

Working Worldwide Newsletter April 2005



In our second Working Worldwide issue of 2005, we cover even more news from through out the world. As usual we invite you to send in feedback and comment on the articles covered. and look forward to keeping you up to date with changes to Taxtion, Immigration and Employment legislation around the globe in 2005

I hope you find the newsletter informative and useful, if you wish to discuss any of the topics please send me an email or call me on **+44(0)20 7484 3000**.

As always we welcome your feedback on any of the issues raised, or the Newsletter itself to **webfeedbackUK@glotel.com**.

Regards,

Lara Pritchard
Tax & Compliance Director

The information contained in this newsletter is strictly confidential and may only be read, copied and used by the intended recipient. This newsletter is intended as a general guide only, and the application of its contents to specific situations will depend on the particular scenario(s) involved. Consequently, we recommend that readers seek appropriate professional advice regarding their particular circumstances.



Austria

Further Immigration Restrictions Proposed

The current Government of the conservative People's Party and the populist Freedom Party have plans to implement further restrictions to immigration from outside the European Economic Area (EEA). The overall intake of immigrant workers from outside the EEA will be near to zero in 2005. This is a reaction from the government to the increasing unemployment levels among foreign nationals in Austria following a policy of restricted immigration for less-skilled labour and a quota based framework to attract skilled labour from outside the EEA. A reduced quota has been introduced for 'key-workers', defined as 'third-country nationals' earning at least 2,100 Euro before tax per month.

Bulgaria

2005 Tax Changes

As of 1 January 2005, a number of changes in the Bulgarian tax legislation apply, unless otherwise stated. The changes affect corporate and personal taxation, withholding tax, VAT, social security contributions, inheritance, gift and tonnage tax.

Corporate income tax is now levied at a general rate of 15% instead of the previous 19.5% - the same rate as applicable to monthly prepayments. Non-resident service providers without a fixed establishment in Bulgaria rendering services under the reverse charge mechanism are no longer required to register for VAT.

Personal taxation has been affected by having both the bottom and top progressive rates reduced respectively to 10% and 24%, from 14% and 29% in 2004.

Social security contributions for both employers and employees are based on gross remuneration. Each of them is, separately, subject to an annual ceiling of BGN 15,600 (approx. Euro 7,800). The total rate of the employer's compulsory contributions is 29.55% for individuals under employment contract and 30.05% for those under a management contract. The total rate paid by employees and managers is 12.45%.

Czech Republic

Changes to corporate and personal taxation, withholding tax

A number of amendments have been incorporated into the Czech tax legislation, mainly affecting corporate and personal taxation and withholding tax.

The general rate of corporate income tax has been reduced to 26% and will further decrease to 24% in 2006.

Most of the changes in personal taxation are beneficial to taxpayers and they include extra allowances to non-resident individuals if 90% of his/her total income is derived from Czech sources in addition to personal allowances.

The social security contributions rate for self-employed increased to 45% of net income in 2005 and will go up to 50% in 2006. The maximum base at CZK 486,000 (approx. Euro 16,000) per year has not changed.

Although The EC Interest and Royalties Directive preclude any taxation on royalty payments to associated EU companies, the Czech Republic has been granted a transitional regime. Based on the new regime, the country enjoys an exemption from the application of the Directive with respect to royalties until the date of application of the EC Savings Directive, which has now been delayed to 1 July 2005. The Czech Republic may levy withholding tax on royalties at 10% for the next 6 years.



France

France has abolished the compulsory 35-hour week

On 23 March 2005, in a final vote, the National Assembly approved a Government-backed bill (Law 350-135) permitting employers to negotiate deals with staff to increase working time to 220 hours a year in return for better pay.

The law effectively clears the way for the gradual erosion of the 35-hour week, a flagship policy of the former Socialist-led government that gave many people more time off but added to concerns about France's declining global competitiveness.

The new law endorses an increase in extra hours that employees can work to 220 every year from the previous limit of 180. It allows them to go further with "optional overtime" in return for extra pay and lets them sell part of their holiday entitlement back to their employers or put it toward early retirement, training or sabbatical leave. Trade unions doubt that the extra time will be quite as optional as promised, especially for people working in small companies.

In order to apply the changes, however, companies will have to break away from their broad sector-wide agreements with unions, unchanged by the new law, and negotiate deals with their own staff representatives. This means the effects of the reform may not be seen for some time.

According to a 2003 OECD survey of 25 industrialised countries, only Norwegian and Dutch employees worked less time each year than the French, who worked an average 1,431 hours. German workers put in 1,446 hours, British 1,673 hours, Americans 1,792 hours and Koreans 2,390 hours.

Italy

A new scheme known as 'staff-leasing' was introduced in Italy in September 2004 to replace the existing temporary agency work regulations

The legislative decree 276/03, effective from 2 August 2004 but modified in September 2004, provides for two types of staff-leasing: open-ended and fixed term. Open-ended staff leasing is a significant step as it allows labour to be leased on a permanent basis, eliminating the short-term nature of temporary agency work. Fixed-term has a similar arrangement to temporary agency work, now abolished by the reforms and replaced by new contractual forms.

Open-ended staff leasing arrangements are permitted in certain industries like information technology consultancy and assistance services; call-centre management; marketing and market research, commercial organisation, porter and cleaning services; security, custody, catering and transport services; and management of libraries and museums. Any other cases will have to be determined by collective bargaining.

Fixed-term staff leasing is allowed for technical reasons or reasons to do with production and organisation, and to substitute absent staff. Company-level collective agreements will establish the specific circumstances in which labour can be leased, the type of lease and the number of leased workers a company can have on its books.

The main feature of staff leasing is that it enables the user company to direct and control workers although it is not party to the employment relationship. There are no quantitative limitations on the use of such contracts, so that entire company departments could be staffed by workers on open-ended leasing contracts. The contractual relationship is only between the agency and the company, while the leasing agency may hire the workers to be supplied on all existing types of work contract, including those introduced by the reform law, such as part-time, job-on-call, job-sharing and 'work-entry' contracts.



Slovak Republic

Legalisation of Temporary Agency Work

Temporary agency work has been permitted in Slovakia since February 2004 and is mainly intended to help unemployed people find a job more quickly. It is now regulated by several items of labour legislation including guarantees on workers' pay and conditions.

Temporary work agencies must now obtain a license from the Centre for Labour Social Affairs and Family which is valid for a maximum of five years, renewable. The license specifies the agency's territorial and occupational scope. If the agency breaches the regulations or behaves unfairly they could lose their license. Although detailed statistics are not yet available, just under 50 agencies had obtained a license by late 2004.

The Act establishes that unemployed people can use temporary work agencies' services free of charge. The use of temporary agency work is not restricted in any sector or area of the labour market. In addition, a variety of legislation ensures the same employment conditions for agency workers as for all other employees.

Agency workers sign an employment contract with the agency, which has to guarantee temporary employment at a user company. All mandatory rights have to be observed in accordance with the labour legislation. The agency worker is posted to a user company based on an 'allocation' agreement between the agency and the end user who pays the former a fee.

The contract can be terminated before expiry date upon mutual agreement and they should have general information on the user company, duration of employment, job specification, location, wage conditions and conditions for early termination. The duration of contracts and number of extensions is not explicitly regulated by the law.

Spain

Draft bill intended to regulate new expatriate regime should be passed in time for the 2004 tax return filing due date of 30 June 2005

In January 2004 a new expatriate regime was introduced into Spanish law. However, no formal application procedures have been established until now. The new expatriate regime entitles employees assigned to Spain to elect to be taxed according to the provisions of the non-resident Income

Tax Law rules instead of the tax rules for residents.

Once certain conditions are met and election completed, the individual will be subject to a flat tax rate of 25% (on employment income) instead of the normal resident progressive tax rates (being 45% the highest rate). Personal or family exemptions do not apply under the Non Resident tax rules. The election applies to the first year of residence and the following five consecutive years.

A special application form will be published to elect for this regime. The form should be filed with the Spanish authorities within 6 months from the commencement of the expatriate's Spanish activities, together with the following:

- Declaration from the employer confirming the taxpayer is an employee;
- A copy of the Spanish Social Security registration documents or Certificate of Coverage;
- A copy of the international assignment letter or employment contract;

Finally, transitional rules will be implemented for individuals who acquired the right to this election in 2004 or beginning of 2005 but could not make the necessary election due to the lack formal procedures. The deadline for election will be 2 months from the date the bill is passed.



Australia

The Australian Government has announced a change in its system for taxing small business aimed at reducing the compliance burden.

On Friday 3rd September 2004 the Australian government brought in a new system of self-assessment for small businesses. Previously the Government required contractors who received more than 80% of their income from one source to apply to the Commissioner of Taxation for a determination of their tax status. This was necessary for the taxpayer to remain outside the PAYG system and still be able to claim deductions not available to employees. As of the 3rd September it is now possible for contractors to assess themselves as to whether they fall into the PAYG system or not. The same strict tests for independence remain in place to determine whether or not the contractor would still be eligible for the deductions and avoid PAYG.

The strict tests a contractor has to pass include:

- the contractor controls the services offered and the risk;
- the contractor has multiple concurrent clients;
- the contractor has substantial investments in equipment;

The business entity then has to pass one of the following tests:

- A personal service business must have multiple and unrelated clients. This negates inter company invoicing and the use of investment income;
- A personal service business must employ people to deliver the service other than the principals;
- A personal Business is expected to have its own premises, not a home office or a serviced office;

Whilst the contractor will no longer have to fill out forms to apply for a Personal Service Business Determination, they will still be required to consult their accountant to see if they pass the tests and it will add a degree of uncertainty to contractors tax situations.

The Australian Taxation office announced it would be clamping down on employers who flouted basic employer obligations.

The Australian Taxation Office cited increased auditing activities on the following employers who:

- do not withhold PAYG from payments to employees and workers;
- withhold PAYG but do not notify or pay the withheld amounts;
- do not make mandatory superannuation contributions and/or provide superannuation reports to employees;
- do not report eligible termination payments for reasonable benefit limit purposes;
- do not report and pay fringe benefits tax on benefits provided to employees;
- do not declare employee contributions towards taxable benefits as taxable income and do not return GST credits; or
- have not contributed the correct amount of superannuation to a superannuation fund on their employees' behalf.

Any employers found not meeting these requirements are likely to face fines and further penalties including not being able to sponsor for visas and work permits.



Sweden

Swedish tax authorities have revised the principles for determining tax residence

Tax authorities in Sweden announced revised principles to be applied in order to determine whether an individual is resident in Sweden for tax purposes. This will primarily affect individuals who habitually spend short periods in Sweden but don't have their real dwelling or home in Sweden.

Residency and thus individual income tax liability on world-wide income is recognised if the individual has his real dwelling and home in Sweden or if the individual habitually spends time in Sweden on a continuous basis. Based on this, a six-month stay in any 12 month period indicates tax residence. Previously, in order to break a consecutive stay, an individual had to spend at least two-months outside of Sweden. According to the revised principles though, that's not applicable anymore as the interruption will only be considered as temporary if it's shorter or equal to the period spent in Sweden either prior or subsequent to the

interruption. Thus, if an individual spends 2 months in Sweden, two months abroad and then two months in Sweden again, instead of having just two periods of two months considered, now this will be seen by the authorities as a consecutive stay of six months.

Given the above, individuals who were considered as non-residents and thus paid taxes on lower rates (25% for non-resident professionals) are now more likely to be exposed to the much higher resident rates of up to 58%.

These revised terms will form the basis for the tax authority's future decisions on residence issues and although they do not have legislative effect they represent their view and interpretation on the applicable tax legislation and court practice.



United Kingdom

Immigration

The Government has announced a Five-Year Strategy for immigration, as well as changes to the Working Holiday Visa program and the Leave to Remain scheme. The following changes to the Working Holidaymaker Scheme (WHS) have been introduced with immediate effect:

- A working holidaymaker may no longer work for the whole period of their visa, work must be incidental to a holiday and cannot exceed a total of 12 months during the 2 years visa term.
- An applicant must come from a Commonwealth Country (except Lesotho) or a British Dependent Territory. The UK Government will now administer this on a bilateral basis and may apply restrictions to some countries if it believes that nationals from a particular country are not adhering to the regulations.
- An applicant may change from the WHS to the Highly Skilled Migrant program or to a work permit if they meet the required criteria without leaving the UK.

In February the Government announced a five year plan to manage UK immigration, which, if elected, will be in place by 2007. The scheme will be split into four tiers:

Tier 1

Highly skilled workers such as Doctors, Engineers, IT specialists will be able to enter the UK without a job offer, similar to the way in which the Highly Skilled Migrant Program works at present. This will replace the Highly Skilled Migrant Program.

Tier 2

Skilled workers educated up to the age of 18, will need a job offer before entering the UK and the future employer will need to be provide evidence that no EU national could be found for this position.

Tier 3

Low skilled workers will be allocated a small tightly managed quota for specific areas for specific time periods.

Tier 4

Applies to students and specialists where there are no issues of competition with the labour force.

Changes to be introduced by 2007/8 will include:

- Only giving immigrants from tier 1 and 2 the right to remain in the UK
- Remove the rights of immigrants to bring

their families with them, known as 'chain migration' Introduction of finger printing of all visa applicants by 2008

Exemption from Employers Liability Insurance

From 28 February 2005 limited companies that employ only the owner, and the owner owns 50% or more of the issued share capital, are exempt from holding Employers Liability Compulsory Insurance (ELCI). If both the Director and Secretary are employees then ECLI will still be required. If the one employee who owns more than 50% of the company is injured they would have to prove negligence against themselves, it was decided that this was not likely to succeed.

Inland Revenue Guidance on Dual Contracts

The Inland Revenue is currently reviewing their approach to Dual Contracts and will soon be issuing new guidelines. A dual contract is a common tax planning strategy for foreign domiciled employees who work partly in the UK and partly outside of the UK. The employee will have 2 employment contracts, one in the UK with their UK employer and one with the foreign employer outside of the UK. The aim is to make any payments for work outside the UK exempt from any UK tax liability.

The Revenue's review is likely to lead to a list of arrangements that the Revenue sees as unacceptable and likely to lead to challenges, these will be published on the Inland Revenue website shortly.
<http://www.hmrc.gov.uk/>

If the new regulations make dual contracts invalid the Revenue will be entitled to seek both income tax from the employee and PAYE and national insurance contributions from the employer. Penalties may also be due on top of this.

People are advised to avoid dual contracts until this guidance has been published. If dual contracts are an imperative a termination clause allowing immediate termination and re-negotiation has been strongly advised.

Data Protection – Wins for Businesses

Two recent cases brought under the Data Protection Act 1998 (DPA) have been won by businesses. These cases are likely to be advantageous to businesses who have often interpreted the DPA in an overly cautious manner.



United Kingdom (continued)

Smith v Lloyds TSB Bank Plc

Mr. Smith, when a customer of Lloyds, believed he had an agreement from Lloyds to make a long-term loan to his business. Lloyds denied this existed. Mr Smith believed Lloyds had some documents, which would prove the existence of this agreement, so under the DPA he requested Lloyds to disclose all documentation relating to him. At the time of the request Lloyds had no electronic records relating to Mr Smith, but there were some unstructured bundles kept in boxes, which had previously been held electronically.

Mr Smith argued that as it was once held electronically it was partly held on automatic equipment and as scanning equipment exists it could be easily stored electronically once again. The judge however rejected both of these claims and made the following points:

- The question of whether information is data must be determined by the nature of the information as at the time of the request.
- Even if the documents had consisted of 'Data' within the meaning of the DPA it was not personal to Mr Jones as it relates to a loan to his company.
- Not all information retrieved from a search against a persons name is personal data within the DPA. A mere mention of an individual in a document held by a data controller does not mean that the document contains personal data in relation to that individual.
- To ascertain whether data falls within the DPA it is relevant to consider whether the information is biographical in a significant sense, whether it has the individual as its focus and that personal data is information that affects the privacy of the individual, either in a personal, or business capacity.

Durant vs Financial Service Authority

This case began as a result of a failed employment claim by Mr Durrant against Barclays. Following this Mr Durrant made a section 7 request to both Barclays and the Financial Service Authority (FSA) The FSA refused to release certain documents including some relating to the failed employment case. The Court of Appeal found against Mr Durrant viewing it as a misguided attempt to use the machinery of the DPA.

The ruling has resulted in some amended guidelines to section 7 of the DPA. Data only falls within the scope of the DPA where the information is biographical in a significant sense, where it has the individual as its focus and that the personal data

is information that affects the privacy of the individual, either in a professional, or business capacity

Examples of "Personal Data" are as follows:

- information about the medical history of an individual
- an individual's salary
- information concerning an individual's tax liabilities
- information comprising an individual's bank statements
- information about an individual's spending preferences

The following would not be considered "Personal Data:"

- reference to a person's name where the name is not associated with any other personal information
- incidental mention in the minutes of a business meeting of an individual's attendance at that meeting in an official capacity; or
- where an individual name appears on a document or an e-mail indicating only that it has been sent or copied to that particular individual with no other information about that individual contained in it.

The recent cases and the new guidance from the information commissioners means employers and businesses can be more relaxed when receiving section 7 requests under the DPA.

Agency Workers: Are there implied contracts of employment?

The first co-employment claim since *Dacas vs Brook Street* was decided in the Court of Appeal has been heard by the Employment Appeal Tribunal. In the case of *Cable and Wireless plc v Muscat*, Mr Muscat was originally hired as an employee of EI Ltd and then subsequently contracted via a service company. EI Ltd was taken over by Cable & Wireless (C&W) in 2002 and Mr Muscat's employment was transferred under TUPE to C&W.

At C&W's request Mr Muscat's service company entered into an arrangement with an Employment Business in August 2002. On December 2002 Mr Muscat's contract with the employment business was terminated on C&W's request. Mr Muscat brought a claim of unfair dismissal against C&W. The tribunal found that an implied contract did exist and the fact that there was a quadrangular series of contracts made no difference. In its decision the employment tribunal quoted *Dacas vs Brook Street* which stated tribunals must consider



United Kingdom (continued)

circumstances outside of the contractual terms.

C&W appealed to the Employment Appeal Tribunal (EAT) stating that it believed Dacas was wrongly decided. The EAT dismissed this appeal stating it would be a 'brave' EAT that decided not to follow Dacas purely because it believed the judgement to be wrong, the judge stated that he believed tribunals should continue following the guidance of Dacas when determining employment status.

Application of TUPE

Two recent cases went to the Employment Appeal Tribunal (EAT) regarding the Transfer Undertakings (Protection of Employment) Regulations 1981 (TUPE). The first (Hope vs PGS Engineering Ltd) looked at where the liability lies where an employee objects to the TUPE transfer. The second (Numast v P&O Scottish Ferries) looked at whether the TUPE regulations cover workers outside of the European Acquired Rights Directive (ARD).

Hope vs PGS Engineering Ltd (PGS)

Mr Hope was employed by PGS who were to merge with Garfield Manufacturing Services Ltd (GMS) and Shifnal Engineering Group Ltd (SEG). Mr Hope was originally told that he would be entitled to a redundancy payment if he did not transfer to GMS. Later he was sent a contract with GMS for his signature, effective from June. He was told that he would not be eligible for redundancy if he did not sign the contract. Mr Hope replied that he would not sign this contract and requested his redundancy entitlement.

The EAT held that Mr Hope had in fact 'objected' to the TUPE transfer. His objection amounted to a constructive dismissal and there was no need for him to resign. The EAT went on to say that as Mr Hope was given his notice as a result of his objection and refused to sign a new contract. This dismissal was unfair as it related to the TUPE transfer under regulation 8(1).

Since he objected to the transfer of his employment the liabilities did not transfer to GMS and remained with PGS who were liable to the unfair dismissal claim.

NUMAST v P&O Scottish Ferries.

In this case ferry services from Orkney to Shetland were taken over by Northlink from P&O. Northlink did not use the same ships or maintenance staff but took on most of the seafarers. 268 claims were brought in total in regards to this transfer made against P&O, Northlink and others by the National Union

of Maritime, Aviation and Shipping Transfer Officers (NUMAST) and individual employees.

The significance of this case was how TUPE was interpreted in relation to the European Acquired Rights Directive (ARD). The ARD is the European legislation that TUPE is based upon. It was argued because this case fell outside the scope of the ARD, which does not apply to seagoing vessels, that TUPE also could not apply. That court ruled that TUPE was ultra vires, that means the scope of TUPE can be wider than the ARD. It was interpreted that European Law was merely the minimum protection workers should receive and member states could extend this if they felt it was necessary. All clients when operating in the EU will need to be aware of local legislation and not rely on European wide legislation to save them from costly lawsuits.



European Union

USA assures most Europeans that they will not need to apply for visitor visas

It had been widely reported that all EU nationals and members of the visa waiver program (VWP) will require visas from 26 October 2005 they do not have a passport containing a biometric identifier.

In order to improve U.S. border security, the U.S Congress ordered improved passport standards as part of the enhanced border security and visa entry reform act of 2002. The plan was originally to apply to applicants on the visa waiver scheme from 26th October 2004. However, the Administration successfully lobbied Congress to extend this for a year.

As it appears that many VWP nations will not be able to issue biometric passports by the 26th October 2005 it is feared that applicants would require visitor visas. The US have assured EU nationals that as long as passports issued prior to the 26 October 2005 are machine readable visitor visas would still not be required.

The EU Services Directive

The European Commission has agreed to re-draft the EU Services Directive planned to create a single market for services after objections from France and Germany. The directive, which was meant to be implemented in the latter half of 2005, proposes that providers of services should be subject to control from their country of origin rather than the host state. This was thought to be a big opportunity for the UK IT industry who could operate in the EU under UK law rather than the often burdensome legislation of some EU countries.

The EU Services Directive specifically states that the IT industry requires harmonisation, this hasn't been objected to. What has been objected to is the perceived threat to public services and health care from the cheaper Eastern European economies and it has been lobbied for these to be removed from coverage of the directive.

It is still unclear whether tax would be an area excluded by the Directive, for example, would a UK company working in Germany under UK law be treated under UK tax? If so this would be a real benefit for services providers from low tax economies.



The Americas

Antigua and Barbuda

Reintroduction of individual income tax

The Antiguan House of Representatives passed legislation on 24 March 2005 reintroducing income tax on resident individuals which had (with a few exceptions) been abolished as from the 1978. If passed by the Senate, the tax, which would apply on income over ECD 3,000 (approx. USD 1,100) at rates of between 10% and 25% from 16 April 2005.

Chile

Treaty between Chile and UK enters into force

The first income tax treaty and exchange of notes between Chile and the United Kingdom, signed on 12 July 2003, entered into force on 21 December 2004. In Chile, the treaty generally applies from 1 January 2005. In the United Kingdom, the treaty will generally apply in respect of corporation tax for any financial year beginning on or after 1 April 2005 and in respect of income tax and capital gains tax for any year of assessment beginning on or after 6 April 2005.

Although, the treaty may appear to provide beneficial treatment for services under the Business Profits (0% withholding) or Royalties (10% withholding versus 30% under domestic rules) articles, the effects may be short lived. The definition of a permanent establishment contains the following clauses, which are likely to create a permanent establishment for many service companies operating in Chile for more than six months:

- (a) building site or construction or installation project and supervisory activities in connection therewith, but only if such building site, construction or installation project or supervisory activities last more than six months; and
- (b) the performance of professional services and of other activities of an independent character in a Contracting State, if such activities are carried on within that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve-month period

Mexico

Reforms impose withholding tax on previously exempt services

The tax reform which came into effect from 1 January 2005 effectively imposes a 25% withholding tax rate on most services provided by non-residents to Mexican entities. Historically, service companies have

been exempt from withholding tax on the premise that their services were included in the definition of Business Profits which, under double tax agreements, is exempt from withholding tax where the entity does not have a Permanent Establishment (PE) in Mexico. The reform has changed in definition of business profits to exclude income for foreign residents including technical assistance fees and fees on construction contracts. Therefore, the technical assistance fees will fall under the 'Other Income' article of most double tax treaties, which effectively stipulates that the fees are taxable in Mexico without any reduced withholding rate.

This change in definition contradicts the normal interpretation of the Business Profits article in double tax treaties by the OECD countries. In addition, it is thought by some, that this tax is probably unconstitutional. Anyone who wants to take this position should file a separate court action within 15 days of payment to have any chance of getting a refund.

Peru

Withholding Tax on Technical Assistance Fees

From 1 January 2005 the withholding tax rate applicable to Technical Assistance Fees for services rendered in Peru by non-resident entities was reduced to 15% (previously 30%). However, in order to qualify for this the Peruvian company must submit the following to the tax authorities:

- a) A sworn statement signed by the non-resident entity attesting that it will provide the technical assistance and record the related income, and
- b) A report from an international audit firm certifying that the technical assistance has actually been provided.

At this early stage it is difficult to say how easy it is to obtain such a report and what international audit firms will require in order to certify the performance of these services.



Asia Pacific

Australia

GST amendment could apply to Software Licensing

From 10 February 2005, Australian GST Law was amended to apply GST to transactions which grant "rights or options to acquire underlying taxable supplies which are made in Australia". The amendment is intended to tax tour operators who sell Australian tours to foreign tourists but has a much broader application and could, for instance, catch software licensing agreements. An enterprise which is resident outside of Australia will be required to register for GST in Australia and remit 10% GST on that portion of a right or option which is exercisable over taxable supplies in Australia.

China

Expatriate Tax Audit

The IIT amnesty program directed towards expatriate employees who had not paid tax expired on 31st December 2004.

The Tax Office has now commenced its audit program and has announced that any taxpayer who filed returns under the amnesty will not be targeted. The names of any person/organisation caught under this audit will be published in the media including:

- the names of offending individuals, institutions or firms
 - their related information such as tax-file numbers, identification numbers and outstanding taxes
- Consequently, individuals and companies need to be sure their affairs are in order to avoid the potential individual embarrassment and PR damage that can occur now that the amnesty is over.

India

The Indian budget was unveiled on 28 February 2005

Effects on Companies

Service tax remains at the same level but has been extended to 9 more services including broadening the definition of Manpower services to include the supply of manpower, temporary or otherwise. This would mean that all manpower services are subject to the 10% service tax plus CESS of 2%.

Withholding tax on the provision of technical services will be reduced to 10% (previously 20%) on fees paid to non-residents under agreements concluded after 1 June 2005.

The corporate income tax rate was reduced from 35% to 30% but the surcharge of 2.5% was increased to 10% resulting in minimal savings to companies. In addition, a Fringe Benefits Tax payable by employers has been imposed at the rate of 30% on payment of any reimbursements made to an employee. India industry is currently challenging this new regulation.

Effects on Individuals

Although the initial exemption has been doubled, the standard deduction was removed effectively reducing the overall basis for taxation by INR 30,000 (USD 690) per year. The income trigger for applying the surcharge was increased by INR 150,000 (USD 3,500) per year.

VAT Introduced on goods

From 1 April 2005, VAT was introduced in 21 of India's 29 states replacing the sales tax on goods. This is applicable to 550 items at either 4% (basic necessities such as medicine) or 12.5%

On a lighter note

Authorities in the city of Rajahmundry in Andhra Pradesh state are sending drummers around to create a noise outside homes until tax evaders cough up. Officials say they recouped 200,000 rupees (\$4,600) on the first day.

Taiwan

VAT Audits

The Ministry of Finance and National Tax Administration (NTA) announced that they will commence VAT audits from April 1st 2005. They will be targeting

- entities which have a high ratio of input to output tax
- entities with a high percentage of VAT exempt sales
- entities who have large VAT carry-overs

They will also audit VAT refund applications.

Any entity who is found to have violated the VAT laws will be subject to fines and penalties of between 1 - 10 times the VAT underpaid



Asia Pacific (continued)

News in Brief

The Philippines increase in VAT from 10% to 12% was approved by the majority of the House of Representatives on the 27 January 2005. This should be signed into law by the 30th April deadline.

With effect from 1 April 2005, New Zealand taxpayers will only be able to recover GST incurred in the previous two years. The only exception to this rule will be where there was a "simple oversight" to reclaim or it was not possible to obtain a GST invoice. Prior to 1 April 2005 taxpayers could recover GST incurred any time since GST was introduced in 1986.



Africa

Nigeria Deemed Income Method for Expatriates Working in Nigeria

Where the Nigerian Internal Revenue Service believes that the tax return filed for an expatriate is incorrect they may attribute a "Best of Judgement" income to the individual. The income that the individual will be deemed to have earned in Nigeria is included in the official published Deemed Income Guidelines. The level of income depends on the individual's position, the type of company they are working for and nationality. The table below summarises the applicable annual income levels for 2005 in USD equivalents:

In addition to the right of the Nigerian Internal Revenue Service to impose this regime, individual companies can elect to have their expatriates treated under the deemed income rules.

Should a company wish to use actual income for its expatriates they will need to be able to provide a notarised copy of the employment contract and copies of local and foreign pay slips.

Position	Minimum Income	Maximum Income
Executives	94,875	455,400
Senior Managers	60,720	303,600
Managers	54,648	121,440
Supervisors	41,745	94,875
Technicians/Others	34,155	60,720

Glotel.