Global Reward Services Quarterly Newsletter

December 2023

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

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Africa

South Africa: Updates to the Draft Tax Administration Laws Amendment Bill

In our last GRS newsletter, we covered the Draft Tax Administration Laws Amendment Bill, which proposed that the distinction between resident and nonresident employers would be removed (click here). As of November 2023, updates to the amendment were proposed that narrowed the scope to **only** apply to those nonresident employers who conduct business through a permanent establishment (PE) in South Africa. The obligation to deduct employees' tax would also expand to include all representative employers (previously limited to representative employers of nonresident employers). Please note, whether the definition of a representative employer extends to a Professional Employer Organization or Employer of Record should be determined on a case-by-case basis.

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Beginning January 2024 (anticipated date of promulgation of the proposed legislation) all nonresident employers with a PE in South Africa must be registered as an employer with the South African Revenue Service (SARS) and deduct employees' tax (PAYE) from remuneration paid to their employees. The obligation to withhold PAYE arises when the employee has a liability for normal tax, which occurs if the individual earns annual taxable income exceeding the tax threshold (R95 750 or about USD 5,211 in respect of the 2024 South African tax year). In addition to PAYE withholding, nonresident employers with a PE in South Africa will have an obligation to pay Skills Development Levies (SDL) and make Unemployment Insurance Fund (UIF) contributions to SARS.

Once the legislation is in effect, nonresident employers with a PE in South Africa or their representative must comply with local payroll compliance obligations, which include the submission of monthly payroll tax returns with payments to SARS and issuing annual employees' tax certificates by the relevant deadlines. Noncompliance or late payments will result in the employer being subject to a 10 percent penalty as well as interest.

For more information, including details on the definition of a PE, please read our Tax and Legal News Alert published by KPMG South Africa and our KPMG Flash Alert.

KPMG observations

Nonresident employers with a PE in South Africa should note this imminent requirement for payroll withholding and ensure that they are ready to comply **should** the legislation become effective during January 2024.

Engaging a reputable service provider to assist with Companies and Intellectual Property Commission (CIPC) registration, PE assessment, or to manage payroll compliance in South Africa is highly recommended.

Americas

United States: California State Disability Insurance Wage Base Removed

Under California Senate Bill No. 951, effective January 1, 2024, the California wage cap for State Disability Insurance (SDI) will be eliminated. As such, the SDI tax will be applicable on all taxable wages including equity. In 2023, the California wage base was $153,164 with a contribution rate of 0.9 percent. The SDI rate will increase to 1.1 percent for 2024.

For more information, read here.

KPMG observations

This new bill will impact all employers with employees working in California. Previously, high earning employees benefited from the SDI caps in California, but now will owe nearly 1 percent more in SDI tax on income over the previous threshold. This change will also be important for employers, who will be responsible for withholding the taxes due. The SDI cap removal will also impact recipients of equity awards, as award income that may have previously been capped will now be subject to the 1.1 percent withholding. Employers should be sure to coordinate with their share plan administrators and/or tax service providers to include this additional amount in withholding on tax settlement equity awards. Proactive employee communications to impacted equity plan participants is recommended.

For more state and employment tax updates, please review KPMG's latest Payroll Insights.

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United States: Terminated Tax Treaty with Hungary

Earlier in 2023, the United States informed Hungary that the Income Tax Treaty between the two countries will be terminated, and therefore no longer provide benefits to individual taxpayers. The expiring benefits include lower tax rates on certain income, exclusion for certain employment income, and relief from double taxation.

For more information, read here.

KPMG observations

Employers need to be aware of the impacts of the termination of the US-Hungary Income Tax Treaty as of January 1, 2024. From an equity perspective, the gain from the sale of stock would no longer be subject to exclusive taxation in the taxpayer's country of residence, which could potentially lead to double taxation.

Additionally, for awards that vest/are exercised after December 31, 2023, the exemption from host country source employment income under the Dependent Personal Services article would no longer be available. This means that individuals who receive equity awards and work in the US for a certain period may be subject to US tax on the US source portion of their income. Relief from double taxation in this case would depend on Hungary's domestic tax laws.

Finally, note that dividends paid on vested or exercised equity awards by a resident company to a treaty resident of another country would no longer be subject to a reduced tax rate in the resident country.

Employers should consider all these implications prior to granting equity awards to employees, as well as communicate these changes to impacted mobile employees.

United States: T+1 Update/Reminder

As an industry, corporate issuers who are registered in the US are preparing for the change to T+1 settlement scheduled for May 28, 2024, including the impact that the accelerated settlement may have on their stock option and restricted stock unit programs. Many companies have formed working groups with key internal stakeholders and service providers to prepare/revisit processes in readiness for a shorter turnaround time.

For more information, read here.

KPMG observations

More companies are working with their third-party tax providers and share plan administrators to work through processes and procedures. HR data cleanups are underway to ensure employee work history is available for the life of stock options and has a more automated way of being refreshed. In general, corporate issuers are identifying automation opportunities for their equity program so they have either tax settlement rates on file or a faster method to return taxes in real time. Importantly, this change only applies where there is a sale of the stock in the open market, in a sell to cover transaction, not in a net settlement or withhold-to-cover process.

See T+1 is coming for stock options: Is your company ready? webcast replay or other T+1 materials at SEC final rule for T+1 settlement cycle (kpmg.com) and Timing of employment taxes for RSUs under current SEC settlement timelines (kpmg.com).

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Brazil: Changes to Individual Taxation, Reporting of Foreign Income and Assets

On April 30, 2023, the Brazilian government published Provisional Measure No. 1,171/2023, which introduces changes to taxation rules applicable to individuals, including the progressive federal income tax table's brackets. The possible changes in the Brazilian individual tax legislation are still under discussion and approval by the Brazilian congress.

In addition to the tax rate tables adjusting as of May 2023, the Provisional Measure (the Measure) also will have an impact on equity recipients, effective January 1, 2024. Notably, new progressive tax rate tables apply to Brazilian tax residents and those who receive income from capital invested abroad, including from the sale of stock traded on a foreign exchange. The updated tax tables will result in taxes due for employees on their tax returns. Also note that the Measure revokes the exemption previously applied to capital gains on the sale of assets held abroad by tax residents in Brazil when the asset had been acquired during their period of nontax residence.

Lastly, note that the Measure will also impact dividend treatment received by shareholders of a foreign corporation.

For more information, read our KPMG Flash Alert.

KPMG observations

Employers should note that several favorable rules for capital gains on the sales of assets held overseas and dividends paid on foreign assets have been repealed, which could result in increased tax burden compliance and payment of any tax owed. Employers must consider how this will impact their employees who are receiving equity awards while in Brazil, or who move into Brazil after acquiring company shares. Proactive communication to employees impacted is recommended.

Asia Pacific

South Korea: 2023 Tax Law Amendment Bill

South Korea's 2023 Tax Law Amendment Bill (the Bill), which was announced on 27 July 2023, is currently under review by the National Assembly. It is expected to be confirmed toward the end of this year after it goes through an extensive legislative process. Key features of the bill for compensation and equity professionals include the extension of the electable flat tax rate, as well as a new filing obligation for stock-based compensation transactions for foreign corporations.

The tax cost for inbound expatriates in South Korea is likely to be lower as a result of the extension of the flat tax rate. The rate was set to sunset as of December 31, 2023; however, the Bill provides for the extension through 2028. Under the Bill, a foreign worker who first begins to provide labor in South Korea on or before December 31, 2028, can elect to have the 19 percent flat tax rate (20.9 percent including local income tax) applied to their employment income until the taxable period that ends within 20 consecutive years from the date the foreign national first provides labor in Korea. Other statutory components of the flat tax remain intact. While the 19 percent flat rate may not be beneficial for all employees, it is advised that compensation professionals note this

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benefit for employees, and that equity professionals liaise with employees to understand the employee's election, and how this impacts their applicable withholding rate.

The Bill also provides that domestic corporations or domestic places of business of foreign corporations in South Korea are now required to report stock-based compensation received or exercised by their employees if the compensation is paid by a foreign corporation with foreign controlling ownership. The filing should include detailed information about grant and exercise schedules, payment schedules, exercise/payment profit, employee personal information, and more, for stock-based compensation exercised or received from January 1, 2024. The filing deadline is March 10 of the following year.

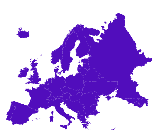
For more information, read our KPMG Flash Alert.

KPMG observations

South Korean companies and foreign companies with offices in South Korea should assess their equity compensation plans to understand if they now have a new annual filing obligation. For more details on which organizations will be required to file, please refer to our GMS Flash Alert.

Additionally, equity professionals should track flat-rate elections by employees and coordinate with their share plan administrators to ensure proper withholding rates are applied on share-based compensation. Please refer to our Flash Alert for flat rate election eligibility.

Europe



Ireland: Share Options Taxation for 2024

The Finance (No.2) Bill 2023 released in October mostly contained measures aimed at implementing tax initiatives previously announced in the Minister for Finance's Budget speech on October 10, 2023. However, one key measure for equity compensation professionals to note is the change to reporting requirements for certain award types.

The Bill outlined that gains realized on the exercise, assignment, or release of a share option will now be included under the PAYE regime for gains realized on or after January 1, 2024 instead of the self-assessment system. Previously only stock options (and certain ESPPs depending upon the plan rules) were not subject to the PAYE regime, instead taxes were payable by employees within 30 days of exercise.

Employers will now be responsible for calculating and collecting tax as part of their employer PAYE returns, as they do for other equity award types (i.e., Income Tax, Universal Social Charge and Pay Related Social Insurance), while employees may still be required to file an income tax return.

For more information, read here.

KPMG observations

Given that employers will now be responsible for processing share option gains through payroll and collecting the relevant taxes due as part of their employer PAYE returns, companies will need to revisit their internal processes to ensure they can accurately capture the data related to these gains. Furthermore, organizations should coordinate with their Share Plan Administrators and tax service provider to ensure accurate award processing.

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Netherlands: 2024 Tax Plan Package Presented

In September, the Dutch tax authority presented the 2024 Tax Plan. The Tax Plan Package (the Plan) highlights, among other measures, significant changes related to tax rates, payroll tax and social security contributions, as well as makes updates to various items which will impact how employers may choose to compensate employees.

Of note, the Plan confirmed that there will be a maximum limit introduced for the 30 percent expatriate regime ruling, meaning the benefit will be capped at €69,900 from January 1, 2024, causing an increase in an individual's top income tax rate from 34.65 percent to 49.5 percent if their employment income exceeds €233,000. For those already using the 30 percent ruling in December of 2022, they will be grandfathered in until January 1, 2026. As of November, the 30 percent ruling will be grandfathered in and they can still benefit from the partial foreign taxpayer status through to 2026. The change was adopted as part of 2023 Tax Plan Package and is coming into force per January 1, 2024.

This change may negatively impact the tax burden of employees in the Netherlands or employer costs if an assignee is tax equalized. Employers should also be aware of other proposed changes announced in this Plan that impact compensation, including changes to untaxed travel allowances, and as well as simplification of the public transport exemption.

The Tax Plan's measures will likely affect the Dutch income tax liability of employees, employer obligations and administration, and assignment-related costs. The proposal will come into effect after approval by the Houses of Parliament, which is expected at the end of December.

For more information, read our KPMG Flash Alert.

KPMG observations

Employers with employees in the Netherlands will need to incorporate these changes coming into effect. Beyond the changes to income and social tax bands and rates, it is critical to complete an assessment on who will be impacted by the change in the 30 percent expatriate concession. As equity awards are typically offered to the highest-compensated employees, the limitation of the 30 percent ruling may make offering equity to employees in the Netherlands less tax efficient. The Plan proposed to scale back the 30 percent ruling to 20 percent after 20 months and 10 percent after 40 months, making employees in the Netherlands much less tax efficient over the course of the five-year implementation. We will continue to monitor progress of this bill and its impact in this area.

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Contact us

Terrance Richardson
Principal, Tax
National Global Reward Services Lead
T: 214-840-2532
E: trichardson@kpmg.com

Kathy Lo
Principal, Tax
Global Reward Services
T: 415-963-8988
E: kathylo@kpmg.com

Ryan McDonald
Principal, Tax
Global Reward Services
KPMG Benefits Services
T: 585-263-4098
E: ryanmcdonald@kpmg.com

Parmjit Sandhu
Principal, Tax
Global Reward Services
T: 212-954-4063
E: parmjitsandhu@kpmg.com

Dinesh Sinniah
Partner, Tax
Global Reward Services
T: 312-665-3603
E: dsinniah@kpmg.com

Leann Balbona
Managing Director, Tax
Global Reward Services
T: 212-872-3671
E: lbalbona@kpmg.com

Kelly Davis
Managing Director, Tax
Global Reward Services
T: 480-459-3500
E: kellyadavis@kpmg.com

Ashra Jackson
Managing Director, Tax
Global Reward Services
T: 215-982-0823
E: ashrajackson@kpmg.com

Kerri McKenna
Managing Director, Tax
Global Reward Services
T: 267-256-1951
E: kerrimckenna@kpmg.com

Eric Myszka
Managing Director, Tax
Global Reward Services
T: 312-665-1000
E: emyszka@kpmg.com

John Tomaszewski
Managing Director, Tax
Global Reward Services
T: 212-909-5561
E: johntomaszewski@kpmg.com

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