated tax treatment of Italian-sourced pensions paid to non-resident individuals. The case determined the taxation of a pension paid by the Italian state to a resident in France who had carried out work in Italy.

The critical point of these cases has always been the interpretation of the pension provisions of most of the tax treaties signed by Italy, which, in exception to the general principle of taxation of pensions in the only state of residence of the perceiver, provide that "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 in the state of source (Italy in this case) if they are considered to be a social security service provided by the state. The reach of this provision is relevant and suggests a careful analysis of treaty provisions in the case of Italian-sourced pension recipients who are willing to relocate outside Italy or in the case of holders of a foreign pension who are willing to transfer to Italy.

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Netherlands



Exchange of information obligation

As of 1 January 2022, companies that qualify as a withholding agent for Dutch wage tax and so-called collective administering organisations (in Dutch: *collectieve beheersorganisaties*) are obliged to notify the Dutch tax authorities of payments made to persons who are not on the payroll. This notification obligation is called the "exchange of information".

Several exemptions are in place, such as for payments to qualifying volunteers, freelancers that invoice their services including VAT, artists and sportspersons. Note that different wage tax regulations already apply to artists and sportspersons.

If payments are being made to persons that do not meet the exceptions above, a notification obligation may exist. Notifications to the Dutch tax authorities have to be made on 31 January of each year. The notification should consist of the following information: Dutch social security number, date of birth, initials, surname, address information and country.

Tax-free travel allowance

Employers are permitted to provide a tax-free travel allowance for employees. As of 1 January 2023, the maximum tax-free travel allowance is increased from EUR 0.19 to EUR 0.21 per kilometre. It is proposed to further increase to EUR 0.22 in 2024.

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Increase of tax-free budget in work-related cost rules scheme

Employers can use the discretionary margin under the work-related cost rules scheme to provide and reimburse their employees with regard to tax-free items. For 2023, the discretionary margin for each employer is set at 3% of the first EUR 400,000 of the wage bill and 1.18% over the excess of EUR 400,000.

Nigeria



Recent updates on immigration rules

In Nigeria, the Ministry of the Interior is responsible for the administration and technical enforcement of the Nigerian Immigration Act 2015 and the Immigration Regulations 2017 as they relate to the establishment of business in Nigeria by wholly foreign-owned or joint venture companies and the employment of expatriates. These responsibilities include granting business permits, approving expatriate quota and monitoring the utilisation of quota positions by companies to ensure the effective transfer of technology to Nigerian undergraduates and eventual indigenisation of the positions occupied by the expatriates.

August 2022 saw the Nigerian Ministry of the Interior release a circular informing the public of a revised Handbook on Expatriate Quota Administration. The revised handbook introduces additional requirements to the existing framework for foreigners doing business in Nigeria. Some of the notable changes made by the revised handbook include the following:

Issuance of a business permit

Formerly, a company must have a minimum share capital of ten million (10,000,000) shares to be able to apply for a business permit and expatriate quota positions.

However, the revised handbook has increased the minimum share capital requirement for companies seeking to apply for a business permit to one hundred million (100,000,000). The value of equipment or machinery imported into the country for the purpose of conducting business could also form a portion of the paid-up capital to be invested in the country. This will considerably increase the cost of business registration with the Corporate Affairs Commission as the cost is typically a function of the amount of share capital.

Reduction of expatriate quota lifespan

The expatriate quota lifespan has been revised such that the facility is for a period of three (3) years in the first instance, renewable biennially two consecutive times within a lifespan of seven (7) years, except for approvals for companies in the oil and gas industry, the approval of which will be for an initial period of 2 years and renewable once within a life span of 4 years.

National Identification Number to be reflected in monthly returns filing

The revised handbook mandates that the National Identification Number (NIN) of the expatriates and their Nigerian understudies shall be reflected in the monthly returns filing. Monthly returns refer to reports on the utilisation of the expatriate quota issued to the company. It contains information such as the nationality of the expatriates, date of entry to and exit from Nigeria and where they reside in the country. It shall now include the NIN of the expatriates and their Nigerian understudies.

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Provisions on fees and penalties

The revised handbook provides for an increase in the statutory fees applicable to each service category and stipulates a fine of NGN 3,000,000 (three million Naira) on any company that fails to renew the expatriate quota or render the mandatory expatriate monthly returns within the stipulated time. The same rate of fine being NGN 3,000,000 (three million Naira) shall be payable for each month by any company that fails to employ Nigerian understudies as required.

Poland



New rules on remote work and business trips

1. Remote work

The status of remote work in the Labour Code has been changed to a permanent option, rather than one applicable just in relation to the COVID-19 pandemic. The new regulations will enter into force on 7 April 2023.

Remote work will be performed fully or partially in the place indicated by the employee and approved by the employer. For all employees, there is a limit on the number of days (24) in a year when work can be performed remotely. For some employees (e.g. parents raising children under 4 years of age), remote work is unlimited as long as it is compatible with their type of work.

To duly implement remote work, it is crucial to assess the opportunities and challenges for a given employer, prepare internal regulations, review employment contracts and take care of training.

In terms of tax impact, employers will be required to:

- › Provide the materials and tools necessary for remote work; or
- › Pay cash compensation or a fixed sum for the employee to use their own personal tools.

The provision of tools and materials or the payment of compensation or a fixed sum to the employee by the employer as per the above may not lead to the generation of any additional taxable income for the employee.

However, questions have already been raised about how to calculate the compensation and the fixed sum so that it is tax free. The amount should correspond to the employee's estimated costs of working remotely. According to the law, major items to be taken into account in such an estimation are "*(...) standard wear and tear of materials and tools, including technical equipment, their documented market prices, the quantity of materials used for the employer's purposes, the market prices of the materials, as well as standard consumption of electricity and costs of telecommunication services*".

Employers' organizations have already asked for official guidelines regarding compensation for employees and other aspects of the new law.

2. Increased mileage rates in Poland

After 15 years without changes, the per-kilometre rates were increased on 17 January 2023 to reach the following caps:

- › PLN 0.89 (previously PLN 0.5214) for passenger cars with an engine cubic capacity of up to 900 cm³
- › PLN 1.15 (previously PLN 0.8358) for passenger cars with an engine cubic capacity of more than 900 cm³
- › PLN 0.69 (previously PLN 0.2302) for motorcycles
- › PLN 0.42 (previously PLN 0.1382) for mopeds

If an employee uses a private car during a business trip (in which case, the vehicle mileage record is obligatory), such an allowance is exempt from PIT and social security only up to certain limit according to the PIT Act. The limit for a passenger car is as follows:

- › For cars with an engine cubic capacity of up to 900 cm³ = PLN 0.89 (previously PLN 0.5214) × number of kilometres
- › For cars with an engine cubic capacity above 900 cm³ = PLN 1.15 (previously PLN 0.8358) × number of kilometres

Thus, the tax-free allowances have just increased due to the change in the law.

A respective change has also increased the allowance limits for local travel, calculated as a fixed monthly sum or a sum based on mileage.

Portugal



Digital Nomad visa and taxation of crypto asset-derived income

Digital Nomad visa

The Portuguese Law No. 18/2022 approved on 25 August had relevant changes to Law No. 23/2007, also known as "the Foreigner's Law", introducing a new Portuguese visa type called the "Digital Nomad visa".

This new visa programme applies to foreign individuals who intend to relocate to Portugal and perform a professional activity in the Portuguese territory, remotely, for the benefit of entities domiciled abroad, either as a dependent professional (i.e. an employee) or an independent service provider. In the case of independent service providers, the professional activity in question can be performed by a company incorporated for this purpose.

The Digital Nomad visa can be requested as a temporary stay visa, which is valid for one year and allows multiple entries into Portuguese territory during said period, or as a residence visa that is valid for four months and allows two entries into Portuguese territory during said period. However, the residence visa grants to the visa holder the right of requesting a residence permit in Portugal after the visa expires.

The visa applicants will have to present to the Portuguese consular authorities of their residence country a tax residence certificate, proof of income received in the previous three months (which should be equal to or greater than the Portuguese minimum wage of 3 months) and one of the following documents:

- › An employment, service provision or company incorporation agreement;
- › A promise/proposal for the conclusion of an employment or a service provision agreement; or
- › A declaration issued by a company proving an employment relationship or any proof of the provision of services to one or more companies.

Crypto asset tax regime

On 30 December 2022, the Portuguese Law No. 24-D/2022 was approved, which established the Portuguese State Budget for 2023.

Along with many changes to the Portuguese tax law, the State Budget Law for 2023 introduced a tax regime for income obtained by individuals that is derived from crypto asset-related activities. As a preliminary note, it is relevant to consider that, for the purposes of this regime, only crypto assets of a fungible nature are considered, therefore the regime is not applicable to NFTs.

Operations related to the issuance of crypto assets, such as mining, or the validation of crypto asset transactions through consensus mechanisms are qualified as an independent professional activity. Income derived from such economic activities that does not consist of crypto asset mining shall be subject to Personal Income Tax ("PIT") at 15% of its amount, while income derived from the mining of crypto assets will be taxed at 95% of its amount, if the simplified approach to determine the taxable income of the beneficiary is applied. If the taxable income of the taxpayer is determined by the organised accounting method (which is mandatory if said income exceeds EUR 200,000), then all income derived from the activities in question, after offsetting business expenses, shall

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be subject to PIT. The income in question will be liable to PIT by the application of the general progressive rates system.

Income derived from the trading of crypto assets shall be considered a taxable capital gain and other items of income derived from crypto assets will be classified as investment income, both subject to PIT at a 28% rate.

Saudi Arabia



Tax implications of global mobility in KSA

To increase the efficiency of the organisation's workforce, many companies have started to implement their global mobility strategies to empower flexibility and to adapt to hybrid and remote working methods.

As a result of the pandemic "since 2020", most of us have become familiar with global mobility, since (in a simple form) the employee can "work from anywhere" as per flexible and remote agreements signed between the employer and the employee who performs overseas duties virtually.

Regarding the complexity of the global mobility process, since it requires learning various tax and employment laws in different markets, this may trigger potential multi-jurisdiction tax compliance.

As a result, the tax authority in KSA (ZATCA) – as it appeared during the latest performed audits – adopted a new approach involving the scrutinisation and tracking of cross-border relationships between the employer and the employee that may trigger tax consequences.

Accordingly, the authorities are starting to increase recovery and collection activities for tax obligations arising from remote working.

ZATCA is focusing on intercompany transactions, including cost sharing and recharges related to the global mobility workforce. ZATCA may require transfer pricing studies to comply with the arm's-length principle.

Non-compliance with the TP requirements may result in additional tax levied on the part of the employer as well as such transactions being subject to withholding tax in some cases.

Moreover, the direct cross-border hiring of employees may trigger a taxable presence (permanent establishment) in the country of employment.

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Finally, companies should adapt so as to manage these kind of transactions by understanding the employment and tax law of different companies and income tax treaties between countries to avoid any unintended tax consequences.

Senegal



Senegal raises its personal income tax shield to 43%

"Ensuring greater social justice in the distribution of the tax burden" is one of the objectives pursued by the Amending Finance Law (LFR) for the year 2022. Thus, without departing from the tradition of finance laws, it has made several changes to the General Tax Code (CGI).

The scope of the changes has not spared the provisions applicable to personal income tax (IRPP). Indeed, until then placed in what could be described as a stable regime, the IRPP has undergone major changes with the advent of the finance law.

Although these are partly favourable to the taxpayer in some regards, including the revision of the cap on the exemption of health insurance premiums, it must be recognised that, for the most part, the changes introduced have resulted in an upward revision of the IRPP, including the increase in the tax shield.

Indeed, since the advent of Law No. 2012-31 of 31 December 2012 on the General Tax Code, the progressive scale of income tax had remained constant and capped at 40%.

But with the 2022 LFR, this scale has been revised upwards, by adding a new tax bracket at a rate of 43% for annual net taxable income above XOF 50 million, or EUR 76,225.

At the same time, the tax shield, which is a bulwark to avoid a confiscatory level of levies and to combat the risk of expatriation of wealthy taxpayers, is revised upwards and increased to 43%.

Therefore, beyond the increase in the tax burden that this major reform has brought about, the main question that it has not failed to raise is the effective date of application of this new bracket of the progressive scale. Legally, the law n°2021-21 of 2 March 2021, fixing the rules of applicability of the laws and administrative acts, clearly stipulates that these texts come into force one clear day after their publication in the official journal (OJ). On this basis, it can be noted that the 2022 LFR published in the OJ on 27 May 2022 came into force on 28 May 2022.

Therefore, for the tax on salaries and wages, subject to an annual declaration regime, the application of the new tax bracket as of May 2022 raises difficulties if we know that the salaries paid by the employers in 2022 are to be declared at the latest on 31 January 2023. Thus, for the taxation of wages and salaries, the application of the new 43% bracket as of the above-mentioned date creates a distortion and an inconsistency with respect to the method of determination of this tax, which is essentially annual, and which is carried out by means of monthly withholding.

Maintaining this date would force employers to reconsider the monthly deductions made throughout the year 2022 and to calculate the annual tax actually due by applying the two shields (the old and the new) proportionally to the two periods over which they would legally apply based on the rules of applicability of the laws mentioned above. For this reason, taxpayers were legitimately expecting a postponement of its application until January 2023.

Unfortunately, the Tax Authority has decided otherwise by choosing to increase its tax revenues, by deciding for the "retroactivity" of the new 43% bracket for all personal income, including salaries earned in 2022 from 1 January 2022. This is likely to penalise the beneficiaries of "large salaries or incomes" and to force companies to regularise the withholding of taxes on salaries of more than XOF 50 million (EUR 76,225) per year relating to the 2022 fiscal year.

Would the Senegalese Tax Authority have sacrificed the rules for the application of the law over time, even if it is a tax law, for the benefit of increasing tax revenues from the beneficiaries of "big salaries or incomes"?

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Recently, on January 31, 2023, the Senegalese Minister of Finance stated that personal income is calculated on an annual basis, and that this new tax shield will therefore be applied to income received in 2022.

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