

# Expatriate News

January 2005



This issue of BDO Expatriate News looks at a number of issues affecting expatriate employees and their employers, which result from recent cases, new legislation and Revenue practice around the world. Further information can be obtained from your normal BDO contact or the BDO Expatriate Services Committee at the end of the newsletter.

## **Belgium:**

### **Belgian social security authorities follow tax authorities on discounted shares.**

The Belgian social security authorities have recently clarified the social security position for employer's discounted shares, so that this is almost the same as the position taken by the Belgian tax authorities.

Article 609 of the Belgian Corporate Code states that under certain conditions the employer can grant shares to his employees with a maximum discount of 16.67 per cent ( $100 \text{ per cent} - 100/120$ ), since the issue price of these shares may not be lower than 80 per cent of the price justified by the employer and his auditor. Prior to 26 March 1999, it was uncertain whether the benefit that the employee received at

the time of the share issue, which resulted from the Article 609 discount, should be subject to Belgian social security contributions.

The law of 26 March 1999 ended this uncertainty by confirming that the discount is not a 'benefit' within the meaning of Article 2 paragraph 1, 3° of the law of 12 April 1965 regarding the protection of remuneration. Therefore, the price reduction is excluded from the social security definition of remuneration and the benefit is not subject to Belgian social security contributions.

However, the Belgian social security treatment of employer's discounted shares which are not granted in accordance with Article 609 of the Corporate Code remained unclear. Initially, the Belgian social security authorities refused to revise their position under which employer's discounted shares which are not granted in accordance with Article 609 are a benefit subject to Belgian social security contributions. The value of the benefit for social security purposes was based on the authorities' calculation of the value of the share at the date of grant.

The Belgian social security authorities have now revised their position with effect from the first quarter of 2004. An employer's discounted share which is not granted in accordance with Article 609 is accepted as not subject to Belgian social security contributions, provided that the shares are not transferable during the two-year period commencing on the date of grant and that the discount is a

maximum of 16.67 per cent of the fair market value of the shares at the date of grant.

This exemption from Belgian social security contributions is only applicable to discounted shares granted and charged as a cost by the employer. It does not apply to discounted shares granted and charged by another person (such as a foreign parent company) for which the costs are not recharged to the Belgian employer. In the second situation, the general rules apply: if the foreign parent company grants discounted shares directly to the Belgian employees of its Belgian subsidiary which is not participating in the foreign Employee Stock Purchase Plan and the related costs are not recharged to the Belgian subsidiary, no Belgian social security contributions are due.

This new Belgian social security exemption should stimulate the creation of new Employee Stock Purchase Plans as an alternative to stock option plans.

### **European Commission refers Belgium to ECJ**

On 22 October 2004 the European Commission announced that it had referred Belgium to the European Court of Justice (ECJ) regarding Belgium's discrimination against foreign pension funds. The Commission considers that the Belgian legislation discourages foreign pension providers and foreign life insurance companies from offering their services on the Belgian market and also individuals from concluding voluntary pension insurances with foreign pension funds.

Currently, contributions made by the employer to an additional insurance for old age and premature death (an extra-statutory pension) are only deductible under Belgian tax law if certain conditions are fulfilled. One of these conditions is that the contributions are paid by the employer to a pension fund established in Belgium.

On 5 February 2003, the Commission sent Belgium a letter of formal notice that the Commission considered that the above condition discriminates against foreign pension funds. Since Belgium did not provide a definitive reply to the formal notice, the Commission sent Belgium a reasoned opinion on 17 December 2003 requesting Belgium to amend its legislation, because the Commission finds it unacceptable that:

- pension contributions can be deducted only if paid to Belgian pension funds;

- the transfer of Belgian pension capital to a foreign pension fund results in special taxation in Belgium;
- pensions paid to persons who move from Belgium to other EU Member States remain taxable in Belgium, even if Belgium has, under its bilateral tax treaties, ceded taxation rights to other treaty states;
- foreign pension funds must appoint a tax representative in Belgium before offering their services in Belgium.

Belgium agreed to make the necessary changes at the latest by September 2005, the implementation date for the Pension Fund Directive (2003/41/EC). As the Commission considers this commitment to be too imprecise and the implementation date of September 2005 too late, the Commission referred the case to the ECJ. Earlier this year, the Commission referred Spain to the ECJ on the same matter, as Spain was also not willing to amend its legislation until September 2005.

### **European Court:**

#### **Finnish tax credit for Finnish dividends**

The European Court of Justice (ECJ) ruled in the 'Manninen' case. In this case the Finnish tax credit for Finnish dividends was being questioned.

Mr. Manninen is a Finnish national who has several investments inside and outside of Finland. Due to the Finnish tax regulations, Manninen was entitled to receive a tax credit for the dividends received from Finnish companies. However, he was not entitled to receive a tax credit from dividends that he received from companies established outside Finland.

The ECJ ruled that the Finnish regulation was a breach of the free movement of capital within the EC. According to the Court, the Finnish regulations encourage Finnish residents to invest in Finland, which limits the freedom to choose to invest in any company and they are therefore not in conformity with EU legislation.

On the basis of this ECJ ruling, it could be argued that all tax credit systems should be abolished by virtue of EU law.

## Most favourite nation clause

The ECJ is deciding in the 'D-case'. This case concerns a German resident who owns real estate in the Netherlands which represents less than 90 per cent of his worldwide equity. Under Dutch national tax regulations he is not entitled to the tax-free amount for estate tax purposes. However, Belgian nationals are entitled to such benefits under the Netherlands/Belgium double tax treaty. The German taxpayer claims that by virtue of European law he should be entitled to the same benefits as those to which other Dutch non-residents (in particular Belgian tax residents) are entitled.

The Attorney General's decision in this case was published on 26 October 2004. Although decisions by the Attorney General do not have the legal power that can be attributed to an ECJ ruling, they are regarded as very important indications of how the Court itself may judge.

This case could have an enormous impact because if the taxpayer wins, EU/EEA nationals could potentially claim the benefits which are provided under European tax treaties which do not directly apply to them. This could substantially reduce tax liabilities within the EC, therefore we will keep you closely informed on the progress of this case.

## Austrian tax incentive for dividends abolished

The ECJ ruled in the 'Lenz' case against the Austrian Government. The issue in this case is that residents of Austria are entitled to choose whether dividends are taxed at a final 25 per cent tax rate or at half the progressive tax rate. However, this choice only applies to dividends originating from Austria (the normal full progressive tax rates apply to foreign dividends).

The Austrian Government defended their rule by pointing out that companies not resident in Austria could be subject to a lower corporation tax regime abroad. This argument was not accepted and the Court decided that the Austrian legislation was not in conformity with European law.

This decision is very important for all European countries which have similar choices in their tax regimes (such as Belgium), as the ruling may require their legislation to be abolished.

## Finland:

### Six month-rule and holidays in a third state

The Finnish Supreme Administrative Court made a decision on 24 September 2004 concerning the application of the Finnish six-month rule (24.9.2004/2425 KHO:2004:90) which provides a tax exemption for employees assigned to work outside Finland. The six-month exemption rule only applies if the taxpayer stays abroad because he is working for a continuous period of at least six months. Although the stay abroad must be continuous, the individual can visit Finland for an average of six days for each month of the non-Finnish period.

In this tax case a married couple were subject to unlimited tax liability in Finland. They worked in Estonia for a Finnish company: A had worked in Estonia from 1 December 1997 to 31 October 2000 and B from 3 May 1998 to 31 October 2000. In 2000 A had spent periods totalling 44 days in Finland and B had been in Finland for 36 days. In addition, the couple spent their holidays in Trinidad and Tobago (a 9-day trip), Israel (an 8-day trip), Singapore and Australia (a trip of 33 days for B and 35 days for A), so that A's holiday trips totalled 50 days and B's were 52 days. They both spent four days of holiday in Lithuania (two journeys each of two days).

In taxing the couple for the fiscal year 2000, the tax authorities treated the third country holidays as periods spent in Finland, with the exception of the holidays in Lithuania, on the basis that they were not directly work-related stays abroad. As a result, A was treated as spending 94 days and B 88 days in Finland, they had exceeded the Finnish days allowed during their continuous stay in Estonia and the six-month exemption was denied.

However, the Supreme Administrative Court regarded the days in Trinidad and Tobago, Israel, Singapore and Australia as holidays or days off which were earned when working in Estonia and thus directly related to the work outside Finland. Hence the days off and holidays spent in these third states could not be treated as a stay in Finland and the six-month exemption applied.

The decision of the Supreme Administrative Court was as anticipated, based on two earlier decisions in similar cases. In decision 2.6.1998/1040 it was decided that holidays spent in a third state did not interrupt the continuous stay abroad, since the taxpayer's spouse lived in that third state. In decision 5.4.2001/759 KHO 2001:22 when a taxpayer working in the UK for a local subsidiary of a Finnish company spend his holidays in Sweden and

Denmark with his girlfriend, the stay in these third states was regarded as not interrupting the continuous stay abroad.

## Germany

### New evidence requirements for double tax treaty claims

A new rule applies for 2004 onwards for the income tax assessment procedure for employees who are subject to unlimited income tax in Germany. This rule applies to all cases in which the employee can apply for exemption of his employment income under a double tax treaty (DTT). Income from countries which are not party to a DTT is not affected.

The various treaties exempt from German income tax the earnings of German-resident employees for work performed abroad, if certain conditions are met. However, these earnings are included in the calculation which determines the German income tax rate that applies to the individual's other income (taxation with progression). Some of the DTTs contain a clause which makes avoidance of double taxation dependent on actual taxation in the country in which the earnings arise (where the duties are performed), to prevent income from escaping taxation completely.

Tax exemption in Germany under a DTT from 2004 onwards depends on evidence that either foreign tax is paid, or that the other country has not exercised its taxation right. The onus is on the employee to provide documentation and evidence and this applies even where the DTT does not have a clause that requires taxation in the other country. The new rule is a unilateral, globally-applicable requirement of the German legislation which overrides the provisions of the tax treaties.

The new rule has no impact on the wage tax exemption procedure for which the employer can apply during the current tax assessment period. The obligation to produce supporting documents only applies to the employee, so that inability to document the foreign tax or waiver by the foreign tax authorities will result in additional tax.

Tax assessment notices, payroll or similar documents may be acceptable evidence of foreign income tax, but it may be difficult to provide evidence in the situation where the foreign country does not collect any tax (for example where there is no tax charge on individuals or where the income is covered by allowances or exemptions). It remains to be seen how the German tax authorities will deal with this. Where evidence of the foreign tax cannot be provided until after the German assessment

procedure is completed, a correction of the tax assessment notice in favour of the taxpayer can be made under Article 175 section 1 of the No. 2 General German Tax Law (AO).

The new rule discriminates against employees compared with recipients of other types of income and it only relates to employees who work in countries with which Germany has a double tax treaty. At present it is unclear to what extent it is compatible with the German constitutional law on discrimination.

### New rules regarding taxation of pension income

In 2002 the Federal Constitutional Court decided that the differing tax treatments applied to civil servants' and company pensions and to the German state pension scheme violates the basic principle of equality in German Constitutional Law. At the same time, the Court committed the legislator to creating new rules which should apply from 2005 onwards at the latest. After a long legislative procedure these new rules became law on 5 July 2004.

In general, pensions are currently taxable in Germany by reference to a variable proportion of the total amount received. The new regulations gradually change the basis of taxation of pensions towards a full taxation of pensions, together with phased deductions treated as special expenses.

According to the new rules, 50 per cent of the statutory pension payments will be taxable income for individuals who received pension payments in the past and also for individuals who retire in 2005. This tax basis will remain constant for the whole retirement phase starting with the year 2005 for such individuals. The so-called 'cohort principle' will apply to later retirees, ie the taxable income of individuals retiring in the years 2006-2020 will increase at 2 per cent and for individuals retiring in the years 2021-2040 at 1 per cent. Therefore, if an individual reaches retirement age in the year 2006, 52 per cent of the statutory pension payments will be taxable income for the rest of his life. A basis of 100 per cent will be reached for individuals who reach retirement age in 2040. The tax-free amount of the gross pension will be determined in the tax year after the first pension payment and will continue in perpetuity. Therefore, every later pension increase will be fully liable to tax. The new system will also apply to private pensions and purchased life annuities if the insurance provides monthly payments for life which do not start before the age of 60 and which cannot be inherited, transferred, lent, marketed or capitalised.

As a balancing measure to the new rules for taxing pension benefits, contributions to private pensions and purchased life annuities (which provide statutory old-age pensions, old age provision for people in certain

professions, and capital provision for old age pensions) of up to 20,000 per year can be deducted by the individual as special expenses ( 40,000 for a joint assessment). The deductions are introduced progressively, so that in 2005 only 60 per cent of the allowable contributions are deductible. This percentage rises at 2 per cent per year so that a full deduction will be given in 2025. Different rules will apply to contributions for other types of pension provision, with separate maximum deductions of between 2,400 and 1,500 per year.

The age tax allowance amounting to 1,908 in 2004 and the old age allowance amounting to 3,072 in 2004 (which applies to civil servants' pensions and pensions paid by a former employer) will be reduced from 2005 onwards by fixed amounts under the above 'cohort principle', so that individuals who reach retirement age in 2040 cannot claim these allowances.

Following extensive public discussion regarding the abolition of the privileged tax treatment for endowment policies, payments from contracts closed after 31 December 2004 are taxable. However, only 50 per cent of the payments are taxable if the contract has a duration of more than 12 years and the recipient is older than 60 years when the first payment is made. In addition, the application procedure for Riester pensions will be simplified by the introduction of a one-time bonus election.

Regarding company capital pension schemes, the five alternatives (direct promise, direct insurance, staff provident fund, staff pension fund and retirement fund) have been treated in different ways in the past. The new rules will harmonise the different tax treatments by applying taxation upon receipt to all these types of pension.

### **Limitation of foreign losses**

The German Supreme Tax Court (BHF) raised doubts regarding the conformity with the European Law of the current German tax rules which exclude foreign losses in the calculation of German income taxation and therefore asked the ECJ for a preliminary decision.

In the Ritter-Coulais case a married couple assessed jointly was subject to unlimited taxation. They both received income from employment in Germany, but lived in their own one-family house in France. They asked for rental losses from their use of their house to be taken into account in calculating their income tax rate (negative progression). German tax regulations treat losses on their use of their house in France as income from immobile assets within

Articles 3(1) and 4(1) of the France/Germany double tax treaty and the income is not liable to German income tax by virtue of Article 20(1)(a) of the treaty.

The losses are not deductible in the tax rate calculation under German income tax law because foreign losses can only be deducted from income of the same type from the same country. Thus, the foreign losses of an individual who is subject to unlimited taxation can neither be taken into account in calculating taxable income nor in the calculation of the income tax rate for the year of the loss.

The BFH has asked the ECJ whether this limitation of loss relief under German law affects the European freedom of establishment and capital movement, because domestic and foreign losses are treated differently. Therefore, it is recommended that appeals are filed against relevant tax assessment notices in case it is decided that these losses should be allowed in the tax calculation. In addition, an application should be filed to delay payment of any tax due for earlier years if possible.

## **Netherlands**

### **Dutch tax authorities pay special attention to foreign share option schemes**

According to the information available to the Dutch tax authorities, the value of the benefit from a share option granted to the employee by a foreign parent company is not always declared to the Dutch tax authorities. Therefore the tax authorities have started a project to specifically check the taxation of these share option plans.

In June of this year the tax authorities requested information from companies with a foreign parent company regarding share option plans granted to their employees. A number of employees have already received a letter from the tax authorities requesting them to inform the tax authorities of the share options that have been granted to them under company schemes.

Taxpayers are being given the opportunity to voluntarily file a return with the tax authorities regarding the share options already granted to them. In this way, a fine and possible criminal prosecution can be avoided. This has been a proven method in the past for the Dutch tax authorities to impose income tax on undeclared income from foreign savings and investments.

The Dutch tax authorities have the authority to impose additional assessments going back for

twelve years on income derived from abroad. The additional assessments normally include interest and a fine and in some situations the tax authorities can even start a criminal prosecution.

According to Dutch domestic tax law, the grant of an option to purchase shares in the employing or any other associated company is a taxable event at the time the share option is granted unconditionally to the employee. Dutch wage withholding tax and personal income tax may be due in situations such as:

- Share options granted to an employee whilst working and living abroad become unconditional whilst working in the Netherlands.
- Share options granted to an employee whilst working in the Netherlands become unconditional after leaving the Netherlands.

The Dutch Ministry of Finance has indicated that in taxing stock options an apportionment will be made between the Netherlands and other countries in which the employee has worked. The taxable income from share options that have become unconditional and can be allocated to the Dutch employment is taxable in the Netherlands as income from employment, but this only relates to share options that have become unconditional after 1 January 2002. The tax treatment prior to 1 January 2002 was completely different and must be determined on a case-by-case basis.

The exercise of share options is not as such a taxable event for Dutch wage withholding tax and personal tax purposes. However, where the employee exercises share options within three years from the date that the share options were granted to him, additional income tax will be due no matter where the individual is resident at that time.

Currently, under certain conditions employees can defer the tax charge from the time that the share options become unconditional either to the date of exercise, or to the date of sale of the option shares. This gives the employee the advantage of not paying the tax upfront, but at a time when he can realise the value of the options.

Please note that the Dutch Ministry of Finance intends to cancel the possibility of deferring the tax charge. Consequently, a tax charge will arise on the date the share options are exercised or sold. Transitional provisions will be implemented for share options that are either granted unconditionally or become unconditional before 1 January 2005. This proposal is included in the Tax Proposals for 2005.

## **Dutch expatriate facility questioned by Dutch Parliament**

The Dutch expatriate facility (the 30 per cent ruling) which has always enjoyed much interest from abroad has now been questioned in the Dutch Parliament. The reason for this attention appears to be that the Dutch tax authorities have increased the number of wage administration investigations into companies that employ one of the 32,000 expatriates who currently enjoy the benefits of the ruling.

In their investigations the Dutch tax authorities mainly focus on whether the 30per cent ruling was applied to non-cash benefits. It has not previously been argued whether the ruling could be applied to such benefits. Meanwhile, the Dutch tax authorities have raised additional assessments to disallow the ruling on benefits. BDO feels that, as the 30per cent ruling may be applied to all remuneration from current employment, in principle non-cash benefits qualify for the ruling. Some benefits also qualify as "extraterritorial" costs, in which situation the benefit should be part of the 30 per cent ruling.

The 30 per cent ruling has recently been of great interest for another reason: a dispute between a taxpayer and the Dutch tax authorities. The taxpayer, who is a Dutch resident, claims that he is discriminated against because he cannot enjoy the benefits from the 30 per cent ruling, whilst foreign employees can. The ruling does not distinguish between resident and non-resident taxpayers, but it does state that if an employee worked or stayed in the Netherlands in the 10 years prior to filing the application for the ruling, then all periods ending in the 15 years prior to the date of the application in which the employee worked or stayed in the Netherlands must be deducted from the maximum period for which the ruling applies (10 years). As a result, Dutch residents who have worked and remained in the Netherlands all their lives cannot benefit from the ruling.

Despite these recent events, the present Dutch State Secretary of Finance has confirmed that he has no plans to abolish the 30 per cent ruling.

## **UK**

### **UK tax deduction for living costs on short-term assignments**

The UK tax legislation includes a deduction from the employee's general earnings for reasonable living costs (such as accommodation, utilities and meals) where the individual is working away from his normal workplace and certain other conditions are met. This deduction can be very helpful in reducing the UK tax cost of short-term

assignments, both for outbound UK expatriates and for inbound expatriates working in the UK (for whom the employer typically has to pay substantial rent or hotel costs).

The deduction applies when the employee is attending a temporary workplace during a period that is not anticipated to exceed 24 months. However, no deduction is due if the employee attends a workplace for a continuous period that is all, or almost all, of the period of the employment.

To date, the UK Revenue has challenged the deduction in cases where an assignment exceeds 24 months, querying the date that the decision was made to extend the assignment. This is because the deduction ends on the date of this decision, so that the deduction is restricted where the decision to extend the assignment is made before the end of the first 24 months. The UK Revenue has now indicated that it will use the second rule above to deny the exemption completely where an expatriate work under a separate contract covering the whole of the assignment period. This approach will be applied regardless of whether the employment contract remains in force with the legal employer who sent the individual on assignment.

### **Travel cost deductions for accompanying partners**

The UK tax legislation provides a tax deduction for the travel costs of the expatriate's spouse accompanying the expatriate at the start and end of an assignment, as well as for limited visits where the spouse remains in the home country. The deduction is extended to the expatriate's children who are under 18 years, including any step-children and illegitimate children. However, the deduction does not apply to the expatriate's partner if they are not legally married, nor does it apply to a partner of the same sex.

The UK Revenue has recently confirmed that when the Civil Partnerships Bill becomes law in the UK (so that same-sex couples will be able to legally register their relationship), at the first opportunity the tax legislation will be changed to treat same-sex couples in the same way as married heterosexual couples. As a result, a legally registered spouse or partner of an expatriate will qualify for the UK travel deduction, but other partners will not.

## **USA**

### **US Individual Taxpayer Identification Numbers (ITINs) for non-US citizens**

Individuals with US income are required to pay US income tax without regard to their immigration status. To do so, they must have a US social security number (SSN) or an ITIN. Spouses or dependants with little or no US income can usually be claimed as a dependant on another taxpayer's US return, but their SSN or ITIN must be listed on the return. Taxpayers who are ineligible for a SSN can obtain an ITIN, which is a nine-digit number beginning with the number nine. They are only used for tax purposes and not for identification purposes.

In December 2003 the IRS changed the ITIN application process in order to limit their usage to tax purposes. In the past ITINs were issued with a card similar to a social security card, but they are now issued with an authorisation letter in order to avoid confusion.

To apply for an ITIN, the taxpayer must show a federal tax purpose for the ITIN. A completed Form W-7 should be attached to the federal tax return upon filing and any applications without proof of a federal tax need will be denied. The Form W-7 instructions list a number of reasons for applying for an ITIN, including:

- a non-resident alien claiming a tax treaty benefit
- a non-resident alien filing a US tax return and not eligible for a SSN
- a US resident alien filing a US tax return and not eligible for a SSN
- a dependant or spouse of a US Citizen, resident alien, or non-resident alien visa holder
- a non-resident alien holding US assets, for example in a financial institution, paying income that requires US tax withholding.

In addition, the taxpayer must submit identification documents substantiating the information on the Form W-7. Either the original or a certified copy of a valid passport is sufficient. If the passport is not available, the Form W-7 instructions include a list of other forms of identification. When using identification other than a passport, at least two documents from the list should be submitted. Copies are sufficient, but all copies must either be notarised by a US notary or certified by the issuing

government agency. Any original identification documents will be returned to the taxpayer upon completion of the application process.

When applying for an ITIN with a tax return, the tax return must not be sent to the normal IRS Service Center. Instead, it must be sent to the following address:

Internal Revenue Service  
Philadelphia Service Center  
ITIN Unit  
P.O. Box 447  
Bensalem, PA 19020

After the tax return is filed, the IRS should notify the taxpayer in writing within six weeks of the ITIN number assigned. It is often necessary to file the federal return first to obtain the ITIN and to file an extension to the filing date of any state returns required until the ITIN is received. Most US states will reject a tax return with a missing number.

## US immigration developments

An important development in Congress addresses the cap on the number of H-1B visas that can be issued. The 2005 Omnibus Appropriations Bill has been passed by both the House of Representatives and the US Senate, but none of the provisions will apply unless and until the President signs it into law. The effective date for most of the H-1B provisions will be 90 days after the enactment of this law. The exception is the H-1 provisions for certain filing fees for H-1B visas, which are expected to be effective immediately upon signing. The L-1 visa provisions will be effective 180 days after the enactment of the Bill.

**Additional H-1B visa exemptions:** The new legislation will open up more H-1B visas to some applicants. However, currently no additional H-1B visas are available because the President has not signed the Bill into law. If it is signed into law, up to 20,000 foreign nationals with Masters' degrees or higher qualifications from US institutions of higher education will be exempt from the H-1B cap. This provision is not expected to be effective until 90 days after the date the Bill is signed.

**Additional H-1B & L-1 fees:** Other consequences of the new H-1B relief are that employer attestations and the employer-funded training fee will be reinstated. This fee (which was previously \$1,000 per new H-1B petition) will increase to \$1,500. The fee is additional to the USCIS filing fees and the optional

\$1,000 premium-processing fee. A \$500 Fraud Prevention and Detection fee is also being introduced for initial H-1B and L-1 petitions and for change-of-status petitions. However, employers with fewer than 25 full-time employees in the United States will only be required to pay half of the standard new fees.

**Prevailing wage requirements & DOL investigations:** Employers applying for visas under the new rules will be required to pay the employee 100 per cent of the government-determined prevailing wage, compared to the 95 per cent applicable under the current rules. It should be noted that the Department of Labor will be given enhanced authority to initiate investigation of employers where there is reasonable cause to believe the employer is not in compliance with immigration law and practice.

**Contract placement under L-1 visas:** The new legislation will tighten up the L-1B visa requirements for the work location. In particular, L-1B holders would be prevented from being primarily stationed at the work-site of another employer under two circumstances:

- (a) Where the visa holder is supervised and controlled by an unaffiliated employer.
- (b) Where the visa holder provides labour for the other employer, rather than providing a product or service based on the specialised knowledge of the petitioning employer.

These provisions would apply to initial, extended and amended L-1 petitions filed on or after the effective date, which is expected to be 180 days after the Bill is signed into law.

L-1 blanket petitions: the reduced six-month period of work abroad requirement for certain beneficiaries of L-1 blanket petitions would be eliminated under the new legislation and the previous one-year requirement would be reinstated.

For further information on any of the topics covered in this Newsletter, please contact your local BDO Member Firm, or the international BDO Centre of Excellence Expatriate Services, whose representatives are:

|                     |   |                               |
|---------------------|---|-------------------------------|
| Chris Maddock       | <b><a href="mailto:Chris.Maddock@bdo.co.uk">Chris.Maddock@bdo.co.uk</a></b>     | BDO Stoy Hayward LLP          |
| Marc Verbeek        | <b><a href="mailto:c.verbeek@bdo.be">c.verbeek@bdo.be</a></b>                   | BDO Belgium G.I.E.            |
| Amanda Sullivan     | <b><a href="mailto:Amanda.Sullivan@bdo.co.uk">Amanda.Sullivan@bdo.co.uk</a></b> | BDO Stoy Hayward LLP          |
| Gerlinde Seinsche   | <b><a href="mailto:gerlinde.seinsche@bdo.de">gerlinde.seinsche@bdo.de</a></b>   | BDO Deutsche Warentreuhand AG |
| Jan Van Langendonck | <b><a href="mailto:jan.vanlangendonck@bdo.be">jan.vanlangendonck@bdo.be</a></b> | BDO Belgium G.I.E.            |
| Armand Lahaije      | <b><a href="mailto:armand.lahaije@bdo.nl">armand.lahaije@bdo.nl</a></b>         | BDO Accountants & Adviseurs   |
| Niek De Haan        | <b><a href="mailto:niek.de.haan@bdo.nl">niek.de.haan@bdo.nl</a></b>             | BDO Accountants & Adviseurs   |
| Roslyn Innocent     | <b><a href="mailto:r.innocent@advis.fr">r.innocent@advis.fr</a></b>             | BDO Marque & Gendrot SA       |
| Carol-Ann Simon     | <b><a href="mailto:csimon@bdo.com">csimon@bdo.com</a></b>                       | BDO Seidman, LLP              |

You can let us know by email what you would like to see in the future. Click on the link below, and get your pen or keyboard going. Send your feedback to **[bdoglobal@bdoglobal.com](mailto:bdoglobal@bdoglobal.com)**.

# [www.bdoglobal.com](http://www.bdoglobal.com)



BDO International is a world wide network of public accounting firms, called BDO Member Firms, serving international clients. Each BDO Member Firm is an independent legal entity in its own country.

The information in this Newsletter is for general guidance only and is not a substitute for professional advice. The BDO Member Firms accept no responsibility for any actions taken or not taken on the basis of the information in this Newsletter.