



Expatriate news



Welcome to the latest edition of Grant Thornton's Expatriate news.

International assignee tax benefits – squeezed by contracting economies

In the new economic landscape, have revenue authorities altered the nature or extent of the tax benefits available to international assignees, or have they altered their approach to determine who might qualify for the relief?

The articles in this issue discuss recent changes made by certain governments and revenue authorities, some of which may be beneficial to internationally mobile employees, but many of which are not.

To find out more about the topics featured in Expatriate news do not hesitate to get in touch with our Expatriate tax team. These contact details are included on the last page of this newsletter.

Expatriate tax team

For further information our Expatriate tax ebook 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

Tax concessions for internationally mobile employees and their employers

Under Australian income tax law, various tax concessions are readily available for employers of internationally mobile employees. In fact the concessions also might indirectly be passed on to the employees.

The concessions recognise that Australia is generally an importer of human capital, and are an incentive to help attract the best person at a reasonable cost. These concessions are designed to assist with the considerable cost of moving employees to or from Australia.

The current economic conditions have not reduced the availability of the concessions. In fact Australia has largely been protected from the global financial crisis and continues to need skilled labour from overseas – thus the main purpose for these concessions continues to apply. However, compliance checks on eligibility for concessions being claimed have recently been increased.

Generally, these concessions apply through Australia's Fringe Benefits Tax (FBT) system – in this regard, in Australia most benefits in kind (ie. non-cash benefits) provided to an employee are taxed to the employer (via FBT) rather than being taxed in the hands of the employee.

Concessions include:

Living away from home (LAFH) benefits

Expatriates who are required to live away from their usual place of residence are entitled to various benefits without FBT or income tax being payable, under LAFH concessions. However, these benefits need to be properly planned for and be included in the remuneration package offered at the start of the assignment.

The LAFH concessions are available to both Australian residents living temporarily overseas, and non-residents living temporarily in Australia. A person can generally satisfy the definition of 'LAFH' if they are required to live away from their usual place of residence in order to perform the duties of their employment. To date, the Australian Taxation Office (ATO) has allowed a reasonably broad interpretation of 'LAFH'. For international assignments, a person can generally continue to be 'LAFH' provided their assignment period is no longer than four years.

Appropriate structuring of a remuneration package with concessionally-taxed benefits 'in kind' can result in significant tax savings. Benefits 'in kind' which can be provided and are taxed concessionally include:

- provision of accommodation
- cash allowances for food costs
- school fees for children.

Other concessions

In addition to the LAFH benefits outlined above, benefits 'in kind' relating to costs of relocation, both temporarily (LAFH) or permanently, are also concessionally taxed.

A general exemption from tax on foreign source business and investment income (including gains from foreign assets and from assets that are not taxable, for example, Australian property) is also available to LAFH expatriates who hold temporary visas, subject to certain criteria.

Recent ATO activity in relation to LAFH concessions

As a result of normal compliance reviews, the ATO revenue authority has indicated concern with the rate of growth of LAFH benefits in recent years, and announced it would review them, believing some employers may be paying excessive amounts for exempt accommodation and food allowances, and not satisfying all the requirements of the concession.

The ATO subsequently wrote to some employers requesting information in relation to whether the required employee declarations have been kept; the amount of exempt accommodation and food allowances paid; and the basis used for ascertaining any exempt accommodation and food component amounts.

More recently, in October 2011, LAFH concessions were raised at a government tax forum as an area which might be looked at further, due to their highly concessional nature. Whilst the government has not yet announced any changes to the LAFH concessions, this is an area of tax law that has the potential to be changed in future to reduce concessions which are available only to a select portion of the workforce.

Should the LAFH concessions remain in their current form, it is likely this will continue to be an area of increased compliance review by the ATO. Employers utilising these concessions should take particular care in determining which employees satisfy the criteria of 'LAFH', making sure that all remuneration contracts are drafted in accordance with the requirements of the law, and that relevant declarations are obtained from employees to support the claim.

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Austria



Tax exemption for work under aggravating or hazardous conditions abroad

A payroll tax exemption for employees of Austrian entities working on construction projects abroad, the so-called 'Montageprivileg' has to be phased out over 2011 and 2012, since it was deemed to be in conflict with EU legislation.

Effective from 1 January 2012 a new and, in certain cases, even more favourable tax exemption provision, will be available for temporary assignments abroad that involve aggravating or hazardous work risk factors (for example: temperature, dust, dirt and health risks) or aggravating or hazardous assignment country factors (countries where travel warnings have been issued, or countries listed on the Development Assistance Committee list receiving official development assistance issued by the Organisation for Economic Co-operation and Development – that is, countries perceived to be inherently dangerous).

The exemption can be claimed for employees who are assigned to the project abroad by an employer resident in the EU/EEC or Switzerland, or from a permanent establishment located within the EU/EEC or Switzerland when the assignment location is at least 400 kilometres from the Austrian border and the assignment duration is no shorter than one month. In addition, certain other prerequisites need to be fulfilled.

The tax free amount is determined as 60% of the remuneration for the assignment after the deduction of social security contributions, and limited with the applicable ceiling amount for social security contributions (EUR 4.230 per month in 2012). This amount is exempt from wage tax and employer payroll taxes, and not considered when determining tax progression. The tax exemption does not apply to irregular remuneration items such as the 13th and 14th salary in Austria and certain bonuses.

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Belgium

Utilising the 'expat tax regime'

In Belgium, a planning technique, known as the expat tax regime, can be utilised to protect individuals from the top rate income tax of 50%.

In broad terms, provided that the individual can demonstrate that they only intend to be in Belgium for a temporary period, they can limit their liability to Belgium tax to earnings related to days worked while in Belgium.

The authorities have historically taken a lenient approach to the period for which these rules could apply. However, there are increasing incidents of the authorities now challenging whether the individual is still in Belgium for a temporary period after three or four years.

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Botswana



2011 budget changes

Numerous changes to Botswana tax laws were proposed in the 2011 budget. These changes were in consideration of the economic downturn around the globe and took effect from 1 July 2011.

With respect to personal taxation

- threshold for individual's tax increased from 30,000 to 36,000 Botswana Pula
- with the change in the definition of business, individuals are now allowed to off-set losses from one business with another, except for

farming, mining and capital losses which are ring-fenced. An individual will now be able to off-set farming losses to a maximum of 50% of other income.

The revised tax rates for June 2012 are as follows:

Residents

Taxable income tax in Botswana Pula

0 – 36,000	0
36,001 – 72,000	0 + 5% of excess over 36,000
72,001 – 108,000	1,800 + 12.5% of excess over 72,000
108,001 – 144,000	6,300 + 18.75% of excess over 108,000
144,001 and above	13,050 + 25% of excess over 144,000

Individuals – non-residents

Taxable income tax in Botswana Pula

0 – 72,000	5% of every pula
72,001 – 108,000	3,600 + 12.5% of excess over 72,000
108,001 – 144,000	8,100 + 18.75% of excess over 108,000
144,001 and above	14,850 + 25% of excess over 144,000

Capital gains tax

Exemption from capital gains on the sale of the principal primary residence (PPR) is allowed only if the property is held by the individual for five years. An exemption from capital gains on subsequent disposal of the PPR will be allowed if five years have elapsed from the tax year in which the previous PPR was sold.

Taxable income

Every individual who earns a taxable income is now liable to register with the revenue authorities. A Tax Identification Number (TIN) must be provided to the payer where withholding tax is being deducted (ie. PAYE 3% on construction payments, 10% withholding tax on interest received) so that it is included on the withholding tax certificate. Credits from withholding tax certificates can only be claimed if the certificate has the TIN of the payee.

Increase in interest allowance

The exempt portion of interest received by resident individuals from banking institutions or building societies is increased from 6,000 to 7,800 Botswana Pula.

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Canada



Non-resident employees in Canada: Regulation 102 withholding requirements

Under Regulation 102 of the Canadian Income Tax Act (Reg. 102), employers are required to withhold income tax at source from Canadian-source compensation related to services rendered in Canada paid to nonresident employees. Every employer, resident in Canada or not, must maintain a Canadian payroll system and withhold prescribed federal and provincial income tax for all employees who reside or physically work in Canada. Even if the employee's country of residence has an income tax treaty with Canada that

exempts their income from tax in Canada, the employer must still withhold and remit payroll taxes from the employees, unless the employer has received a Reg. 102 waiver from the Canada Revenue Agency (CRA). The revised procedures are intended to facilitate employer payroll compliance for employees who are required to work in Canada.

New procedures

- **Form R102-R** – previously, in order to request a Reg. 102 waiver, a detailed letter to the CRA was required. An employee can now file form R102-R. As the form demands additional detailed information, obtaining the waiver has become more onerous.
- **Form R102-J** – a new joint employer/employee Reg. 102 application, similar to form R102-R but much shorter. Form R102-J, applies only to employees expected to earn less than C\$5,000 or \$10,000 for services rendered in Canada,

depending on the country of residence. More of the process requirements are transferred from the employee to the employer and the CRA can send approval directly to the employer so the waiver may be implemented sooner.

- **Blanket waivers** – the CRA is designing a certification process that enables non-resident employers to administer a Reg. 102 blanket waiver, eliminating the need for employee-specific waivers. Legislative changes would be required before the new process can be implemented.

Tax audits

In the past, the CRA generally did not penalise or pursue employers for failing to maintain a payroll system for non-resident employees who worked in Canada. Now, CRA auditors performing payroll reviews regularly check to see if payroll for non-resident employees is compliant with the withholding requirements. The CRA

also has a renewed focus on auditing non-resident entities that carry out business activities in Canada.

Penalty and interest implications

Failure to deduct and/or remit payroll taxes incurs a fine of 10% on the first omission of the amount the employer failed to deduct. The penalty then is increased to 20% for any subsequent omissions.

Failure to file Form T4 incurs a fine of C\$25 per day up to a maximum of C\$2,500.

Interest is based on prescribed rates on the date that the payment is due.

Even if a Reg. 102 waiver is obtained, the employer still has the obligation to submit T4s and a T4 summary to the CRA, provide the employee with a T4 slip 'Statement of Remuneration Paid' by the end of February, and the nonresident employee is required to file a Canadian income tax return.

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Cyprus



- **increase in top rate of income tax for individuals** – (effective retrospectively, from tax year 2011)
A new income tax rate of 35% will apply for taxable income over €60,000.

The table to the right shows the new tax bands. Basically the tax rate of 30% will cover taxable income between €36,300 up to €60,000. Any amount over €60,000 will be subject to tax at 35%.

Income tax rates

Taxable income €	Rate %	Tax €	Cumulative taxable income €	Cumulative Tax €
First 19,500	–	–	19,500	–
Next 8,500	20	1,700	28,000	1,700
Next 8,300	25	2,075	36,300	3,775
36,300-60,000	30			
Over 60,000	35			

Changes in Cyprus tax legislation

Introduced in August 2011, the changes for individuals are as follows:

- **income tax relief on non-Cyprus tax resident individuals** – (effective from tax year 2012)

For non-Cyprus tax resident individuals who start employment in Cyprus after 1 January 2012, if the income from employment is more than €100,000 per annum they are entitled to 50% relief on taxes due for the first five years of their employment.

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France



New withholding tax and exit tax introduced

A new withholding tax applies to non-residents receiving stock options and grants of free shares from a French source, at a maximum 20% rate. Since 1 April 2011, this withholding tax applies to both qualifying plans at the time of sale of shares, and non-qualifying plans at the time of grant. The employer is responsible for the payment of this withholding tax. This new tax may cause a double taxation issue in the country of residence.

As from March 2011, France has reintroduced an exit tax on unrealised capital gains on shares for individuals transferring their tax residence out of France. Employees becoming non-residents may be liable for the payment of a 19% tax if they have at least a 1% shareholding or financial rights in a company, or if the value of their shareholding exceed €1.3M. French social contributions will also apply.

Subject to conditions, the payment of exit tax may be suspended until the sale, or even avoided, but only after an eight year period (however social contributions would still apply) or if the employee comes back to France before the eighth year. Again, this new tax may cause a double taxation issue in the country of residence.

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Ireland

The tax costs and administrative burden for foreign employers sending an employee to work in Ireland have increased significantly in recent years. These changes have been brought about largely due to the introduction of Irish payroll withholding obligations. Having said this, almost 1,000 multinational companies have chosen Ireland as their investment platform on the basis that Ireland represents a strategic European base due to the pro-business and low corporate tax environment. This, along with the holding company regime, research and development tax credit and skilled workforce, makes Ireland a very popular choice for inward investment.

PAYE on foreign employments

Although PAYE on foreign employments was introduced in Ireland a number of years ago Irish Revenue has recently become more strict on the correct application of the rules, and has shown less leniency where the timelines set out in the legislation for application for exemptions have not been adhered to.

Advance approval is required in situations where the employee is subject to payroll deductions in the home jurisdiction or in cases where not all duties are performed in Ireland. Revenue has become stricter on the timely application of PAYE in such circumstances and it is likely that interest will be imposed where the PAYE pay and file deadlines are not complied with. While Revenue has been lenient on the application of such deadlines in the past, we have seen more instances where Irish payroll has been insisted upon purely on the basis that the deadlines for such exemptions were not complied with. The Revenue may

pursue the local Irish entity for the appropriate PAYE where the foreign employer fails to operate PAYE.

Limited remittance basis – Special Assignment Relief Programme (SARP)

Due to operational and staffing difficulties arising for a number of multinational companies trading in Ireland, a limited form of remittance basis was re-introduced in respect of foreign employment earnings.

Where certain conditions are met an employee may apply to Revenue for a proportionate refund of the Irish tax deducted from this employment income, based on earnings not remitted.

Many in the international business community believe that the changes have not gone far enough. Some are calling for the minimum earnings threshold to be reduced, while others argue that the operation of the relief by way of a year end rebate is off-putting for many employers and employees.

Share based remuneration

The Finance Act 2011 signalled significant changes to the tax and social security (PRSI) treatment of share-based remuneration arrangements. Employers face increased administrative burdens while employees will feel the impact in the form of an extra tax and/or PRSI cost. The changes impact on all employers that offer share-based remuneration to incentivise and retain staff. Previously 'tax exempt' Revenue-approved share schemes now fall within the tax net and within the scope of both PRSI (employee) and the new Universal Social Charge (USC).

With effect from 1 January 2011, the employer must account for the income tax, PRSI and USC on share based remuneration through payroll, with exemptions for documented pre 2011 arrangements for gains arising before 31 December 2011.

Share options remain outside the scope of PAYE but employee PRSI and the USC will apply on share option gains. It remains the employees' obligation to self-account and pay income tax and the USC on the exercise of share options through the Relevant Tax on Share Options (RTSO) regime. However, the employer must operate employee PRSI through payroll.

Generally, employees coming to Ireland under a foreign employment contract will remain within their home country's social security system and in this regard it is important that a valid Certificate of Coverage/A1 Certificate is in place for the duration of the assignment/secondment.

Domicile levy

A new piece of legislation that is relevant for Irish expats having left the country is the domicile levy. This levy applies to Irish citizens who are domiciled in Ireland. In order for the levy to apply the individual must have worldwide

income in excess of €1m, own Irish assets worth more than €5m on 31 December in the relevant tax year, and their final Irish income tax liability is less than €200,000. The due date for the payment of this levy is 31 October in the year following the relevant tax year. Credit can be claimed against the domicile levy for any Irish income tax paid, however credit is not allowed against foreign tax paid.

2012 Irish Government Budget

Two measures affecting internationally mobile individuals were announced by the Irish Government in the 2012 Irish Budget on 6 December. It is hoped that these new measures will help attract key talent to Ireland and facilitate the development and expansion of Irish businesses, and will assist expansion into emerging markets.

Firstly, a special assignment relief programme was announced, although specific details will not be available until the publication of the Finance Bill in

early 2012. This programme will be welcomed following the various changes in taxation of foreign income introduced in recent years, which have negatively impacted foreign employees working in Ireland. It is hoped that this relief programme will provide a significant incentive to encourage a skilled workforce to come to Ireland without imposing overly complicated conditions.

Secondly, a foreign earnings deduction was announced for employees working temporarily (more than 60 days a year) overseas in certain developing countries including Brazil, Russia, India, China and South Africa. Again, the specific details will not be available until the publication of the Finance Bill. It should be noted that Ireland previously had a relief scheme which was withdrawn at the end of 2003, which may give an insight into how the scheme will operate. Under the previous regime a proportion of employment income relating to workdays spent overseas could be excluded from taxation and the

tax paid on this portion of income via the PAYE system could then be reclaimed by filing an appropriate tax return.

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Italy

Solidarity surcharge

Considering the exceptional international situation and the country's high public debt, the European Community asked Italy to act to balance its budget and reduce its public debt.

The Italian government intervened with the introduction of the so called 'Adjusting measures decree'.

Owing to the absence of available funds, the government is obliged to find money by increasing the pressure on taxpayers; the most significant measure for individuals is the 'Solidarity surcharge'. This is a new tax that will be levied on individuals' taxable annual income exceeding €300,000.

Application period

The tax rate of 3% will be applied starting from FY2011. The forecasted period necessary to get the balanced budget is three years, ie. until FY2013. Nevertheless, this period could be extended if results are not met.

Taxable base

The taxable base of the surcharge is the total income. This means that for an individual the base of calculation will be composed of income from land and buildings, capital income, self-employment and employment income, business income and other income. Only dividends and capital gains are out of scope of the taxable base, and income subject to separate taxation (for example, severance mandate).

Calculation method

This additional tax will be applied on every tax payer with an annual income greater than €300,000.

This contribution is classified in the decree as deductible expense. This means that an individual asked to pay taxes in Italy, with a gross income for FY2011 of €310,000, will pay a solidarity surcharge equal to €300 (10,000 x 3%). However, in the following FY, ie. the one in which the solidarity surcharge is actually paid, the relevant amount will be deducted from the personal tax base. As a result, Italian personal income tax (IRPEF) and all the local taxes (regional and municipal surcharge) will be reduced consequently.

Regarding this issue, please find below a table with a comparison of the solidarity surcharge levied and the effect of the deduction of the solidarity surcharge on IRPEF. The last column shows the net amount of the contribution after savings resulting from the deduction on personal income tax described above (assuming the income remains unchanged in both FY's).

Income (€)	Solidarity surcharge (€)	Net Solidarity surcharge (€)
300,000	0	0
350,000	1,500	855
400,000	3,000	1,710
500,000	6,000	3,420
750,000	13,500	7,695
1,000,000	21,000	11,970

Other measures

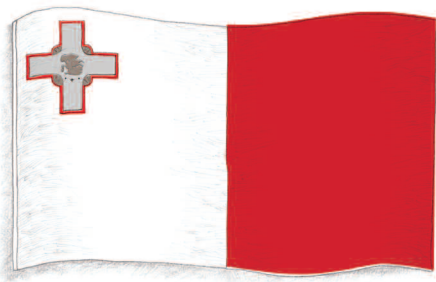
It is also expected that local administrations (ie. regions, municipalities), may slightly increase the additional taxes they have the power to levy, as a consequence of the reduced contributions they will receive from central government. For instance, a brand new 0.2% additional municipal tax (expected to increase up to 0.8% in FY2012) has been introduced for people living in Milan, which has never levied additional taxes before. This is another measure that is probably going to affect a huge number of expats.

One of the immediate effects of these additional taxes will be to reduce the appeal of Italy to highly skilled workers. Accordingly the government has tried to reduce this potential impact by introducing new measures in relation to passive income taxation. In particular, interest on bank accounts, bank deposits and all bonds will be taxed at only 20%, instead of the previous 27% rate.

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Malta



Taxation of highly qualified individuals

In its bid to further develop the financial services industry in Malta and attract foreign specialised executives in this industry, the government recently enacted new rules on the taxation of employment income of highly qualified individuals. These employees benefit from a flat personal tax rate of 15% that is chargeable on their employment income, excluding the value of fringe benefits, whilst exempting employment income exceeding €5million.

Eligible for the 15% tax rate are foreign-domiciled chief executive officers, chief risk officers, chief financial officers, chief operations officers, chief technology officers, portfolio managers, chief investment officers, senior traders/traders, senior analysts (including structuring professionals), actuarial professionals, chief underwriting officers, chief insurance technical officers, marketing heads and investor relations heads.

Individuals must be in possession of relevant professional qualifications or adequate professional experience relevant to the profession or sector specified in the work contract, and employment should be with an entity that is licensed and/or recognised by the Malta Financial Services Authority, such as banks, insurance and reinsurance companies, pension funds and pension schemes, fund management companies, licensed investment services companies, collective investment schemes and custodians. The rules do not apply where the employer benefits from incentives granted in terms of the Malta Enterprise Act and the Business Promotion Act. The employee is to submit an application to the Malta Financial Services Authority for formal determination on their eligibility to benefit under these rules.

The individual must also satisfy other conditions, namely:

- a. is in receipt of stable and regular resources that are sufficient for maintenance of self and family, without any recourse to the social assistance system available in Malta
- b. resides in accommodation regarded as normal for a comparable family in Malta
- c. has comprehensive health insurance for him or herself and family members
- d. is not a permanent resident in Malta.

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Netherlands

In September 2011, the Dutch government released their plans for the 2012 budget. Below we have highlighted a number of points that may affect expatriate employees, local employees and business.

Please note that adjustments to the budget plans may still take place as a result of the parliamentary discussions.

30% ruling

One of the most significant plans announced is the proposal to change the 30% ruling regulations. The following planned changes were announced:

- the specific expertise test will now mostly be determined by a salary level. The taxable level, after application of the 30% ruling, will now be €35,000, or 50,000 before the 30% allowance – a higher salary level than at present. Companies will also still need to be able to demonstrate scarcity on the Dutch labour market

- a review period of 25 years will be applicable. This means that periods of previous stay/work in the Netherlands in the last 25 years will be deducted from the maximum eight year period of the ruling. In practice, this means that fewer or no employees with Dutch nationality will qualify for the ruling
- employees hired from abroad, but within 150 kilometres from the Dutch border, will no longer be eligible for the ruling. This may affect (future) employees hired from not only Belgium and Germany, but potentially also from Denmark, France, Luxembourg and the UK

- doctoral candidates and graduates under the age of 30, who obtain their doctorate and find a job within one year of obtaining their doctorate and have a taxable salary of at least €26,605, will qualify for the ruling. This covers not only doctorate graduates from Dutch institutions, but also doctorate graduates from foreign institutions.

The Dutch government also announced transitional measures. This will mainly affect employees who would become subject to the five year interim test after 1 January 2012.

The text of the new regulations will be released at a later date, and hopefully will provide more guidance on the current plans. In the meantime, it is advisable to check the following:

- review your current 30% ruling population in order to determine the consequences of the transitional rules, as some employees may lose future eligibility for the ruling

- be mindful when recruiting new expatriates or when recruiting doctoral candidates of their eligibility for the ruling under current and future regulations. For example, it is no longer a rule of thumb that knowledge migrants will ‘automatically’ qualify for the ruling
- optimisation of your compensation and benefits programme with respect to expatriates may be considered, since it is expected that fewer expatriates will qualify for the 30% ruling. Certain cost allowances (extra territorial costs) can still be paid tax free.

The proposed changes and explanatory notes still give rise to many questions. Grant Thornton expatriate services will be in touch with the Dutch tax authorities in the coming weeks to seek further clarification on the aforementioned changes.

Vitality savings scheme

As of 2013, a new saving scheme (vitaliteitsparen) will be introduced to replace the existing salary savings scheme (spaarloonregeling) and the life-course savings scheme (levensloopsparen). Contrary to the existing salary schemes, employers will no longer be involved in this savings arrangement.

Employees, entrepreneurs and earners of income from other activities can participate in this saving scheme. The scheme enables participants to build up a financial buffer for a number of causes, i.e. study, partial retirement, transition from one job to another.

However, there are no mandatory causes required. The amounts must be saved through financial institutions (banks, insurance companies) and the key details of the scheme are as follows:

- the contributions are tax deductible up to €5,000 per year, via the personal income tax return. It is possible to save up to €20,000
- there are no limits to the amount that can be withdrawn. Withdrawals by participants of 62 years and above will be limited to a maximum of €10,000 per year
- the savings are exempt from taxation in Box III
- withdrawals are subject to taxation.

The salary and the life-course savings scheme will be discontinued as of 2012 and transitional arrangements will be put into place.

Deferred tax assessments

Two points in the regulations for deferred tax assessments (conserverende aanslag) in respect of pension and annuity in emigration situations will be aligned with the Dutch supreme court's rulings.

First, the Dutch tax authorities are obligated to determine whether the Netherlands has the right to levy tax on the surrender of the pension or annuity. Such a levy can, in principle, only be effected in cases where the Netherlands has retained taxation rights based on the applicable tax treaty or has sufficiently recognised the taxation rights of the country of residence.

Secondly, the regulation will be tailored to the freedom of movement in accordance with EU law. This will include measures regarding the tax base as well as removal of formal barriers (eg. written waivers regarding the sustained supply of capital).

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Poland



Acquisition of shares under equity loans – changes as of 2011

Amendments have been introduced into the Polish Personal Income Tax Act (PIT Law) regarding the acquisition of shares under equity plans.

The amendments concern taxation of income on shares acquired free of charge or at a preferential price and postponement of the tax until the time of their sale. These regulations usually apply in cases of employees participating in equity plans.

The additional benefit resulting from the law, apart from the taxation postponement, is that proceeds from sale of shares, as well as the difference between the market price and the preferential price paid by the employee at the moment of acquisition, are both taxed at the linear rate of 19%. Consequently, the progressive rates (up to 32%) on employment income (or income from other sources) are not applicable in such cases.

Taking into consideration the changes as of 1 January 2011, the following conditions must be met to benefit from the taxation postponement:

- the regulations in question are applicable not only to newly issued shares, as was the case until the end of 2010, but also to the acquisition of existing shares
- the acquisition of shares is based on the shareholders resolution of the company
- the company issuing shares is settled in the European Union (EU) or in the European Economic Area (EEA), which was not specified in the law until 2011.

As a consequence, where non-EU and non-EEA shares are involved, the acquisition of shares will be treated as a taxable event.

Employees who benefit from the acquisition of shares, complying with the above conditions, are entitled to apply the taxation at the linear rate at the moment the shares are sold.

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Spain

Spain has reintroduced a wealth tax applicable to both tax residents, on a worldwide basis, and non residents, for Spanish located properties, assets, rights and shares, for the fiscal calendar year 2011.

In the same way as Cyprus has done (see Cyprus), Spain has slightly adjusted its famous so-called 'Beckam clause' regime, whereby foreigners becoming Spanish tax residents can benefit from a fixed 24% tax rate, for a period up to six years, on their 'Spanish employment source income', and avoid applying progressive tax rates on a worldwide basis.

The 'Spanish part' of a taxpayer's annual salary is reduced to a maximum of €600,000 per year.

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United Kingdom



With effect from 6 April 2010, the UK increased its top rate of tax to 50% on annual income over £150,000 and introduced a scale-down of the personal allowance (tax deduction) at a rate of 50p for each £1 earned over £100,000. From 6 April 2011, the UK increased the rates of National Insurance Contributions (NIC) (social security) by 1% for employees and employers.

For 2011/12, income tax rates on general income are 20% on taxable (after personal allowance) income to £35,000, 40% on taxable income between £35,000 and £150,000 and 50% on taxable income above £150,000. The personal

allowance is £7,475. NIC rates for employers in 2011/12 stand at 13.8% (uncapped) on annual income above £7,338 per year. For employees, NIC in 2011/12 is 12% on annual income between £7,228 and £42,484 and 2% (uncapped) on annual income above £42,484.

There have been a number of high profile tax cases recently which have resulted in fundamental changes to the requirements for an individual to be UK resident, or for short-term assignees to qualify for reliefs from UK tax. These have led to recent revisions to tax authority guidance (new guidance was issued in December 2009, and revised in April 2010 and December 2010). The new guidance has made it more difficult for UK residents to become non-resident, harder for short term residents to qualify for overseas workday relief, and generally harder for individuals to self-assess their residence status.

In response to concerns regarding the subjective nature of the current rules, the UK authorities announced in June plans to introduce a new 'statutory residence test' from April 2012. A consultation paper containing draft proposals was issued in June 2011. While the intention is to bring some much needed clarity, there is concern that if the legislation is rushed through without proper consultation it will not provide the certainty that is required. As the proposals stand, it could become more difficult to break UK residency under the 'statutory residence test'.

Tax favoured saving (pre-tax contributions) into UK registered pension schemes has been restricted to £50,000 per annum with effect from 6 April 2011. Previously, a complex regime existed which restricted tax relief on pension contributions to the basic rate for many high earners. This regime has been repealed in favour of a simpler

system which applies a single limit across all taxpayers. Where not all of the £50,000 limit was used in the previous three tax years, these unused amounts can be added to the current year's limit. The total lifetime amount which can be saved into a UK registered pension plan is also scheduled to be reduced from £1.8 million to £1.5 million in April 2012.

The UK has introduced a complex set of anti-avoidance provisions (known as the disguised remuneration rules) aimed at the provision of benefits to employees via third parties, (in practice, usually trusts). The new rules are in force with effect from 6 April 2011 and in many cases impose a tax charge on such arrangements at an earlier stage than was previously the case.

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United States

The Federal individual income tax rates for calendar year 2012 remain unchanged, with the highest rate set at 35%. Given the current political climate and the November 2012 elections, uncertainty abounds and there will be much discussion in the next year about individual income tax rates in the US.

In contrast to the relative certainty of the Federal rates, many state and local jurisdictions are increasing tax rates in the face of dire financial circumstances. The 2010 and 2011 fiscal years were possibly two of the most challenging for state budgets since the great depression and with the revenue declines continuing into the 2012 fiscal year, there is no relief in sight.

The personal income tax is a major source of revenue for 41 states and many have implemented small rate increases that affect a relatively low number of high income taxpayers by creating an additional top tax bracket. This is a change which is administratively simple and can be implemented quickly, helping to balance a budget. Although state income taxes are deductible on the taxpayer's Federal income tax return, the Alternative Minimum Tax (AMT) quickly reduces the benefit for higher income taxpayers. The AMT regime is also under scrutiny and may change in 2012 and beyond. Therefore, as an employee's state tax burden increases, it is critical that it is taken into consideration for expatriate policy design and candidate selection.

Here is information on seven states for the 2011 tax year to give you an idea of the rates:

- **California** – top rate of 9.3% for married couples filing jointly at an income threshold of \$96,059. There is an additional 1% tax imposed on taxable income in excess of \$1 million
- **Connecticut** – top rate of 6.7% for filing jointly at an income threshold of \$500,001
- **Illinois** – tax is assessed at 5% of Federal adjusted gross income, with modifications, regardless of filing status
- **New Jersey** – top rate of 8.97% for married couples filing jointly at an income threshold of \$500,001
- **New York** – top rate of 8.97% for married couples filing jointly at an income threshold of \$500,001. In addition, there is a New York City tax for residents at a top rate of 3%
- **North Carolina** – top rate of 7.75% for married couples filing jointly at an income threshold of \$100,001
- **Pennsylvania** – Tax is calculated as 3.7% of taxable compensation, net profits, net gains from the sale of property, rent, royalties, interest and dividends, in addition to other specific types of income.

In addition to implementing rate increases, states are also stepping up enforcement of existing laws, especially in the area of wage withholding and collection of back taxes. Failure to withhold state income taxes when an employee is working in the state can result in significant penalties. Employers need to be diligent in tracking their employees in order to meet state withholding requirements.

States are also vigorously pursuing residency termination cases, making it more difficult for taxpayers to break their residency. This can have a major impact on global assignees whose state residency is a factor in their overall expatriate package. Again, failure to withhold taxes at any level carries significant penalties and the changing compliance landscape should be taken into consideration as year-end payroll reporting deadlines approach.

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