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# Expat news

## Recent changes and laws effecting internationally mobile employees

Welcome to the latest edition of Grant Thornton's Expat news. The articles in this issue discuss recent changes and laws made by some governments and revenue authorities, some of which may be beneficial to internationally mobile employees and others that may not.

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

For further information our Expatriate tax ebook provides an overview of the different tax systems around the globe. Visit **www.gti.org** to find out more.

# Belgium

## Tax free lump sum allowances – for extended foreign business trips

The Belgian tax authorities already accepted that the payment of lump sum allowances to employees and directors by their employer to cover costs from foreign business trips that do not exceed 30 days were tax free. These lump sum allowances cover meal costs, as well as other small expenses from the foreign business trip. The level of the allowance depends on the country visited and is based on the allowances as attributed by the ministry of foreign affairs to its civil servants (with a minimum of €37.18 per day).

By way of a circular letter on 10 October 2013, the Belgian tax administration has now provided guidelines for attributing the same tax free lump sum allowances in case of extended foreign business trips.

The conditions for this extension are as follows:

- an extended business trip exceeds 30 consecutive calendar days with an absolute maximum of 24 months
- when taking up permanent residence in the foreign country, the payment of the allowance must end
- the lump sum allowance may not be combined with the reimbursement of the actual incurred meal and other small expenses
- the full amount of the lump sum allowance can be granted tax free for each full day abroad
- the allowance for the day of departure from or return to Belgium must be halved.

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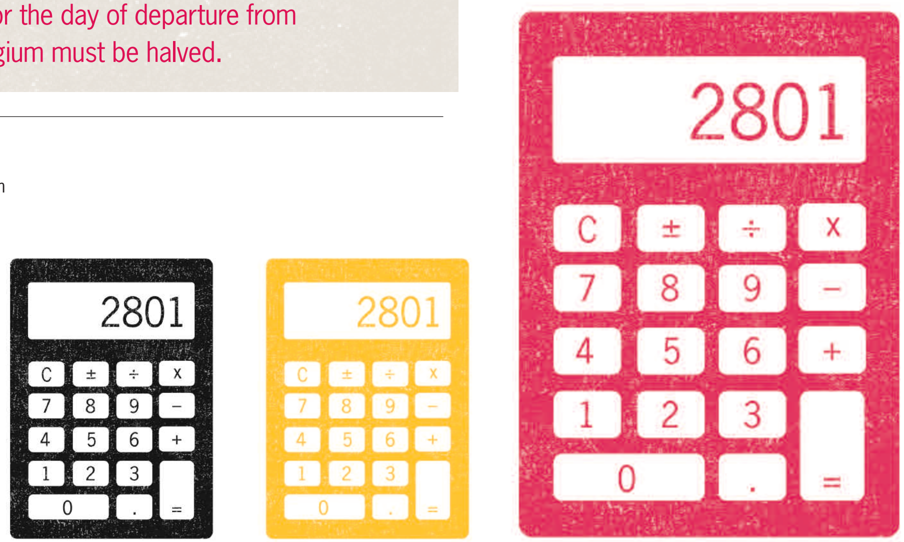

# Canada

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 in or physically work in Canada.

**Non-resident employees in Canada: Regulation 102 withholding requirements (update)**

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

**Tax audits**

The CRA has a renewed focus on auditing non-resident entities that are carrying on business activities in Canada. Also, CRA auditors performing payroll reviews are paying greater attention to see if payroll for non-resident employees is compliant with the withholding requirements. For example, the CRA has recently sent out letters to non-residents with Canadian-source compensation reported on line 104 (other employment income) of the Canadian personal income tax return, requesting the following information:

- source of the income including name, address and phone number of payer
- brief description of the nature of the payment (ie salary, wages or self-employed income).

In light of these actions, employers should verify that they are in compliance with Canadian withholding requirements under Reg. 102 and that T4 (statement of remuneration paid) information slips are issued to non-resident employees with Canadian-source compensation, reporting both the amount of income paid and the amount of tax withheld. Penalties for non-compliance can be significant:

- failure to deduct and/or remit payroll taxes – 10% on the first omission of the amount the employer failed to deduct. The penalty is increased to 20% for subsequent omissions
- failure to file form T4 – C$25 per day up to a maximum of C$2,500
- interest – prescribed rates on date payment is due.

Employers who have not been in compliance in the past, may consider coming forward and catching up under the CRA's Voluntary Disclosure Program (VDP) provided that the CRA has not already initiated any action (including a request for withholdings or the T4 form for the years concerned). Provided all conditions are met, a successful disclosure under the VDP may result in waiving some or all of the penalties otherwise applicable, although any tax and arrears interest owing would still have to be paid.

**Canadian deduction of 401(k) contributions**

Provided that certain conditions are met, non-resident employees who are required to file a Canadian income tax return to report Canadian-source compensation can deduct their 401(k) contributions on their Canadian income tax return, pursuant to 'Article XVIII of the Canada-US income tax treaty'.

In addition to verifying compliance with Reg. 102 withholding requirements, the CRA has also been sending letters recently to a number of non-resident employees who have been deducting their US 401(k) contributions on their Canadian income tax returns. Recent letters have included requests for a statement of contributions (W2 slips) or a letter from the US employer confirming the amount of contributions made in the year. The CRA has stated that non-compliance with these requests would result in the disallowance of the deductions claimed.

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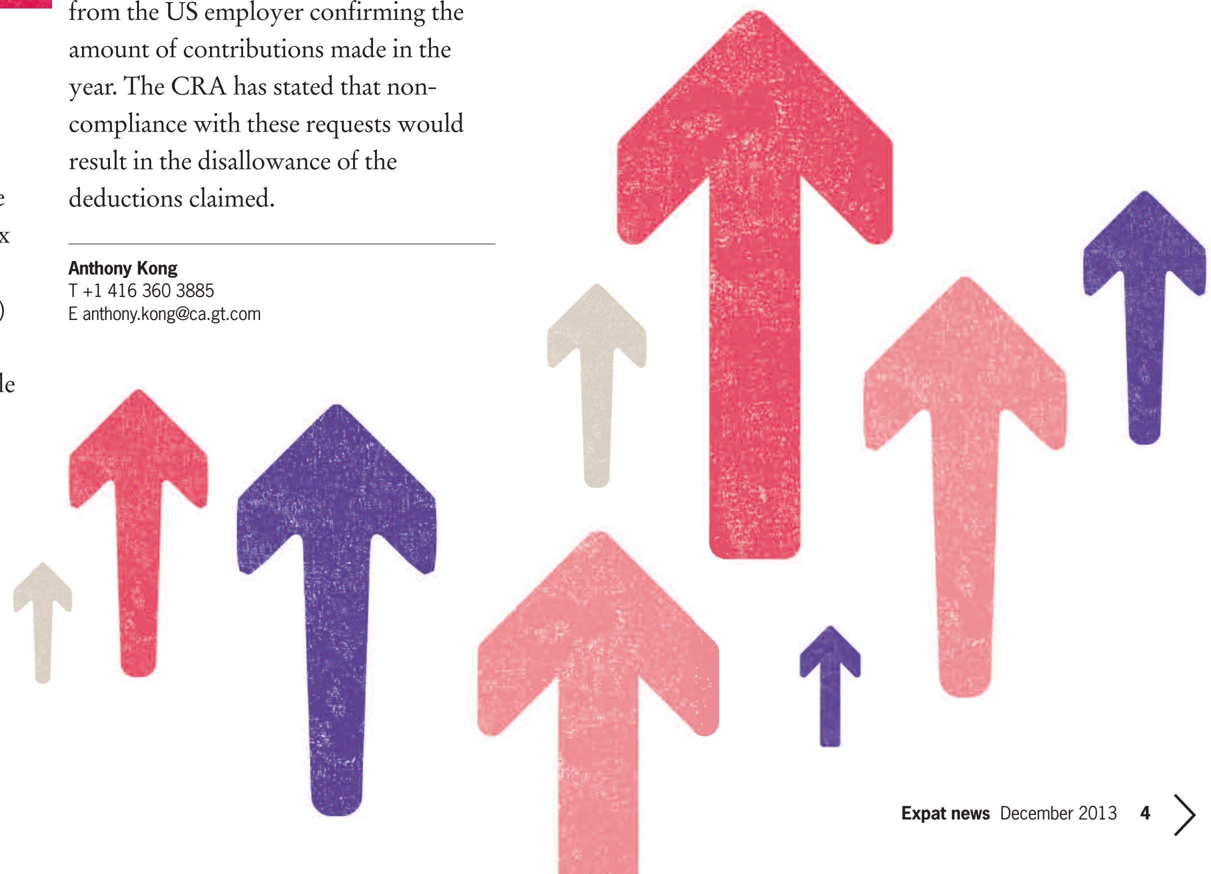

# Germany

## Reform of travelling expenses in 2014

As of 1 January 2014 there will be significant changes to the consideration of travelling expenses within the German tax law. This article highlights some of the main changes.

### First place of work

In 2014, the previously used term 'regular place of work' will be replaced by the term 'first place of work' since it was controversial as to what constituted a regular place of work. The definition of these terms, however, is important in the determination of whether certain travelling costs (eg per diems, accommodation costs, travelling expenses) can be deducted or be reimbursed tax free by the employer.

The new term 'first place of work' is supposed to clarify this matter and a definition of the term will be included in the tax law. The first place of work is a fixed establishment of the employer, of an affiliated company or of a third party determined by the employer. In addition, the employee must be assigned to the fixed establishment indefinitely, for the duration of the employment or for at least 48 months. The employers instructions to which fixed establishment the employee is assigned will also now play an important role.

This means that an individual who is assigned to an affiliated company with a separate working contract between the individual and the host company is limited to the assignment agreed. The individual's first place of work will be located at the host company due to the fact that, for the duration of the employment, the employee will be assigned to the fixed establishment (affiliated company). This will impact several beneficial regulations that will not be applicable.

As of 1 January 2014 there will be significant changes to the consideration of travelling expenses within the German tax law.

### Deduction of meal expenses

If the employee works outside their home or first place of work, they can continue to deduct meal expenses using per diem rates or the employee can claim these amounts tax free.

However, under the new legislation there will be only two instead of three per diem rates starting next year:

- €12 per day for an absence of more than eight hours and €12 each for the arrival and departure day when travelling overnight
- €24 per day for an absence of 24 hours.

As before, these per diem rates can only be taken by the employee during the first three months of the assignment.

### Deduction of meal expenses paid by the employer or paid on behalf of the employer

If the employer pays for the meals or they are paid on their behalf in 2014, the deductible amount by the employee or the tax free refundable amount will be reduced by 20% for breakfast and 40% for lunch and dinner at the per diem rate. The meals will then not need to be taxed by the employer.

### Lump sum taxation for meal expenses paid by the employer or paid on behalf of the employer

Under certain circumstances the benefit in kind for meal expenses paid by the employer or paid on behalf of the employer that are not tax free can be taxed with a lump sum tax rate of 25% within the payroll process.

### Accommodation costs

Actual accommodation costs in connection with a double household situation (where a taxpayer has a home in the home country and Germany) can now be deducted up to €1,000 per month (no lump sum) or reimbursed tax free by the employer, whereas in the past a complex method of calculating the deductible/reimbursable amount was necessary.

If the employee works outside their home or first place of work and they have further accommodation, all of the accommodation costs can be deducted or reimbursed tax free for the first 48 months of employment. After 48 months, the deductible amount will then also be limited to €1,000 per month.

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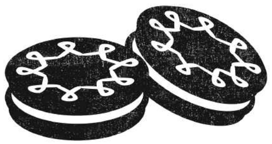



# Gibraltar

Gibraltar is a well regulated finance centre so is easy to see why it's an ideal location for expatriates and companies alike.

Gibraltar is an Organisation for Economic Co-operation and Development (OECD) white listed jurisdiction and one of very few in the European Union (EU) to offer such attractive tax incentives. Gibraltar has no value added tax (VAT), capital gains, inheritance or gift taxes and together with the various tax incentives for high net worth individuals, it's a reputable and well regulated finance centre so is easy to see why it's an ideal location for expatriates and companies alike.

## High Executive Possessing Specialist Skills (HEPSS)

A special employment tax status is available for employees as a cost saving incentive for companies recruiting senior executives. These individuals must satisfy the finance centre director, that the appointment of a HEPSS individual will promote and sustain economic activity of particular economic value to Gibraltar.

A HEPSS individual shall be charged tax limited to the first £120,000 of their assessable income only and will therefore be capped at a maximum tax of £29,940 per annum.

A HEPSS individual must have available for exclusive use, approved residential accommodation in Gibraltar for the whole year of assessment and cannot have been gainfully occupied or resident in Gibraltar for three years immediately preceding the HEPSS application.

## Category 2 Individuals – High Net Worth Individual (HNWI)

Gibraltar offers the opportunity for HNWIs to obtain category 2 status which places a cap over the tax liability of an individual. Tax is applied to the first £80,000 of assessable income (including worldwide income) meaning that a category 2 individual will pay a maximum of £29,880 tax per annum, with a minimum tax payable of £22,000.

A category 2 individual must have a minimum net worth of £2million, have approved residential accommodation available for exclusive use in Gibraltar for the whole year of assessment and cannot have been occupied or been resident in Gibraltar for five years immediately preceding the category 2 application.

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# Italy

> The new regulations increase the number of individuals who can be subjected to fiscal monitoring.

### Assets held abroad – less formalities and reduced penalties

European law 97/2013, significantly modified the burdensome formalities to be met by individuals who are resident in Italy for tax purposes in relation to the reporting of assets and investments held abroad (foreign investment return form (RW) – fiscal monitoring).

The new regulations simplify the reporting obligations and effect the penalties for not completing the required form. At the same time, however, they increase the number of individuals who can be subjected to fiscal monitoring.

### No more obligation to report transfers

Any obligation to report transfers made by a non-resident intermediary to and from a foreign country has been removed and it is no longer mandatory to report any transfer from and to foreign countries in the income tax return. Sections I and III of the RW have been removed, however, section II still needs to be completed with the amounts of the assets held abroad at the end of the financial year.

### Elimination of the €10,000 allowance

The less than €10,000 threshold, where no reporting was required has been abolished. It is therefore mandatory to report any and all assets and investments held abroad regardless of their amounts.

### Penalties

Applicable penalties are significantly reduced for failure to fill in section II regarding assets held abroad. Penalties are reduced to a minimum of 3% up to a maximum of 15% of the value of unreported assets (in lieu of the previous 10% to 50%). In case of assets held in black-list countries, penalties are doubled thus ranging from a minimum of 6% to a maximum of 30%.

Moreover, where the RW form is submitted within 90 days of the submission deadline, a reduced fixed penalty of €258 applies.

The new rules have retroactive effect, therefore they apply in any situation in which penalties have not yet been assessed and paid.

### Beneficial owner

Monitoring obligations have also been extended to the so-called beneficial owners of foreign investments. According to the anti-money laundering rules, these are the individuals who actually own or control a legal entity through the direct or indirect ownership or control of a significant percentage of the share capital or of the voting rights, also through bearer shares. In particular, this requirement is considered as met when the shareholding percentage is equal to 25% plus one of the share capital. The tax authorities have not yet provided the necessary clarifications on the application of the latest news and a dedicated measure will shortly be issued.

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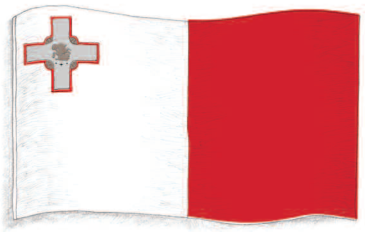
# Malta



**Maltese global residence programme**
The global residence programme, which is replacing a scheme that was introduced a couple of years ago, introduces more certainty and facilitates the process which exists until today. The programme provides very good incentives for persons from outside the EU and European Economic Area (EEA) who want to invest in Malta.

The programme provides for a tax rate of 15% subject to a minimum annual tax charge of €15,000. Lower property investment thresholds have also been introduced. Essentially it is a fine tuning of the 'resident but not domiciled' rule which has been popular with retired persons and also HNWIs since it was introduced (though under different conditions) in the 1970's.

To qualify for the aforesaid special tax status, an application in the prescribed format is to be submitted together with a completed questionnaire and ancillary supporting documentation. A non-refundable fee of €5,500 to €6,000 applies for every application submitted. The fee is intended to cover costs incurred through a sub-contracted international firm to run an international 'fit and proper' background check. Applications will need to be submitted by Maltese warrant holders registered with the inland revenue department as authorised mandatories.

Individuals qualifying for the special tax status are entitled to reside in Malta together with family members and their dependants, subject to certain conditions:

- **property** – applicant shall either:
  - acquire for own use (including dependants) a personal residence in Malta of not less than €220,000 (if the property is in the south of Malta or in Gozo, a sister Island) or of a minimum value of €275,000 for properties in central and northern Malta
  - rent residential property in Malta for not less than €9,600 (or €800 monthly) in Malta and €8,750 (or €730 monthly) in Gozo or the south of Malta, subject to inflation index.
- **resources** – stable and regular resources that are sufficient for the applicant to maintain themselves and dependants without recourse to the social assistance system in Malta
- **sickness insurance** – recognised across the EU in respect of all risks normally covered for Maltese nationals for the applicant and their dependants
- **domicile** – applicant and dependents shall never become domiciled in Malta nor citizens of Malta
- **residency** – applicant shall not stay in any one other jurisdiction for more than 183 days in a calendar year. A declaration to this effect shall be made in the annual tax return
- **fluency in English or Maltese**
- **fit and proper** – assessment is based on considerations of good conduct and morals, criminal record, bankruptcy issues, governmental investigations.

### Tax treatment

- foreign income remitted to Malta is chargeable to tax at the flat rate of 15% subject to a minimum annual tax charge of €15,000, after double taxation relief
- no tax is chargeable on foreign capital gains even if remitted to Malta
- gains on the sale of owner occupied premises in Malta used as the primary residence and which have been owned and actually lived in for a period of three years are exempt from tax. A final withholding tax of 12% on the transfer value of immovable property situated in Malta is charged on the sale of other property
- tax is chargeable at the flat rate of 35% on local income and gains realised on the transfer of other chargeable assets in Malta
- it is also possible for the applicant to engage in gainful employment and business activities in Malta. Such other chargeable income of the beneficiary [and their spouse] that is not charged to tax at the rate mentioned above will be charged to tax at the rate of thirty-five cents (0.35) on every euro
- double taxation relief is available to those qualified for the special tax status in respect of tax levied outside Malta, on any income remitted to Malta which is subject to tax in Malta. Malta has a wide treaty network with almost 60 countries and when income is derived from a country with which Malta does not have a treaty, a domestic system of unilateral relief is available.

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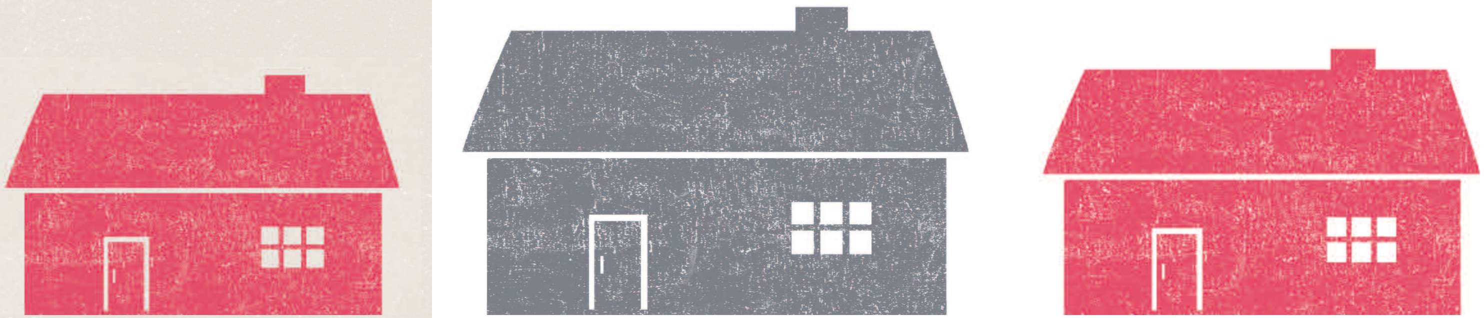
The global residence programme provides very good incentives for persons from outside the EU and European Economic Area (EEA) who want to invest in Malta.



# The Netherlands

## New decree regarding 30%-ruling

Employees hired or assigned from abroad with specific skills and expertise that are scarce on the Dutch labour market may be eligible for the 30%-ruling. Under this ruling, the employee may in principle receive 30% of their salary in the form of a fixed tax free allowance for the additional costs of working abroad (so called extraterritorial costs).

On 11 September 2013, the Dutch Government issued a new decree regarding the 30%-ruling to further clarify the working of the ruling in light of legislative changes that took place effectively from 1 January 2012. The old decree in this respect dated 21 October 2005 was replaced. The new decree was issued in the form of 46 questions and answers, highlighted below are some of the main points.

## Bonus paid after end of employment

The decree stipulates that a bonus paid after the end of the 30%-ruling, and which relates to a year that the 30%-ruling was still applicable, does not fall under the scope of the 30%-ruling. The effect of the ruling ends on the last day following the month in which the employment ends.

In international situations, this would mean that a bonus paid out after an expatriate has left the Netherlands, would not be subject to the 30%-ruling even though the bonus may be allocated to the Netherlands for Dutch tax purposes.

While the wording of the decree states that a bonus as described above is not subject to the 30%-ruling, the wording of current legislation in combination with existing case law may leave room for a different interpretation.

## Internship and education PhD students

Non-resident individuals who are only in the Netherlands for purposes of an internship or education may also be eligible for the 30%-ruling if they are hired while they are still regarded as non-residents of the Netherlands for Dutch tax purposes.

For doctoral (PhD) students, an exception has been made in so far as these students are also permitted to perform employment activities during their studies in order to pay for these studies or if the employer offers the student an employment prior to graduating. In the latter case, the graduation as a PhD must be the reason that the employer is hiring the student.

The student is then not regarded as a local hire, but as an employee recruited from abroad. It is expected that this 'flexible' measure will allow more PhD students to be eligible for the 30%-ruling.

PhD students in the Netherlands for the sole purpose of obtaining their PhD can still be eligible for the 30%-ruling if they find work in the Netherlands within one year of obtaining their PhD.

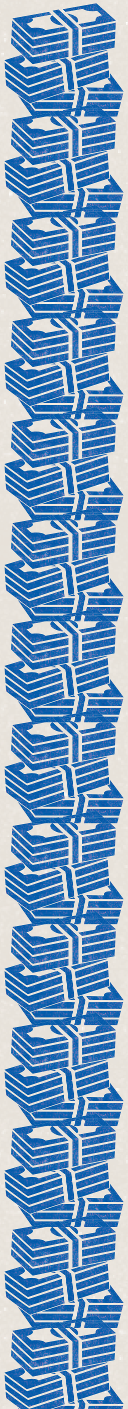
### Part-time wages

The decree further clarifies that part-time wages are not recalculated to a full-time wage in order to determine eligibility for the 30%-ruling. This means that the total of the actual part-time wages (ie salary, including fixed components) must be higher than the salary criteria in order for the employee to be eligible for the ruling.

For employees with a 30%-ruling who are considering working part-time, it is recommended to review the impact on their salary in order to determine (continued) eligibility for the ruling. In cases where the part-time salary drops below the salary criteria, the employee would lose the ruling for the entire year as well as for the future.

### Entering the Netherlands during the tax year

Wages of an employee who enters the Netherlands part way through the year, are recalculated to an annual wage in order to determine eligibility for the 30%-ruling.



## Budget 2014

Recently, the Dutch Government announced their plans for the 2014 budget, below, we have highlighted a number of the planned measures.

### Deferral of tax on severance payments

Under Dutch legislation it is possible to defer taxation on severance payments by making use of the standing-right facility. The Dutch Government has now announced plans to abolish this facility effective from 1 January 2014.

This means that it will no longer be possible to defer tax on severance payments. In international situations, it is recommended to review pending severance situations for expatriates in the Netherlands in order to determine if international tax planning opportunities exist, especially given the plans to abolish the possibility of deferral in the Netherlands.

Existing standing-rights (pre 2014) will be respected. However, the Dutch Government has also announced plans to allow for a one-time pay-out of existing standing rights during 2014 under relaxed measures. The relaxed measures state that only 80% of the pay-out will be subject to tax and will not be subject to the revision interest penalty of 20%.

### Continuation of the crisis levy

For tax year 2013, the Dutch Government introduced a 'crisis-levy' of 16% for employees with income from employment that exceeded €150,000 in the 2012 tax year. As part of the budget measures for 2014, the Dutch Government plans to extend this crisis-levy for another year.

The crisis levy is currently the subject of numerous court cases. As the outcome of these court cases is still unknown, it could be recommended to object against the levy in 2014 as well.

### Qualified non-resident taxpayer status

Under current Dutch legislation, non-resident taxpayers can choose to be treated as resident taxpayers. By doing so, these taxpayers become eligible for deductions as if they were resident taxpayers of the Netherlands.

Due to certain clawback measures under this status, the ruling was subject to scrutiny and was also the subject of court proceedings. The outcome of the court cases were that the measures were not EU-proof. Therefore, an amendment was necessary and a more flexible approach was adopted through a decree.

The Dutch Government has now announced plans to abolish the choice for (deemed) resident status. Instead, taxpayers meeting certain specific criteria (in line with existing EU-case law) will instead qualify for a special non-resident status. Under this status, and as a non-resident taxpayer, these taxpayers will be eligible for tax deductions, for example, similar to resident taxpayers. The most important criteria are that the taxpayer must be a resident of the EU, EEA, Switzerland or the Caribbean Netherlands (BES-Islands), 90% or more of the income must be subject to Dutch wage/income tax and the taxpayer must obtain an income statement from the tax authorities of the country of residence confirming their tax resident status in that country.

The new status is expected to become part of legislation as of 1 January 2015.

## New tax treaty with Germany

The new tax treaty between the Netherlands and Germany is expected to enter into force on 1 January 2014. For internationally active employees, there are a number of changes, the main changes are listed below.

## Employees

Employees living in one country and working in the other country are in principle taxable in the work-country, unless they satisfy the criteria of the 183-days ruling.

Under the old treaty, the number of days was measured in the relevant calendar year. Under the new treaty, the number of days with respect to the 183-days rule will be measured over a twelve month period. This means that taxability in the work country may be triggered at an earlier point in time, leading to taxation in the work country as of day one.

Under the new treaty, employees exercising their employment on board a ship or aircraft that is exploited internationally, are subject to taxation in the country where they live. This is different than under the provisions of the old treaty, under which the country where the management of the company was, had the taxation rights on the employment income.

## Board members

Under the old treaty, the allocation of income earned by members of the Board of directors was allocated according to the rules for regular employment income. The income of supervisory Board members was taxable in the country where the entity was resident.

Under the new treaty, taxation rights on director's fees for members of the Board of directors and for supervisory Board members are aligned. The country where the entity is resident has taxation rights on these fees.

## Pension

The tax treaty also provides a new approach to determine whether a pension is subject to home country or source country taxation.

## Transitional measures

The new treaty contains a transitional measure under which individuals can choose for the application of the old treaty if the provisions of the new treaty lead to a less favourable tax treatment. The transitional measure is valid for one year, after which the provisions of the new treaty will need to be followed.

The new tax treaty between the Netherlands and Germany gives rise to evaluate current cross border employment situations in order to check if differences in taxation will occur.

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The new tax treaty with Germany gives rise to evaluate current cross border employment situations.

# Poland

## Unclear share options regulations

It is becoming increasingly common for employees (especially executives and managers) to be given shares or stock options of the company they work for. This kind of remuneration should work as an incentive to put as much effort in as possible in order to increase the market value of the company's shares.

Polish regulations are not clear about the tax consequences of exercising share options by employees. The solutions presented by the Polish tax authorities have been changing over the years and have, a number of times, been inconsistent with the judgements of the Polish administrative courts.

There are at least three possibilities under the domestic tax laws of Poland to classify the source of income from share options:

- **income from employment (as a result of 'participation in the employees' incentive programme) at the moment of the option is exercised** – subject to taxation (18% and 32%) and social insurance payments
- **income from other sources** – subject to taxation at progressive rates in the annual tax return
- **capital gain, as an income from derivatives** – subject to taxation at a 19% rate in the annual tax return.

Based on the most recent binding rulings issued by the Polish minister of finance, stock options should be taxable in the year of their exercise as capital gains. It should be noted however that this issue is controversial, as there is no single coherent opinion confirmed by the tax authorities and/or administrative courts.

As a consequence of ambiguities, each case should be considered individually. Where the employee is granted the option to purchase/obtain the shares of his own company – most probably the tax authorities will claim it to be the employment income. Still this might be successfully questioned by the taxpayer before the court.

On the other hand, if the option relates to the shares of another entity of the group (eg the parent company located outside Poland), and the employer was not involved in the stock options grant process, the tax authorities usually treat the income from the exercise of such options as capital gains. The taxable amount is the market value of the shares on the date the options are exercised reduced by any related costs carried by the employee, where applicable (eg exercise price).

As a rule, when selling shares it is possible to deduct the costs of their purchase. Deducting just the option exercise price however would lead to partial double taxation. Therefore, another provision of the Polish income tax law applies in such cases. The amount once recognised as taxable income should be deducted from income at the next stage of taxation. Consequently, when selling shares, the tax is paid on the difference between current market value and their market value on the date of the exercise of the share options. To sum up, in most cases the discussed issue might be very confusing and the answer is not obvious even for the tax authorities and courts.

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# United Kingdom

The UK Government has introduced significant changes to the rules on the availability of tax relief for time spent working outside of the UK.

### Important changes to UK tax relief for overseas workdays

As part of wide ranging changes to the tax rules affecting international assignees which came into force in April 2013, including a new statutory residence test, the UK Government has also introduced significant changes to the rules on the availability of tax relief for time spent working outside of the UK.

This relief, widely known as overseas workday relief, has been a key tool for international employers in reducing the cost of assignments to the UK. The changes mean that overseas workday relief is now potentially available to a significantly increased population of individuals working in the UK.

At the same time, additional legislation known as the special mixed fund rules has been enacted covering how payments must be made offshore to benefit from the relief. This adds further detail to the already complex rules in this area.

Employers and assignees need to get to grips with the new rules and additional complexity to avoid losing out on valuable tax relief.

### Some history

Under the old regime individuals who came to the UK intending to stay for only a short period of time (generally less than three years) would in certain circumstances be considered resident but not ordinarily resident.

This allowed them to elect to apply the remittance basis of taxation to their earnings derived from time spent working outside of the UK. Under the remittance basis of taxation, provided those earnings were paid outside of the UK (typically into a sterling bank account in the Channel Islands or the Isle of Man) and not subsequently remitted to the UK, they would not be subject to UK income tax.

This relief is extremely valuable, particularly for tax equalised individuals in respect of whom UK taxes paid by the employer must be grossed-up. For example, the employer of a tax equalised individual with net compensation of £250,000 who spends 20% of their working time outside of the UK would save approximately £40,910 per annum at 2013/14 tax rates by claiming overseas workday relief.

Purchasing a UK property or signing a lease over UK property for a period of greater than three years would generally result in the loss of not ordinarily resident status and the attendant tax benefits. Signing a UK employment contract or assignment extension could also result in the loss of this resident status.

### A new approach

Under the new statutory residence test introduced from 6 April 2013, the concept of 'not ordinary resident' has been abolished. A new test was therefore required to control access to overseas workday relief.

Following a consultation process during which various different approaches were considered, the government decided to allow all non UK domiciled individuals the opportunity to access overseas workday relief. The relief can be accessed, in the year of arrival in the UK and the following two tax years, provided that they were non-resident in the UK for three tax years prior to the year of arrival.

The length of intended stay in the UK is no longer a relevant factor, provided that the tax payer retains a non UK domicile (under UK law this means broadly that the country which the tax-payer considers to be their long term home remains outside the UK).

The new rules will open overseas workday relief to most non-UK nationals coming to work in the UK for the first time, or after an absence of at least three tax years, irrespective of their intended length of stay. Individuals who are locally hired in the UK may also benefit if they are non UK domiciled and have arrived in the UK recently.

Qualifying individuals will now be free to purchase or sign a long lease on a UK property, or enter into an assignment extension without fear of losing their entitlement to overseas workday relief.

Those individuals who were not ordinarily resident in the UK at 5 April 2013 will be subject to a transitional regime under which they will continue to qualify for overseas workday relief under the rules in force prior to 6 April 2013. These individuals would therefore still be unable, for example, to purchase a UK property without losing their entitlement to overseas workday relief.

### Rules regarding offshore payments

In order to claim overseas workday relief it is necessary to ensure that the income relating to time spent working outside the UK is not remitted to the UK. There are complex rules covering both what is considered to be a remittance and how to identify the source of the funds in a particular remittance.

Additional legislation has been enacted in this area also coming into force from April this year making it critical that individuals are provided with advice in order that they can structure their offshore accounts and payments correctly. If this is not done the opportunity to claim the relief may be lost.

### Key issues for employers

The new rules present an opportunity as well as a challenge for international employers. The key opportunity is that overseas workday relief will be available to a wider range of employees, bringing the opportunity to reduce costs for equalised assignees and increase the net value of packages for non-equalised employees.

The challenge is to ensure that employees have the information they need to plan their affairs effectively. Employers will need to consider what advice and assistance they provide, to both assignees and individuals employed locally in the UK. Employers who do nothing may end up with disgruntled employees if those individuals miss out on valuable tax relief as a result.

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# United States

### How the new 3.8% 'net investment income tax' may affect expats

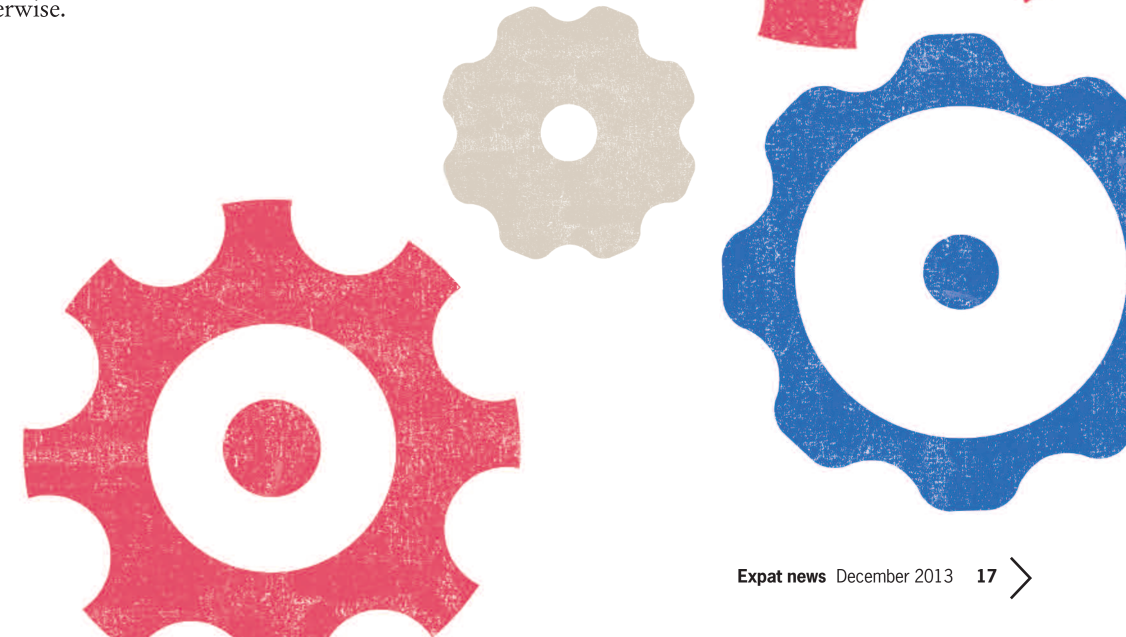
The new 3.8% 'net investment income' tax under section 1411 has specific applications for US expatriates and inpatriates. The tax, which became effective on 1 January 2013, affects higher-income individuals. It is imposed if the modified adjusted gross income (MAGI) of the taxpayer exceeds $250,000 for married couples filing jointly, $125,000 for married couples filing separately or $200,000 for single individuals.

### MAGI for expatriates

For tax purposes, MAGI is defined as adjusted gross income plus the add-back of a common exclusion available to expatriated individuals: the foreign earned income exclusion under section 911 of the tax code. Under section 911, US citizens and green card holders can exclude up to $97,600 (the 2013 amount) of foreign earned income from US taxation while they are working in a foreign country, provided they meet certain conditions. Under the new tax, the expatriate would have to add back the amount of income excluded under section 911 to arrive at the MAGI in order to determine whether the new tax applies. Interestingly, the foreign housing exclusion, which expatriates who live in a high-tax jurisdiction can use to augment the foreign earned income exclusion, is not considered an add-back to arrive at the MAGI.

### Application to non-residents and part-year residents

Only those filing a full year and part-year-resident US return are subject to this new net investment income tax, those who are filing as a non-resident alien on an individual income tax return are not. Individuals who elect to be US tax residents under the provisions of the tax code section 6013(g) are not liable for the new tax unless they elect otherwise.

### Is it really social security?

Although the tax has been referred to as an additional 'Medicare tax', it does not take the form of social security and cannot be mitigated for individuals who are coming from, or going to, a country with which the US has International social security or 'totalisation' agreements.

### What is net investment income?

Much discussion has surrounded the definition of net investment income, and defining the term properly is particularly relevant for expatriates and inpatriates. Foreign pensions, or annuities, are almost certainly not exempt from US taxation and therefore could be subject to the net investment income tax. All expatriates should establish the exact nature of any foreign pensions or annuities and their treatment for US tax purposes, so that a proper analysis can be made. Foreign rental income would be subject to the new tax if the income exceeded allowable expenses.

It is unclear at this time whether certain income streams that are exempt from US income tax under the provisions of an income tax treaty would also be exempt from taxation under section 1411. The preamble to the section 1411 proposed regulations, states that the Internal Revenue Service (IRS) and treasury department are still contemplating the definition of a 'US beneficiary' under the tax and the question of whether foreign pension funds that are treated as trusts for US tax purposes should be excluded from the net investment income tax.

What appears to be clear, however, is that the section 1411 tax cannot be offset by section 901 foreign tax credits. In public statements, the IRS has reasoned that because foreign tax credits can only offset a chapter 1 liability, the credits cannot offset the net investment income tax, because the tax is located under chapter 2a of the internal revenue code.

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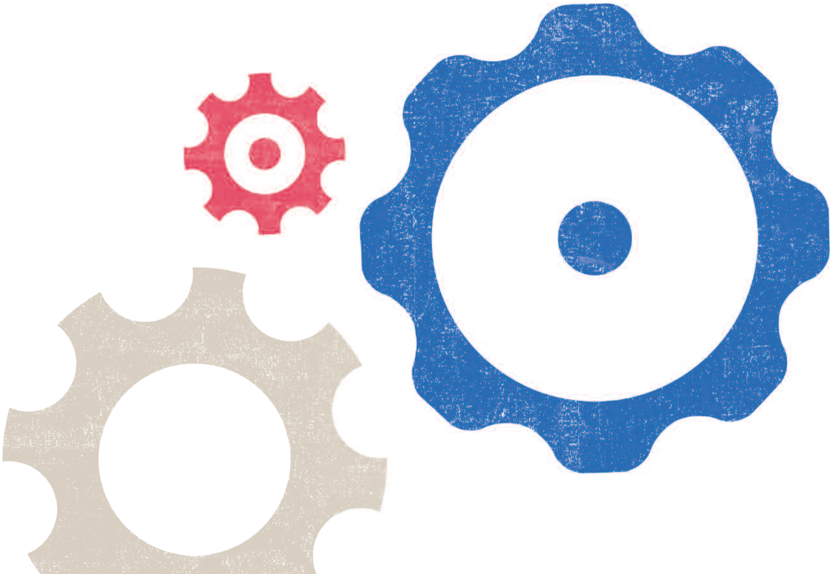

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