
Global equity compensation

Recent legislative updates

December 2011 Edition

Country Summaries

*(for a more comprehensive discussion, please see
the "Country Discussions" section below)*

Denmark

RSUs with graded vesting likely taxable at grant

As mentioned in the Summer 2011 edition of the Global Monthly Update, the Danish tax authorities issued a ruling confirming that restricted stock units (RSUs) with graded vesting will be taxable at grant, regardless of the length of the vesting period. This treatment is contrary to prior tax rulings which indicated that it would be possible to delay taxation of RSUs until vesting if a vesting schedule of at least 3 years was utilized. At this time PwC-Denmark has indicated that a cliff vesting period of at least three years, or a minimal purchase price, would likely defer taxation beyond the grant date.

Netherlands

New "Health Warning" requirement for offers made under EU prospectus exemption/exclusion

From January 1, 2012, mandatory "health warning" language will need to be included in offer/marketing materials (e.g. employee share plan booklets/communications) where companies make offers of shares in the Netherlands and want to rely on either the European Union Prospectus Directive (EUPD) exemption for offers made to fewer than 100 individuals per member state (150 as of July 1, 2012) or the exclusion where the consideration for the offer over a period of 12 months is less than EUR 2.5 million across the EU (EUR 5 million as of July 1, 2012).

Changes in pension laws and accounting standards

Companies play a crucial role in retirement as sponsors of some of the largest pension plans in the world; but this role brings a dilemma as pension risk is growing at a time of economic troubles. Companies must choose between managing the risk themselves, selling it to a third party or passing it to their employees. PwC-Netherlands has provided their annual review of the pension disclosures which includes a summary of new pension agreement requirements which will apply beginning in 2014 and accounting changes that will arise under the International Financial Reporting Standard (IFRS).

Please note that as this update is outside of the general scope of global equity, the information presented above will not be discussed below under the Country Discussions. Please see the attached Pension Winds of Change update for additional information.

Russia

Insurance contributions payable on salaries of certain foreign employees as of 2012

As previously provided in our October 2011 Global Equity Update, the Russian Government proposed changes to the current social security regime that will create a regressive scale of tax that is expected to increase payroll costs for Russian employers. The Russian Government, unexpectedly, amended the first version of the bill to include foreign nationals temporarily staying in Russia among insured parties covered by mandatory pension insurance. The only exception to this rule is for highly qualified specialists (i.e. foreign employees with the applicable work permit) and employees who have entered into a labor contract for a term of less than six months. Thus, employers will have to remit insurance contributions to the Russian Pension Fund on payments to certain categories of foreign employees temporarily staying in Russia in 2012.

Sweden

Swedish parliament decides on an amendment to tax concession for foreign key personnel

The Swedish parliament has decided on an amendment to the qualification of foreign key employees for tax relief. Under the current regulations, some foreign key employees are eligible for an income and social tax exemption on 25% of their income during the first 36 months of residence in Sweden. The current qualifications for tax relief remains the same but the amendment states that if a foreign employee receives a minimum qualifying salary the qualification of being a "key personnel" is automatically fulfilled. The minimum salary is set at a recurring monthly income of at least two times the Swedish price base amount (a total of SEK 88,000 for 2012).

United States

Clarification on the timing and penalty risks related to the deposit of employment taxes on equity

The IRS is continuing to pursue and assert penalties against employers for failing to make timely deposits following certain equity transactions. Under prior Internal Revenue Service (IRS) publications, the IRS indicated that penalties will not be assessed if tax deposits are made within one day of the stock option settlement date, as long as the settlement does not occur more than three days after the exercise date. However, this rule only applies to nonqualified stock option exercises. Other awards, such as restricted stock awards, will not likely be eligible for this grace period (based on IRS practices). Employers should review current practices around employment tax deposits and ensure that, to the extent possible, processes are in place to meet the deposit requirements.

Country Discussions

Denmark

RSUs with graded vesting likely taxable at grant

As mentioned in our Summer 2011 edition of our Global Monthly Update, the Danish tax authorities issued a tax ruling in May 2011 indicating that restricted stock units (RSUs) with graded vesting will be taxable at grant, regardless of the length of the vesting period. This treatment is contrary to prior tax rulings which indicated that it would be possible to delay taxation of RSUs until vesting if a vesting schedule of at least 3 years was utilized (whether it be cliff-vesting or graded vesting). It is not anticipated that this ruling will have retroactive effect on awards granted prior to May 2011 given the existence of prior tax rulings issued by the tax authorities; however, companies should consider this timing of taxation issue when making any future grants. Where grants have been made in Denmark since May 2011, it may be necessary to seek specific confirmation from the tax authorities on the timing of taxation, as well as, the associated reporting requirements.

At this time PwC-Denmark has indicated that a cliff vesting period of at least three years, or a minimal purchase price, would likely defer taxation beyond the grant date; however, there remains a risk that taxation may occur at an earlier date. Companies granting equity in Denmark should seek advice on the timing of taxation under the terms of their specific plan prior to grant.

Netherlands

New "Health Warning" requirement for offers made under EU prospectus exemption/exclusion

From January 1, 2012, mandatory "health warning" language will need to be included in offer/marketing materials (e.g. employee share plan booklets / communications) where companies make offers of shares in the Netherlands and want to rely on either the European Union Prospectus Directive (EUPD) exemption for offers made to fewer than 100 individuals per member state (150 as of July 1, 2012) or the exclusion where the consideration for the offer over a period of 12 months is less than EUR 2.5 million across the EU (EUR 5 million as of July 1, 2012).

The "health warning" language is not required for offers relying on the "employee share plans" exemption which is available to companies which have securities admitted to trading on a regulated market in the EU/EEA.

Companies planning to make awards to participants in the Netherlands in 2012 should review whether or not such offer shall fall within one of the exemptions from the EUPD prospectus filing requirements. If the company is able to rely on one of the exemptions, it should be reviewed whether or not a “health warning” statement is required in the offer documentation and/or employee communications.

The Executive Reward team at PwC-Netherlands is able to assess whether or not an offer would be exempt from the prospectus filing requirements. Furthermore, if required, they can provide the appropriate wording that can be inserted to meet the “health warning” requirements.

Please see the attached Executive Reward Team publication from PwC-Netherlands for additional details.

Russia

Insurance contributions payable on salaries of certain foreign employees as of 2012

The Russian government introduced changes to the current social security regime in September 2011 which are slated to create a significant increase in payroll costs for employers in Russia. Specifically, the legislation created a regressive scale of social security contributions, plus, an additional 10% employer contribution on income above the prescribed threshold (of approximately US\$17,000). At the time of original drafting it was anticipated that the legislation would exclude foreign employees temporarily staying in Russia.

Policymakers made a significant, unexpected amendment to the original version of the bill on November 23rd (approved on November 26th and effective as of January 1, 2012). Under this amendment, foreign nationals temporarily staying in Russia are now included among the insured parties covered by mandatory pension insurance. The only exception to this amendment is for Highly Qualified Specialists (i.e., foreign employees with the appropriate work permit) and employees who have entered into a labor contract with a term of less than six months.

At this point, the law does not specifically apply social insurance fund or mandatory medical insurance fund contributions; it only applies to social contributions to mandatory pension insurance. From a payroll perspective, companies should ensure that their Russian affiliates properly apply taxes as of January 1, 2012 for foreign nationals temporarily staying in Russia (unless such employees are eligible for the aforementioned exemption). In addition, companies should consider whether to accelerate some payments into 2011 to avoid additional pension insurance taxes that will be due in 2012.

For additional information, please see the attached Global Watch Updates from PwC-Russia (Global Watch No. 19 which provides background on the original legislation and Global Watch No. 26 which outlines the most recent changes from November 2011).

Sweden

Swedish parliament decides on an amendment to tax concession for foreign key personnel

On November 23, 2011, the Swedish parliament decided on an amendment to the qualification of foreign key employees for tax relief. Under the existing tax concession, individuals who meet the relevant qualifications benefit from a 25% income tax and social security exemption for all income (including equity award income) earned in the first 36 months of residency in Sweden.

In parallel to the existing rules, a "minimum qualifying limit" on foreign key employee salary now applies. The minimum qualifying salary limit is set at least two times the Swedish base amount (a total monthly income of SEK 88,000 for 2012) in order to qualify for the tax concession. It remains somewhat unclear what items of income are includable in the new minimum salary limit. Cash payments and benefits provided on a monthly basis based on the employment contract (or similar agreements) are clearly included. It is however not probable that remuneration paid less frequently, for example annual bonuses, or post-assignment deferred payments, for example equity compensation, are included in the minimum qualifying limit.

If the foreign employee qualifies for the exemption and obtains approval (via application) for the relief, the tax concession should apply to all taxable compensation that is paid or provided by the Swedish employer. This includes base salary, annual cash bonuses, equity compensation and benefits-in-kind.

The amendment will enter into force on January 1, 2012. For more information, please see the attached IAS Global Watch (Sweden).

United States

Clarification on the timing and penalty risks related to the deposit of employment taxes on equity

The Internal Revenue Service (IRS) is continuing to pursue and assert penalties against employers for failing to make timely deposits following certain equity transactions. The exercise of nonqualified stock options and often the vesting of restricted shares give rise to employment taxes. An employer is generally required to deposit employment taxes under the applicable monthly or semi-weekly deposit period rules. However, if on any day the employer accumulates employment taxes of \$100,000 or more, those taxes must be deposited by the close of the next banking day. Failure to make timely deposits of taxes will lead to penalties based on

graduated rates; however, the penalty will not apply to the extent a business can demonstrate that its failure was due to reasonable cause.

Nonqualified stock options are generally taxed at the time the employee exercises the options (based on the difference between the fair market value at exercise and the exercise price). The income recognized by the employee is treated as compensation to the employee, subject to income tax withholding, employment taxes, and included on Form W-2.

Technically, the Internal Revenue Code (section 83) provides that income from exercise of nonqualified stock options is included in income on the exercise date. However, the FICA and income tax withholding provisions generally do not impose a withholding obligation on the employer until wages are actually or constructively paid. In an effort to provide guidance to field agents examining the issue, on March 14, 2003, the IRS issued a field directive related to the assertion of penalties for failure to deposit employment taxes. The directive remains in effect currently and advises that IRS examiners are not to challenge the timeliness of deposits if such deposits are made within one day of the stock option settlement date, as long as the settlement does not occur more than three days after the exercise date.

It should be noted that this directive is intended to address the deposit penalty matter relative to nonqualified stock option exercises *only*. This rule should not be applied to other share-based awards. The IRS agents are routinely applying the deposit penalties and frequently denying relief based on reasonable cause arguments submitted by the employer. Employers should review current practices around employment tax deposits resulting from exercises of nonqualified stock options and other equity-related events (e.g., restricted stock vestings) and ensure that, to the extent possible, processes are in place to meet the deposit requirements.

For more detailed information on the above, please see the attached IRS Hot Topics (USA) publication.

Contact information

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

Philadelphia, PA

<i>Bill Dunn (Partner)</i>	<i>267 330 6105</i>
<i>AmyLynn Flood (Partner)</i>	<i>267 330 6274</i>
<i>Kerri McKenna</i>	<i>267 330 1723</i>
<i>Karolyn Sadowski</i>	<i>267 330 1935</i>
<i>Michael Shapson</i>	<i>267 330 2114</i>

Stamford, CT

<i>Heather Royce</i>	<i>203 539 4210</i>
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Los Angeles, CA

<i>Aldona Gorman</i>	<i>213 356 6127</i>
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New York, NY

<i>Parmjit Sandhu</i>	<i>646 471 0819</i>
<i>Ari Solomon</i>	<i>646 471 8477</i>

Chicago, IL

<i>Andrew Katsoudas</i>	<i>312 298 2831</i>
<i>Anne Roest</i>	<i>312 298 2646</i>

San Jose, CA / San Francisco, CA

<i>Julie Rumberger</i>	<i>408 817 4460</i>
<i>Brad Reynolds</i>	<i>408 817 1219</i>

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