JANUARY 2012

JONES DAY
COMMENTARY

EMPLOYEE STOCK PLANS: YEAR-END INTERNATIONAL REPORTING REQUIREMENTS—2012 UPDATE

This *Commentary* highlights some of the principal calendar and year-end reporting requirements for employee stock plans that U.S. companies most commonly encounter when offering these programs to their employees in selected jurisdictions 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*. If you have any questions about these requirements or need any assistance, please do not hesitate to contact one of the Jones Day lawyers listed below.

AUSTRALIA

Employers are subject to annual reporting requirements with respect to all equity grants to Australian employees. By July 14, 2012, Australian employers must issue an Employee Share Scheme Statement to each employee who was granted an equity award that vested in the prior tax year (*i.e.*, before June 30, 2012), and by August 14, 2012, the employer must file an Employee Share Scheme Annual Report with the Australian Taxation Office ("ATO"). However, if taxation is deferred until a subsequent tax year, reporting to employees and the ATO will most likely not be required for 2011–2012. In any event, it is recommended that employees be provided with a statement about future reporting requirements.

CANADA

Elimination of Tax Deferral Elections. Prior to March 4, 2010, for stock options granted over exchange traded shares with an exercise price equal to or exceeding the fair market value of the underlying shares at the date of grant (generally, "prescribed shares"), Canadian employees were generally permitted to defer tax on the spread of their options at exercise up to the first CD 100,000 of any options that vested in a particular calendar year. Employees who desired to take advantage of this deferral were required to file a deferral election on Form T1212 with their employer by January 15 of the year following the year in which the options were exercised, as well as with the Canada Revenue Agency (with his/her annual tax return for each year while the income is deferred). This requirement has now been eliminated.

Effective March 4, 2010, the Canadian federal government eliminated this deferral election for stock options and, by extension, the requirement to file a Form T1212. Canadian employees who filed deferral elections prior to such date and whose tax liability is greater than the benefit received upon sale of the stock received upon exercise, however, may receive special tax relief on stock sold after 2009 and before 2015. This treatment generally reduces the taxes payable on the proceeds of disposition from the optioned securities. In order to take advantage of this special tax relief, employees must make an election by the filing due date of their personal tax return for the year in which they sell their stock. The tax relief will also apply retroactively for employees who sold their stock before 2010 as long as they made the election for special tax treatment on or before their tax filing due date for the 2010 taxation year.

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 by January 17, 2012 (which is the tenth business day of the first quarter of the calendar year) for activity that occurred during the fourth quarter of 2011.

In addition, for those companies with SAFE approval that provides for a designated quota of foreign currency that may be transferred out of and/or into China (*e.g.*, under an employee stock purchase plan), companies must renew their foreign exchange quota for the 2012 calendar year. This renewal request should be made annually by the Chinese affiliate that is authorized by its parent company outside of China to act as its local agent with respect to SAFE-related matters and should be filed by December 31, 2011.

FRANCE

Tax Reporting for French-Qualified Awards. French affiliates of companies that grant stock options and/or restricted stock units ("RSUs") to their employees in France who are tax-qualified under the French Commercial Code[1] must fulfill certain tax reporting requirements by February 2012.

With respect to French-qualified stock options, the French affiliate must provide each employee and its appropriate tax office, 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, the 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

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.

authorities (URSSAF, the *Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales*) with (i) the French affiliate's corporate purpose, the 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. If 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 shareholder 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 distributing it to shareholders.

INDIA

Tax Reporting for Stock Options/Restricted Stock/Restricted Stock Units/Purchase Rights. With the relatively 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 restricted stock and RSUs, and purchase for employee stock purchase plans). Companies are also required to issue a Tax Deducted at Source ("TDS") certificate to their employees by April 30, 2012 after the end of the tax year (March 31, 2012). Employees should use this certificate to file their annual tax return, which is due on July 31, 2012 (for employees not liable for a tax audit, *depending on annual income*) and September 30, 2012 (for employees liable for a tax audit).

In addition, the Indian affiliate is required to file TDS returns with the Indian tax authorities on a quarterly basis. Those returns, which are due by the 15th day following the last day of the relevant quarter, report details on all amounts withheld during the quarter, including those amounts withheld with respect to taxable gains. In respect of the sale of shares, employees will continue to be responsible for paying and reporting any applicable capital gains tax.

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 ("RBI") through the AD Category–I Bank, which provides details regarding the shares issued to residents of India during the prior fiscal year. This report should be filed on Form ESOP Reporting (Annex–B and Annex–C) of the RBI Master Circular on Direct Investment by Resident in Joint Venture (JV) / Wholly Owned Subsidiary Abroad (dated July 1, 2011) and must be submitted no later than July 31, 2012.

IRELAND

Tax Reporting for Stock Options/Restricted Stock Units/Purchase Rights. By March 31, 2012, all employers are required to file a Form RSS1 with the Irish Revenue with respect to all equity awards that have vested in the 2011 tax year.

ISRAEL

Tax Reporting for Stock Options/Restricted Stock Units/Purchase Rights. For stock option, RSU, and ESPP grants under trustee and non-trustee 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, the local affiliate or trustee annually 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. 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 submitted 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. Please note that if the equity awards are granted to employees of more than one Malaysian entity, a separate filing should be made by all Malaysian entities as they are separate and distinct employers.

PHILIPPINES

Securities Reporting for Exemption. Companies that grant equity awards to their employees in the Philippines typically obtain an exemption from the Securities and Exchange Commission in the Philippines ("SEC Philippines") to avoid having to register their securities with the SEC Philippines. Once an exemption has been received from the SEC Philippines, the company is then required to file an annual report with the SEC Philippines by January 10 of each year that reflects the number of shares that have been issued by the company pursuant to stock option exercises, the vesting of restricted stock units, and purchases under an employee stock purchase plan during the prior calendar year.

SINGAPORE

Certain Tax-Favored Program Applications. Companies that grant stock options and share awards in Singapore may have awards that are potentially eligible for the Qualified Employee Equity-Based Remuneration Scheme ("QEEBR Scheme") and the Equity Remuneration Incentive Scheme (All Corporations)("ERI Scheme"). Employers that desire to operate stock plans that qualify for the QEEBR Scheme and the ERI Scheme must keep sufficient documentation to show that their stock plans satisfy the applicable requirements when requested by the Comptroller of Income Tax.

Qualified Employee Equity-Based Remuneration Scheme. Under the QEEBR Scheme, qualifying employees may apply to defer payment of the income tax due at exercise of stock options and vesting of share awards, including RSUs, for a period of up to five years, subject to an interest payment.

Under the terms of the QEEBR Scheme, a stock plan that meets the applicable requirements is automatically qualified, and no formal approval is required. The QEEBR scheme generally requires that stock options do not vest any earlier than one year after the date of grant, and for stock options where a discount at grant applies, the option may not vest any earlier than two years after the date of grant. For share awards, where the price paid for the share is equal to or greater than its market value, the award cannot vest earlier than six months from the date of grant. However, if the price paid is less than market value, the award cannot vest any earlier than the first anniversary of the date of grant.

Employees must submit an application form to defer their tax gains to the Inland Revenue Authority of Singapore, and the local affiliate must certify on the application form that the stock plan under which the stock option and/or share award is granted qualifies for the QEEBR Scheme. The form must be submitted to the Inland Revenue Authority of Singapore by April 15, 2012.

Equity Remuneration Incentive Scheme (All Corporations). Under the ERI Scheme, qualifying employees are eligible for income tax exemptions for gains arising from qualifying stock option and share award plans, including RSUs, of up to SGD 1 million (approximately USD 767,754) over a period of 10 years. Under this scheme, the employee will enjoy a full tax exemption on the first SGD 2,000 worth of gains from the stock option and share awards plan and a tax exemption of 25 percent on the remaining amount of gains from such plan for each year of assessment during the 10-year period. Under the terms of the ERI Scheme, among other requirements, the same vesting requirements applicable to the QEEBR Scheme also apply to stock options and share awards, respectively. In addition, the stock options and share awards must be offered to at least 50 percent of a company's eligible employees in Singapore (subject to certain exclusions for part-time, newly hired, and short-term employees).

The local affiliate is required to provide employees with the details of all gains arising from stock plans, segregating the gains, where applicable, into those qualifying for the various share incentive schemes and those that do not qualify for any tax exemption under any schemes, with the annual return of remuneration, no later than March 1, 2012.

The local affiliate is also required to give a written confirmation to a qualifying employee within the four-week period following December 31, 2011 that the qualifying terms and conditions of the ERI Scheme have been met in respect of those share awards and/or stock options granted under the relevant qualifying stock plan.

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 after the end of the calendar year in which the options were exercised in accordance with the details described in the Guidance set forth by the Thai SEC, as well as submit a summary of the plan pursuant to which the options were granted. Therefore, with respect to stock options exercised in 2011, the issuer company must file the report by January 15, 2012. A similar requirement exists for stock purchased under an ESPP—a report has to be filed within 15 days after the end of each purchase period under the plan. For example, if an ESPP's annual purchase period ends on January 31 of each year, the reporting deadline would be February 15 of that same year.

UNITED KINGDOM

Tax Reporting for Incentive Stock Options/Purchase Rights. For each tax year, which runs from April 6 to April 5 in the UK, UK employers are required to file a number of tax returns with Her Majesty's Revenue & Customs ("HMRC") that relate to equity grants made to their employees and the exercise or vesting of such rights.

The first report due is the Employer Annual Return, which is required with respect to income tax and national insurance contributions ("NICs") accounted for by UK employers through the PAYE system (the payroll tax deduction system) in the previous tax year. This report, which comprises two forms and includes tax amounts deducted through payroll on stock option exercises and vesting of other stock purchase rights, must be filed with HMRC on Form P35 (which summarizes total payroll deductions for all employees) and Form P14 (which summarizes payroll deductions for each employee) by May 19, 2012 for the 2011–2012 tax year.

By July 6, 2012, UK employers must file with HMRC an annual return of expenses and benefits provided to each employee on Form P11D (one per employee), which will include the value of stock vested in the employee during the 2011–2012 tax year. By the same date, UK employers must also file annual stock-related benefits reports with respect to stock options and other stock purchase rights that have been granted and/or exercised and/or vested in the 2011–2012 tax year. With respect to stock options/purchase rights granted under unapproved stock plans, the report must be filed on Form 42. With respect to rights granted under HMRC-approved stock plans, UK employers must complete the prescribed form for that particular type of approved plan (Form 34, 35, 39, or 40).

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 an 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 an ESPP. For stock purchases that occurred in 2011, information statements must be delivered to employees by January 31, 2012 and then filed with the IRS by either February 29, 2012 or March 31, 2012, depending on the filing format. If paper returns are filed with the IRS, the filing deadline is February 29, 2012, whereas electronically filed returns, which are required for 250 or more returns, are due by March 31, 2012. 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. The information statement for exercised ISOs should be made on IRS Form 3921 and on Form 3922 for shares purchased under an ESPP.

VIETNAM

Exchange Control Reporting for Approved Issuers. Companies outside of Vietnam require exchange control approval from the State Bank of Vietnam with respect to the offer of awards under an equity plan to employees in Vietnam. If a company has received such approval, it is required to submit an annual report to the State Bank of Vietnam that summarizes the number of grants made during the prior year as well as the number of shares issued pursuant to awards in the prior year. Reports for the 2011 calendar year are due by January 31, 2012.

Country	Type of Report	Type of Awards Covered	Deadline
Australia	Tax Report	All equity awards	July 14, 2012 (Employee Statement) August 14, 2012 (Report to ATO)
Canada	Tax Relief Elections for Deferrals	Stock options	Individual's Tax Return Deadline
China	Quota Renewal Quarterly Report	Stock options (potentially) and purchase rights under an ESPP All equity awards	December 31, 2011 January 14, 2012
France	Tax Report	French-qualified stock options and restricted stock units	February 15, 2012
India	Withholding Certificate Exchange Control Filing	All equity awards All equity awards	April 30, 2012 July 31, 2012
Ireland	Tax Report	All equity awards	March 31, 2012
Israel	Quarterly Report Annual Report	All equity awards All equity awards	End of Quarter March 31, 2012
Malaysia	Tax Report	All vested equity awards	January 31, 2012
Philippines	Securities Report	All equity awards	January 10, 2012
Singapore	Confirmation Report Tax Report Tax Deferral Application	All equity awards that qualify under the ERI Scheme All equity awards All equity awards that qualify under the QEEBR Scheme	January 31, 2012 March 1, 2012 April 15, 2012
Thailand	Securities Report	Stock options Purchase rights under an employee stock purchase plan	January 15, 2012 Varies
United Kingdom	Tax Report	Stock options and stock transfers	May 19, 2012 (Forms P35 and P14) July 6, 2012 (Share Scheme and Benefit Returns (P11D, Form 42))
United States	Tax Report	Incentive stock options and purchase rights under an employee stock purchase plan	January 31, 2012 February 29, 2012 or March 31, 2012, as applicable
Vietnam	Exchange Control Report	All equity awards	January 31, 2012

LAWYER CONTACTS

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