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ALLIOTT GROUP

A Worldwide Alliance of Independent Accounting, Law and Consulting Firms

IN FOCUS

A Special Report: The Common Reporting Standard - What Does It Mean to Expatriates?

The Common Reporting Standard (CRS) has real implications for expatriates and individuals with assets held overseas. Read our experts' simple guide to what you need to know.

A multijurisdictional report from Alliott Group's Global Mobility Services Group makes it clear that the creation of a global tax reporting network under CRS rules is truly under way. While emphasising that CRS is a gamechanger and that expatriates must pay attention, it does hint however that deadlines for implementation may be over ambitious in certain less developed countries and that national tax laws in some countries could make CRS rules open to interpretation.

Indeed, should all proceed according to schedule, this global push towards coordinated tax reporting compliance will involve approximately 1,300 bilateral relationships being in place by 2018.

An expatriate who is tax resident/paying taxes outside the country where he or she banks, should be aware that their bank will give their personal account information to the local tax authority, which may then be shared automatically on an annual basis with the tax authority where he or she is tax resident. Expatriates' individual accounts as well as dividends, interest and other incomes earned outside their countries of origin (or "tax residence") will be under investigation.

Expatriates need to regularise their affairs now

David Gibbs, partner at London member firm Alliotts and Chair of the association's International Tax Services Group comments: *"CRS is live and expatriates should not assume it won't apply to them. Financial institutions are already busy collating information, ready for transmission around the world in Spring 2017. Expats need to come forward to normalise their affairs with tax authorities and disclose any assets held offshore – there will be significant reputational and financial risks for lack of compliance."*

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Editor's Welcome

Luc Lamy, Chair of Alliott Group's Global Mobility Services Group

The Expat Post is our new international newsletter for companies with an international workforce and for individual expatriates working and living in countries around the world.

As an international alliance of independent, medium sized accounting and law firms in 70+ countries worldwide, we believe we are well placed to provide a holistic view of many of the evolving issues affecting companies with international/cross border assignees and of course the issues that impact on the individuals involved.

And while this publication will address many of the challenges that involve tax and social security, we will also unravel legal issues such as immigration, work permits, employment law and regulatory law so that you can move forward with confidence and anticipate, plan for and meet the challenges ahead in the global marketplace.

This issue provides more about what you need to know about the principles of permanent establishment *(see page 7)* and how moving people across borders can create a PE problem for the company and the employee. Our global mobility experts also explain another gamechanger - the Common Reporting Standard (CRS) – find out on pages 1 and 3 why expatriates must take steps to get their financial affairs in order now. Finally, we look at which countries offer a 'special tax regime' for expatriates *(see pages 4-5)* and/or what special tax treatment can apply to non-residents.

For more information on any of the issues covered or how Alliott Group can help, please contact myself, Giles Brake at Alliott Group (giles@alliottgroup.net) or visit our website (www.alliottgroup.net) to locate an expert in a specific city or country. A local contact will act as your gateway to the world.

Enjoy!

LUC LAMY

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The Common Reporting Standard – What Does It Mean to Expatriates?

While those who hold significant reportable financial assets offshore in the form of foreign investments or property are the most likely group to be affected by CRS implementation, should their jurisdiction adopt it, **John Nelson**, managing director at Dixcart Trust Corporation in Guernsey comments: *"Offshore tax planning and wealth management have become synonymous with tax evasion in many people's eyes and as a result have become highly politicised globally. With revelations of offshore assets (for whatever reason) the perception is of non-compliance which comes with the potential for reputational damage. People may assume that it is the high profile, big impact clients (Politically Exposed People, Commercially Exposed People and Media Exposed People) who are being targeted, but the average expatriate should not assume they will go under the radar."*

All of Alliott Group's global mobility experts re-emphasise the need to normalise affairs early and work with advisors to remove any doubt. **Jamie Towers**, partner at Hanrick Curran in Brisbane, comments: *"Australia has arrangements in place to receive information from 50 jurisdictions and send information to 41. We anticipate that further jurisdictions sending information to Australia will be added over the next 12 months. Australian expatriate workers will need to ensure they do not fail to make the proper tax declarations in Australia and the same goes for foreign tax residents living and working in our country - anyone who harbours doubts about the legitimacy of their current arrangements would be wise to have them checked by their professional advisers."*

Revenue generation to address the global tax gap

Governments worldwide are continuing their search for additional tax revenue and are looking, through CRS, to address perceived tax leakage to other jurisdictions. **Manie Steyn**, partner at MMS Group in South Africa comments: *"South Africa has a large budget deficit – however, under CRS, the South African Revenue Services (SARS) will have access to an unprecedented volume of information on South African tax residents' offshore dealings and structures, some of whom will be expatriates. CRS will allow SARS to collect taxes more efficiently and we may see significant tax revenues generated once the first reporting period ends. We advise South African tax residents and expatriates with such structures to seek advice quickly to ensure they are compliant. This might include a SVDP (Special Voluntary Disclosure Programme) application to SARS which must be submitted before 31 August 2017."*

Lack of consistency and non-U.S. participation could hamper CRS effectiveness

The report also points out specific weaknesses in CRS, notably the U.S. not being a participant jurisdiction and individual jurisdictions being given a certain amount of leeway in their implementation of CRS rules. Indeed, **David Gibbs**, partner at Alliotts in London, comments: *"Differing guidance across the world will make it difficult for financial institutions to apply a consistent approach across all jurisdictions. It should be noted that CRS contains many exemptions that may be legally exploited by account holders and financial institutions to retain privacy – whether these, or non-participation by the U.S., will negate the effectiveness of CRS, remains to be seen."*

As to the reasons for the United States' lack of appetite for CRS, Alliott Group members point to the existence of FATCA and the potential for banking confidentiality to be undermined. **Scott Shapiro**, partner at Weber Shapiro in New Jersey, comments: *"FATCA helps the IRS to stop American citizens evade payment of U.S. taxes whether they are living and working abroad or hold investments somewhere else outside the U.S. Whether it is fair or not, FATCA is not based on reciprocity with the IRS being the recipient, not the provider, of tax information."*

Open to interpretation

Alliott Group global mobility tax experts in Belgium and the Netherlands, feel that non-resident tax payers may not be too affected by CRS. **Fred Krabbendam**, managing director at Borrie in Rotterdam comments: *"Dutch 30% tax ruling holders can opt to be treated as non-Dutch tax residents during their stay in the Netherlands. The results of this are that, inter alia, income (including capital gains) from Dutch but also from foreign bank and investment accounts, is excluded from Dutch Box 3 taxation. This means that Dutch and foreign bank and investment accounts do not need to be reported in the foreign expatriate's Dutch tax return."*

The Belgian special tax regime and CRS

In Belgium, **Luc Lamy**, partner at Tax Consult in Belgium points out that there is still an issue in relation to how CRS regulations should be interpreted in the case of Belgian expatriates benefiting from the Belgian special tax regime (STR) for foreign specialists and expatriates: *"These expatriates, through application of the Belgian STR, qualify in Belgium as non-resident taxpayers who are no longer residents of another country for tax purposes. As a result, these expatriates would appear to not be affected by CRS regulations as for these individuals, there is no Residency State the Belgian authorities should communicate the information to. This implies henceforth a tendency to consider these particular expatriates as Belgian resident taxpayers for the purpose of CRS. The Belgian financial assets of these expatriates will be taxable in Belgium and will not be subject to any information exchange required under CRS."*

There are still opportunities for (careful) tax planning

While pointing out that expatriates (and high net worth individuals with assets held overseas) must comply with the new CRS rules, **Jackie Hendley**, Head of Tax at Smith Cooper in Birmingham, comments: "CRS is aimed at combatting tax evasion, not lawful tax mitigation and opportunities for tax planning are still available but need the help of a tax expert to ensure they stand up to scrutiny."

For advice on CRS

Click here to download the full report or in the first instance, contact Giles Brake at Alliott Group.

Special Tax Regimes for Expatriates: Video Reports

Combined with other factors, a special tax regime for expatriates can make a country more attractive to a foreign company that is looking to expand and to invest by helping to reduce employment costs. In the videos below, six global mobility experts from around the world explain whether a special tax regime is available in their countries – scan the QR codes below to watch the video interviews.

While some countries such as Belgium, France and Luxembourg do offer well established "regimes", how an expatriate is treated for income tax purposes in different countries around the world will depend on many different factors, including, but not limited to, the type of visa used to enter the country, the social, economic and/or family ties that individual has created to the host country, the nature of the individual's profession, or the number of days spent in the host country within the tax year.

EXPERT VIEWPOINTS

Jackie Hendley
Head of Tax, Smith Cooper, Birmingham

"There is no special tax regime for foreign employees coming to the UK but there are rules that determine how they are treated from a tax perspective. Whether accommodation and other expenses are taxable or not will depend on the contract they are employed under and the duration of any secondment."

jackie.hendley@smithcooper.co.uk

You Tube
Watch the full interview

Jamie Towers
Partner, Hanrick Curran, Brisbane

"There is some special treatment of expatriates' tax affairs in Australia - those coming into the country on a temporary visa will be treated similarly to Australian residents, but marginal tax rates only apply to their Australian sourced income."

Jamie.Towers@hanrickcurran.com.au

You Tube
Watch the full interview

Valérie Ménard
Partner, Hardy Normand et Associés, Montreal

"There is no special regime for expatriates in Canada. Our tax regime is based on residency and whether the individual has created sufficient ties to Canada to constitute being resident in Canada for tax purposes. Non-residents will only be taxed on income earned in Canada."

VM@hna.ca

You Tube
Watch the full interview

Note: A QR code reader app needs to be installed on your smartphone to view the videos.

Carlos Montesa
Partner, Abbantia Abogados y Asesores Tributarios, Seville

"There is a special tax regime for expatriates in Spain (impatriate system) that must be applied for within six months of arrival. All income is taxed at a rate of 24% unless earnings are above Euros 600,000 at which a 45% rate of tax will apply."

carlos.montesa2@abbantia.com

You Tube
Watch the full interview

Antonio Varela
Partner, ABV Advogados, Lisbon

"Since 2009, Portugal's Tax Regime for Non-Habitual Residents creates conditions under which the individual qualifies for the country's special tax regime. These can include renting a property or staying in the country for more than 193 days. There are many benefits such as a tax exemption on pensions. A flat rate of tax of 20% also applies to specific high level professionals."

apv-12020L@adv.oa.pt

You Tube
Watch the full interview

Guillermo Villegas Jr
Partner, Villegas y Villegas, Monterrey

"An expatriate can enjoy a special tax regime when assigned to Mexico. If qualifying as non-residents, they will only pay tax on Mexican sourced income and are allowed to have an exempt accumulated income."

guillermo.va@villegassc.com.mx

You Tube
Watch the full interview

Never Make Assumptions: Permanent Establishment Risks & the International Assignee

In recent times, global tax reform has been moving at a lively pace, driven by several factors: the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS) initiative, local corporate tax reform initiatives, but just as importantly, the concept of permanent establishment. In this article, we give a helicopter view of the general principles of permanent establishment and explain how short and long term staff assignments can trigger a PE problem for companies and individuals.

What is permanent establishment?

Permanent establishment or 'PE' is one of the fundamental principles used by local tax authorities to claim jurisdiction over a company doing business on their territory which is thus perceived to have created a taxable presence. It is a slightly grey area and misjudging how and where it applies can be a costly mistake. Recent tax reforms have empowered local tax authorities to investigate corporate structures and to re-categorize what some companies may dress up as auxiliary employee activities as direct sales employee activities that are therefore liable to local taxation.

To add to the uncertainty, what constitutes a permanent establishment under local tax rules will vary from country to country. In general however, PE is judged to exist if an activity carried out by a business in a country results in revenue being generated or value created.

How is PE determined?

Local tax authorities will carry out their own tests and then apply local PE laws and any relevant double tax treaties entered into by that country. These tests vary considerably, but the bullet points below show what are generally considered to be indicators of a PE in a country. A portion of the company's income attributable to the PE (subject to certain exceptions) will be subject to local tax and social security contributions and subject to demanding reporting and filing requirements, registrations and professional fees. For the assignee, cross border commuter or business traveller, income tax payments and social security contributions could be assessed.

- The OECD Model Tax Treaty defines a trigger for PE as being a "fixed place of business through which the business of an enterprise is wholly or partly carried on" in the host country. The terms are loosely defined and could include not only a formal office, but possibly the employee's home office, an "office business center[1]" or in the case of protracted assembly work, containers on a construction site
- A specific individual (or a number of individuals) could create a PE risk, even when a true physical location of the employer does not exist
- An employee's job title (or description) shows that he/she carries out activities related to revenue generation or sales, and that employee works in the host country for an extended duration
- A company employee in the host country receives compensation such as commissions, bonuses and in some countries, even stock/share options that relate to sales activity
- Sales are to customers based in the host country and local contracts are negotiated by a locally-based employee or dependent agent. Although the employee or agent may not have the authority to close contracts, if he or she is deemed to be substantially involved in the negotiation of contract terms or the signing of such agreements, a PE may be deemed to exist.

Isabelle Paré, Senior Manager at Hardy Normand et Associés in Montreal adds: *"Even if the corporation does not have a PE, assignees/cross border commuters or business travellers remain liable to tax on employment income earned in the foreign country, subject to specific exclusions contained in tax treaties. In Canada for example, foreign companies with no PE can still be subject to tax and social security withholding requirements."*

[1]"Office business centers" or "executive suites", provide physical office space and/or meeting rooms that can be available for use. It differs from a virtual office, which provides communication and address services for a fee, without providing dedicated office space.

Examples of situations which could trigger a PE

- Your company transfers a high level executive (e.g. CFO) temporarily from global HQ to a different country to head up a new subsidiary with the CFO retaining some of his/her responsibilities in the home country. The host country's tax authorities may consider that this individual's activity creates a PE as the foreign company is actually conducting business in the host country (as the CFO is undertaking business related to the foreign country on the host country's territory) and may therefore claim tax jurisdiction over both the local subsidiary and the foreign parent
- Your company sends a technical staff member to the host country to carry out a software installation and provide maintenance services over an extended duration to a new client. Local tax authorities in the country may deem that the services rendered trigger a PE as revenue can be attributed back to these services
- An employee in the host country receives pay slips which include a job title comprising the word "sales." PE may be automatically triggered due to the word "sales" being in the employee's job title, whether that individual is actually involved in the sales process or not
- Your company hires a client relationship/account manager to work in the host country on the assumption that this position will not be linked to revenue generation and therefore will not trigger a PE. However, tax authorities may deem this type of activity to be a direct contributor to overall revenue generation.

Which situations can avoid a PE?

If the activity carried out by an individual is preparatory or auxiliary in nature, i.e. if it does not form an essential part of the business as a whole, a PE will generally not be deemed to exist. However, in practice, proving this can be difficult and is the responsibility of the company.

It is advisable to seek certainty from local tax authorities at the outset to ensure staff assignments are in compliance with local (tax) laws and structured as efficiently as possible from a tax perspective. In view of the varying definitions of what constitutes a PE and the definitions and exemptions held in tax treaties between countries, it is important to get good professional tax advice. Many of these issues can be resolved or mitigated through the correct planning and documentation.

ALLIOTT GROUP COMMENTARY

David Gibbs

Partner, Alliotts, London

"The circumstances which give rise to a PE in the UK are broadening in line with the OECD's proposals which seek to identify where economic benefit is really being obtained (the "nexus" approach). As a result, understanding the breadth and depth of the activities of overseas employees in the UK has become a more important subject for HMRC. HMRC wants to know exactly who enters the UK to work even if it is for only a short period. As an inducement to reporting the movements of overseas employees in the UK, HMRC introduced the Short-term Business Visitors Agreement for companies which requires them to report employees entering and leaving the UK, but then removes the payroll burden where the employee is exempt from tax through a double tax treaty."

david.gibbs@alliotts.com

Isabelle Paré

Senior Manager, Hardy Normand et Associés, Montreal

"The fact that a non-resident is carrying on business in Canada does not necessarily mean that this will lead to tax liability and compliance requirements. The PE concept in Canada is based on the OECD Model Treaty and comments. However, new treaties tend to include a more service based concept, introducing rules to capture non-residents with significant presence through use of assignees or business travellers. This approach is reflected in recent audits. The reduction of Canadian corporate tax rates, which are sometimes below the home country rate, may no longer be a net cost to non-resident companies, which make a PE issue less dramatic."

IPare@hna.ca

Jamie Towers

Partner, Hanrick Curran, Brisbane

"The Australian Government taxes foreign residents on Australian sourced income. However, tax treaties override domestic law and limit the ability of the Government to tax a foreign company only to income derived in Australia through a PE. Tax treaty definitions of a PE vary from treaty to treaty, although they largely follow the OECD model, so it is critical to understand which activities create a PE in each case. Employee and 'agent' activity in a host country needs to be closely scrutinised to understand whether a PE is created. The OECD is current focusing on artificial avoidance of PE status and is considering tightening up its definition of a PE to catch more employee / agent activities. Australia has strongly supported and implemented the OECD's recommendations around BEPS and now has some of the strongest multinational anti-avoidance laws in the world."

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Martin Seidl

Partner, Rothenbuchner & Partner, Vienna

"The Austrian PE concept follows the OECD Model Treaty and will be extended over time in line with BEPS. With respect to international assignees, PE risks only exist if the assignee acts on behalf of the foreign company in Austria; secondments to affiliated companies will not create a PE in Austria. As every assignment/secondment to Austria has to be notified to a local authority, any activity of a foreign company in Austria for an extended duration should be checked by a tax advisor to avoid any PE risk."

M.Seidl@rothenbuchner.co.at

Belgium: Each Relocation Requires Case-by-Case Analysis

How to Optimize Mobility for Executives on Foreign Assignment: An Interview with **Luc Lamy**, Chair of Alliott Group's Global Mobility Services Group and a Partner at Tax Consult.

Companies seconding personnel on foreign assignments should make sure that they do so legally. In this interview, Luc Lamy, a partner at Tax Consult, explains that executives may sometimes also benefit from special tax benefits.

Which particular aspects merit a company's special attention?

Luc Lamy: First of all, the immigration formalities. Non-European nationals, for example, need a work permit or independent contractor's card. And a work permit for France does not let you work in Belgium! It's also important to keep in mind that in Belgium, for example, it takes six to eight weeks to obtain a permit. Belgium also requires the "Limosa declaration" (advance notice of arrival). As far as social security is concerned, the European regulations apply: you may be subject to the system of your home country.

What about taxes?

Luc Lamy: It depends on the specific country: each bilateral treaty is worded differently. You have to be careful. Is the mere fact of working abroad a taxable event? Should you plan on advance payments of tax? An executive on a 10-month assignment in a foreign country may have the obligation to pay a monthly tax based on his earnings, even if it is paid in another country. You have to pay tax wherever it is due.

Isn't there a uniform European tax system?

Luc Lamy: No, there isn't. Everything depends on the agreements for the avoidance of double taxation. Belgium has signed many of these agreements. In non-signatory countries, it is necessary to examine the domestic laws of the two countries. The same is true outside of Europe. If you send one executive to the USA and another to South America, the tax systems are different. Each relocation therefore requires a case-by-case analysis. We should emphasise however, that international law takes precedence over domestic law.

What about the companies themselves?

Luc Lamy: Foreign assignments automatically cost more than local hiring. The company must pay for the costs of housing, relocating the family, etc. In certain countries, the company can save on social security and/or tax expense by signing the lease itself when providing accommodation.

Is there a special tax system for foreign executives?

Luc Lamy: We have had a special tax system in Belgium since 1983. Many other countries have followed suit, including France and Luxembourg, quite recently. It's the first thing to look into in terms of optimisation, because it really helps reduce employment costs.

For more information

Please contact **Luc Lamy**, partner at Tax Consult, Alliott Group member firm in Belgium: ll@taxconsult.be

Alliott Group's Global Mobility Services Group facilitates access to accountants, tax advisors and lawyers in many of the world's commercial centres across some 70 countries. Visit our website (www.alliottgroup.net) to find a professional or contact Giles Brake (giles@alliottgroup.net) at Alliott Group.