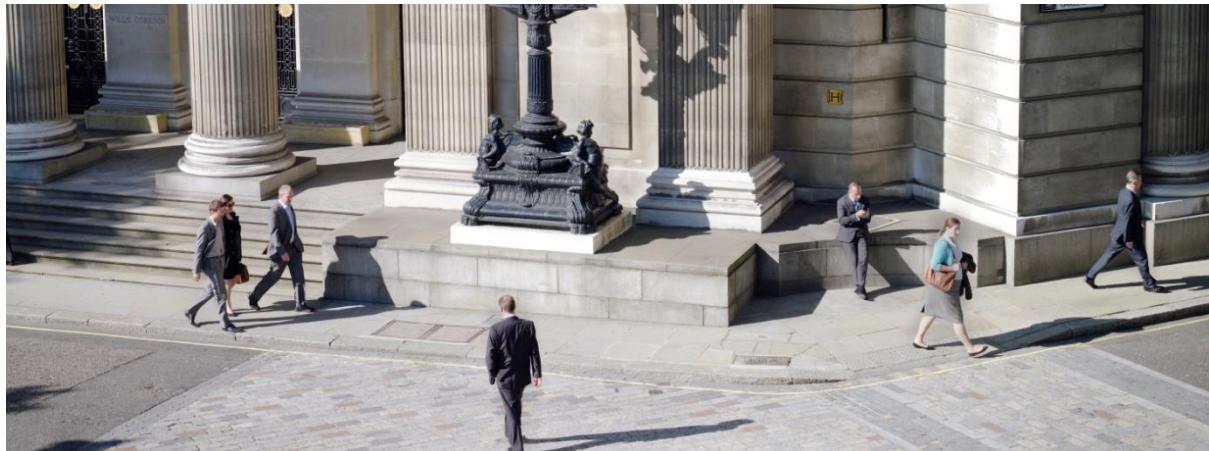


Recent legislative updates



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

- [France—Constitutional Court strikes down 75% tax rate; French Parliament passes new laws](#)
- [Japan—2013 tax reform proposal may impact globally mobile employees](#)
- [Luxembourg — New Luxembourg Circular covering the tax treatment of stock options](#)
- [Switzerland—New draft circular letter on equity-based compensation](#)
- [United Kingdom—New HMRC response arrangement for technical queries](#)
- [United Kingdom - UK OTS recommendations regarding non-tax favored share plans](#)

Country summaries

For a more comprehensive discussion, please see *Country Discussions* starting on page 3.

France

Constitutional Court Strikes down 75% tax rate; French Parliament passes new laws

The French Parliament recently passed various personal income tax and wealth tax provisions under the French Act for 2013 and the 3rd Amended Finance Act for 2012. The new laws passed by the French Parliament were published on December 29, 2012. As detailed in this [October 2012 Update](#), the changes contained significant tax reforms including higher income tax rates, an exceptional surtax applicable to high earners, and changes to the tax treatment of dividends, interest, capital gains and wealth tax among other things.

In response to the changes, the French Constitutional Court struck down several measures in its decision published on December 30, 2012, including the exceptional surtax of 75% on very high earned income (the so-called 75% tax). Going forward, the French government has announced that a new taxation on very high income will be presented to the Parliament in 2013.

Japan

2013 tax reform proposal may impact globally mobile employees

A 2013 tax reform proposal submitted by the Cabinet Office Tax Commission, known as Taiko, was released on January 29, 2013. The 2013 Tax Reform Proposal includes, among many provisions, an additional national tax bracket of 45% for taxpayers with more than 40 million yen of taxable income (effective January 1, 2015). Another significant proposal is the introduction of non-taxable Individual Savings Accounts and reversion of the separate 10% tax rate on dividends and capital gains on listed stock to 20% from the beginning of 2014.

Luxembourg

New Luxembourg Circular covering the tax treatment of stock options

On December 20, 2012 the Luxembourg tax authorities issued a new Circular LIR covering the tax treatment of stock options in Luxembourg where the grant of the options occur on or after January 1, 2013.

The new Circular modifies the tax valuation rules for freely negotiable and non quoted options. The benefits relating to the grant of such options are henceforth valued at 17.5% (instead of 7.5% before 2013) of the value of the underlying basis of the option. The new Circular also stipulates that "the valuation of 17.5% of the underlying value of the security must conform to reasonable conditions." The criteria of reasonability and its application remain unclear and will need to be clarified going forward.

Switzerland

New draft circular letter on equity-based compensation

On December 14, 2012 the Swiss tax authorities issued a new draft circular which provided guidance on the taxation of employee options at exercise and shares at acquisition (i.e., after the vesting period in the case of share awards), including the allocation of income for mobile employees. A final version is expected to be published in April 2013 but will enter into effect at January 1, 2013. Existing rulings not in line with the new rules will not be applicable as of January 1, 2013 and thus, transitional rules will have to be monitored closely.

United Kingdom

New HMRC response arrangement for technical queries

UK HM Revenue & Customs (HMRC) is piloting a new quick response arrangement for technical queries relating to UK tax-favored plans. The trial will run for 4 months from mid-January 2013 and will assist HMRC in deciding whether to operate this arrangement on a permanent basis. This development enables queries relating to certain operational aspects of UK tax-favored plans to be turned around quickly.

UK OTS recommendations regarding non-tax favored share plans

The UK office of Tax Simplification (OTS) has recommended changes to the tax treatment of non-tax favored share plans which may bring some simplicity and potential challenges for employers.

Country discussions

France

Constitutional Court Strikes down 75% tax rate; French Parliament passes new laws

The French Parliament recently passed various personal income tax and wealth tax provisions under the French Finance Act for 2013 and the 3rd Amended Finance Act for 2012. The new laws passed by the French Parliament were published on December 29, 2012. As detailed in this [October 2012 Update](#), the changes contain significant tax reforms including higher income tax rates, an exceptional surtax applicable to high earners, and changes to the tax treatment of dividends, interest, capital gains and wealth tax among other things.

- **The creation of an additional 45% income tax bracket** will be effective for income earned on or after January 1, 2012 for the portion of taxable income in excess of Euro 150,000 per share in the tax household. Prior to this change the French top marginal tax rate was 41% for income in excess of Euro 70,830 (this tax bracket is maintained).
- **The tax treatment of dividends and interest** becomes aligned with the tax treatment of professional income; therefore, this income becomes subject to French personal income tax at progressive rates. The election for a flat withholding tax is abolished.
- **Capital gains derived from the sale of securities** (taxed until now at a rate of 19%) become subject to French personal income tax at progressive rates up to 45%, plus social levies (including CSG-CRDS) at a rate of 15.5% (of which 5.1% is deductible) and, if applicable, to the exceptional income tax for high earners at a marginal tax rate of 4%. A rebate on the taxable capital gain becomes applicable depending on the length of the holding.
- **For 'qualified' grants of stock options and free shares realized on or after September 28, 2012:** The employer contribution rate applicable to qualified stock options and free shares remains at 30% at grant. Gains will be subject to progressive rates (as detailed above) and will be subject to the social surtaxes on employment income, i.e., 8% CSG/CRDS (and no longer to those applicable to passive income at the 15.5% global rate). A portion of the CSG (5.1%) would be deductible from the taxable income the year of its payment. The employee contribution rates should be maintained at 10%. Gains resulting from stock options or free shares will be exempted from social charges if the employer is compliant with reporting obligations.
- **The wealth tax threshold** starting in 2013 is set at Euro 1,300,000. Progressive rates from 0.5% to 1.5% will apply to bands starting at Euro 800,000.

In response to the reforms, the French Constitutional Court struck down several measures in its decision published on December 30, 2012, notably, the strike down of the exceptional surtax of 75% on very high earned income ("the 75% tax"). The Constitutional Court's decision to strike down the 75% tax significantly changes the tax profile for high income individual taxpayers.

Employers should review their assignee populations and determine how the provisions pursuant to the Finance Acts (for the 2012 and 2013 tax years) will affect their mobility costs and administrative processes for both tax years.

Please refer to this [PwC France Global Watch](#) for additional details regarding the changes.

Japan

2013 tax reform proposal may impact globally mobile employees

A 2013 tax reform proposal submitted by the Cabinet Office Tax Commission, known as Taiko, was released on January 29, 2013. Some of the proposed changes include:

- Effective January 1, 2015, Japan's top tax rate increases to approximately 45%
- Separate tax rates on capital gains and dividends
- Effective January 2014, the introduction of Individual Savings Accounts ("ISAs") allowing individuals to exempt gains from the sale of listed stock for up to 5 years

Offshore assets

With regard to the Offshore Assets Reporting Form, effective from the 2013 tax year, the Tax Commission is proposing a change to how a security will be determined to be "offshore." The government will now use the location of where the security is held to determine whether it is an offshore asset (instead of the location of the issuing company of the security). For instance, shares of a Japanese company held with an American brokerage company would be considered an offshore asset.

Please refer to this [PwC Japan Global Watch](#) for additional details regarding the changes.

Luxembourg

New Luxembourg Circular covering the tax treatment of stock options

Before January 1, 2013, the tax treatment of stock options in Luxembourg was covered by an administrative circular dated of January 11, 2002. The Luxembourg tax authorities issued on December 20, 2012 a new Circular covering the tax treatment of stock options in Luxembourg which will be applicable for stock options granted on or after January 1, 2013.

In effect, the new Circular reiterates the exact terminology used in the previous Circular with the exception of the following two elements:

- New Lump Sum Valuations - As of January 1 2013, in the case freely negotiable and non quoted option (not valued on an established financial basis) is granted to beneficiaries, the taxable value of the said option is estimated at 17.5% (instead of the previous 7.5%) of the value of the underlying basis of the option.
- Reasonability Criteria - The new Circular also stipulates that the "valuation of 17.5% of the underlying value of the security must conform to reasonable conditions." The definition provided in the text is open to interpretation and creates uncertainty which should be considered in the absence of what in practice is considered as reasonable.

Concrete application of this criteria remains unclear and will need to be clarified going forward.

Note that options that are not freely negotiable remain taxable upon exercise, and not upon grant.

Switzerland

New draft circular letter on equity-based compensation

On December 14, 2012 the Swiss tax authorities issued a new draft circular (expected to be published in April 2013) providing guidance on the taxation of employee options at exercise. As detailed in this [previous update for Switzerland](#), employee options are taxed at exercise, except for listed and freely disposable options (taxed at grant).

Shares are subject to taxation at acquisition, i.e., after the vesting period in case of share awards (RSUs, etc.). If shares are subject to restrictions, a tax discount of 6% per year is applicable (partial year taken into account). In the event the shares become unrestricted prior to schedule, irrespective of the reason, additional employment income is triggered, even if the employee could not benefit from the tax discount at grant.

The new draft circular specifies that the closing price on the taxing date should be used as a tax relevant value. In the case of subscription periods in share purchase plans, special rules regarding the tax relevant value apply. In addition, where an exchange rate is required, the taxable value should be converted into Swiss Francs (CHF) using the average bid/ask price of the previous trading day.

For non-quoted shares, companies must establish and consistently use a valuation formula to ensure the sale proceeds are qualified as tax-free capital gain. The valuation is valid for 6 months. If the valuation formula is changed, any step-up in value deriving from the formula change generally constitutes taxable employment income at the time of the formula change, irrespective of an actual sale by the employees.

The new circular indicates that for participants, that move to/from Switzerland with actual change of tax residence and working country, the taxable benefit is allocated to Switzerland based on the time spent in Switzerland during the vesting period, with a special flat tax rate in export "outbound" situations. However, this needs to be evaluated on a case by case basis.

Existing rulings will no longer be applicable if not compliant with the new rules. Companies should analyze the impact of the draft circular tax letter thoroughly, including tax treatment as well as employer reporting and social security obligations.

United Kingdom

New HMRC response arrangement for technical queries

HM Revenue & Customs (HMRC) has announced details of a new quick response arrangement which is being trialed for technical queries relating to UK tax-favored plans over the 4 months from January 14th through May 2013.

It has published the terms of the arrangement which include what issues will qualify for the arrangement (transactions - related questions on variations of capital, company reorganizations) and the information which must accompany a submission. A query will not be eligible for the arrangement if it takes HMRC more than one hour to deal with; which will need to be kept in mind when considering the suitability of a query and the amount of information which would need to be submitted to get a satisfactory outcome.

HMRC has said it will respond to queries under this arrangement within 7 days of receipt. It will monitor the usage of this arrangement during the trial and outcomes will be reported in September 2013. This arrangement should provide a route to obtaining HMRC's view of specific points of uncertainty which can be quickly resolved.

UK OTS recommendations regarding non-tax favored share plans

The UK office of Tax Simplification (OTS) has recommended changes to the tax treatment of non-tax favored share plans which may bring some simplicity and potential challenges for employers. The changes to the treatment of non-tax favored share plans are in the following key areas:

- Taxation of Internationally Mobile Employees
- Establishment of a new Employee Shareholding Vehicle

- The UK non-tax favored annual return of share transactions to HM Revenue & Customs (HMRC) - Form 42, including recommendation to allow online filing
- Pay-as-you-Earn and the additional tax charge (S.222 charge) where the employer does not recover taxes from the employee within the legislative time limit
- Valuation of employee shares
- Deferral of tax charge in relation to non-marketable securities

We expect that the UK government will launch a consultation on how best to implement these changes. Some changes may come in March in the Finance Bill of 2013, but others will take longer.

The changes that are likely to be most welcomed by employers are those intended to remove or relax some of the more draconian provisions around operating pay as you earn (PAYE) when shares are acquired by employees. The proposed changes extend the timescale for employers paying over PAYE to UK HMRC and effectively remove the current penalty tax charge where an employee makes good for PAYE outside the 90 day deadline.

For those with internationally mobile employees, the recommended changes to align the tax approach across different types of share awards will be seen as a logical solution to the many anomalies that currently arise. We expect that employers may need to change their processes.

For those responsible to administer share plans, the proposed simplification of the annual HMRC share plans return Form 42 will be particularly welcome.

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

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