Recent legislative updates

Global Equity Organization Awards

PwC congratulates the recipients of the 2014 Global Equity Organization (GEO Awards) presented at the International Conference in Miami in May 2014. Special congratulations to Jennifer George, winner of an individual award for Outstanding Support for GEO and AmyLynn Flood, who is part of the leadership team of the Chapter of the Year - New York City.

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

- *New Zealand*—Submission to allow employer withholding and reporting on employee share schemes
- *South Africa*—Minor administrative relief for foreign exchange transactions
- *Turkey*—Recent changes to securities registration laws

Country summaries

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

New Zealand

Submission to allow employer withholding and reporting on employee share schemes

Currently, employee share schemes are not subject to employer reporting or withholding in New Zealand. The onus on reporting equity income and paying the associated taxes falls on employees and employees risk exposure to interest under the Use-of-Money-Interest (UOMI) system. The Corporate Taxpayers Group (a lobby group made up of the large corporate taxpayers) has recently made a submission to the Government which would allow employers to elect to treat benefits under share plans as subject to either Pay-As-You-Earn withholding or potentially Fringe Benefit Tax. Officials agree in principle with the submission and will consider if and how employers can meet the obligations of their employees in respect of employee share schemes. Further consultation will be held with the wider tax community. PwC will continue to monitor any developments and keep you informed on any progress regarding this potential change. The information presented above will not be discussed below under Country Discussions.

South Africa

Minor administrative relief for foreign exchange transacations

In the past, South African residents who wished to remit funds from South Africa (e.g., to acquire stock) were required to file a MP1423 form amongst other requirements. This requirement is no longer in place and will provide some administrative relief for those wishing to remit funds overseas to acquire shares.

Turkey

Recent changes to securities registration laws

Historically, the Capital Markets Board (CMB) required an application to be made prior to the launch of an employee share plan in Turkey in order for the CMB to review the plan and to confirm whether or not relief from the securities registration requirements could be granted. The CMB granted these exemptions until 2010, after which the determination of whether offers constituted a public offering shifted to companies and the CMB no longer accepted applications.

In 2010, the CMB integrated the exemption requirements given to multinationals as part of previous applications into the Communique Serial: III, No:44. This communique has recently been repealed, however, there is no change to the current practice as the requirements in Communique Serial: III, No: 44 have been included within the more recent Communique Serial: VII No: 128.4.

Multinationals can continue implementing their share based employee incentive plans in Turkey and generally employee share plans should continue to be exempt from the registration requirements on the basis they are not an offer to the public.

Country discussions

South Africa

Minor administrative relief for foreign exchange transactions

For all foreign exchange transactions, South African Exchange Control residents ("SA residents") must comply with the exchange control regulations governed by the South African Reserve Bank (SARB). Certain banks are appointed to act as Authorized Dealers for the purposes of foreign exchange and these Authorized Dealers act on behalf of their customers in interactions with the Financial Surveillance Department of the SARB.

The Exchange Control Rulings previously required, inter alia, the completion of the MP1423 form for South African residents who wished to use either of their foreign allowances in order to remit funds from South Africa (e.g., to acquire stock). The completion of this form is no longer required, but applicants must still submit the proper ID identifying that the applicant is 18 years or older, proof of residence, power of attorney (where required) and any other forms required by the Authorized Dealer.

Additionally, applicants who wish to use their investment allowance must submit a duly (electronically) completed Tax Clearance Certificate in Respect of Foreign Investments (FIA001). This certificate should be issued by the South African Revenue Services (SARS), should bear the SARS logo and specific background watermark. No transfer will be allowed unless the Tax Clearance Certificate bearing the date is viewed and the Authorised Dealer ensures that the amount to be transferred does not exceed the amount reflected on the certificate. Since the Tax Clearance Certificate is specifically dated, the certificate may only be regarded as valid for a period of 12 months from the date reflected thereon.

As the form MP1423 was administrative in nature and usually completed easily by the Authorized Dealer or by companies acting on behalf of employees participating in stock plans, the completion of the form was not considered to be an onerous task. The obtainment of a Tax Clearance Certificate from SARS is considered to be far more onerous, as it can be time-consuming and/or problematic to obtain. Therefore, although there has been some administrative relief for remitting funds outside of South Africa, companies offering stock plans in South Africa should continue to ensure transactions pursuant to their plans meet the SARB exchange control requirements.

Turkey

Recent changes to securities registration laws

Under the Turkish Capital Markets regulations, the sale of foreign securities in Turkey via public offering or private placement is subject to the prior approval of the Capital Market Board (CMB) and the underlying securities need to be registered with the CMB. Technically, the operation of equity plans may be deemed as a private placement and therefore subject to the CMB registration requirements.

Historically, there were no written regulations with respect to the securities registration and approval requirements for equity plans. The CMB verbally stated that they would generally not impose public offering procedures on employee incentive plans. However, the CMB did require an application to be made prior to the launch of the plan in Turkey in order for the Board to review the plan and to confirm whether or not relief from the securities registration requirements could be granted. The CMB granted these exemptions until 2010, after which the onus on determining whether offers constituted a public offering shifted to companies and the CMB no longer accepted applications.

The current rules

In October 2010, the CMB integrated the wording of the exemptions given to individual multinationals in to its legislation under the Communique Serial: III, No:44. The exemption clause indicated that:

“[T]he sales of shares to be given by foreign corporations to their employees in Turkey within the scope of share provision plans and similar programs explicitly shall be exempt from registration with the Board, provided that:

- The sales do not take place in Turkey;
- No exercise to be defined as a public offering is realized; and
- The information to be provided does not contain statements that would give the impression of a public offering.

The CMB has recently repealed Communique Serial: III, No: 44 and has included the above requirements in another communique, Communique Serial: VII No: 128.4.

Next actions

Multinationals can continue implementing their share based employee incentive plans in Turkey and most plans will continue to be exempt from the registration requirements on the basis that they do not qualify as a public offer. However, as the burden is on companies to ensure that they meet the above requirements, it is recommended that specific advice is sought prior to implementing employee share plans in Turkey.

Let's talk

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

Bill Dunn (Partner), *Philadelphia, PA*
+1 (267) 330-6105
william.j.dunn@us.pwc.com

AmyLynn Flood (Partner), *Philadelphia, PA*
+1 (267) 330-6274
amy.lynn.flood@us.pwc.com

Kerri McKenna, *Philadelphia, PA*
+1 (267) 330-1723
kerri.l.mckenna@us.pwc.com

Michael Shapson, *Philadelphia, PA*
+1 (267) 330-2114
michael.j.shapson@us.pwc.com

Parmjit Sandhu, *New York, NY*
+1 (646) 471-0819
parmjit.k.sandhu@us.pwc.com

Ari Solomon, *New York, NY*
+1 (646) 471-8477
ari.solomon@us.pwc.com

Gemma Smith, *New York, NY*
+1 (646) 471-6623
gemma.a.x.smith@us.pwc.com

Courtney McCabe, *New York, NY*
+1 (646) 471-5567
courtney.mccabe@us.pwc.com

Aldona Gorman, *Chicago, IL*
+1 (312) 298-4445
aldona.n.gorman@us.pwc.com

Anne Roest, *Chicago, IL*
+1 (312) 298-2646
anne.l.roest@us.pwc.com

Paras Sarvia, *Chicago, IL*
+1 (312) 298-4520
paras.sarvia@us.pwc.com

Jennifer George, *San Jose, CA/ San Francisco, CA*
+1 (408) 817-4370
jennifer.b.george@us.pwc.com