Global Reward Services Quarterly Newsletter

July 2020

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

In this issue

Global:

COVID-19 Spot Survey – Reported implications on total rewards programs

KPMG recently polled nearly 100 global professionals in human resources, compensation and benefits, global mobility, and tax regarding the impact of the global COVID-19 challenges on their organization's total rewards programs. Respondents represented over thirty industries globally.

Some of the key findings are listed below:

— In terms of COVID-19-related support to employees, just over half (51 percent) confirmed that they were tailoring support services, expense coverage, etc., by country and/or job roles/responsibility and/or specific individual needs.

— There was a clear 50/50 split between organizations having a written Work from Home (WFH) policy and those not having WFH policies, with just under a half (44 percent) confirming they are making changes to their WFH policies based on COVID-19 needs.

— Sixty-two percent are not contemplating any changes to bonus plan performance metrics at this time.

— Nearly three-quarters of survey participants are not considering changes to their equity grant approach at this time.

You can find the full report here.

KPMG observations:

A trend that emerged from the spot survey is that responses to COVID-19 tend to be industry driven. For example manufacturing companies are focused on continued production and considering hazard pay as well as Paycheck Protection Program (PPP) expense coverage, or production of PPP materials. Expense coverage for office supplies were provided by some of technology companies to assist employees in being able to efficiently work from home. Most companies are focused on the preservation of cash which we are seeing in the form of equity awards replacing cash based plans, and option repricings. While the vast majority of companies are not making any immediate changes to their equity grants or bonus plan performance metrics, many are beginning to evaluate potential future changes including, but not limited to, replacing a percentage of salary or bonus with equity, and repricing underwater stock options. For those contemplating changes, it will be important to consider how these actions can carry their own set of complexities around shareholder approvals, tax and accounting consequences, and administrative considerations.

Americas:

United States – Employer-related liquidity—tax credits, deferrals, and efficiencies (COVID-19)

Employers are adapting and evolving to meet the realities of a rapidly changing environment in light of COVID-19. The U.S. government has released new legislation that may provide relief to both businesses and individuals. In addition, numerous states and localities are responding with their own orders and relief.

The two pertinent U.S. acts that have been passed in response to the COVID-19 pandemic are the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Families First Coronavirus Response Act (FFCRA):

— The CARES Act contains measures designed to bring some economic and fiscal relief to companies, small businesses, and individuals facing financial difficulties due to the COVID-19 crisis. The act includes a payroll tax credit for qualified wages paid by employers during a partial or full suspension of operations due to government order or during a period of significant decline in gross receipts, the deferral of certain payroll and self-employment taxes, and enhanced employee retirement and benefit provisions.

— The FFCRA provides for two new payroll tax credits for paid leave for certain employers with less than 500 employees to offset mandatory paid Family and Medical Leave Act (FMLA) and sick leave.

1. Payroll tax deferral:

The CARES Act permits all employers and self-employed individuals to defer the deposit of certain payroll taxes otherwise due from the date of enactment (March 27, 2020) through December 31, 2020. The deferred taxes are considered timely paid as long as 50 percent of the deferral is remitted by December 31, 2021 and the remaining 50 percent is remitted by December 31, 2022.

The Internal Revenue Service (IRS) is updating Form 941 and accompanying instructions for the second calendar quarter of 2020, which provides additional guidance on how to report payroll tax deferrals under the CARES Act.

Note: on June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 was signed into law, providing several changes to the Paycheck Protection Program (PPP), enacted as part of the CARES Act. The new law extends the time for the expenditure of funds and eases the requirement that 75 percent of funds be used for wages. Additionally, a tax provision of the legislation amends the CARES Act to allow the deferral of payroll taxes without losing forgiveness of indebtedness under the PPP.

2. Employee retention credit

The CARES Act also provides a refundable payroll tax credit for 50 percent of "qualified wages" (including qualified health plan expenses) paid to employees by an eligible employer. In addition, the CARES Act offers the available credit to employers maintaining a trade or business in the 2020 calendar year whose:

— Operations were fully or partially suspended, due to government order limiting commerce, travel, or group meetings due to the COVID-19 crisis, or

— Gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is allowed against the employer portion of Social Security taxes with respect to qualified wages paid during the period from March 13, 2020 through December 31, 2020. The maximum amount of qualified wages that may be taken into account with respect to each employee is $10,000 (i.e., the maximum credit is $5,000 per employee). For employers with an average number of full-time employees during 2019 greater than 100, qualified wages are only those amounts paid with respect to time for which an employee was not providing services due to the circumstances described above. There are additional important considerations regarding what amounts may be considered qualified wages for purposes of the employee retention credit, including coordination with other available tax credits.

The IRS and Treasury issued Notice 2020-22 providing relief from the section 6656 penalty for failure to timely file employment taxes (i) to the extent the amounts not deposited are equal to or less than the amount of the employer's anticipated payroll tax credits and (ii) as long as the employer does not also seek payment of an advance credit with regard to the same amount.

The IRS released updated Frequently Asked Questions to provide additional clarity on the applicability and operation of the employee retention credit—including how to claim the credit. Employers may claim the credit through Form 941, *Employer's Quarterly Federal Tax Return*. To claim the employee retention credit, employers that paid qualified wages during the period from March 13, 2020, through March 31, 2020, are to include 50 percent of those wages together with 50 percent of any qualified wages paid during the second quarter of 2020 on the employer's **second quarter Form 941**, Form 941-SS or Form 941-PR; employers are **not** to include the credit on the first quarter Form 941, Form 941-SS, or Form 941-PR.

The IRS has also issued **Form 7200**, *Advance Payment of Employer Credits Due to COVID-19*, that employers may file with their quarterly payroll tax return to request an advance payment of the tax credits for qualified sick and qualified family leave wages, and the employee retention credit.

It is important to note than an eligible employer that receives a covered loan under the Small Business Administration pursuant to the PPP provisions added under the CARES Act is not eligible for the employer retention credit.

Read more here.

3. FFCRA – Paid leave requirements

The FFCRA imposes two additional paid leave requirements, described below, on certain public employers with at least one employee and private employers with fewer than 500 employees. In determining whether an employer has fewer than 500 employees, the FMLA rules apply. Employers may also be entitled to a refundable payroll tax credit, described below, to offset expenses of providing the mandatory paid leave.

a. Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act (Expanded FMLA) enacted under the FFCRA amends the Family and Medical Leave Act of 1993 (FMLA) to create a new category of benefits available from April 1, 2020 through December 31, 2020. These benefits generally apply in the case of a qualifying need related to the COVID-19 public health emergency.

A qualifying need exists when an eligible employee is "unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency." For this purpose, a public health emergency means an emergency with respect to COVID-19 declared by a federal, state, or local authority. An eligible employee for this purpose is an employee who has been employed for at least 30 calendar days.

After an initial 10-day leave period (which may be unpaid), a qualifying employee generally is entitled to paid leave at not less than two-thirds of the employee's regular rate of pay for the number of hours the employee would otherwise be scheduled, or would normally be scheduled, to work. However, Expanded FMLA provides that the paid leave requirement for an employee is limited to $200 per day and $10,000 in the aggregate. Note that this may be combined with emergency paid sick leave, described below, for an aggregate of $12,000 over a 12-week period.

Small businesses with fewer than 50 employees may qualify for exemption from certain mandatory leave if providing leave would jeopardize the viability of the business as a going concern.

b. Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act (EPSLA) enacted under the FFCRA requires certain employers to provide emergency sick leave to employees with a qualifying need from April 1, 2020 through December 31, 2020. Employees may qualify for up to two weeks of emergency paid sick leave under the EPSLA in the event the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in (1) or has been advised as described in (2) above.
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Employees taking leave for reasons one through three are generally entitled to full pay up to $511 per day and $5,110 in the aggregate. Employees taking leave for reasons four through six are generally entitled to pay at two-thirds their regular rate up to $100 per day, and $2,000 in the aggregate. All employees of a covered employer are immediately eligible for emergency sick leave for the reasons specified above, without regard to length of employment.

4. Paid leave payroll tax credits

The FFCRA and CARES Act allow certain employers to claim payroll tax credits equal to 100 percent of the qualified sick leave wages paid by the employer under the EPSLA as well as the qualified leave wages paid under the Expanded FMLA provisions, subject to certain limitations. The credit applies against the portion of Social Security taxes imposed by section 3111(a) or the section 3221(a) "Tier 1" excise tax (relating to the Railroad Retirement Tax Act).

However, the Act provides the credit is refundable for amounts exceeding such tax liability. The credits are available for qualified emergency sick leave and Expanded FMLA wages paid from April 1, 2020 through December 31, 2020.

Notice 2020-22 discussed above applies the penalty relief with respect to the payroll tax credits associated with qualified sick leave and expanded FMLA leave wages.

5. Other compensation and benefits provisions

The CARES Act provides additional provisions related to compensation and benefits, including, but not limited to the following:

- Temporary exclusion from employee income for certain student loan repayment assistance from employers
- Temporary waiver of early withdrawal penalty for certain withdrawals from qualified retirement plans
- Temporary added flexibility and relief for qualified retirement plan distributions and plan loans
- Temporary waiver of required minimum distribution rules for certain defined contribution plans and individual retirement arrangements.

You can find more detailed summaries of the labor-related tax provisions of the CARES Act, the FFCRA, and provisions triggered by the COVID-19 National Emergency Declaration, here. and Employers providing employee hardship assistance related to coronavirus (COVID-19).

KPMG observations:

1. **Eligible companies should consider utilizing the payroll tax deferral relief for cash flow management.**
2. **The ability to secure the employee retention credit is complex based on defined terms such as qualified wages, qualified employer, and other criteria. Companies with furloughed employees could potentially consider this.**
3. **While these provisions require certain employers to provide paid sick leave and Expanded FMLA, there is a corresponding tax credit against the employer's portion of Social Security taxes to offset the additional expense. Any excess credit is refundable. Employers should consider whether these provisions are applicable to them, and if any special rules apply.**
4. **Eligible companies should consider securing available relief to sustain their business and their ability to retain employees. All components of the stimulus package should be reviewed for application.**

COVID-19 global relief themes:

1. **Payment Filing Extensions:** The most widely adopted measure of economic relief in response to COVID-19 that countries have used is a deadline extension for filing and/or tax payments. At the time of publication, 22 countries, and counting, in the Americas have enacted tax deadline extensions. Examples include Brazil extending the deadline to June 2020 for filing individual income tax returns for 2019 and also extending the deadline for information returns related to certain social contributions (including Program of Social Integration and Contribution for the Financing of Social Security).
2. **Tax Credits:** Additional COVID-19 relief measures that may impact employers and employees are related to individual income tax relief. In addition to the credits available under the FMLA in the United States, Costa Rica has adopted a plan in which employees can make eligible withdrawals from their defined contribution plans if their labor contracts have been terminated, temporarily suspended, or their salaries have been reduced. After the eligible employee's application is filed and approved, the amount available to the employee is that which is available under the defined contribution plan at the time of termination, contract suspension, or salary reduction.
3. **Payroll tax deferrals/reductions:** As discussed above, payroll taxes are one strategy countries have been utilizing as a form of economic relief for businesses and workers. The United States has enacted the payroll tax deferral under the CARES Act and the payroll tax credit under the Expanded FMLA. Only one other country in the Americas has followed suit—Argentina. Argentine employers that provide healthcare-related benefits are permitted a 95 percent reduction of employer contributions for 90 days from the date of publication in the official gazette, on March 20, 2020.

KPMG observations:

New relief measures are being announced every day; please see our COVID-19 Global Tax Developments Summary, for more information on tax relief, which is updated daily (https://home.kpmg/us/en/home/insights/2020/04/taxnewsflash-coronavirus-covid-19-developments.html**).**

Asia/Pacific

Singapore – Deemed exercise rule and opportunity for tax refund

There is a potential opportunity available for certain noncitizen employees who previously worked in Singapore to apply for a tax refund if the actual gain realized upon the exercise of options or vesting of shares is lower than the gain previously subjected to tax under the Singapore deemed exercise rule.

This is especially important in the current COVID-19 environment as global equity markets have dropped significantly over the past few weeks and may remain depressed. Consequently, noncitizen employees who previously paid taxes in Singapore under the deemed exercise rule may qualify for a tax refund. The reassessment opportunity would benefit individual taxpayers or their employers that funded the tax on the deemed gains under a corporate tax equalization program.

Under Singapore tax law, certain noncitizen employees are deemed to derive taxable gain from unexercised stock options and unvested share awards when they cease employment in Singapore. This deemed exercise rule applies to any unexercised or restricted employee share options (ESOP) or any unvested or restricted shares under an employee share ownership (ESOW) plan granted while the noncitizen employee was working in Singapore.

When the deemed exercise rule applies, the noncitizen employee is deemed to have derived a final gain from ESOP or shares under an ESOW plan. The deemed gains are calculated based on the Open Market Value (OMV) of the shares one month prior to the cessation of employment or the date of grant of the ESOP or ESOW (whichever is later), less the price payable (if any) by the employee to acquire the shares.

If the amount of the deemed gain computed and reported on the tax clearance return is greater than the actual gain realized by the individual upon exercise or vesting, upon application, the Comptroller of Income Tax (CIT) may reassess the individual's tax liability based on the actual gain computed for the assessment year to which the deemed exercise relates.

To apply for a reassessment of tax liability, the individual must submit:

(a) An application to the CIT within four years from the year of assessment following the year in which the deemed exercise rule applied, and

(b) Relevant documentation to support that the actual tax liability is lower than that computed under the deemed exercise rule.

Where the actual gain realized at exercise or vesting is greater than the deemed gain computed under the deemed exercise rule, no additional tax is assessed. Read more here.

KPMG observations:

With the depressed global equity markets, the actual gains realized upon exercise of ESOP rights and/or vesting of the ESOW shares previously subjected to tax under the deemed exercise rule, may be lower than the deemed gains. The reassessment opportunity presents taxpayers and employers with a potential avenue to recover taxes previously paid.

Interested parties may consult with their professional tax advisers to assess their situations and determine next steps.

COVID-19 relief themes:

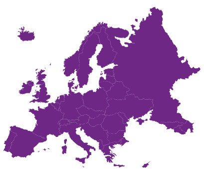
1. Similar to the Americas, countries within the Asia Pacific region have also been implementing extensions to tax filings and/or payment deadlines. At the date of publication, 21 countries have proposed or implemented these measures.
2. In regards to individual income tax measures, Australia's government has announced tax relief measures including tax-free withdrawals from superannuation funds and one-off stimulus payments to individual taxpayers to be made through the social security system.
3. As of the date of publication, four countries in the Asia Pacific region have implemented payroll tax relief: Australia, China, India, and Thailand. Australia introduced deferrals and waivers on payroll taxes, and China issued guidance that provides measure for local social security bureaus and allows enterprises to make catch-up employer social security contributions within a period of three months following containment of COVID-19 outbreak without adversely affecting employee rights to social security benefits. It is important to note that the payroll tax relief measures often vary by region within a country. Australia's rules are different among Queensland, New South Wales, Western Australia, and Tasmania. It is important for employers to investigate how these varying relief measures affect them.

4. Specific to Australia, there are also new provisions around employment withholding. The Australian government announced that if the only reason an employee of a foreign employer is temporarily working in Australia is because of restrictions on travel due to COVID-19, and it is anticipated that the employee will leave before June 30, 2020, then the foreign employer is not expected to register for pay-as-you-go withholding.

KPMG observations:

New relief measures are being announced every day, please see our COVID-19 Global tax developments summary, for more information on tax relief, which is updated daily.

Europe:



Germany – COVID-19: Tax and social security relief measures and considerations

The federal government in Germany has launched a broad-based package of measures to cushion the effects of the coronavirus and COVID-19 on employers and workers. In addition to making the regulations on compensation for short-time work more flexible and extending liquidity assistance for affected companies (in the form of simplified access to loans and guarantees), tax liquidity assistance is also being provided.

Social security law issues in cross-border situations

One large issue for companies with mobile employees is with many working from home presently, the question arises as to what effect a temporary change of place of employment has in terms of social security tax obligations. The central representation of interests of the statutory health and nursing care insurance funds in Germany (GKV-Spitzenverband/DVKA) has commented on this and has clarified that the coronavirus crisis should not have an impact on which country's social security law will be applicable.

Individuals who work in Germany and live in another European Union (EU) member state will be subject to German social security legislation. If the employment of these individuals is now carried out at home—wholly or partly—on a temporary basis due to the coronavirus crisis, then there are no changes in the assessment under German social insurance law: membership in the German social security system is maintained. This should apply equally to individuals who live in Germany and are employed in another member state.

In the case of individuals who are normally employed in more than one EU member state for one employer (so-called "multistate workers"), affiliation to the social insurance scheme depends on the amount of work performed in the member state of residence. If a substantial part of the individual's employment (at least 25 percent of his working time) is carried out in the member state of residence, the legislation of that state applies to all of his employment. If the current situation leads to a temporary change in the distribution of working time, there is no need to redetermine which country's social security legislation is applicable.

Short-time work/short-time allowance

With the effects of the coronavirus pandemic permeating the German market, employers may take advantage of opportunities to reduce personnel costs and secure liquidity. The use of short-time work compensation in particular may help here. Among the measures adopted to mitigate the consequences, the regulations on short-time working have been made more flexible and adapted to the new requirements and situations, including the following:

- An eligible company can apply for short-time work if 10 percent of its employees are affected by a loss of working hours. Previously, at least one-third of the employees had to be affected.
- In the event of short-time work, social security contributions may be fully reimbursed by the Federal Employment Agency.
- Short-time allowance is also possible for employees on temporary employment (Zeitarbeit).
- Normally, the payment of short-time work compensation is also limited to 12 months—now it may be extended to 24 months.

The company must fulfill three basic conditions in order to receive short-time work compensation:

- **Step 1**: Introduction of short-time working
- **Step 2**: Notification of the loss of working hours to the responsible employment agency
- **Step 3**: Applying for short-time work compensation at the responsible employment agency.

Read more here.

> **KPMG observations:**
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> **The expanded short-time work provisions may be a great opportunity for businesses to reduce personnel costs and secure liquidity. Employers should consider investigating if the new flexibility around short-time work apply to them, as well as how to properly report and apply the allowance.**

United Kingdom – Employment-related securities annual reporting

The 2019-20 deadline for filing employment-related securities (ERS) annual returns was **July 6, 2020** and automatic penalties will arise for forms that are not submitted by the deadline; however, due to the rapidly evolving environment during COVID-19, the deadline could change.

We appreciate that some companies may want to delay starting the ERS process given the current issues they are facing with regard to COVID-19; however, others may want to start the year-end reporting now and we have therefore provided further information below. Year-end employee share plan reporting involves three key tasks:

- Registering new plans (or other equity arrangements) established during 2019/20;
- Certifying that certain tax advantaged share plans meet the conditions to attract tax relief; and
- Submitting the required annual returns detailing reportable transactions, or "nil" returns where no reportable events occurred.

What needs to be reported to Her Majesty's Revenue & Customs (HMRC)?

In our experience, it can take several weeks to prepare the forms. If you have not previously registered your share plan online, the process will take longer. You may need to report:

- Acquisitions of shares or other securities by employees or directors;
- The grant and/or exercise of share options by employees or directors;
- Certain disposals of securities (where the event has given rise to an income tax charge); and
- Events under tax-advantaged plans.

The annual reporting process is a window into your equity incentive arrangements. HMRC uses the information provided to help identify any errors in:

- PAYE and National Insurance operated on share-based awards;
- Corporation Tax (CT) relief claimed in relation to employee share acquisitions, to include considering the impact of net settlement on both the share reporting and CT deductions; and/or
- Employees' self-assessment filings.

You can read more about this topic here.

KPMG observations:

Against a backdrop of ongoing HMRC employer compliance reviews, it is important to ensure that you are confident, not only that the information provided in the annual returns is complete and correct, but that it is consistent with your payroll and corporation tax compliance positions.

Early preparation of these returns means a greater chance of ensuring correct end-of-year payroll withholding, and allows any historical errors unearthed to be proactively managed via voluntary disclosure.

COVID-19 relief themes:

1. By far, Europe has the greatest number of countries with numerous COVID-19 tax relief measures. As of the date of publication, there are over 51 European countries with filing and payment deadline extensions. These include areas such as social security, individual tax returns, and corporate tax filings.
2. Several countries in Europe have introduced measures around individuals' tax returns. One important example for employers is Croatia, where the government announced that amounts received by individuals as grants to mitigate the special circumstances caused by the coronavirus would not be taxable for individual income tax purposes. This is important for employers to note as they are weighing the option of offering their employees additional aid.
3. Several countries are also offering relief via payroll taxes. While the relief proposed in the United Kingdom, allowing small and medium enterprises to reclaim statutory sick pay amounts paid for sickness absences due to COVID-19, is similar to the U.S. payroll credits, other European countries, Gibraltar and Hungary, have taken a different approach by offering exemptions from social security payments only in certain industries that were harder hit by COVID-19, such as hospitality and tourism.

4. One other COVID-19 relief measure widely used in Europe is short-time work. The brief characteristics of the short-time work concept is that due to COVID-19, the working hours of employees are reduced by a significant amount (varies by country) and their salaries are adjusted accordingly. The employer pays the employees financial support for their loss of earnings, and the employer, in turn, will receive financial support from the government. The criteria for these programs vary by country.

KPMG observations:

New relief measures are being announced every day; please see our COVID-19 global tax developments summary, for more information on tax relief, which is updated daily.

Read more about working from home in selected countries in an overview of answers provided from 34 countries.

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