

## Working Worldwide Newsletter January 2006



### A Very Happy New Year to you, and our rapidly growing readership!

This edition of Working WorldWide will be reaching over 4000 people and covers our usual global round-up of changes to Employment, Immigration and Tax legislation, with an in-depth focus on Asia Pac.

We follow regional stories, with coverage of a survey on salaries and attrition rates in Asia Pac, plus specific details on changes to Australia's 'WorkChoices' Act 2005, Citizenship status changes in New Zealand and amendments to non-resident tax status in Japan. There are new personal tax arrangements proposed in Sri Lanka and Taiwan, South Korean VAT rules are changing, whilst Hong Kong sees legislation on timely payment of employees tightened.

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](mailto:lpritchard@glotel.com).

Regards,  
Lara Pritchard  
Tax & Compliance Director

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## Croatia

**Official regulations have been issued to provide direction on the 2005 Corporate Income Tax Act including the new transfer pricing and thin capitalization rules, permanent establishment (PE) and the withholding tax on business consulting services.**

The legislation stipulates that the provision of services, including advisory and business services, creates a PE for a foreign enterprise if the services are rendered over a period that exceeds three months in any 12-month period. The Regulations clarify that the three-month period must be continuous and that breaks of up to seven days are not regarded as an interruption. The number of individuals working on a project is not considered relevant for determining whether a PE is created.

The 2005 legislation added business consulting services to those which are subject to withholding tax. Because business consulting is a broad category, the Regulations specify which services fall outside the scope of business consulting services and, therefore, are not subject to withholding tax:

- Courses, seminars, workshops and similar training services;
- Services of engineers, architects and similar services that result in written instructions (i.e. project documentation, blueprints, etc.);
- Agency and mediation services;
- Secondment of employees to Croatia; and
- Data handling



## Czech Republic

### **A Decree on the application of tax treaties and taxation of Czech-Source Income of non-residents came into force on 1 January 2006.**

On 13 October 2005 the Ministry of Finance published a new Decree D-286 on the Taxation of Czech-Source Income of non-residents in the Czech Republic. The decree primarily deals with conditions for the application of tax treaties and the domestic tax law implementing EC Directives in the Czech Republic.

Under the current rules, the payer of income to foreign recipients may automatically grant tax treaty benefits, provided that the recipient of the income has a seat or domicile in the other country. In case of doubt, the payer must request a certificate of residence.

The new rules establish that from 1 January 2006, the payer of the income will be able to continue to grant the benefits of a tax treaty automatically, provided that the recipient of the income presents:

- a tax residency certificate issued by the foreign tax authorities;
- a declaration that the recipient is the beneficial owner of the income and that the tax law of the other contracting state attributes the income to the recipient for taxation purposes; and
- documents demonstrating that other conditions set out in the tax treaties, domestic tax law or EC Directives are fulfilled.

With regard to a tax audit, the payer of the income will have to prove that the conditions in respect of eligibility for granting the benefits were duly fulfilled.

If the beneficial owner of the income does not present the required information and documents to the payer of the income, no benefits will be granted, and the general rules applying to situations in which the income is received by a person resident in a non-tax treaty country will have to be followed.



## France

**All foreign workers requesting certain types of work permits will now be obliged to provide proof of 'sufficient' knowledge of the French Language.**

On 23 August 2005 a decree was issued clarifying conditions for foreign workers working in France. Any worker requesting a 10 year Residence Card (a special work permit that may be applied for only after 5 years of continual residence in France) will be affected by the new regulations and will now have to provide proof of sufficient knowledge of the French Language.

In addition to this, French Immigration authorities are now able to withdraw a foreigner's residence permit if they cease working prior to the permit's termination date.

A decree due in January 2006 is expected to go one step further and state that all

foreigners wishing to work and settle in France, on a long term basis, must have sufficient knowledge of the French language. Otherwise they must take action to ensure they acquire sufficient knowledge once they have settled in France.

This category would include non-EU citizens applying for a first French residence permit for "salaried employees" (valid for just 1 year), i.e. international assignees or foreigners directly recruited to work in France.

The Government is also looking at "setting quantitative targets for immigrants" after the Home Secretary noted that only 5% of legal immigrants respond to the needs of the French economy.



## Hungary

### Tax amendments for 2006 and beyond

On 7 November 2005, the Hungarian parliament approved a Bill containing various amendments to the tax laws, which will gradually take effect over the next 5 years. The changes affect almost all types of taxes, as well as social security contributions. Some of the most significant changes entered into force on 1 January 2006 (unless otherwise indicated) and are detailed below:

#### Corporate income tax

A reduced rate will be introduced. The part of the pre-tax profits of the enterprise which does not exceed HUF 5,000,000 (approx. € 20,408) will be taxed at a rate of 10%, while the part exceeding this threshold will be taxed at the regular rate of 16%. The application of the reduced rate is dependent upon the enterprise paying social security contributions on at least 150% of the minimum wage with respect to its employees. The full amount of the local business tax paid by the enterprise will be deductible from the tax base.

#### Individual income tax

The top rate of individual income tax will drop from 38% to 36%, while the income ceiling in the first bracket (taxed at a rate of 18%) will increase to HUF 1,550,000 (approx. € 6,326) of annual gross income.

#### Value added tax

The standard rate will drop from 25% to 20%.

### Local business tax

The income derived through a foreign permanent establishment of a Hungarian resident company will be exempt from local business tax. (The tax will be completely abolished as of 1 January 2007.)

### Simplified taxation – income from professions

A new type of simplified tax will be introduced in respect of income earned from certain professions. Persons engaged in mainly intellectual professions who provide independent services may opt to be taxed at a flat rate of 35%, which includes all taxes and social security contributions. Out of the 35%, 15% is borne by the individual and 20% by the payer of the income.

### Social security contributions

Individuals will be subject to health care contributions on certain types of passive income (e.g. dividend, capital gains that do not qualify as interest and income from leasing of real estate) at a rate of 4%.

### Outbound dividends

In accordance with the amendments adopted in November 2004, the withholding tax on dividend income paid by Hungarian resident companies to non-residents is abolished.



## Ireland

**The 2006 Budget has severely curtailed the benefits of the remittance based tax system enjoyed by expatriates working in Ireland.**

One of the most beneficial expatriate tax regimes in Europe was effectively abolished on 1 January 2006. Previously, non-Irish domiciled individuals employed under "foreign" (i.e. non-Irish, non-U.K.) contracts of employment pay Irish tax only on the amount of income remitted to Ireland, regardless of whether the individual performs the work in Ireland.

However, from 1 January 2006, the remittance basis of taxation is no longer applicable to employment income received for duties

performed in Ireland. Such employment income will be taxable even if it is not remitted. The remittance basis will continue to be available, however, for employment income that relates to duties performed outside Ireland and in respect of other non-employment income that is non-Irish/non-U.K. (e.g. dividends, interest, rental income, etc.).

The new measures have generated significant negative reaction from multinational companies in Ireland. The Irish Taxation Institute and other representative bodies are lobbying to reverse the proposals that emerged from certain widely publicised abuses of the remittance basis.



## The Netherlands

The Netherlands Parliament has approved the tax proposals for 2006. The major tax changes are as follows:

The corporate income tax will be reduced from 27% to 25.5% on the first €22,689 and 29.6% thereafter (reduced from 31.5%). In 2007 these rates will drop further to 24.5% and 29.1% respectively.

Rates of personal income tax, including social insurance will start at 34.15% rising to a top rate of 52% on earnings over €52,228.

As from 2006, the benefits of a company car will be taxable. The taxable amount is 22% of the catalogue value where the car is driven for more than 500km for private purposes.



## Norway

**On 10 November 2005 the Norwegian Government presented the state budget for 2006.**

As part of the budget there are proposed changes in the standard deduction for expatriates. Under the current law, persons with temporary residence in Norway, i.e., for less than 4 years and non-resident expatriates, are allowed a standard deduction from taxable ordinary income of 15% of gross income, resulting in an effective tax saving of 4.2%. The standard deduction is in lieu of deductions for actual costs incurred in relation to the work performed in Norway, such as expenses in respect of accommodation and commuting. This relief is granted for the first four Norwegian assignments.

Under the amendment, a maximum annual deduction of NOK 40,000 (approx. € 5,000) will be introduced and the deduction will be reduced to 10% of gross income. The standard deduction will now only be available for the first two assignments in Norway.

The budget also added that the 12.5% additional employer social security contribution on high income earners is to be abolished. This budget was sanctioned by the King on 9th December 2005.



## Russia

**The Federal Tax Service has issued two official letters clarifying the applicable withholding tax rate in respect of employment income of resident and non-resident individuals.**

Under the Tax Code, the flat rate withholding tax is applied to employment income of residents at 13% and non-residents at 30%. A resident individual is defined as an individual who is effectively present in Russia for at least 183 days in a calendar year. Therefore, in some cases (e.g. during the first 6 months of a calendar year), there has been some confusion as to which rate to apply.

If a Russian national is registered as residing in Russia, and has, as of 1 January of the relevant calendar year, an employment contract for at least 183 days, there is an assumption of residence and the 13% withholding tax rate applies.

For foreign nationals the 13% withholding tax rate should be applied in respect of employment income of foreign nationals who have a temporary or permanent Russian residence permit.

## Belarusian nationals

In addition, one of the letters refers to the non-discrimination clause in the tax treaty between Belarus and Russia. The basis of this clause suggests that the 13% withholding tax rate should apply to Belarusian nationals working in Russia from the first day of their presence in Russia, "taking into account the length" of their employment contracts. It is not clear why only this treaty was specifically mentioned since the current Russian tax treaty network consists of 66 tax treaties in force, most of which contain a similar non-discrimination clause.

In conclusion, the presumption of residence applies:

- if a foreign national resides in Russia on the basis of a temporary or permanent residence permit; or
- if a Belarusian national has an employment contract that allows him/her to work for at least 183 days in a calendar year in Russia.



## Sweden

The Swedish government is to simplify the provisions on taxation of small and medium size enterprises.

The Swedish Parliament has approved amendments to the taxation of small and medium sized enterprises (SMEs); the main amendments are as follows:

- Abolishment of the net wealth tax;
- The tax rate on capital will be reduced from 30% to 20%
- The minimum amount of salary payment to the owner will be 7 basic amounts (SEK 280,000 – approx. €30,000) added to 5% of gross salary paid and the maximum amount will be 15 basic amounts (SEK 600,000 – approx. €64,000).
- Owners of qualifying shares in SMEs are taxed on SME income under specific rules. Provided certain conditions are fulfilled, part of the income from dividends and capital gains from an SME is taxed as capital income. Income exceeding the marginal amount is taxed as employment income.



## Turkey

### Corporate and individual income tax cuts announced

On 29 November 2005, the Prime Minister and the Minister of Finance announced income tax cuts and other changes, effective from 1 January 2006.

### Corporate tax

The corporate income tax rate (currently 30%) will be reduced to 20%. It was also declared that the investment allowance, which is one of the exempt items in calculating the taxable corporate income, would be abolished as of 1 January 2006.

### Individual tax

The progressive individual income tax rates will also be reduced. Currently, the rates of the five-bracket rate table are 20%, 25%, 30%, 35% and 40%; these rates are decreased by 5 percentage points for employment income. It was announced that all individual taxpayers will be subject to the same four-bracket rate table, with rates of 15%, 20%, 27% and 30%. The bracket amounts, however, have not yet been declared.



## United Kingdom

### Married couples in business together received a big boost when Arctic Systems successfully won their appeal against the HMRC in the Court of Appeal.

In an eagerly awaited judgement for thousands of married couples operating small businesses Sir Andrew Morritt and Lord Justices Keene and Carnwath found unanimously for the tax payer in the case of Jones v. Garnett [2005]. The judges found that Geoff Jones had not created a settlement for tax purposes in favour of his wife, Diana, when they went into business together.

This test case arose after Her Majesties Custom and Revenue (HMRC) deemed that S660A, known as Settlement Legislation applied to the relationship between Mr & Mrs Jones. Mr Jones was the sole fee earner for Arctic Systems, but paid himself and Mrs Jones a nominal Salary. Mrs Jones completed the admin for Arctic Systems but after their salaries were paid the dividends were evenly split. The HMRC argued that all income should be taxed as if it were Mr Jones and the Jones's should not be able to take advantage of Mrs Jones tax allowances.

As discussed in previous issues of working worldwide this decision overruled the highly controversial Special Commissioners spilt decision that ruled in the revenue's favour.

In his judgement Sir Andrew stated that despite S660A legislation one spouse may generate the income of the firm or company, the services of the other individual may be just as commercially important in providing essential administrative support and back up services.

The main points of the judgement were as follows:

- There was no arrangement in the nature of a settlement when the Jones subscribed to one share each, and set up their company.
- Mrs Jones had what was described as "hope value" attaching to her share in the business on day 1. Hope value or intention is not enough to change an arrangement into a settlement for tax purposes.
- HMRC's interpretation of the settlement provisions in terms of a commercial venture between a married couple was an unjustified extension to the scope of settlement legislation.
- There was no gift in this case – Diana Jones subscribed to her share

- If there had been a gift of a share, an ordinary share is not substantially a right to income in any case.

The result of this doesn't mean that married couples could still not fall foul of these rules in certain circumstances such as:

- Where the non-fee earner plays absolutely no part in the running of the business.
- Where exemption for gifts can not be claimed, because the settlor spouse still gains from the income – for instance dividends paid into a joint bank account.
- Where contracts are in place at the formation of the company, where the company is formed for a specific project or to take over business of a sole trader.

### The advocate general has given an opinion that rolled up holiday pay can be lawful in certain circumstances.

A number of employers particularly in the IT and construction industry have used what is been known as 'rolled up' holiday pay. This where the holiday entitlement is calculated and added on to the workers salary. When the worker then takes leave he or she receives no pay.

This has been challenged as breaching the Working Time Directive and is currently being considered by the European Court of Justice (ECJ). On 5 December the Advocate General gave a clear opinion that in certain circumstances rolled up holiday pay could be lawful. Although the Advocate General's opinion does not have to be followed by the ECJ, recent history shows that in most cases it is.

The Advocate General has stated that rolled up holiday pay can be lawful provided that the precise proportion of pay which is the rolled up holiday is clearly shown. This would also need to sit alongside a contract that states each employee must take a minimum of 20 days leave. There is a concern that rolled up holiday deters workers from taking leave. If, as expected, the Advocate General's opinions are adopted by the ECJ it will put the onus on the employer to make sure workers with rolled up holiday do in fact take their leave.

### Latest news from Employment Tribunals - regarding employment status and unreasonable contract clauses



## United Kingdom (continued)

In the case of Willow Oak Developments t/a Winsdor Recruitment v Silverwood the Employment Appeals Tribunal (EAT) held that a dismissal for refusing to sign restriction clauses could be potentially fair, notwithstanding that the covenants were unreasonably wide and potentially unenforceable. Whether the covenants were reasonable would be relevant to the fairness of the dismissal, also taken into account would be the employer's behaviour in seeking to introduce new terms.

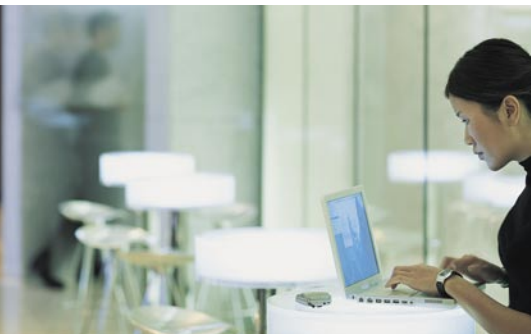
In *Barcia v Muir* the EAT found that Mr Muir a painter and decorator was not in fact an employee of Mr Barcia. Mr Muir claimed that he was entitled to paid holiday from Mr Barcia whilst he was carrying out painting and decorating for Mr Barcia. The EAT ruled the fact the individual was required to perform a personal service was not conclusive of his worker status. In determining whether an individual is an employee a tribunal should look to whether the person for whom the services are performed is a client or customer of a business carried out by that individual. If this is the case, the individual is not a worker and consequently has no rights under the working time regulations 1998. This ruling will give further guidance to employment status cases in the UK.

### **A new report into inward migration to the UK from the new EU countries was completed 18 months after the UK opened borders to the new countries.**

Figures show that 111,000 workers arrived in the UK from the 8 new EU countries in the past 12 months, which compared to 20,000 in the previous 12 months, which included a period before the accession. The new EU countries now send more immigrant workers to the UK than the whole of Asia and the Middle East combined, with the original EU 15 countries contributing 81,000 new workers a year.

Immigrants from Poland make up the largest group accounting for 52% of the new total. Lithuanians and Slovaks come second and third. Poland provides the UK with its second highest number of immigrants second only to India.

Accession workers now make up a quarter of all workers from abroad registered with a UK NI number.



## Asia Pac

### Salaries and Attrition rates

An Asia Pac survey stated that in 2005 salaries across the Asia Pac region grew significantly. India reported the highest average salary increase at 13.9 per cent, and employees in the Indian IT market received the highest increase at an average of 17.9 per cent. The Philippines followed with an overall salary increase of 8.2 per cent, which was closely followed by China, at 8.1 per cent.

In Australia, the average overall salary increase ranged from 4.3 per cent to 4.6 per cent for the five employee groups surveyed for 2005 and from 4.4 per cent to 4.5 per cent for 2006.

The same survey showed that the Philippines had the highest employee turnover rate (18.1 per cent), followed by Taiwan (17.7 per cent), China (14.4 per cent), India (13.1 per cent) and Singapore (13 per cent). In Australia, attrition rates dropped to 13.3 per cent – down from 15.1 per cent in 2004.

Australia

The Workplace Relations Amendment (WorkChoices) Act 2005 was given Royal Assent by the Governor-General on 14 December 2005 and is expected to come into effect in March 2006.

The objective of this amendment is to create a national workplace relations system, including the establishment of the Australian Fair Pay Commission (AFPC) which will set

and adjust minimum and award classification wages, minimum conditions of employment and co-ordinate direct bargaining between employers and employees.

It also widens the scope of the role of the Australian Industrial Relations Commission, particularly in relation to regulation of industrial action; a simplified system of awards; transmission of business rules; protection of key award conditions in bargaining processes; dispute settlement procedures.

Provisions are also in place to protect small businesses (those employing fewer than 15 employees) from redundancy pay.

### From 7 October 2005 the Workplace Surveillance Act was introduced in NSW.

Under this Act it has now become legal for an employer to monitor staff by using tracking devices in work vehicles, installing video cameras or reading emails, as long as they give two weeks' notice or get approval from a magistrate. Employers found to be in breach of the new regulations face fines of \$AUD 5500.



## Hong Kong

### Failure to pay salaries

The Hong Kong courts have issued a ruling stating that salaries must be paid no later than 7 days after the payment date shown in an individual's employment contract.

Any employer who fails to pay an employee on time will now be liable to a fine of up to HK\$200,000 and imprisonment for up to one year. Also Directors, Managers and Partners of the company can be found individually liable of the same offences unless it can be proved that the offences were committed without their consent or knowledge or not attributable to any neglect on their part.



## Japan

### Changes announced to the expatriate tax regime

The Ministry of Finance has announced that there will be a review of the beneficial tax regime available to non-permanent residents of Japan. It is expected that this will form part of the 2006 Income Tax Reform and will come into effect sometime in 2007.

Under the current system, an individual who has been in Japan for less than 5 years and does not hold Japanese nationality is only taxable in Japan on Japanese source income and any other income that is physically

remitted to Japan. The Ministry of Finance are however concerned that this system is being abused by individuals repeatedly leaving Japan stating that they will be out of Japan for more than a year and then returning.

They therefore intend to change the legislation to say that an expatriate will only be eligible to the tax benefit if they have been outside of Japan for more than 5 years in the past 10 years



## South Korea

### VAT on commissions

If a South Korean company pays commissions to a foreign company with no permanent establishment in Korea, the Ministry of Finance and Economy ruled that the Korean company has to self-assess VAT and pay VAT on behalf of the foreign entity. The only exception to this is if the services that the commission relates to are used by a VAT-taxable business.



## New Zealand

### Change to citizenship status

From 1 January 2006, children born in New Zealand (or in the Cook Islands, Niue or Tokelau) will only be able to acquire New Zealand citizenship at birth if one of their parents is a New Zealand citizen, or has permanent residency

Any person who is born in New Zealand on or after 1 January 2006 and is determined by the Department of Internal Affairs not to hold New Zealand citizenship, will be deemed from the time of birth to initially have the same immigration status as the most favorable immigration status of either of their parents.



## Sri Lanka

New Sri Lankan Budget 2006 proposals, presented on 8 December 2005, make significant changes to the tax regime.

The new Budget includes various proposals to the direct and indirect tax regimes

including a reduction in personal income tax rates for residents, as follows:

Amount (SLR)	Proposed rate (%)	Current rate (%)
up to 5 million	15	20
over 5 million:		
– listed company (first 5 years after listing)	33.33	30
– listed company (others)	35	30
– others	35	32.5



## Taiwan

### Alternative Minimum Tax Law Passed

The Alternative Minimum Tax Law was passed in December 2005, effective from 1 January 2006.

Under this legislation all individuals will be subject to a minimum 20% tax rate and should they have additional deductions that bring the normal tax calculation to a rate of less than 25%, these deductions will have to be added back – thus increasing taxable income.

It was intended that this legislation would apply to all individuals and also all companies – but it would appear that there are exemptions for sole traders, partnerships and non-profit making organizations.

It is also predicted that by 2009-2010 the scope of the Alternative Minimum Tax law will be widened to include non Taiwanese-sourced income for all Taiwanese tax residents.

### Chinese nationals to be fingerprinted

From 1 September 2005 all Chinese nationals entering Taiwan will have both left and right thumbprints scanned. This is to facilitate checking and comparing their identification documents during exit and arrival. It is hoped that this will speed up immigration formalities in the future.



## USA

### Employers May Be Liable for the Sexually Harassing Conduct of Non-Employees

The United States Court of Appeals for the Seventh Circuit has concluded in the case of *Dunn v. Washington County Hospital*, No. 05-1277 that a hospital could be liable for the sexual harassment of a doctor who had staff privileges at, but was not an employee of, the hospital. In this case, a nurse at a small hospital in Illinois claimed that the chief doctor for obstetrics "made life miserable for her and other women on the staff." The lower court had already thrown the nurses' case out of court on the basis that because the chief doctor was not an employee of the hospital, but an outside physician who had received staff privileges, the hospital did not have the authority to control his conduct, and therefore could not be liable for it.

The Seventh Circuit disagreed. It found that although the district court's analysis was a correct statement of general negligence principles, these principles were "irrelevant" for a sexual harassment analysis under Title VII. Title VII provides that an employer's liability is "direct" and not solely "derivative" from the acts of its employees. For this reason the "ability to 'control' the [misbehaving] actor plays no role." What is crucial and determinative is that the employer, upon receiving notice of the misbehaving actor's conduct, invoke and reasonably utilize the "arsenal of incentives and sanctions" that are available to it to end the offensive conduct.

This case spells out that employers must respond promptly and appropriately when employees make a claim of harassment, whether the "source" of that harassment is another employee, an independent contractor, a guest of the employer's or even a customer invited onto the premises by the employer. In any such event, it is not a defence in the Seventh Circuit for the employer to claim that because it had no authority to control the conduct of its invitee, its employees had no recourse when subjected to the invitee's harassment.

### US' new budget bill does not include more H1B visas.

A Senate passed measure to provide additional foreign workers visas for high tech industries and speciality fields was dropped from the budget bill that passed the House of Representatives in December.

The Senate plan would have allowed 30,000 extra H1B visas each year with increased fees for those additional visas.

Congress capped the six-year H1-B visas at 65,000 per year in 2004 and that cap was reached on 10 August 2005 for the fiscal year that started 1 October 2005.

House and Senate negotiators also dropped a plan to increase L-1 visas which companies use to transfer employees to the United States.

### Congress Addresses Immigration Reform

On December 16, 2005, the House of Representatives passed H.R. 4437, the Border Protection, Anti-terrorism and Illegal Immigration Control Act of 2005, by a vote of 239 to 182. The bill contains a wide range of border and interior enforcement provisions, including several new amendments. Highlights of the bill include:

#### Electronic employment eligibility verification.

If enacted, the bill would require all employers to participate in a mandatory electronic employment eligibility verification system that links the Social Security Administration and Homeland Security databases. (Currently, a voluntary electronic verification system is in place.) Three to six years from enactment (depending upon the employer's industry), all U.S. employers would be required to electronically re-verify every worker in the civilian workforce.

#### Increased penalties for worksite violations.

The bill would also increase the fines against employers who hire ineligible workers or commit eligibility verification paperwork violations. Fines for paperwork violations would range from \$1,000 to \$2,500. Fines for hiring ineligible workers would be set at a minimum of \$5,000 for a first offence, \$10,000 for a second offence, and \$25,000 for third and subsequent offences. Monetary penalties would be capped at \$7,500 for first offences, \$15,000 for second offences, and \$40,000 for all subsequent offences. In addition, the bill would no longer permit the size of the business to be considered in determining



## USA (continued)

the penalty amount, though penalties assessed against smaller businesses could be mitigated.

### **Criminalizing Immigration Violations and Third-Party Liability.**

H.R. 4437 would designate unlawful presence or an immigration status violation as a criminal as well as a civil offence. The covered offences could reasonably be interpreted as including visa overstays. In addition, providing assistance to out-of-status individuals could be considered to be an act of harbouring an illegal immigrant.

A number of proposed amendments to the bill were unsuccessful or withdrawn. These include proposals (1) to eliminate the family-based fourth preference category (for brothers and sisters of U.S. citizens) and reallocate those 65,000 visas to employment-based immigrant categories; (2) to lower to six months the maximum prison sentence for unlawful presence in the United States; (3) to suspend the Visa Waiver Program until the US-VISIT system is fully operational and until all ports of entry have functional biometric machine readers; and (4) to increase the penalty for hiring an unauthorized worker to \$50,000.

The Senate is expected to consider the budget reconciliation bill very shortly, before Congress recesses for the winter. However, it is not expected to consider H.R. 4437 until late January 2006, in the second session of the 109th Congress.

### **H1-B Applications start on April 1.**

H1-B Applications can be filed on April 1 2006 for an October 1, 2006 start date. Early preparation of applications is advisable to ensure the best chance of success.

# *Glotel.*