

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

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## Americas





# United States: Administrative delays may impact mobile employees

The United States Internal Revenue Service (IRS) is currently experiencing delays in processing applications for Individual Taxpayer Identification Numbers (ITINs). Consequently, these issues will hinder the IRS's ability to review tax returns and issue tax refunds. ITINs are important because they are required for U.S. taxpayers who do not qualify for a Social Security Number (SSN). Instead, these taxpayers must apply for an ITIN to use for their tax filings. This is done by submitting a form W-7, *Application for IRS Individual Taxpayer Identification Number*. This process currently takes ten weeks; however, with tax filing season set to begin, wait times are expected to increase along with the demand for ITINs.

Similarly, the U.S. Social Security Administration (SSA) is experiencing significant delays in the approval of Certificates of Coverage (COCs) that may impact mobile employees. Some countries require that a COC be provided to process visa applications. Consequently, a delay in the issuance of COCs may have a direct impact on the planning of international assignments. In addition, U.S. citizens, or residents who are working abroad for a U.S. employer, are generally subject to U.S. social security and Medicare tax (FICA). They may also be subject to the social security tax of the country in which they are working. In order to eliminate double social security taxes for those individuals, the U.S. has bilateral social security agreements with many countries that contain provisions that allow workers to be exempt from host-country social security tax for a period of time. The host country will generally require that the employer obtain a COC that demonstrates that an employee remains subject to home-country social security tax, which validates exemption from corresponding host-country taxes. The U.S. Social Security Administration has acknowledged delays in approving COCs, partially due to the COVID-19 pandemic.

Read the KPMG Flash Alert.

#### **KPMG** observations:

Employers, domestic and abroad, should be aware of the delays that are currently occurring in issuing both ITINs and COCs. These delays will have financial and administrative implications for employers and their employees. Both parties should begin to plan as far out in advance as possible in order to mitigate the issues that may arise from not having a timely ITIN or COC on file.





## China: New disclosure requirements for employee share ownership plans

In recent years, the Chinese tax authorities have been increasingly focused on individual income tax (IIT). As part of this effort, the State Taxation Administration (STA) recently issued a Circular on further deepening the reform of tax administration to simplify and streamline tax administration processes, and enhance taxpayer experience, with the aim to cultivate and stimulate market vitality. This Circular introduces 15 new measures that enforce tax collection and reinforce tax administration. One of the new enforcement measures attracting a lot of attention imposes additional tax reporting requirements on employee share ownership plans (ESOPs) that better enforce collection of IIT and regulate appropriate use of the preferential tax treatment on qualified equity awards.

The new reporting requirements apply to domestic and overseas public and private companies that have ESOPs in China. Existing ESOPs must satisfy the new reporting requirement by December 31, 2021. Beginning on January 1, 2022, for new ESOPs, companies must complete the required reporting by the 15th day of the month after approval. Additional applicable reporting requirements apply.

The forms for the new requirements specifically include reporting on variable interest entity structures (VIE structures). A VIE is a business structure that allows an investor to own a controlling interest without voting rights. They are often used as special purpose vehicles to passively hold a company's financial assets. The application of the preferential tax treatment for ESOPs

implemented for participants in China under VIE structures has been inconsistent under China's tax bureau. The inclusion of reporting on these structures raises questions around whether the preferential tax treatment can be applied to ESOP awards granted to participants under a VIE structure.

Read the KPMG Flash Alert.

#### **KPMG** observations:

Two categories of companies are going to be impacted: 1) public and private companies that have approved implementation of ESOPs in China and 2) public and private companies that are currently implementing ESOPs in China.

Impacted companies should consider establishing an equity-incentive-based compliance calendar and corresponding standard operating procedures that include the new ESOP reporting.



#### Hong Kong: New Tax Treatment for Equity-Based Compensation

In late-August, Hong Kong's Court of First Instance (CFI) ruled that share grants subject to forfeiture are taxable at grant. This was a reversal of the Board of Review's earlier decision that these share grants were taxable only once the risk of forfeiture lapsed.

The CFI decision involved a Hong Kong taxpayer who had been awarded a share grant while employed in the United Kingdom. In addition to holding the shares, the taxpayer had voting and dividend rights. The taxpayer returned to Hong Kong prior to the lapse of the risk of forfeiture. The Board of Review determined that the benefit of the shares accrued to the taxpayer only once free of the risk of forfeiture. As a result, the share grant was subject to tax in Hong Kong.

The CFI's decision focused on the date that the taxpayer was able to "turn [their] shares into a pecuniary account." As of the grant date, the shares were issued and transferred to taxpayer's agent, held for their sole and absolute benefit, and the taxpayer was entitled to the related dividend and voting rights. The CFI concluded that the forfeiture provisions of the share agreement did not affect the accrual of income and that the Board of Review had erred in its initial decision. Therefore, the CFI's decision draws a clear distinction between vesting and forfeiture. The CFI reasoned that there can be no forfeiture without prior vesting of shares.

Read the KPMG Flash Alert.

#### **KPMG** observations:

This decision is important as it affects the timing and amount of taxation for equitybased remuneration. The Court drew a clear distinction between a vesting period, which defers the accrual of the income, and an outright grant with the possibility of forfeiture on the occurrence of a future event.

Employers establishing share-based remuneration plans will need to understand this distinction and its implications. The case highlights the subtle distinction between vesting conditions and forfeiture provisions which will impact the timing of taxation and share valuation.

For early-stage companies and other incentive arrangements, it may be preferable to pay tax at the grant of shares on a lower value and to have the subsequent gain accrue as capital growth. Therefore, valuations will be an important consideration.

Please note that this alert concerns restricted stock (shares granted to an employee that are nontransferable and subject to forfeiture upon certain conditions) rather than restricted stock units (an unsecured promise by an employer to grant a set number of shares upon completion of a vesting schedule).





## Belgium: Revamping of expatriate regime

The Belgian federal government recently announced changes to the tax treatment for expatriates. As of January 1, 2022, these rules have become codified within the Belgian tax regime.

Expatriates who meet certain criteria related to their: (1) presence in Belgium or near Belgium, (2) tax status in Belgium, (3) employer, and (4) compensation will no longer be considered "deemed non-residents," as is the case under the existing expatriate tax regime. Instead, these individuals will be deemed "Qualifying Employees" subject to normal residence rules. Under the new rules, Qualifying Employees will need to report worldwide income, including their investment income, in their annual income tax return unless they can provide a residence tax certificate from their home country.

Furthermore, certain regularly reoccurring employer-paid expatriate benefits will be tax-free. These payments are capped at 30 percent of the Qualifying Employee's gross remuneration and EUR 90,000 per year. Regularly recurring expenses include:

- additional costs associated with housing in Belgium compared to the country of origin,
- additional costs associated with the cost of living in Belgium compared to the country of origin,
- costs of private travel to the country of origin for the taxpayer, their partner, and their children, and
- costs associated with the visit to the country of origin for a birth, marriage, or death of a family member of the taxpayer or their partner.

Subject to certain conditions, the following additional expatriate benefits are also tax-free:

- costs relating to relocation to Belgium,
- costs relating to furnishing of the home in Belgium, and
- costs tied to school fees for children in Belgium are subject to certain conditions.

The new expatriate tax regime will be applicable for a period of five years, with the possibility for extending it by three years. The existing expatriate tax regime will remain in effect for two years (2022 and 2023), but only for expatriates who started working in Belgium before December 31, 2021. For those expatriates that would like to transition to the new regime and qualify, an application must be completed by June 30, 2022.

Read the KPMG Flash Alerts from October 2021 and November 2021.

#### **KPMG** observations:

The new rules may dramatically impact the tax treatment of expatriates in Belgium and could affect international assignment policies, the costs of sending expatriate employees to Belgium, and the planning of assignments to Belgium.

The draft law on the new expatriate tax regime is not yet final, and the regime's rules may still undergo changes. Expatriate employees in Belgium - or planning to come to work in Belgium - and their employers should consult with their tax service providers about compliance with the new conditions and/or about the choice to remain under the current regime or switch, if applicable, to the new one.



#### Ireland: 2021 PAYE settlement agreement deadline and reviewing noncash benefits

Since the introduction of Real Time Reporting in January 2019, employers have been required to report details of payments made to employees and directors by the date of payment. For notional pay or benefits-in-kind (BIK), the amount is to be reported in the payroll submission by either 1) the day the notional payment is made, or the benefit has been provided; or 2) the earlier of the next pay date or December 31 of the current year.

The 2021 PAYE settlement agreement (PSA) allows employers to settle the income tax, Universal Social Charge (USC), and Pay Related Social Insurance (PRSI) outside of payroll in respect of noncash benefits provided to employees and directors where the benefits provided are minor, in nature and amount, and irregular with regard to the frequency of the benefits that are provided. The items that are typically included in a PSA generally vary by employer, but common examples include noncash gift vouchers provided to employees and directors for food and drinks at seasonal parties, certain staff entertainment, taxis to and from work, gym memberships, etc. These benefits can be difficult to administratively account for and therefore the PSA gives employers a more manageable way of doing so.

The PSA application must be submitted to Revenue by December 31, 2021 and the PSA must be submitted, and the corresponding liability paid, to Revenue by January 23, 2022.

Read the KPMG Flash Alert.

#### **KPMG** observations:

The 2021 PSA application deadline has come and gone. Employers should have reviewed their records and identified any taxable noncash benefits provided to employees and directors on which income tax, USC, and PRSI were not remitted to Revenue via payroll. Employers that have submitted their applications should now be in the process of paying their respective liabilities to Revenue.

Furthermore, there has been heightened Revenue audit and intervention activity in recent months. If employers provide benefits that need to be included in the PSA, they should be cognizant of the PSA deadlines moving forward.



#### Switzerland: Preparing 2021 salary certificates and updates for 2022

Payroll providers around the world are still dealing with challenges presented by the COVID-19 pandemic, and these challenges don't appear to be going away anytime soon. Below are a few of the challenges and considerations Swiss payroll specialists are dealing with when preparing 2021 salary certificates:

- There is uncertainty as to whether payments for the costs of home offices (for example, a lump-sum payment for business use of private homes, or reimbursement for expenses pertaining to work equipment) constitute salary compensation and are thus taxable and subject to social security or tax-exempt expenses.
- Company cars and discounted meals must continue to be reported in box F or G. respectively, regardless of whether the employee works from home or in the office.
- Short-time work compensation paid out by the employer and financed by unemployment insurance must be reported under point 7 on the salary certificate.
- "Corona daily allowances" paid in the event of an interruption in employment due to the unavailability of childcare or due to quarantine must be reported. If an allowance is paid to the employer due to continued salary payments, it must be reported under point 1 in the salary certificate. If the allowance is paid directly to the employee or self-employed individual, it is reported on the individual's tax return.

For 2022, the offsetting of costs for commuting in a company vehicle for federal level tax purposes has been eliminated by the increase of the private share for company vehicles from 0.8% to 0.9% per month. The Canton of Zurich has announced that it will adopt this change.

Provisionally effective (still subject to the approval by U.K. competent authorities) as of November 1, 2021, a new Swiss-U.K. social security agreement grants insured persons largely equal treatment and easier access to social security benefits. This new agreement will impact payroll for mobile employees.

Also effective for 2021 is a change for the processing of payments made after termination of employment. Such payments must now be processed according to the principle of acquisition year. Consequently, social security contribution rates of the determination year are applicable. Unemployment insurance contributions that have already been deducted from salary during the respective period are now considered. Regulations of the determination year regarding unemployment insurance contribution thresholds, amount of exempt income for pensioners, as well as marginal income are also relevant. The guidelines on the collection of contributions have been updated to reflect these changes. Implementing these changes will be a particular challenge for employees who terminated several years ago but are still receiving long-term incentives.

For 2022, social security contributions (AHV/IV/EO/ALV) and caps remain unchanged for 2022. Pension fund thresholds also remain unchanged for 2022.

Read the KPMG report.

#### **KPMG** observations:

Payroll specialists need to be cognizant of recent payroll-related changes and the impact of COVID-19 on salary certificates. The challenges associated may require new additional administrative resources as well as changes to common practice to ensure that employees are provided the most accurate and up-to-date salary certificates.

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