Recent legislative updates



This issue addresses recent tax and regulatory changes in various jurisdictions:

- *Belgium* – New employer income tax withholding obligation on stock compensation taxable as of January 1, 2019
- *Belgium* – Further clarification on the NSSO's adjusted position on the applicability of social security contributions on equity award income
- *Poland* - Further discussion on the changes in the Polish PIT taxation of employee incentive programs

Country Summaries

Belgium

New employer income tax withholding obligation on stock compensation taxable as of January 1, 2019

The anticipated Belgium "Jobs Deal" agreement has proposed significant changes to the treatment of equity compensation by the Belgian tax authorities, including imposing an employer withholding obligation on all equity awards granted by foreign-based companies which are taxable as of January 1, 2019. The "Jobs Deal" agreement has not yet been translated into a law.

The information presented above will be discussed in the *Country Discussions* section below.

Belgium

Further clarification on the NSSO's adjusted position on the applicability of social security contributions to equity award income

In the published Administrative Instructions for the 3rd quarter of 2018, the Belgian National Social Security Office (NSSO) adjusted its position to assert that equity compensation is subject to social security contributions regardless of whether the local entity is charged with the cost of the equity compensation or if there is any involvement by the local entity. This means that the NSSO views both employee and employer social security contributions as applying to equity award income.

This position is stricter than the NSSO's prior interpretation and may be legally challenged. However, until there is further guidance, it is recommended that foreign-based companies consider this position for equity compensation becoming taxable from Q3 (i.e. July 1, 2018) onwards. More information on this issue can be found here.

The information presented above will not be discussed in the *Country Discussions* section below.

Poland

Further discussion on the changes in the Polish PIT taxation of employee incentive programs

As reported in our December 2017 alert, amendments to the Personal Income Tax (PIT) Act in effect from January 1, 2018, extended the availability of favorable tax treatment (i.e. the possibility to defer taxation of the acquisition of shares until sale) for equity compensation programs. Per the amendments, shares issued by companies headquartered in certain countries with which Poland has entered into a double taxation agreement (e.g. USA, Switzerland, Japan) became eligible for the favorable tax treatment.

PwC-Poland has recently published an English-language version of their report titled "Employee Stock Ownership Programs – an Opportunity for Companies, an Opportunity for Poland." The report provides a comprehensive guide for foreign-headquartered companies looking to expand their equity compensation programs to Poland and utilize the opportunity presented as a result of these legislative changes.

To view a copy of this report, please click here.

The information presented above will not be discussed in the *Country Discussions* section below.

Country Discussions

Belgium

New employer income tax withholding obligation on stock compensation taxable as of January 1, 2019

As reported in our August/September legislative update, the anticipated Belgium "Jobs Deal" agreement has proposed significant changes to the treatment of equity compensation by the Belgian tax authorities. Under the agreement, foreign-based companies are generally subject to an employer withholding obligation on all equity awards granted to employees which are taxable as of January 1, 2019. This withholding obligation would exists regardless of whether the local subsidiary is involved in the grant of the equity compensation, or whether the equity compensation is recorded as an expense in the local subsidiary's financial statements.

Previously, most foreign-based companies would generally have a withholding obligation for equity compensation only where the Belgian subsidiary was involved in the administration of the equity compensation plan, and particularly, where there was a recharge of costs. However, once enacted into law, the proposed changes would impose a withholding obligation on all forms of equity compensation irrespective of these factors.

The "Jobs Deal" agreement also imposes a general employer reporting obligation on foreign-based companies for all forms of equity compensation, regardless of the involvement of the Belgium entity or whether there is a chargeback of costs. Previously, only stock options taxed at grant were subject to employer reporting but now all equity (e.g., stock options taxed at exercise, restricted stock units,restricted stock, etc.) will require employer reporting at the taxable moment regardless of recharge or local entity involvement. This reporting obligation applies to all equity awards that are taxable as of January 1, 2018. The taxable benefit must be reported at year end on individual statements (281.10) by the end of February 2019.

While these changes have not have not been translated into law yet, they will likely pass. Employers should review their current processes to ensure they are compliant with these legislative changes to withholding and reporting requirements.

Let's talk

For questions on the content in this document, please contact any of the following individuals.

AmyLynn Flood (Partner),
Philadelphia, PA
+1 (267) 330-6274
amy.lynn.flood@pwc.com

Jennifer George (Partner),
San Francisco, CA
+1 (415) 498-5743
jennifer.b.george@pwc.com

Robert Purser (Partner),
Atlanta, GA
+1 (678) 419-4188
robert.purser@pwc.com

Brandon Yerre (Partner),
Dallas, TX
+1 (214) 999-1406
brandon.w.yerre@pwc.com

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