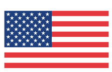
Global Reward Services Quarterly Newsletter

March 2024

The KPMG Global Reward Services Quarterly Newsletter brings you compensation and rewards developments, along with KPMG observations from around the world.

Americas



United States: SEC Settlement Window for Stock Trades

The SEC adopted the rule to shorten the settlement cycle to T+1, **effective May 28, 2024,** for all U.S. securities transactions. The rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business day after the trade date ("T+1") are coming up quickly.

KPMG observations

To prepare for this change, companies should review their settlement process and determine timing of payroll deposits. Please read our article on the implications of this change for companies operating global equity plans in the US.

Asia Pacific

Thailand: Further guidelines on foreign-sourced income brought into Thailand

The Thai Revenue Department has issued new guidance regarding the remittance of foreign earned income into Thailand under Section 41 Paragraph 2 of the Thai Revenue Code.

Departmental Instruction No. Por 161/2566 ("DI No. 161/2566"), issued in September 2023, provided an interpretation of Section 41 Paragraph 2 of the Thai Revenue Code that any foreign-sourced income remitted to Thailand by a Thai tax resident from 1 January 2024 onwards will be subject to Thai personal income tax. Previously, Section 41 Paragraph 2 was interpreted to mean that foreign-sourced income would be subject to Thai personal tax only if that income was brought into Thailand in the same tax year. DI No. 161/2566 establishes that foreign-sourced income earned in previous tax years will also be subject to personal tax when brought into Thailand. The impact of this new interpretation is that any individual who qualifies as a Thai tax resident will be subject to Thai taxation on income previously earned if remitted to Thailand. A resident of Thailand is defined as an individual who stays in Thailand for a period or periods aggregating 180 days or more in any tax year.

Due to confusion regarding income derived from previous years, the Thai Revenue Department has now issued Departmental Instruction No. Por 162/2566 which clarifies that income tax should not apply to foreign-sourced income derived before 1 January 2024. Furthermore, if the foreign-sourced income is subject to tax in the source country, the tax paid in the source country can be credited against the personal income tax liabilities in Thailand per rules prescribed in the applicable double taxation treaties.

For more information, please review our KPMG Flash Alert or contact the article authors, Panisa Srihera, Tanakorn Jennanachok and Araya Apiboonchaikru via email at panisa@kpmg.co.th, tanakorn@kpmg.co.th and arayaa@kpmg.co.th.

KPMG observations

This guidance signals a shift in the treatment of foreign-sourced income earned and remitted into Thailand. Starting 1 January 2024, Thai tax residents who earn income abroad are subject to personal income tax on such income. This new interpretation will provide an additional burden for employees who qualify as a Thai tax resident and have previously received and remitted to Thailand, dividends or gains from foreign-sourced equity or incentive compensation from employers.

This shift in treatment of foreign-sourced income may require more record-keeping around income reporting while increasing individuals' tax burden in Thailand. KPMG can assist with proper tracking and reporting of previously earned foreign-sourced equity income and incentive compensation.

Singapore: Changes to IRAS's Voluntary Disclosure Program

The Inland Revenue Authority of Singapore (IRAS) has implemented changes to its Voluntary Disclosure Program (VDP). The VDP allows employers to voluntarily disclose past tax errors or omissions. Employers who participate in the program typically can expect mitigating treatment from the IRAS and reduce the risk of penalties.

Previously, the VDP allowed employers to settle tax discrepancies without the IRAS issuing Notice of Assessments (NOAs) to employees. IRAS has now shifted to issuing NOAs directly to employees to reflect any under-reporting of income, even if the taxes are settled by the employer.

For more information, please review our KPMG Flash Alert or contact the article authors, Murray Sarelius, Barbara Kinle and Garren Lam via email at murraysarelius1@kpmg.com.sg, bkinle@kpmg.com.sg and garrenlam@kpmg.com.sg.

KPMG observations

The new NOA requirement has made the once streamlined process of the VDP much more intricate and complex. Employers utilizing the VDP could previously expect minimal direct engagement with employees. With the implementation of NOAs, employers could now face increased administrative burdens associated with addressing employee inquires or dissatisfaction regarding under-reported income. The change also signals that the IRAS will be placing an increased emphasis on accurate reporting going forward.

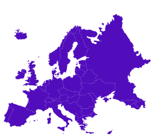
Employers are encouraged to:

1) Increase their diligence regarding the accuracy and completeness of their payroll data to ensure discrepancies are identified and rectified, and

2) Build an effective communication channel and an employee management system to avoid potential disruption

KPMG can assist with compliance reviews and consulting support for employers. Please reach out with any questions, comments, or concerns.

Europe



Belgium: Social security contributions on equity-based compensation

On November 20, 2023, the Antwerp Labour Court of Appeals determined that Belgian employee social security contributions are not due on equity-based compensation granted by a US parent company to employees of its Belgian subsidiary. This determination confirms the tax principles that were adopted in recent years by the High Court of Cassation, whose ambit is to opine on legal principles rather than particular fact patterns in specific cases.

In essence if equity-based compensation is not provided in return for labour/services and is not linked legally or financially by way of a recharge to the Belgian entity or employer it will not be subject to Belgian social security taxes. Thus, the Court of Appeals has confirmed the existing approach taken for Belgian social security contributions on equity-based compensation granted by a US parent, where such cost is not recharged to the Belgian entity, nor is the equity benefit included in the local Belgian employment contract nor provided in return of labour performed, then employees are not liable to pay social security contributions on such income.

For more information on the previous tax position, please see our KPMG GMS Flash Alert or contact the article author Jeroen Vandenbossche via email at jvandenbossche@kpmg.com.

KPMG observations

The ruling simply confirms the existing social security position taken by foreign parents granting equity-based compensation to local Belgian employees.

Netherlands: Employee incentive trends – SAR Plans: your incentive plan for 2024

In the Netherlands, due to the increase in the substantial interest regime (from 26.9% up to 33%), complicated employee equity structures have become less advantageous for employers. As a result, employers may be interested in providing Stock Appreciation Right (SAR) plans to employees. SAR plans can be easily set up, do not require statutory adjustments, and are relatively tax friendly. Equity incentive plans may benefit and appeal to companies for varying reasons – it is important to consider the following when implementing a plan:

Step 1: Determine strategic alignment: How will the plan support company goals?

Step 2: Type of equity incentive: What type of plan supports those company goals?

Step 3: Setting up the equity incentive plan: What documentation is required and how can the plan be best implemented?

For more information, please review our KPMG Flash Alert or contact the article authors, François Koppenol and Jelmer Post, via email at koppenol.francois@meijburglegal.com and post.jelmer@kpmg.com.

KPMG observations

Employers are encouraged to review their equity structures if they have historically relied on the substantial interest rules and determine if a new plan design is appropriate. KPMG has identified SAR plans as potential alternatives.

Germany: Landmark ruling on the taxation of stock options

On 12 December 2023, the German Ministry of Finance issued a circular confirming the application of the ruling from the Federal Fiscal Court regarding stock option taxation in event of a residence change.

Under German law, the benefit-in-kind received upon exercise of a stock option results in a taxable gain to be allocated proportionally over the applicable grant to vest period for German tax purposes.

The Federal Fiscal Court's decision holds that the residency of the option holder at the time of taxation is critical for the determination and allocation of the right to tax the benefit-in-kind. This means that an option which vests while the option holder is a resident of Germany shall be taxable at exercise in Germany in proportion to the number of days the holder worked in Germany, as well as taxable in Germany on any other country workdays for which there is no right to taxation under a double taxation agreement.

For example, employee X was employed and was a resident of the U.S. in Year 1. In Year 1, X worked 150 days in the U.S., 50 days in Germany, and 30 days in a third country. In Year 2, X is assigned to Germany. X receives a bonus relating to her work in Year 1. Under the new Fiscal Court decision, a total bonus component of 80/230 (50 days in Germany, 30 days in the third country) is taxable in Germany, unless there is a right to taxation under a double taxation agreement with the relevant third country.

For more information, please read our KPMG Insight or contact KPMG Germany, Carmen Ramona Egermann, via email at cegermann@kpmg.com.

KPMG observations

The German Ministry of Finance's inclusion of this decision in the circular is evidence of its importance to the tax authorities and requires employers to act accordingly. This decision not only affects stock option plans but all other deferred compensation arrangements such as bonus payments.

For German tax resident employees their employers will be, in general, responsible for tax withholding and remittance of applicable German taxes under the Fiscal's Courts decision. This new arrangement may lead to increased double taxation for employees in situations where the other country does not consider the resident status at the time of taxation as decisive. . Employers are encouraged to review their employee population that would be impacted by this change to manage any double taxation that may potentially arise under the new rules.

Germany: Improved tax framework for employee share ownership

Germany has enacted the Future Financing Act which alters the taxation of employee incentive programs starting 1 January 2024.

The Future Financing Act (the "Act") has increased the tax-free allowance for non-cash benefits from the transfer of shares to employees at no cost or a discount from EUR 1,440 per year to EUR 2,000 per year. The Act still requires that participation in equity incentive plans be open to all employees with more than a year of employment in order to receive the allowance.

The Act has also extended the opportunity to postpone taxation of a benefit received from incentive programs under Section 19 German Income Tax Act to companies founded no more than 20 years ago with a maximum of 1,000 employees and annual turnover of up to EUR 100MM or an annual balance sheet total of up to EUR 86MM. The end of the deferral is generally triggered when the shares are transferred to a third party. However, the end of the deferral is also triggered when the employee terminates the employment or when a 15-year period has expired. In these two cases, there is an optional liability regime introduced for further deferral of taxation.

For more information, please read our KPMG Insight or contact KPMG Germany, Carmen Ramona Egermann, via email at cegermann@kpmg.com.

KPMG observations

The Future Financing Act has provided new tax benefits to employee incentive programs in order to further incentivize employers to establish and maintain these types of programs. While these provisions are generally beneficial, they will require close coordination between employers, employees, and tax authorities to be properly implemented.

United Kingdom: Europe Transparency Directive: Are you ready for pay transparency?

The EU plans to require member states to implement more concrete measures to close the gender and equity pay gaps. When the Pay Transparency Directive is implemented by member states, it will become mandatory for most companies with European operations to give prescribed information about pay transparency and undertake detail gender pay and pay equity report. The directive will give employees access to information needed to determine whether they are being treated fairly compared to employees in the same company and the necessary tools to claim their right to equal pay.

Currently, there is no obligation in the UK for employers to audit or publish data on equal pay. However, it is likely that many companies with UK and EU operations will want their UK businesses to report in the same way as their EU businesses.

For more details on the EU Pay Transparency Directive and if your Company is prepared, please read our KPMG Article Is your company ready for pay transparency? (kpmg.com) published by KPMG UK or contact the authors, Scott Cullen, Vijay Solanki, and Donna Sharp, via email at scott.cullen@kpmg.co.uk, vijay.solanki@kpmg.co.uk, and donna.sharp@kpmg.co.uk.

KPMG observations

Prior to the European Transparency Directive going into effect, your Company should consider how they're positioned to address calls for pay transparency and how to make your employee reward structures more transparent.

What you might need for effective and transparent pay is an effective underpinning structure, a strong governance process, an understanding of your current position, good communication and an effective use of technology.

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