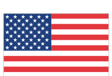
Global Reward Services Quarterly Newsletter

May 2022

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

Americas



United States: Delays Occurring for Issuance of ITINs, Certificates of Coverage

The United States Internal Revenue Service (IRS) released a Chief Counsel Advice memorandum on January 14, 2022. This is one of the first memorandums to be released concerning the impact of global mobility tax compliance processes on an employer's federal income tax reporting and withholding obligations. This memorandum addresses whether an employer is eligible for a tax refund on behalf of the tax equalization of an employee on foreign assignment in the year following the calendar year in which the compensation was paid. Please keep in mind that employers are eligible to correct any overpayments in the calendar year in which the wages were paid to the employee.

The short answer is no. An employer is not eligible for a refund for the taxes that it pays on behalf of a tax-equalized employee. The IRS has established that a refund only applies to an employer's withholding for employee compensation if the hypothetical tax estimate is an "administrative error." An administrative error occurs when there is "inaccurate reporting of the amount withheld due to a transposition error or math error." Therefore, an administrative error occurs when the amount that the employer reported as withheld on the employer's employment tax return does not equal the amount actually withheld from the employee's wages. If no administrative error exists, the employer cannot receive a refund for such income tax in the year following payment of related compensation. Furthermore, an administrative error only exists if determined prior to the end of the calendar year to which compensation is attributable.

The Service takes a different approach for FICA tax. Contrary to income tax, refunds for FICA tax may be permissible in subsequent calendar years after attributable compensation payment. Prior to this refund, the IRS requires that the employer make all efforts to reimburse the employee and secure the employee's consent for allowance of refund claim.

For more information, read our KPMG Flash Alert.

KPMG observations:

This IRS memorandum confirms the importance of accuracy in hypothetical tax estimates for mobility programs. Employers must have effective and timely processes in place to correct overpayments before year-end.

Asia Pacific

China: Recent Developments on IIT policies

The Ministry of Finance and the State Taxation Administration for the People's Republic of China (PRC) extended policies revolving around individual income tax (IIT) treatment of annual bonuses, equity-based incentives, and certain expatriate fringe benefits-in-kind. Additionally, the policies stem beyond just IIT, providing guidance on income earned from partnerships and sole proprietorships. It is noteworthy to add that these policies not only benefit salary income earners, along with strengthening IIT compliance, but they also aid companies and individuals in adapting their tax planning.

The Ministry of Finance and the State Taxation Administration, together, created three new policies on December 30 and December 31 of 2021:

- **Announcement No. 41 of 2021:**
  - All sole proprietorships and partnerships, who are holding equity investments, are subject to audits for IIT assessment and reporting purposes starting January 1, 2022.
  - Sole proprietorships and partnerships must also report any equity investment undertaken to the tax authorities within 30 days of the date of acquisition.

— **Announcement No. 42 of 2021:**
  - Preferential IIT policies pertaining to annual bonuses and equity incentives granted by public companies are extended to December 31, 2022 and December 31, 2023, respectively.

— **Announcement No. 43 of 2021:**
  - The preferential IIT policy on benefits-in-kind granted to foreign nationals working in China is extended until December 31, 2023.

In addition, the new legislation approved for the continuation of key, existing preferential IIT policies and treatment. The beneficial treatment provided for equity incentives (e.g., stock options, stock appreciation rights, restricted stocks, and other equity-based awards granted to individuals) granted by listed companies has been extended until December 31, 2022. Preferential treatment for annual bonuses, benefits-in-kind, and the exemption from annual IIT reconciliation for comprehensive income have been extended until December 31, 2023.

The objective of the changes to the tax regulations is twofold: 1) reduce the IIT burden on salary income earners and 2) enhance the administration of IIT from high-income earners who derive income from sole proprietorships and partnerships.

For more information, read our KPMG Flash Alert.

KPMG observations:

Companies and individuals should consider the following in their planning:

— Stay abreast of relevant policy developments and budget for future cost increases and talent retention programs before the policy extension's expiration.

— Companies should comply with the tax reporting requirements for equity plans in order to secure the preferential tax treatment, and seek professional advice to assess appropriate tax treatment where in doubt.

— The existing IIT subsidy policy in the Greater Bay Area will also expire at the end of 2023 (for related coverage, see GMS Flash Alert 2019-116, 15 July 2019). Companies and individuals should also closely follow the developments on any possible changes and extensions to the policy, and devise plans to align corporate and talent strategies.

India: 2022 Union Budgets Make Adjustments at Margins for Individuals, Employers

On February 1, 2022, Nirmala Sitharaman, India's Finance Minister, introduced the Union Budget for 2022. The key highlight of the budget was the introduction of the taxation of Virtual Digital Assets (VDA), e.g., crypto assets, nonfungible tokens (NFTs), etc. In terms of India's income tax rates, those will remain unchanged, but a new cap of 15 percent was placed on a surcharge on income taxes for all long-term capital gains. Moreover, other existing items that were changed in the 2022 Union Budget revolve around:

— National Pension Scheme (NPS) deduction, for employer's contributions, increased to 14 percent (from 10 percent) of specified salary for State Government employees with effect from Financial Year (FY) 2019–20.

— Employer reimbursements of COVID-19 medical expenses are no longer included in the recipient's income, including the ex gratia received by family members of the deceased person from the employer within the specified time. This change is applicable from FY 2019–20.

— Deduction in respect of premiums paid for a policy for the benefit of a disabled dependent now available to the policy holder (being individual or member of HUF) even if annuity/lump sum to be received by the disabled dependent on attainment of 60 years of age by policy holder. Further, such annuity or lump sum amount received by a disabled dependent on the above referred policy is not taxable.

— A 15 percent cap has been set for the surcharge on long-term capital gains income.

Please note that unless otherwise indicated, the proposed amendments relating to direct taxes will apply from the assessment year 2023–24.

As mentioned above, the 2022 Union Budget also initiated new treatment for the taxation of VDA, which includes, but is not limited to, crypto assets, NFTs, and other digital assets. Specifically, any income earned from the transfer of any of these digital assets will now be subject to a 30 percent tax, in addition to any surcharge and/or cess. Furthermore, the holder of the digital asset is not allowed any deduction for the expenses or losses on these assets, aside from their cost of acquisition. Loss, if any, on transfer of VDA cannot be set off against any other income/carried forward to succeeding full year. There are also withholding tax provisions introduced for transfer of VDAs.

Lastly, The Finance Act 2020 read along with Circular No. C1 of 2020, also permits employees to indicate to their employer whether the employer should withhold taxes from salary income as per the Current Provisions (old tax regime) or under the Optional New Tax Regime. Key features of the Optional New Tax Regime include:

— The Optional New Tax Regime is introduced by The Finance Act 2020 for individuals with modified tax slabs and rates. On satisfaction of certain prescribed conditions, an individual may opt to compute tax in respect of total income (without considering exemptions and deductions), instead of the existing tax regime.

— Net taxable income is taxed based on new progressive income tax rates ranging from 5 percent to 30 percent.

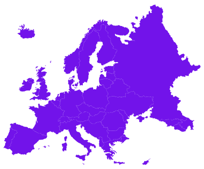
For more information, read our KPMG Flash Alert.

KPMG observations:

This new budget signals stability for individual taxpayers—including international assignees subject to Indian taxation—and their employers. High-income earners could experience lower taxation if they incur any capital gains due to capping the rates of surcharge applicable to specified capital gains.

Moreover, as the definition of "assets" expands, we will see a growing number of countries adjusting to the new rise of VDAs, along with specifying taxation treatment for years to come. Therefore, mobile employees—and their employers—must be mindful of the tax consequences when using VDAs as compensation.

Europe



Belgium: Guidance on Expat Tax Regime and Tax-Free Allowances

On December 27, 2021, Belgium's Parliament passed legislation that reformed the Belgian expatriate tax regime. Subsequently, these changes took effect January 1, 2022. Expatriates will no longer be considered as nonresidents, which used to be the case under the prior Belgium expatriate regime. Instead, expatriates will now be considered as Belgian tax residents, unless proof of a tax residency certificate from another country can be provided. Expatriates, qualifying as Belgian tax residents, will now need to report *worldwide* income (along with any investment income) on their respective individual tax returns.

Furthermore, the new expatriate tax regime includes the reimbursement of recurring expenses, which derive directly from employment in Belgium, now being considered tax-free under certain conditions. These expenses are limited to 30 percent of the individual's gross renumeration, which is paid by the employer—in addition to their gross renumeration. Note that clarification is expected from the Belgian tax authorities on the calculation method of these tax-free allowances.

It is also important to note that under the new expatriate tax regime, certain nonrecurring expenses can, under certain conditions, qualify as tax-free: relocation costs to Belgium, furnishing a new residence in Belgium, and school fees for children in Belgium. Lastly, the social security authorities concurred with Belgium's new regime, qualifying the expenses noted above as exempt from social security contributions within certain limits.

The new expatriate regime will be applicable for five years, with a possible three-year extension. Though, to ease the transition, the existing regime will remain applicable for the two years following the new legislation (2022 and 2023), but only for those who were expatriates that started working in Belgium prior to December 31, 2021, granting them the ability to choose between the old and new regimes, if possible.

For more information, read our KPMG Flash Alert.

KPMG observations:

It is expected that further guidance will be published by the Belgian tax authorities in the coming weeks with more details and practicalities on the new expatriate tax regime. Until then, employers and employees should stay abreast of recent developments and plan around the changes that the Belgian government is incorporating in the country's tax regime.

Ireland: 2021 Share Schemes Reporting Deadline: March 31, 2022

The due date for filing details of 2021 employee share participation schemes and other certain cash-settled schemes in Ireland was March 31, 2022. Important details to keep in mind when approaching this mandatory date include the format of the following forms:

- Forms RSS1, ESA, ESS1, and KEEP 1 are all in electronic format and are required to be filed through the Revenue Online System (ROS)
- Form RSS1 includes the details of the grant, release, assignment, and exercise of unapproved share options.
- Form ESA covers unapproved share awards such as Restricted Stock Units, Discounted Equity awards, as well as awards that are “cash-settled.” It also includes incentive cash payments that have value processed through Irish payroll but are based upon nominal share value (phantom shares).
- Form KEEP 1 includes details of Key Employee Engagement Programme share options granted to employees and directors of certain small and medium-size entities.
- Form ESS1 outlines events and transactions on shares issued under an Irish Revenue Approved Profit Sharing Scheme (APSS). The shares are held in trust and the obligation to file the return rests with the Trustees.

Online ROS filing requires the employer or, where relevant, the Trustees, to hold a Share Scheme Registration number, which must be separately obtained from Irish Revenue. Further, filings by a tax adviser will require the agent to be linked for this purpose. As a result, additional administrative steps/time may be needed to enable returns to be filed in practice.

In addition to the above spreadsheets that must be uploaded to ROS, filing of Forms SRSO1 and ESOT1 are required in paper form by March 31 annually:

- Form SRSO1 preparation for “save as you earn” share options
- Form ESOT1 preparation for employee share ownership trust transactions.

For more information, read our KPMG Flash Alert.

KPMG observations:

Employers should ensure all relevant equity informational returns have been filed. Financial penalties can be levied for failing to file timely and in the case of Irish Revenue approved arrangements (e.g., APSS), withdrawal of approval is possible where the relevant person has failed to make a return.

As reporting obligations cover both domestic and globally mobile employees, in addition to understanding that? tax treatment of the relevant schemes, it is also important to review the cross-border activity of employees to understand the appropriate reporting position to be adopted.

It is recommended that employers advise employees that the returns will detail information relating to share awards, sales of shares, and dividends that will be available to Ireland’s Revenue to check whether personal compliance obligations have been met. We recommend an FAQ note or similar communication is provided to employees in this respect.

Netherlands: Ministry Changes stance on Severance Paid to Cross-Border Workers

The Dutch Ministry of Finance has provided new guidance on the sourcing of severance payments. This new guidance has provided that the allocation of the right to tax a severance payment will be based on where the employment duties were performed on which the severance is based. Following February 4, 2022, all severance payments made to cross-border workers will be sourced according to this guidance.

Since July 15, 2014, the Dutch Ministry of Finance has required that allocation of the payment be based on where the employment duties were performed during the 12 months prior to date of termination. After February 4, 2022, it is most likely that the entire period of employment will need to be evaluated when considering the taxes on severance, instead of only the final months of employment as evaluated in past years.

Prior to this guidance, severance payments made to cross-border workers were often subject to double taxation due to the differences in sourcing in other countries. The Dutch approach of sourcing based on the final 12 months of employment did not match the interpretation and treatment in other countries, resulting in negative tax consequences for affected employees.

This new sourcing method implemented by the Dutch Ministry of Finance will result in a major difference of treatment of severance payments subject to Dutch income tax. Assessments not final as of February 5, 2022 may still benefit from this guidance. To qualify, taxpayers must provide proof that the application of the guidance will not result in a partial nontaxation of the severance payment.

For more information, read our KPMG Flash Alert.

KPMG observations:

This position makes sourcing more complex causing global mobility and international tax professionals to have additional considerations when making determinations on the sourcing of a severance payment. Instead of sourcing to the place of employment for the last 12 months prior to termination, professionals must consider the entire period of employment for an individual.

United Kingdom: Employee Share Plan and Trust Reporting Obligations 2022

U.K. employers should be aware of the fast-approaching reporting deadline for employee share plan compensation. Employers will need to register any new reportable arrangements and file all Employment Related Securities (ERS) annual returns with the U.K. tax authorities by **July 6, 2022**.

Employers must report any notifiable events that occur in relation to ERS or rights to acquire ERS during the U.K. tax year (April 6 – April 5). Notifiable events that trigger reporting via ERS returns include:

- Grants of rights to acquire shares or other securities (e.g., options or long-term incentive plan awards);
- Acquisitions of shares or other securities;
- The lifting of restrictions (such as a risk of forfeiture) from shares or other securities;
- Equity compensation that arises due to a change in control; and/or
- Certain other reportable events involving shares or other securities which are acquired, or treated as having been acquired, by reason of employment.

Note that these events must be reported regardless of where the issuing company is incorporated, resident, or listed. Furthermore, employers should recognize that the reporting obligations for U.K. non-tax-advantaged plans differ from those of tax-advantaged plans. And finally, if no reportable events occur during a tax year in relation to a registered plan, a 'nil' return must be submitted by the filing deadline to avoid penalty.

ERS return templates and associated HM Revenue & Custom's (HMRC) guidance are available by clicking here.

Employee Benefit Trusts (EBT), including those established to operate employee share plans, are also required to register with HMRC Trust Registration Service (TRS) if they incur certain U.K. tax liabilities (e.g., income tax, capital gains tax, inheritance tax, etc.). The deadline for registering a taxable EBT depends on when the trust was established and when a relevant U.K. tax liability first arises. Employee trusts without any relevant U.K. tax liability may also be required to register with HMRC. The registration deadline for relevant EBTs without a U.K. tax liability is within 90 days of the date on which they were created or otherwise became registerable or, if later, September 1, 2022.

The obligation to register an EBT under the TRS falls on the trustee. However, sponsoring employers have an ongoing reputational interest and governance role in making sure that employee trusts are registered as required, and that the information provided to HMRC is complete and correct. Penalties can arise for late registration.

EBT registration guidance is available by clicking here.

For more information, read our KPMG Flash Alert 2022-084 and the KPMG Flash Alert 2022-083.

KPMG observations:

Employers and trustees should ensure that there is a process in place that tracks the entire administration of their respective share plans and/or trusts. Furthermore, employers should begin preparing all of their annual ERS returns. This, in-turn, should give employers a better opportunity to make any required corrections to end-of-year payroll withholding. Trustees and sponsoring employers should also implement pre-emptive measures to monitor the status of their EBTs in case registration is required.

Automatic penalties will arise if an employer does not submit the relevant ERS returns (including any required 'nil' returns) by the July 6, 2022 deadline. If the July 6 deadline is missed, an automatic penalty of GBP 100 per registration will arise. Additional penalties will arise where submissions remain outstanding as of October 6, 2022 and January 6, 2023 (an additional GBP 300 per deadline). HMRC has discretion to impose further penalties in relation to any returns that remain outstanding after April 6, 2023. As noted above, penalties will also be assessed if the EBT registration is not in compliance with current HRMC regulations and guidance.

Global Reward Services spotlight

Data & Analytics

KPMG ESPP Calculator

Preparing for your next Employee Stock Purchase Plan (ESPP) purchase period? Talk to us about our new KPMG ESPP Calculator! This tool allows employees anywhere in the world to model their future estimated posttax profit based on user-inputted values. Customize the calculator to meet your organizational needs and drive employee participation! By modeling multiple variables, the tool outputs an employee-friendly, easy-to-understand calculation detail. To set up a demo, please reach out to a member of the U.S. GRS team.

Intelligent automation in Total Rewards

Did you know that you could automate routine tasks performed by your Total Rewards team to alleviate administrative burden and allow them to focus on more value-added activities? Examples of this intelligent automation include:

— Assessment of an employee's eligibility to participate in ESPP offering and purchase periods, taking overlapping periods into consideration where applicable, indicating if the employee has reached contribution limits for any given offering period, reached annual contribution limits, or reached share purchase limits

— Review and validation of an employee's ESPP purchase period eligibility, calculating the number of shares an employee may purchase and comparing the amount to share plan administrator reports and noting discrepancies,

— Reconciliation of data between legacy share plan administration/payroll systems and new systems to ensure data in both is accurate and being used appropriately

— Consolidation of international payroll files into a master global payroll file or the split of a consolidated global payroll file into numerous international files for global distribution

— Conversion of incentive compensation reporting and tax withholding data into specific payroll system file formats (ADP, Workday, etc.) including company-specific wage codes.

Health & Welfare

The market landscape for managing a benefits program implies an increase in cost to plan sponsors. With a dedicated focus on efficiency and long-term sustainability, cost increases do not have to be the norm. Key factors for CFOs to consider:

— **Tight Labor Market:** With benefits at the forefront, employees are evaluating total rewards programs as a key consideration for future employment.

— **Market Demands:** As generations shift, employees are demanding personalized benefits that fit their unique situation.

— **Regulatory Landscape:** Many initiatives within the Biden agenda will increase costs across the Human Resources spectrum for employers.

— **Longer-term Effects of Delayed Care:** The impact of care deferrals may not be known for several years but has the potential to increase prevalence of high cost conditions due to fewer early-stage diagnoses and worsening chronic conditions.

— **Create the Sustainable Future:** Although the landscape implies cost additive, there have never been more solutions available for employers to establish a long-term, sustainable program.

Global Compensation

Many post-IPO companies are rapidly growing into global corporations that are establishing legal entities in several new jurisdictions. With this comes the prospect of hiring and compensating global talent. How can these companies expand existing compensation and benefits plans and policies internationally in the most streamlined and efficient way? KPMG has been assisting several clients to develop a global framework to determine appropriate policies and practices, maintain compliance, and tweak the base approach to reflect the importance of each jurisdiction, the talent footprint, and market benchmarks. Reach out to your usual contact at KPMG or one of the Global Compensation contacts below.

Contact us

Michael A. Bussa
Partner and Global Reward Services Leader
T: 212-954-1811
E: mbussa@kpmg.com

Kathy Lo
Principal
T: 415-963-8988
E: kathylo@kpmg.com

Ryan McDonald
Principal
T: 585-263-4098
E: ryanmcdonald@kpmg.com

Terrance Richardson
Principal
T: 214-840-2532
E: trichardson@kpmg.com

Parmjit Sandhu
Principal
T: 212-954-4063
E: parmjitsandhu@kpmg.com

Dinesh Sinniah
Partner
T: 312-665-3603
E: dsinniah@kpmg.com

Leann Balbona
Managing Director
T: 212-872-3671
E: lbalbona@kpmg.com

Jennifer Link
Managing Director
T: 212-909-5381
E: jlink@kpmg.com

Mark Spittell
Managing Director
T: 214-840-4394
E: mspittell@kpmg.com

John Tomaszewski
Managing Director
T: 212-909-5561
E: johntomaszewski@kpmg.com

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

kpmg.com/socialmedia