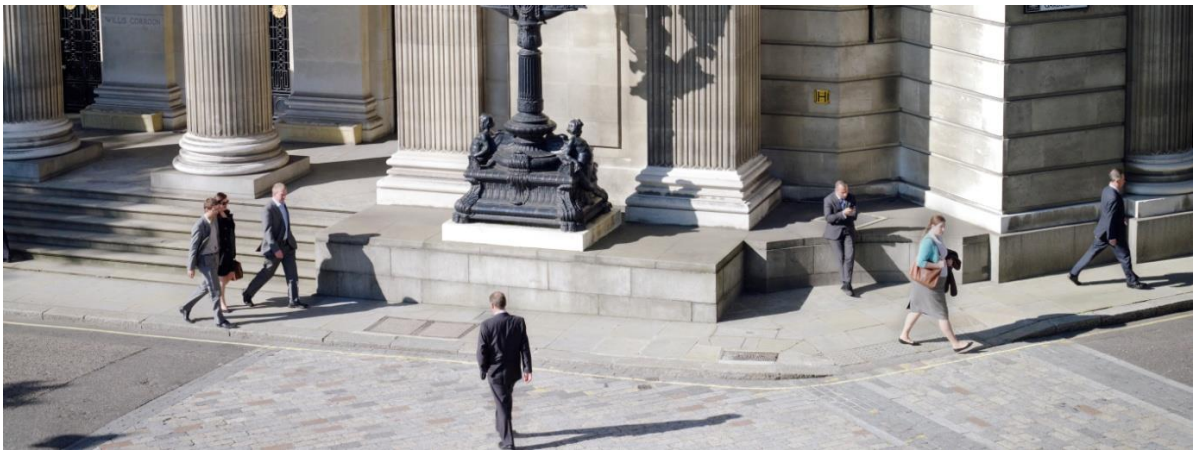
Recent legislative updates



This month's issue addresses recent tax and legal changes in various jurisdictions, namely:

- *Australia*—New privacy laws in Australia to take effect March 2014
- *Greece*—Postponement of employer withholding requirement on benefits in kind
- *Hungary*—Changes to employee share schemes with favorable tax treatment
- *Italy*—Changes to tax reporting and withholding requirements related to investments and financial assets held abroad
- *Japan*—Upcoming employer reporting requirement for equity award income

Country summaries

For a more comprehensive discussion, please see *Country Discussions* starting on page 2.

Australia

New privacy laws in Australia to take effect March 2014

In November 2012, the Australian parliament passed legislation which will have a significant effect on privacy and data protection regulation in Australia. The legislation introduced a new set of privacy principles (to be known as the Australian Privacy Principles or the APPs) that will regulate the handling of personal information by both businesses and Australian government agencies. The APPs will take effect from March 12, 2014 and will replace the existing National Privacy Principles (NPPs) that currently apply to businesses and the Information Privacy Principles (IPPs) that currently apply to Australian Government Agencies. We have set out below in Country Discussions our responses to common questions we have received in relation to the incoming APPs. These responses may be of particular interest to global plan managers and administrators whose plans have Australian participants.

Greece

Postponement of employer withholding requirement on benefits in kind

In July 2013, the Greek Parliament passed legislation which affects the employment withholding obligation on equity awards granted to employees. The bill's original effective date was January 1, 2014. According to a new tax law 4223/2013, published in the Government Gazette on December 31, 2013, the new employer withholding obligations will be postponed and become effective January 1, 2015.

Historically, the Ministry of Finance (MOF) has taken the position that share settled awards were not subject to employer withholding. Under the new legislation, share-settled awards granted to employees will be taxed as employment income and subject to withholding. While the employment withholding obligation will be effective January 1, 2015, benefits arising from equity awards will continue to be taxable income and employees will be required to declare the income in their tax returns and pay the applicable taxes directly to the tax authorities. It is also likely that the equity award benefits will need to be included in the annual salary certificate granted by the local employer, although this has yet to be confirmed by the Ministry of Finance (MOF).

The information presented above will not be discussed below under Country Discussions.

Hungary

Changes to employee share schemes with favorable tax treatment

Effective January 1, 2014, there have been several changes to the requirements for tax favorable treatment for employee share schemes. Under the new rules, qualified plans no longer have to be approved by the Ministry of Finance (MOF) and if affiliated companies participate in the plan, they must also satisfy all the conditions necessary for favorable tax treatment in Hungary. For further details, please refer below to the Country Discussions.

Italy

Changes to tax reporting and withholding requirements related to investments and financial assets held abroad

On August 6, 2013, the Italian tax authorities issued a new guidance on tax reporting and withholding requirements for investments and financial assets held abroad by Italian resident taxpayers. Effective January 1, 2014, individuals who are either the legal owner or beneficial owner of financial assets held abroad will be required to report such assets on Schedule RW of their income tax return. Many foreign workers on assignment in Italy will now be subject to these reporting requirements. The minimum threshold requirement of assets worth EUR 10,000 has also been abolished. Also, Italian financial intermediaries and other financial institutions may be required to begin collecting withholding taxes on certain types of payments they receive on behalf of their clients. For further details, please refer below to the Country Discussions.

Japan

Upcoming employer reporting requirement for equity award income

As a reminder, Japanese employers must report the income recognized from foreign share plan awards in 2013 to the tax authorities on the Chosyo by March 31, 2014. This requirement applies to Japanese subsidiaries owned 50% or more by a foreign entity that provide equity awards to employees or directors resident in Japan. As this is a reminder of upcoming filing requirements, the information presented above will not be discussed below under Country Discussions.

Country discussions

Australia

New privacy laws in Australia to take effect March 2014

In November 2012, the Australian parliament passed legislation which will have a significant effect on privacy and data protection regulation in Australia. The legislation introduced a new set of privacy principles (to be known as the Australian Privacy Principles or the APPs) that will regulate the handling of personal information by both businesses and Australian government agencies. The APPs will take effect from March 12, 2014 and will replace the existing National Privacy Principles (NPPs) that currently apply to businesses and the Information Privacy

Principles (IPPs) that currently apply to Australian Government Agencies. We have set out below our responses to common questions we have received in relation to the incoming APPs. These responses may be of particular interest to global plan managers and administrators whose plans have Australian participants.

Do the APPs apply to employee information collected and transferred related to participation in an equity plan offered by a foreign company to employees of its subsidiary in Australia?

Yes, but there may be various exemptions that apply which allow for the collection, use and transfer of personal data related to the offering/ participation in an employee equity plan by employees in Australia. One exemption that may be available is the employee records exemption discussed below. If this exemption does not apply, there may be other exemptions which PwC-Australia would be pleased to discuss further.

Is the 'employee records' exemption available for information collected from Australian participants under a global incentive plan?

It is common practice for global issuers to rely upon the 'employee records' exemption to the Privacy Act when collecting or disclosing personal information from Australian participants. This exemption will continue to apply under the APPs.

An 'employee record' means a record of personal information relating to the employment of the employee. This exemption provides that an act or practice of an employing entity (i.e., collecting or disclosing personal information) is exempt from the provisions of the Privacy Act if the act/practice is:

- directly related to a current or former employment relationship between the employer and the individual; and
- an employee record held by the employing entity that relates to the individual

In the context of a global incentive plan, it will of course depend on the type of information being collected as to whether it could be construed as an employment record in the first place. Historically, the information collected is commonly an employee record. Critically however, to rely upon the employee records exemption, the entity collecting and disclosing the information must be the employing entity. As such, the exemption will not be available where the participant in question is a prospective employee, contractor or consultant or an employee of a related company of the entity collecting or disclosing the information. Given the increasing use of third parties to administer global plans using offshore technology platforms, we expect that global issuers will find it increasingly difficult to rely on the exemption.

Does the employee records exemption apply to the transfer of employee personal data outside of Australia (to a parent company)?

Under the APPs, companies are required to 'take such steps as are reasonable' to ensure that overseas recipients of personal information do not breach the APPs. Companies will generally be liable for any breaches of privacy law by the overseas recipient. However, this obligation will not apply if:

- the disclosing entity reasonably believes the recipient entity is subject to a law, or binding scheme, that has the effect of protecting information in a way that is substantially similar to the way in which the APPs protect the information, and there are mechanisms that the relevant individual can access to take action to enforce that protection of the law or binding scheme; or
- the relevant individual gives their informed consent to the cross-border disclosure of his/her personal information.

Potential penalties

The new data protection regime has been given considerable 'teeth' as strengthened compliance and penalty regime will allow for penalties of up to $340,000 for individuals or up to $1.7 million for corporations.

Next steps to consider

There are several privacy compliance matters that are recommended for clients to consider:

- The need for a clearly expressed and up to date privacy policy that contains the disclosures required by the APPs (this is a requirement of the APPs);
- The need to identify areas of risk for their organization and plans to mitigate those risks; and
- The need to implement accurate and compliant policies and processes to ensure the APPs are met. In the context of global incentive plans, we would in particular encourage global plan managers to ensure that their processes facilitate the reliance on one of the exemptions to the APP principle that restricts cross-border disclosure of information.

With the implementation of the APPs less than one month away, it is important to ensure compliance with the APPs. If you have any questions in relation to the above, please contact your usual PwC contact or Nick Brown, PwC-Australia at nick.brown@au.pwc.com.

Hungary

Changes to employee share schemes with favorable tax treatment

Historically, employees in Hungary were eligible for preferential tax treatment for share awards received under a qualified plan if the following conditions were satisfied:

- The plan is officially approved by the Ministry of Finance (MOF);
- At least 10% of all employees of the company participate in the plan, of whom the portion of executive management is not more than 25%;
- No more than 50% of shares available under the plan may be purchased by executive management;
- The issuing entity is registered in an OECD member state;
- Shares cannot be transferred for two years from the end of the year in which the awards were granted (e.g., stock options granted in May 2012 could not be exercised until January 1, 2015);
- Share rights may not have been previously issued under the plan prior to the official approval;
- In the case of share awards (i.e., restricted stock awards), shares should be deposited at grant with a brokerage firm operating in any EEA or OECD member state; and
- For stock option and stock appreciation right awards, no deposit or any restriction to shares is necessary after a two year vesting period has been met.

If the above conditions were satisfied, taxation would be deferred until the date of sale. The preferential treatment is only applicable to annual gains up to HUF 1,000,000.

Effective January 1, 2014, there have been several changes to the requirements for employee share schemes to receive favorable tax treatment. These changes include the following:

- employee share schemes no longer have to be approved by the MOF;
- performance vesting conditions are no longer permitted, only continued service conditions may be included in qualified plans;
- chief accounting managers, supervisory board members, and close relatives of employees participating in the qualified plans are not permitted to obtain shares under the plan; and
- if affiliated companies participate in the plan they must also meet all the conditions necessary for favorable tax treatment in Hungary.

Companies that grant awards under a qualified plan in Hungary should have their plans reviewed to ensure they comply with the changes to the tax qualified treatment requirements.

Italy

Changes to tax reporting and withholding requirements related to investments and financial assets held abroad

Reporting requirement changes

Currently, Italian residents are required to report the value of investments held overseas, including shares in foreign companies, on Schedule RW of the annual tax return if the value exceeds EUR 10,000 on December 31 of the tax reporting year. These requirements are being expanded to cover additional individuals and the threshold for reporting is being eliminated.

Specifically, Article 9 of Law no. 97 published on August 6, 2013, modified the rules for this reporting requirement. According to the new guidance, many foreign workers on assignment in Italy will be subject to these rules. The Director of Italian Tax Agency published Provision n. 151663 which clarifies the structure of the new section RW of the Form UNICO 2014 and provides a simplification of the requirements for taxpayers holding investments abroad. The Provision also specifies the intention to reinforce the actions against international fraud by increasing the population required to complete Section RW and by introducing special reporting duties to the Italian financial intermediaries intervening in the collection of the cash flows from foreign countries.

Who is subject to the new regulations?

Under the previous legislation, individuals, non-profit organizations, partnerships and similar entities, and residents within the Italian territory and owning investments and financial assets abroad (that may give rise to taxable income in Italy) were required to complete Section RW of its yearly income tax return. The new legislation requires the fulfillment of the RW form not only by the legal owner of the financial assets held abroad, but also by the beneficial owner. According to the new regulations, Italian taxpayers must complete the RW Form when they own foreign investments directly and when they own foreign investments through legal entities, provided that they result as the relevant beneficial owner. The beneficial owner can be defined as follows:

- If it is a non-listed company, the beneficial owner is the person (or persons) who:
  - owns or controls, directly or indirectly the company through equity participation or by exercising voting rights (when the ownership is higher than 25% plus one of shares), or
  - controls the management of a legal entity in all other manners

What kind of investments are subject to the new regulations?

The previous minimum threshold requirement of EUR 10,000 has been abolished. The RW Form must be completed regardless of the amount of investments and activities held abroad.

In addition to the amount of days of ownership, investments and financial assets must be disclosed on Schedule RW based on their value:

- at the beginning of each fiscal year or at the first day of ownership;
- at the end of the fiscal year or at the end of the year of ownership.

Withholding requirement changes

Previously, investment income from financial activities managed by Italian Intermediaries was subject to a separate taxation rate in Italy (a flat rate of 20%). This income was reported by the individual through the personal tax return and included in the aggregate taxable income and the related taxes paid accordingly, unless the investments were controlled by an Italian intermediary who accounts for the tax.

The new regulations provide that Italian Financial Intermediaries involved in the receipt of cash payments deriving from foreign investments and foreign financial activities must apply a withholding tax on such amounts, unless a specific authorization is in place to receive the cash payment without withholding. The withholding obligation is now extended to income from foreign assets held abroad transferred to Italy which is not subject to separate taxation, but which is included in the taxpayer's aggregate taxable income. Such income would include:

- capital gains derived from the sale of property abroad;
- rental income derived from property abroad;
- other income derived from leasing assets held abroad, such as cars, boats, and planes;
- capital gains derived from qualified shareholdings in nonresident companies.

Financial institutions (or other intermediaries) are required to withhold tax any time they are involved in a transaction from abroad. The tax withheld is treated as a payment credited toward the individual's final tax liability. The withholding will be made automatically unless the individual certifies that the cash payment is not derived from investments abroad. It is up to the individual to provide the necessary information to identify the source of income and the taxable amount. Otherwise, withholding needs to be operated on the whole amount. Where an amount has been over-withheld, the individual can request a refund by February 28th of the following year. The new withholding regime is in force from January 1, 2014. The withholding obligation applies to banks, all foreign exchange bureaus, financial intermediaries, and the post office.

Companies that have employees in Italy participating in employee share schemes of an overseas parent company should consider communicating these new regulations to participants so that they are aware of the new withholding requirements.

Let's talk

For more information about any of these developments, please feel free to contact any of our team members listed below.

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