

BDO Expatriate Newsletter

June 2011

Africa

Angola

In January 2011, the parliament approved the Bill on General Legal Regime of Fees (Regime Jurídico Geral das Taxas), which consolidates and amends existing tax laws and regulations.

Benin

The individual income tax system is reformed by establishing a single personal income tax (Impôt sur le revenu des personnes physiques) with the new progressive rates ranges between 0% and 45%.

For individual taxpayers who derive only employment income, the monthly withholding tax paid on their behalf by the employer is a final tax. However, such individuals are required to file an annual income tax return for compliance purposes.

Cameroon

All cash payments in lieu of benefits-in-kind and any expenses incurred by the employer on behalf of the employee are included in the taxable base, unless expressly exempt by law.

Employees of international organizations with diplomatic status are exempt from personal income tax on condition that the deed or convention establishing such organizations explicitly provides for such exemption. However, locally recruited non-diplomatic employees of international organizations and diplomatic or consular offices remain subject to personal income tax.

Ghana

The personal income tax brackets rates have been revised between 0% and 25%. There is a proposal to increase the final withholding tax rate on supply of services by non-residents from 5% to 15%.

Liberia

It has been reported that individual income bands have been revised effective 1 January 2011 and the tax rates are between 0% and 25%.

Madagascar

The maximum tax rate for individuals has been reduced from 23% to 22%.

Mauritius

Individuals with total income (inclusive of exempt income) exceeding MUR 2 million will be subject to a 10% solidarity tax on their exempt income; this will apply in addition to their personal tax liability.

Morocco

There has been a decrease in the rate of tax from 30% to 15% with respect to income derived by resident individuals from foreign-source shares. However, capital gains derived from foreign-source shares are still subject to a final 20% tax rate.

Salaries and remuneration derived by employees of enterprises installed in "Casablanca Finance City" are subject to a 20% income tax rate. This final rate applies during the first 5 years of employment. From the sixth year and for an unlimited period of time thereafter salaries will be subject to the progressive rate.

Zambia

Tax rates on new bands are now between 0% and 35%.

For more information, please contact:

Shohana Mohan
smohan@bdo.co.za

Kemp Munnik
kmunnik@bdo.co.za

Australia

Australian tax implications for non-resident employers of Australians working overseas

The Australian Taxation Office (ATO) has released a tax determination which examines the circumstances in which a non-resident entity paying assessable salary and wages to an Australian resident employee in respect of employment outside of Australia needs to comply with Australia's:

- Pay-As-You-Go withholding (PAYGW) laws; and
- FBT laws (should other employment-related benefits be provided to the employee).

This determination relates to previous tax law changes which removed the income tax exemption for foreign employment earnings derived by the majority of Australian resident employees working overseas with effect from 1 July 2009.

The ATO considers that a foreign entity will only have a PAYGW obligation in respect of salaries and wages paid to Australian resident employees for work performed overseas where the entity has a “sufficient connection” with Australia. The ATO’s view is that a sufficient connection with Australia exists if the foreign entity has a physical business presence in Australia, which may arise where the entity has any of the following in Australia:

- An office;
- Business operations;
- Trading presence; or
- Employees.

The potential tax implications for Australian resident employees of a foreign entity that does not have Australian PAYGW and FBT obligations are not addressed in the determination, although in a Fact Sheet released by the ATO in August 2010 they flag the following potential consequences for an affected employee:

- The employee’s foreign earnings will be subject to Australian tax;
- As PAYGW is not being withheld from these foreign earnings, it is likely the income will be subject to Australia’s PAYG instalment system; and
- The market value of a non-cash benefit provided to the employee is likely to represent assessable income of the employee for Australian tax purposes.

For more information, please contact:

Nick Gangemi
Nick.gangemi@bdo.com.au

Steve Frapple
steve.frapple@bdo.com.au

Belgium

Non-qualifying Stock Options - a recap

The Belgian Court of Appeal confirmed a former point of view of the Supreme Court in Belgium relating to the Belgian individual income tax treatment of non-regulated stock options granted before 1999.

Belgium has two different income tax regimes applicable to stock options granted by an employer to its employees.

Belgian law effective 26 March 1999 introduced a lump sum taxation regime for qualifying stock options that meet the conditions stipulated in that law.

One of these conditions is that the stock options should be accepted by the employee within 60 days following the day of the offer of the stock options. Where the conditions stipulated in this law are met, the benefit in kind is taxable at the moment of ‘grant’ (i.e. offer + 60 days) even if the grant is subject to suspension or dissolving conditions.

The question arises as to what is the taxable moment for non-qualifying stock options? This would include those that do not meet the conditions stipulated in law, for example when the stock options are granted by an employer to his employees who have accepted the offer after 60 days.

With regard to Belgian income tax consequences for non-regulated stock options granted prior to 1999, a judgment of the Brussels Court of Appeal in June 2010 confirmed a prior decision in February 2005 of the Belgian Supreme Court concluding that the moment of taxation is in fact the vesting moment of the options.

In 2005, the latter Court had overruled its prior decisions of February 2002 and January 2003, where it had decided that the moment of taxation would be the moment of the granting of the stock options and not the moment of exercise. However, in those rulings no further clarification of ‘grant’ was mentioned, implying that for conditional stock option plans, uncertainty relating to the moment of taxability remained and the Belgian tax authorities kept taxing the benefit in kind at the moment of exercise.

The latter position has been revised by the Belgian Supreme Court which has now decided that these non-qualifying stock options are taxable at the moment of the grant unless the possibility to exercise the stock options depends on an uncertain and future event (i.e. stock options granted with a suspensive condition). However, the Court has not explained what should be regarded as an ‘uncertain and future event’.

The Brussels Court of Appeal decided in June 2010 that non-qualifying stock options (granted before 1999) are, in principle, taxable at the moment of the grant, unless an uncertain and future event occurs. In such cases, the taxable moment will be postponed to the moment of the completion of the suspensive condition (e.g. the impossibility to exercise the options due to a blocking period of five years) and the benefit in kind will become taxable at that moment (i.e. after the blocking period of five years) even if the option has yet to be exercised at that moment. Indeed, where an employee would then decide not to exercise the options immediately after the blocking period of 5 years, this will not result in a postponement of the taxable moment. The moment of taxability will still be after the blocking period of five years, as the decision of the employee not to exercise is based on a personal choice.

This all seems incredibly confusing but clearly the taxation of stock options in Belgium is very specific and the moment of taxability depends on the specific circumstances in each case given the different option types (regulated options, unregulated options, conditional granting, etc.). As a result, individual plans and related circumstances should be reviewed in detail before determining the income tax status of the benefit in kind relating to stock options in Belgium.

For more information, please contact:

Jan Van Langendonck
jan.vanlangendonck@bdo.be

Peter Wuyts
peter.wuyts@bdo.be

Canada

Stock Based Compensation

The Canadian federal budget on 4 March 2010 introduced several important changes in the Canadian taxation of stock based compensation effective in 2010 and 2011.

Withholding Taxes

Effective in 2011, employers are now expressly required to withhold income taxes on taxable employee benefits arising from stock based compensation, net of any related deductions available to the employee. An option granted before 2011 pursuant to a written agreement entered into before 4 March 2010 is exempt from these new requirements.

Previously, the legislation was unclear. Although the Canada Revenue Agency (CRA) has historically taken the position that withholding tax generally does apply, they have usually granted administrative relief in situations where withholding would create hardship to the employee, or the benefit was conferred by a non-resident entity that did not pay any cash remuneration to the option holder. The new legislation limits the CRA's latitude to provide such administrative relief, so employees and employers must consider how to fund withholding tax payments, particularly if the shares acquired under the stock options are not immediately sold. Compensation agreements may need to be amended to ensure arrangements are in place to accommodate these new withholding requirements.

Cash-Out Payments

Some employee stock option plans permit employees to elect to surrender their options in exchange for a cash-out payment from the employer. Under previous legislation, the employer was generally permitted to deduct 100% of the cash-out payment. Meanwhile, the employee was generally able to claim a deduction equal to 50% of the taxable benefit, such that the benefit was effectively accorded the same preferential tax treatment as a capital gain.

For any cash-out payments made after 4 March 2010, the employer must now elect to forgo a tax deduction for the payment in order for the employee to be eligible for the 50% deduction. To avoid later disputes between employers and employees, it would be prudent to consider amending compensation agreements to clarify whether the employer or the employee is entitled to claim the deduction.

Deferral of Taxation re Publicly Traded Shares

Since 2000, an election has been available to defer taxation of benefits relating to stock options on publicly traded shares until the year that the shares are sold. For all stock options exercised after 4 March 2010, this election is no longer available, and the benefits are taxable in the year in which the options are exercised.

Provisions have been introduced to provide some relief in situations where taxable benefits were previously deferred at the date of exercise, and the value of the shares has

since decreased to the point where the shares are now being sold for an amount insufficient to cover the related tax liability.

For more information, please contact:

Erle Shrier
EShrier@bdo.ca

Jason Ubeika
JUbeika@bdo.ca

European Union

Social Security

Extension of rules regarding social security to third country nationals effective from 1 January 2011

From 1 May 2010 the European social security scheme to apply to nationals of EU member states is determined in the EU by the Regulations No 883/2004 and 987/2009. The previous Regulation No 1408/71 remained in force for some cases for a transitional period and in relation to certain countries, for example Switzerland and the EEA-countries that are not part of the EU (Iceland, Liechtenstein and Norway). Until recently this was also the case for non-EU nationals to whom since 2003 an extension applied between the EU member states of the EU Regulation No 1408/71.

With the Regulation No 1231/2010 (Official Journal of the European Union of 29 December 2010) the new coordination rules also apply as from 1 January 2011 to nationals of third countries legally residing in the EU in so far as different social security schemes could apply. Therefore excluded are the situations in which a third country national only has links with the third country and a single member state. For example, where there is an assignment from Canada to France or simultaneous employment in Turkey and Germany, then Regulation No 883 will not apply. In both cases either bilateral treaties (if any) between these countries or the national legislation will continue to apply. However, if the Canadian seconded employee works simultaneously in France and in Belgium, the Regulations No 883/2004 and 987/2009 will determine the applicable European social security scheme as from 1 January 2011.

Do note that the extension of these Regulations is not applicable to the United Kingdom and Denmark. For the UK the EU Regulation No 1408/71 continues to apply on third country nationals. For Denmark, the national legislation applies or alternatively bilateral treaties.

The transitional rules of the Regulations No 883/2004 and 987/2009 also apply to this extension. Consequently third country nationals remain subject to the old EU Regulations for a period of 10 years (until 31/12/2020) providing their situation does not change. They can however explicitly request to fall under the application of the new EU Regulation, which can have possible consequences for the employer. Requests to apply the revised legislation will only apply as from the first day of the next month after application.

For more information, please contact:

Andrew Bailey
andrew.bailey@bdo.co.uk



France

New Finance Law for 2011

French Finance law for 2011 was adopted in December 2010 and has increased a certain number of tax rates for individuals. In addition, the stocks options and restricted stock units regimes have been significantly amended.

Income tax rates

Progressive tax rates

The highest tax rate has been increased from 40% to 41%. The new income tax brackets for 2010 are as follows:

Progressive rates €	Tax rates
Under €5,963	0 %
Between €5,963 and €11,896	5.5 %
Between €11,896 and €26,420	14 %
Between €26,420 and €70,830	30 %
Above €70,830	41%

Fixed rates

The rate applicable to capital gains on movable assets has been increased from 18% to 19%. Capital gains on movable assets were previously not taxed providing that the yearly amount of the total proceed did not exceed €25,380. This exemption has been removed so that all gains are now taxed. The rate applicable to capital gains on real estate has been raised from 16% to 19%.

Social rates

In addition to income tax, passive income (such as dividends, interest, rental income or capital gains) is subject to complementary taxes called 'social taxes'. These taxes are applicable if the taxpayer is a tax resident of France. The social rates have been increased from 12.1% to 12.3%.

Stock options plan - Restricted Stocks Units tax regime

A specific tax is due by the employer on the grant of French qualified options and RSUs. This tax is computed either on 25% of the fair market value of the granted shares or on the value of the options according to the IFRS rules.

	Old rate	New rate	
French Qualified Options	14%	10%	N/A
French Qualified RSUs	10%	10%	Less than € 17,676 (2011)
French Qualified RSUs	14%	10%	Greater than € 17,676 (2011)

This specific tax is also due by the employee at the time of the sales of the shares (in addition to capital gains tax and social taxes). This tax is computed on the amount of the capital gain. The new rate is 8% instead of 2.5%.

In addition, new tax laws have introduced an obligation for the employer when the beneficiary of the awards (French national or foreign national) is a non resident at the time of the liability to income tax.

The employer may have to withhold the income tax due on non-qualified and on qualified awards as of 1 April 2011 at the time of vesting (unqualified plan) or at the time of the sale of the shares (qualified plan) provided that a part of the gain is attributable to and taxable in France.

This new rule obliges the employer to follow carefully the taxation of the awards at the level of the employees and to have a good tracking system to know when French tax has to be withheld.

For more information, please contact:

Edouard de Raismes
ederaismes@djp-avocats-bdo.fr

Carine Duchemin
cduchemin@djp-avocats-bdo.fr

General

Introducing localisation as a low cost alternative to expatriate assignments

The additional expatriate pay element, typically adding up to three times the cost of the base salary creates unintended challenges for businesses trying to get a worthwhile return on investment from expatriate assignments.

As organisations implement cost saving initiatives in employing mobile workforces, categorisation of the various sub-sets of employees is becoming an integral part of international assignment planning. Organisations are re-defining assignments into long-term, short-term, commuter, rotational, developmental and short-term business travellers and are developing variable policies.

Definitions will vary but for these purposes long-term is defined as assignments between 1 and 5 years, short-term is defined as an assignment duration from 1 to 12 months, commuter is defined as 3 to 12 months and short-term business travellers is defined as up to 3 months.

A recent survey by ORC Worldwide highlights localisation as a common low cost alternative to employing expatriate employees with almost 50 per cent of African companies adopting localisation policies. In simple terms, 'Localisation' is a term used when an assignee is placed on the host country terms and conditions of employment and is provided with local pay elements.

While localisation may address economic issues and help cost saving initiatives for businesses there may be very little to incentivise the assignee to accept the offer to localise. The significant challenge for the Human Resource department is directing localisation to the right group of assignees. An added challenge is making localisation equitable for the assignee and the organisation.

Straight forward localisation policies generally do not provide premiums related to cost of living adjustments (COLA), tax assistance, and provision of housing and education costs. However, a one size fits all approach is certainly not a prize winner when planning international assignments. The comparison of income tax rates, wages, salaries, standard of living, benefits, cultural and living conditions between home and host locations play a vital role when considering localisation as an alternative to employing expatriates.

For instance, movement of an assignee from a moderate hardship location to a location considered to be a high hardship location with dissimilar socio-economic and cultural diversity may result in increased resistance against successful implementation of localisation.

When is localisation optimised as a strategy?

Localisation strategy may be optimised among a particular sub-set of assignees that may include early career expatriates or developmental employees where the deal breaker is not so much remuneration, reward and benefits when compared with career progression and development.

On the other hand, movement from a low salary index ratio to a high salary index ratio may not require much intervention as positive response to localisation from assignee populations is possible once the assignee grasps the concept of the earning potential and spending power in the host location. Attaching detailed salary build-up calculations with referenced notes in terms of variables used to calculate the assignee net take home pay is among the essential tools in creating localisation success stories.

How to introduce localisation

Designing a localisation policy framework requires necessary research related to host country norms and practices. For instance, prescribed minimum wage criteria in the host location is amongst the essential planning required when designing a localisation policy framework.

Strategy and policies may vary from one location to another as certain remuneration or other related trends are directed at a subset of the assignee population, which may require country specific localisation policies.

Depending on affinity between home and host locations, a local plus package may be implemented. This method of pay includes local salary benchmarked in the host country plus education, housing, tax return preparation and/or home leave travel assistance or other benefits. The importance of providing tax return preparation assistance should not go unnoticed. Assistance should ideally be provided to the assignee for at least 2 years to ensure optimal tax compliance in the home and host locations, while also reducing any potential reputational risk for the assignee and the organisation. Economy class travel is also the preferred alternative.

An alternative to the local plus package is the Lump Sum Approach. In terms of this approach, the assignee is transferred directly to the host country payroll and a lump sum payout or cash buy out is provided to compensate for costs associated with COLA, housing and education costs.

The disadvantage in adopting this approach is the organisation may lose the assignee to a competitor soon after paying the lump sum which is not an uncommon practice.

Depending on the host location, an alternative to the Lump Sum Approach is perhaps the transitional Phase-Out Approach. This approach involves payment of the lump sum in tranches.

In other words, the pay elements and or allowances are graduated and phased out over a period of time, i.e. 100 per cent of the expatriate pay elements in year 1 of localisation, two-thirds in year 2 and one-third in year 3. Payment delivered in tranches may result in a softer landing and perhaps smoother transition for the assignee with an increased return on investment for the organisation.

For more information, please contact:

Andrew Bailey
andrew.bailey@bdo.co.uk

Shohana Mohan
smohan@bdo.co.za

Greece

Tough tax evasion laws planned

The Greek government is looking to crack down on tax evasion with proposed jail sentences on conviction for significant (+€75,000) income tax evasion. A special program is to be launched with a 3 year action plan to reduce tax evasion. Currently it is estimated that 30% of tax due goes uncollected.

For more information, please contact:

Marios Eleftheriadis
lrc1.athens@bdo.com.gr

India

Greater exchange of tax information

The Indian tax authorities are taking steps to reduce tax evasion by signing tax information exchange agreements with a number of jurisdictions, including the Bahamas, Bermuda, British Virgin Islands and Isle of Man. India plans to seek agreements with other tax havens in order to reduce tax lost through offshore tax arrangements.

For more information, please contact:

Anish Mehta
anish.mehta@bdoindia.co.in

Sandeep Thadathil
sandeep.thadathil@bdoindia.co.in

Sweden

The Swedish government has presented the Spring Budget for 2011, outlining the economic strategy for the Budget for 2012. The main proposals are intended to enter into force on 1 January 2012.

A summary of the employment related proposals is set out below:

Individual taxation

- Employment deduction is increased
- Basic threshold for national income tax on earned income is increased
- Income tax for individuals over the age of 65 is reduced
- Special income tax on non-residents (SINK) is reduced to 20% (currently, 25%) and applies to income received from income year 2012 - see below.
- Taxable value (car benefit value) of certain environmentally friendly company cars is reduced and applies until 31 December 2013.
- Rules on the special tax relief granted to qualifying foreign key staff members temporarily employed in Sweden are simplified. Further details to follow in due course.

Swedish SINK provisions contrary to Community law

Two rulings by the Swedish Supreme Administrative Court (SAC) in December 2010 clarified that employers are not to withhold tax or pay social security contributions on, for example, per diems and mileage allowances paid to EU or EEA resident employees who are covered by the special income tax for non-residents (SINK).

The special income tax for non-residents (SINK) may apply when non-residents receive salary and/or benefits for work in Sweden. SINK is a flat and final withholding tax of 25%, which means that the rate is the same regardless of how much the employee earns but also that no deductions are available.

In the cases tried by the SAC an employer had paid per diem and mileage allowance to employees who were resident in Denmark and who were subject to SINK. The allowances paid did not exceed standard values for deductibility under the ordinary Swedish income tax Act (IL).

The SAC initially stated that the allowances were subject to SINK because such benefits are formally taxed under IL. However, according to the IL, per diems and certain other expenses that do not exceed specified fixed amounts are tax deductible for employees. No corresponding deduction is available under the SINK scheme as SINK is a final withholding tax regime. As a result tax withholdings and social security contributions were required on the payments made to the Danish employees.

Had payments instead been made to Swedish resident employees, the allowances would not have been subject to tax or social security contributions. The SAC found that this resulted in such a different treatment that prevents the free movement of workers within the EU and hence the local SINK regulations cannot be applied on such allowances paid to EU/EEA resident employees.

The SAC rulings mean that employers are not required to deduct tax or pay social security contributions on allowances that would have been tax free under IL if the recipient is an EU or EEA resident who is subject to SINK. Employers who have previously made tax deductions and paid social security contributions on such allowances may be able to request a review of historical payroll tax return filings.

Unlimited Swedish tax liability despite exit from Sweden - less than 96 days of travelling outside employment country required for tax exemption

The Swedish Tax Authority has published a statement with their view of maximum number of days spent in Sweden and third countries in order to benefit from Swedish tax exemptions rules on employment income when working abroad.

A Swedish resident who works abroad is able to benefit from Swedish tax exemption on his or her foreign employment income if:

- The foreign assignment lasts for at least six consecutive months and the income is taxed in the country of employment (six-months rule)
- The foreign assignment lasts for at least one consecutive year in the same employment and the same country (one-year rule). Under the one-year rule there is no subject to tax requirement but tax exemption in the country of assignment must be a consequence of local provisions in that state.

Shorter periods of time spent outside the country of employment will not break the qualification period for the six-month and the one-year rules. However, according to both rules the Swedish expatriate employee must not spend more than 72 days in Sweden during each one-year assignment period.

On October 25, 2010, the Swedish Tax Authority issued a statement stating that no more than a total of 96 days per employment year may be spent outside the employment country. This means that on average 8 days per month may be spent on business trips, vacations etc. Taking into account the provisions of the rules as set-out above no more than 6 days of these may be spent in Sweden. Hence, if an individual spends the full allowed 72 days in Sweden in the course of an employment year there will only be 24 days (or an average of 2 days per month) left for time spent in third countries.

The Tax Authority's statement is not binding and is likely to be challenged in the Administrative Court. However, until there is a different ruling travel patterns for individuals assigned from Sweden ought to be closely monitored as the new policy increases the risk for Swedish taxation. For frequent travellers, spending more than the stipulated 96 days outside the assignment country, tax relief may of course still be available under the applicable tax treaty.

For more information, please contact:

Jessica Otterstål
Jessica.Otterstal@bdo.se

Switzerland

Switzerland pledges greater cooperation in tax inquiries

The Swiss government has advised that they will provide assistance to foreign governments seeking information on bank account holders even if data held about suspected tax evasion is incomplete. Previously the Swiss had refused to help unless the requests were very specific and included both names and addresses of account holders. The US government in particular has been pushing for greater cooperation in its aim of reducing tax evasion by US citizens with Swiss bank accounts.

For more information, please contact:

Romano Cavicchiolo
romano.cavicchiolo@bdo.ch

United Kingdom

Further changes to non UK domiciled rules?

Tax collected from non UK domiciled individuals appears to have been much lower than anticipated prompting rumours that the government may review existing rules. Major changes came into effect from 6 April 2008 but have not led to the desired increase in tax. The current, overly complicated, rules are in need of radical revision but it is unlikely this radical overhaul will occur given the fiscal deficit and continuing bad publicity associated with non domiciled and non resident individuals. We await the Government's and HMRC's Consultative Document and a new statutory residence test with much interest.

Unrest in Africa

HMRC has confirmed that where individuals are evacuated from Egypt, Libya or Tunisia due to the current political situation, the situation would be treated as an "exceptional circumstance" and therefore covered by existing guidance in HMRC6 to exclude such days when considering UK tax residence. This will remain the case for the period that the Foreign and Commonwealth Office (FCO) advice for the country they are leaving is in place.

For more information, please contact:

Andrew Bailey
andrew.bailey@bdo.co.uk

Phil Partington
phil.partington@bdo.co.uk

Andrew Kelly
andrew.kelly@bdo.co.uk

United States

IRS announces a second voluntary compliance program for offshore accounts

The Internal Revenue Service has recently announced a special voluntary disclosure initiative designed to bring offshore money back into the U.S. tax system and help people with undisclosed income from hidden offshore accounts get up to date with their taxes. The new voluntary disclosure program will be available through to 31 August 2011.

Under the Bank Secrecy Act, each US person must file Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly called "FBAR") if they had a financial interest in, or signature authority over any foreign financial accounts, including bank, securities or other types of financial accounts, in a foreign country, and the aggregate value of all foreign financial accounts exceeds US\$10,000 at any time during the calendar year. Although there is no tax associated with the filing of an FBAR, penalties range from US\$10,000 for non wilful violations up to the greater of US\$100,000 or 50 per cent of the total balance of the foreign account for wilfully failing to file an FBAR.

The Foreign Account Tax Compliance Act - FACTA - impact on non US accounts

New IRS rules effective 2013 requiring foreign banks to disclose account details or deduct a withholding tax will accelerate recent trends for foreign banks to restrict non US services to US citizens. The increasing compliance burden is seen as outweighing the commercial advantages of having US clients.

Tax cuts extended: implications for individual taxpayers - Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("the Act")

On 17 December 2010, President Obama signed into law the Act which is, in essence, an extension of the 2001/2003 Bush-era tax cuts for two years. The Act also provides a payroll tax holiday for 2011 and a change in the exemption amount and maximum tax rate for estate taxation. Finally, the Act extends and modifies many of the provisions first enacted in the 2009 American Recovery and Relief Act and also incorporates many individual extensions of the so-called annual extenders. The items noted below are not all encompassing, but are of particular interest for expatriate program administrators.

- **Tax Rates** - The Act extends the 10% individual income tax bracket as well as the 25%, 28%, 33%, and 35% individual income tax brackets. The Act allows the capital gains rates to remain at 0% for taxpayers below the 25% bracket and 15% for taxpayers in the 25% rate and above. Without the legislation, the capital gains rates were scheduled to expire at the end of 2010, and revert to 10% and 20%, respectively. The current qualified dividend rates of 0% for taxpayers below the 25% bracket and 15% for taxpayers in the 25% bracket and above are extended. Without the legislation, these rates were set to expire at the end of 2010, taxing qualified dividends at the ordinary income rates. All of these rates are extended for two years through 2012.

- **Employee payroll tax cut** - For 2011 only, the Act reduces the Social Security (OASDI) tax rate on employees to 4.2% (from 6.2%). However, the Act does not reduce the OASDI contribution base, which is \$106,800 for 2011. Thus, the maximum OASDI tax in 2011 for employees is \$4,485.60. The employer portion of OASDI has not changed and is still 6.2%. The employee payroll tax cut offsets the loss of the Making Work Pay Credit, which expired in 2010.

• **Extensions and modifications of the 2009 American Recovery and Relief Act provisions and Annual Extenders** - Along with the extension of the 2001/2003 Bush-era tax rates, the Act also extends the repeal of the phase-out for personal exemptions, the repeal of the phase-out of itemized deductions for high income taxpayers, the elimination of the marriage penalty in the standard deduction, the continuation of the \$1,000 child tax credit, and the continuation of the dependent care credit, all through 2012.

The Act also extends, from 2009, the election available to taxpayers who itemize their deductions to deduct state and local sales taxes in lieu of state and local income taxes through 2011. The Act extends for one year, through 2011, the itemized deduction for the cost of mortgage insurance on a qualified personal residence, subject to phase-outs.

The Act puts in place a 2-year patch for the Alternative Minimum Tax (AMT). The Act increases the AMT exemption amount to \$72,450 for tax years beginning in 2010, and \$74,450 for tax years beginning in 2011. For an individual who is not married and is not a surviving spouse, the exemption amount is \$47,450 for tax years beginning in 2010, and \$48,450 for tax years beginning in 2011. For married taxpayers filing separate returns, the exemption amount is 1/2 of the married filing jointly amount. In addition, both the personal credits and non-refundable credits can offset AMT through 2011.

The American Opportunity Tax Credit, which expanded and renamed the Hope Credit, can be claimed for tuition and certain fees you pay for higher education through 2012. The credit can be claimed for expenses for the first four years (previously two) of post-secondary education. Related expenses have been expanded to include expenditures for course materials including books, supplies and equipment.

The credit has increased to \$2,500 (100% of the first \$2,000 of tuition, fees and course materials paid during the tax year, plus 25% of the next \$2,000). The credit begins to phase out with modified adjusted gross income (MAGI) of \$80,000 for single filers and \$160,000 for joint filers and is completely phased out with MAGI of \$90,000 for single filers and \$180,000 for joint filers.

The Act extends, from 2009, the above-the-line deduction for qualified tuition and related expenses through 2011. The maximum deduction is \$4,000 for taxpayers with adjusted gross incomes not exceeding \$65,000 (\$130,000 for joint returns) and \$2,000 for taxpayers with adjusted gross incomes not exceeding \$80,000 (\$160,000 for joint returns).

Finally, the \$2,000 annual contribution amount and the expanded definition of education expenses (to include elementary and secondary school expenses) related to the Coverdell education savings accounts are extended by the Act for an additional two years, through 2012. Coverdell education savings accounts are tax-exempt savings accounts used to pay the higher education expenses of a designated beneficiary.

• **Roth IRA Conversion** - Although not part of the Act, as a reminder, previous legislation removed the adjusted gross income limit and all taxpayers are eligible to contribute to a Roth IRA and to convert a traditional IRA to a Roth IRA beginning in 2010.

Anyone who converted a Roth IRA in 2010 may defer and spread income recognition from the conversion over tax years 2011 and 2012. The 10% penalty tax normally imposed on early or excess distributions from an IRA does not apply.

For companies that have US employees in foreign countries, you can expect little or no cost changes, as the tax rates and deductions remain the same. Companies who equalized US expatriates for the 2009 tax year may have seen an increase in tax reimbursements to employees due to the Making Work Pay (MWP) Credit. If the employee's MWP Credit based on theoretical taxable income was higher than the MWP Credit based on their actual taxable income (due to phase-out of the credit based on income limits), companies made up this difference.

Since the MWP Credit expired in 2010, companies will no longer bear this cost. In fact, companies may see a small decrease in tax assistance due to the 2011 payroll tax cut, which is administered via payroll and does not have any taxable income limits. This tax savings may occur when an expatriate's stay-at-home OASDI wages are less than the wage base limit of \$106,800 and the company grosses up assignment allowances. The tax assistance on assignment allowances for the employee portion will only be based on the 4.2% rate.

Programs with foreign nationals in the US are likely to experience little or no cost impact as well. One impact that could occur is where a foreign national has no certificate of coverage and the company is bearing the employee's cost of US OASDI tax, either through equalization, a net guaranteed payment or other tax assistance. The 2% reduction in the employee portion for OASDI will reduce the company's costs. This is effective for 2011 only and reduces the employee but not employer portion of OASDI.

With the extension in the tax cuts, tax planning that has been in place for the last few years can remain in place for the next two years. This applies to individual taxpayers, as well as their employers. Hypothetical tax liabilities for assignees should remain consistent through to and including 2012, allowing for ongoing budgeting and planning for international assignment programs. While this does provide some relief for the near-term, taxpayers and companies must continue to look to 2013 and the potential tax landscape that may exist at that time.

Circular 230

Any US federal tax advice contained in this communication is not intended to be used, or written to be used, for the purposes of avoiding penalties under the Internal Revenue Code, or for promoting, marketing, or recommending to another party any tax related matter.

For more information, please contact:

Donna Chamberlain
dchamberlain@bdo.com

Ken Guilfoyle
kguilfoyle@bdo.com

