

Global Taxation Update

Australia

Data Matching Programme – Visa Holders, Sponsors and Migrant Agents

In October 2015, the Australian Department of Immigration and Border Protection (DIBP) issued a 'Notice of Data Matching Programme', announcing that it will provide the Australian Taxation Office ('ATO') with names, addresses and other details of visa holders, their sponsors and migration agents for the 2013/14 to 2016/17 financial years.

It is estimated that records relating to approximately one million individuals will be provided. The data items that will be provided include;

Visa Applicants And Sponsors

- Address history for visa applicants and sponsors
- Contact history for visa applicants and sponsors
- All visa grants
- Visa grant status by point in time
- Visa subclass code and descriptor
- All international travel movements undertaken by visa holders (arrivals and departures)
- Sponsor details (subclass 457 visa)
- Education providers (educational institution where the student visa holder intends to undertake their study).

All Migration Agents

- Address history for migration agents
- Contact history for migration agents.

How The Data Will Be Utilised

The records will be electronically matched by the ATO with certain sections of its data holdings to identify non-compliance with registration, lodgement, reporting and payment obligations under taxation laws.

Purpose Of The Data Matching Programme

1. Ensure that taxpayers are correctly meeting their taxation obligations
2. Ensure compliance with registration, lodgement, correct reporting and payment of taxation and superannuation obligations
3. Improve intelligence on the overall level of compliance with taxation obligations by target group
4. Assist in developing and implementing administrative strategies to improve

voluntary compliance

5. Test the veracity and strengths of existing risk detection models and treatment systems
6. Identify areas for improvement in the ATO's suite of compliance models and treatment systems
7. Identify potentially new or widespread fraud methodologies and those entities controlling or exploiting those methodologies.

BDO's Comment

Expatriate employees working in Australia, as well as their employers - whether locally based or overseas, should of course be conscious of their tax obligations in Australia and act accordingly. This move is likely to result in cases of non-compliance being exposed which may result in extra and unbudgeted costs to the employee and/or employer.

Employers of expatriate employees should consider reviewing their internal protocols to ensure that they are tax compliant in Australia and encourage their expatriate employees to do the same.

Canada

Taxation of allowances for board and lodging in, or transportation to, remote worksites or remote work locations.

Under the Canadian Income Tax Act (the Act), all amounts received by a taxpayer in the year in the form of an allowance for any purpose must be included in income, unless otherwise exempted by the law. One such exemption deals with employment at a special work site or a remote location. This states that 'an allowance (not in excess of a reasonable amount)' in respect of board and lodging or transportation, may be excluded from income in certain circumstances. Board and lodging allowances received for work 'at a special work site, being a location at which the duties performed by the taxpayer were of a temporary nature' will be exempt.

A recent Canada Revenue Agency (CRA) document clarifies their position in regards to allowances that would otherwise qualify but seem unreasonable. When an allowance is determined to be in excess of a reasonable amount, the entire amount will be taxable. The reason for that is that if an allowance is higher than a reasonable amount, it tends to include expenses other

than board and lodging or transportation. This position is consistent with the CRA's position regarding other higher-than reasonable allowances received by employees (e.g. motor vehicle allowances).

In regards to the temporary nature of the duties performed, it was the longstanding position of the CRA that an assignment that lasted less than 2 years would be considered temporary in nature. Should the assignment be over two years, it could still be considered temporary depending on the facts. The CRA would consider allowances received during the assignment to be eligible for exemption as long as the contract between the employer and the employee was not expected to be for more than 2 years. In recent audits we have seen a shift of interpretation from the CRA restricting the availability of relief. The new position can be summarised as follows: 'It is the view of the CRA that the duties to be performed by an employee at a particular work location will not be considered to be of a temporary nature where the employer requires the duties to be performed on an ongoing basis, even though the particular employee's contract is for a short-term'. This view has been used increasingly in audits by the CRA in order to deny the application of the exemption when employees, having important duties with the company, were put on assignments that lasted short periods of time (e.g. CEOs, CFOs). In summary, the CRA will look at the temporary nature of the role of the employee within the company, as opposed to the duties undertaken by the specific employee.

BDO's Comment

It is our view that the CRA is looking to limit the cases where allowances for board and lodging would benefit from exemption. Where an employer has previously taken the position that an allowance for board and lodging was not to be included in the compensation of employees coming to Canada for short periods of time, the position should be reviewed to determine if this tax treatment is still sustainable.

Germany

New Income Tax Rates and assessment ceilings in the German Social Security System (From 1 Jan 2016)

Annual Employment Income (EUR)	Min. Withholding Rate
8,652 and less	0%
between 8,653 - 13,669	14
between 13,670 - 53,665	24%
between 53,666 - 254,446	42%
over 254,447 (Married Couple = EUR 508,894)	45%

Social Taxes

On top of the wage tax, a solidarity surcharge of 5.5% and church tax (if applicable) of 8%/9% of the income tax due, will also have to be withheld.

Social Security Contributions

19.325% is the employer portion and 19.325 % is the employee portion, for a total contribution of 38.65%. These amounts are broken down as follows:

	Employee	Employer
1. Medical insurance	7.3 %	7.3 %
2. Health care insurance	1.175 %	1.175 %
3. Pension insurance	9.35 %	9.35 %
4. Unemployment insurance	1.5 %	1.5 %

Depending on the insurance provider an extra payment is due (generally around 0.8 % or 0.9 %) towards medical insurance. This extra payment is borne only by the employee. For employees with no relevant children (over the age of 23) 0.25 % has to be paid additionally towards health care insurance by the employee. There is a contribution ceiling for the pension and unemployment insurance amounting to EUR 6,200 per month in 2016 (for individuals who live in the western part of Germany) and EUR 5,400 per month in 2016 (for the eastern part of Germany). For medical and healthcare insurance the contribution ceiling is EUR 4,237.50 per month in 2016.

BDO's Comment

Please review the changes, and consider what impact they may have. Do remember that whilst German social security rates might, at first glance, be higher than in other countries the impact of capping can be beneficial for those in receipt of high levels of earnings.

Malaysia

Budget 2016 Highlights

The 2016 Budget introduced personal tax changes as listed below:

Income tax rates for resident individuals

The following rates have increased for 2016: All other bands remain unaffected.

Chargeable Income (RM)	Current tax rate (%)	Proposed Tax Rate (%)	Increase (%)
600,000-1,000,000	25	26	1
1,000,001+	25	28	3

Income tax rates for non-resident individuals

Income tax for non-residents is to be increased from 25% to 28% for 2016.

Personal Tax Relief for taxpayers whose spouse has no income and/or pays alimony to former spouse

Personal tax relief for a taxpayer who fits the above criteria is increased from RM3,000 to RM4,000 from 2016.

Personal Tax Relief for Parental Care

Parental care relief is introduced whereupon the taxpayer is allowed to claim RM1,500 relief for a mother and RM1,500 relief for a father.

This relief can be equally shared with other siblings provided that the total relief claimed shall not exceed RM1,500 per mother and RM1,500 per father.

The claim is subject to the following conditions:

- Such taxpayer does not claim expenses on medical treatment and care of parents
- Parents are the legitimate natural parents and foster parents in accordance to the respective law subject to a maximum of 2 persons
- Parents aged 60 years and above
- Parents reside in Malaysia in the current year of assessment; and
- Parents have an annual income not exceeding RM24,000 per annum for each parent.

Personal Tax Relief for Children below 18 years of age

Personal tax relief for children below

18 years of age is to be increased from RM1,000 to RM2,000.

Personal Tax Relief for Children Studying at Tertiary Level

Personal tax relief on fees for tertiary education is to be increased from RM5,000 to RM7,000 per annum.

Personal Tax Relief on Employees' Contribution to Social Security Protection Scheme (SOCSO)

Personal tax relief on employees' contribution to SOCSO pursuant to the Employees' Social Security Act 1969 up to a maximum of RM250 per annum.

Personal Tax Relief on Gratuity on Retirement or Termination of Employment Contract

With the introduction of the new paragraph 25D in Schedule 6, the Director General extended the exemption under that Schedule to any sum received by way of gratuity on retirement from an employment under any written law or termination of an employment contract other than paragraphs 25, 25A, 25B or 30A of that Schedule.

The sums shall not exceed an amount ascertained by multiplying the sum of RM1,000 by the number of completed years of service of that individual.

Employment Gross Income

The proposed amendment provides that any gross income from an employment which is receivable in any year of assessment is taxed in the year it is received. It also provides that any income receivable by an employee who will be leaving Malaysia is deemed to have been received for the period before the employee leaves Malaysia.

BDO's Comment

Do familiarise yourself with the proposed changes and consider how this may affect individuals taxable in Malaysia.

The Netherlands

Dutch Crisis levy 2014 contrary to European Convention of Human Rights, according to Advocate General. Crisis levy

In March 2013 and March 2014 a one-off employer's levy of 16% was levied on employee's salaries that in preceding years, respectively 2012 and 2013, exceeded EUR 150,000. Many employers filed objections against the crisis levy. A number of these cases are now being brought before the Dutch Supreme Court as test cases.

Proceedings concerning 2013 and 2014

In a specific test case, the Advocate General concluded on 17 November 2015, that the crisis levy for 2014 did have a retroactive effect and furthermore that the government had failed to justify this. He argued that the crisis levy for 2014 in fact defies two fundamental expectations of taxpayers. Firstly, the expectation that the government would adhere to its announcement that the crisis levy would only be levied in 2013 and, secondly, the expectation that past time periods would not be taxed again. This is contrary to the European Convention of Human Rights. The Advocate General concluded that the scope of the 2014 crisis levy therefore should not go further back than 17 September 2013, as it was only then that the one-off extension of the crisis levy was adequately announced to the public. The 2014 crisis levy of 16% cannot therefore be applied to salaries received before 17 September 2013, to the extent that these exceeded EUR 150,000. The salary received before 17 September 2013 should however be taken into account to determine whether the employee's salary for 2013 exceeds EUR 150,000.

Please note that in proceedings against the crisis levy for 2013, the Advocate General concluded on 18 June 2015, that retroactive effect is also present for 2013 and that this cannot be justified for a number of reasons. The scope of the crisis levy for 2013 therefore should not go further back than 25 May 2012, the date on which, in the opinion of the Advocate General, the crisis levy was adequately announced.

BDO's Comment

We now have to await the judgment of the Dutch Supreme Court. If the Supreme Court follows the Advocate General's Opinion, in some cases this could lead to a refund of part of the crisis levy for those employers who filed a notice of objection against the crisis levy.

Sweden

Gross salary calculation requirements to benefit from the rules for expert tax relief

An individual who moves to Sweden to work for a Swedish company (or a foreign company with a permanent establishment) can under certain circumstances be covered by the 'expert tax regime'.

The expert tax regime applies to foreign experts, executives, key personnel, scientists, researchers and others whose skills are difficult to find in Sweden. Furthermore employees with a monthly gross salary

including benefits exceeding two basic amounts (SEK 89,000 for 2015) are automatically eligible for expert tax status.

The Supreme Administrative Court has, in a ruling in November 2014, stated how the net salary should be calculated to gross in order to determine whether an employee on a net contract fulfills the salary level requirement to be taxed under the expert tax regime. The ruling implies that the tax relief should be taken into consideration when calculating the gross salary. Hence, the monthly gross salary should be equivalent to the threshold of minimum two price base amounts after the tax relief has been deducted from the gross salary.

The expert tax regime is beneficial since income tax and social security contributions are based on only 75 % of the employment income. Furthermore, a number of benefits (moving costs, children's schooling, home travel, etc.) are tax exempt.

The tax relief can however, only be granted for three years, and a condition to be covered by expert tax is that the employee is not expected to stay in Sweden for more than five years. Furthermore, the following criteria should be fulfilled;

- The employer must be a Swedish company or a foreign company with a permanent establishment in Sweden
- Individuals who have been a resident in Sweden during any of the five years prior to the start of the assignment in Sweden cannot qualify
- Application must be filed within 3 months from starting work in Sweden
- The salary should preferably be paid from the employer's Swedish bank account.

Ruling by the Supreme Administrative Court

There have been uncertainties in how the gross salary should be calculated for an individual on a net contract in order to reach the threshold of a gross salary of SEK 89,000 per month. The Supreme Administrative Court ruling states that for an employee with a net contract to be able to be taxed in accordance with the Expert Tax Regime, the net salary should be at least as high as the net salary for an employee with a gross contract. Hence, the tax relief of 25% should be taken into consideration when determining if an employee with a net agreement is entitled to the expert tax relief.

The above implies that the formula Gross salary = Net salary + preliminary tax withholding based on standard tax tables.

This formula should be used regardless of whether there is an agreed net salary or gross salary.

It should be noted that if the requirement for monthly gross salary is not fulfilled there could be a possibility to be taxed in accordance with the rules for expert tax relief if the employee is a specialist, researcher or part of the board of the company who he/she works for. This applies if there is no possibility to find the same type of expertise/skills in Sweden.

BDO's Comment

The ruling by the Supreme Administrative Court has clarified the rules for expert tax relief based on salary levels and it is of great importance for future applications for expert tax relief. Given that the final deadline for applying for the relief is three months from the start of the work, if the salary level is not reached in accordance with the above, an application based on special skills should be filed at the start of the work in Sweden in order not to miss the three month deadline.

USA

New IRS Form 1095 – Affordable Care Act

US employers with at least 50 full-time US employees must ensure they are complying with the Affordable Care Act and file the correct forms, reporting details of the health coverage they provide. U.S. based assignees should be notified that they will be receiving Form 1095-C in early 2016 and may need information from Form 1095-C to complete their 2015 U.S. income tax filing. Do note that an international assignee may be eligible for exemption from the individual penalty if a resident of a foreign country, or if a non-resident of the United States.



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