Global Reward Update – Wrap up

August 2023

We hope you are enjoying the summer. We thought it would be a good time to circulate a few key changes impacting global incentive plans since our last update. Some are an update on information provided in previous Global Reward Updates (GRUs) and others are new developments.

We hope this summary is useful, and if you have any questions, please do get in touch with your usual Deloitte contact or any of the Incentives partners listed on the final page.

Please use the links below for each of the country updates:

Global tax & legal updates

Global tax & legal updates

Albania: New law on "income tax" (Law No. 29/2023) has been published

Law No. 29/ 2023 was published in Albania's official gazette on 2 May 2023. The new law introduces significant changes to corporate income tax, individual income tax, and withholding tax and will become fully effective on 1 January 2024.

From an individual income tax perspective, important amendments include: a broader definition of tax residence, the categorisation of income into three distinct types (employment, business, and investment), an extension to the scope of employment income, the introduction of controlled foreign company rules, the introduction of taxation of inheritances and gifts, and a revised tax rates system for employment income with a seven-month transitional period as from 1 June 2023.

Whilst full details of the changes impacting both individuals and businesses have been set out in our Tax @ hand article (here is a link), we thought it would be helpful to note the following:

- Under the new regime, employment income of up to Albanian Lek (ALL) 2,040,000 (approx. $21,258) per annum, will be taxed at 13% and at 23% in excess of ALL 2,040,000. Between 1 June 2023 and 31 December 2023, a transitional regime will apply and employment income will be taxed at current progressive rates.
- The tax will be withheld monthly by the employer and paid to the tax authorities by the 20th day of the following month (this may mean a change to the existing approach to settlement of tax arising from share income, depending on specific circumstances).
- A new form, known as the "statement on personal status" will be introduced to be signed by the employer and employee. The employer named on the form will calculate the tax payable on employment income and will deduct from the tax base each month 1/12th of the relevant personal allowance, depending on the level of annual income.

Please let us know if you would like further information about the expected changes arising as a result of the new law. Further detailed instructions on the implementation of each article of the new law are expected to be approved and issued during August 2023.

Canada: Introduction of Employee Ownership Trusts

The 2023 Canadian federal budget introduced a new type of entity, the Employee Ownership Trust (EOT), to facilitate the sale of a controlling interest in a qualifying business from its business owners to a trust for the benefit of its employees as a group (similarly to an "Employee Stock Ownership Plan" in the US or an EOT in the UK). The new reliefs offered to business owners and their employees are intended to encourage the transfer of companies to the benefit of employees in a tax efficient manner.

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Canada: Introduction of Employee Ownership Trusts (continued)

The proposed EOT rules would allow a controlling interest in the business to be acquired by the EOT using borrowed funds from the business itself with an extended repayment period of up to 15 years, without adverse tax consequences. The capital gains reserve will be increased from 5 years to 10 years, thereby extending the deferral period available in relation to capital gains tax which is payable on the sale of a business to an EOT (such that only 10% of the gain on deferred proceeds needs to be bought into income annually). An EOT is also exempted from the 21 year deemed disposition rule which is applicable to most Canadian trusts.

As the qualifying conditions are stringent, an EOT will generally be a suitable structure for succession planning of a Canadian-controlled private corporation only where employee ownership is considered as a long-term ownership model for the business. An EOT must maintain a controlling interest in the company at all times and only ever be used to hold shares in the business for employee beneficiaries, and to make distributions to qualifying employees.

The current proposals are expected to be effective from 1 January 2024 but may be subject to further changes. As there are a number of qualifying conditions which are beyond the scope of this wrap-up, please contact us if you would like our assistance with considering whether an EOT would be suitable for your employee incentive arrangements.

We will keep this under review and publish further updates in due course.

Germany: Proposed increase to annual tax-exempt amount

There have been several proposed changes to the legislation, currently in draft, which are expected to be implemented from 1 January 2024, as summarised in the below updates for Germany:

As discussed in our Global Wrap Up in December 2021 (here is a link), Employees in Germany are able to benefit from a tax-exempt amount of €1,440 per calendar year when they acquire (company) shares as a result of their employment (which gives rise to a tax liability) provided that the Plan is in principle offered to “all employees” and real shares are delivered. The applicable tax exemption may be applied by the German employer when operating withholding.

It is proposed (but no final decision made by the government) that this limit will be increased to €5,000 per calendar year, such that employees will be only pay income tax to the extent that they receive taxable income from employment related securities in excess of this limit.

We will keep this under review and will provide any necessary updates.

Germany: Proposed flat rate of income tax on ERS

It is proposed that a flat rate of tax of 25% will be introduced which will apply to any income arising on the acquisition of employment-related securities (ERS), such that the income will be taxed at the flat rate rather than the employee’s marginal rate of tax (which is up to 45%).

We will keep this under review and will provide any necessary updates.

Germany: Proposed tax point deferral for private companies

As it currently stands, the award of shares (in a private company) to an employee free of charge, or at a discounted price, may result in an employee being subject to a 'dry tax charge'. To counter this issue, new draft legislation proposes to expand the number of companies whose employees are able to benefit from the deferral of tax by doubling the employee limit (to include companies employing fewer than 500 employees); doubling the turnover and assets on the balance sheet limit (to €100million and €86million, respectively); and extending the period in which companies must have been incorporated (preceding the date shares are awarded) from 12 to 20 years.

It proposes to allow the payment of tax to be deferred until the earlier of:

- the point of sale
- 20 years from the date of acquisition; and
- termination of employment. However, where the employer voluntarily assumes liability for the employee's income tax and agrees to recover the liability through withholding, the income tax will only be due on a sale of shares.

We will keep this under review and will provide any necessary updates.

Indonesia: Change in securities law

Under a new securities law regime, all offers of shares in Indonesia after 30 December 2022 by companies that are not listed in Indonesia are considered public offers and need to comply with the Otoritas Jasa Keuangan (OJK) registration requirements unless the 'private placement' exemption applies.

Offers can qualify as a private placement if:

- the overall value of the offer is less than IDR5 Billion (approximately $329,380) in a 12-month period; or
- the offer is made to 100 people or fewer; or
- securities are sold to 50 people or fewer.

Note that, for the purposes of the first limb all offers within a 12-month period will be aggregated.

Where an offer does not qualify as a private placement, companies can apply for exemption from the registration requirements by obtaining a specific approval from the OJK (called a "Stipulation Letter"). Obtaining a Stipulation Letter is likely to be a more expensive and onerous process than obtaining the old "No-Action Letter". It generally requires the filing of an information memorandum and an application letter (each in the local language) with the OJK prior to making an offer under an employee share plan. Preparing and filing the information memorandum will likely involve active engagement with the regulator.

Please contact us if you would like our assistance with considering whether any action should be taken, particularly if an offer to acquire shares has been made after 30 December 2022 and the private placement exemption does not apply.

Malaysia: Change in rules around payroll deductions

Revisions to the Malaysian Employment Act (the "Act") came into force on 1 January 2023 removing the limit on payroll deductions above which approval by the Director General of Labour ("DGL") was needed. Under the old rules, approval from the DGL was only required where payroll deductions (for example under an employee share purchase plan) would be taken from employees earning less than MYR 2,000 (approx. £340) per month. With the revisions to the Act, the MYR 2,000 cap no longer applies and Companies operating a share plan where any payroll deductions are made must obtain approval from the DGL.

While there is an exemption available for employees purchasing shares in their employer, this does not appear to extend to shares in overseas parent companies. The low limit under the old rules meant that, for some companies, DGL approval has not previously been needed for employee share purchase plans. Companies will need to be aware that DGL approval is now required in all cases and can take 10-12 weeks to be granted.

Please contact us if you would like our assistance with considering whether approval of plans involving payroll deductions is required.

Portugal: Changes to taxation of stock option gains in early-stage companies

As discussed in our Global Wrap Up in April 2023 (here is a link), the Portuguese government proposed new legislation changing the taxation of employee stock option gains (including phantom share plans) in certain early-stage companies. On 25 May 2023, this legislation was approved and has taken effect retrospectively from 1 January 2023.

The new legislation also introduces and defines the concepts for start-up, scale-up and business angel into law, outlining the conditions that must be satisfied by the relevant company (or individual).

Please contact us if you would like to discuss how this may impact the operation of your plan.

South Korea: Changes to the sale of shares in overseas listed companies

The Financial Supervisory Service of the Republic of Korea issued a notice on 19 June 2023 stating that individuals may be fined for breaching the Foreign Exchange Transaction Act if shares in overseas listed companies are not traded through a domestic (South Korean) brokerage firm. Following the notice, we are aware of Korean banks starting to review inbound payments of proceeds of sales of shares acquired from share plans and highlighting the regulations to the relevant individuals. These individuals may subsequently be subject to fines. We are keeping this under review and will keep you updated.

We recommend employers liaise with their share plan administrator to discuss the possibility of involving a South Korean brokerage firm to trade in shares on behalf of individuals in Korea, and in the meantime consider communicating to employees in Korea the risk of trading in shares. Alternatively, it may be possible to cash settle awards. Please let us know if you would like any assistance with this updated position and mitigation solutions where it is not possible to utilise a South Korean brokerage firm.

South Korea: New reporting requirement on foreign equity-based income

On July 27, 2023, the Korean Ministry of Economy and Finance (MOEF) released its proposed tax law revisions. Whilst this includes a number of proposed changes, we wanted to highlight the planned introduction of new equity reporting for offshore parented companies (including a Korean subsidiary of a foreign company which owns 50% shares or more directly or indirectly, and a Korean branch office of a foreign Headquarter).

It is proposed that from 1 January 2024, these companies would need to report transaction details of equity-based income or equivalent, including personal information of employees, income amount, and grant and vest details of foreign shares by the 10th of March of the following year.

For the past few years, we have seen the National Tax Service (NTS) requesting transaction details of foreign equity-based income from selected foreign companies, but this update would expand this to a much larger portion of foreign companies.

Until these proposals are finalised, we will keep this under review and keep you updated.

United Kingdom: HMRC Guidance on net settlement and cash cancellation

HMRC have published new guidance on the corporate tax treatment of net settled awards or cash cancelled share options (exact HMRC guidance can be found here). Net settlement occurs where an employee partially disposes of the right to acquire shares in exchange for a cash payment to settle tax amounts due at vesting/exercise (e.g. PAYE, NIC), while cash cancellation occurs when an option is cancelled and settled instead by a cash award (net settlement is more common in US parented companies than for UK PLCs; cash cancellations on the other hand occur more frequently on a transaction). The guidance confirms that a deduction is allowable for corporation tax on the cash settled element of the options, however, this should be limited to the lower of the accounting charge and the amount on which the employee is liable to UK income tax.

HMRC's guidance also states that, where expenses have been incurred in relation to cancelled options in previous years, a corporate tax deduction for them cannot be taken in the year that the award vests/option is settled (but companies may be able to amend previous years' returns). If an employer makes a cash cancellation payment greater than the fair value of the option, this excess should be charged separately to the profit and loss account and would be deductible under general principles.

We recommend that employers who net settle or provide cash cancellation for options review their corporation tax return in order to ensure that the company is accounting for the correct deduction.

We will advise on further developments in due course as we are seeking clarification on some aspects. Please let us know if you would like assistance with this new guidance.

United Kingdom: SIP and SAYE call to evidence

As mentioned in our April 2023 Global Wrap Up (here is a link), the government launched a call for evidence on Share Incentive Plan (SIP) and Save as you Earn (SAYE) share schemes on 5 June. As part of the call for evidence, a consultation document was published which uses 24 questions to discuss the current usage, effectiveness, and flexibility of the schemes, along with their suitability with lower-income earners and a comparison with other performance incentives.

The deadline for submission is 25 August, so we will keep this under review and advise of further developments in due course.

United Kingdom: Taxation of EBT and EOT consultation

An Employee Benefit Trust (EBT) is a trust which is set up for the benefit of the employees or office holders of a company or group of companies. An Employee Ownership Trust (EOT) is a specific type of EBT where trustees own and exercise control of the company for the benefit of all the employees.

A consultation was published by the government (here is a link), on 18 July seeking views on proposals for targeted reform of EBT and EOT regimes which will run for 10 weeks ending 25 September.

We will keep this under review and keep you updated as further developments occur.

United Kingdom: EMI grant notification deadline extended

As mentioned in our April 2023 Wrap Up update (here is a link), on 18 July 2023 HMRC published draft legislation to extend the deadline for reporting EMI option grants. This will be effective for EMI options granted on or after 6 April 2024.

Full details can be found on the government website here.

We will keep this under review and keep you updated as further developments occur.

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