AlliottGlobalAlliance®

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Alliott Global Alliance is an international alliance of independent professional firms
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Welcome

Welcome to Alliott Global Alliance's Autumn edition of the Expat Post – our newsletter bringing you the latest updates on issues impacting the international workforce.

This edition has been specifically curated for the Expat Academy's 2021 Annual Conference, Better Together. Alliott Global Alliance professionals from across Europe are pooling their expertise and resources, with the support of the alliance's Executive Office, to headline sponsor the event.

The conference, taking place in London will bring together many global mobility and HR professionals from companies across a wide variety of industries and will be attended by a multidisciplinary global team of tax advisers, immigration experts and lawyers from Alliott Global Alliance (AGA).

In this issue Graeme Kirk summarises the ongoing immigration problems experienced by UK and EU businesses following Brexit, Hunter Norton highlights the importance of understanding tax implications before undergoing expatriation and we also have an update from Masuda Funai's immigration team on how employers can avoid falling foul of the tricky area of immigration compliance.

Members of AGA's Global Mobility Group recently colloborated with BritishAmerican Business on the future of global mobility and read my update about changes to tax for those in Belgium who own property abroad.

We are also pleased to welcome a contribution from VP Sustainability & Managing Partner, Leonie Pentz from AGA preferred partner, AIMS International, who tells us why global firms are relocating staff to South Africa.

Speak to one of our global mobility experts in the Expo area

Luc Lamy
Tax Consult
Chair of Alliott Global Alliance's
Global Mobility Services Group
LL@taxconsult.be

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Expat Academy
2021 Annual Conference
Better Together

13.09.21 Bishopsgate, London

expat academy

Alliott Global Alliance is a proud Lead Sponsor of this prestigious conference, which brings our team into personal contact with global mobility professionals working for international employers and other trusted suppliers to this fast moving sector.

Ongoing immigration problems for British & EU businesses as a result of Brexit

Prior to Brexit, UK businesses used to be able to send staff to work in EU countries without restriction and EU Companies used to be able to send their staff to work in the UK without restriction. Here **Graeme Kirk**, our global mobility expert from Ellisons Solicitors in the UK, explores some of these in his insight session summarised below.

As a result of Brexit, all this has changed and businesses both in the UK and Europe are now realising the full consequences of Brexit and how it adversely affects their business model.

For UK businesses wishing to send workers to European countries, even on a temporary basis, it is necessary for these workers to meet the immigration requirements of each EU or EEA country in which they are going to be working, as there is no common immigration policy for workers or business visitors in either the European Union or the European Economic Area.

For EU or EEA Companies wishing to send staff to the UK to work on a temporary basis, they will be required to come within the highly restricted provisions of the UK Business Visitor Rules contained in Appendix V – Visitor: Permitted Activities of the UK Immigration Rules.

Under these Rules, which now include provisions arising from the EU-UK Trade and Cooperation Agreement, a visitor may: -

- Attend meetings, conferences, seminars, interviews; and
- Give a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser; and
- Negotiate and sign deals and contracts; and
- Attend trade fares for promotional work only, provided the visitor is not directly selling; and
- Carry out site visits and inspections; and
- Gather information for their employment overseas; and
- Be briefed on the requirements of a UK based customer provided any work for the customer is done outside of the UK.

In addition, in an international Group situation, an employee of an overseas based Company may: -

- Advise and consult; and
- Trouble-shoot; and
- Provide training; and
- Share skills and knowledge on a specific internal project with UK employees of the same corporate Group provided no work is carried out directly with clients.

In addition, an internal Auditor may carry out regulatory or financial audits at a UK branch of the same Group of Companies as the visitor's employer overseas.

In addition, and very usefully, an employee of a foreign manufacturer or supplier may install, dismantle, repair, service or advise on equipment, computer software or hardware, where the manufacturer or supplier has a contract of purchase or supply or Lease with a UK Company or organisation.

There are other very specific and sector-based activities allowed within the UK Visitor Rules including elements for work related training, science and academia, the legal sector, the religious sector, the creative sector and for sports persons. However, for mainstream business, not falling within one of the very specialist sectors allowed the ease of doing business has declined markedly as a result of Brexit.

UK Companies who wish to use the services of an overseas employee of a Company with whom they have contracts may have to consider applying for a Tier 5 (Temporary Worker) Licence. However, the Tier 5 (Temporary Worker) Licence only works in certain business sectors, as allowed, for example, under GATTS Agreement and the EU-UK Trade & Cooperation Agreement, which both cover only specific business sectors.

In addition, all business visitors are subject to a one-hundred-and-eighty-day limit on any stay in the UK, with the basic principle understood that a visitor should not spend more than six months in any twelve-month period in the UK. Within the EU, under the Schengen Agreement, British nationals can only spend ninety days in any one hundred and eighty days in any of the Schengen countries, including time spent on holiday.

There has also been the use of the Frontier Worker Visa system for EU nationals to continue working in the UK, but this only works for individuals who were already working in the UK prior to 31st December 2020, whilst living in the EU and again is subject to restrictions.

Currently, there is no sign that there will be much, if any, relaxation in the above rules for mainstream business sectors in the foreseeable future.

For more information contact
graeme.kirk@ellisonssolicitors.com

Taxation of real estate held abroad by Belgian resident individuals

In this update **Luc Lamy**, Partner at Tax Consult summarises the tax changes in store for those owning property abroad.

Current regime

Under the current system, the rental value of your property abroad - whether or not it is rented out - is included in your Belgian return. Provided that Belgium has concluded a double taxation treaty with the country where the property is located, the rental value of the property is exempt from Belgian tax. However, this is considered when determining the tax rate on your other income (commonly known as "exemption-with-progression").

New regime

Allocation of foreign cadastral income

From the 2021 income year onwards - and to align the tax regime of foreign properties with that of Belgian properties - the "cadastral income" of foreign properties will be considered (even if, in fine, this income will also be exempt subject to progressivity).

The tax authorities will have to determine the cadastral income of foreign properties held by Belgian taxpayers, with no proactive approach on the part of taxpayers required under law.

Who is it intended for?

The new regime applies to individuals who are Belgian tax residents and who own property abroad.

The law provides that these individuals be taxed on the income from the said property. However, the word "income" is misleading, insofar as there will still be taxation even if the property doesn't generate any income (e.g., a secondary residence not rented out).

What are the declarative obligations?

- Declaration form

Any individual who owns a foreign property is obliged to declare this to the Administration générale de la documentation patrimoniale (General Administration of Heritage Documentation). To this end, the Administration Mesures et Evaluations (Measurement and Assessment Administration) has provided a specific declaration form enabling the Belgian tax authorities to establish the cadastral income of the property located abroad.

- Deadlines for submitting the form

This form must be completed within a period of time that varies depending on the date of acquisition of the property and the nature of the taxpayer.

Depending on the date of acquisition of your foreign property, there are two possibilities.

1. You acquired your property before 1 January 2021

   In this case, two scenarios are possible:

   - You have already declared the existence of foreign properties in previous Personal income tax returns (IPP)

   In this case, you will receive the form on or after 15 June. If you have activated the eBox, you will receive the digital form there. Otherwise, you will receive it by post. You then have until 31 December 2021 to declare your foreign properties.

   - You are declaring foreign properties for the first time in the IPP return for the 2020 calendar year

Here, you will receive the form around September/October. If you have activated the eBox, you will receive the digital form there. Otherwise, you will receive it by post. You then have until 31 December 2021 to declare your foreign properties.

2. You acquired your property after 1 January 2021

You must then voluntarily declare this property within four months of acquisition.

However, a transitional period is foreseen between 1 January 2021 and 25 February 2021, the date of publication of the law. Thus, if you have acquired a property abroad on 1 January 2021, you have 4 months from 25 February 2021 to get your affairs in order.

If you change your status from non-resident to Belgian tax resident, you will be required to voluntarily declare your foreign property to the General Administration of Heritage Documentation within thirty days of your move to Belgium. This is a very short period of time, so you should pay particular attention to it.

- Penalties for non-declaration or late declaration

It should be noted that the law provides for an administrative penalty of EUR 250 to 3,000 in the event of failure to make a declaration.

Establishing the cadastral income of your property abroad

Methods for determining cadastral income

The tax authorities are likely to apply three methods to determine the cadastral income of your foreign property.

- First method

The first method involves going back in time to find the gross annual rental income of your property in 1975 (see box 8 of the form).

- Second method

If you don't know the rental value of the property in 1975, the second method is based on the market value of the property in 1975 (see box 8 of the form).

- Third method

If neither of these methods can be applied to your property, the tax authorities will use the third method. This method is based on the current market value of the property, to which a correction factor is applied to bring this value back to the 1975 value. This last method is new and is also the method most likely to be applied to your foreign property, given the practical difficulties involved in demonstrating the market or rental value of the property in 1975.

In practice, the tax authorities will rely upon the most recent market value of the property that can be determined based on supporting documents (e.g., the purchase price or the report of local experts or the inheritance declaration). This market value will then be corrected by two factors to arrive at a cadastral income equivalent to that which would be attributed to a comparable Belgian property.

The tax authorities allow you to directly declare the current estimated market value of your property (see box 4 of the form). If you do not know the current market value, the tax authorities will ask you to provide a series of relevant items to enable them to do so (see boxes 5 to 7).

Timeframe for determining cadastral income

Establishment of the cadastral income of properties acquired before 2021 will take some time. However, the Belgian tax authorities expects that this will be notified to Belgian taxpayers by March 2022 and should then be included in the return for the 2021 income year.

Objecting to one's cadastral income

Within two months of being notified of your cadastral income, you have the possibility to lodge an objection against the latter by submitting a new cadastral income amount.

Determining the taxable base of your foreign property

Once the cadastral income has been determined, the taxable base - which is exempt subject to progressivity - will be determined in the same way as for Belgian property, i.e., it will depend on the purpose of the building (rented or not) and the type of rental (private or professional).

- Foreign property not rented or rented for private purposes

The taxable base will be equal to the indexed cadastral income of the building, increased by 40%. Foreign taxes will not be deductible.

- Foreign property rented for business purposes

The taxable amount will be equal to the actual rental income less a flat rate for expenses of 40% which cannot exceed 2/3 of the revalued cadastral income. Incidentally, this ceiling has not previously been applied, given that no cadastral income was attributed to foreign property. Please note that foreign taxes are non-deductible.

Practical case

You own a property in the south of France where you stay during the holidays, so it is a second residence that is not rented out.

You are unaware of the market or rental value of the property in 1975. However, you have managed to determine the current market value of your property based on a report by local experts, with this amounting to EUR 400,000.

Based on the above formula, the cadastral income of your property will be EUR 1,412. As Belgium has concluded a double taxation treaty with France, this 'income' will be exempt, subject to progressive taxation. Since your property is not rented out, the taxable base - exempt subject to progressive assessment - will be EUR 1,976.80 (EUR 1,412 plus 40%).

For more information contact :
Luc Lamy – **ll@taxconsult.be**
Alexandre De Munck – **adm@taxconsult.be**

Immigration compliance applies to all employers – not just those sponsoring visas

Contributed by: masuda funai

Many employers believe that immigration law only applies to businesses that sponsor visas or that are multinational companies. That is a dangerous assumption. Immigration law affects every single U.S. business, small and large, in every industry. Every U.S. business must verify that it only hires individuals that have authorization to work in the United States. This process is achieved via the Form I-9, Employment Eligibility Verification. Fines for not having this form or for not completing/maintaining it correctly range from $230 to $1,948 per I-9 depending on the percentage of violations.

In addition to the employment eligibility verification requirement, businesses should be aware of the immigration anti-discrimination provisions that prohibit rejecting valid documents in the I-9 completion process and unfairly rejecting U.S. workers based on citizenship or immigration status. How might this happen? Here are a few examples:

- Requiring Lawful Permanent Residents to provide a green card during the I-9 process
- Re-verifying green cards during the I-9 process
- Having "U.S. citizen only" language in the recruitment process
- Rejecting an applicant for a job because they may require visa sponsorship in the future even though they have current valid work authorization
- A Social Security Number mismatch occurs, and the employee is fired before an investigation is conducted

Do not run afoul of this tricky area of legal compliance. Regardless of whether you are a U.S.-based company that does or does not sponsor visas, compliance in this area is compulsory and companies should consult with their immigration specialist to understand their legal obligations.

For more information contact
Kgaber@masudafunai.com

Global remote work opportunities boost for struggling economies

Leonie Pentz, VP Sustainability & Managing Partner AIMS International South Africa tells us more.

According to Ebrahim Patel, South Africa's Minister of Trade, Industry and Competition, eighty-two thousand jobs have been created in South Africa in the provision of business services to global companies – with a 22% annual growth in new jobs over the past three years in this sector. In the climate of a depressing and growing national unemployment rate of 32.6%, this news is to be celebrated.

In his address, the minister noted the success of the targeted incentive programme by the Department of Trade Industry and Competition (the dtic) that has drawn large global firms to locate their front and back-office work in South Africa. Major global brands such as British Gas, BMW, Samsung, Amazon, American Express, Lufthansa and T-Mobile are some of the firms whose clients are now serviced from South Africa.

The African continent is well suited in terms of geography and linguistics to support companies' English and French speaking clients with support services. While Africa has its fair share of infrastructure challenges, the benefits far outweigh the problems. The AIMS South African team have been working remotely, servicing many international clients for over a decade and most of that time from Cape Town.

One of the most interesting developments due to remote work gaining popularity is remote working visas. For example, for as little as US$611, you can enjoy most of the benefits of UAE residents. The Dubai digital worker visa programme is one of the most attractive globally. On our last count there were 22 countries offering these programmes.

The one-year virtual working programme in Dubai offers applicants and their families the comfort of living in one of the world's most connected and cosmopolitan cities while having access to some of the fastest internet speeds in the world.

There is a myriad of mutual benefits for business and emerging economies in the new normal. Let's embrace them.

For more information contact
leonie@aims-southafrica.com

Understanding tax costs before you expatriate

Here **Hunter Norton**, Partner at Farkouh, Furman & Faccio in New York explains.

Although most taxpayers would never consider relinquishing their U.S. citizenship or surrendering their status as U.S. permanent residents (i.e., expatriate), a certain minority of taxpayers in fact do so. Taxpayers choose to expatriate for a variety of reasons. Common examples include long-term U.S. permanent residents whose net worth is increasing and who have an interest in residing outside of the U.S. in the future, and U.S. citizens residing abroad who wish to avoid the tax compliance obligations applicable to all U.S. citizens whether or not they reside in the U.S.

Taxpayers considering expatriation should understand that there are significant tax consequences associated with this act. In 2008 Congress enacted a revised expatriate tax regime under Internal Revenue Code ("IRC") section 877A that requires "covered expatriates" to recognize gain in taxable income based on the appreciation in certain assets valued as of the day before expatriation well as new withholding and reporting rules. Taxpayers considering expatriation should be advised of the applicability and operation of these rules in order to make an informed decision as to whether expatriation is a prudent choice.

Taxpayers subject to expatriation tax rules

The special tax rules under IRC section 877A apply to "expatriates" who satisfy certain tests (i.e. covered expatriates). An expatriate means (1) any U.S. citizen who relinquishes his or her citizenship and (2) any lawful permanent resident of the U.S. (i.e. a green card holder) who has been a lawful permanent resident of the U.S. for at least 8 of the 15 taxable years prior to expatriation and ceases to hold such status. A covered expatriate is a generally an expatriate who:

1. has an average annual income tax liability for the previous 5 years prior to expatriation of $172,000 (in 2021).
2. has a net worth of $2 million or more as of the expatriation date; or
3. fails to certify compliance with all federal tax liabilities for the 5 taxable years preceding the date of expatriation

Operation of the expatriation tax rules

Covered expatriates are deemed to sell all of their assets on the day before they expatriate for fair market value and, subject to limited exceptions, must recognize any net gain as income. An exception exists for interests in "eligible deferred compensation", which includes interests in various qualified retirement plans to which the expatriate has provided a completed Form W-8CE to inform plan trustees as to their covered expatriate status. Covered expatriates who subsequently receive distributions from eligible deferred compensation plans are subject to a 30% withholding tax on the distribution. Similar treatment is provided for interests in non-grantor trusts for which the covered expatriate has provided Form W-8CE to the trustee within 30 days following the date of expatriation. Taxpayers that hold interests in certain non-eligible deferred compensation plans or interests in certain tax deferred accounts such as traditional IRAs are deemed to receive a distribution from such plans or accounts as of the day before expatriation.

Congress did provide some relief in that each individual has a single lifetime exemption of $600,000 ($744,000 in 2021) to be applied against the gain recognized on the deemed sale under section 877A. Another special adjustment applies to treat the basis of assets held by long term permanent residents as not less than fair market value as of the day the individual became a U.S. resident. This adjustment does not apply to certain assets that are otherwise taxable to non-residents such as interests in U.S. real property and assets that are effectively connected to a U.S. trade or business.

Congress provided further relief in allowing covered expatriates to defer the tax payable with respect to any property deemed sold by reason of section 877A until the due date of the tax return for the earlier of: (i) the date the asset is disposed by sale, non-recognition transaction or gift or (ii) the year that includes the date of death of the covered expatriate. Taxpayers must provide adequate security to the IRS, and interest charges apply to the deferred tax amount.

Special gift / estate tax rules

Covered expatriates are also subject to special gift and estate tax rules under which any otherwise non-taxable gift or bequest received by a non-spouse U.S. citizen or resident from a covered expatriate in excess of an annual exemption amount ($15,000 in 2021) is taxable to the recipient.

For certain taxpayers, the decision to expatriate results in significant tax consequences and a variety of issues to consider. FF&F's experienced professionals are familiar with the expatriation process and can assist you with all tax-related issues and compliance needs.

For guidance with tax–related expatriation matters or for information about our services, please email Hnorton@fffcpas.com

AGA partners with BritishAmerican Business in transatlantic global mobility event

Against the backdrop of the disruptions brought on by COVID-19, policy developments related to Brexit, and the new Biden administration in the US, Alliott Global Alliance, ("AGA"), and New York accountancy member firm, Farkouh, Furman & Faccio ("FF&F") partnered with BritishAmerican Business recently to host a webinar for the leading transatlantic trade association's business community. The event saw AGA's immigration, tax and HR experts lead a discussion on the prospects for corporate global mobility on both sides of the Atlantic in the upcoming year.

The panel of experts, comprised exclusively of members of AGA's Global Mobility Practice Group, covered important legal and HR considerations related to visas, short- and long-term employee migration for international business, and tax strategies and implications for businesses and their employees.

170 members of AGA and BritishAmerican Business on both sides of the Atlantic with an interest in HR, legal and/or tax considerations related to immigration and global mobility, attended the virtual event.

Expertly moderated by David Gibbs, Partner at Alliotts, our panelists were Hunter Norton, Partner, Farkouh, Furman & Faccio, Graeme Kirk, Partner, Ellisions Solicitors, Bernardo Entschev, President at AIMS International and Kathie Gaber, Principal, Immigration, Masuda Funai.

For more information contact
giles@alliottglobal.com

Giles Brake, Alliott Global Alliance CEO commented:

"Thank you to all at BAB, FF&F and our member panellists, for their support and expertise in helping to organise this important update for companies facing challenges moving their people back and forth across the Atlantic. These have been, and still are extremely challenging times for international businesses and corporate executives and their families. This event will have put AGA member firms on the radar of international companies needing assistance with their tax and immigration related global mobility challenges on both sides of the Atlantic."

Tamra Eker, Managing Director of BritishAmerican Business added:

"Our global mobility briefing, held in partnership with FF&F and AGA, highlighted the benefits of collaboration between BAB and other global organizations, to bring timely insights on critical business issues to members. BAB offers a robust program of events, developed in partnership with our member organizations, representing a wide range of expertise on key themes across multiple industries."

Together as One

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