

# HR and tax alert

## Japan

### Recent tax reforms bring additional reporting requirements

#### Executive summary

The 2012 tax reform act in Japan has introduced a number of changes to the current rules, two of which we highlight here in more detail as it pertains to individuals.

From the 2012 calendar year onwards, local employers are required to report the benefit derived by each employee from the foreign parent company's stock based compensation.

In addition, the period for submitting an amended tax return to claim a refund of overpaid tax (downward tax assessment) has been extended from 1 to 5 years.

#### Local employer's reporting requirement

Under the 2012 tax reform act, the local employer (defined as any Japanese subsidiary in which 50% or more shares are directly or indirectly held by a foreign parent company or the Japanese branch of a foreign company) is required to report each employee's benefit derived from its foreign parent company's stock based compensation from the 2012 calendar year.

At present, the following guidelines are available regarding this reporting obligation:

- ▶ Only a Japanese subsidiary or branch of a foreign company has this reporting obligation. However, there is no tax withholding obligation. The report must be submitted by 31 March following the end of the calendar year. The first such report needs to be submitted by 31 March 2013 for the 2012 calendar year.

- ▶ The reporting requirement is for all employees and directors who are tax residents of Japan. The local employer is required to prepare the report for each employee, to provide detailed information regarding the stock-based compensation and the foreign parent company whose stock has been used. This includes: name, address, date of receipt and a number of other details (e.g. number of shares or equivalent, value, currency, etc) relating to the stock based compensation. This will apply to all stock based compensation, whether stock is granted directly to the employees, or if equivalents or cash are given.
- ▶ If the number of applicable reports is 1,000 or more, the local employer has to submit the report electronically.

Based on our understanding, we can also say that:

- ▶ In the case of stock option plans, only those exercised on or after 1 January 2012 are subject to this reporting obligation.
- ▶ In the case of restricted stock unit plans, only those vesting on or after 1 January 2012 are subject to this reporting obligation.
- ▶ This applies to local employees as well as expatriates seconded from other entities.

A form to report such stock based compensation has also been released by the National Tax Agency.

**Extension of time period for filing amended tax returns to claim refunds**

The period of “Kousei no seikyu” (amended return to claim refund) has been extended to five years following the original filing due date. This applies for 2011 tax returns (which were due on 15 March 2012) onwards. As a result, it is expected that the period for normal tax audits will be extended from 3 years to 5 years.

**Next steps**

The additional equity reporting requirement will lead to an additional administrative burden for companies. In certain cases, a better exchange of information between Japanese entities and their foreign parent companies may be required to facilitate the preparation of the report.

With the amended tax return filing period extension, it is expected that the potential for tax audits to be extended to 5 years is likely. If this is the case, there will be additional record keeping requirements to cover the longer period.

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