

global peRSpectives

A QUARTERLY LOOK AT INCENTIVE AND COMPENSATION ISSUES AROUND THE WORLD –
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Contributors to this Issue



Sophie Borenstein
Partner
Paris
+33 1 44 34 80 82
sborenstein@reedsmith.com



Jeremy Glover
Partner
London
+44 (0)20 3116 3629
jglover@reedsmith.com



Zack Dong
Counsel
Shanghai
+86 (0)21 3032 3116
zdong@reedsmith.com



Craig P. Tanner
Partner
San Francisco
+1 415 659 4734
ctanner@reedsmith.com

PREPARING FOR YEAR-END GLOBAL STOCK PLAN REPORTING REQUIREMENTS

The regulatory requirements for global stock plans seem to increase every year. In many countries, either the issuing company or the local subsidiary is responsible for submitting tax, securities and/or currency exchange reports annually. Below is a list of common annual reporting requirements through January 31, 2013.

Between October 1, 2012 – December 31, 2012

- **China – SAFE Annual Quota:** If your company has completed the registration requirements necessary to administer employee stock plans in China, the annual quota application for the upcoming year is due. The application will be filed by the designated agent for the stock plans in China.



Craig P. Tanner
Partner – San Francisco
Tax, Benefits & Wealth Planning

January 15, 2013

- **Thailand – Annual Securities Report:** Companies must report option activity to the Thai SEC within 15 days of the “closing date of sale.” For reporting purposes, the closing date of sale for options is the last day of each calendar year (*i.e.*, Dec. 31) in which the stock awards vest.

January 31, 2013

- **Malaysia – Tax Report (Form BT/ESOS/2005):** Annual report of RSU share distributions, option exercises, and stock purchases that took place in the prior calendar year.
- **Philippines – Securities Report:** Annual report for companies that rely on a securities exemption under Section 10.2 of the Philippines Securities Code. (The Philippines’ SEC does not specify a filing date for the report; however, we recommend that the filing be made no later than the end of January each year for the prior calendar year.)
- **United States – Tax Report:** Annual information statement report for employees with ISO exercises (Form 3921) and/or ESPP share transfers (Form 3922).
- **Vietnam – Exchange Control Report:** Annual disclosure by companies that have obtained approval from the State Bank of Vietnam (SBV) to offer stock awards. The report should include information about (a) option exercises, (b) RSU vesting events, and (c) amounts paid to employees through the stock awards during the past fiscal year. This report is normally submitted to the SBV within the first month immediately following the end of the relevant fiscal year.

FRANCE UPDATE

New rates for social contributions applicable on stock options and RSUs

The second modified finance bill for 2012 (n° 2012-958 of August 16, 2012) has modified the social regime applicable to stock options and RSUs.



Sophie Borenstein
Partner – Paris
Tax, Benefits & Wealth Planning

The rate of the employer contribution due at the time of grant of options or RSUs, currently set at 14%, is raised to 30%. This increase applies to grants of options and RSUs made on or after July 11, 2012.

The rate of the employee contribution due at the time of the sale of the related shares is increased from 8% to 10%. This increase applies to disposals made on or after the day following the date of publication of the law, *i.e.*, August 18, 2012.

shares, rates that were applicable, for the employer contribution, when the annual value per employee was less than a threshold equal to 50% of the annual social security ceiling or, for the employee contribution, when the total annual earnings of acquisition was lower than this same threshold.

Thus, the free shares are now liable to the normal rates of 30% and 10%, regardless of their amount.

In addition, the new law has ended the more favorable reduced rates of the employer and employee contributions (of 10% and 2.5%) for free

UK TAX AUTHORITIES COMMENT ON RESTRICTED STOCK UNIT PLANS

HM Revenue & Customs (“HMRC”) have recently updated their manuals and provided their analysis of how Restricted Stock Units (“RSUs”) should be taxed in the UK. Unless otherwise stated, this summary assumes the participant is a UK resident and ordinary resident at all relevant times.

HMRC’s default understanding of an RSU award is that this is normally an agreement to issue or transfer stock or shares at the time when the award vests; the award will vest when all the conditions laid down to be satisfied before the stock or shares may be issued have been met, *e.g.* time, employment or performance conditions.

HMRC take the view that the employee will generally be subject to income tax and possibly National Insurance contributions (“NICs”) on the value of the securities when the employee acquires the underlying shares or becomes entitled to acquire the underlying shares (if earlier). This may be immediately upon vesting and not necessarily when the shares are formally transferred. The tax charge is under the normal income tax earnings provisions rather than the employment-related securities provisions—this could have an effect on the taxation of internationally mobile employees (see below).

On the other hand, if the RSUs are structured so that the employee has to exercise the award in order to acquire the shares, the tax charge will arise on exercise. Essentially, the RSU is then treated as a stock option for UK income tax and NICs purposes, and the tax charge arises under the employment-related securities provisions.

If the employee is entitled to dividend equivalents under the relevant plan, the employee will be subject to income tax and NICs on the payments as normal employment income in the year in which the employee receives it, or earlier if he becomes otherwise entitled to such income.

If the RSU award is a stock appreciation right (“SAR”) rather than an agreement to issue or transfer stock or shares, *i.e.* it provides a monetary value equivalent to the increase in value of a specified number of shares over a specified period of time, then the employee is generally going to be subject to income tax and NICs when the right to benefit under the SAR is enjoyed. If the SAR is settled in cash, the tax point will normally be on receipt or earlier if the cash is otherwise made available to the employee. If the SAR is settled by shares, the tax point will normally be on acquisition of the beneficial interest in the shares—normally on vesting.

If RSUs are awarded to non-UK residents (*e.g.* internationally mobile employees), then the tax treatment may be different from what was expected and clients should speak to one of the Reed Smith team. Many



Jeremy Glover
Partner – London
Tax, Benefits & Wealth Planning

businesses have historically assumed that RSUs will simply be taxed like stock options. Depending on the structure of the relevant plan and the circumstances of the awards, this assumption may be incorrect.

Broadly, where an employee is awarded a stock option, the tax position will depend on the residency of the employee at the date of grant. So, ignoring income remitted to the UK, if the employee is not a UK resident or ordinarily resident at the date of grant, a charge to income tax under the employment-related securities provisions may not arise on exercise, although there may be a charge on sale of the underlying shares. Again, ignoring the remittance basis, where the employee is provided with general income (*e.g.* on receipt of a cash bonus) under the standard income tax earnings provisions, the tax position will depend on the period that the income was earned. In that case, a non-UK resident employee may be subject to UK income tax for the relevant income on vesting to the extent that it relates to duties performed in the UK regardless of where he was resident at the date of grant.

ARGENTINA – NEW CURRENCY EXCHANGE RESTRICTIONS IMPACT STOCK PLAN

By Craig P. Tanner

In July, the Argentine Central Bank issued new rules concerning the conversion and transfer of currency. The new rules significantly restrict the cash flow necessary to operate employee stock programs. Specifically, the Central Bank rules prohibit the exchange of Argentine pesos for foreign currency, except in the following situations (none of which is helpful for the employee stock programs):

- Tourism and travel purposes up to US\$1,000 per month with Central Bank validation
- Sales of products to non-Argentine residents up to US\$1,000 per month
- Payments for services provided or rental property to non-Argentine residents up to US\$100,000

CHINA – SAFE TO BEGIN ACCEPTING APPLICATIONS FOR 2013 STOCK PLAN QUOTAS IN OCTOBER

As those of you who work with stock programs offered to employees in China already know, the issues related to currency exchange restrictions are a constant challenge. If you are not familiar with the



Zack Dong
Counsel – Shanghai
Corporate & Securities

Chinese currency restrictions, the current set of rules published by the State Administration of Foreign Exchange (“SAFE”) requires that the fund flow process be pre-approved and that the agent for the issuing company establish a local bank account for the monitored transfer of funds under the stock program. Each year, the agent must apply to SAFE for a quota of the total funds that will be transferred through the local bank account.

For the 2013 quota, SAFE will begin taking applications in October. The process for completing and submitting the application is set forth in SAFE Circular on Issues concerning the Administration of Foreign Exchange Used for Domestic Individuals’ Participation in Equity Incentive Plans of Companies Listed Overseas (Circular Hui Fa [2012] No. 7) (Circular 7). In the case of a first-time quota, all information and documents set out in Circular 7 are required. In the case of a quota renewal, only information and documents that are new or modified will be required. SAFE may request additional information and documents at its discretion.

- Charitable contributions to government-sponsored agencies and international organizations
- Payments for family support or educational expenses

In effect, the Central Bank has suspended all other currency conversions and transfers unless prior approval is obtained from the Central Bank. Since the rules went into effect in the past few months, it is difficult to predict if the Central Bank will approve the exchange of Argentine pesos for the operation of an employee stock program.

IRELAND – REMOVAL OF EMPLOYER REQUIREMENT TO WITHHOLD SOCIAL SECURITY ON STOCK OPTIONS

From July 1, 2012 forward, Irish employers are no longer required to withhold social security taxes (also referred to as PRSI) on non-qualified stock option gains. It is now the employee’s obligation to pay the social security along with income taxes on the taxable income for these stock options. The employee must pay the taxes within 30 days of the stock option taxable event (*e.g.*, the exercise of an option). The removal of the withholding obligations applies to stock options only. RSUs and other stock awards remain subject to income tax and social security withholding.

ISRAEL – NEW ADMINISTRATION REQUIREMENTS FOR SECTION 102 STOCK PROGRAMS

In July, the Israeli Tax Authorities (“ITA”) published new guidance on the administration of stock award programs under a Section 102 plan. The new guidance changes the process for how the issuing companies report grant information and deliver award documents to their Israeli trustees. If you are not familiar with an Israeli Section 102 plan, it is a type of stock award program that allows for preferential tax treatment if certain conditions are met. The Section 102 plans are administered in Israel through trustees.

The issuing companies must provide the following information and documents to their Israeli trustee for all grants under the Section 102 plan:

- A copy of the issuing company’s board or committee resolution adopting the grant of stock awards under a Section 102 plan, along with the names of the grantees and award terms (*e.g.*, number of shares, vesting schedule, termination date). The copy of the resolution must be delivered to the trustee within 45 days of the grant date.
- A copy of the signed stock award agreement from each grantee within 90 days from the grant date
- For restricted stock awards, the deposit of the actual shares within 90 days of the grant date

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