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## Europe:
## Suspension of visa free travel for US and Canadian citizens?

### History

Currently, US and Canadian citizens can travel to the Schengen zone without a visa for up to three months in every six-month period. EU citizens should equally be able to travel without a visa to the United States and Canada.

This is based on the EU's common visa policy, whereby third-country nationals can benefit from a visa waiver if all EU citizens can – reciprocally – travel without a visa to that country. The UK and Ireland are excluded from the EU's common visa policy (as they have exercised their right to opt out) and are not affected by what follows.

### The issue

Canadian and US citizens can travel to the Schengen zone without a visa. However, Romanian and Bulgarian citizens – despite being EU citizens – cannot yet enjoy visa-exempt travel to Canada. In addition to Romanian and Bulgarian citizens, the United States also excludes Croatian, Cypriot, and Polish citizens from the visa waiver program.

On March 2, 2017, the EU Parliament consequently adopted a nonbinding resolution requesting the EU Commission to suspend visa-exempt travel for citizens of countries that do not reciprocally grant visa-exempt travel to all EU citizens for 12 months, in accordance with EU legislation.

### What this means

Suspending the visa waiver for Canadian and US citizens would have a significant impact on businesses, as it may bring the introduction of business visas and, with it, additional, costly and time-consuming processes.

### Is a suspension of visa-exempt travel for Canadians and US citizens looming?

Canada has introduced visa-exempt travel for Bulgarian and Romanian citizens who have held Canadian temporary residence for the last 10 years, or are currently holding US nonimmigrant visas. Canada is currently on track to allow Bulgarian and Romanian citizens to travel without a visa as of December 1, 2017.

The new US administration has agreed to launch a result-based process toward bringing the five EU member states (Bulgaria, Croatia, Cyprus, Poland, and Romania) under the visa waiver program, if they meet all requirements as set out in US legislation. This includes reporting to the Interpol Stolen and Lost Travel Documents database on a daily basis and signing and implementing the Preventing and Combatting Serious Crime Agreement.

The EU Commission responded to the EU Parliament's resolution on May 2, 2017, stating that the suspension of the visa waiver program would be counterproductive at this time.

Therefore, companies should not fear an immediate suspension of visa-exempt travel. However, the EU Commission may reconsider its position in the future if insufficient progress is made.

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## France:
## Macron Presidency: Immigration, social security, and Brexit

After Brexit, Sunday May 7, 2017, proved to be another pivotal day for Europe. French citizens chose between the extreme right-wing candidate Marine Le Pen and the center-left candidate Emmanuel Macron.

Le Pen had proposed a referendum to have France leave the European Union ("Frexit"), a complete immigration freeze, and the re-establishment of France's internal borders. Frexit and further disruptions on a European level were therefore a possibility, however, it was Macron who was elected.

### Immigration and European border control

Macron's program focuses on four aspects of immigration. First, it underlines the importance of integration (French language skills and understanding of the values and functioning of public institutions, and the labor market). Macron promises that France will take up its fair share of refugees, provide fast processing times of asylum cases (a total of six months between the launch of the asylum cases and a final decision in appeal, if applicable), and a more efficient rejection policy.

A third block of Macron's program focusses on attracting talent by simplifying the procedure and decreasing processing times for France's "talent visa." It also aims at simplifying access to the labor market for students who obtained a Master's degree in France and by having faster processing times for employers, scientists, and other profiles registered in a so-called "bona fide list" kept by the local chamber of commerce or the embassy's regional economic department.

Last, Macron wants more European action to protect its borders and irregular migration. To achieve the former, he will push to reinforce Frontex, the European Border and Coast Guard Agency and increase Frontex's on-the-ground border inspectors to 5,000 agents. Additionally, Macron wants more checks at European external borders, an increase in tackling smugglers, and European programs to discourage irregular travel to the European Union.

**Stance on Brexit**

Now that the UK has triggered Article 50, Brexit negotiations can finally proceed (an alert covering the Council's negotiation guidelines will follow at a later time). At the negotiating table, all three European institutions will be present: the European Council (chief negotiator Didier Seeuws), the European Parliament (chief negotiator Guy Verhofstadt), and the European Commission (chief negotiator Michel Barnier). All three institutions will have to accept a Brexit agreement. (For a Brexit update, a recording of the webinar "Brexit: what does it mean for employers and the global workforce?" is now available).

It is likely that Macron and Merkel will join forces at the European level, as Sarkozy and Merkel previously did. Merkel has already expressed her strict intent – and, when campaigning, Macron indicated that he will be equally "tough" on the UK, calling Brexit a "crime" and saying that "Britain will have to face the consequences." When visiting London in November, Macron was clear about the details and principles of Brexit: "The UK is not to enter the single market unless it respects all four freedoms including the free movement of persons. There is no access to the single market or any passporting rights for financial services without financial contributions to the EU. There will be losses but they have to be heaviest for the UK. The Anglo-French Le Touquet agreement regulating the UK-French border in Calais will need to be revisited."

**European social security and the posted workers directive**

Posted workers are sent from one EU country to another to temporarily provide services at the host member state. The directive foresees the worker earning the minimum wage of the host country; however, the worker remains subject to home social security contributions (more information on the directive can be found in the February 15, 2017, alert).

Approximately 285,000 European citizens are seconded to France and almost 85% of them are blue collar workers (50,000 Polish workers, 45,000 Portuguese workers, 35,000 Spanish workers, and 30,000 Romanian workers). This means that those employees are paid a French minimum wage and that social security contributions are paid in their home country. Those contributions are often lower than when French social security contributions are due, making those workers cheaper. This would then lead to unfair competition.

Given that a similar number of French citizens who work abroad (in Belgium, Germany, Luxembourg, the Netherlands, Spain), Macron does not aim to repeal the posted workers directive but wants to limit the posting of workers to a one-year period. This would have a considerable impact on employee mobility.

**What this means for employers**

Macron's election as French president could mean relaxed rules regarding skilled migration: decreased administrative burden and faster processing times. It may also imply a tougher stance on border control, Brexit, and posted workers, which could lead to stricter compliance checks.

Deloitte will continue to monitor changes in policy that affect employers and employees.

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# United States:
# Recent Accounting Standards Update Presents Potential Opportunity for Multinational Issuers

### Overview

The issuance of ASU 2016-09 may present opportunities for increased net share settlement usage globally, with resulting positive impact on basic earnings per share calculations.

### Key Points to Know

Prior to the issuance of ASU 2016-09, pursuant to ASC 718, employers were required to use liability classification of share-based payments if the number of shares withheld to cover tax costs exceeded the minimum statutory withholding requirements. For multinationals, the complexity involved with determining the minimum withholding rates applicable to their global employee populations, as well as potential risk of being subjected to liability accounting, caused many issuers to utilize a sell to cover withholding methodology on their equity awards globally (even if utilizing net share settlement in the US where supplemental wage withholding guidance is relatively clear).

ASU 2016-09 amends ASC 718 to state that the net settlement of an award, by itself, will not result in liability classification of share-based payments if the withholding rate utilized does not exceed the maximum statutory tax rate in an employee's relevant jurisdiction. As such, the new guidance should present more comfort that issuers can retain equity classification for their awards where net share settlement is used globally (so long as there is a statutory obligation to withhold taxes and withholding rates do not exceed jurisdiction-specific maximums).

For entities that currently utilize net share settlement in the United States, but choose to sell to cover globally, or utilize sell to cover globally, the move to broad-based net share settlement may also result in increased basic EPS. For example, since the total outstanding shares for purposes of calculating basic EPS do not include shares until they are issued, utilizing net settlement will result in fewer shares issued at vesting of restricted stock units (since only the net number of shares will be issued, rather than the gross number with shares subsequently sold to cover taxes). Even assuming the earnings side (i.e., the numerator) of the EPS calculations remains constant, net share settlement would result in a smaller number of shares actually outstanding (i.e., a smaller denominator), thereby resulting in an increase in basic EPS.

Of course, the move to net share settlement will not eliminate tax remittance obligations, and by foregoing the option to sell shares to cover the withholding, increased cash will need to be utilized by issuers to cover global withholding obligations.

### Action Items

Prior to implementing such a shift in share settlement practices, there are a few key considerations, including:

- Assessment of global statutory withholding obligations, including by worker classification (e.g. employees, non-employee consultants, directors, etc.).
- Documentation of maximum individual tax rates by jurisdiction (federal, regional, etc.).
- Cash flow modelling to accrue for tax funding where shares are no longer sold to cover taxes.
- Understanding proxy advisor views on net share settlement and how reserved shares may be utilized (or impact on proxy scorecards when surplus shares are "recycled").

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