

## Working Worldwide Newsletter October 2006



### Welcome to the latest edition of Working WorldWide - Glotel's quarterly round up of changes to tax, immigration and employment legislation around the globe.

As the northern and southern hemispheres either prepare for winter or anticipate summer, it seems that the changes in legislation on which we report are as diverse as those seasons! France is rapidly strengthening barriers to immigration, whilst Italy embraces illegal immigrants who have been in the country for 5 years.

New Age Discrimination Legislation has far reaching implications for UK based businesses, and we give some tips on what not to put in job advertisements, plus (no surprise to regular readers) we provide an update on the latest case law covering employment status.

Elsewhere, Costa Rica and Colombia have wide ranging tax reforms, Vietnam is tightening rules on Representative Offices, China clarifies its rules on Permanent Establishments and Thailand tightens up its Visa waiver process.

Finally, we had an excellent response from those of you keen to assess potential liability against 'deemed employment' criteria in the UK, but if you didn't find the time to contact us last time it's not too late! If you would like more information on this or any other topic covered in this issue please do not hesitate to contact [lpritchard@glotel.com](mailto:lpritchard@glotel.com)

Regards,  
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## European Union

### **Bulgaria and Romania to join EU.**

*After seven years of talks Bulgaria and Romania are to be admitted to the EU. Both countries will undergo audits to check their progress in curbing organised crime and corruption, adherence to food safety regulations and the proper use of EU funds. In addition they must submit six-monthly reports on their progress in fighting corruption and modernising farming industries.*

*Conditions of admittance are tougher than those imposed on previous accession nations, with a probable 3 year restriction on migration to other EU countries; the UK has already indicated that it will apply restrictions.*



## Bulgaria

### New Corporate Income Tax Act

*Bulgaria falls into line with EC rules with changes to its tax regime, expected to take effect from 1 January 2007.*

### Tax Rates

*The 15% Corporate Income Tax rate will not change, but may be reduced in the course of the budget procedure later in 2006. The targeted rate is 12%.*

*The social expenses tax (imposed on benefits for employees) will be unified at 12% (currently, 15% or 12%, depending on the benefit).*

### Permanent Establishments (PEs) and Withholding Tax

*For a PE in a state with which Bulgaria has a treaty, income paid out by that PE to any non-resident will not be subject to withholding tax in Bulgaria. The withholding tax rate on dividends will remain at 7%, but the withholding tax on other payments will be reduced from 15% to 10% in respect of:*

- (i) liquidation proceeds,*
- (ii) interest,*

- (iii) royalties,*
- (iv) technical services fees,*
- (v) income from management contracts,*
- (vi) income from factoring and franchising,*
- (vii) rental income and*
- (viii) other income relating to and gains on the disposal of immovable property and financial assets, except for gains on disposal of shares that are traded on a Bulgarian stock exchange, which will be exempt.*

### Interest and Royalties Directive

*Bulgaria has been granted a transitional period in respect of implementation of the Interest and Royalties Directive until 31 December 2014. During the transitional period, the rate of tax on payments of interest or royalties between qualifying companies will not be able to exceed 10% until 31 December 2010 and 5% for the following years until 31 December 2014. There is also provision for a general reduction in the withholding tax for interest and royalties paid to non-residents.*



## France

### Strict new immigration legislation

After months of wrangling, new immigration legislation has finally been adopted by parliament. The main provision is a new three year residence permit, called a 'skills and talents permit'. This permit seeks to encourage highly skilled and qualified immigrants to enter France. Low skilled workers may qualify for this permit but only for industries with listed skills shortages.

The legislation has been criticised by many for promoting the brain drain from poorer countries whilst restricting 'working class' immigrants to France. The government argue that this measure is appropriate due to the keen competition for highly skilled migrants.

All non-EU migrants must now sign an integration contract committing them to respect the French way of life, including taking language and cultural lessons, designed to promote the use of the French language and adoption of French traditions.

Access to France will also be dependent on proof of sufficient income or funds to support the individual and any dependents. Immigrants will have reduced rights to the French social security system.

The new legislation is likely to increase the time and cost of migrating to France, with more onerous documentation requirements;

whilst spouses of French nationals may also face longer waiting times as a result of the rising number of 'marriages of convenience'.

It is estimated that between 200,000 and 400,000 immigrants are illegally in France with the government aiming to deport 26,000 this year.

### Finance Bill for 2007 approved

The finance bill was approved by the French Council of Ministers on 27 September 2006, and is applicable from 1 January 2007.

The number of tax brackets has been reduced from 7 to 4 and the supplementary deduction of 20% of taxable income has been directly integrated into the progressive tax rates. Therefore the previous marginal rate of 48.09% is reduced to 40%.

Amount (EUR)	Rate %
Up to 5,614	0.0
5,625 - 11,198	5.5
11,199 - 24,872	14.0
24,873 - 66,679	30.0
Over 66,679	40.0



## Italy

### **Citizenship rights for illegal immigrants in residence for 5 years.**

*Whilst most western governments are getting tough on illegal immigrants and trying to increase the numbers being deported, the new Italian government has declared that illegal immigrants, who can prove they have been in Italy for five or more years, may be granted citizenship.*

*As long as the immigrants have been law abiding they should be officially integrated into the Italian economy. It is understood*

*that the Italian economy relies heavily on illegal workers, although estimating the total number of such workers is difficult due to the contradictory nature of the immigration law.*

*The original proposal, to grant citizenship after just 2 years, was rejected as too short a period in which to prove commitment to Italy. It is thought that over 300,000 immigrants may now apply for Italian citizenship.*



## Spain

### Government reforms to encourage indefinite employment contracts

A new labour reform issued by the Spanish government, effective from 10 June 2006, is aimed at increasing the number of employees on indefinite contracts of employment. The new law offers a system of benefits and reduced social security contributions to companies that employ, on an indefinite basis, employees under the age of 30 and/or over the age of 45. At the same time doubling the length of time benefits are available for employing disabled people.

The new rules also change how fixed term contracts can be offered. Employers will not be able to offer two or more temporary contracts to the same employee for a

cumulative period longer than 24 out of the previous 30 months. Should this happen the employee will automatically be granted an indefinite contract of employment and if the employer then wants to terminate such a contract the employee will be entitled to severance pay. Standard severance pay in Spain is typically 45 days salary per year of employment.

To actively encourage indefinite employment contracts, employers who volunteer to convert fixed term contract to indefinite contracts before December 2007 see a reduction in the statutory severance compensation for unjust dismissals from 45 days to 33 days salary per year of service.



## Serbia

### Amendments to the Personal Income Tax Law.

#### Salary tax

From 1 January 2007 the salary tax rate will be reduced from 14% to 12%.

#### Annual personal income tax

For income generated in 2006 the flat annual tax rate of 10% is abolished and new tax rates have been introduced offering

*different treatment for resident and non-resident taxpayers. While the tax rates are the same for both resident Serbian citizens and expatriates the higher tax rate hits in at 8 times the average salary for expatriates compared to 6 times the average salary for Serbian citizens.*



## United Kingdom

### Latest news on employment status.

In the latest case on employment status (*Ncube and Others v (1) 24/7 Support Services Ltd (in liquidation), (2) Secretary of State for Trade and Industry and (3) Trust Healthcare Management Ltd*) the Employment Tribunal (ET) held that agency workers were considered employees not only when they were working but also in gaps in between assignments. This was because the workers were required to attend training sessions even when not working on assignments and were annually appraised. The agency had exercised close management and disciplinary control over the workers and this was enough to give the workers employment rights.

### Workers based outside the UK generally unable to bring claims in UK employment tribunals.

In the recent case *Anderson v Stena Drilling PTR Ltd* the Employment Appeal Tribunal EAT held that Mr. Anderson who worked offshore on an oil rig was not able to bring a claim for unfair dismissal in the UK courts. The EAT referred to recent House of Lords decisions where only in certain circumstances could peripatetic employees and expatriate employees bring a claim in the UK. A person can make a claim if their base is in the UK even if they spend the majority of time working outside the UK. An example of this would be an air hostess working out of Heathrow, which is considered to be a peripatetic worker. An expatriate worker could bring a claim in a UK tribunal if either (1) the employee is working as a representative of a business conducted in Britain, e.g. a news correspondent for a British agency or (2) they work at an extra-territorial enclave such as a military base or embassy. The court deemed that as Mr Johnson fitted none of the above scenarios, therefore he was unable to bring a claim for unfair dismissal against Stena Drilling.

### Age Discrimination Legislation – effective 1 October 2006.

The legislation effectively bans all forms of discrimination of the grounds of age. Whilst it has been trumpeted as protecting the old, the young also enjoy increased protection. Particular attention is likely to be focused on recruitment and advertising of job vacancies in the next few months.

In short the legislation makes it unlawful to:

- Directly discriminate – to treat someone less fairly than others on the grounds of their age
- Indirectly discriminate – use criteria that restrict people of a certain age.
- Harassment due to age – unwanted conduct that creates an embarrassing or hostile environment.
- Victimise anyone due to a complaint made under any of the above

Upper age limits on retirement and redundancy will be removed. The national retirement age is set at 65 with any compulsory retirement below that age unlawful unless objectively justified. Employees will now have the right to request to work past 65 if they wish and employers will have to consider the request.

In terms of recruitment, employers should not ask for dates of birth or date of qualifications. Job descriptions that request numbers of years experience are dangerous unless the duration of the experience can be objectively justified. Qualifications that are requested must not indirectly discriminate. For example asking for O-levels will discriminate against the young and asking for a Media Studies qualification may discriminate against the old.

Offering long service benefits can be lawful if any benefit is earned with 5 years or less experience, or can be justified to reward loyalty or fulfils a specific business need.

### Treasury starts anticipated war against composite companies.

Composite companies are popular with sub contractors in both the construction and IT industries. The Treasury have long viewed them as a type of “disguised employment”. Composite companies are a corporate structure where contractors are issued with one or more shares of a unique class, in order that dividends can be matched to earnings. The contractor informs the composite company of hours and rates of pay and the composite company manager raises an invoice and takes care of all the administration. In general the composite company will be made up of a handful of contractors who will never meet or exceed a turnover £300,000 so corporation tax remains at 19%.



## United Kingdom (continued)

*The contractor is paid a nominal wage and his remaining earnings are paid in dividends plus a deduction to the composite company manager. This ensures the contractor makes a tax saving without the bother of running his own company. However, there are problems if caused if the contractor's employment status is questioned or the contractor is caught by IR35.*

*The first sign of the clampdown promised in the 2005 budget, has been seen in the construction sector. A composite provider, Gabem, had its exemption certificate for CIS cancelled; meaning companies are no longer allowed to pay Gabem gross and Gabem will now suffer 18% deductions on payments it receives. This means Gabem will no longer have the cash flow to pay dividends immediately and have to wait to the end of the tax year to claim back the deductions. Gabem are appealing to the high court. Assuming the appeal fails it may be expected that HMRC will target other composite providers.*



## News in Brief - Europe

### Kazakhstan

*From 1 January 2007 progressive individual tax rates will be replaced with a 10% flat tax rate.*

### Latvia

*On 7 September 2006, the Latvian parliament approved the reduction of the flat rate of individual income tax from current 25% to 15%. The reduction will take place gradually, by decreasing the tax rate to 22% in 2007, 19% in 2008 and to 15% in 2009.*

### Russia

*From 1 January 2007, a person is regarded as a resident of Russia if he/she is physically*

*present in Russia for at least 183 days during any 12-month period, previously this was a calendar year. Temporary stays abroad of less than 6 months for medical or educational purposes are regarded as being "physically present in Russia".*

### Uzbekistan

*From 2007 there are plans to reduce tax rates to 10% for corporate tax, 24% for social tax and individual income marginal tax rate to 25%.*



## Australia

### New legislation to control Independent Contractors & Workplace Relations

*The Independent Contractors Bill (2006) and the Workplace Relations Amendment (Independent Contractors) 2006 Bill, were introduced from June 2006. The Independent Contractors Bill enables independent contractors to enter into contracts under commercial law rather than being subject to any form of regulation under employment law. The objectives of the Act are to protect the freedom of independent contractors to enter into services contracts and to recognise independent contracting as a legitimate form of work arrangement.*

*The Workplace Relations Amendment (Independent Contractors) Bill 2006 inserts a provision into the Act to guard against bogus arrangements. These provisions will prohibit a range of conduct including:*

- *making false statements to a worker with the intention of persuading or influencing that worker to become an independent contractor, where that person knows the statement to be false and misleading; or*
- *dismissing or threatening to dismiss a person where the sole or dominant purpose is to engage the person as an independent contractor to perform substantially the same work.*

*These changes could result in an increase in the number of individuals either being forced or choosing to operate as independent contractors as employers try to reduce the costs of employment.*

- *misrepresenting an employment relationship as an independent contracting arrangement;*



## China

### **State Administration of Taxation (SAT) clarified, when a Permanent Establishment is deemed to exist.**

*In a ruling issued on July 19th (Guo Shui Han [2006] No.694A) a foreign enterprise is considered to have a Permanent Establishment (PE) if it sends employees to China to provide services for a project, including consulting services, and the periods of work last for more than 6 months in any 12-month period.*

*If a project lasts for a number of years, a foreign enterprise is considered to have a PE in China even if just one of the periods of work of an employee exceeds 6 months. As long as the project continues, the foreign enterprise has a PE in China.*

*If a PE is recognized, the profits arising from the services provided in respect of the project within China are subject tax in China.*



## Hong Kong

### Proposal to introduce Goods and Services Tax (GST)

*In July 2006, the Hong Kong Special Administrative Region government presented an outline for the introduction of GST. The proposal stated that there would be a single rate GST of 5%, applicable to all taxable supplies with the exception of financial services, international supplies, exports*

*and residential property. The threshold for registration would be HKD 5 million. It is further proposed that some existing taxes would be reduced or abolished including salaries tax, hotel tax and profits tax.*

*It is expected that the Hong Kong GST will be similar to those already applied in New Zealand and Australia.*



## Thailand

### **Visa waiver visitors – change to periods of stay.**

*Previously visitors from visa waiver countries were permitted to stay for 30 days initially and could be issued with two 30 day extensions thus allowing a 90 day stay in total. Visitors could then exit Thailand and re-enter on a new visitor's visa, effectively restarting the 90 day cumulative period.*

*From 1 October 2006 new legislation states that visitors can only stay for a total period of 90 days in any 6 month period. Once they have spent 90 days in Thailand they cannot re-enter again as a visitor until 90 days have passed since their most recent date of departure.*



## Vietnam

### Branch and Representative Offices subject to tighter control.

On 15 August 2006, new legislation was introduced which will make it more difficult to establish a Branch or Representative Office (RO) in Vietnam. A foreign company will have to apply for an RO licence which will only be granted if they have been trading for over 12 months elsewhere. The company must also provide audited financial statements and confirmation of tax residence which will need to be approved by their home countries tax authorities.

*RO licences will now be issued for a fixed period of, no more than, 5 years (after which they can be renewed) and the licence will be revoked if the company does not trade for more than 6 months, or fails to submit relevant information when requested.*

*It must also be noted that all existing ROs and Branch Offices currently in Vietnam need to reregister for a licence before 14 February 2007. Failure to do so may result in penalties.*



## News in Brief - Asia Pacific

### India

*New income tax legislation is due to be introduced from April 2008. This legislation is to replace the Income Tax Act (1961) and is heralded as the introduction of a new and simplified tax code.*

### New Zealand

*From July 2007, New Zealand will be lifting the cap on the number of immediate relatives that can be sponsored for residency. Currently, places for these applicants are limited. The sponsors will however have to prove that a genuine relationship exists.*



## Colombia

### Tax reforms announced

*From 1 January 2007 the following amendments to the Colombian tax regime will be implemented:*

- 1. Corporate tax rates are to be progressively reduced from 34% in 2007 to 32% in 2009 and subsequent years.*
- 2. The number of VAT rates will be reduced from nine (ranging from 2% to 38%) to 4 (ranging from 10% to 25%), with the standard rate remaining at 16%.\**
- 3. Individual tax rates will range from 0% to 32% compared to the current top rate of 35%.*

*\*It was originally anticipated that the reforms would change VAT rates to a standard rate of 17% and a reduced rate of 10% but this appears to have been revised during the drafting process. As in many other Latin American countries Colombia imposes a financial transactions tax, whereby payments actioned through banks attract a tax of 0.04%. Whilst it had been thought that the reforms would announce the gradual elimination of this tax, the final draft states that there will be no changes.*



## Costa Rica

### Ministry of Finance announces changes to corporate and VAT laws

*Following years of discussion the new laws are intended to become effective from 1 January 2007. For corporations the tax year will be changed from 1 October 1 – 30 September to mirror the calendar year, bringing Costa Rica in line with most other Latin American countries.*

*Foreign companies intending to establish their residence in Costa Rica will now be*

*required to report the amount of the capital being invested to the tax authorities. In addition, foreign companies established in 'free zones' will be subject to tax at the rate of 29%, effectively reducing their attractiveness from 2010.*

*The number of taxable supplies subject to VAT will be increased to include previously excluded transactions such as professional services at a standard rate of 13%.*

# *Glotel.*