Global equity compensation
Recent legislative updates

October 2011 Edition

Country Summaries

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

Belgium
Proposed capital gains tax on equity

For more than a year now various parties have been negotiating policies for the new Belgian government. A recent proposal includes a tax on capital gains from shares held by individuals at varying rates. Although this tax has not yet been approved, it is now speculated that a capital gains tax on shares may soon become a reality in Belgium.

China

Foreigners subject social security contributions on regular salary

The China Social Security Law, which took effect on July 1, 2011, introduced a national framework aimed at standardizing and streamlining the social insurance schemes administered by local governments in China. Under the new legislation, foreign nationals working in China will be required to make social security contributions. As a result, although equity awards are generally exempt from Chinese social security contributions, there is a risk that some local tax bureaus may impose such contributions on all equity compensation, including both local and cross border employees, thereby creating a potential increase in costs related to equity awards in China.

Netherlands

2012 Budget plan includes proposed amendments on 30% ruling

The 30% ruling, applicable to some foreign nationals who arrived in the Netherlands on or after January 1, 2001, provides employer and employee tax allowances on salary income if various conditions are met. Generally, the conditions require the cross border employee to have specialized skills not readily available in the Dutch market and be employed by a Dutch resident employer/entity. To hedge abuse of this beneficial tax treatment, the proposed amendments provide specific eligibility limits and requirements on 30% ruling qualifications for cross border employees and transitional rules for applications against existing assignees. As a follow-up to our September 2011 Global Equity Legislative Update, the Ministry of Finance provided their proposed amendments to the 30% Ruling for the 2012 Budget Plan which will likely become effective on January 1, 2012.

Russia

Proposed changes to social security regime

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. This revised social security scheme includes an additional 10% employer contribution on income paid above the proscribed threshold. If approved, the legislative changes can be implemented as early as January 1, 2012.

South Korea

Data protection legislation

The Data Protection Bill previously passed by the National Assembly became effective on September 30, 2011. Part of the bill includes the Data Protection Act, which imposes very specific requirements on companies to protect personal data including the need for data privacy consents. Multi-National companies with operations in South Korea should ensure they are compliant with the new Data Protection legislation related to the movement of personal data.

Turkey

Foreign equity plans exempt from registration

The Capital Market Board (CMB) recently published a new Communiqué which indicates that stock options and performance shares granted under a share ownership plan do not need to be registered if certain conditions are met. The CMB also provided PwC-Turkey with a confirmation, via private letter ruling, that share ownership plans are not required to be registered and no additional transactional information will be requested provided the relevant plan/grant meets the respective conditions.

Ukraine

Confirmation of stock option taxation

The tax authorities have confirmed that stock options will be subject to tax on the spread at exercise (i.e., the difference between the fair market value of the shares at exercise and the option exercise price). However, there remains a risk of double taxation on proceeds from the sale of shares.

United States

Georgia: Sourcing rules for income earned by non-residents

The Georgia Department of Revenue has adopted regulations, effective for taxable years beginning on or after January 1, 2011, on the taxability of deferred income and stock options received by nonresidents. Under these rules, companies are required to withhold taxes on equity income that may have been earned by a non-resident living and/or working in Georgia during the applicable deferral/vesting period.

Country Discussions

Belgium

Proposed capital gains tax on equity

Belgium has been waiting for over a year to receive final regulations from its government. Currently, there are eight parties negotiating a government program for the next legislature; however, no legislature has been sworn in yet. In the course of these negotiations, the Socialist Party proposed the following progressive capital gains tax on shares sold by individuals:

1) Capital gains realized within 12 months following the acquisition of shares would be taxed at 50% (plus local taxes).

2) Capital gains realized in the period from the 1st anniversary to the 8th anniversary of share acquisition would be taxed at 25% (plus local taxes).

3) Capital gains realized after an 8-year holding period would be tax free.

At this stage, this new capital gains tax is merely a party proposal and there is no explicit agreement by any other parties to push forward. Thus, it is speculated that a capital gains tax on shares might soon become a reality in Belgium.

If passed, while an employee would be solely responsible for remitting and reporting capital gains tax due, companies should keep in mind this change as they make grants to Belgian employees.

China

Foreigners subject social security contributions on regular salary

On September 6, 2011, the Ministry of Human Resources and Social Security issued the final Provisional Measures for Foreigners Working in China regarding Participation in the Social Insurance Scheme which will take effect on October 15, 2011.

In essence, the legislation imposes social security contributions on foreigners hired by Chinese companies directly or selected to work in their employer's Chinese subsidiaries, branch offices, or representative offices and who possess legal work permits in China. The social security contributions, applicable to compensation income, include pension, medical insurance, work related injury insurance, unemployment insurance, and maternity insurance at capped rates up to approximately 22%. Likewise, the employer will be required to contribute the employer portion of social security contributions (at capped rates up to approximately 44%) on the same income.

Special rules may apply for foreigners from countries who maintain a Totalization Agreements with China.

At the current time this legislative change has limited impact on global equity offerings in China since such awards are generally exempt from social security. However, the underlying risk that local tax bureaus may seek to apply social contributions on equity income, has only been heightened by the focus on social security contributions by cross border employees. As a result, it is important that Companies remain aware of the changing legislation and potential social security risks that may arise for equity award grants.

Please see the attached Global Watch China release for more information regarding the new legislation.

Netherlands

2012 Budget plan includes 30% ruling proposed amendments applicable to foreign employees

As noted in the September 2011 Global Equity Legislative Update, the 30% Ruling is a special tax regime that that may be extended to some foreign employees assigned to the Netherlands. Generally, the 30% ruling permits specific income allowances for both the employer and cross border employee, reducing the overall tax burden of an international assignment. However, the State Secretary indicated that he wanted to amend the ruling to limit its scope, focusing on the intended target group for the 30% ruling -- 'real' expatriates or recruited foreign nationals. The proposed amendment remains substantially the same as provided in our September 2011 Global Update. However, the expected amendments, likely to take effect on January 1, 2012, include the following:

1. The 'specific expertise' requirement will now require a minimum salary level (EUR 50,000);
2. The look back of the 'discount rules', which reduce the duration of the 30% ruling by previous periods of stay and/or work in the Netherlands, will be increased to 25 years; and

3. Employees living in the border area (i.e., radius of 150 kilometers from the Dutch border) will no longer qualify for the 30% ruling (in other words, commuter employees will be excluded).

The proposed amendment indicates that there is no retroactive effect for employees who started prior to January 1, 2011. As a result, companies may want to accelerate planned international assignments to the Netherlands into 2011 if they want to avoid application of the new legislation.

In addition, the authorities have proposed a 5 year interim transitional test. Under this test, employers may be required to prove that current assignees that have been present in the Netherlands for 5 years are still eligible for the 30% ruling treatment based on their skills and the relevant employment circumstances. This interim transitional test will not apply to individuals who have already worked in the Netherlands for 5 years as of January 1, 2012.

Please see the attached Global Watch (Netherlands) for more detailed information regarding the proposed changes.

Russia
Proposed changes to social security regime

The Russian Government proposed changes to the current social security regime for employers. If approved, the legislative changes can be implemented as early as January 1, 2012.

Under the proposed change, the previously capped social security contributions will be replaced by a regressive contribution scale which will likely lead to a sharp rise in payroll costs for employer. Specifically, the proposed changes will include insurance contributions at a rate of 30% on remuneration up to a salary cap of RUB 512,000 (approximately US$17,000), plus an additional 10% on income above this threshold, imposed on compensation, including equity compensation.

It is anticipated that this legislation will have widespread affect in Russia with an impact on nearly all businesses (save some small businesses that may be eligible for an exemption). However, the majority of foreign nationals should still remain exempt from the aforementioned Insurance Contributions.

From a tax planning perspective, employers may want to consider accelerating the payment of annual performance bonuses into 2011 to avoid the proposed incremental social tax costs.

Please see the attached Global Watch (Russia) for more information regarding these changes.

South Korea
Data protection legislation

The Data Protection Bill passed by the National Assembly became effective on September 30, 2011. Part of the bill includes the Data Protection Act (DPA), which imposes very specific requirements on companies to protect personal data.

The DPA is applicable to both individuals and organizations that are involved in the movement of personal data and the use of personal data files for business purposes. Most significantly the legislation imposes the following key requirements:

1. Employees will be required to provide data privacy consents to the movement of their personal data;
2. The entity/organization must have a specific privacy policy;
3. All entities/organizations are required to have a designated privacy officer; and
4. A procedure must be established to report any potential data violations or leaks.

Multi-National companies with operations in South Korea should ensure they are compliant with the new Data Protection legislation related to the movement of personal data. We recommend companies contact their local legal counsel to determine any next steps in this regard.

Turkey
Foreign equity plans exempt from registration

Under the Turkish Capital Markets regulations, the sale of foreign securities in Turkey via public offering or private placement was subject to prior approval from the Capital Market Board (CMB) and the underlying securities needed to be registered with the Board.

Due to lack of any further guidance under the relevant legislation, in principle, equity based employee plans were deemed as private placements and hence were subject to the aforementioned requirements. This said, although there were no written regulations in this respect, CMB authorities verbally stated that they would not impose such public offering procedures on employee incentive plans. Nonetheless, they did require an application to be made prior to the launch of the plan in Turkey in order for the Board to review to plan and to confirm whether or not relief would be granted.

A new Communiqué published by CMB states that registration of stock options and performance shares (which are granted under a share ownership plan) will not be required with the Board on condition that:

a) No sales transaction are realized in Turkey (i.e., via foreign broker);

b) No transaction are considered as a public offering; and

c) Information to be provided to the employees does not contain statements which would qualify the plan as a public offering.

PwC-Turkey requested an opinion from CMB in light of the Communiqué regarding the status of previously registered plans and any follow-up procedures that may be required. The CMB confirmed that share ownership plans are no longer required to be registered and that they will not request any additional information on such transactions, provided that the above conditions are met.

Ukraine

Confirmation of stock option taxation

PwC-Ukraine has reported we have additional clarity regarding the taxation of stock option income. The rules have confirmed that taxable investment income realized from derivative transactions, including employee stock options, is calculated as the positive difference between the proceeds received by the taxpayer and the amounts paid by the taxpayer. This confirms that income tax on a stock option award will be due on the spread at exercise (i.e., the difference between fair market value of the shares at exercise less the option exercise price).

However, there remains a risk that employees will be subject to double taxation on a portion of the income earned at the time of sale. Under the rules, individuals will be subject to tax on the difference between the sales proceeds and the expenses incurred at share acquisition. Based on this definition, PwC-Ukraine forewarns that the spread at exercise may not be considered an expense incurred for the share acquisition (and thereby not deductible from the taxable income base); as a result, the taxable benefit at sale may be equal to the sales proceeds less the option exercise price. This treatment would lead to double taxation on spread that was taxed at exercise.

Companies should be aware of this potential double taxation when granting stock options and communicating the related tax implications and requirements to Ukrainian employees.

United States

Georgia: Sourcing rules for income earned by non-residents

The Georgia Department of Revenue has provided specific rules for the taxation of income earned by Georgia non-residents who perform services in Georgia. Specifically, a Georgia nonresident who regularly engages in employment, trade, business, or other activities for financial gain in a prior year within Georgia will be subject to Georgia tax, if such income exceeds the lesser of 5% of all the income received by the nonresident during the taxable year or $5,000. These rules are effective for taxable years beginning on or after January 1, 2011.

In general, the rules require companies to allocate income based on the percentage of time a taxpayer spent in Georgia during the relevant vesting or deferral period. For example, assume an individual receives a Restricted Stock Unit (RSU) in 2009 which vests on the 3rd anniversary of the grant date (i.e., 2012). The individual does not reside in Georgia, nor has s/he ever resided in Georgia, during the vesting period; however, the individual has worked in Georgia for 300 days (out of a total of 1,000 total work days) over the course of the 3 year vesting period. However, as the rules are only retroactive to 1/1/2011, we would look at the ratio of days worked in Georgia on or after 1/1/2011 to the total days worked during the vesting period. If the individual worked 100 out of 300 total work days in Georgia in 2011 and 2012 during the vesting period, the Georgia Department of Revenue will deem 30% (100/300 days) of the individual's RSU income as taxable income in the state of Georgia for the year of vesting. Companies will be required to calculate the taxable benefit sourced to Georgia and withhold the relevant taxes on such income.

Special rules have been provided for Deferred Compensation, Non-Qualified and Incentive Stock Options and Employee Stock Purchase Plans. It is also understood that Restricted Stock and Restricted Stock Units will be subject to the legislation.

As the rules around nonresident sourcing are complex and vary depending on the individual circumstances of each transaction, Companies should be cognizant of the specific requirements as equity awards vest or deferred compensation is paid. In addition, as companies are now required to withhold and remit the associated taxes on this income, it will be important to work with your payroll providers to ensure the proper amount of tax is allocated to the state of Georgia.

PwC would be happy to provide further guidance upon request.

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