

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

Topics included in this issue:

Americas

- **United States:** Multistate Reporting of Compensation
- United States: Employer's Role in Rescue Act COBRA Subsidies and Tax Credits
- United States: American Families Plan Revealed with Tax Increases on High-Income Individuals

Asia/Pacific

- Australia: Plan Now for Employee Share Scheme Reporting
- Australia: Budget Measures on Tax Residency and Equity Schemes
- South Korea: Modifications to Income Tax Rates, Tax Exemptions, and More

Europe

- **Greece:** Greater Clarity from Tax Authorities on Taxation of Equity Income
- Switzerland: Updated Swiss Equity Compensation Reporting Requirements
- United Kingdom: July 6, 2021 Employee Share Plan Reporting Deadline

Americas





United States: Multistate Reporting of Compensation

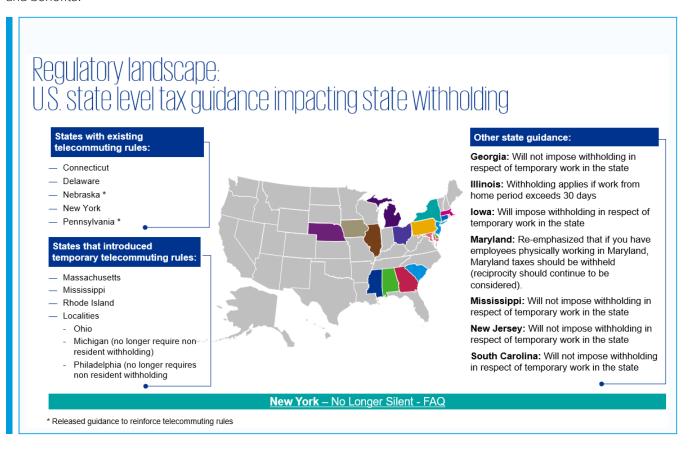
Since the pandemic began, many companies have had remote working in place, and organizations have continued these work arrangements into 2021. As a reminder, there are five U.S. states that have telecommuting rules: Connecticut, Delaware, Nebraska, New York, and Pennsylvania. In addition, there are states and localities with temporary telecommuting rules, which are outlined in the below diagram.

Due to these telecommuting rules and the current complexity around remote workers as a result of the pandemic, companies should have processes in place to track where their employees are actually working from day to day. Payroll

reporting can be complex when telecommuting rules come into play, and KPMG is seeing many questions around processes and systems to accommodate these rules.

Moreover, KPMG is seeing cases where corporate headquarters are being moved from high-, to low-, or even no-tax states. When employees also move from the headquarters state to another state, and have reward/incentive compensation earned over a year or more (e.g., short-term incentives such as cash bonuses or long-term incentives such as stock options, restricted stock, or performance units), a trailing state tax liability generally will be created. Employers may be responsible for reporting and potentially withholding on the reward/incentive compensation in the different states the employee has worked in.

For employers, the criteria for which employees are considered "mobile" has expanded greatly due to these state-to-state moves and could possibly include entire workforces that receive reward/incentive compensation. In addition, these same rules generally apply to regular wages and benefits.



KPMG observations:

Tax settlement on equity awards can become challenging for corporate issuers. Knowing the rules between states if reciprocity or tax credits are allowed, what to report (full, sourced or none) can be challenging. Companies will need to address this area now so they are not caught by surprise upon state payroll tax audits. Over withholding should also be avoided particularly if withholding shares as companies will not want to over withhold shares from a plan participant.

If your organization needs assistance with evaluating or addressing these situations, please contact your KPMG service team member or those listed on this newsletter.



United States: Employer's Role in Rescue Act COBRA Subsidies and **Tax Credits**

The ongoing global pandemic has resulted in many challenges for the workforce, including involuntary termination of individuals by their employers or a reduction in the individuals' work hours. These actions have been made more difficult for employees since they must make critical decisions regarding whether or not they will continue making costly payments into the employer sponsored health plan, through COBRA benefits. Fortunately, the American Rescue Plan Act of 2021 (Rescue Act) contains a useful provision for impacted individuals.

The Rescue Act provides two key benefits for affected individuals:

- I. IA 100 percent COBRA subsidy for up to six months, from April 1 through September 30, 2021, for any individual who lost health coverage due to either an involuntary termination or involuntary reduction in hours
- II. A "second chance" to make COBRA elections in light of the subsidy, even if they let their coverage lapse previously

Since the "subsidy" is technically a tax credit, employers will need to take several actions, including:

- I. Determining the individuals/dependents who lost health coverage on or after November 1, 2019 due to either of the two reasons stated above
- II. Sending a notice to these individuals by May 31, 2021
- III. Permitting individuals to enroll in other health plans offered within 90 days of the notice, if the new health plan option is less expensive than the health plan in which the employee was previously enrolled
- IV. Offsetting COBRA costs by claiming a credit against Medicare taxes.

From an individual perspective, impacted persons will have 60 days after receipt of the notice to elect COBRA benefits. Note, these elections are not retroactive and only provide coverage on a go-forward basis. Additionally, participants who become eligible for other group health coverage or Medicare, are not eligible for the subsidy and are responsible for notifying the employer if and when they lose eligibility.

Please also note that the IRS recently issued Notice 2021-31, which provides guidance on the COBRA premium assistance in a series of 86 questions and answers. The notice provides clarity on administering premium assistance subsidies and tax credits.

For more information, read our KPMG report.

KPMG observations:

The update to COBRA subsidies provided by the Rescue Act will have implications for employers. As more impacted individuals elect COBRA coverage, employers may see additional claims that affect insurance or stop-loss insurance renewals. Furthermore, since many employers rely upon a COBRA administrator, it is important for organizations to coordinate as soon as possible with their COBRA administrators on required notices and the information necessary to claim the payroll tax credit.

Since there are still several open questions with respect to COBRA subsidies, including some of the details around how employers apply for the credit and if such subsidies are considered parachute payments for IRC section 280G purposes, please be on the lookout for future KPMG updates on this topic.



United States: American Families Plan Revealed with Tax Increases on High-Income Individuals

The White House recently released a fact sheet outlining several provisions contained in President Biden's proposed American Families Plan (the Plan). The Plan contains several proposed tax law changes that will impact high earning individuals and their employers.

One of the changes outlined in the proposal is to increase the top individual income tax rate. The Plan calls for an increase of this rate back to 39.6 percent, up from the current 37 percent. Along with increasing the top individual income tax rate, the Plan would also reduce the top marginal tax bracket threshold for all filers.

In addition, under current legislation, long-term capital gains are taxed at a rate of 0 percent, 15 percent, or 20 percent, with the applicable tax rate being based on a taxpayer's taxable income and filing status. However, if enacted, the Plan would modify these rates by imposing a 39.6 percent tax rate on long-term capital gains for households with income over \$1 million (\$500,000 for taxpayers who are married and filing separately).

The Plan also includes proposals related to the taxation of unrealized capital gains at death, and elimination of the stepped-up basis for gains in excess of certain thresholds.

For more information, read our KPMG report.

KPMG observations:

While the Plan still needs to be negotiated in Congress, it is important for employees and employers to consider the potential impact these law changes could have on them.

From an employee perspective, actual U.S. tax obligations may increase for high earning individuals. This increase would be seen both on ordinary income employees receive, as well as on the proceeds realized from the sale of long-term equity incentive compensation received. To see a hypothetical example of how these tax increases could potentially impact an individual who receives equity compensation, please refer to Exhibit 1 below.

For employers, the costs of their mobility programs could increase if U.S. tax costs rise. Additionally, it is worth considering that increases in capital gains rates would reduce the benefit employees receive when being awarded certain types of incentive compensation, particularly equity awards.

Additional detail on these and other proposals in the Plan can be found in the President's Fiscal Year 2022 budget and related Green Book. Please keep an eye out for future KPMG Flash Alerts on this topic as more details on the Plan and legislative updates are made available.

Exhibit 1: High-level illustrative comparison of the taxation of equity compensation

Assumptions				
Tax filing status	Single filer			
Annual income	\$1,500,000			
Equity compensation	\$500,000			
Gain at sale (over 12 months later)	\$200,000			

	Before Tax Changes		After Tax Changes		Net Increase	
	Tax Rate	Taxes Due	Tax Rate	Taxes Due	Tax Rat	e Taxes Due
Federal Income Tax Due Upon Acquisition of Equity	37%	\$185,000	39.6%	\$198,000	2.6%	\$13,000
Long-Term Capital Gains Tax Due at Future Sale of Equity	20%	\$40,000	39.6%	\$79,200	19.6%	\$39,200
Total Taxes Due on Equity Income		\$225,000		\$277,200		\$52,200

^{*}This high-level example does not include certain other taxes such as FICA and additional Medicare, state and local/city taxes, or the net investment income tax (NIIT). This example assumes the equity is taxed at the highest marginal Federal income tax rate, based on the individual's total annual income.





Australia: Plan Now for Employee Share Scheme Reporting

Employers operating in Australia have an obligation to report taxable Employee Share Scheme (ESS) transactions on an annual basis. This deadline is quickly approaching and companies should start the data gathering process as soon as possible.

For the Australian tax year ending on June 30, 2021, employers must provide their employees with ESS statements by July 14, 2021 and submit their annual ESS report electronically to the Australian Tax Office (ATO) by August 16, 2021.

ESS filings should include all types of equity compensation, such as option exercises, share purchases through employee share purchase plans, and restricted and performance share awards.

For more information, read our KPMG report.

KPMG observations:

Filing ESS returns timely and accurately can be a time-consuming process for various reasons, including the following:

- I. Multiple updates to ESS legislation over the last two decades
- II. Data that is required to file tends to be extensive and found in various parts of an organization
- III. Australia's unique rules regarding what is considered a taxable event
- IV. Short turnaround between the June 30 year-end and the first reporting deadline of July 14

With all of this in mind, employers should focus on gathering their necessary data as soon as possible to avoid additional stress during what is always a very busy early July period. If your organization works with a third-party provider to assist with ESS filings, we advise starting those discussions as soon as possible.

The KPMG market-leading technology, ESS Assist, and our dedicated team of data analysis specialists, can effectively assist organizations with their ESS reporting obligations. If you are interested in learning more about our services, please reach out to your KPMG contact or those listed on this newsletter.



Australia: Budget Measures on Tax Residency and Equity Schemes

On May 11, 2021, the Australian government delivered the Federal Budget (the Budget) for the 2021/2022 tax year. The Budget contained several key measures impacting individual's tax residency and rewards.

Under the Budget, a new primary test that would deem individual's Australian tax residency will be introduced. This test will look to see if an individual was physically present in Australia for at least 183 days during a tax year, and if so, consider the individual a tax resident. If the conditions for this test are not met, secondary tests will apply. While the legislation surrounding these tests has not been formally drafted, it is hoped the new proposals will provide greater clarity for mobile employees with respect to their residency position.

Please note that any changes will be effective as of July 1 following the legislation being enacted. Despite there not being draft legislation at this time, the Budget announcement referenced the Board of Taxation's report on Australian residency from 2019. If the board's recommendations are followed, Australian nonresidents living overseas, who have connections to Australia, and who return frequently to Australia, should monitor the progress of these proposals to understand the impact any changes would have on their tax residency.

Further, the Budget alters the current rules governing Employee Share Schemes (ESS). The updated regulations will remove the "cessation of employment" taxing point for ESS interests (e.g., stock options and stock units) provided to employees. The current rules are disadvantageous for Australian employees, as they have been required to pay tax on ESS interests in the tax year in which their employment terminates. This has been problematic where ESS interests are not vested at the time of termination, and the payment of tax results in adverse cash flow situations. This change will help align Australia's taxation guidelines with the rest of the world.

Finally, the Budget also helps reduce some of the regulatory requirements surrounding ESS for unlisted companies in Australia. Specifically, where such employers charge or lend to employees receiving an ESS interest up to the \$30,000 per employee per year, the regulatory will be streamlined. For those unlisted employers that do not charge or lend to employees, the regulatory requirements will be removed.

For more information, read our KPMG reports on the budget measures and on the Federal Budget 2021.

KPMG observations:

The changes introduced in Australia's Federal Budget 2021/2022 tax year will have a large impact on employers and employees alike.

Changes to the way individual tax residency is determined will have a clear impact on the tax positions taken by employees in Australia. They will also be a key driver for employers by potentially altering the timing of assignments and both their employment tax obligations and the assignment costs of their mobile employees.

In addition, the changes to ESS regulations will be welcome to employees, and also will have an effect on employers, reporting obligations with respect to their equity plans. Finally, the ESS changes around the simplification of regulatory requirements should make it easier for companies to offer ownership interests to attract and retain top talent.

For the KPMG comprehensive analysis of the Federal Budget discussed above, please refer to the following link, or reach out to your KPMG contact: Federal Budget 2021 | Budget insights and analysis - KPMG Australia (home.kpmg)



South Korea: Modifications to Income Tax Rates, Tax Exemptions, and More

A new law approved by South Korea's National Assembly has introduced changes to the top tax rate and the scope of tax-exempt benefits in the country.

Effective January 1, 2021, the top marginal income tax rate in South Korea has increased to 49.5 percent (including local income tax) for taxpayers with taxable income over KRW 1 billion. Additionally, the country's second highest tax rate has increased to 46.2 percent (including local income tax), applicable to income between KRW 500 million and KRW 1 billion. Previously, the top marginal income tax rate of 46.2 percent (including local income tax) applied to all income in excess of KRW 500 million.

Of particular relevance to high earning international assignees, is that a foreign worker who begins working in South Korea before December 31, 2021, can elect to have a flat-tax rate of 20.9 percent (inclusive of local income tax) applied to earnings for five consecutive tax years. This would include the first year the individual starts working in South Korea.

Additionally, prior to 2021, employer-sponsored housing and group insurance premiums valued up to KRW 700,000 were considered tax exempt in South Korea. However, effective January 2021, these benefits are now considered *nontaxable* welfare benefits as a result of the new law.

For more information, read our KPMG report.

KPMG observations:

Changes to the top tax rate in South Korea are of particular interest to multinational employers as hypothetical tax rates for tax-equalized assignees may need to be updated, and payroll withholding rates adjusted as well. Since many high-earning mobile workers could be impacted by these rate changes, the ability to elect a lower flat tax rate for five years is an option for employees to consider with their tax advisers.

Finally, the change in classification from tax-exempt to nontaxable for housing and group insurance benefits could have a large impact on assignees in Korea. Due to the classification change, if an assignee elects the flat tax rate method outlined above, these benefits that were previously excluded from income must now be included in gross income. Overall, this tax law change could result in increased tax burdens and assignment costs.



Greece: Greater Clarity from Tax Authorities on Taxation of Equity Income

Greece's Ministry of Finance recently issued a new circular that provides clarity regarding the tax treatment of the income arising for employees, partners, or shareholders of legal entities. The circular covers income derived from both stock options and free shares (assuming the grants were within the framework of share plans that require either performance or time metrics be met).

Several of the key points of the new circular include, but are not limited to:

- I. Holding period The holding period of shares acquired upon exercise for determination of when the income will be taxed as employment income and when stock options are deemed to be granted are now clearly defined.
- II. Market value of the benefit at exercise Income is now explicitly noted to be the difference between the closing price of the share on the stock exchange at exercise, and the price of the stock at the date of option grant, regardless of the individual's employment status at the time of exercise.
- III. Taxable event is upon transfer of shares The taxable event is now clearly defined as the "time of transfer of shares" which were acquired upon exercise. The circular also notes that a transfer takes place either when shares are sold or when they are donated. If the shares are transferred prior to the completion of 24 or 36 months, depending on the case, from the grant date of the stock options, the income generated is taxable as employment income; otherwise, the income would be treated as capital gains.
- IV. Employer reporting and withholding Companies granting stock options should provide the impacted employees, partners, or shareholders with a hard-copy salary letter relating to the tax year the stock options were exercised. The letter should specify the amount of income and grant date of the stock options. Furthermore, companies should include the respective income in their monthly electronic payroll withholding return.
- V. Free shares tax obligation Income arising for an employee, partner, or shareholder in the form of free shares (e.g., RSUs, RSAs, PSUs, etc.) that require specific performance or time goals be met for the shares to be granted, is now classified as a capital gain and taxable at a flat rate of 15 percent.
- VI. Employer's reporting obligations (free shares) Companies granting free shares should provide employees, partners, or shareholders with a hard-copy salary letter relating to the tax year the free shares were granted. The letter should outline the number of the shares vested, as well as the value of the shares on vest date. Furthermore, companies should include the respective income in their monthly electronic payroll withholding return.

For more information, read our KPMG report.

KPMG observations:

Both employers and their employees who receive equity compensation should be aware of the new circular outlining the tax treatment of income arising from stock options and free shares. After years of ambiguity, this new Circular brings clarity and provides both issuers and recipients of equity compensation with clear guidance on the timing and taxable portions of any shares vested, or stock options exercised, on or after January 1, 2020. Please contact your KPMG service team should your organization need further clarity or assistance in understanding or implementing these updates.



Switzerland: Updated Swiss Equity Compensation Reporting Requirements

The Swiss tax authorities recently updated Circular No. 37 to clarify how employers should report equity related compensation information to the cantonal tax authorities.

All Swiss employers must provide their employees with yearly salary certificates, which include all relevant employment income they received in the applicable tax year. For employees receiving equity compensation, the employer must also provide the employees, and the employee's cantonal tax authority, with additional information in an addendum, or "annex", to the salary certificate. The annex must include relevant information relating to their equity compensation, such as the plan name, grant and vest date, and number of instruments the employee received. This additional reporting requirement applies to all employees receiving equity compensation relating to their Swiss employment, even if the employee has already left Switzerland and only has trailing equity compensation sourced to Switzerland.

The update to Circular No. 37, which came into effect on January 1, 2021, provides much needed clarity on how employers can report equity compensation information to the cantonal tax authorities in a consistent format. In particular, the update contained details regarding:

- I. A standard reporting template (along with sample templates) accepted by all cantonal tax authorities
- II. Support for electronic filing for more efficient delivery to the tax authorities

The update to Circular No. 37 should not only allow companies to use one consistent reporting format for all cantons, but also ease the administrative burden and filing time for employers.

For more information, read our KPMG report.

KPMG observations:

The update to Circular No. 37, which came into effect on January 1, 2021, is relevant for all employers who have a Swiss branch or subsidiary, not just Swissheadquartered companies. The update also affects all employees, both local and mobile, who have had any portion of their equity awards sourced to Switzerland.

KPMG can assist with any difficulties associated with these updates, through the use of KPMG Swiss Equity Annex Reporting (SEAR) technology. Our technology has the ability to:

- I. Process relevant data using standard reports
- II. Help validate data accuracy
- III. Generate templates in both Excel and .PDF formats in multiple languages (German, French, English, and Italian)
- IV. Automate the sharing of files with employees

If assistance is required with understanding the new reporting templates, or if your company would like to utilize KPMG SEAR technology, please reach out to your local KPMG contact or those listed on this newsletter.



United Kingdom: July 6, 2021 Employee Share Plan Reporting Deadline

U.K. employers must register any new reportable arrangements and file all Employment Related Securities (ERS) returns with HMRC on an annual basis, and the deadline is quickly approaching!

Employers have an obligation to report any notifiable events that occur in relation to ERS (e.g., shares or other securities that are either granted or acquired based on employment) on or before July 6, 2021. Employers should also review their prior-year ERS registrations to confirm which plans (if any) were registered previously, and whether any additional registrations are required for 2020/2021.

For plans or other arrangements already registered with ERS Online Services (either for this year or from a previous tax year), if the employer does not submit an ERS return by this year's deadline, an automatic penalty of £100 per registration will apply. Additional penalties will apply where submissions remain outstanding on the following dates:

- I. October 6, 2021 additional £300 penalty
- II. January 6, 2022 additional £300 penalty

Furthermore, HMRC has the option to levy additional penalties on any outstanding returns after April 6, 2022.

Please also note that even if no reportable events occur during a tax year for a previously registered plan, a "nil" return must still be filed by the deadline to avoid a penalty.

For more information, read our KPMG report.

KPMG observations:

As HMRC has yet to indicate if there will be any extension to file ERS returns in 2021, it is imperative that employers submit their relevant returns by July 6, 2021 in order to avoid the above outlined penalties. Companies should also ensure the figures on their returns can be reconciled back to their payroll positions prior to completing their filing.

ERS return templates and associated HMRC guidance can be found by clicking here.

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