

Global Rewards Update: Japan – Foreign asset reporting for incentive plans

January 2014

Background

Currently, all resident taxpayers in Japan, both permanent and non-permanent, in receipt of earned income over JPY20 million are required to file a Statement of Assets and Liabilities, reporting on a worldwide basis.

From 1 January 2013, Japan introduced an additional foreign asset reporting requirement, the Foreign Asset Report. The first report under the new regime will need to be filed by 17 March 2014 and it will cover assets held at 31 December 2013 (see further details below).

The scope of this report includes all permanent residents of Japan (whether they are taxpayers or not). Permanent residents of Japan will therefore need to determine whether they may be required to file this report for any foreign assets held (including foreign shares acquired under incentive plans). The reporting requirement covers all share options that have vested, even if they have not yet been exercised. Unvested share awards and share options should not however be included.

This new foreign asset reporting requirement is in addition to, and not a replacement for the Statement of Assets and Liabilities; however, if the asset has been reported on the Foreign Asset Report, it is not necessary to duplicate the reporting on the Statement of Assets and Liabilities.

Foreign Asset Report

Individuals who are required to file the Foreign Asset Report are permanent residents for tax purposes in Japan. This includes foreign nationals who are residents in, and have had a domicile in, Japan for more than five years in the preceding ten years or those who are currently Japanese tax residents. These individuals are required to file the report for the year when the total value of their foreign assets exceeds JPY50 million as at 31 December of that year.

The form is a separate requirement to the income tax return and individuals are required to submit this form even if they do not have any taxable income in Japan.

Generally, the due date for the Foreign Asset Report is 15 March following the end of the year. The first reports are due by 17 March 2014 (as 15 March 2014 falls on a Saturday) for assets held at 31 December 2013.

Scope of reporting

The Foreign Asset Report is a two-page form consisting of a report and summary table. The Japanese authorities have taken the view that foreign assets include any assets located outside of Japan that have an "economic value".

Details requested include the type of asset, purpose of use, quantity, value and location of the asset. All assets held overseas must be disclosed and the value of all assets should be aggregated. The value should be reported as the fair market value as at 31 December of that year.

In addition to shares held by the individual, vested but unexercised stock options count towards the JPY50million threshold for the purposes of this Foreign Asset Report.

Penalties for non-compliance

In cases of fraudulent reporting or non-filing, an individual may face a prison sentence of not more than one year and a fine of not more than JPY500,000. However, these are applicable from the second reporting year onwards (i.e. for reports filed for the 2014 year). Any reports that are voluntarily submitted after the due date will be deemed to have been filed before the due date.

Japanese authorities have amended their calculation of any penalty taxes due for any under-reported income associated with the Foreign Asset Report. If underreported income is declared on the Foreign Asset Report, penalty taxes are reduced by 5%. However, if underreported income is not declared on the Foreign Asset Report, penalty taxes are increased by 5%. These measures will be implemented for reports submitted on or after 1 January 2014.

Action

There may be many individuals who do not realise this reporting requirement applies to them. Although this is an employee reporting requirement, companies should consider giving their employees guidance on the new Foreign Asset Report. This may include specific guidance (for example to state the vested but unexercised stock options need to be included) or an update of the current employee communications to make employees aware of their compliance responsibilities.

It is worth noting that the Japanese authorities are starting to undertake significant increased audit activity in the area of equity compliance. Companies should therefore consider whether they are giving sufficient guidance to employees participating in incentive plans which allow employees to ensure they are compliant.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at globalequity@deloitte.com, and a global rewards consultant will contact you.

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