



EMPLOYEE STOCK PLANS: YEAR-END INTERNATIONAL REPORTING REQUIREMENTS

This *Commentary* highlights the principal year-end reporting requirements for employee stock plans that we see repeatedly when U.S. multinationals offer these programs to their employees worldwide. Please note that this *Commentary* does not address routine, year-end tax reporting obligations. A chart summarizing these items appears at the end of this *Commentary*.

CANADA

Tax Deferral Elections. Employees in Canada are generally required to recognize taxable income from stock options exercised during a calendar year. For those options granted over exchange traded shares with an exercise price equal to or exceeding the fair market value (“FMV”) of the underlying shares at grant (generally, “prescribed shares”), the employee may defer tax on the spread at exercise up to the first C\$100,000 of options that vest in any calendar year (determined at the time of grant using the FMV of the

shares at that time). This deferral continues until the employee sells the shares, dies, or becomes a non-resident of Canada.

Employees who wish to take advantage of this deferral with regard to options exercised in 2009 must file a deferral election on Form T1212 with their employer by January 15, 2010, and with Revenue Canada (with his/her annual tax return for each year while the income is deferred).

CHINA

Exchange Control Reports for Stock Options/ Restricted Stock Units/Purchase Rights. For companies that have obtained SAFE registration for their equity plans in China, quarterly reports must be filed with the local SAFE officials detailing the company’s equity plan activity (e.g., grants, exercises, share sales, and the balance of the designated foreign exchange account) during the previous quarter. The

next report is due January 14, 2010, for activity that occurred during the fourth quarter of 2009.

In addition, for those companies with SAFE approval that provides for a designated quota of foreign currency that may be transferred out of China (e.g., under an employee stock purchase plan), companies must renew their foreign exchange quota for the 2010 calendar year. This renewal request should be made annually by the Chinese affiliate that employs the applicable participants and should be filed by December 31, 2009.

FRANCE

Tax Reporting for French-Qualified Awards. French affiliates of companies that grant to their employees in France stock options and/or restricted stock units (“RSUs”) that are tax-qualified under the French Commercial Code¹ must fulfill certain tax reporting requirements by February 2010.

With respect to French-qualified stock options, the French affiliate must provide each employee, by February 15 of the year following the year in which an employee exercises his or her tax-qualified stock option, with a statement that provides (i) the French affiliate’s corporate purpose, location of its principal establishment, and/or the location of its registered office; (ii) the exercise price of the exercised stock options; (iii) the number of shares acquired upon exercise of the stock options; (iv) the date of grant and date of exercise of the exercised stock options; and (v) the excess amount of the discount at the time of grant of the exercised stock options, if the discount granted to the employee exceeds 5 percent of the average trading price for the 20 trading days preceding the date of grant. The French affiliate must also send a copy of this individual statement to the tax office where it files its corporate tax return before February 15 of the year following the year in which an employee exercises the stock option.

If the four-year holding period required for tax-qualified treatment is not observed, the statement must also include (i) the date of grant and exercise of the stock options; (ii) the

exercise price of the stock options; (iii) the date of sale of the shares acquired upon exercise; (iv) the number of shares sold; and (v) the value of the shares at exercise.

With respect to French-qualified RSUs, before February 1 of the year following the year in which the RSUs vest, the French affiliate must provide the French social security authorities (Urssaf) with (i) the French affiliate’s corporate purpose, location of its principal establishment, and/or the location of its registered office; (ii) the names of the employees and corporate executives who have vested in French-qualified RSUs in the previous calendar year; (iii) the number of vested shares; and (iv) the value of the vested shares at the end of the two-year vesting period. The French affiliate is not currently required to file a report with the French tax office with respect to the vested RSUs.

Annual Report to Shareholders. Assuming that the French affiliate of the issuer company has annual shareholder meetings, the French affiliate should distribute a special report to its shareholders at its annual shareholders’ meeting that lists the French-qualified stock option and RSU grants that have been made to the 10 employees of the French affiliate who have received the most stock options and/or shares upon exercise/vesting of the awards as well as the corporate executives of the issuer company, its affiliates, and the affiliated companies of the consolidated group. If the French affiliate does not hold its own shareholder meetings, the French affiliate should still compile this report but retain it in its files rather than distribute it to shareholders.

INDIA

Tax Reporting for Stock Options/Restricted Stock Units/Purchase Rights. Even though there are no specific calendar year-end reporting requirements in India, with the recent change from fringe benefit tax to perquisites taxation of equity awards, there are a few items that companies and employees should keep in mind. Companies are now required to withhold on the taxable gains from equity awards (at exercise for stock options, vesting for RSUs, and purchase for employee stock purchase plans) and are also required to

1. Among other things, generally equity awards are considered tax-qualified in France if they are granted pursuant to a special French sub-plan and meet special holding period and other requirements.

issue a Tax Deducted at Source certificate to the employees by April 30, 2010, after the end of the tax year (March 31, 2010). Employees should use this certificate to file their annual tax return, which is due on July 31, 2010 (for employees not liable for a tax audit, *depending on annual income*) and September 30, 2010 (for employees liable for a tax audit).

Exchange Control Report. Companies should also be aware of the requirement for the Indian affiliate to file a statement with the Reserve Bank of India through the AD Category-I Bank, which provides details regarding the shares issued to an India resident during the prior fiscal year. This report should be filed on Form ESOP Reporting (Annex-B and Annex-C) of the Master Circular on Direct Investment by Resident in Joint Venture (JV) / Wholly Owned Subsidiary Abroad and must be submitted no later than July 31, 2010.

ISRAEL

Tax Reporting for Stock Options/Restricted Stock Units/Purchase Rights. For stock option, RSU, and ESPP grants under trustee and nontrustee plans in Israel, reports must be made both quarterly and annually to the Israeli tax authorities. At the end of each calendar quarter, the local affiliate or trustee, as applicable, must file Form 146 detailing the grants made during that quarter with the Israeli tax authorities. In addition, annually, the local affiliate or trustee must file Form 156 with the Israeli tax authorities by March 31 of the following year detailing the grant activity and the status of any outstanding grants during the prior calendar year.

Please note that while the Israeli tax authorities have indefinitely extended the deadline for these submissions (until an electronic submission system is operable), many companies choose to make these reports in hard copy until the electronic system is operable in accordance with the applicable deadlines.

MALAYSIA

Tax Reporting for Equity Award Vesting. Malaysian affiliates of companies that grant equity awards to employees in Malaysia must report, on an annual basis, any stock option exercises, RSU vesting, and/or purchases under an

ESPP that took place during the previous calendar year. The report must be made to the Malaysian Inland Revenue Board on Appendix C of the Form BT/ESOS/2005 (*i.e.*, the same form used to report the grant of equity awards) and should be filed by January 31 of each year.

THAILAND

Securities Reporting for Stock Options/Purchase Rights.

Companies that grant stock options to the employees of their Thai affiliates must report any exercises of those options to the Thai SEC within 15 days of the end of the calendar year in which the options were exercised as well as submit a summary of the plan pursuant to which the options were granted. Therefore, with respect to stock options exercised in 2009, the issuer company must file the report by January 15, 2010. A similar requirement exists for stock purchased under an ESPP—a report has to be filed within 15 days of the end of each purchase period under the plan. For example, if an ESPP's annual purchase period ends on January 31, the reporting deadline would be February 15 of that same year.

UNITED STATES

Tax Reporting for Incentive Stock Options/Purchase Rights.

U.S. companies that grant incentive stock options (“ISOs”) to their U.S. employees or sponsor a Section 423 ESPP in which their U.S. employees participate must deliver an information statement (at least once per year) to those employees who have exercised their ISOs during that year or who have purchased shares of stock under such Section 423 ESPP. For stock purchases that occurred in 2009, information statements must be delivered by January 31, 2010. The information statement must provide the number of shares purchased, the exercise or purchase price, and the value of the shares transferred from the company to the participant, among other items. Beginning with stock purchases that occur after 2009, the information statements that are delivered to employees must also be filed with the IRS. The information statement for exercised ISOs should be made on IRS Form 3921 and on Form 3922 for shares purchased under such Section 423 ESPP.

Country	Type of Report	Type of Awards Covered	Deadline
Canada	Deferral Elections	Stock options	January 15, 2010
China	Quota Renewal	Stock options (potentially) and purchase rights under an employee stock purchase plan	December 31, 2009
	Quarterly Report	All equity awards	January 14, 2010
France	Tax Report	French-qualified stock options and restricted stock units	February 15, 2010
India	Withholding Certificate	All equity awards	April 30, 2010
	Exchange Control Filing	All equity awards	July 31, 2010
Israel	Quarterly Report	All equity awards	End of Quarter
	Annual Report	All equity awards	March 31, 2010
Malaysia	Tax Report	All vested equity awards	January 31, 2010
Thailand	Securities Report	Stock options Purchase rights under an employee stock purchase plan	January 14, 2010 Varies
United States	Tax Report	Incentive stock options and purchase rights under an employee stock purchase plan established pursuant to Section 423 of the U.S. Internal Revenue Code	January 31, 2010

This Commentary should be considered guidance only. Specific design features of employee stock plans can substantially alter the applicable legal requirements. Readers are urged to obtain specific legal advice regarding how the local requirements apply to their plan terms before filing any year-end report.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Robert G. Marshall II
+1.415.875.5720
rgmarshall@jonesday.com

Shoshana E. Litt
+1.216.586.1015
selitt@jonesday.com

Louis Rorimer
+1.216.586.7224
lrorimer@jonesday.com

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our web site at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.