KPMG

GMS Flash Alert

Global Compensation Edition

2017-116 | July 14, 2017

Austria - New Law Alters Tax Treatment of Certain Employee Share Awards

On 29 June 2017, Austria's parliament adopted the new Worker Participation Foundation Act 2017, which, among other things, provides for:

- the grant of company shares by an employer to its employees for the duration of their employment, and
- contributions to a newly-created Worker Participation Foundation (in German:"Mitarbeiterbeteiligungsstiftung").[1]

The new law enters into force from 1 January 2018.

WHY THIS MATTERS

Under certain conditions, employees receiving shares under the new rules will not be subject to income wage tax and social security contributions on the grant of those shares. This should lighten their tax burdens and enhance their interest in this form of compensation.

The new rules are expected to encourage employees to deepen their commitment to the companies they work for and incentivize performance by means of developing "anchor" shareholders (via the Worker Participation Foundation) who are given institutional voting interests. This could prevent hostile take-overs, strengthen Austria's future economic position, and safeguard Austrian jobs.

"Stock company" employers should take into account the new equity program opportunities.

New Rules in Brief

Starting from 1 January 2018, employees who are granted shares free-of-charge or at a reduced price up to an amount equal to EUR 4,500 per calendar year will not be subject to income wage tax and social security contributions on the grant of those shares, as long as the shares are held in trust by the Worker Participation Foundation until the end of their employment service. Grants are to be made either to all employees who are eligible or to groups of employees defined according to general (non-discriminating) criteria – e.g., all employees with more than three years of employment with the company, all "field" employees, etc., while "all managers" or "only directors" would not be valid criteria.

Moreover, the coverage of administration costs by the Worker Participation Foundation does not generate a taxable benefit-in-kind. Examples of the administration costs paid by the Foundation are the costs for running the trusteeship, stock deposit costs, etc. – these would not be taxable to the participating employees.

Shares issued from the Worker Participation Foundation to the employees after they complete their service – even if they were acquired over several years – shall be treated as "tax neutral" to the participating employee, that is, exempt from Austrian income and social taxes.

KPMG NOTE

The new regulations apply only to "stock companies" (that is, stock "corporation" companies and not limited liability companies), in German: "Aktiengesellschaft". The company must not be publicly-traded. As such, most employees are not affected. It would be desirable that the new government rectify this imbalance by means of alternative tax saving models that would be accessible by all other employees otherwise excluded as a result of these new regulations.

The new Worker Participation Foundation will be entitled to hold shares of the company itself. However, the amount of shares is limited to 10 percent of the voting rights of the company. Subsequently, those shares must be held in a trust – as noted above – and transferred to the employees according to a plan (over a period of several years). The transfer of shares to employees over several years will be required – e.g., in order to cover RSU programs or stock option programs. These usually run over the course of three or five years. The grant of shares and other property by the company to the Foundation are:

- free of "foundation entrance" tax and exempt from corporate income tax at the Foundation ("Stiftungen") level; and
- in general, tax deductible as an operating expense at the company level.

The cost of the shares – either book value or current market value (if just acquired) – may be claimed as a corporate income tax deduction for Austrian income tax purposes.

FOOTNOTE:

1 See (in German), click here.

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or the following professional with the KPMG International member firm in Austria:

Wolfgang Schneider
Tel. +43 (1) 313 32-3153
wschneider@kpmg.at

The information contained in this newsletter was submitted by the KPMG International member firm in Austria.

www.kpmg.com

kpmg.com/socialmedia

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to http://www.kpmg.com.