

Working Worldwide Newsletter April 2006



Welcome to Working WorldWide, Glotel's round up of the most important changes in taxation, immigration and employment legislation around the globe.

Firstly, a big thank you to the remarkable response we received following our New Year edition which featured Asia Pac. The electronic post-bag was bulging with requests from new subscribers and comments on the quality of our coverage – Thank you.

This time out you will find our customary mix of stories with an interesting theme emerging both sides of the Atlantic. In the USA the Immigration Reform Bill is proving much more than just a 'water cooler' topic of conversation, whilst in France there has been a significant popular expression of disquiet over draft immigration proposals. In the EU as a whole the subject of labour mobility has resurfaced – 2 years on from the original transition arrangements adopted when the Accession Countries joined in 2004

Australia sees a potential shake-up in taxation following a bench-marking exercise designed to make comparisons with overall taxation levels in comparable developed economies - results are due to be published later this month and destined for our next issue. South Africa and Japan see changes to tax regimes and China has clarified the definition of a Permanent Establishment which had been the cause of some confusion.

As usual we hope to hear from you with comments, ideas and feedback. In the meantime we hope you enjoy this issue.

As usual we would be delighted to receive feedback about this publication, particularly from our first time readers in Asia Pac. Please send any comments you may have to me at the following address lpritchard@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.



European Union

By 1 May 2006 all EU countries must decide whether to continue with restrictions on the free movement of workers within the EU.

The issue of labour mobility is again at the forefront of EU policy discussions, as the 2 year period of 'transitional arrangements' comes to an end at the beginning of May. When the EU expanded in May 2004 each country had the option of protecting its borders against new members of the EU. The UK, Ireland and Sweden were the only countries (of the existing EU-15) to open up their borders at this time. The remaining 12 members kept their borders closed and restrictions in place.

By May 2006 these 12 countries, plus the new EU member states that imposed reciprocal mobility restrictions, must decide whether to lift or reapply these limits, for a further 3 years. In 2009 any country retaining restrictions will be allowed to keep them, only if they can prove that their economy needs special protection. If proven they will then be able to maintain restrictions up until 2011.

There have been a number of studies on EU immigration levels since May 2004, which have shown that the mobility flows have not been as high as predicted. Only in Ireland and Austria are the proportions of workers from the new EU countries higher than 1% of the total workforce. Austria who shares borders with 4 accession states has seen one of the highest levels of inward migration, despite setting some of the toughest restrictions, whilst Sweden has seen no more inward migration than the other Nordic states.

Most reports concluded that the migration flows have been determined by supply and demand factors and that immigrants have filled vital job shortages, especially in the UK and Ireland.

At the time of writing Finland, Portugal and Spain are lifting restrictions altogether. France is only going to relax restrictions for sectors where there are labour shortages, whilst Denmark, Greece, Italy and The Netherlands are considering increasing their immigration quotas, but keeping restrictions in place. Germany, Austria and Belgium will keep existing restrictions in place.

The accession countries are expected to relax their reciprocal restrictions but this has not yet been confirmed.



Finland

Changes to taxation of non-residents' salaries and pensions have been announced by the Finnish Parliament.

From 1 April 2006 a non-resident has the option to choose whether his/her salary from Finland will be subject to a final 35% withholding tax or to progressive tax rates. The conditions for progressive taxation are that the non-resident resides within the EEA and that at least 75% of his worldwide income is derived from Finland. If the non-resident is entitled to progressive taxation they will benefit from all deductions that Finnish residents would be entitled to. On top of progressive tax the non resident would also be liable for municipal tax according to the average municipal income tax percentage.

The Progressive tax system in Finland starts at a rate of 10.5% and goes up to a top rate of tax of 33.5% payable on all salary earned above €56,900.

If the non-resident does not qualify for progressive rates of tax, they will pay 35% withholding tax with a standard deduction of €510 per month or €17 per day from April 2006.



France

France announces new draft immigration laws.

Interior Minister Nicolas Sarkozy has put forward draft immigration legislation, soon to be debated by parliament. It sets out new requirements for foreign workers, students and those who want to join their families, requiring that immigrants must master the French language and to prove that they have fixed regular salaries. Under the bill anyone deemed to be/ have been an illegal immigrant would be barred from acquiring a 10 year residence permit.

The legislation has faced fierce criticism from left wing and human rights groups that have also been angered by recent legislation allowing security cameras on public transport and in places of worship as well as requiring schools to teach positive aspects of the French colonial past especially in North Africa.

Changes to legal obligations for employers sending expatriates to work in France

The French Government is to publish a decree introducing new compliance measures for expatriate employees going to France. The decree will be in respect to the

minimum wage, working time and exercise of the right to strike. The new rules are expected to be in force by the end of 2006.

Application of the rules will cover employees of companies based outside France, who normally perform duties outside France, and who then work for limited periods on French territory under the supervision of the local employer. In such cases employers will have to declare all seconded employees to the authorities. From this declaration the employee will receive certain provisions of French Labour Law including minimum wage, working time, increased pay for overtime, paid vacation, public holidays, maternity and paternity leave, occupational health and safety, individual and collective liberties in work relationships and the right to strike.

Previously only employers that were posting workers for 'provision of services' to French entities in France had to comply with these regulations.



Germany

A European Court judgement in Luxembourg has changed rules regarding sending non-EU employees to Germany.

Until this judgement, in order to send a non-EU employee to Germany required the employer to apply for a Vander-Elst-Visum to Germany. One of the conditions of the Vander-Elst-Visum was that the employee had been employed for at least a year.

The recent judgement declared the year-long condition unlawful. Now to collect a Vander-Elst-Visum the employer has to provide a declaration that the residence permit, the work permit and social security payments for the respective employee are proper and legal in the country where the employee is habitually employed. The employer will be required to give this declaration before the employee starts work in Germany.



Ireland

The Irish Finance Bill brought an end to the remittance basis of assessment for income tax – up-date to our last edition...

The Irish Finance Bill published on 2 February 2006 ended the remittance basis for income tax for employment income for the following categories of individuals:

- *Foreign domiciled individuals employed in their home country who have been assigned to Ireland;*
- *Irish citizens who have returned to Ireland after being tax resident abroad for 3 or more consecutive years.*

The remittance basis enabled many expatriates and returning Irish nationals to limit their Irish taxable income to the income brought into Ireland, provided the employer and pay point were located outside Ireland and the UK.

From 1 April 2006 the remittance basis only applies to investment income and duties performed outside Ireland, provided payment is received outside Ireland and the UK.

Where an individual is on an Irish Payroll, income tax must be withheld under the Pay as You Earn (PAYE) system. If an individual, who was previously subject to the remittance basis, remains on a payroll outside Ireland or the UK, PAYE is required to be withheld on the amount of the employment earnings.

Corresponding anti-avoidance legislation states that where an agent of the employer pays the employees, the withholding responsibility falls onto the employer unless the withholding agent has accounted for the PAYE. Where a non resident employer seconds an individual to Ireland and does not operate PAYE, the Irish entity must account for the appropriate PAYE.

All employers and individuals affected by the change will need to ensure that they have the appropriate processes in place to accurately calculate their PAYE liabilities.



The Netherlands

Work permits no longer required for workers who provide cross border services

Cross border services occur where individuals are required to work in the Netherlands on a temporary basis, but it is not their permanent place of work. Effective from 1 December 2005, employers no longer need to apply for work permits for their employees who previously were not entitled to provide cross-border services in the Netherlands. These permits applied to:

1. Employees from Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Slovakia and Slovenia;
2. Employees from outside the EU/EEA and Switzerland who had been issued with valid work and residence permits in the state in which the employer was based.

Previously if these workers did not have a work permit for the Netherlands they were not permitted to carry out any cross border work.

As of 1 December 2005, foreigners who provide temporary cross border services in the Netherlands are no longer required to obtain a work permit as long as the employer is based in the EU/EEA or Switzerland. Instead the employer must notify The Central Organisation for Work and Income before the assignment commences.

This exemption does not apply for employment agencies.

The fine for non-compliance is €4,000 per employee, the fine for late notification to the Central Organisation for Work and Income is reduced to €1,500 if it they are notified within 2 weeks of employees starting work.

Social security registration requirements tightened

The existing social security registration procedures for new employees will be replaced by a 'first-day notification' (Eerstedagsmelding) requirement from 1 July 2006. Employers must report new employment contracts before the effective date of these contracts. This rule is important, because if the tax inspector discovers that first-day notification was omitted for an employee who has already started working, the tax inspector can assume that the employee has been employed for at least six months, unless the employer can prove otherwise.



Poland

Employers list labour law obstacles to business activity

At the beginning of 2006, the Polish Confederation of Private Employers Lewiatan (PKPP) published a document entitled Black List of Obstacles, which catalogues impediments seen as significantly hampering business activity in Poland. This includes 36 different business impediments in the area of labour relationships, many of which stem from the Labour Code. The obstacles identified by PKPP in the labour relations are summarised below.

Working Time

Employers believe the regulations allow little flexibility in working hours, and therefore they propose a relaxation of the current restrictions on working on Sundays and holidays and enabling employers to introduce individual working time accounts for workers. Moreover, PKPP favours the abolition of the notion of the 'working day' and greater freedom for overtime work.

Right to Leave

PKPP criticises the current system which sets 31 March as a strict deadline for employers and employees to decide on using remaining annual leave entitlement from the previous year. It suggests that the parties should be able to agree on using the overdue holiday up until the end of the following calendar year.

Collective Agreements

In the opinion of PKPP, there is a need for legal regulation of situations in which an employer and trade unions are unable to reach agreement with respect to the employer's internal rules after a collective agreement is terminated. From a practical point of view, an employer cannot issue regulations with respect to pay without the consent of trade unions, although it is legally bound to issue such regulations. Employers want to be able to set pay regulations, against the opinion of trade unions if necessary.

Health and Safety Regulations

PKPP states that the implementation of some regulations based on EU Directives on health and safety at work have proved to be difficult and require increased expenditure. As these costs are borne entirely by employers, they believe that certain health and safety requirements should be examined, so as to adjust them better to the needs and the status of specific enterprises.

Other Issues

Other obstacles identified by PKPP as resulting from Labour Code regulations include:

- *excessive employer's obligations regarding employment contracts;*
- *the fact that employment contracts cannot be effectively terminated or revoked if an employee is absent; and*
- *PKPP termed 'irrational' regulations with regard to employee's maternity or parenthood rights.*

Employment of Temporary Agency Workers

The authors of the PKPP report gave particular emphasis to the regulations on the employment of temporary agency workers. They want to revoke the current rule preventing employers that have previously made collective redundancies from using the services of agency workers. They also want to abolish the 12-month limit on the amount of time a temporary agency worker may work in one enterprise during any three-year period. Should the total abolition of this limit prove impossible, the employers have an alternative proposal, which is to maintain the 12-month time limit on agency workers working in one company, but within a shorter reference period of 24 months.



Romania

Changes to social security legislation

A number of changes to Romanian social security legislation took effect from 1 April 2006. Below is a summary of those with the most far reaching effects:-

Social Security Contributions

The employer's social security contributions for 2006 have been decreased as follows:-

- from 22% to 20.5% for standard working conditions;
- from 27% to 25.5% for "particular" working conditions, as defined; and
- from 32% to 30.5% for "special" working conditions, as defined.

Out of the above percentages 0.75% is paid to the National Health Fund, representing the contribution for medical leave. These percentages apply to a base capped at five times the national average gross salary.

The employee's contribution for social security remains at 9.5%.

Contributions to Unemployment Fund

The contributions to the Unemployment Fund are as follows:-

- the employer's contribution has been increased from 3% to 2.5%;
- the employee's contribution remains at 1%; and
- contributions due by insured persons based on an unemployment insurance contract have been reduced from 4% to 3.5%.



United Kingdom

Court of Appeal rules that a Limited Company Contractor can be the employee of the end user.

The judgement in the case of *Muscat vs. Cable & Wireless* was handed down by the Court of Appeal (CA) in March. The CA supported the decision made by the Employment Appeal Tribunal that Mr Muscat was an employee of Cable & Wireless (C&W) under an implied unwritten contract.

Mr Muscat earned £65,000 per annum as an IT executive who operated through a limited company via a recruitment agency. However, the facts of this case were unique. Mr Muscat was originally employed by a company that C&W took over and his employment transferred to C&W under TUPE (Transfer of Undertakings - Protection of Employment) regulations. Due to head count restrictions C&W asked Mr Muscat to leave permanent employment and come back as a contractor under his own limited company. C&W even paid the incorporation costs of Mr Muscat setting up his company. Despite the change in circumstances with Mr Muscat now working as a contractor there were no changes in his duties.

In their ruling the CA robustly supported the statements and guidance made in the case of *Dacas vs Brook Street* (Working Worldwide March 04 edition). Many observers believed *Dacas* to be a flawed decision as it clearly went against what was agreed in the contracts between the parties.

Once again the courts struck out parts of the contract that in their view were not reflected by the reality of the arrangement. For example, although there was a clause that stated there was no employee/employer relationship and despite the fact that Mr Muscat was an employee of his own limited company the CA still implied a contract of employment with the end user.

This ruling defines *Dacas* as the leading case on co-employment claims in the UK. Tribunals are now clearly instructed to look at the whole arrangement to see if an implied contract exists irrespective of the agreed contractual terms.

This does not mean the end for the use of flexible workers. End users should be aware of these rulings and ensure that the use of temporary workers for longer than 12 months can be justified and that these longer assignments don't slip into employment relationships. The end-user should use an agency to take care of all

HR functions and negotiate any extension to contracts, rates of pay and disciplinary procedures. The more responsibility that an agency can maintain the harder it will be for the courts to imply a direct contract between the end user and temporary worker.

The European Court of Justice (ECJ) ruled that 'rolled up' holiday pay is incompatible with the Working Time Directive.

The ECJ has finally ruled on the practice of rolling up holiday pay and stated that it is incompatible with the Working Time Directive. Rolling up holiday pay is the practice of paying an additional salary over and above the normal salary when the employee works, but when the employee is on holiday no pay is awarded. This was ruled unlawful except where the employment was terminated and holiday pay was owed. The ECJ ruled that rolling up holiday pay may encourage workers not to take leave.

The ECJ was also asked to rule on a situation whereby if a worker had been paid in advance for their holiday could his/her employer lawfully claim this money back when the employee did take holiday. Despite the ECJ ruling that rolled up holiday is unlawful, they ruled yes to this situation.

This still leaves the situation unclear, the ruling states that the art of rolling up holiday pay is incompatible with the Working Time Directive yet; if an advance was paid for holidays it can be legally claimed back. Therefore, a worker who receives rolled up holiday can take a claim to an employment tribunal for the payment. Yet in defence as long as the employer can show that the rolled up holiday has been agreed and is clearly shown on the employee's payslip separate from the basic salary there should be no problem. This was generally in line with the Advocate General's view reported in the last edition of *Working Worldwide*.

The ECJ ruling will almost certainly force the UK to make a change to the Working Time Regulations. Under EU law member states are not allowed to continue with legislation that the ECJ rules incompatible with EU law. Once the UK legislates on this it should provide some clarity on this issue and outlaw rolling up holiday pay completely.



United Kingdom (continued..)

UK Government reveals final proposals for the new immigration points system

As reported in previous editions of working worldwide the UK Government has been planning changes to the UK's immigration policy. The Government, after a period of consultation, has announced the new immigration procedures expected to come into force from the summer of 2007. The aim of the change is to make it easier for highly skilled workers to enter the UK, but harder for workers of lower skill levels. The system will operate in a similar way to the points systems used by Canada and Australia.

Underpinning the new system is a five tier framework:

- Tier 1: The direct replacement for the current Highly Skilled Migrant Program (HSMP). All applicants that would have fallen under the HSMP will soon apply as a Tier 1 immigrant.
- Tier 2: These are for skilled workers in areas that have shortages. They will be given points if they have a job offer in a shortage area. Two of these areas are nursing and teaching.
- Tier 3: Low paid low skilled workers. Previously the UK has allowed immigrants to come in to fill jobs in hospitality, food processing and agriculture from all over the world. This has changed in favour of nationals of the expanded EU with all their restrictions lifted.
- Tier 4: Students wishing to study in the UK.
- Tier 5: Youth and mobility temporary workers such as working holiday makers, musicians and sportsmen.

All applicants will require a certain level of points to be granted entry clearance and points will be granted for qualities believed to help an immigrants success in the labour market. Tier 1 immigrants will still be able to enter without a job offer. For further information please see the Government website: www.workingintheuk.gov.uk/

The Government expects the new system will effectively end low skilled immigration from outside the EU, though the facility exists to open up routes should shortages exist.

Fixed-term employees are entitled to enhanced redundancy rights in line with permanent employees.

Historically redundancy schemes have often varied between permanent and fixed term members of staff, however, a recent Employment Tribunal Decision suggests this practice is unlawful. Fixed term employees have had the right to reject less favourable treatment unless it can be objectively justified since 2002. It was always justified that fixed term workers would receive lower levels of redundancy (as long as this was still equal or above the statutory minimum) because permanent employees have an expectation of continued employment, whilst fixed term employees frequently do not.

This argument has been tested by a group of senior advisors working under a fixed term contract for the Department of Education. They were concerned when their contracts came to an end they would not receive sums similar to their permanent colleagues when they were made redundant.

The Tribunal upheld the employees' claims so when their contracts expire later in 2006 the Department will have to pay enhanced redundancy payments on a par with those payments to permanent employees or offer to keep them on. The Tribunal found that as these fixed term workers had worked on a number of successive fixed term contracts they did in fact have a reasonable expectation of continued employment.



Uzbekistan

Tax rates amended

On 27 December 2005, the Government adopted Resolution No. 244, which amended various tax rates and introduced other changes in the domestic tax laws and regulations. Amongst the most important amendments, which was applied from 1 April 2006, are:

- *the general corporate income tax rate is reduced from 15% to 12%;*
- *the rate of the compulsory unified social payment for employers is reduced from 31% to 25%.*



Australia

Tax exemptions for temporary residents

The Tax Law Amendment (Tax Law Amendment (2006 Measures No. 1) Bill 2006) was introduced into Parliament in February 2006 proposing changes to the current legislation which will provide for exemptions from Australian tax for foreign sourced income including capital gains for temporary residents.

The amendments are expected to apply from 1 July 2006.

457 Visa change

From 1 July 2006, foreign nationals on 457 visas will be able to include same-sex partners in their visa applications as qualifying dependents. In order for same sex partners to qualify, the visa applicant needs to show that a bona-fide relationship exists. It is expected that this provision will be applied to other visa categories (i.e. skilled migrants) at a later date

Benchmarking study of tax

The Australian Treasurer announced in February that a study will be conducted to examine how Australia's tax system compares with other developed economies. The study will involve a comparison of overall taxation levels and rates and will cover the indirect tax, income tax and company tax systems, including taxes collected at national, state and federal levels.

The intention of the study is to provide a public document that compares taxes in Australia with other countries and will identify areas of taxation where Australia lags behind.

The results are expected to be published in April 2006



China

Permanent Establishment - definition clarified

The State Administration of Taxation issued a notice (Guo Shui Fa [2006] No.35 in March 2006 clarifying the definition of a Permanent Establishment (PE). They stated that

- a business covers not just manufacturing activities but also ordinary activities of non-profit organisations, so a non profit making organisation could be deemed a PE unless it only carries out preparatory or auxiliary activities;
- activities of a business cannot be regarded as preparatory or auxiliary if the business provides services not only to the head office of the business but also to third parties, or if the nature of the business corresponds to the ordinary business carried out by the head office;
- income derived from an individual working for a PE is subject to tax under the Dependent Service Article of the relevant tax treaty or domestic law;
- If a taxpayer is of the opinion that its site does not constitute a PE, then they need to present evidence and request that the tax authorities issue a ruling of qualification;



Hong Kong

Quality Migrant Admission Scheme introduced

A new immigration scheme has been introduced in Hong Kong. This is called the Quality Migrant Admission Scheme or "QMAS" and the purpose of it is to attract young, highly skilled immigrants to Hong Kong.

1,000 permits will be issued each year to qualifying professionals starting from June 2006. Applicants need to fit the following criteria:

- *Aged 18-50*
- *No criminal record*
- *Possess at least 1 university degree*
- *Be fluent in either English, Putonghua or Cantonese*
- *have sufficient funds to support themselves and family members while seeking employment or setting up a business in Hong Kong*

Once a foreign national has been approved for entry under this scheme, the applicant will have one year to obtain employment or establish a business in Hong Kong. Once employment or the business is established, a second analysis will be conducted to decide long-term work and residence status.



India

The Indian budget was announced on 28 February 2006. A summary of the highlights is shown below:

The most significant change announced in the budget was the increase in Service Tax from 10% to 12%. In addition, 15 new services will fall within the scope of Service Tax (including credit and debit card services, insurance and management consultancy).

There were no changes to the Corporate Tax rates or surcharge of education cess. Contributions of up to INR 100,000 per employee to the superannuation fund will be exempt from FBT.

Employees Provident Fund – interest rate cut

The Employees Provident Fund announced that the interest rate will be cut by 1% from 9.5% to 8.5%. However, even with this cut in interest, the fund is expected to face a shortfall between income earned on investments and interest declared for its 40 million participants.

This fund, which makes up an employees retirement payout, covers most private sector workers who contribute 12% of their payroll – the employer contributes another 12%.



Japan

Tax reform for 2006 – draft approval given

Tax reforms are being deliberated in the House of Councilors. These include an increase in individual tax rates and amendments to the inhabitant tax rate from 2007. Although it is proposed that the inhabitant tax rate will increase to a flat 10%, a new tax credit will be introduced to keep the tax burden on individuals neutral.

International taxation

The following changes have been made to the international tax regime:

- *the definition of a “non-permanent” resident is to be amended. From April 2006 a non-permanent resident is defined as a resident who does not have Japanese nationality and has lived in Japan for less than 5 years out of the previous 10 years;*

- *the National Tax Agency’s powers are to be expanded to include the right to conduct an investigation of a tax payer where a treaty partner has requested it for a criminal tax investigation;*
- *Transfer Pricing rules are to be expanded;*

Other changes include the abolition of the annual disclosure of high-income taxpayers. Tax penalties for filing tax returns late will be 15% if the tax liability is less than JPY 500,000 and 20% if the liability is over JPY 500,000. This will not be imposed if the tax return is less than 2 weeks late and the tax liability is paid on time.



New Zealand

Changes in Skilled Migrant Category and National Immigration Quota in 2006

The Immigration Minister announced that the national quota for foreign workers for 2006 is to be increased from 45,000 to 51,000. There have also been changes to the Skilled Migrant Category. From 21 December 2005, any worker who scores over 140 points on the Ministry of Labour's Expression of Interest Form will be automatically selected to apply for residence. See <http://www.immigration.govt.nz/> for more information.

Prior to the new changes, Skilled Migrant Category applicants were required to accrue a minimum score of at least 100 points to qualify to apply for residency.



Argentina

Clients and subcontractors jointly liable for employee payments

On 3 February 2006 the Labour Court of Appeals issued a ruling on the joint and several labour liabilities of contractors and subcontractors.

Currently, many companies subcontracting all or part of a production process to third parties. In turn, the subcontractor hires employees for this task. The Employment Agreement Law ("LCT") guarantees payment to the employee by establishing joint and several liability of the assignor or main contractor. The issue at stake was whether the creditor could demand payment from any one of the joint debtors at the creditor's choice with no need to jointly request payment to all debtors.

The judges held that employees may claim all debts to their direct employers or to the party obliged under the LCT and may recover all outstanding payments from any one of the debtors. Thus, in the case of service subcontractors, a dismissed employee may directly and solely sue the party that has retained their employers as a contractor, without having first to claim payment from the employer.

Immigration regulations tie employees to sponsoring employers

The Argentine National Immigration Department (DNM) has recently enacted new regulations which require the Argentine work permit sponsor to formally notify the DNM by certified letter of any interruption in the visa holder's employment (e.g. termination or voluntary departure) within 15 days of the interruption of employment. Once notification is received, the DNM will cancel the individual's work visa. Failure to provide formal notification will result in a warning to the petitioner or cancellation of the petitioner's Registration Number.

*In addition, the regulations require Argentine companies and individuals to obtain a Registration Number (Numero Unico de Inscripcion en el Registro) at the National Corporate Registry Office in order to file work permit applications for non-MERCOSUR** candidates. Once a registration application is approved by the National Corporate Registry Office, the DNM will register the petitioner and grant a Registration Number (Numero Unico de Inscripcion en el Registro). The Registration Number must be evidenced on all work permit applications and any*

immigration proceedings filed on behalf of non-MERCOSUR nationals.

***MERCOSUR is a free trade agreement comprised of four Member Countries (Argentina, Brazil, Paraguay and Uruguay) and six Associate Member Countries (Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela). Member countries of MERCOSUR may extend limited freedom of movement privileges for nationals of other member countries.*



USA

Immigration Headlines

The world of U.S. immigration changes rapidly, making it essential for Glotel to stay on top of the latest news and events. Here is a round-up of recent changes to U.S. immigration legislation.

2007 H-1B cap opens for filing

On 1 April 2006, the USCIS began accepting applications to count toward their FY2007 H-1B cap of 65,000 visas. Although application processing remains unchanged from last year, there has been a change in the filing location. As of 1 April 2006 all H-1B petitions, must be filed at the Vermont Service Center in St. Albans, Vermont. The change of filing location is an attempt to increase adjudication efficiency.

Immigration Reform Bill

On 27 March 2006, the Senate Judiciary Committee concluded its fifth and final mark-up session on immigration reform. As amended, the Committee's bill includes the following:

1. A guest worker program that would admit 400,000 new workers per year and would allow adjustment to permanent residence after four years.
2. A program that would permit currently out-of-status workers to remain in the U.S. and work for six years, and transfer to permanent residence by meeting certain requirements, such as payment of \$2,000 in fines. The beneficiaries under this program would be required to go to the "back of the line" so as to not displace any applicants for lawful immigration.
3. The "DREAM Act" which would allow undocumented children who are accepted at a U.S. college or university or who wish to enlist in the military to become permanent residents.
4. An increase in the annual cap on H-1B visas to 115,000. If the 115,000 limit is reached in any fiscal year, the limit for the following year would be increased by 20%. The bill would exempt from the numerical limit (including the current 20,000 additional visas set aside for advanced degree holders) advanced degree holders in the science, technology, engineering, or mathematics (STEM) fields.

5. A requirement that intra-company transferees who enter the U.S. on an L-1 visa to start a new company initially receive a one-year visa only. After the first year, if the company demonstrates that it is legitimate, then the L visa may be extended. Spouses of the L-1 visa holder may not work during the first year.
6. An extension of the optional practical training (OPT) period to 24 months for students following graduation. The bill would create a new "F-4" visa class for students who come to the U.S. to seek an advanced degree in a STEM field. F-4 students would not be subject to the immigrant intent bar ("Section 214(b) bar") and would be given 18 months to find employment in the U.S. A direct path to permanent residence for F-4 students would be available with payment of a \$2,000 fee.
7. Mandatory and universal participation in an electronic employment verification system within five years of enactment, beginning with employers in critical infrastructure (e.g. power plants, airports etc.) after the first 180 days, followed by employers of 5,000+ persons after two years. Participating employers would enjoy "safe harbour" while failure to participate would be deemed a violation of laws prohibiting hiring of unauthorised workers. The bill would retain current attestation requirements, but employers would be allowed to use electronic signature and storage. There would be increases in civil and criminal penalties for employing undocumented workers.

This immigration reform bill is a hot topic to watch and has already inspired large protests in several major U.S. cities. As always, we will keep our finger on the pulse of U.S. immigration and keep you up to date.



USA - California

Changes to California employment legislation affecting payments to computer software professionals from 1 April 2006

Under the federal Fair Labour Standards Act, an employee is exempt from overtime compensation requirements as a “computer software professional” only if, among other things, he or she is paid on a salary basis. However, confusingly, California law provided that an employee is exempt as a “computer software professional” only if, among other things, he or she is paid at an hourly rate of pay (currently set at \$47.81).

The Assembly Bill 1093 amends the law to provide that a computer software professional employee may be paid on an hourly basis or the annualised full-time salary equivalent of that rate, provided that all other requirements for satisfying the exemption are met and as long as in each workweek the employee does not receive less than the statutory minimum hourly rate for the computer software professional exemption (currently \$47.81 per hour) for each hour worked.



South Africa

Updated guidelines for the taxation of personal service companies, personal service trusts and labour brokers was issued in March 2006 to further explain the circumstances where clients or customers must withhold PAYE.

Under the Income Tax Act personal service companies, personal service trusts and labour brokers are considered to be 'employees' and consequently the client/customer is effectively the 'employer' who must withhold employee tax at the rate of 34% from all payments to such parties.

Personal Service Companies and Personal Service Trusts

Under the Income Tax Act, remuneration for services provided to employers through the medium of companies, close corporations or trusts (referred to as personal service companies and personal service trusts) is subject to employees' tax. The Act also restricts the deductions such entities are entitled to in calculating their taxable income.

According to the SARS, if the answer to any of the following questions is 'yes' the company will be considered personal service company with the client/customer having to withhold 34% tax from all payments.

- 1) the services are rendered personally by any person connected to the company;*
- 2) the business employs less than four full-time employees throughout the year of assessment. It is important to note that employees who are shareholders or members of the company, or related/connected to the person who is personally rendering the service cannot be counted in this minimum;*
- 3) the person who is personally rendering the service would have been regarded as an employee of the client if the service was rendered directly to the client and not through the company;*
- 4) the person who is personally rendering the service, or the company is subject to the control or supervision of the client as to the manner in which, or hours during which, the duties are or are to be performed;*
- 5) the amounts paid consist of or include earnings of any description that are payable at regular daily, weekly, monthly or other intervals;*
- 6) more than 80% of the income of the company is received from one client;*

Labour brokers

In addition to the 34% employee tax, a corporate labour broker without an exemption certificate cannot deduct expenses except for those amounts paid to employees of the broker for services rendered.

Subject to other regulations a Certificate of Exemption will generally be issued to a Labour Broker who is registered for tax, registered as an employer and who has submitted all returns required under the Income Tax Act.

Glotel.