

EXPAT POST

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Together as One



Welcome

Welcome to Alliot Global Alliance's Spring 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 2022 European Super Huddle, Better Together, Europe. Alliot Global Alliance is once again co-sponsoring the event with the support of member firms across Europe.

The conference, taking place in Amsterdam 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 Alliot Global Alliance (AGA). Our local in-country GM tax and legal experts are perfectly positioned to provide a single point of contact for your multi-jurisdictional workforce related challenges.

In this issue Graeme Kirk, Senior Counsel at Ellisons Solicitors Immigration Department summarises the advantages and disadvantages of the New UK Global Mobility Visa; Julie T. Emerick, Immigration Attorney at Masuda Funai offers an update on the work of the U.S. Citizenship & Immigration Service, Dániel Fehér of Feher Legal & Tax, Hungary highlights the structure of social insurance when working and residing in different locations and I summarise the new special tax regimes for executives and researchers.

Thank you to all for your valuable contributions.

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



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23.05.22 BG Hilton, Amsterdam

Alliot 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.





The structure of **social insurance** when working and residing in different locations

In this case study, **Dániel Fehér**, AGA's local engagement lead in Hungary, highlights how the social insurance of a Belgian citizen who is resident in Hungary but employed in Belgium should be structured. Dániel worked on this case with fellow member firm in Belgium, Tax Consult.

According to the facts of the case a Belgian citizen (employee) moved to Hungary, registered, and became tax resident there. The citizen retains employment in Belgium.

The citizen will be based at home in Hungary and there is no regular requirement to travel to work in Belgium except for around 1-2 times per month.

The employee does not work in Hungary at all and only retains work for the Belgium employer.

However, even though the employee becomes tax resident in Hungary, the citizen aims to keep Belgian social insurance status for as long as possible so to avoid becoming resident in view of the social insurance in Hungary.

So, is this possible for the long term?

To answer this question, we must look at the legal background, and, whether a separate Social Insurance Agreement between Hungary and Belgium exists.

Since this is not the case yet, the **Regulation (EC) No 883/2004 of The European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Coordination Agreement)** will need to take place and the rules of the Coordination Agreement must be mandatory applied.

According to these there is only a very short period of transition. A Belgian social insurance relationship can be kept while living in Hungary for 3 months, after which the employee must establish a social insurance legal relationship there.

This can happen easily if the employee establishes an occupation relationship with a Hungarian employer or registers as an entrepreneur.

If these options are not possible the employee or the Belgian employer is incumbent on the registration in Hungary.

In the case of registration by employees, a citizen will be responsible for the declaration and paying of the taxes and social contribution of themselves and of the employer. In such instances, the Belgian employer will not intervene in Hungary from a legal or taxation point of view.

In our experience of such cases the employers will pay all duties on behalf of the employees by bank transfer. So that these transfers can be identified by Hungarian authorities, the employers will indicate the tax and social insurance number of the employee(s) in the transfer notice.

In the latter case the employer is obliged to fulfil the registration and claim a Hungarian tax number, submit all declarations, and pay the taxes and social contribution also for the employee as would happen in regular employment between national participants.

However, the deregistration of the employee from the Belgian social insurance system is in both cases very important!



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Belgium – New special tax regime



In this update **Luc Lamy**, AGA's local engagement lead in Belgium, summarises the new special tax regimes for executives and researchers.

New special tax regimes for executives and researchers have been installed following legislation published on 31 December 2021. The circular of 8 August 1983 has been abolished and a new circular of 21 January 2022 introduces a transition period of 2 years for individuals benefitting from the old regime.

Effective Date

1 January 2022.

General Framework

The most significant change is the abolition of the fiction of Belgian tax non-residence. As such, the two new regimes are called the special tax regime for impatriates (hereinafter "STRI") and for impatriate researchers (hereinafter "STRIR").

New Features

All nationality conditions have been removed so that Belgian nationals meeting the conditions listed below will be able to benefit from the new regime. The maximum duration is fixed at 5 years, possibly extended by 3 years. It will be possible to keep the scheme if one changes employer in Belgium.

The individual has to be recruited directly abroad by a Belgian entity (not necessarily part of a multinational group) or a non-profit organization. The individual can also be assigned or transferred within a multinational group.

Change

The philosophy of the scheme is profoundly modified in that it is designed exclusively in favour of the impatriate. This novelty is not neutral in terms of tax assistance granted to impatriates.

Conditions

General conditions:

	STRI	STRIR
Direct recruitment from abroad	X	X

Additional and cumulative conditions to be assessed over a reference period of 60 months preceding the start of the assignment in Belgium:

	STRI	STRIR
Not having been subject to Personal Resident or Non-Resident Income Tax on professional income	X	X
Not living within 150km of the Belgian border	X	X

Conditions assessed at recruitment but checked annually:

	STRI	STRIR
Minimum gross remuneration per calendar year	>75.000 euros*	N/A

* Excluding the reimbursement of recurring expenses covered by the new scheme and assessed daily in case of partial year, suspension of contract or change of employer. Can include the taxable benefits in kind and variable remuneration.

In case of non-compliance with the conditions related to the employer or the salary threshold, the application of the scheme is definitely lost.

Other conditions:

	STRI	STRIR
Degree in science (minimum master's degree) or 10 years of experience*	N/A	X
Applicable to non-profit organizations	X	X
Applicable to employees	X	X
Applicable to self-employed executives in charge of daily management	X	N/A

*The researchers should perform at least 80% research activities of scientific, fundamental, industrial, or technical nature within a laboratory or an enterprise.

Benefits – On top of the remuneration, the employer may reimburse tax free costs proper to the employer up to 30% (capped at 90,000 euros on an annual basis – to be prorated eventually) of the gross annual remuneration.

The reimbursement should be contractually agreed. On top of the 30%, the payment of school fees and certain moving expenses can still be tax free. Installation costs incurred during the first six months may not exceed EUR 1,500. The travel exclusion mechanism has been removed.

The reimbursement of the tax-free costs proper to the employer are exempt from social security contributions.

Process

A formal request should be filed by the Belgian entity within three months of arrival in Belgium. Any change (i.e., extension, change of employer) will require electronic request to be made. The requests should include the formal agreement of the individual.

New obligations

Under this new scheme, an annual analysis will have to be carried out to verify the salary threshold condition. Furthermore, the new regime will be implemented through rigorous reporting.

Transitional period

An opt-in procedure is foreseen to allow current foreign executives to benefit from the new regime. Only expats who are less than 5 years under the current regime and who meet the conditions of the new regime may opt-in before 31 July 2022.

Foreign executives not exercising this option or not eligible for the new regime can benefit from the old regime until 31 December 2023. After that date, they will become Belgian tax resident (unless resident of another country).

Follow up

An administrative circular and a FAQ are expected soon to provide clarification regarding the practical implementation of the new regimes.



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The New UK Global Business Mobility Visa – Good News or Bad?



Graeme Kirk, AGA's local engagement lead in the UK, summarises the advantages and disadvantages of the New UK Global Mobility Visa.

The Home Office has introduced with effect from the 11th of April 2022 a new Global Business Mobility Visa, which is a new category combining several sponsored routes for overseas businesses seeking to establish a presence in the UK or wishing to transfer staff to an existing UK business for specific purposes.

This new visa creates a multi-category sponsored route that replaces, reforms, or expands on a number of existing business visas, including the long-established Representative of an Overseas Business visa, the two types of Intra-company Transfer visas, and visas for contractual services and independent professionals previously coming under the Temporary Work International Agreement route.

The new visa will also provide a new route for overseas employees to be seconded by their overseas employer to the UK as part of a high value contract or investment.

The Global Business Mobility Visa is divided into five different temporary work assignment types as follows: -

- a) Senior or Specialist Worker route.
- b) Graduate Trainee route.
- c) UK Expansion Worker route.
- d) Service Supplier route.
- e) Secondment Worker route.

A key take away is that NONE of these routes will lead to the right to indefinite leave to remain (permanent residence) in the UK.

Looking at each of these routes in turn: -

1. Senior or Specialist Worker Route

This route is for Senior Managers and Specialist employees who are being assigned to a UK employer which is linked to their overseas employer and who wish to undertake a temporary assignment in the UK. This route replaces the existing Intra-Company Transfer route but is in all other respects identical to the ICT route, other than the fact that the minimum salary to qualify under this route, where an employee has been working for the sponsor Group outside the UK for at least twelve months prior to the application has increased to at least £42,400.00 or whatever is the "going rate" for the job, whichever is higher.

It is possible to stay for five years in the UK on the basis of this visa, or for five years in any six-year period, or nine years in any ten-year period if applying as a high earner (being paid in the UK a gross salary of at least £73,900.00 per year).

2. Graduate Trainee Route

This route is for overseas employees who are on a graduate training course with their employer, leading to either a senior management or specialist position and who are required by their foreign employer to undertake a work placement in the UK. This category replaces the ICT Graduate Trainee route, but the provisions of the new visa are again almost identical to the old ICT Graduate Trainee visa.

The route does require a salary of at least £23,100.00 per year or the “going rate” for the job to be paid, whichever is higher and there is a requirement to prove that the employee is on part of a structured graduate training programme leading towards a managerial or specialist role within the sponsor organisation.

The visa can be granted for a period of one year.

3. UK Expansion Worker Route

This route has replaced the Representative of an Overseas Business route which previously potentially led to the right to settlement in the UK. The inability of this new route to lead to settlement is a major negative in the new Rules.

This route is for overseas workers looking to undertake temporary assignments in the UK, where the employee is either a senior manager or specialist employee of the overseas Company being assigned to the UK, to assist in the expansion of the business in the UK. It can only be used when the business has not yet begun trading in the UK.

Unlike the old Representative of an Overseas Business route, this will require an application for a Sponsors Licence to be made and this application can be made by a suitable applicant for the Expansion Worker route.

The applicant will have to be paid a salary of at least £42,400.00 per year or the “going rate” for the position, whichever is higher and, if successful, permission will be granted for a period of one year, with the possibility of extending this visa for a further year to two years in total.

Set against the negative fact that this visa can never lead to settlement, the good news is that up to five qualifying employees of the overseas Company may come to the UK under this visa category, whereas previously only one individual could come as the representative of the overseas business.

4. Service Supplier Route

This route replaces the underused contractual service supplier and independent professional provisions under the Temporary Work – International Agreement route under Tier 5 and is for contractual service suppliers employed by overseas service providers, or self-employed independent professionals based overseas, who are looking to undertake temporary assignments in the UK to provide services covered by a UK International Trade Agreement.

The maximum single assignment period under this route can be either six months or twelve months depending on the Trade Agreement being used for the application.



5. Secondment Worker Route

This is a new immigration route, which will enable overseas employees looking to undertake temporary assignments in the UK by being seconded to the UK as part of a high value contract of their overseas employer, worth at least £50million.

To qualify for this route, the employee must currently be working for an overseas business that has a Home Office registered contract with their UK Sponsor and who has worked for that business outside the UK for at least twelve months. Permission will be granted for an initial period of one year up to a total of continuous permission of two years.

As stated above, it will be possible to extend the above visas from within the UK, up to the maximum length of time permitted under each route, but none of these routes will lead directly to settlement in the UK.

It will be possible for family dependents (spouse/partner and children under eighteen) to come to the UK with the main applicant, subject to meeting the financial requirements of the Rules.

In view of the comparative ease in obtaining a Skilled Worker Visa, it is likely that many UK employers will wish to continue to use the Skilled Worker route rather than the Global Business Mobility Visa, because the Skilled Worker route does potentially lead to settlement rights in the UK. In addition, many individuals arriving in the UK under the new GBM Visa, particularly those coming on the Expansion Worker Visa route, are likely to wish to switch status to the Skilled Worker route as soon as they qualify for it, to move onto a route leading to settlement.

As part of its Brexit Policy, the British Government stated that it wished to take back control of UK immigration Policies and the new GBM Visa is one of the first examples of this new Policy. Time will tell as to whether it assists in any material way in solving the major skills shortages currently existing in the UK economy.



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Updated Guidance from USCIS about Employment Eligibility for E or L Dependent Spouses



Contributed by **Julie T. Emerick**, AGA's local engagement lead in the US.

The U.S. Citizenship & Immigration Services (USCIS) is working to provide updated documentation to spouses having E or L non-immigrant visa status who are now authorized to work incident to their immigration status in light of the recent USCIS policy change.

When working in the United States, an employer is required to complete a Form I-9, Employment Eligibility Verification (Form I-9) and request the employee to provide documentation of the employee's identity and legal authorization to work in the United States. For E or L non-immigrant spouses, the employment authorization used to be in the form of an Employment Authorization Card (EAD). However, based upon the implementation of the above policy change for Form I-9 completion, an employer may now accept from an E or L non-immigrant spouse, a Form I-94 issued in the E-1S, E-2S, E-3S or L-2S classification.

Beginning January 30, 2022, CBP began issuing such Forms I-94 to E or L non-immigrant spouses upon their entry into the United States. On this date, USCIS also began issuing such Forms I-94 to E or L non-immigrant spouses when their Form

I-539 applications were approved. For E or L non-immigrant spouses who had a Form I-539 approved before January 30, 2022, USCIS is now working to issue updated notices with the E-1S, E-2S, E-3S or L-2S classification (instead of E-1, E-2, E-3 or L-2 classification). The USCIS has indicated that such notices should arrive in the U.S. mail by April 30th. If not received by this date, a request to receive the notice may be emailed to: E-L-married-U21@uscis.dhs.gov. CBP will not be revising the Forms I-94 for E or L visa spouses who entered the United States prior to January 30, 2022. These spouses will either need either to travel internationally and re-enter the United States in order to be issued an updated Form I-94 or to apply for an extension through the USCIS (if eligible).

If you have questions about completing the Form I-9 or E or L spouse employment authorization eligibility, please contact our firm.



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