Global equity compensation Recent legislative updates

September 2011 Edition

Country Summaries

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

Denmark

Potential changes for reporting obligations for tax qualified equity plans

The existing reporting obligations in Denmark for tax qualified equity award plans may change for grants made in 2012 or later. Specifically, the changes would place the reporting obligation on the local employing company.

Korea

Preliminary return and payment no longer required for capital gains on shares traded on foreign exchange

The Korean National Tax Service ("NTS") has announced that the recent amendment to the Individual Income Tax Act will remove the requirement for filing a preliminary return and payment of capital gains taxes for gains from the sale of shares traded on foreign exchanges. This amendment is intended to reduce administrative costs with respect to refunds for preliminary payments of capital gains tax.

Netherlands

Proposed amendments to the "30% ruling" to expatriate income

The State Secretary of Finance has recently proposed amendments to the 30% ruling (permitting specific employer and employee allowances related to an expatriate's income) which would affect inbound employees. The intended changes may have a negative effect on returning Dutch nationals and commuters living in the border area of the Netherlands.

United Kingdom

Final disguised remuneration rules confirmed

Finance Act 2011 has received Royal Assent finalizing the disguised remuneration rules. The original rules as provided in December 2010 would have been applied more broadly but the Government has stated detailed exemptions to ensure that most daily transactions do not fall under the charging provisions. While these rules will likely not affect the most common types of employee share plans, changes may need to be made to certain plans or to how such plans are administered to avoid inadvertently activating a charge.

Country Discussions

Denmark

Potential changes for reporting obligations for tax qualified equity plans

Employees in Denmark may defer the taxable event of equity awards until the time of sale of the shares provided various conditions are met and the local employer and the employee agree, in writing, to such conditions. A corporate tax deduction for the local employer will not be allowed where a tax deferred plan is implemented.

Currently, the reporting obligation for a tax deferred equity plans lies with the tax advisor or auditor, who must submit a statement to the tax authorities confirming the plan meets all of the criteria for applying the qualified rules. However, the reporting obligations may change for grants made in 2012 or later. Under the proposed changes, the employing company (the local Danish entity) will have the reporting obligation.

Discussions regarding these potential changes are expected to continue for a few months and might be delayed by the upcoming parliament elections. We will provide further updates as such information becomes available.

Korea

Preliminary return and payment no longer required for capital gains on shares traded on foreign exchange

The Individual Income Tax Act in Korea requires individuals to file a quarterly preliminary tax return and pay any capital gains tax resulting from the gain on sale of shares, including those disposed by large shareholders of their shares of listed companies, unlisted companies, and shares traded over-the-counter and overseas. Capital gains tax is currently imposed at a flat rate of 22% (including surcharges) on the portion of the gain that exceeds KRW 2,500,000. The filing of the return and payment of capital gains tax generally should be made within the two months following the end of the quarter during which the shares were sold. If the preliminary return is filed and the capital gains tax is paid within the prescribed time frame a 10% tax credit will be allowed.

However, the Korean National Tax Service ("NTS") has recently announced an amendment stating that the Individual Income Tax Act will no longer require the filing of a preliminary return and payment of capital gains tax for sales of shares of foreign companies, or shares of Korean companies traded on foreign exchanges, excluding shares issued by foreign companies traded on the Korean stock exchange. The change is intended to lessen administrative costs associated with tax refunds due to differences between capital gains preliminarily declared and taxes paid and that of the final declaration and payment. This latest amendment will apply to shares sold on or after January 1, 2012.

This amendment will be beneficial for employees of a Korean subsidiary receiving equity award grants from a US/foreign parent company or in general for expats or mobile employees working in Korea who hold shares of a foreign company as the gain from the sale of such shares will be exempt from capital gains tax and the related tax return filing requirements.

Netherlands

Proposed amendments to the "30% ruling" to expatriate income

A foreign employee assigned to the Netherlands may be granted the right to be taxed in accordance with a special Dutch tax regime called the 30% ruling. Generally, under the 30% ruling, the employer and employee are permitted specific allowances which assist in reducing the overall tax burden of an international assignment.

The 30% ruling is currently utilized by approximately 2,000 Dutch nationals. The State Secretary has indicated that he wants to amend the ruling to focus on the intended target group for the 30% ruling (i.e., the 'real' expatriates or recruited foreign nationals). The State Secretary believes that the 30% ruling is currently applied more broadly than was intended at the time the ruling was created.

The State Secretary has stated that the 30% ruling will be amended for inbound employees as follows:

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. Thus, new inbound employees that left the Netherlands more than 10 years ago will now no longer be entitled to the 30% ruling (this change affects mainly Dutch nationals who return to the Netherlands after a long residence abroad);
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.

Additionally, less strict conditions will apply to university doctorates so they may more easily qualify for the 30% ruling.

It remains unclear when these proposed amendments will become effective if they are adopted. PwC-Netherlands expects that the amendments will not function retroactively and that they will likely not apply to existing cases. In situations where the proposed amendments will cause a 30% ruling not to be obtained for new assignments to the Netherlands, PwC-Netherlands recommends that it might be wise to accelerate these assignments, especially from Belgium and Germany or for Dutch nationals.

As this change will significantly affect the tax rates for internationally mobile employees in the Netherlands, companies should consider communicating the potential changes to affected employees. The changes will be included in the 2012 Tax Budget Plan. Further updates are expected to be given shortly.

United Kingdom

Final disguised remuneration rules confirmed

Finance Act 2011 has received Royal Assent finalizing the disguised remuneration rules. The original rules, published in December 2010, would have been applied more broadly but the Government has stated detailed exemptions to ensure that most common transactions do not fall under the charging provisions. Changes may need to be made to some plans or plan administrations to avoid inadvertently activating a tax charge.

Where the new rules apply to specific remuneration arrangements a Pay As You Earn (PAYE) and National Insurance Contribution (NIC) charge will arise and it will be the obligation of the employer (or former employer) to operate.

Why has the Government introduced the new rules?

The new rules are mainly intended to tax what the Government considers to be 'disguised remuneration,' which mostly refers to deferred compensation. If the disguised remuneration rules apply, employees may be taxed on money or assets that they have not yet received or may never receive. If the new rules don't apply, current tax treatment and timing will generally remain unchanged.

The impact on employee share plans

In most cases, the new rules will not have a negative effect on the more common types of employee share plans. In some cases, especially where an employee benefit trust (EBT) is involved, plan rules as well as grant and administrative processes may need to be changed to ensure that a charge under these rules is not unintentionally triggered.

Generally, there are exemptions which cover the award and vesting or exercise of most standard share option plans, long-term incentive plans and phantom share plans. The new rules will generally not apply where the shares used come from newly issued shares or treasury shares held by the company, or where cash is paid by the employer.

However, the new rules:

1. May apply where an EBT buys or holds shares to be used to satisfy share awards unless certain exemptions apply; and
2. Will likely apply where an employee buys shares from an EBT or another shareholder on deferred payment terms.

If PAYE and NIC is due, when should it be paid?

If the tax point is on or after August 17, 2011:

The normal payroll deadlines for PAYE and NIC apply to the disguised remuneration rules. The employer generally has between two and six weeks to pay the taxes to HMRC.

If the tax point occurred between April 6, 2011 and August 16, 2011:

PAYE and NIC must generally be paid to HMRC by September 21, 2011.

If the tax point was the making of a loan between December 9, 2011 and April 5, 2011 that has not been repaid by April 5, 2012:

PAYE and NIC must generally be paid to HMRC by May 21, 2012.

Please see the attached announcement for more details on the final disguised remuneration rules and the affect on various compensation arrangements.

Contact information

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

Philadelphia, PA

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

Stamford, CT

Heather Royce	*203 539 4210*

Los Angeles, CA

Aldona Gorman	*213 356 6127*

New York, NY

Parmjit Sandhu	*646 471 0819*

Chicago, IL

Andrew Katsoudas	*312 298 2831*
Anne Roest	*312 298 2646*

San Jose, CA

Julie Rumberger	*408 817 4460*

San Francisco, CA

Brad Reynolds	*415 498 5368*