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WELCOME TO

TAXING ISSUES

THE QUARTERLY BULLETIN FROM CAPITAL GES

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WELCOME TO TAXING ISSUES

Welcome to Taxing Issues, the quarterly bulletin from Capital GES.

In this first issue of 2018 we provide an important article about the new data protection legislation GDPR that will be coming into force in all EU member states on 25th May.

We also provide you with a brief update concerning the social tax changes in Romania, the Irish Budget changes for 2018 and an article with updates on the UK Gig Economy.

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

Finally, we look at the new Danish Holiday Act with the new rules expected to go into force in 2020.

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

I'd take this opportunity to wish you all a healthy and prosperous New Year from all of us at Capital GES.

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GDPR

The General Data Protection Regulation (GDPR) will come into force on 25th May this year and will set the global standards for data protection and privacy rights. This is the biggest change in data privacy regulation in over 20 years and GDPR will replace the outdated 1995 Data Protection Directive, which was adopted to help regulate the processing of personal data.

Effective across all EU member states, GDPR will strengthen and harmonise data protection for all EU citizens. Unlike the previous Directive, GDPR will impact every business and public sector organisation and require everyone to be compliant, transparent and accountable when handling personal data.

Before 25th May, organisations will need to review their current approach to data processing, privacy and compliance and start putting new processes and systems in place to comply or risk heavy penalties.

The Key Changes of GDPR

Many of the key principles from the 1995 Directive will still apply with some new regulations added, including extended territorial scope, improved individual personal data rights, increased accountability and tougher sanctions for all organisations when handling EU citizens' personal data.

Within GDPR both the data processor and data controller are liable when it comes to processing personal data. A data controller is a person or a business which decides the purposes and ways that the data is processed whereas data processors consist of third parties such as IT services providers that process personal data on behalf of the data controllers.

Extended Territorial Scope

One of the biggest changes of GDPR is the expanded territorial scope. GDPR applies to all organisations that process the personal data of individuals in the EU.

Any organisation that offers goods or services to or monitors the behaviour of EU citizens will also observe the new regulation even if they are based outside the EU. These organisations will need to take the necessary steps to ensure compliance and in some cases may need to appoint an EU representative.

Personal Data and Consent

All data subjects are the legal owners of their personal data. Personal data refers to any data that will identify the person such as name, address, phone number, email address, bank details etc. Any business or organisation that collects this personal data will need the individual's permission and consent to collect and process it.

The areas around consent have been strengthened with GDPR and all organisations will be required to be transparent in their communications with all individuals. Examples of this required consent would be positive opt-ins, unticked boxes and use of clear and concise language. GDPR also requires that it must be easy for the individual to withdraw consent.

Improved Data Protection Rights

Under GDPR, individuals will have increased rights, including:

Right to access: Any person will have the right to receive confirmation from the data controller as to whether or not their personal data has been processed and for what purpose, and where it's located. Under GDPR the data controller will be obliged to provide a copy of the personal data undergoing processing.

Data portability: Any person will have the right to obtain their personal data and reuse it for their own purposes. The data controller will be requested to send a readable format to the individual or send on the data to another controller if requested.

Right to be forgotten: The right to be forgotten, also known as right of erasure, entitles the person to have the organisation's data controller remove or delete their personal data when requested. There are many reasons for erasure; data is no longer relevant to original purposes or the person withdraws their consent for processing.

Privacy by design is a new introduction with GDPR and requires that the subject of data protection and privacy are included during the design stages of new products. Both the data controller and processor will need to ensure personal data is protected when introducing new products.

Increased Accountability

For many years we have heard of data breaches happening and personal information becoming lost or sent to the wrong people. Under GDPR legislation , organisations will not only be required to ensure that personal data collection is done in a legal and fair way but they will also be expected to protect it from misuse, thereby respecting the rights of the data owners.

When a data breach occurs which could result in a risk to the rights and freedoms of an individual, the data controller will be required to inform the supervisory authority and the individual. As part of GDPR requirements all data controllers are required to document any personal data breaches detailing the facts and action taken. These documents will verify compliance for the supervisory authority. The supervisory authority is an independent public authority in each member state that will monitor the application of GDPR.

Some organisations may need to appoint a Data Protection Officer (DPO). Public authorities, organisations that monitor data subjects on a large scale, or process sensitive personal material on a large scale will require a DPO. A DPO may be someone in the organisation or an external individual that will be responsible for recording data processing activities and ensure data protection compliance.

Tougher Sanctions

Any organisation that is found to be in breach of GDPR after 25th May 2018 will face heavy penalties. There are two levels of fines and both the controller and the processor are liable for non-compliance. Fines for infringements will be considered on a case-by-case basis and will take a number of criteria into consideration.

For the most serious infringements, the maximum fine is up to 4% of annual global turnover or €20 million, whichever is greater. Serious infringements by GDPR include not having sufficient customer consent to process data and the transfer of data to third parties.

The second level fine is up to 2% or €10 million. Examples of these infringements include not having records in order and not notifying the supervisory authority and data subject when a data breach occurs.

Impact of GDPR

The introduction of GDPR gives EU citizens more control over how their personal data is processed. For businesses GDPR provides a clear legalised structure for data protection rights but will also create a significant amount of work ahead of the live date on 25th May. The serious penalties involved will certainly encourage compliance although it remains to be seen how effective the policing of such a massive undertaking can be. The only certainty at this stage is that GDPR will be at the top of many to-do lists for many months yet!

Romania: Tax Changes to be implemented January 2018

On 10th November, the Romanian Government announced the changes to be made in relation to income tax and social security contributions.

Currently the social security contributions rate of 39.25% of the gross wage is paid by both the employer and the employee but from January 1st 2018, the government will implement the transfers of almost all social and health security obligations from the employer to the employee. As a result of this change the government has reduced the rate on gross salary from 39.25% to 37.25%.

From January the employer will pay a work insurance contribution of 2.25% instead of the current 23-24% in contributions on gross salary with the employee contributing a rate of 35% of their gross salary instead of their current 15-16 %.

The government also announced the reduction of the current income tax rate of 16% to 10% starting January 1st 2018.

Breakdown of the new social and health security contributions starting 1st January 2018

Paid only by the Employee

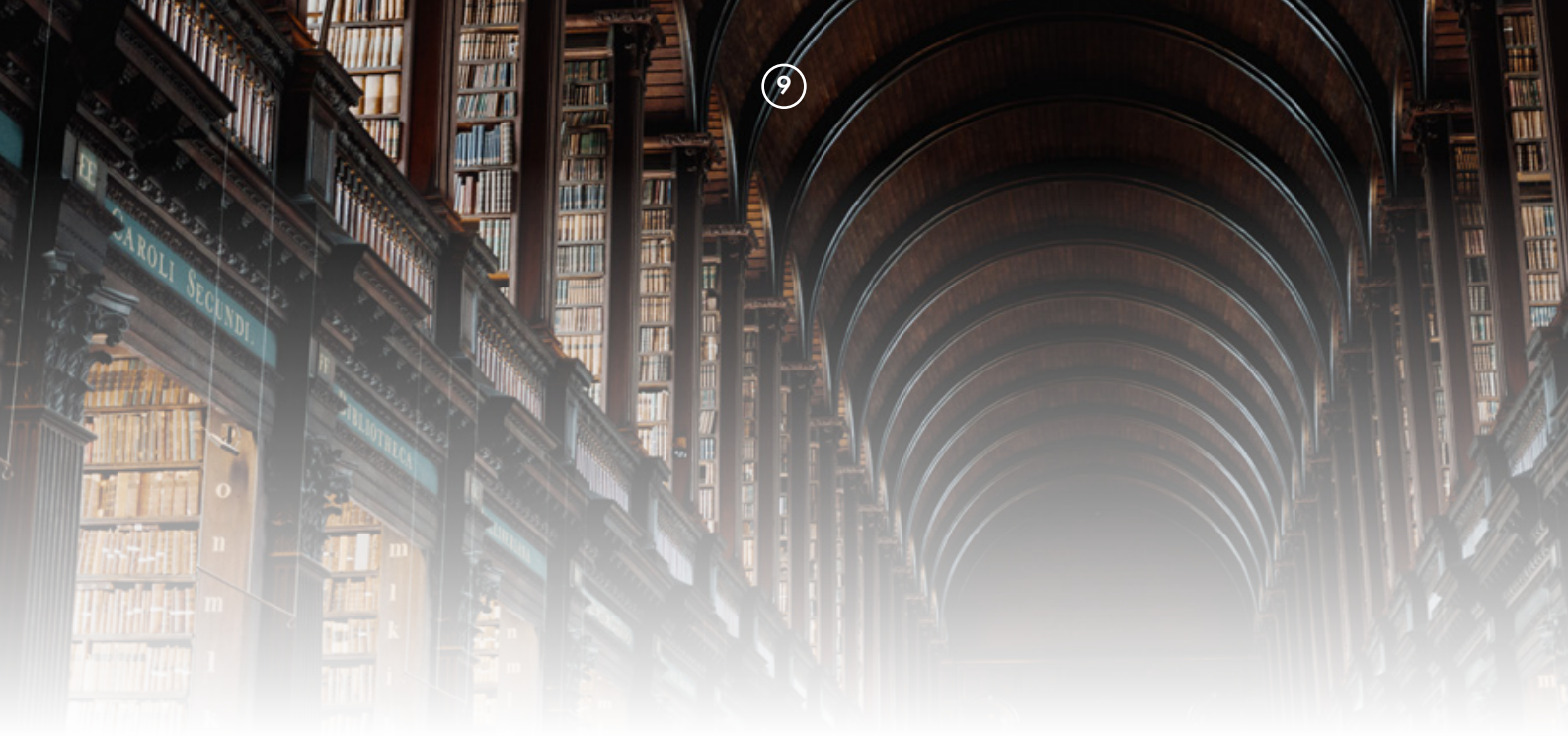
Pension Contribution	**25%**
Health Insurance	**10%**

Paid only by the Employer

Work Insurance Contribution	**2.25%**

Ireland: 2018 Budget Announced

On 10 October, the minister for Finance, Public Expenditure and Reform announced the Budget 2018. Capital GES have listed the tax changes for Ireland in 2018.



USC Rate & Band Reduction

Incomes of €13,000 or less will continue to be exempt from USC in 2018 and the USC rates were cut with the 2.5% rate of USC reduced to 2% and the 5% USC rate reduced to 4.75%. The threshold for the 2% USC was increased by €600 going from €18772 to €19,372. This increase was made to tie in with the new minimum wage (€9.50) that was announced in July 2017. The 5% USC rate was reduced to 4.75%

Income	Rate
€0 – €12,012	0.5%
€12,012 – €19,372	2%
€19,372 – €70,044	4.75%
€70,044+	8%

The higher rate of USC of 11% on income in excess of €100,000 for the self-employed remains.

The USC relief for medical card holders is being extended for a further two years. Medical care holders and individuals aged over 70 years and whose aggregate income does not exceed €60,000 will now pay a maximum USC rate of 2 percent in 2018.

PRSI

Employees earning between €352.01 and €424 in a week will be entitled to a new weekly PRSI credit which will reduce the amount of PRSI deducted from their earnings in that week.

Income Tax Credits

The standard rate income tax band for all earners increased by EUR 750.

The Home Carer Tax Credit increased again in Budget 2018 with the announcement of a €100 increase to bring the credit to €1,200.

The Earned Income Credit for the self-employed increases by EUR 200 going from €950 to €1,150.

DIRT reduction

The rate of DIRT is set to reduce to 37% in 2018 and then by 2 percent each year until it reduces to 33% in 2020.

Corporation tax rate

As expected, the Minister reaffirmed Ireland's commitment to retaining the 12.5% corporation tax rate stating that the 12.5% rate was one of the reasons that Ireland is an attractive destination for foreign investment.

The Seamus Coffey report was published in September 2017 and sets out a roadmap for Ireland to implement a range of reforms over the coming years up to the end of 2020. From advice on the report the Capital Allowances for Intangible Assets and any related interest expense, will be limited to 80% of the relevant income arising from the intangible asset in an accounting period.

The Gig Economy – Latest Updates

Over the last few years employment law topics such as worker status and holiday pay have been in the headlines for those working in today's Gig Economy. Since 2016, several high profile cases, featuring the likes of Uber, Deliveroo and CitySprint, regarding employment status have taken place, and towards the end of 2017 there were a number of decisions made on worker classification that could have a big impact on the future.

Uber

In 2016, two drivers brought a case in London against the "ride-sharing" platform Uber over employment rights. Uber had argued that the workers were self-employed and not entitled to employee's protections. In a landmark case the Employment Tribunal (ET) ruled that the Uber drivers were employees and not contractors and as such were entitled to workers' rights and protections.

After appealing to the Employment Appeal Tribunal (EAT) Uber lost their appeal in November 2017. The EAT upheld the ruling by the ET that Uber drivers are workers for the purposes of the Employment Rights Act 1996 (ERA). To determine this ruling, EAT looked at the worker status and the reality of the arrangement between Uber and the drivers. After considering several factors the EAT upheld the decision made by the ET.
The EAT found that the Uber drivers are classified as employees as they have an obligation to personally perform their services. This begins when the drivers are signed in to the uber app, are in the territory within which they are authorised to work and are ready to accept assignments. The EAT agreed with the ET that Uber drivers are workers and are entitled to the right to the national minimum wage and holiday pay.

Deliveroo

While most claims to determine worker status have been brought through to the employment tribunals, in May 2017 the Independent Workers Union of Great Britain (IWGB) began the Central Arbitration Committee (CAC) case on behalf of Deliveroo riders to gain union recognition. In November, after determining worker status the CAC concluded that Deliveroo riders are not employees.
The CAC rejected the IWGB's application for union recognition. After examining several factors CAC found that there was a genuine substitution clause that reflected the reality of the contractual relationship for the Deliveroo riders. The CAC determined that Deliveroo riders did not contractually agree to personally provide work for the company and that they could, and had indeed in some cases, use a substitute either before or after accepting a job. CAC concluded that Deliveroo riders are self-employed as opposed to employed and therefore are not entitled to employees' rights.

The European Court of Justice

In addition to these cases the European Court of Justice (ECJ) made a landmark decision on the workers' holiday pay entitlements. In November, the ECJ handed down a decision that self-employed contractors who were misclassified could claim compensation for all unpaid holidays. The case involved a window cleaner who was awarded £27,000 compensation for the unpaid holidays he would have received has he been correctly classified as an employee. Before the ECJ's ruling there was a limit on liability of one or two years but with the limit removed claims can go as far back as 1990s when the European Union's Working Time Directive was introduced.

Coming up Next

More cases regarding employment status will be heard in 2018. Coming up in February is the Pimlico Plumbers supreme court appeal. Following the EAT's decision, in late November Uber has petitioned an appeal which will go through to the Court of Appeals and Deliveroo still face an employment tribunal case from a group of riders. With the two companies taking very different approaches, Uber responding with hard hitting tactics and Deliveroo using a softer approach it will be interesting to see how it plays out for the two companies next year and how it will affect the future of the Gig Economy.

Country Profile: Colombia

Capital:	Bogotá D.C.
Population:	49'392'072 (December 2017 est.)
Language:	Spanish (official)
Exchange rate:	GBP 1 = COP 4,049.88 (04th Dec 2017) Colombian Peso (COP)
Time zone:	GMT -5
Electricity:	110V-120V; 60Hz
Cost of living:	Bogota ranked 130th most expensive city in the world - ***Mercer Worldwide Survey 2016***
Tax year:	1st January to 31st 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, or more than 50% of their equity is administered in Colombia.

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 2016 has created a new system based on different types of incomes earned in the fiscal year, which has established five categories of incomes with specific rates: income derived from work (salaries, honorary, commissions, travel expenses), income derived from pension (pension funds), income derived from capital (financials interest, royalties, leases), income not derived from work (sales, alienation of assets), income derived from dividends or participations (partners, shareholders about your investments in shares).

Tax rates on income vary according with the kind of income. The income rates derived from work are currently 0%, 19%, 28% and 33%.

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

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 correspond 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 (40% of the monthly wages), however, affiliation to health (12.5%) and occupational risk systems depend on the risk of the activity performed. 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.

Country Profile: **Poland**

Capital:	Warsaw
Population:	38’142’531 (est. Dec 2017)
Language:	Polish
Exchange rate:	1 GBP = 4.69 PLN – Polish Zloty (3 December 2017)
Time zone:	GMT+1 (+2 in summer)
Electricity:	230V/50Hz
Cost of living:	Warsaw ranked 180th most expensive world city - ***Mercer Worldwide Survey 2016***
Tax year:	1st January to 31st December

Income Tax

Individuals who have their centre of personal or economic interests in Poland or whose stay there exceeds 183 days in a tax year are deemed to be resident for tax purposes. Residents are taxed on their worldwide income. Non-residents in Poland are taxed on Polish-source income only. As a general rule, spouses are taxed separately on their income, but in some cases they can elect to file jointly: for example spouses in a community property marriage who were married the entire tax year, or spouses who have their residencies in different EU member states.

Taxable employment income includes salaries, bonuses and all other payments or benefits made on behalf of the employee. Moving costs reimbursed by the employer are exempt from taxable income up to the equivalent of 200% of the wages earned in the month in which the removal takes place if the transfer is requested by the employer. Social security contributions are deductible from taxable income. A tax credit of up to 7.75% of the base for health insurance contributions is available. An allowance of PLN 1’112.04 for minor children or children under the age of 25 if they continue to study is applicable (per child). There is a standard employment deduction of PLN 1’335 and a personal allowance of PLN 3’091.00. Income tax is only applicable above this threshold. Income between PLN 3’091.00 and PLN 85’528 is taxed at 18% and income above PLN 85’528 is taxed at 32%. Dividends are taxed at 19%, profits from the sale of shares are taxed at 19%. A final withholding tax of 19% applies to domestic dividends and interest.

There are no special rules for expatriates. Annual tax returns must be filed by 30 April in the year following the tax year. Income tax must be paid in advance every month and then adjusted at the end of the tax year.

Social Security

Social security contributions are levied on the employee’s gross remuneration. Employees must contribute 9.76% towards old age pension, 1.50% towards disability insurance and 2.45% towards health and maternity insurance. Medical expenses are covered by an obligatory health insurance contribution of 9% payable by the employee and calculated on the employee’s gross remuneration after deduction of contributions to old-age, disability and health and maternity insurance. Employers must contribute 9.76% towards old age pension, 6.50% towards disability insurance and 0.67% to 3.86%, depending on the employer’s type of business activity, towards industrial injuries insurance. Additionally, employers have to contribute 0.10% of the employees’ salaries to the warranted employees’ claims fund (FGSP) and 2.45% to the labour fund (FP). The ceiling for the old age pension and disability insurance contributions is PLN 127’890 in 2017 but there is no ceiling for sickness and maternity insurance.

Denmark: The New Danish Holidays Act

In 2014, The European Commission ruled that the current Danish Holidays Act was not in compliance with EU legislation. The Danish Holiday Act Committee holiday committee was set up to work on new legislation and On 31 October 2017, the Danish Parliament adopted the proposed new Danish Holiday Act.

The new Danish Holiday Act will:

- Introduce concurrent holidays - Allowing Danish employees to earn and take holiday within the same time period.
- Allow newly hired employees to be entitled to take paid holiday during their first year of employment.
- Allow Holiday leave to be extended from 12 to 16 months to allow for flexibility in the labour market. Holiday will be earned and taken in the period from 1 September to 31 August and earned holiday may be taken until 31 December in certain cases.

Some provisions of the holiday act still remain unchanged. The new Holidays Act does not change the number of paid holiday leave days. Employees still have the right to 25 days of holiday with pay each year.

An interim period will begin in 2019 to ensure the transition from the current to the new holiday system is as flexible as possible with the new rules expected to go into force on 1st September 2020.

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GET IN TOUCH

For more information on how Capital GES can help your company expand in a safe and compliant way, please contact our team of experts for more information.

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