Global Reward Services Quarterly Newsletter

November 2020

The KPMG LLP (KPMG) *Global Reward Services Quarterly Newsletter* brings you compensation and reward developments, along with KPMG observations from around the world.

In this issue

Americas:

USA – New GLAM provides useful insight into the timing of income inclusion

The Internal Revenue Service (IRS) Office of Chief Counsel has issued a generic legal advice memorandum (GLAM) addressing the timing of income inclusion, application of Federal Insurance Contributions Act (FICA) taxes, and federal income tax withholding with respect to nonqualified stock options, stock-settled stock appreciation rights (SARs), and stock-settled restricted stock units (RSUs).

The GLAM also addresses when an employer must deposit the employment taxes that have been withheld with respect to these awards, including a discussion of the next-day deposit rule that requires an employer to deposit employment taxes with an authorized financial institution on the next banking day after $100,000 or more of employment taxes have been accumulated during a deposit period.

The GLAM does not address the impact of an employer's ability to defer employment tax deposits under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) for the period of March 27, 2020, through December 31, 2020 (see Practice Note, Payroll (FICA) Taxes: Delayed Payment of Employer Payroll Taxes).

Following the release of GLAM 2020-004, the IRS revised the conditions for applying the administrative waiver of late deposit penalties in an internal procedural update to Internal Revenue Manual (IRM) 20.1.4.26.2. The IRS, through this update, has shortened the applicable deadline for depositing owed and accumulated employment taxes related to stock-settled awards from three business days after exercise (T+3) to two business days after exercise (T+2), while also expanding the administrative waiver's applicability to additional types of awards.

This IRM update indicates the following changes: (1) SARs and RSUs. The administrative waiver of late deposit penalties will now explicitly apply to stock-settled SARs and RSUs in addition to stock options; and (2) deposits will be treated as timely if deposited within one day of settlement (assuming the $100,000 next-day deposit rule applies), as long as settlement occurs within two days of indicated dates.

> **KPMG observations:**
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> **Although a GLAM may not be used or cited as precedent, it provides insight and guidance on the IRS's views. The GLAM at issue and subsequent updates provide useful insight into the timing of income inclusion, application of FICA taxes, and federal income tax withholding for stock-settled awards, taking into account the inherent delay of the settlement cycle. Employers should consider reviewing their stock-settled awards to ensure that they are consistent with this new guidance.**

Brazil – Newly published thresholds and reporting requirements

On July 30, 2020, Brazil's National Monetary Council (CMN) recently published the Normative Resolution (NR) n. 4841, which changes the requirements to complete the Brazilian Capital Abroad Reports (CBE), regulated by NR n. 3854/2010.

From September 1, 2020, the annual report will be mandatory for individuals or legal entities resident in Brazil who hold assets and/or investments outside Brazil greater than or equal to USD 1 million, as of December 31, 2020, an increase in the prior threshold of USD 100,000. As for now, the due date falls in early April 2021. However, this date will be confirmed later by the Central Bank of Brazil.

Please note that in addition to the changes to the CBE, the CMN also changed the registration requirement threshold for monetary deposits into the bank accounts in Brazilian Reais of individuals or legal entities resident, domiciled, or headquartered outside Brazil. As per the new NR n. 4844, from September 1, 2020, transactions equal to or greater than BRL 100,000 must be reported to the Central Bank of Brazil via their electronic system (SISBACEN). Previously, this limit was BRL 10,000.

> **KPMG observations:**
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> **By increasing the assets value threshold to USD 1 million (on December 31), the Central Bank of Brazil is in effect exempting many individuals and legal entities resident in Brazil from this additional obligation. Brazilian taxpayers may wish to consult with their qualified tax professional or professional services provider to determine if they will be exempt from the additional obligations.**

Asia/Pacific:

Australia – COVID-19: Clarified application of COVID-19 fringe benefits tax rules

On August 25 2020, the Australian Taxation Office (ATO) clarified the application of the fringe benefits tax (FBT) rules to benefits provided by employers in addition to salary and wages, due to the coronavirus pandemic.

A fringe benefit can arise where employers provide benefits to employees (or their associates) in addition to salary and wages. However, exemptions and concessions are sometimes available to reduce (or eliminate) the amount of FBT due. Importantly the ATO clarified its view in relation to the application of existing legislation and practices given some of the unique circumstances brought about by the pandemic.

The full update addresses a diverse range of topics including, but not limited to, not-for-profit salary packaging, canceled events, COVID-19 testing and more. The ATO clarified a number of items that will typically be exempt from FBT including: (1) Qualifying salary-packaged meal and entertainment provided to employees of Not For profit Organizations; (2) laptops, portable printers, and other electronic devices provided to employees to work from home due to the pandemic; (3) emergency accommodation, food, transport, or other assistance provided to employees; (4) coronavirus tests; and (5) the payment of nonrefundable costs for canceled events.

Items provided to employees to help protect them from contracting the coronavirus are specifically exempt under the emergency assistance exemption where provided to employees who have physical contact with customers or clients or are involved in cleaning, and the more general minor benefit exemption can potentially be utilized where provided to other employees where the benefit is under A$300.

KPMG observations:

Tax may not be the first consideration when providing essential benefits due to the coronavirus pandemic, but companies should review the tax treatment of benefits they have been providing and consider the potential FBT implications when providing future benefits, particularly larger items such as home office furniture where there may be a tax-efficient way of providing the benefit. Parties who are interested in assessing or planning their employee benefits in light of the Australian Taxation Office's update should consult with their professional tax advisers to assess their current situation and determine next steps.

India – COVID-19: Provident fund and pension relief announced

Recent notifications and circulars issued by some of India's regulators, Employees' Provident Fund Organization (EPFO) and Pension Fund Regulatory and Development Authority (PFRDA), provide much-needed relief to employers and employees, Provident Fund (PF) members, and National Pension Scheme (NPS) subscribers that are currently under stress due to the effects of COVID-19. Among the measures, there are grace periods for the filing of certain returns, nonrefundable advances from subscribers' PF accounts, and partial withdrawals from the National Pension System under certain conditions.

Additionally, pursuant to the announcement, EPFO has issued scheme guidelines pertaining to Pradhan Mantri Garib Kalyan Yojana (PMGKY) to help eligible individuals impacted by the COVID-19 pandemic. As part of the package, the central government proposes to pay 24 percent of monthly wages into PF accounts for the next three months (i.e., March 2020 to May 2020) for employees with wages below INR 15,000 per month who are employed in establishments having up to 100 employees, with 90 percent or more of such employees earning monthly wages less than INR 15,000. This benefit was extended for three more months, i.e., from June 2020 to August 2020. Eligible employers who have been impacted by the pandemic are encouraged to take the benefits provided by the government.

Furthermore, the mandatory employer and employee contributions were reduced to 10 percent each from 12 percent each for three months (i.e., May, June and July 2020). This is applicable to all employers (other than government company and companies covered in above).

EPFO had issued a circular dated May 15, 2020, which states that no proceedings should be initiated on establishments covered under the PF Act for levy of penal damages on account of any delay in the payment of any contributions or administrative charges due for any period during the lockdown.

KPMG observations:

Companies that have been impacted by the pandemic and are eligible to take advantage of these relief measures should consider taking advantage of the updates outlined above. Parties who are interested in assessing or planning their employee benefits in light of the EPFO and PFRDA's notifications should consult with their professional tax advisers to assess their current situation and determine next steps.

Europe:

Ireland – COVID-19: Employment Wage Subsidy Scheme introduced

The Irish government introduced a new Employment Wage Subsidy Scheme (EWSS) on July 23, 2020, which applies from July 1, 2020 and is expected to be in place until March 31, 2021. Under the EWSS—which is intended to help support businesses and employees detrimentally impacted by the coronavirus crisis—the employer will pay the employee his normal wages, and following the submission of the payroll return, will then receive a subsidy from the revenue in respect of eligible employees. The EWSS will operate in parallel with the Temporary Wage Subsidy Scheme (TWSS) for July and August before replacing the TWSS from September 1, 2020. An employer cannot receive EWSS support in respect of an employee where TWSS is being claimed for the employee during this period.

The scheme provides those employers that have been significantly impacted by COVID-19 with welcome financial support for the next nine months, to help with the recovery of their business and the wider economy. Employers should therefore be aware of this scheme and assess the eligibility requirements, as they may be able to avail themselves of this new scheme.

For employers that have previously availed themselves of the TWSS, its important they are aware of the changes as the TWSS ceased as of September 1, 2020.

Note that while the subsidy will predominantly impact those employed locally in Ireland, it should be considered whether any expatriates could qualify.

KPMG observations:

The initial drafting of the scheme excluded individuals who are proprietary directors of a company. It would seem, however, that following a government announcement on July 31, 2020, proprietary directors who retain ordinary employees on payroll will also be eligible with effect from September 1, 2020. A finance bill amendment is anticipated in respect of this.

Individuals connected with the employer (unless such connected persons received pay from the employer between July 1, 2019 and June 30, 2020) are excluded from EWSS currently.

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