

Recent legislative updates



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

- **Australia**—ASIC Consultation Paper regarding employee incentive schemes seeking comments
- **France**—Solidarity tax on high remuneration approved by French Constitutional Court
- **Ireland**—Upcoming reporting requirements
- **United States**—2013 SEC comment letter trends: Employee stock compensation

Country summaries

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

Australia

ASIC Consultation Paper regarding employee incentive schemes seeking comments

Many companies with Australian operations will be familiar with the requirements of *ASIC Class Order CO 03/184: Employee Share Schemes* (CO 03/184), a regulatory instrument that provides relief from many substantive and technical conditions imposed by Australian law when making offers of equity instruments in Australia. For some time, ASIC (Australia's companies and securities regulator) has flagged changes to this important regulatory instrument. In November 2013, ASIC released "Consultation Paper 218: Employee Incentive

Schemes" (CP 218) - a copy of which can be found [here](#). The purpose of the consultation paper is to set out proposed changes to CO 03/184 and seek feedback.

France

Solidarity tax on high remuneration approved by French Constitutional Court

The proposed tax on high remuneration, first detailed in our [November 2013 Update](#), has been approved by the French Constitutional Court. Consequently, entities operating in France will be subject to a temporary tax on high gross remuneration of individual employees and executives granted in 2013 and 2014. The tax rate is 50% on remuneration accrued or granted by any company, group or individual doing business in France in excess of 1 million Euros.

Ireland

Upcoming reporting requirements

As a reminder, companies with employees participating in equity plans in Ireland will be subject to upcoming reporting requirements. Companies are required to complete an annual return (Form RSS1) for all unapproved share option plans on a compulsory basis. Companies must file Form RSS1 by March 31st following the end of the relevant tax year. As detailed in our [March 2013 Update](#), reporting via Form RSS1 is now limited to the grant, release and assignment of share options and other rights i.e., details of other share plans are not required to be declared on the Form RSS1.

In addition, details of the shares delivered and subject to employer withholdings (PAYE/PRSI/USC) with the exception of unapproved share options should be included in the company's annual end-of-year P35 return (due by February 15th or February 23rd if paying and filing online).

As this is a reminder of upcoming filings, the information presented above will not be discussed below under Country Discussions.

United States

2013 SEC comment letter trends: Employee stock compensation

PwC has produced the [2013 SEC comment letter trends: Employee stock compensation publication](#) to assist management teams in identifying and understanding the SEC staff's current focus areas for stock compensation. We have highlighted the areas where registrants received the most comments from the SEC staff and have provided relevant examples of recent comment letters to aid preparers in ensuring their disclosures are robust and consistent with the relevant accounting or reporting guidance for stock compensation. This publication includes an analysis of comments made by the SEC staff to registrants published on the SEC's website between January 1, 2013 and September 15, 2013 related to stock based compensation. The information presented above will not be discussed below under Country Discussions.

Country discussions

Australia

ASIC Consultation Paper regarding employee incentive schemes seeking comments

Many companies with Australian operations will be familiar with the requirements of *ASIC Class Order CO 03/184: Employee Share Schemes* (CO 03/184), a regulatory instrument that provides relief from many substantive and technical conditions imposed by Australian law when making offers of equity instruments in Australia. For some time, ASIC (Australia's companies and securities regulator) has flagged changes to this important regulatory instrument. In November 2013, ASIC released "Consultation Paper 218: Employee Incentive Schemes" (CP 218) - a copy of which can be found [here](#). The purpose of the consultation paper is to set out proposed changes to CO 03/184 and seek feedback.

Some of the key proposed changes to CO 03/184 include:

- Extending the relief given under CO 03/184 to include offers of certain non-share equity instruments, including Australian CDIs, UK CDIs, US ADRs and certain performance rights and SARs
- Extending the relief given under CO 03/184 to include offers made by listed and unlisted bodies to casual employees, prospective employees, contractors and non-executive directors that meet certain conditions
- Extending the limited relief given under CO 03/184 to unlisted companies to include offers of up to \$1,000 of fully paid ordinary shares annually per participant and, in limited circumstances, the offer of options or performance rights; and
- Placing further conditions in the relief including that (1) each offer to a participant must not result in that participant receiving a significant proportion

(being 25% or more of a participants entitlement under each offer) until the expiry of a minimum of 12 months from the date of grant, and (2) the offer documents provided to participants be "clear, concise and effective."

A multi-disciplinary team from PwC Australia (including our legal, tax, accounting and remuneration teams) are preparing a response to the submissions raised by ASIC in CP 218. We welcome responses and thoughts on CP 218 from our global network of clients and professionals. Following the submission of its response, PwC Australia will release a more detailed analysis of ASIC's proposals and its submission.

France

Solidarity tax on high remuneration approved by French Constitutional Court

The proposed tax on high remuneration, first detailed in our [November 2013 Update](#), has been approved by the French Constitutional Court. Entities operating in France will be subject to a temporary tax on high remuneration accrued or granted in 2013 and 2014. The tax rate is 50%, but tax cannot exceed 5% of the gross revenue realized by the enterprise for the year during which the tax is due. It will apply to the portion of the gross remuneration granted by an entity to an employee in excess of EUR 1M. In principle, except in abusive situations, if an individual is an employee of two or more companies of the same group, the remuneration paid by each employer should not be combined.

Gross remuneration owed for a given year will include:

- Wages, salaries, and similar items as well as cash, in-kind, and fringe benefits
- Director's attendance fees and similar items
- Pensions and supplemental retirement allocations; indemnifications, allocations, and other benefits granted upon retirement
- Amounts granted as part of compulsory or voluntary profit-sharing plans
- Grants of stock options, free award of shares, and similar items
- Equity warrants for entrepreneurs
- Reimbursements due to other entities for any of the above categories

The remuneration items listed above are included in the tax base regardless of their payment date. As a general rule, remuneration is included in the tax base when it is accounted for as an expense. Assuming that they are "qualified" from a French point of view, stock options, free award shares, and equity warrants for entrepreneurs are included in the tax base of the year in which they are granted.

The tax base generally corresponds to the amount recorded in the employer's books. Pensions and similar items will be computed differently if paid in annuity versus granted in capital. For "qualified" stock options and equity warrants for entrepreneurs, the enterprise can choose between the fair value of the options or warrants determined in the consolidated accounts (such as IFRS), and 25% of the market value of the shares attached to the options or warrants at the decision date to grant the options or warrants. For "qualified" free award shares, the enterprise can choose between the fair value of the shares determined in the consolidated accounts (such as IFRS) or the market value of the shares as of the date of the decision to grant the shares. The election must be made before the tax payment.

For remuneration paid or accrued in 2013, the tax will be payable by April 30, 2014. For remuneration paid or accrued in 2014, the tax will be payable by April 30, 2015.

This tax will be deductible for corporate tax purposes. However, this tax will not be deductible from the tax base for calculation of the temporary 10.7% surtax.

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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