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BDO International

May/June 2008

Expatriate News

Expatriate News has a European flavour this month and we begin with an initiative to deal with issues which hinder EC employment mobility. A number of recent ECJ cases have looked at the issue of discrimination, in particular in relation to the tax and social security legislation in the Netherlands, Portugal and the United Kingdom.

The Netherlands and the United Kingdom also feature in our domestic tax news. The Netherlands has issued a decree concerning the taxation of foreign pension scheme contributions and the United Kingdom continues to release details regarding the far-reaching tax changes which affect expatriates from 6 April 2008.





EUROPE

EU action plan

The top priority of a new EU action plan (the European Job Mobility Action Plan 2008-2010) is to make it easier to seek and find work abroad. Other objectives include the improvement of the current social security rules, the removal of administrative obstacles to cross-border working within the European Community, and raising awareness about working abroad.

Almost 6.5 million extra jobs have been created in Europe during the last two years and another 5 million are expected by 2009, as a result of the so-called 'Lisbon Strategy' for growth and jobs. The European Commission has emphasised the fact that worker mobility is a fundamental right of EU citizens. However, although one in two Europeans welcomes the opportunity to work abroad, in practice very few of them actually move. Currently only 2% of the European workforce is employed outside its home country.

While many individuals remain in their home EU state because they are satisfied with their current situation, many others would like to move abroad but are discouraged by the administration involved in relocating. It is hoped that the new action plan will make a difference in this respect.

The Commission has launched the Action Plan for 2008-2010 because the Lisbon Strategy and the European Employment Strategy identified enhanced geographic and job-to-job mobility as important, both in terms of creating employment, and for the development of the employability and adaptability of

the EU workforce in the context of rapidly changing labour markets.

The Action Plan focuses on certain key areas, in order to ensure that the Commission builds upon past experience. The anticipated high-level actions complement other important legislation and initiatives at the lower, EU Member-State level.

Social security contributions

An important issue is the EC legislation for the coordination of social security contribution schemes, currently laid down in Regulation (EEC) 1408/71 and its implementing regulation (EEC) 574/72. These rules are designed to ensure that EU migrant workers who make use of their Community right to the freedom of movement do not face the loss of social security protection.

Although the regulations have helped to achieve this objective in the past, new mobility patterns (such as shorter foreign work periods, changes to employed and self-employed status, and multinational employers' current mobility practices) can make their application problematic. As an example, a mobile worker who frequently works on short-term contracts in different EU Member States could be faced with benefits from and contributions to a number of different social security schemes. Therefore, consideration is being given to the development of new rules that would be more appropriate to the needs of mobile workers and the companies that employ them.

The Commission will also consider whether there is a need to adapt the Community legislation for social security coordination and the related administrative practices, following a consultation that began earlier this year. A decision based on the findings will be made in the second half of 2009.

Pensions

The protection of the individual's rights to state pension, and to supplementary pensions (such as those provided by employers), can have a significant influence on worker-mobility decisions. In 2005 the Commission presented a proposal for a Directive (the Portability of Pensions Directive) with the aim of reducing the obstacles to mobility by improving the portability of pensions.

Certain pension schemes in EU Member States require the payment of contributions for at least two years (or even longer) before the individual is entitled to receive any benefits. The result is that many Europeans forfeit their benefits completely or for a large part of their working life, because more than 40% of the European workforce stays in the same job for less than five years.

This loss of pension rights is a real obstacle to the free movement of workers within Europe. Therefore, the Commission has drafted new legislation for portable pensions, which the current Commission president would like to see adopted by the end of June 2008.

In coming decades, Europe will be forced to confront the major challenge posed by its ageing population and the need for sustainable pension systems. Therefore, the European Union is encouraging its member

countries to push ahead with reforms to meet three broad objectives:

- 1) A guarantee of an adequate pension for all, breaking the link between old age and poverty;
- 2) Financially sustainable retirement schemes;
- 3) Adapting pensions provision to demographic change.

The Portability of Pensions Directive aimed to allow pension benefits to transfer with the worker as he or she moves across sectors and countries within the European Union. The proposals reinforced the Commission's 'Growth and Jobs' strategy, by making it easier for workers to move between jobs and countries.

On 9 October 2007 the Commission adopted an amended proposal to reduce obstacles to workers' mobility through improved access to, and better preservation of, their pension rights. The proposal reflects most of the European Parliament amendments produced in June 2007, sets minimum requirements for improved access to pensions, and provides clearer pension preservation rights, so that mobile workers' pensions are treated fairly.

The Directive includes provisions for improved access for workers to useful and timely information regarding their rights. Finally, the proposals include a commitment to a regular review of the progress made by Member States in improving the portability of supplementary pensions.

If approved, the Directive will make the conditions for acquiring pension rights more flexible, in particular as regards the different qualifying periods before workers acquire rights. In addition, the conditions for preserving dormant pension rights (such as the reduction in the value of pension rights over time) and the transferability of acquired rights should be improved. Improved information will be given to workers on how mobility may affect their pension rights.

New EC regulations

In addition to the other measures above, the Commission will increase the streamlining of administrative practices and improve the cooperation procedures between national institutions and the authorities in the Member States.

In 2009 (when the new Social Security Regulation (EC) 883/2004 is expected to come into force), the exchange of information between national institutions for the purpose of coordinating social security matters should be fully electronic. This will allow online consultation and exchange of information between Member States, as well as facilitating the introduction of an electronic version of the European Health Insurance Card. These changes should considerably reduce the time taken to process migrant workers' social security applications.

Portugal: discrimination against foreign investments

The European Commission (EC) has sent Portugal a formal request to amend its tax legislation relating to investments held in financial institutions established outside Portugal. In certain cases the income from these investments can be taxed more heavily than income from investments held in Portugal.

The Portuguese tax rules provide that income derived from either domestic or foreign-sourced capital is subject to a final flat-rate 20% withholding tax. However, in the case of certain categories of such income derived from financial institutions established in Portugal, Portuguese-resident taxpayers can opt for taxation under the normal progressive tax rates.

The progressive tax rates imposed on the income of individuals range from 10.5% to 42%. Accordingly, for resident individuals with a marginal rate of tax lower than 20%, the income from investments within Portugal can be subject to less tax than the tax imposed on income from investments held outside Portugal.

The Commission considers that the Portuguese rules are incompatible with Article 56 of the EC Treaty, which guarantees the free movement of capital within the European Community. The European Court of Justice has already stated that any measures taken by a Member State which are liable to dissuade its residents from investing in other Member States constitute a restriction on the free movement of capital (the *Van Hilten* case Number C-513/03).

The formal request sent to Portugal is in the form of a reasoned opinion under Article 226 of the EC Treaty. If Portugal does not reply satisfactorily to the reasoned opinion within two months, the Commission may refer the matter to the ECJ.



UK social security contributions legislation

Two recent cases have considered the UK social security contributions legislation. The first was a case before the European Court of Human Rights (ECHR), *Walker v United Kingdom*, which concerned the different upper ages that can apply to men and women for UK contributions purposes, and which considered whether this was discriminatory under Article 14 of the European Convention on Human Rights.

The second case (*Clements v Revenue and Customs Commissioners*, which was heard before the UK Tax Commissioners) looked at whether the UK six-year rule for the retrospective payment of contributions breached the right to family life, property rights, and the anti-discrimination provisions in the Human Rights Convention. In the event, the UK Tax Commissioner reached no substantive conclusion regarding the six-year rule. This was because he found that the Australian individual who brought the case was not covered by European law, since he had never worked or been resident in any of the EU states at any time up to the date of his claim.

In *Walker v United Kingdom* the ECHR examined the fact that the UK's social security contributions legislation requires payment of contributions by workers up to 'pensionable age'. Although the pensionable age is the same (age 65) for both men and women who are born after 5 April 1955, men born before this date pay contributions up to age 65. Women born before 6 April 1950 will pay contributions up to age 60, while women born between 6 April 1950 and 5 April 1955 will pay up to an age between 60 and 65. A reform of the UK system means that women and men who reach pensionable age after 5 April 2010 must only pay

contributions for 30 years in order to receive a full state retirement pension (compared to 44 years for men and 39 years for women who reach pensionable age by 5 April 2010).

The Court confirmed that a difference in treatment was discriminatory for the purpose of Article 14 of the Human Rights Convention if it had no objective and reasonable justification. It was stated that a difference of treatment based exclusively on sex would require very weighty reasons in order to be compatible with the Convention.

The Court decided that the linking of UK social security contributions to the notional end of working life, or to the age from which the state pension was paid, was reasonably and objectively justified. The difference in pensionable ages continued to be justified until such time as social conditions changed, so that women were no longer substantially prejudiced because of a shorter working life. The United Kingdom's gradual reform of its social security system in stages was not condemned by the Court.

NETHERLANDS

Pensions of incoming employees

A Decree recently took effect in the Netherlands on the taxation of foreign pension scheme contributions. This Decree updated previous decrees and allows a foreign pension scheme to obtain approval from the Netherlands tax authorities (so that the contributions to the pension fund are tax-free).

The main rule is that where a foreign pension scheme does not meet the Netherlands tax-approval criteria, the employer must withhold wage tax and social security contributions from the foreign pension contributions. However, a foreign pension scheme can now 'qualify' for Netherlands tax purposes. Subject to the Netherlands tax authorities' approval, the employer's pension contributions will not form part of taxable salary. In addition, the employee's pension contributions will be tax-deductible. Therefore, it is important to obtain this approval for foreign tax pension plans in all cases.

It should be noted that in the Decree a distinction has been made between employees coming to the Netherlands from other EU Member States, and employees who come from outside the European Union.

The maximum amount that qualifies for Netherlands tax purposes is the amount applicable in the EU Member State involved. However, other conditions apply if the employee is seconded to the Netherlands from a country outside the European Union: for example, only partial corresponding approval is possible for a non-EU pension plan that has tax benefits that exceed the Netherlands tax benefits.

In both situations, the Netherlands authorities' approval applies for the period of the employee's Netherlands secondment, up to a maximum total period of five years. It should also be noted that if an employee is simultaneously employed by a non-Netherlands employer, participates in a non-Netherlands pension plan, and is seconded to the Netherlands, the employee will be deemed to have continued his or her participation in the non-Netherlands pension plan instead of starting to participate in a new pension plan.



UNITED KINGDOM

Non-UK domiciled Members of Parliament

Regular readers of BDO *Expatriate News* will recall that a Private Members' Bill called the Disqualification from Parliament (Taxation Status) Bill was presented to the UK Parliament at the end of 2007. This proposed that any individual who elects for the remittance basis of taxation will be disqualified from acting as a Member of the UK Parliament (MP) or as a Member of the House of Lords (peer).

The UK government has announced that it will not force MPs and peers to be tax-domiciled in the United Kingdom, at least until the end of the next parliament. This means that any changes appear to have been deferred until a time closer to the next UK General Election (which must take place in May 2010, at the latest).

Tax changes from 6 April 2008

Tax allowances and rates

As part of the changes for the UK tax year 2008/09, the Government announced (in 2007) the abolition of the 10% tax rate for non-savings income. This change attracted a great deal of criticism, because of the impact on lower-paid employees (who have been taxed since 6 April 2008 at the 20% basic tax rate).

On 13 May 2008 the Chancellor of the Exchequer announced that individuals affected by the loss of the 10% tax rate would be compensated for this by a general increase in the basic personal allowance. The personal allowance will therefore be GBP 6035 for the UK tax year 2008/09 (the allowance was previously set at GBP 5435), producing a saving to basic-rate

(20%) taxpayers of GBP 120 (GBP 600 @ 20%) and of GBP 240 to higher-rate (40%) taxpayers.

In order to ensure that only the lower-paid benefit from the increase in the personal allowance, the starting point for the 40% higher tax rate has been reduced to taxable income of GBP 34 800 (previously this was set at GBP 36 000). This will increase higher-paid individuals' income tax for 2008/09 by GBP 240 (an additional GBP 1200 taxed at 40%, instead of at 20%), thus cancelling out the benefit of the increased personal allowance.

Employment-related securities

The UK Government's reform of the remittance-basis tax rules from 6 April 2008 includes changes to the way that employment-related share incentives will be taxed in future. The remittance basis applies to certain earnings of individuals who are either non-domiciled or not ordinarily resident in the United Kingdom.

Previously, the main UK tax charges on gains from share-based incentives applied where the individual was both resident and ordinarily resident in the United Kingdom at the time of grant. Share and option gains relating to employments assessed on the remittance basis generally escaped UK taxation, unless UK shares were involved. However, a fall-back provision enabled the UK authorities (HMRC) to tax gains relating to any period in which employment duties were performed in the United Kingdom.

Restricted and conditional shares and share options that are awarded after 5 April 2008 will now be within the main UK tax charge if the employee is UK-resident at the time of grant. The new rules mean that gains arising on post-5 April 2008 share and option awards will be taxed if the employee is either UK-resident, or the gains relate to a period of UK employment duties.

Where the employee's earnings are assessable in the United Kingdom on the remittance basis, new legislation provides that the gains on post-5 April 2008 share and option awards will be apportioned on the basis of the UK and non-UK workdays in the relevant accrual period. In the case of share options, the accrual period will run from the date of grant to the first date on which the options can be exercised (the vesting date). The gains relating to the UK duties will be taxable in full, but the remittance basis will apply to the gains relating to the non-UK duties.

In this connection, it is important to note the new remittance basis rules from 6 April 2008. In particular, these affect UK-resident individuals aged over 18 who have been UK-resident in more than seven out of the ten UK tax years including the current tax year. If the individual's unremitted income and gains for the tax year are GBP 2000 or more, a GBP 30 000 Remittance Basis Charge (RBC) must be paid to use the remittance basis for that year. In addition (and subject to the same GBP 2000 limit), individuals who have been UK-resident in more than seven UK tax years will forfeit their UK personal tax allowances and capital gains tax exemption for any UK tax year for which they use the remittance basis.







More information

For more information, please contact your local expatriate contact or one of the Expatriate Services Centre of Excellence contacts below.

G S Choong	Sydney, Australia	gs.choong@bdo.com.au
Jan Van Langendonck	Brussels, Belgium	jan.vanlangendonck@bdo.be
Muriel Sivasankaran	Paris, France	m.sivasankaran@bdo-taxlegal.fr
Gerlinde Seinsche	Frankfurt, Germany	gerlinde.seinsche@bdo.de
Robin Schalekamp	Rotterdam, Netherlands	robin.schalekamp@bdo.nl
Kemp Munnik	Johannesburg, South Africa	kmunnik@bdo.co.za
Ramon Portela	Madrid, Spain	ramon.portela@bdo.es
Linda Petruzzello	New York, USA	lpetruzzello@bdo.com
Andrew Bailey	London, UK	andrew.bailey@bdo.co.uk

If you have any feedback or comments regarding this newsletter, including features that you would like to see in the future, please contact Amanda Sullivan, Newsletter Editor at jimsullivan1@btopenworld.com



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