UK – Managed Service Companies – first case before tribunal

HMRC found it extremely difficult to enforce the old IR35 rules and as a result the MSC legislation came into force back in April 2007. Broadly speaking the regime applies to contractors who use "Managed Service Company Providers". MSC Providers are defined very widely, and are intended to include organisations providing services "influencing" the way in which payments are made to the contractor company's activities. This might include any adviser, but the definition of MSC Providers provides some help by excluding from the definition of MSC Providers persons just "providing legal or accountancy services in a professional capacity".

Consequently, the accounting services industry has grown significantly since then for the purpose of helping aspiring contractors to set themselves up through limited company vehicles. If contractors' limited companies are deemed to be managed by MSC Providers, then all income produced under the limited company needs to be treated on a PAYE basis and effectively cutting out the possibility of gaining the more tax efficient salary/dividend option. Furthermore, if the MSC Providers do not settle the appropriate taxes and NIC deemed to be due on the contractor's income, that tax can be transferred to the MSC Provider and ultimately onto the directors of the MSC Provider!

The first case to test the MSC legislation, Christianuyi Limited and others v HMRC [2016] UKFTT 0272 (TC), occurred in April this year. The organisation that was really on trial here was the MSC Provider, Costelloe Business Services Ltd (CBS). In order for the MSC legislation to apply there has to be both an MSC Provider and that Provider must be "involved" with the MSCs. CBS actually admitted to being an MSC Provider but denied being deemed to be "involved" with the MSC companies. There are five tests of "involvement" within the MSC legislation, and only one of these tests has to be met for the involvement condition to be applicable. Interestingly enough CBS did not claim the exemption for legal and accountancy services.

In this case HMRC accused CBS of three forms of involvement: benefiting financially whenever the worker actually provided their services; influencing or controlling how the worker received their payment; or influencing or controlling the worker's company finances or other activities. The tribunal concluded that all three forms were satisfied so the MSC legislation applies. Apparently CBS advised around 1'000 service companies, however only five were the subject of this test case. Tax due from the five named companies amounts to approximately GBP 160'000! CBS made a few blatant mistakes in the management by: using its own bank account for monies due to the MSCs and keeping some of the interest that arose from the bank account; charging each MSC fees for only when the worker was actively providing a service; and admitting that board minutes drawn up for each MSC were false.

HMRC are also chasing the tax amounts not paid from CBS and its directors and it should be noted that the net can technically be cast wider to include anyone who can be clearly seen to have "encouraged" or been "actively involved" in the worker establishing an MSC. This case will clearly shake a little the contracting industry and cause many to review their existing structures to ensure that they cannot be potentially attacked in the same manner.

Welcome

Welcome to the quarterly bulletin from Capital Consulting.

In this third issue of 2016 we provide an interesting article about the first case attacking Managed Service Company Providers in the UK.

We also provide you with a brief update on some of the proposed 2017 tax changes for Brazil to be voted and approved by the National Congress and an article concerning news on the automatic exchange of information in tax matters from Switzerland.

Our country profiles of this issue cover Finland and Colombia, providing you with a useful summary of living, taxation and social security information for each country.

Finally, we look at the new temporary labour visas applicable for Chile and the recent employment law changes in Germany with respect to pensions, contracts and gender pay differences.

We take this opportunity to wish you all a pleasant summer holiday.

I hope you will find this new edition useful and would welcome your feedback at news@capitaltaxconsulting.com.

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Brazil: proposed tax changes

On 5 May 2016, the Brazilian Executive Branch submitted to the National Congress Bill 5,205/2016 with amongst the proposals the following:

– There will be an increase of individual income tax brackets from 2017 onwards, as follows:

Monthly taxable (BRL)			Rate (%)	Deductible amount (BRL)
up to		1'999.18	0	0
1'999.19	–	2'967.98	7.5	149.94
2'967.99	–	3'938.60	15.0	372.54
3'938.61	–	4'897.91	22.5	667.93
over		4'897.91	27.5	912.83

– Currently inheritance and donations received by individuals are exempt from income tax. The bill proposes the levy of income tax on inheritance and donations received by individuals as follows:

Rate (%)	Inheritance received during a period of two subsequent years (BRL)			Donations received during a period of two subsequent years (BRL)		
0	up to	–	5 million	up to	–	1 million
15	5 million	–	10 million	1 million	–	2 million
20	10 million	–	to 20 million	2 million	–	3 million
25	over		20 million	over		3 million

Inheritance or donations received by a spouse or companion continues however to be exempt from taxation. The bill still needs to be voted and approved by the National Congress.

Country Profile:

Finland

Capital: Helsinki

Population: 5'530'271 (July 2016 estimation)

Language: Finnish (official) 94.2%, Swedish (official) 5.5%, other (small Sami- and Russian-speaking minorities) 0.2% (2012 est.)

Exchange rate: GBP 1 = 1.313 EUR (31 May 2016)

Time zone: GMT + 2/ summer time GMT +3

Electricity: 220-240 V

Cost of living: Helsinki ranked 67th most expensive city in the world - Mercer Worldwide Survey 2015

Tax year: 1 January 31 December

Income Tax

An individual is deemed to be resident in Finland if he has his main abode in Finland or if he is continuously present in Finland for a period of more than 6 months. A presence is deemed continuous irrespective of a temporary absence.

Finnish nationals are considered tax residents in Finland for 3 calendar years even if they have moved abroad, unless they can establish that no essential connections with Finland have been maintained.

Resident individuals are subject to tax in respect of their worldwide income: capital income, which is generated through the possession of wealth (i.e. sole proprietorship, dividends, property etc.), and earned income, which includes salary, pensions and social benefits. There are 3 individual taxes: National income tax, municipal tax and church tax.

Both capital and earned income are subject to national income tax. Capital income is levied at a rate of 30% up to EUR 30'000 of capital and 34% for any other capital exceeding the cap. Earned income is taxed from 6.5% to 31.75% on income exceeding EUR 16'700 (no tax levied below this amount). The highest rate applies to earned income exceeding EUR 72'300. A surtax of 6% is levied on pension income exceeding EUR 45'000 (after deduction of pension income allowance).

Municipal tax applies to earned income only at flat rates determined by each municipality from a minimum rate of 6.50% to 22.5%.

Church tax is paid by members of the Evangelic, Lutheran, Orthodox and Finnish-German church at flat rates on taxable income ranging between 1% and 2.2% from parish to parish.

Non-residents are taxed only on Finnish-source income at a flat rate of 35% and on gains from immovable property located in Finland. Qualified foreigners residing in Finland can apply for a special tax status of 35% for a period up to 48 months, provided their regular monthly salary exceeds EUR 5'800 (teachers and researchers excluded) and they have not been resident for tax purposes in Finland during the previous five calendar years.

Social Security

Social security contributions provide coverage for healthcare, sickness allowance and family benefits. Employers are levied social security charges on a percentage of gross wages and salaries and there is no ceiling for the contribution. The employer's average total contribution for 2016 is 21.6% including; 2.966% to 6.066% for national pension and sickness premiums, 0.081% for group life insurance premiums, pension premiums that average 16.8%, 1% for average accident insurance premiums and 0.7% for unemployment insurance premiums.

The employee's share of social security contributions amounts to approximately 10.5% (2016), including contributions to employment pension (up to 7.2%), unemployment (1.15%), daily allowance insurance premiums (deductible from tax), and health care contributions (2.12%). Individuals under the qualified foreigners' regime already pay for sickness in the flat 35% tax rate, unless they are able to provide an A1 detachment certificate from their country of origin.

Pensions provide old-age, disability and late-career unemployment coverage through 2 schemes; earnings-related and national guaranteed-pensions. Earnings-related pensions are financed by both employer and employee contributions which vary according to business, size, employee's age and ratio of investment to payroll. The average compulsory employer and employee contribution for 2016 amounts to 23.7% (shown above)

Switzerland: International automatic exchange of information in tax matters

On 18 May 2016, the Federal Council initiated a consultation on the Ordinance on the International Automatic Exchange of Information in Tax Matters.

The Ordinance contains the Federal Council's implementing provisions for the Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOI Act). The Ordinance mentions in particular other non-reporting financial institutions and exempt accounts, and regulates details with regard to the reporting and due diligence requirements for reporting by Swiss financial institutions.

In addition to the implementing provisions for the AEOI Act, the Ordinance contains other provisions required for implementing automatic exchange of information. They also include implementing provisions on the tasks of the Federal Tax Administration (FTA), on the information system and, in the Annex, the applicable alternative provisions of the OECD Commentary on the Common Standard on Reporting and Due Diligence for Financial Account Information. The consultation will finish on 9 September 2016.

Country Profile:

Colombia

Capital:	Bogotá D.C.
Population:	48'666'128 (February 2016 est.)
Language:	Spanish (official)
Exchange rate:	GBP 1 = COP 4'421 (23 May 2016) Colombian Peso (COP)
Time zone:	GMT -5
Electricity:	110V-120V; 60Hz
Cost of living:	Bogota ranked 148th most expensive city in the world - Mercer Worldwide Survey 2015
Tax year:	1 January to 31 December

Tax residency

Individuals, national or foreign, will be treated as tax residents by Colombian authorities if (1) they have been present, continuously or not, for more than 183 calendar days in the country; (2) or, in the case of nationals, they have generated 50% of their income within a taxable period in the country.

Income Tax

Following the 2012 tax reforms all tax residents, regardless of nationality, are taxed on their worldwide income starting from their first year of residency in Colombia, reporting equity owned both locally and abroad. Non tax residents report only on Colombian-source income.

To avoid double taxation, individuals are encouraged to declare their fiscal residence by means of a certificate of fiscal residence (or similar document) issued by the country or jurisdiction in which they have become resident for tax purposes.

Income tax system

The tax reform of 2012 has ratified the two existing ordinary tax systems for fiscal residents (nationals or foreign) and included two new ones: the alternative minimum tax (IMAN) and the simplified minimum tax (IMAS).

The ordinary income rates currently range from 0% to 33%, depending on the individual's taxable income. Income lower than 1'090 units, 0%; from 1'091 to 1'700 units, 19%; from 1'701 to 4'100 units, 28%; and 33% for 4'101 units and above. As per 2016, one UVT is equal to COP 29'753. The monthly salary in Colombia cannot be less than the legal minimum salary (COP 689'454 (GBP 156) for 2016).

Non tax residents are subject to a 33% flat income tax rate on Colombian source income.

Resident employees, salaried or independent, can be taxed according to the alternative minimum tax (IMAN) provided certain requirements are met. This system caps the exemptions and deductions for high-income earners with a monthly income above 1'548 tax units per annum.

For those individuals whose gross income is below 2'800 taxable units and their net worth not exceeding 12'000 units per annum, another system can be applied: the simplified minimum tax (IMAS), similar to IMAN but with a higher tax rate. Additionally, if the taxpayer opts for this system, the tax return will be exempt from any tax audit six months after it has been filed.

Social Security

In Colombia, Social Security includes health, pension and occupational risk coverage. Employers and employees must make social security contributions in Colombia. VAT and excise taxes apply. Contributions to the health system corresponds to 12.5% of the worker's monthly salary (4% for the employee and 8.5% for the employer) and contributions to a pension system correspond to 16% of the employee's monthly salary (4% for the employee and 12% for the employer). If an employee receives four or more minimum wages, contributions increase 1% more for the "solidarity retirement fund"; employees with 16 minimum wages or more are obliged to make an additional contribution up to the limit of 1%, depending on the salary. Occupational risks contributions are paid by the employer only, and can go as high as 8.7% of the gross salary.

Self-employed individuals must also make contributions to the pension system (16% of the monthly wages), however, affiliation to health (12.5%) and occupational risk systems is optional. For expatriates, the territorial principle prevails and every labour relationship in Colombia is to be ruled by a labour contract executed in the country. The general rules for the payment of social security applies.

Chile: A new temporary visa for labour purposes

Beginning 1 March 2016, foreigners already living in Chile may apply for a temporary visa for labour purposes at any immigration department in Santiago or the rest of the provincial offices in the country.

Prior to this new visa, foreigners working in Chile had 30 days to request a new visa or abandon the country at the end of the employment relationship. The regular work visa allowed for work for only one employer performing exclusively the tasks set forth in the employment contract. Permanent residency could only be requested after 2 years of labour continuity under a Work Contract Visa. Employers, on the other hand, were obliged to include a travel clause in the employment agreement to guarantee return tickets for the employee and family to the country of origin.

The new temporary visa for labour purposes will grant more flexibility, regularity and permanent residency to foreign workers already in the country.

The new visa will give individuals the opportunity to work for one or more employers at the same time, provided employment contracts have been completed. In case any existing employment relationship ends, individuals will be able to complete a new contract with the same or another employer without the need for requesting a new visa abroad. Moreover, it will be possible to request permanent residency in Chile after one year, as opposed to two under the old work contract visa, provided all other legal requirements are satisfied.

In order to apply for the temporary visa, foreigners will only be required to show a valid contract of employment completed with a company with legal domicile in Chile, an application form and ID.

Employers sponsoring this visa must guarantee minimum statutory provisions according to the Chilean law, particularly with respect to minimum wage, social security contributions and pension. However, it will no longer be obligatory for the employer to pay the return tickets of the employee and family.

Germany: Employment law changes

Recently the German Federal council approved provisions of the EU Mobility Directive on pensions. Pensions will now fully vest in three years instead of five years, and employees can participate in a pension plan starting at age 21 instead of age 25. This will provide fully vested pensions to employees as young as 24 allowing for easier mobility across EU countries after moving to a job in Germany.

Temporary work contracts and pay

As from 1 January 2017, a reform to the German Act on the Supply of Temporary Employees (Arbeitnehmerüberlassungsgesetz – AÜG) regulating temporary work will introduce a maximum hire period of 18 months. Hire times prior to January 1 2017 shall be expressly excluded. This time period will be subject to deviations through collective agreements to a maximum of 24 months. After 18 months, the temporary work leaser may supply a different temporary employee to the same hirer without the previous supply counting towards the maximum period. It may not, however, supply the same temporary employee even if the employee works for the same host business in a succession of different positions.In case of breach, the party commissioning the work (hiring company) shall be deemed liable as an employer for social security and tax purposes.

Additionally, a principal of equal pay has been implemented for temporary employees who should not be paid less than a comparable employee in the hiring company within 9 months of commencement of the employment. Finally, the reform provides for a prohibition of employment for temporary workers to replace permanent ones while striking.

German Equal Pay Act

The latest federal statistics confirmed a 7% gap between men and women's salaries with the same qualifications turning Germany into the country with the highest pay discrepancy in Europe. German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth submitted a first preliminary ministerial draft of the German Equal Pay Act (Entgeltgleichheitsgesetz) on December 9 2015. The Act is expected to be adopted in 2016.

About Capital Consulting

At Capital Consulting, we believe that working abroad should be an enjoyable and profitable experience. We aim to make consultants' and agencies' lives as straightforward as possible whilst ensuring their affairs are structured in a legitimate and tax efficient manner.

The group has been operating from Neuchâtel, Switzerland, since 1990 and currently has a turnover in excess of CHF 70'000'000. During this time we have built a team of qualified specialists with wide experience in the areas of international contracts, taxation and social security.

We assist consultants globally, providing particularly effective solutions for IT, engineering, financial and telecommunications consultants who earn their living outside their normal country of residence.

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