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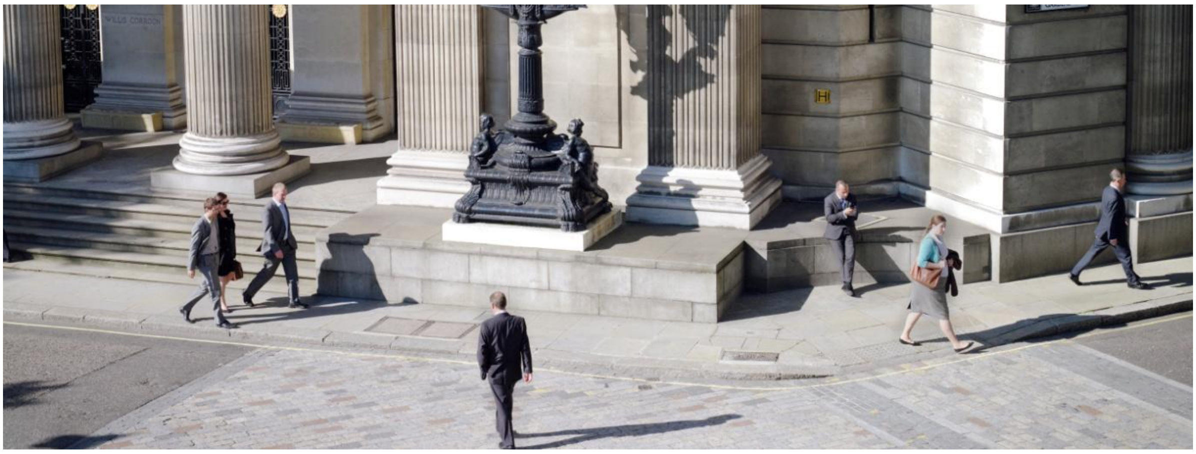
Recent legislative updates



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

- *China*—New SAFE regulation issued
- *Finland*—Supreme Administrative Court issues decision on the sourcing of stock option income
- *Switzerland*—Further information on the Minder Initiative
- *United Kingdom*— UK launches consultation on Office of Tax Simplification proposals

Country summaries

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

China

New SAFE regulation issued

In April, a new regulation was issued by the Chinese State Administration of Foreign Exchange (SAFE), the 'Notice on Implementing Information System for Capital Account Items' (Circular 17). Circular 17 requires companies that have registered their equity plans with SAFE under Circular 7 to have a SAFE issued monitoring code and business registration certificate.

Based on PwC China's discussions with a number of provincial SAFE officials, it has been confirmed that no additional or new procedure/document has been or will be required by SAFE due to the publication of Circular 17. Instead, SAFE will update the monitoring code for registered companies automatically. Accordingly, the new circular which is mainly related to an administrative process should not have any impact on the current registration process for companies with SAFE approval for their employee equity programs. This information presented will not be discussed below under Country Discussions.

Finland

Supreme Administrative Court issues decision on the sourcing of stock option income

On May 16, 2013, the Supreme Administrative Court (SAC) of Finland handed down a decision indicating that the correct sourcing period for stock option benefits which have been granted to international mobile employees should be the period between grant and vest.

Prior to this decision, Finnish tax authorities used the period between grant and exercise to determine the Finnish sourced income.

Switzerland

Further information on the Minder Initiative

As detailed in our March Global Equity Newsletter Update, Switzerland recently adopted the Minder Initiative (Initiative). As a result of the Initiative, Switzerland will introduce strict regulations on executive compensation and corporate governance. The regulations will affect all companies incorporated in Switzerland whose shares are quoted on a stock exchange, their governing bodies and their shareholders (please note that Swiss subsidiaries of foreign parent companies will generally not be subject to these rules).

Following the publication of transitional provisions in June (applicable from January 1, 2014), a list of priority actions for affected companies has now been released. Please refer to this attached PwC-Switzerland Alert for more information. As this is an update to our March newsletter, this information will not be discussed below under Country Discussions.

United Kingdom

UK launches consultation on OTS proposals

In our February Global Equity Newsletter Update, we reported that the UK Office of Tax Simplification (OTS) had made some recommendations to the UK Government regarding changes to the tax treatment of non-tax favored share plans.

The UK Government has now launched its consultation regarding five of the OTS's proposals. The consultation is with a view to gathering further evidence on the potential impacts of these proposals from businesses and other interested parties before the UK Government decides how to proceed. Further information about the proposals under consultation is provided in the Country discussion section below. The consultation is open for response until August 16, 2013. The UK Government will announce the outcome of the consultation in autumn 2013 and if it decides to make changes to the current rules, these changes will be formally proposed in the next annual Finance Bill in 2014.

Country discussions

Finland

Supreme Administrative Court issues decision on the sourcing of stock option income

On May 16, 2013, the Supreme Administrative Court (SAC) of Finland handed down a decision ruling that where an individual qualifies for a valid tax exemption for foreign sourced income, the correct sourcing period for stock option benefits taxed in Finland should be the period between grant and vest.

Prior to this decision, Finnish tax authorities used the period between grant and exercise to determine the Finnish sourced income. The SAC decision comes in light of the fact that the sourcing method previously used in Finland did not follow recommendations provided by the Organization for Economic Cooperation and Development (OECD) Model Convention.

A full or partial exemption of the stock option benefit from Finnish income taxes may be available based on the application of the following:

1. The applicability of the so-called “six month rule” under the Finnish Income Tax Act concerning employee stock option benefits. Among other things, this exemption requires that:
    a. There is a valid tax treaty between Finland and the host country.
    b. Employment-related stock option benefits are, in principle, taxed as employment related income in the host country.

c. The employee has proof that the stock option benefit is reported to the host country tax authorities.

2. The employee is resident of another country which is party to a tax treaty which prevents Finland from taxing any stock option benefit not accrued in Finland (not the case in all tax treaties).
3. The employee is non-resident in Finland for income taxation purposes according to the Finnish legislation.

Please note that this ruling does not change the timing of taxation for stock option benefits which remains at exercise.

PwC Finland can provide guidance on whether this change can provide retroactive tax savings and, if this is the case, help draft and file the appropriate tax appeal(s). In 2013 it is still possible to claim appeals/refunds for this change for tax years 2007 and later.

United Kingdom

UK launches consultation on OTS proposals

In our February Global Equity Newsletter Update, we reported that the UK Office of Tax Simplification (OTS) had made some recommendations to the UK Government regarding changes to the tax treatment of non-tax favored share plans. Following the recommendations made by the OTS in regard to non-tax favored share plans in January 2013, the UK Government is seeking further views and evidence on the impacts of the recommendations in relation to the following.

Taxation of internationally mobile employees' share awards

The OTS made a number of recommendations with a view to simplifying the tax treatment of internationally mobile employees. Broadly, these recommendations included aligning the national insurance contributions (NIC) and tax treatment of share awards where possible. Another recommendation is to change the tax treatment for certain types of award, moving away from an "all or nothing" charge depending on residency at grant to a proportionate charge based on income which should be treated as earned in the UK during the earnings period for an award.

The Government has requested views and evidence regarding these proposals. It is interested on the impact the proposals would have in terms of costs and savings for businesses and the number of internationally mobile employees who would be subject to UK income tax on their share awards.

In our view, this is the most substantive proposal included in the consultation as there will be a material difference in UK taxation to some internationally mobile employees due to this proposal. As a result, employers with internationally mobile employees participating in global share programs will want to keep up to date and start planning for these developments ahead of the expected start date of April 2014.

Availability of corporation tax relief for employee share acquisitions following the takeover of a company by an unlisted company

In certain circumstances, corporation tax relief can be lost following a takeover by an unlisted company and this can lead to additional complexity for companies who then need to take additional steps to seek to secure the relief. The OTS recommended the introduction of a grace period during which the relief would be available following a takeover in these circumstances. The Government has requested further views and evidence on this proposal. This proposal is welcome and should reduce potential complexity in this area.

Additional income tax charge under Section 222

Currently, if the employer does not collect tax withholding from employees within 90 days of the taxable event for equity awards, the amount that should have been collected is deemed income to the employee, subject to additional tax. This proposal is to extend the 90 day period to July 6 following the tax year end. This should be a helpful change for employers.

Valuation rules for listed company shares

Shares listed on the London Stock Exchange are subject to statutory valuation rules. Broadly, the valuation is based on the lower of the two prices quoted on the London Stock Exchange plus one quarter of the difference between these two figures or the average of the highest and lowest prices recorded in the shares for the day. It is proposed that the closing price on the relevant trading day be used instead.

Share for share exchanges and rollovers of restricted shares and nil/partly paid shares

The OTS has recommended that the share for share exchange and rollover legislative rules which apply to share options should be extended to restricted shares (e.g., blocked or forfeitable shares) and nil or partly paid up shares. (A partly paid up share is a share which is issued for an initial payment of less than its nominal value - the company can ask the shareholder to pay up the difference between the subscription price and nominal value after the share has been issued.) The UK Government has asked for views and evidence of the impact in regard to savings/costs to businesses. If adopted, this change will be positive for companies doing conversions of outstanding restricted stock grants due to corporate transactions as these conversions are currently taxable events in the UK.

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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