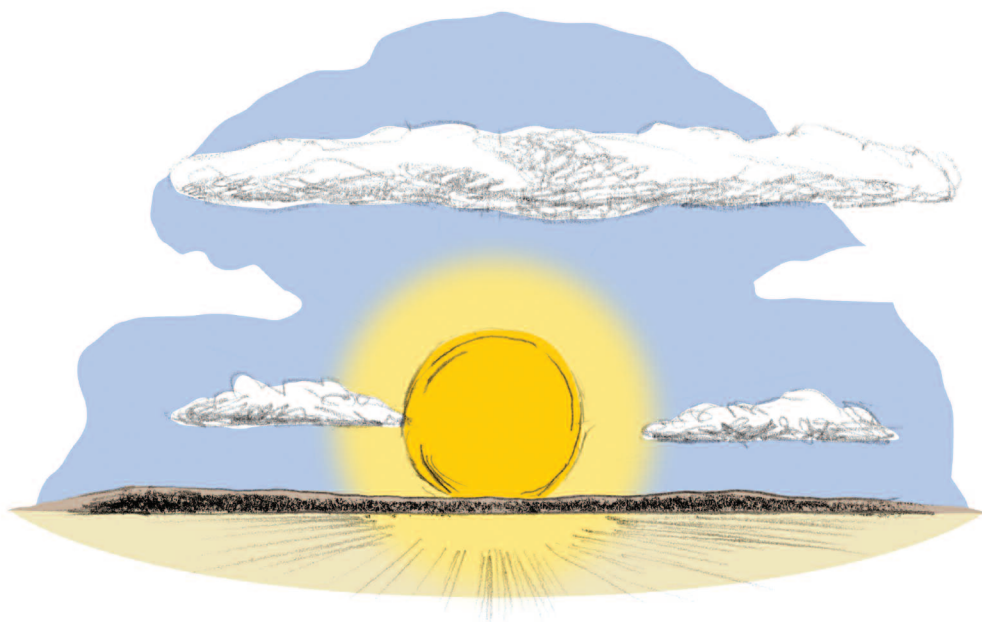




# Expat news



## Welcome to the latest edition of Grant Thornton's Expat News .

As usual, this issue contains information from all over the world – a necessity in the global economy we all now inhabit. So if you want to know about fringe benefit tax in Australia, stock options in Belgium or France, personal income tax in India, professional subscriptions in Ireland, R&D in Israel, tax monitoring in Italy, social security in Portugal,

regional operating HQs in Thailand, the recent UK Budget, tax cuts in the US, or how to calculate total income in Vietnam, this is the place to look.

To find out more about the topics featured in Expat news do not hesitate to get in touch with the Grant Thornton Expat tax team. The contact details are included on the last page of this newsletter. They will all be glad to hear from you.

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**European expatriate tax team**

Supplementing this edition of Expat news is the Expatriate tax ebook which has been designed to provide an overview of the different tax systems around the globe. [Click here](#) to find out more.

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# Australia



Since 1 July 2009, changes to Australian tax legislation have meant that Australian residents working overseas are taxable in Australia on their foreign earnings. Australians working overseas are likely to continue to be Australian tax resident whilst overseas if the overseas period is, for example, up to two years. Prior to 1 July 2009, foreign earnings of Australian residents working overseas were (with some exceptions) exempt from Australian tax where the overseas period was for at least 91 days.

In addition, employers of Australian residents working overseas might be subject to Fringe Benefits Tax (FBT) on any non-cash benefits they provide to their Australian resident employee.

Imposing an FBT liability on the employer is relatively simple for the Australian Taxation Office (ATO) where the Australian resident worker is working for an Australian employer whilst overseas. However, there has until recently been uncertainty on how the ATO would see its jurisdictional authority where the employer is a foreign employer. In this regard, the ATO recently released a taxation determination, TD 2011/1, stating that foreign employers who have a 'sufficient connection' with Australia (eg a physical business presence or branch) are required to withhold tax from the earnings of Australian residents working overseas and are liable for FBT.

Conversely, where a foreign employer does not have a sufficient connection with Australia, it is not required to withhold tax from the earnings of Australian residents working overseas and is not liable for FBT. However, a consequence (which has largely been overlooked) of FBT not applying to the foreign employer is that the Australian resident working overseas is personally taxable on any non-cash benefits.

Many employees are not aware of this – and thus they might have an incorrect Australian tax return for 30 June 2010 (and possibly earlier years). Also where under an 'expat arrangement' an Australian employer sends an employee to work overseas for its foreign associate, it is likely to be the Australian employer which needs be aware of the above tax impact on the employee – this might require added reimbursement under tax equalisation calculations, revising the overall costs of the secondment and possibly prompting changes to secondment sourcing and policy.

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# Belgium



## Taxation of stock options

Stock options granted to employees after 10 January 2003 are presumed to be granted and taxable on the 60th day following the day of the offer, provided that the beneficiary has accepted the offer in writing within that 60-day period. In such a case, Belgian tax legislation applies a lump sum determination of the taxable benefit (a percentage of the value of the underlying shares).

### Example

On 15 January 2009 a Dutch company grants to its sales managers stock options over 100 shares at an exercise price of 100 per share (value of the underlying shares) for those who have reached a turnover of 1,000 (or more) in 2008. The managers must also achieve turnover of 1,100 in 2009 and 1,200 in 2010. The options need to be exercised between 1 March 2011 and 31 December 2011.

Employee X accepts the stock options in writing on 1 March 2009. He reaches the target turnover figures. On 1 March 2011, the date on which he exercises his options, the sales price of one share is 124.

In case of acceptance of the offer after the 60-day period (or verbal acceptance within the 60-day period), taxation will occur at exercise, following regular Belgian tax law and not under the special tax law on stock options.

During the period 1 January 2008 to 31 December 2008 X carried out his activities in the Netherlands. From 1 January 2009 to 31 December 2009 he was working in the United Kingdom for a permanent establishment of his Dutch employer. For all of 2011 he worked in Belgium, also for a permanent establishment of his Dutch employer.

Based upon the above facts the stock options relate to the activities performed during the period from 1 January 2008 until 31 December 2010. During this period the employee worked for 12 months in the Netherlands and for 12 months in, respectively, the United Kingdom and Belgium.

For taxation of stock options in an international context, the Belgian tax authorities will consider the activities (past, current and future) to which the options relate in order to determine the benefit possibly taxable in Belgium.

Under Article 15 of the Belgian-Dutch Tax Treaty, Belgium has the right to tax the benefit related to the employment activity exercised in Belgium (that is, 12 months out of 36). The taxable benefit will therefore be equal to:

$100 \text{ (value of a share)} \times 15\% \text{ (based upon applicable tax law)} \times 12/36 = 5 \text{ per share.}$

This benefit will be taxed for the year during which the options are assumed to be granted according to the special Belgian tax law on stock options (that is, calendar year 2009).

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# France

## Stock options

There are new taxation and filing requirements for non-French residents holding French stock options and free shares.

A new withholding tax is applicable to gains derived from stock options and free grants of shares held in a French company and realised by non-French-resident individuals as from 1 April 2011. The withholding tax applies to the excess discount and to the spread (that is, the difference between the exercise price and the fair market value of the shares upon exercise) but not to the capital gain (that is, the difference between the selling price and the fair market value of the shares upon exercise). Different rates apply to qualifying and non-qualifying plans under French law.

For qualifying plans, the withholding tax is applied on the sale of shares (except in respect of the excess discount, where it is applied at exercise). Withholding tax rates are 18%, 30% or 41%, depending on the value of the gain and the length of the qualifying holding period. The tax rate applicable to free grants of shares is 30% of the spread. However, if the employee is resident in a non-cooperative state, the withholding tax will amount to 50%.

For non-qualifying plans, the withholding tax will be applied when the shares are transferred. Rates will be the same as those applicable to employment income (0%, 12% or 20%).

The employer is always liable for the payment of withholding tax and for filing the appropriate tax returns in France.

Double taxation issues may arise, especially when the country where the individual is resident also has the right to tax the same gains. Appropriate tax planning should then be implemented.

## New French case law related to stock options in cross-border situations

France is out of line, both with the OECD commentaries and with the position of other countries, regarding the tax treatment of stock options. This may trigger double taxation issues. Nevertheless, the French government has never taken the opportunity to clarify the French tax treatment of stock options in cross-border situations, which opens the doors to tax planning ideas.

However, last year the French administrative Supreme Court rendered an important decision on the position where options cannot be exercised before the expiry of a holding period according to the stock option plan, and the minimum holding period provided for by French law is not met. In that case the taxation of the spread must be shared between the countries where the beneficiaries performed their activities during the vesting period.

This is the first time that France has applied the pro rata rule, in line with the OECD commentaries. This method introduces new requirements for both employees and their employers: specific follow-up and additional reporting need to be implemented.

A few months later, though, the lowest administrative Court of Paris confirmed that the spread is not a salary subject to the salary provisions of a double tax treaty but instead it is subject to the capital gains provisions, meaning that the gain is taxable only in the State where the individual is resident at the time of sale. This ruling therefore rejects use of the pro rata rule. The French tax authorities have appealed against this decision, since it introduces a tax loophole for stock options granted before 20 June 2007.

Other French tax courts have also confirmed the French tax authorities' lack of jurisdiction in relation to stock options in cross-border situations. Those decisions still leave some questions unanswered but do suggest potential tax planning opportunities for expatriates who intend to become resident in France and to exercise options or sell shares.

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**Main tax rate changes for individuals**

	Tax rates	Social contributions
Marginal income tax rate applicable above €70,830	41%	Withheld by the employer
Capital gain tax (including movable and immovable properties and sale of shares)	19%	12.3%
Dividends (WHT applicable to dividends paid by French companies to EU individuals, or French residents opting for a final withholding i.e. prélèvement forfaitaire libératoire)	19%	12.3%
Stock options (tax rate applicable to the spread depending on the respect of holding periods, on the amount taxed and on the grant date)	18% 30% 41%	12.3% Employer special contribution 14% Employee special contribution 8%



# India



India's Finance Bill 2011, introduced by the Hon Finance Minister Pranab Mukherjee on 28 February 2011, has not proposed many changes from an individual tax perspective. However, there are still a few items of interest.

- personal income tax rates are proposed to be revised as follows:

Existing Slab (INR)	Revised Slab (INR)	Rate (%)
Up to 160,000	Up to 180,000	Nil
160,001 to 500,000	180,001 to 500,000	10
500,001 to 800,000	500,001 to 800,000	20
Above 800,000	Above 800,000	30

- the minimum exemption limit has been increased for senior citizens to INR 250,000; and the minimum age requirement for an individual to qualify as a senior citizen has been reduced from 65 to 60
- the limit remains unchanged for women at INR 190,000
- there is to be a new category of very senior citizen (aged 80 years and above) with a minimum exemption limit of INR 500,000
- the Education Cess and Secondary and Higher Education Cess at 2% and 1%, respectively, are to continue.

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# Ireland

## Share schemes

There have been significant changes introduced recently to the tax treatment of both Revenue-approved and unapproved share schemes.

## Removal of tax relief for approved share options

The more favourable capital gains tax regime that previously applied to Approved Share Option Schemes (ASOS) was withdrawn in the 2011 Finance Act, effective for options granted on/after 24 November 2010. Income tax exemption still applies to Approved Profit Sharing Schemes (APSS) and approved Save as You Earn (SAYE) schemes.

## PAYE, PRSI and USC

All share awards subject to income tax, with the exception of share options (subject to Relevant Tax on a Share Option (RTSO), which is payable within 30 days of exercise) are now subject to the PAYE withholding regime. In addition, for awards made on/after 1 January 2011, Pay Related Social Insurance (PRSI) and the Universal Social Charge (USC) will apply. This means that the cost to the employer and to the employee of making share awards to employees is going to increase significantly for awards made after this date.

Revenue eBrief 17/11, issued on 25 March, confirms that where a share award was made before 1 January 2011 and a written agreement is in place to support this, such awards will be exempt from PRSI, even where shares vest after 1 January. Any PRSI already deducted by employers in respect of income gains in 2011 to date can be recouped by adjustment to payroll in the current year.

With effect from 1 January 2011 the USC applies to income gains on all share awards, regardless of when agreements were entered into. The Revenue and the Department of Social Protection recognise that some employers may need time to put appropriate structures in place and to adapt their payroll systems to collect the PAYE and USC. Therefore, as a transitional arrangement, they will not seek to impose interest and penalties where any outstanding liabilities are settled before the P30 filing date for June – that is, 14 July 2011 (or 23 July for online filers).

## RTSO

RTSO and USC arising on share option gains must be paid over to the Revenue within 30 days of exercise and a Form RTSO1 filed. For options exercised since 1 January 2011, any outstanding USC should be paid over to the Revenue without delay.

## Employer returns

The due date for the submission of employer returns for employee share awards granted, or shares allotted, during 2010 is 31 March 2011.

## Further updates

The Revenue has advised that a further update regarding share-based remuneration will be issued shortly.

### Professional subscriptions

Finance Act 2011 provides that expenses incurred by an employer on behalf of an employee/office holder in connection with the payment (or reimbursement) of annual membership fees of a professional body are no longer exempt from tax. Accordingly, PAYE, PRSI and the USC must be applied in respect of the notional pay amount.

However, on 25 March Revenue issued eBrief No19/11 to clarify that notwithstanding the new provision in FA 2011, under Irish law a tax deduction is available for expenses incurred wholly, exclusively and necessarily by an individual in the performance of the duties of his/her employment. eBrief 19/11 thus now confirms that a deduction will be available where:

- there is a statutory requirement for membership of a professional body etc before individuals can carry out the duties of their employment

- a statutory provision gives members of a professional body etc the right to plead or be heard in representing a client before a court or tribunal
- there is a requirement for a practicing certificate or license to be issued by a professional body etc before individuals can carry out the duties of their employment.

Other situations in which a deduction will be allowed include those where:

- the duties of the employee and the duties of the employment require the exercise or practice of the occupation or profession in respect of which the annual membership fee refers
- the employee so exercises or practices the occupation or profession in respect of which the annual membership fee refers
- membership of the professional body is an indispensable condition of the tenure of the employment.

### Operation of payroll deduction

As mentioned above, payroll taxes – namely PAYE, PRSI and the USC – must now be applied in respect of the notional pay amount for any membership fees to a professional body etc paid by an employer on behalf of an employee.

However, where a tax deduction as set out above is allowed, for ease of administration and to avoid unnecessary claims, payroll taxes do not need to be applied.

### Universal social charge

The USC was introduced in the Finance Act 2011 to replace the income levy and the health levy with effect from 1 January 2011.

The USC is applied at the following rates:

Rate	Employed	Self-employed
0%	Up to €4,004	Up to €4,004
2%	0 to €10,036	0 to €10,036
4%	€10,367 to €16,016	€10,037 to €16,016
7%	Over €16,016	€16,017 to €100,000
10%		Over €100,000

Individuals with annual income below €4,004 will not be chargeable to the USC; once this threshold has been breached the USC is chargeable on the full income. Reduced rates are applied to individuals over 70 who hold medical cards.

The USC will apply on an individual's income before pension contributions and will also apply to gains from APSS, SAYE schemes, and ASOS. A deduction will be available for capital allowances and trading losses where an individual is actively involved in the trade. The USC will apply to income before deductions for certain capital allowances and donations. A deduction will also be available for certain maintenance payments between separated spouses.

Irish and EU deposit interest, credit union interest and gains from certain investment undertakings are exempt from the USC. The tax-free element of ex gratia payments, salary payments paid under a PAYE Exclusion Order to individuals resident in a treaty country, employment income earned outside Ireland to which the 'remittance basis' applies and social welfare and similar payments are also exempt from the USC.

A special USC rate of 45% will apply to bonus payments greater than €20,000 paid to employees of financial institutions covered by the Bank Guarantee Scheme. The bonus will also be subject to income tax (41%) and PRSI (4%), bringing the effective rate of tax on such bonuses to 90%.

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# Israel

The following amendments have been made in relation to expatriate taxation under Israel's Economic Policy Law for 2011/12.

## Investment in research and development companies (temporary provision)

An investment by an individual (including a foreign resident) in an Israeli-resident company that mainly engages in research and development activities, in exchange for an issue of shares in that company, will be tax-deductible for a period of three years from the year in which the investment was made. The benefit will be granted for investments made in FY2011 up to and including FY2015 and not exceeding NIS 5,000,000 in a single tax year. The amount available for deduction will be reduced (recaptured) by the amount of any proceeds if the shares are sold.

It is worth noting that the deduction will be allowed in relation to any taxable income produced by a foreign resident in Israel. In addition, pursuant to meeting certain requirements under Israeli domestic law and in accordance with some tax treaties, exemptions are available for foreign residents in relation to sales of shares in Israeli-resident companies. Thus, in certain circumstances recapture is not expected to affect foreign investors.

## Amendments in the Income Tax Ordinance – 1961

Cancellation of the exemption granted to a foreign employee who does not benefit from double taxation relief (section 9(15b) to the Ordinance).

Under section 9(15b) an exemption has until recently been granted to a foreign resident in relation to income derived from dividends or interest from securities which the foreign resident acquired in foreign currency, and in relation to which:

- that foreign resident did not qualify for relief from double taxation in his country of residence
- according to a double taxation treaty, he is viewed in his country of residence as though he had paid the tax which he would have paid had the exemption under section 9(15b) not been granted.

This exemption has now been cancelled.

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# Italy



Italy's 2011 Finance Bill did not introduce any significant changes for expatriates but several new rules and interpretations were introduced in 2010. These will need to be considered when expats file individual tax returns in 2011 and we are going to concentrate on a potentially expensive one in this article.

A glance at the calendar of tax deadlines for individuals in Italy shows a first payment deadline of June 16 (extendable to July 18, subject to a 0.4% surcharge) and a final filing deadline of September 30, so expats need to be thinking about making returns soon.

## Foreign investments

The Italian Tax Authorities have issued significant new official interpretations on the 'Monitoring of Foreign Investments'.

Under Tax Monitoring, which was originally introduced in the early 1990s, Italian tax-resident individuals have to disclose any foreign asset with a value in excess of €10,000 to the Italian Authorities on a yearly basis.

As soon as an expatriate becomes tax-resident in Italy, he or she must comply with these domestic rules and report all the investments he or she holds abroad on the so-called 'RW Form' by 30 September each year.

A brief look at the types of investments to be reported shows how broad the requirement is for the many individuals who need to comply with it: shares and portfolios; private and pension funds; bank accounts; houses; cars; boats; jewellery; etc.

Moreover, although filing is not directly linked to current tax liability

(since not only assets generating actual income but also assets potentially able to produce income need to be included), failure to report can lead to heavy penalties (ranging from 5 to 50% of the unreported values, plus confiscation of equivalent sums). Note that Italian tax residents have to report their worldwide incomes in Italy, so non-disclosure is seen by the Tax Authorities as an element in preparation for, and with the aim of, future tax evasion – at least potentially.

Of course expats might become non-resident in Italy before their foreign investments generate income taxable in Italy but that is not accepted as a valid reason to escape this reporting formality. There are no exceptions to the general rule. Therefore the penalties mentioned above will be levied even in cases where the expat can successfully demonstrate a change in his or her residence before the income in question was generated. The penalty is based solely on the facts that the expat:

- was Italian-resident at the time when reporting should have occurred (that is, by 31 December of the relevant year); and
- held undisclosed investments abroad on that date.

It is also worth noting that the new Tax Authority interpretations have widened the scope of this monitoring process to include, by way of further example, foreign bank accounts in the name of third persons where the individual has a signatory power on the account.

Incomplete or inconsistent returns will be extremely hard to correct: we therefore suggest approaching these rules with the same extreme and seamless care expats use while handling their tax returns.

As usual, readers of Expat News should contact us if they wish to learn more about this subject.

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# Portugal

## Expatriate employees

It is proposed that Portuguese companies sending their employees to permanent establishments abroad for a period of not less than three months will be able to access an increased tax benefit during tax years 2011 to 2013. If this proposal is approved, Portuguese-resident companies with expatriate employees will benefit from a deduction for Corporate Income Tax purposes of 120% of the costs incurred where human resources are moved abroad, up to a maximum annual bonus per employee equivalent to 14 times his or her minimum monthly remuneration.

## Social security contributions

A new Social Security Contributions Code entered into force on 1 January 2011. This expands the basis of contributions and aligns social security legislation more closely with personal income tax rules. For example, travelling expenses, representation expenses, personal use of a car, transport expenses and compensation due to contract termination, will all now be subject to contributions.

Certain other changes to social security law have been postponed to 2014. In particular, the employer's contribution rate (which currently stands at 23.75%) will differ according to the type of employment contract. Fixed-term employment contracts will attract an increase in the contribution rate of 3% (to 26.75%), whereas the contribution rate for permanent employment contracts will be reduced by 1% (to 22.75%).

The new law also extends the contributory base, so that all payments attributed to the employee on a regular basis, in cash or in kind, directly or indirectly, in return for his work, will be subject to social security contributions. The meaning of 'regular' is defined to cover any payment that constitutes an employee's right, because it has been pre-established on the basis of objective and general criteria, even if conditional, such that the employee may count on receiving this amount, independently of the frequency with which it is granted.

Some new components of the contributory base will be effective in 2011, but some will be implemented progressively: 33% in 2011; 66% in 2012; and 100% in 2013.

A new 5% 'employer's' contribution rate will apply in relation to self-employees. However, it will only apply if 80% or more of the self-employee's services are rendered to the same company, or to the same person's business activity, or to the same corporate group.

## Personal income tax law

- the Guaranteed Minimum Monthly Compensation (RMMG) is replaced by the Social Support Index (IAS) in determining the taxation of some income, deductions and specific limits for deductible expenses
- income brackets generally have been updated by 2.2%.

- limits have been imposed on the total amount deductible from taxable income, as well as on the use of tax benefits contained in the Tax Benefits Law. The limits vary according to the level of taxable income, as follows:
  - the limit on deductions from taxable income relates only to taxpayers whose taxable income is found in the last two income brackets
  - the limit with regard to tax benefits will apply from the third level of income and below
- the tax deduction for alimony payments has been limited to 2.5 times the IAS (corresponding to €1,048.05) per month per beneficiary
- the deduction of life insurance premiums for tax purposes has been revoked, except for persons with disabilities
- on the other hand, a right to deduction for the cost of new equipment for renewable energy and health insurance premiums has been included in the tax benefits law
- losses related to property income (Category F) and professional income (Category B) as well as the balance between capital gains and losses obtained in the same year (Category G), when negative, can now be carried forward for the next four years
- finally, taxpayers must now identify in their annual tax return their dependants, by indicating their tax number, for the purposes of deductions from taxable income and tax benefits.

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# Thailand



## Expatriates working for regional operating headquarters

Royal Decree 508 (issued in October 2010) provides new criteria for tax incentives available to a regional operating headquarters (ROH) in Thailand. The period during which expatriate employees can enjoy a reduced income tax rate of 15% is extended from 4 years to 8 years. The usual tax rates for individual taxpayers range from 0% to 37%. The 37% rate applies to net income exceeding Baht 4 million.

This incentive applies to expatriates holding executive positions and experts. In addition to meeting the substantive requirements for the establishment and operation of the ROH (for example, services provided to affiliated companies in at least 3 other jurisdictions), the ROH must provide the Revenue Department (RD) with details of its expatriate executives and experts in accordance with requirements set forth by the RD. The reduced income tax rate is available for expatriate employees from the day the RD is notified and continues for 8 years. Accordingly, even if such expatriate has previously enjoyed the reduced income tax rate of 15% for 4 years under the old ROH scheme, he can enjoy such reduced tax for another 8 years. A further requirement is that from the third year onwards, the remuneration of at least five of the ROH's employees must be Baht 2.5 million each.

## Additional allowance for pension life insurance policies

Ministerial Regulation 279 has amended Ministerial Regulation 266 to increase the maximum annual allowable deduction for life insurance paid from 1 January 2010 onwards to an amount not exceeding 15% of assessable income, subject to a maximum of Baht 200,000, if the premium paid is for a pension life insurance policy. This additional allowance, however, is aggregated with the allowances for contributions to a qualified provident fund and the welfare fund and for investment in a retirement mutual fund, such that the total must not exceed Baht 500,000. The Director General of the RD has set the following additional criteria:

- the pension life insurance policy must be for a minimum period of 10 years

- policies paying both fixed-instalment and gradually-increasing-instalment benefits qualify for the increased deduction, as do pension life insurance policies which guarantee benefits covering the life of the insured or a fixed instalment period
- pension benefit payments may start after the policy-holder has reached the age of 55 and continue until he or she is at least 85 years old, on condition that the premiums have been completely paid before benefit payments start
- the insurer must be a life insurance company carrying on business in Thailand.

The existing allowable deduction of Baht 100,000 for qualified ordinary life insurance premium paid remains unchanged.

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# United Kingdom



Budget 2011, on 23 March, raised a number of interesting issues.

## Domicile review and residency update

New measures announced in the 2011 Budget will see a change to the tax regime for those non-UK-domiciled individuals who currently benefit from the remittance basis rules.

From April 2012 non-UK-domiciled but UK-resident individuals who elect to be taxed on the remittance basis will be charged an increased rate of £50,000 where that individual has resided in the UK for at least 12 tax years. A £30,000 remittance basis charge will continue to apply to non-UK-domiciled individuals who have

enjoyed UK residence for at least seven of the previous nine years but less than 12.

It is not yet known whether the increased charge will apply with effect from the twelfth consecutive year of residency, or whether it will apply where an individual has been resident for 12 out of a set number of years, similar to the current provisions.

In addition, proposals were announced regarding the tax charges that arise where non-UK-domiciled individuals remit foreign income or capital gains into the UK. It is intended that these charges will be removed where foreign income and gains are subsequently invested in UK businesses. The simplification of certain aspects of the regime is also due for consideration. However, few details have been released thus far, with a consultation period scheduled for June 2011, before the introduction of the reforms from April 2012.

Further, it was announced that the Government intends to consult on the

introduction of a robust statutory test for residency. Again, little detail is known at present. However, it is anticipated that consultation will also take place in June 2011, with possible inclusion of legislation in Finance Bill 2012.

## Disguised remuneration

Draft legislation released in December 2010, as part of the Finance Bill 2011 draft clauses, introduced a new charge to tax where a third-party intermediary is used to provide a reward to an individual in connection with his or her employment.

Where these provisions apply, the value of the reward is treated as employment income in the hands of the individual, subject to income tax and NIC collected through the employer's PAYE scheme.

As currently drafted, the rules also catch a number of commercially driven transactions. This could impact secondment arrangements where a

group company pays or provides some or all of an international assignee's remuneration. In addition, where a company outsources relocation services to a third-party provider, this benefit would be taxable under this new legislation rather than as qualifying relocation, which means that it would not be eligible for the statutory £8,000 exemption. There are other wide ranging implications for international assignees in addition to this.

On 21 February 2011 HMRC announced its intention to amend the legislation to 'carve out' some of these commercial transactions but the general scope still remains very wide and therefore careful consideration of any benefits or assets provided to employees by third parties should be made, in order to identify whether the legislation might bite.

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# United States

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The legislation not only extends the 2001 and 2003 tax cuts for two years (until 2012), but also provides new tax benefits such as a 2% employee Social Security tax holiday for 2011.

The legislation retains the six US individual income tax brackets at rates ranging from 10% to 35%. The tax table had been scheduled to revert to five brackets, ranging from 15% to 39.6%. The top tax rates on long-term capital gains and qualified dividends will also remain at 15%.

The bill extended alternative minimum tax (AMT) relief for 2010 and 2011. Without this 'patch' the AMT exemption would have plummeted and subjected millions more taxpayers to AMT. The AMT exemption rates in 2010 are \$47,450 for singles (\$33,750 without the patch), \$72,450 for married couples filing jointly and qualified widowers (\$45,000 without the patch) and \$36,225 for married individuals filing separately (\$22,500 without the patch).

Since December 2010, there have also been additional developments in the area of international expatriate taxation which are significant enough to be mentioned in this article.

## Foreign earned income exclusion

The Internal Revenue Service has issued Notice 2010-27 'Housing Amounts for IRC Section 911'. This notice provides the adjusted limitations to the housing expense tables relating to the foreign earned income and housing exclusion calculation. The key changes in this notice are detailed below:

- new locations added to the list are: Luanda (Angola); Sydney (Australia); Bonn, Vilseck and Wahn (Germany); Accra (Ghana); Georgetown (Guyana); Papa (Hungary); Tel Aviv (Israel); Iwakuni (Japan); Maputo (Mozambique); and Windhoek (Namibia).
- locations removed from the list are: Cairo (Egypt), Gaeta (Italy), Chinhae, Chunchon, Kimhae, Kwangju and Tongduchon (Korea), and West Byfleet (UK).

- there are moderate to significant increases in notable cities such as Tokyo (from \$94,200 to \$107,900), Geneva (from \$84,100 to \$84,900) and London (from \$82,900 to \$85,100)
- there are moderate decreases in Paris and four other cities in France (from \$100,100 to \$93,900), Berlin (from \$60,000 to \$56,300) and Rome (from \$66,700 to \$62,500).

In addition, since there was no published information in 2009 (tax return guidance was based on IRS Notice 2008-17), the IRS will allow taxpayers to take advantage of the 2010 rates on their 2009 US Tax Returns.

### Report of foreign bank accounts

On March 30, 2011 the Internal Revenue Service released Notice 2011-31, which provides instructions for applying the new guidance in the recently revised Report of Foreign Bank Accounts (or FBAR) form and instructions and the recently finalised FBAR regulations. The Notice provides that for the purpose of answering questions related to foreign financial accounts on US tax returns, either the existing FBAR regulations (last amended April 1987) or the newly finalised regulations may be referenced for returns filed before May 28, 2011. Returns filed on or after that date should follow the new regulations.

The final regulations focus primarily on who is required to file the FBAR form. The regulations provide that the test for determining whether an individual has signature or other authority of an account is generally whether they have the authority to control the disposition of assets in a financial account. The regulations also clarify that an account will generally not be considered a foreign account for purposes of filing an FBAR if it is maintained with a financial institution located in the United States, even if it contains holdings or assets of foreign entities.

In addition, the regulations provide that a taxpayer generally does not have to file an FBAR for an 'omnibus' account with a US bank acting as a global custodian for assets held outside the US, provided that the taxpayer does not have direct access to his or her foreign holdings at a foreign institution.

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# Vietnam



The Ministry of Finance issued a number of important Official Letters (OLs) in 2010, providing helpful guidance on Vietnam's personal income tax (PIT).

OL 3473/TCT-TNCN, issued on 8 September 2010 by the General Department of Taxation and Ministry of Finance, clarifies:

- the conditions under which citizens of other countries may be treated as a tax-non-resident in Vietnam
- that tax residents must declare PIT on income arising both onshore and offshore

- that documents authorising foreign tax credits need not be legalised and notarised
- that compliance services are non-taxable if provided to all employees of an organisation but taxable if provided to a group or an individual.

OL 3473 also requires foreigners who are tax residents of Vietnam to declare income from leasing overseas property, which is taxed at 25%.

OL 3565/TCT-TNCN treats income as gross if an employer pays fringe benefits on behalf of the employee.

OL 485/TCT-TNCN, meanwhile, states that resident foreigners who terminate their employment in Vietnam must conduct tax finalisation from the beginning of the calendar year up to the month they leave Vietnam, and are entitled to a credit for any PIT paid overseas unless specified otherwise.

For foreigners without a presence in Vietnam but who work both in Vietnam and overseas and have worldwide income, total income arising in Vietnam is calculated as follows:

$$\text{Total income arising in Vietnam} = \text{Number of days working in Vietnam} / \text{Total number of working days in the year} \times \text{Worldwide salary income (pre-tax)} + \text{Other taxable income (pre-tax) arising in Vietnam}$$

In other cases:

$$\text{Total income arising in Vietnam} = \text{Number of days present in Vietnam} / 365 \text{ days} \times \text{Worldwide salary income (pre-tax)} + \text{Other taxable income (pre-tax) arising in Vietnam}$$

Any foreigner who is a resident in Vietnam is entitled to family deductions as from the month he or she came to Vietnam until the month of leaving. An individual whose sole source of income is salary from one income-paying entity may authorise that entity to conduct tax finalisation on his or her behalf.

Foreigners who receive income overseas and are in the category of those required to self-declare tax in Vietnam may do so directly, or authorise another entity to make the declaration at the tax office which manages that entity.

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