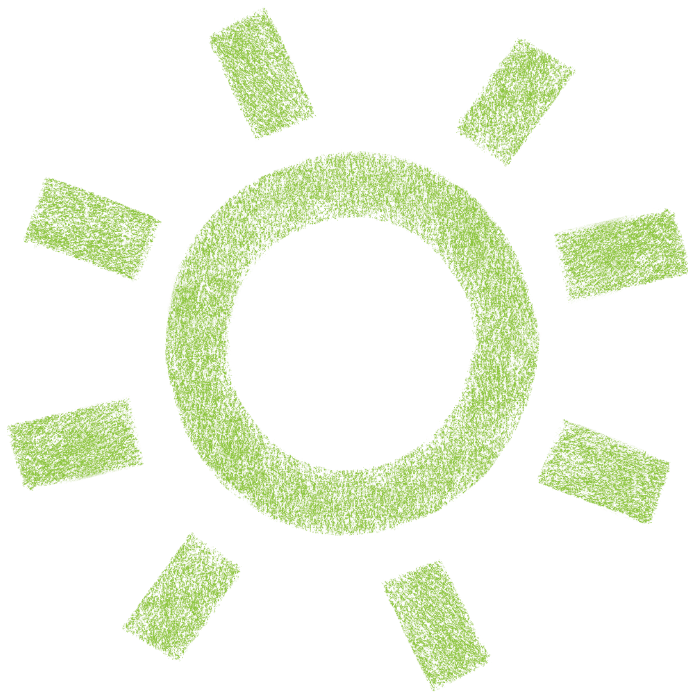
Expat News



Welcome to the second edition of the Grant Thornton Expat News.

Following the enthusiastic response to our first edition, we are delighted to welcome you to the second installment of Expat News. Its main focus is the taxation regulations of expatriates in different regions and covers a wide array of procedures, including the effects of recent decisions by the German Supreme Tax Court and their implications. In addition, we cover recent information updates for non-Dutch employers/intermediaries concerning the supply of workers in the Netherlands.

Thank you to everyone who contributes to Expat News, we look forward to receiving support for future editions. Please send any news or details of hot topics for expats in your jurisdiction to Oscar Myint (**oscar.myint@uk.gt.com**).

European expatriate tax team

Supplementing this edition of Expat news there 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.

Belgium

Belgium has a beneficial tax status for foreign executives who are temporarily assigned there, introduced by an administrative circular of on 8 August, 1983. The executive qualifying for this special tax status can benefit from a number of tax advantages. In principle the special tax status is not limited in time. A prerequisite to qualification is that the executive's economic interest must remain in his country of origin.

The Belgian tax authorities have the right to withdraw the special tax status as soon as the executive no longer fulfils the conditions imposed by the administrative circular. Today, the tax authorities are increasingly auditing files of foreign executives who have been benefiting from the special tax status for more than 10 years. At the time of the tax audit the executive will need to prove that his personal and economic ties with his home country are still more important than those with Belgium.

Therefore, it is very important that the foreign executive maintains sufficient links with his country of origin such as bank accounts, saving accounts and portfolios, life insurances, real estate property, memberships of associations, etc.

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Germany

The Supreme Tax Court has recently published two decisions which impact on expatriate tax matters. Furthermore, the registration procedure for tax purposes will change as of January 2011.

1. Net salary agreement and payment of tax advisory expenses by an employer on behalf of the employee

In general, payments made by an employer on behalf of the employee are regularly considered as a benefit in kind and increase the employee's compensation which is subject to wage tax withholdings.

An exemption from withholding tax will only be granted if:

- special regulations covered by German income tax code apply (eg expenses relating to home leave, moving expenses, business trips, etc), or
- the payments incur in the employer's own interest (eg payroll expenses).

With regard to the employer's payments for the preparation of employee tax returns, the Supreme Tax Court has confirmed in the decision dated 21 January 2010 that these expenses are a part of the employee's compensation. Although the employer bears the income taxes relating to the assignment of the employee, expenses incurred for the preparation of the individual's income tax return do not incur in employer's own interest according to the decision. As the German income tax code does not include any provisions regarding tax exemption for expenses for preparation of income tax returns, a tax free grant is not possible.

Due to the decision, the tax advisory cost cannot be refunded tax free by the employer and is therefore subject to German wage tax withholding as a benefit in kind paid by the employer on behalf of the employee.

From an employer's point of view, the advisory cost will increase the assignment cost due to the gross-up effect in case of the net-salary-agreement.

2. Applicable exchange rates for salary paid in foreign currency

The Supreme Tax Court has confirmed in the decision dated 3 December 2009 that for a salary paid in a foreign currency to an individual, German tax must be determined in Euros based on the day's exchange rate for withholding purposes. For simplicity a monthly average of the exchange rate issued by European Central Bank would also be sufficient. However, an annual average is not allowed.

The monthly exchange rates correspond with monthly rates issued by the German Ministry of Finance.

3. German wage tax card as of January 2011

Until 31 December 2010 expatriates are required to register with a local home office after arriving in Germany. In this regard, the home office provides the employee with a wage tax card which the employee gives to his employer's payroll department as a basis for the tax withholding. The German wage tax card includes details concerning the tax status of the employee.

From 1 January 2011 German tax authorities will be responsible for registration of employees for income tax purposes. A wage tax card will be not required anymore.

A registration with the local home office will still remain for legal purposes.

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Italy

With ruling 33/2010 dated 12 October 2010, the Italian Ministry of Labour defined the set of rules on cross-border secondments, with particular reference to remunerations and social security treatment of employees of EU-companies seconded to an Italian company.

The Italian Ministry of Labour has established that the remuneration and rights of seconded employees must be in line with the ones granted to Italian employees by the National Collective Labour Agreements (ie agreements signed by the trade unions at national level). This new measure is aimed at protecting Italian employees from unfair competition.

The Italian Ministry of Labour has focused on the rules and regulations concerning working hours, days off, workplace safety, maternity and paternity leave, prohibition of discrimination, right to minimum remuneration as provided in collective labour contracts.

Labour inspectors are therefore entitled to take immediate action against both the EU and the Italian company with an assessment notice equivalent to an enforcement order. It therefore is necessary to verify that the secondment process ensures minimum remuneration and, if required, puts in place any corrective measures, should any of the relevant provisions not be respected.

As far as the applicable contributory scheme is concerned, the Ministry of Labour has reasserted that the statutory contributory and welfare scheme provided by the law of the country of origin applies to the seconded employees of EU companies in compliance with the new EU regulations in force as at 1 May 2010. The computation base for contributions should, at least, be equal to the minimum level set forth by the Italian Collective Labour Agreement.

In conclusion: for remuneration purposes, reference shall be made to the subordinate employment income determined by Italian law, which will be increased should the salary granted by the secondment agreement be below the minimum threshold established by the National Collective agreement in force. For the purpose of social security contributions, the law of the foreign country where the seconding company is established will continue to apply.

However the computation base for contributions might be increased to reach the minimum salary level established for domestic labour agreements.

Our firm's labour law team will be happy to address any client query.

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Netherlands

Here we provide information for non-Dutch employers/intermediaries supplying workers in the Netherlands. In addition, we address the liabilities for unpaid payroll tax obligations of Dutch clients employing non-Dutch workers.

The world is shrinking, but the labour market is growing. International employment is an everyday occurrence, especially in labour-intensive sectors with a demand for flexibility in staff deployment, workers are often hired from abroad. These workers are contracted for short periods of time, to work on a particular job. Particularly if domestic labour supply is insufficient, enterprises often call on organisations that can offer these types of workers from other countries, or call on their foreign group companies.

Laws and regulations

Under Dutch law, non-Dutch employers/ intermediaries that supply workers in the Netherlands are obliged to withhold payroll tax. Such suppliers are required to report themselves to the Dutch tax authorities as a withholding agent.

International rules

In cross-border situations, the question of whether or not the non-Dutch withholding agent is obliged to withhold and remit payroll tax for its employees working in the Netherlands is determined by international treaties and the EC Regulation.

Tax treaties

International tax treaties state which country may tax the remuneration for work performed in an employment relationship. Generally that is the country in which the employment is exercised. However the remuneration shall be taxable in the country of residence if the following conditions are met:

1. The employee is present in the Netherlands for a period or periods not exceeding 183 days per year, and
2. The remuneration is paid by, or on behalf of, an employer who is not a resident of the Netherlands, and
3. The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the Netherlands.

If all these conditions are fulfilled, the employment income may be taxed in the country of residence.

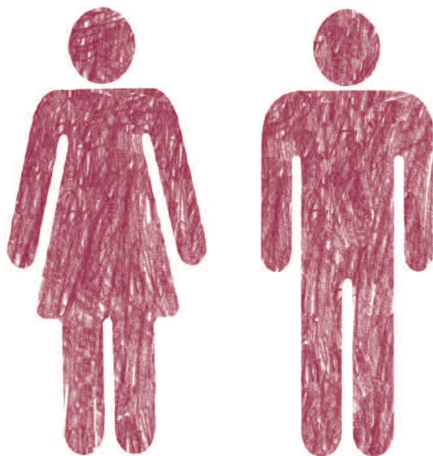
It is a misunderstanding that if a non-Dutch supplier does not have a permanent establishment/permanent representative in the Netherlands, the second condition is always been fulfilled.

For civil law purposes, the supplier is generally the employer. If the designation as employer is considered substantive it might be argued that the Dutch recipient is the employer. You must think of the situation as if work is effectively managed by the recipient, and the recipient bears the risk for the final product.

In this interpretation, the second of the conditions listed above is not met, and consequently the country in which the employment is carried out is entitled to tax the remuneration. In this situation, it is irrelevant whether the employee remains in the country of employment for shorter or longer than 183 days.

Supplying workers within a group

The rules described on the previous page also apply to workers supplied in intra-group relationships. For the sake of practicality, the State Secretary of Finance has made an exception for intra-group situations. If the employee does not remain in the Netherlands for more than 60 business days a year, the right of taxation is granted to the employee's country of residence.



Social security

The principle rule states that an employee who performs his activities in the Netherlands is subject to the Dutch social security systems (national insurance premiums and social security premiums). However, some important exceptions exist for employees temporarily working in another country.

The Netherlands has concluded bilateral and multilateral agreements. One of the multilateral agreements is the EEC-Regulations 883/04.

Withholding agencies

A supplier (being the formal employer) that is not domiciled in the Netherlands, is the withholding agent as meant in the Dutch Wage Tax Act and as such must withhold and remit the payroll tax payable by the employee.

Payroll tax numbers and G accounts

To be included in the withholding agents' records, a non-Dutch employer must have a payroll tax number, issued by the Dutch tax authorities.

Besides a payroll tax number, it is also advisable to apply for a G account, which can also be obtained from the Dutch tax authorities, so a recipient can indemnify itself for liability depositing part of the amounts it invoices into that G account.

Liability for hired workers

A recipient hiring workers runs the risk of seeing held jointly and severally liable for Dutch payroll tax payable by the employer of the workers hired in connection with the performance of that work. This liability also applies in situations involving workers hired from non-Dutch employers.

The scope of liability will be reduced by the amounts deposited into a G account. It is therefore important to know whether the supplier/employer is liable to pay payroll tax in the Netherlands.

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New Zealand and Australia
Transitional and temporary tax residents

Both New Zealand and Australia have introduced tax concessions to entice skilled individuals and their capital to migrate to each country. Legislation taking effect during the 2006 calendar year has effectively created a new class of taxpayer in each country. We have outlined these changes in each country below.

New Zealand

From 1 April 2006 a new transitional resident category applies to individuals who become New Zealand tax residents under the permanent place of abode test or by being present in New Zealand for more than 183 days in a 12 month period for the first time on or after 1 April 2006. This exemption is available to individuals who are first time New Zealand tax residents or individuals who have been non-resident of New Zealand under domestic legislation for a continuous period of at least 10 years prior to satisfying the permanent place of abode or 183 day tests and have not been a transitional resident previously.

Although it is technically possible for it to last as long as 60 months following the month of arrival, generally the exemption lasts for a period of up to 48 months following the month of arrival.

Individuals who qualify as transitional residents have an exemption from New Zealand tax on various categories of foreign income, including:

- rental income derived offshore
- foreign dividends and foreign interest
- royalties derived offshore
- income from employment performed overseas before coming to New Zealand
- income from the exercise of foreign source employee share options to the extent such income is attributable to non-New Zealand work days
- gains on the sale of property derived offshore
- offshore business income (not related to the performance of services)
- income from foreign trusts
- obligation to deduct and pay non resident witholding tax to the Inland Revenue on payments of interest to non resident lenders.

Where investments are held offshore during the exemption period, no New Zealand tax will be levied on associated income. This would in particular exclude deemed income under New Zealand's Foreign Investment Fund (FIF) rules which treats as income the appreciation in value, including that through exchange rate movements, of foreign interests in shares (stock), superannuation (retirement savings) and life insurance.

The exemption also generally excludes income arising under the Financial Arrangement (FA) regime which treats as income or loss, the change in value in New Zealand dollars, on foreign currency accounts whether the individual's interest is in the capacity of a lender or a borrower but only if the other party to the arrangement is a non resident of New Zealand and the arrangement is not for a purpose of a business carried on in New Zealand by a party to the arrangement.

The transitional resident exemption will apply to a person if they returned to New Zealand 10 years or more after the date that they ceased to be a New Zealand tax resident under domestic law, ie relief under a double tax agreement is insufficient.

The transitional resident exemption is only available once in a person's lifetime and it is possible to elect not to use the exemption. This may be a better choice if the individual is in a net loss position in respect of offshore interests. The election to not take the transitional residents exemption is irrevocable however, so should only be taken after due consideration. In the event the exemption is not taken the individual may have the opportunity to take it in the future by leaving New Zealand and becoming a non resident for at least 10 years before returning.

The transitional resident's exemption also has an impact on the application of New Zealand's trust rules. New Zealand has a settlor based trust regime. Generally a first time resident, who has settled a trust in another jurisdiction prior to arrival and the commencement of tax residency, has 12 months to elect the "foreign trust", to become a "complying trust". Put simply, a complying trust is a trust that pays New Zealand tax on its worldwide income from the date of election. If no election is made the foreign trust will become a "non complying" trust at the end of the 12 month period. It is not the purpose here to discuss the New Zealand trust regime, but to note that when a new arrival is a transitional tax resident, the 12 month election period applicable to foreign trusts is added on to the end of the transitional residency period. In other words the 12 month election period becomes 60 months.

Australia

Legislation introduced in 2006 also brought a new concept into Australian tax law – that of the "temporary resident" for tax purposes – designed to apply to individuals temporarily in Australia.

A temporary resident for taxation purposes is defined as an individual who meets all of the following three criteria:

1. holds a temporary visa granted under the Migration Act 1958 (most temporary expatriates will hold a temporary visa)
2. is not an Australian resident within the meaning of the Social Security Act 1991 (most New Zealand expatriates are not required to gain a temporary visa to visit or work in Australia and are unable to access social security benefits applicable to Australian citizens or permanent visa holders)
3. does not have a spouse who is an Australian resident within the meaning of the Social Security Act 1991 (e.g. the individual's spouse is not an Australian citizen or permanent visa holder).

It is important to note that there are no time limits imposed on how long an individual can remain a temporary resident although the main temporary visa class that the rules have application to is the 457 visa which has a 4 year limit.

Slightly modified rules apply to New Zealand nationals who do not require a visa to work in Australia but have not come to live in Australia permanently. In most cases a New Zealand citizen will be a temporary resident unless they marry an Australian, were in Australia prior to 2001 and are thus still entitled to social security benefits, or have taken up 'Permanent Resident' status or 'Citizenship'.

Temporary residents receive beneficial tax treatment. With the exception of employment income, income derived by temporary residents directly, or indirectly, from a source, other than an Australian source, is non-assessable non-exempt income.

Ordinarily Australian residents could be subject to income attribution under various income attribution regimes. However, these rules ensure that individuals meeting the temporary resident criteria will be excluded from income attribution under these regimes.

Temporary residents are effectively treated as non-residents for capital gains tax purposes and are usually only subject to capital gains tax in respect of taxable Australian real property.

The temporary resident regime for expatriates provides a very attractive tax regime for expatriates and certain New Zealand citizens. There are some traps for taxpayers who are beneficiaries of Trusts which should be planned for prior to moving to Australia:

- Australia's capital gains tax exclusion for non-residents and temporary residents on the sale of assets other than real property does not apply to capital gains that flow through non-fixed or discretionary trusts. As such capital gains that may have not been subject to Australian tax had they been held by the temporary resident directly are subjected to tax if they flow through a non-fixed trust
- the attribution rule in Section 99B seeks to tax amounts received by a resident beneficiary of a trust during a year of income. There are a number of exceptions to this rule including amounts of capital and amounts of income that have previously been subject to Australian tax. Unfortunately the treatment of amounts sourced from income earned in years prior to the beneficiary becoming a resident of Australia is unclear.

In summary Australian and New Zealand temporary and transitional residents are offered a range of tax advantages whereby their exposure to the Australian and New Zealand tax systems is limited largely to their employment income which can simplify an expatriate's taxation affairs significantly. The exemption also allows the new migrant (or returning New Zealander in the case of New Zealand) a period of time to consider the options available in respect of foreign income and assets without the possible adverse tax effects that might otherwise apply. In each case the temporary or transitional resident does need to plan carefully where they have a connection to an offshore trust.

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Portugal

Non-habitual tax residents

Portugal recently introduced a new regime, providing beneficial tax treatment for qualifying income earned from a Portuguese source by non-habitual residents. An individual shall be regarded as a non-habitual resident if they become a tax resident in Portugal and have not been taxed as such in the previous five years before qualifying as a Portuguese tax resident. Individuals who fulfil the requirements below are eligible to register themselves as non-habitual residents and be entitled to be taxed as such for a consecutive 10-year period, which can be renewable.

To be considered as a non-habitual resident in Portugal the following conditions needs to be met:

- the expatriate must become a tax resident in Portugal, in accordance with any of the criteria set out in the Personal Income Tax Code
- obtain a residence certificate attesting the taxation and the former residence abroad, showing the effective taxation of the State of his previous tax residence, for proceeding with the registration in the Portuguese Tax Authorities
- the expatriate has not been taxed in Portugal as a resident over the past five years, on Personal Income Tax.

The qualification as non-habitual resident depends also on the exercise of scientific or technical professions of high value. The Implementing Order No. 12/2010, of January 7, following the approval of the non-habitual resident tax regime, defines the activities of high added value, with scientific, artistic or technical character. According to this Implementing Order the following activities are considered for this purpose:

1 architects, engineers and similar technicians
2 fine artists, actors and musicians
3 auditors
4 doctors and dentists
5 professors
6 psychologists
7 liberal professions, technicians and similar
8 investors, directors and managers.

Essentially, non-habitual residents can benefit from a 20% flat rate on income from employment or self-employment earned in Portugal benefiting from exemption on the income earned abroad, provided that such income was subject to taxation at the State of source of that income, under the rules of the ADT between Portugal and the respective State of source. The tax regime applicable to the non-habitual residents in Portugal is applicable for a period of ten consecutive years.

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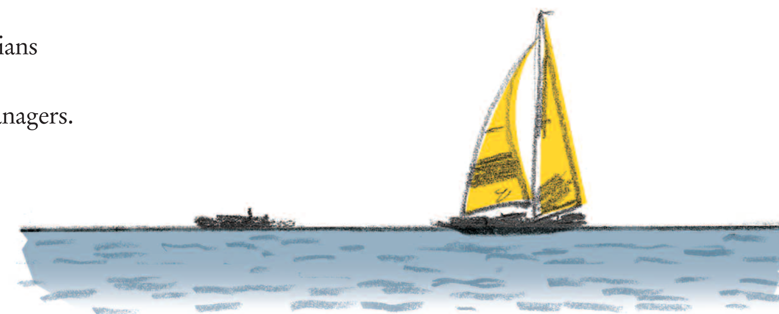

Spain

Important tax changes for residents and non-residents living in Spain

Spain recently presented their fiscal budget which will be enforced from 1 January. The government announced it will be making important changes to the personal income tax whilst the corporate tax act and inheritance tax act may suffer some slight changes.

The most important points to consider include:

- progressive tax rates (the current highest tax rate is 43%) will be increased. Therefore, taxable income between €120,000 and €175,000 will be taxed at a rate of 44%; taxable income exceeding €175,000 at 45%. It must be acknowledged that these rates are still significantly lower than many Northern European countries. As has been the case previously these rate hikes will force many more individuals to check their transactions with employers/holding companies to optimise their tax burden. In accordance with this, transfer pricing rules will be important to bear in mind as one of the Spanish Revenue's priorities for tax audits is to review remunerations to individuals from Small and Medium Enterprises (hereinafter SME) entities.
- the historical 40% reduction from the tax base of non-ordinary employment income accrued over more than 2 years will be limited to income up to 300,000 of taxable income. These limits can be increased (double) in certain cases. Thus, we found that this important tax incentive could still be of use for many types of income/gains where the definition or categorisation is "non-ordinary or periodically" income.
- there are certain reductions in the habitual abode acquisition/restoration tax incentives. This may not be relevant unless foreign or expatriated living in Spain.
- incentives for real property renting activity are increased. Again, this may be of interest for certain foreign retired individuals living in Spain which invested in real property and decided to set up a leasing/renting business.
- one of the most important changes affecting our clients may be the alterations in the Sicav or Spanish UCITS. The reduction of share capital and share premium distributions carried out since September 2010 will now be subject to tax (with certain specific calculation rules) in the hands of the Shareholder (of course, Spanish tax resident individual). This will affect whether the UCIT is Spanish or foreign (Luxembourg, UK, etc). With regard to this measure, we are internally analysing a tax product to avoid any unwanted tax effects for our clients as a result of this law amendment by using an entity vehicle. We will inform clients about this in due time.

Finally it is important to mention the significant opportunities that may affect individuals implementing these tax procedures. We are assisting some of them to regularise their assets held in tax havens to Spain. Others are arranging different tax structures to protect themselves against potential tax risks concerning their investment in foreign jurisdictions.

There are some other proposed changes for the coming fiscal year in other taxes which are also important. Further points to consider include:

- transfer tax/stamp duty: share capital increase of SME will be exempt during the coming years (2011 and 2012). This will be an important incentive for professionals and entrepreneurs to arrange their business through limited liability entities and allow them to optimise their overall business and private tax liability
- corporate tax: companies which are no longer qualified for a reduced tax regime (25% tax rate) will nevertheless be able to apply the special regime for 3 tax years following the loss of such SME qualification.

It is important to consider the recent tax changes that occurred during the last few months/years. Most importantly, the increase in the capital gains tax rate for residents from 18% to 19% (for the first 6.000 euro of taxable income and 21% for the rest of the income additionally). There is a tax exemption for the first 1500 euros net dividend, for both residents and non residents (the rest being subject to 19% or tax treaty rate if applicable for residents and combined 19%/21% for Spanish residents). Other changes that have been recently implemented for Spanish residents which you may not be aware of include:

- the introduction of an exemption for dividends obtained by European pension funds
- the introduction of an exemption for dividends received by collective investment vehicles (IICs) or EU passport UCITS
- the possibility for non Spanish residents but still residents in the EU (without a permanent establishment in Spain) to deduct expenses that are related and directly linked to income-deriving activities sourced from Spain.

Finally, it is important to mention the significant number of individuals implementing tax procedures. Some are bringing assets held in tax havens to Spain, others are arranging different tax structures to protect themselves against potential tax risks concerning their investments in foreign jurisdictions.

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