Global Reward Services Quarterly Newsletter

December 21, 2020

KPMG LLP's (KPMG) Global Reward Services Quarterly Newsletter brings you compensation and reward developments, along with KPMG observations from around the world.

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Americas:

Canada: Additional T4 reporting requirements according to CRA

Effective for the 2020 tax year, the Canada Revenue Agency (CRA) has announced that all employers must report certain employment payments related to COVID-19 on the 2020 T4 slip, "Statement of Remuneration Paid," using new information codes that correlate to defined periods. According to the CRA, this additional information is intended to help them validate payments made to individuals under the Canada Emergency Response Benefit (CERB) and the Canada Emergency Student Benefit programs, as well as payments made to employers under the Canada Emergency Wage Subsidy.

These new reporting requirements are in addition to the existing requirement to report employment income tax in Box 14, "Employment Income," or Code 71, "Indian (exempt income) – Employment."

The CRA has introduced four new codes to report employment income and retroactive payments and each period is aligned with eligibility for COVID-19-related benefits. The four new codes are:

Code 57: Employment income – from March 15 to May 9

Code 58: Employment income – from May 10 to July 4

Code 59: Employment income – from July 5 to August 29

Code 60: Employment income – from August 30 to September 26.

All employers are required to identify the applicable code for each payment based on when the payments were made. Employers that have already filed their 2020 T4 slips and summary will not need to refile.

KPMG observations:

Employers and payroll administrators will have to adjust their procedures and policies to comply with this new requirement, which will increase the administrative burden related to their information collecting and reporting obligations. An inventory of all COVID-19 payments, including time of payment, will be required to determine applicability.

United States: SEC Disclosure on Human Capital Management 2021

On August 26, 2020, the U.S. Securities and Exchange Commission (SEC) adopted final amendments under Regulation S-K as part of a Disclosure Effectiveness Initiative to modernize and improve corporate disclosures that became effective on November 9, 2020. This is the SEC's primary nonfinancial disclosure regime and was amended after the SEC reviewed public comment letters and disclosures that SEC reporting companies made in response to COVID-19.

Human Capital Management (HCM) has been added to the list of topics that a company must discuss in its annual filings and certain registration statements, to the extent that such disclosure is material to an understanding of the company's business. This topic is a required disclosure in annual reports on Form 10-K and certain registration statements.

This new disclosure requirement reflects how the economic landscape has evolved over the past few decades, with human capital becoming an increasingly important resource for most companies. It is expected that few companies will be able to avoid this disclosure requirement entirely by taking the position that their management of human capital is not material to their business (and thus not important to an investor's decision-making). Investor focus on not only HCM but also environmental, social, and governance considerations (ESG) has gained traction with several companies announcing changes to the way they measure executives against broader ESG-type considerations.

The KPMG Board Leadership Center team has issued a booklet (*The ESG journey: Lessons from the boardroom and C-Suite)* highlighting the key considerations for measuring ESG for executives and determining executive compensation. Read more

Aside from the number of employees, which was already a requirement, the new HCM disclosure rules extend the required disclosure to "any human capital measures or objectives that the company focuses on in managing the business." The rule gives a nonexclusive list of possible items to be considered, but not required for disclosure, including "depending on the nature of the company's business and workforce—measures or objectives that address the development, attraction, and retention of personnel." As is the case with most SEC disclosures, only material factors need be disclosed.

Notably, "human capital" is not defined because according to the SEC release, the term "may evolve over time and may be defined by different companies in ways that are industry specific."

Consider the nature of the company's business and workforce: Some human capital measures are more important in certain industries than others. Is there something specific about human capital practices that is especially important to your industry or strategy? For example, disclosure about turnover may be less relevant to a large retail company with a large seasonal workforce as compared to a smaller tech company with specialized and critical talent at every level. We expect disclosures will coalesce by industry. As another example, retailers may find the mix between full-time and part-time a material disclosure while traditionally male-dominated industries, such as mining and heavy manufacturing, may focus on gender diversity.

Policies focused on development, attraction, and retention: Some argue this language suggests there could be a mini-CD&A that addresses broad-based compensation strategy and development. When considering possible areas to explore for materiality, consider elements that may assist in telling your company's human capital story and how they may materially impact your business. Only time will tell what categories become overall "leading practice" and/or which may be industry-specific.

KPMG observations:

Given the new disclosure requirements around HCM, companies need to assess what is considered material to their businesses and what data is needed to develop and draft appropriate disclosures. KPMG can assist companies to collect the data to support disclosures through data and analytics tools to the extent these are not available internally, particularly where we already utilize Link Enterprise and related technology applications such as the Global Equity Tracker to collect employee data. Please connect with your usual KPMG contact to discuss further.

United States: Extended due date for contributions to defined benefits plans

In August 2020, the Internal Revenue Service (IRS) issued Notice 2020-61 as guidance regarding the extension of time for contributions to a single employer defined benefit pension plan with an extended due date of January 1, 2021. These contributions will be treated as timely if they are made no later than January 4, 2021 (which is the first business day after January 1, 2021).

A provision of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. No. 116-136) provides that any minimum required contribution that would otherwise be due under section 430(j) during calendar year 2020 is due on January 1, 2021.

Notice 2020-82 therefore provides that:

— The IRS will treat a contribution with an extended due date of January 1, 2021, pursuant to the CARES Act, as timely if it is made no later than January 4, 2021 (which is the first business day after January 1, 2021).

— For a contribution that is made by January 4, 2021, and treated as timely, the amount of the minimum required contribution that is satisfied by the contribution (and the amount that may be added to the plan's prefunding balance on account of any excess contribution) is determined by computing the applicable interest adjustment using the actual contribution date.

KPMG observations:

Although the purpose of the extended due date for contributions is to allow employers sponsoring these plans to defer these payment obligations until calendar year 2021, financial institutions cannot transfer funds on the January 1, 2020 due date and thus these employers would need to make these contributions prior to January 1, 2021, which would be inconsistent with the legislative intent to defer the payment obligation until calendar year 2021. Employers should consider investigating if the new guidance around the extended due date for contributions apply to them, as well as how to ensure payments are made timely to meet the due date.

United States: San Francisco voters pass Proposition L

Under recently approved Proposition L, effective January 1, 2020, an additional gross receipt tax (GRT) or "administrative office tax" will be imposed on businesses that compensate their highest-paid managerial employee at least 100 times more than the median compensation paid to the business's employees based in the city of San Francisco.

San Francisco currently collects a GRT from businesses engaged in business in the city (unless specifically exempted) at a rate from 0.16 percent to 0.65 percent annually. Businesses with more than $1 billion in gross receipts, 1,000 employees nationwide, and administrative offices in San Francisco pay an administrative office tax based on their payroll expense instead of their gross receipts. This tax rate is 1.4 percent of their payroll expense.

Under Proposition L, businesses will pay an additional GRT at rates starting at 0.1 percent if the executive pay ratio is greater than 100 to 1. The rate increases incrementally as the executive pay ratio increases, going up to 0.6 percent if the executive pay ratio is greater than 600 to 1. For administrative office taxpayers, the additional tax ranges from 0.4 percent to 2.4 percent of their San Francisco payroll expense.

KPMG observations:

Businesses engaged in business in San Francisco will need to compute their executive pay ratio to determine whether they will owe additional taxes under Proposition L.

United States: Year-end deadline to remove section 162(m) provisions in deferred compensation arrangements

Through the end of calendar year 2020, employers have additional flexibility to amend nonqualified deferred compensation (NQDC) arrangements, to remove outdated provisions requiring the delay of payments expected to be nondeductible under section 162(m).

Prior to the Tax Cuts and Jobs Act (TCJA), covered employees for section 162(m) purposes were determined anew on a yearly basis (without any mandatory carryover from prior years). However, as amended by the TCJA, section 162(m)-covered employees now include any individual who was a covered employee of the employer or any predecessor for any preceding tax year beginning after December 31, 2016 and maintained that status for all future tax years.

Amendments to deferred compensation arrangements must be made no later than December 31, 2020. If the corporation would be required to make one or more payments by the end of this year under the amended plan, then such payment(s) must also be made no later than December 31, 2020.

KPMG observations:

Employers that may be affected by these measures under section 162(m) need to consider reviewing the terms of their NQDC arrangements and whether any amendments (and related payments) need to be made before year-end.

Asia/Pacific:

Australia: Tax authorities' plans for data matching program to monitor compliance

The Australian Tax Office (ATO) announced it will acquire visa data from the Department of Home Affairs to identify noncompliance with obligations under taxation and superannuation laws. With this latest initiative, considering the level of detail being acquired coupled with data from Single Touch Payroll (STP) and superannuation fund reporting, the ATO is enabled to apply a sophisticated and highly targeted approach to foster tax and superannuation compliance of individual employees and their employers.

The data to be acquired includes:

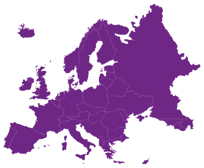
— Address history for visa applicants and sponsors;
— Contact history for visa applicants and sponsors;
— All visa grants;
— Visa grant status by point in time;
— Migration agents (visa application preparer who assisted or facilitated the processing of the visa);
— Address history for migration agents;
— Contact history for migration agents;
— All international travel movements undertaken by visa holders (arrivals and departures);
— Sponsor details;
— Education providers (educational institution where a student visa holder intends to undertake their study); and
— Visa subclass name.

Considering all this, all employers with employees working in Australia under a visa should review their tax, STP, and superannuation obligations in connection with these employees so that they are compliant. Compliance with such obligations can be especially challenging where employees remain paid from their home country payroll.

KPMG observations:

The penalties for noncompliance can be significant, although the Commissioner does have certain discretions to remit the penalties when a voluntary disclosure is made by the taxpayer before an ATO audit or review is initiated. Organizations with concerns about the collection of data and scrutiny by the ATO in the case of their foreign national workers and the state of their compliance should consult with their usual KPMG contact.

Europe:



Greece: Favorable tax treatment of capital gain arising from stock options and free shares

Newly-enacted legislation issued in August 2020 and retroactive to January 1, 2020 in Greece includes tax measures for the enhancement of the Greek economy concerning the taxation of individuals, applicable on income and benefits-in-kind. An employment tax exemption for “free shares” and favorable tax treatment of capital gains realized from stock options and on free shares are among the new laws enacted, in which the government aims to stimulate the economy to support businesses and individuals adversely affected by the COVID-19 pandemic.

A: Employment income exemption of free shares: To expand employment income exemptions, a new provision is introduced that exempts benefits-in-kind in the form of free shares from the calculation of employment and pension income. To qualify for the exemption, such free shares must be offered within the framework of a share plan that requires the achievement of specific goals or the occurrence of a certain event.

B: Favorable tax treatment of capital gain arising from stock options and free shares: To attract skilled employees and to create a rewarding and incentivized employment environment, a tax reform is introduced such that capital gain arising from the sale of free shares given by companies to their employees within the framework of a share plan is classified as capital gain taxed at a flat tax rate of 15 percent. Specifically, favorable tax treatment is introduced on the distribution of a company’s free shares to its employees within the framework of a share plan that requires the achievement of specific goals or the occurrence of a certain event. In particular, the income arising from the sale of shares acquired via such free share plans is treated as capital gain and is taxed with a flat tax rate of 15 percent.

For listed shares, the capital gain is equal to the closing price of the share on the stock exchange on the vesting date, assuming the sale price is equal or lower than that. If the sale price is higher than the closing price on the vesting date, then any excess amount is taxed based on the general provisions applicable to capital gains from listed shares (i.e., exempt from income tax, assuming conditions are met) but subject to solidarity contribution.

For nonlisted shares, the capital gain is equal to the sale price, assuming it exceeds the share value, as this was calculated on the day the free shares were transferred. However, if it is lower, then it is equal to the share value of the day they were transferred.

KPMG observations:

Companies with free share awards such as RSUs in Greece should review their existing Plans to determine if there is an opportunity to secure this tax favorable treatment. Note KPMG Greece can assist in determining whether a Plan can qualify.

Sweden and United Kingdom: Preparing for potential Brexit outcomes for global mobility professionals and their employees as they affect Sweden and the United Kingdom

Sweden

It has now been confirmed that any British citizens who arrive in Sweden to live, work, and study prior to December 31 will 2020 retain their right to remain in Sweden. For such British citizens, a new residency status has been introduced and those who apply may register with the Swedish migration agency to obtain.

The position for U.K. nationals arriving in Sweden after Brexit remains unclear, but it is expected that they will be treated the same as all third-country nationals arriving in Sweden.

United Kingdom

For Swedish nationals who arrive in the U.K. prior to December 31, 2020, an application must be made to the European Union (EU) Settlement Scheme prior to June 30, 2021, to protect their right to remain in the U.K. post-Brexit.

New immigration legislation comes into force in the U.K. from January 1, 2021.

In the event of the U.K.'s departure from the EU on December 31 without any further agreement, the EU Commission has confirmed that social security entitlements acquired by the EU27 or U.K. nationals prior to December 31, 2020 will be protected.

In the absence of any new agreement, EU social security coordination rules, including the rules for posted workers, will cease to apply to any new cross-border arrangements. New rules between Sweden and the U.K. will have to be agreed at a country level. The existing bilateral agreement between the two countries is somewhat insufficient and outdated, particularly with respect to multistate workers.

If this bilateral agreement is not renegotiated, then there is a risk that social security may be payable in both Sweden and the United Kingdom.

KPMG observations:

Employers should continue to monitor the new immigration rules for relocating and visiting employees to the United Kingdom or moving between the U.K. and the EU. In the absence of any new agreement, EU social security coordination rules will cease to apply to any new cross-border arrangements. This will potentially have an impact on employees who receive equity awards. Watch this space, particularly in the new year when further guidance is expected.

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