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WHITE PAPER

January 2021

Employee Stock Plans: International Reporting Requirements

This *White Paper* highlights some of the principal annual reporting requirements for employee stock plans that multinational companies most commonly encounter when offering these programs to their employees in selected jurisdictions worldwide. Please note that this *White Paper* does not address routine, year-end tax reporting obligations. A chart summarizing these items appears at the end of the *White Paper*.

AUSTRALIA

Employers are subject to annual reporting requirements with respect to all equity grants to Australian employees. By July 14, 2021, Australian employers must issue an Employee Share Scheme Statement to each employee who was granted an equity award that vested or was exercised in the prior tax year (i.e., before June 30, 2021), and by August 14, 2021, the employer must file an Employee Share Scheme Annual Report with the Australian Taxation Office ("ATO") using the requisite software program.

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 6, 2021 (the third business day of the first quarter of the calendar year) for activity that occurred during the fourth quarter of 2020.

In addition, for those companies that have obtained SAFE approval for their equity plans (and the plans have not since been terminated), companies must renew their foreign exchange quota for the 2021 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. As a best practice, this renewal request should be filed by December 31, 2020 (although under current SAFE practice, a renewal request which is complete by March 31, 2021, is acceptable).

DENMARK

In 2019, the Danish government introduced annual tax reporting for stock option exercises and the vesting of restricted stock unit ("RSUs"). The new tax reports are due by January 20 of the year following the year in which the shares are acquired pursuant to a stock option exercise or RSU vesting.

FRANCE

Tax Reporting for French-Qualified Awards

French affiliates of companies that grant stock options and / or RSUs to their employees in France that are tax-qualified under the French Commercial Code must fulfill certain tax reporting requirements to: (i) the social security office (URSSAF); (ii) the beneficiary; and (iii) the French tax authorities[1].

At the time of grant of the French tax-qualified stock options and / or RSUs, the French affiliate must report to the social security office ("URSSAF"): (i) the name and address of each beneficiary; and (ii) the number and value of the options and / or shares granted.

By March 1 of the year following the year in which an employee exercises his or her French tax-qualified stock option and / or vests in his or her tax-qualified RSUs, the French affiliate must provide the employee with an individual statement. With respect to stock options, the individual statement provides: (i) the French affiliate's corporate purpose, the location of its principal establishment, and / or the location of its registered office; (ii) the name and address of each employee; (iii) the exercise price of the exercised stock options; (iv) the number of shares acquired upon exercise of the stock options; (v) the date of grant and date of exercise of the exercised stock options; (vi) the acquisition gain realized upon exercise; and (vii) 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% of the average trading price for the 20 trading days preceding the date of grant. With respect to RSUs, the individual statement generally requires the same information as listed above for tax-qualified stock options except that the data should be referenced from the vesting date for the RSUs.

The French affiliate must also send a copy of this individual statement to the tax office where it files its corporate tax return before March 1 of the year following the year in which an employee exercises the stock option and / or vests in his or her tax-qualified RSUs.

In addition, French affiliates should also report details regarding the exercise of French-qualified stock options and the vesting of French-qualified RSUs in the annual employer year-end declaration (the "DADS") by February 1 of the year following the year in which an employee exercises his or her options and/or vests his or her RSUs. French employers must include in the DADS the same information as listed above for the individual statement.

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 shareholders' meeting that lists the French-qualified stock option and RSU grants that have been made to the ten 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

Companies are 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 May 31, 2021, after the end of the tax year (March 31, 2021). Employees should use this certificate to file their annual tax return, which is due on or about July 31, 2021.

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 thirtieth 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 an annual return with the Reserve Bank of India ("RBI") through the AD Category—I Bank, which provides details regarding the shares issued to or repurchased from the employees/directors of the Indian affiliate during the prior fiscal year ending March 31. This report should be filed on Form ESOP Reporting (Annex IV of the Master Direction—Reporting under Foreign Exchange Management Act, 1999 (dated September 19, 2016) ("Master Direction"). The Master Direction does not prescribe the date by which the report must be filed. Therefore, it is advisable to submit the report as soon as possible (preferably by April 30, 2021).

IRELAND

Tax Reporting for Stock Options/Restricted Stock Units/Purchase Rights

By March 31, 2021, all employers are required to file a Form RSS1 with the Irish Revenue with respect to the following events occurring in the prior tax year: (i) options and other rights granted; (ii) shares issued following the exercise of options; (iii) assets transferred—rights (other than share options) exercised; and (iv) consideration given for options and other rights assigned or released.

Separate reporting requirements apply for save-as-you-earn plans, approved profit sharing plans, and employee share ownership trusts.

JAPAN

Tax Reporting for Stock Options/Restricted Stock Units/Purchase Rights

Japanese companies that are owned 50% or more by non-Japanese companies and Japanese branch offices of non-Japanese companies are required to file a statement with the district director of the tax office if: (i) a Japanese resident who is or was an employee or officer of a Japanese branch or subsidiary of a foreign parent exercised, or received benefits under, any of the following rights; or (ii) a nonresident who is or was an employee or officer of a Japanese branch or subsidiary of a foreign parent has received Japanese source income generated from the exercise or, of the receipt of benefits under, any of the following rights:

- The right to acquire, without payment or with payment of a discounted price, stock of the foreign parent or any of its parent or subsidiaries (collectively, “Parent Stock”);
- The right to receive payment of cash in the amount equivalent to the price of the Parent Stock or distributions related to the Parent Stock; and
- The right to acquire the Parent Stock or receive payment of cash where the price of the Parent Stock, the business results of the foreign parent or other index exceeds a predetermined threshold within a certain period.

Exercises of stock options, vesting of RSUs, payment of dividend equivalents, and ESPP purchases are subject to these reporting requirements. These filings must be made with respect to any exercises or payments by March 31 (or by April 30 with respect to any exercise or payment made by nonresidents) of the calendar year following the year in which the exercise or payment occurred.

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 in Appendix C of the Form BT/MSSP/2012 (which is now also known as Appendix A and is the form used to report the grant of equity awards) and should be prepared and filed at the same time as the preparation of the statement of remuneration (i.e., EA Form) of the employees, which is required to be rendered to the employees by the last day of February 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 each Malaysian entity, 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) (“ERIS”). Employers that desire to operate stock plans that qualify for the QEEBR Scheme and the ERIS 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 with an exercise price equal to or greater than the market value at the time of grant 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 at grant, the award cannot vest earlier than six months from the date of grant. However, if the price paid is less than market value at the time of grant, 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 Comptroller of Income Tax, and the employer 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 by meeting the applicable vesting period requirements. The form must be submitted to the Comptroller of Income Tax by April 15, 2021.

Equity Remuneration Incentive Scheme (All Corporations)

Under the ERIS, qualifying employees are eligible for income tax exemptions for gains arising from qualifying stock option and share award plans, including RSUs, of up to SG$1 million over a period of 10 years. While ERIS was phased out in 2013, it still applies to gains accrued through December 31, 2023. Under this scheme, the employee will enjoy a full tax exemption on the first SG$2,000 worth of gains from the stock option and share awards plan and a tax exemption of 25% on the remaining amount of gains from such plan for each year of assessment during the 10-year period. Under the terms of the ERIS, 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 a designated percentage or more 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, no later than March 1, 2021, on an annual return. The annual return to employees is made on Form IR8A. If the company submits salary data electronically to the Comptroller of Income Tax, it may provide employees with such details of the remuneration in any alternative format.

Whenever grants of options or shares are made under an ERIS Scheme, the local affiliate is also required to provide a written confirmation to a qualifying employee, within the four week period following December 31 of the year of grant that the qualifying terms and conditions of the ERIS 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 2020, the issuer company must file the report by January 15, 2021. 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 United Kingdom, 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. These returns must be filed online through the PAYE system (the payroll tax deduction system).

Employers are required to send to HMRC details of every payment made to an employee in real time, i.e., "on or before" the date the payment is made. Real-time information ("RTI") reporting is therefore required for amounts payable and subject to income tax and national insurance contributions ("NIC") on stock option exercises and vesting of other stock awards. If RTI reporting is not practicable, however, reports must be made as soon as possible following the earliest of the date that income tax and NIC are deducted and 14 days of the end of the tax month in which payment is made. RTI reporting must be applied to internationally mobile employees that have UK income tax and NIC liabilities, even if paid by an overseas employer.

By July 6, 2021, UK employers must also file online, through the PAYE system, 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 tax year ending April 5, 2021. Separate annual returns must be filed online for each separately registered stock plan, whether tax-advantaged or non tax-advantaged. (All tax-advantaged stock plans must be separately registered online but all non tax-advantaged stock plans may either be registered separately or under a single "other" unique scheme registration number.)

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 2020, information statements must be delivered to employees by January 31, 2021, and then filed with the IRS by either February 28, 2021, or March 31, 2021, depending on the filing format. If paper returns are filed with the IRS, the filing deadline is February 28, 2021, whereas electronically filed returns, which are required for 250 or more returns, are due by March 31, 2021. 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 ("SBV") with respect to the offer of awards under an equity plan to employees in Vietnam. In 2016, the SBV issued a declaration that requires the local Vietnamese subsidiaries of foreign issuers of equity awards to re-apply for approval and once such approval is received, file quarterly reports with the SBV on a prescribed form that summarizes the number of grants made during the prior quarter as well as the number of shares issued pursuant to awards in the prior quarter, among other information. The first quarterly report is due by the twentieth day of the quarter following the quarter in which the approval is received.

Country	Type of Report	Type of Awards Covered	Deadline
Australia	Tax Report	All equity awards	July 14, 2021 (Employee Statement) August 14, 2021 (Report to ATO)
China	Quota Renewal First Quarterly Report	All equity awards	December 31, 2020 January 6, 2021
Denmark	Tax Report	All equity awards	January 20, 2021
France	Tax Report	French-qualified stock options and restricted stock units	February 1, 2021 (DADS) March 1, 2021
India	Withholding Certificate Exchange Control Filing	All equity awards All equity awards	May 31, 2021 April 30, 2021
Ireland	Tax Report	All equity awards	March 31, 2021
Japan	Tax Report	All equity awards	March 31, 2021
Malaysia	Tax Reports	All vested equity awards	February 28, 2021
Philippines	Securities Report	All equity awards	January 10, 2021
Singapore	Confirmation Report Tax Report Tax Deferral Application	All equity awards that qualify under the ERIS All equity awards All equity awards that qualify under the QEEBR Scheme	January 31, 2021 March 1, 2021 April 15, 2021
Thailand	Securities Report	Stock options Purchase rights under an employee stock purchase plan	January 15, 2021 Varies
United Kingdom	Tax Report	All equity awards	Real-Time Reporting July 6, 2021 (Share Scheme and Benefit Returns)
United States	Tax Report	Incentive stock options and purchase rights under an employee stock purchase plan	January 31, 2021 (Deliver to employees) February 28, 2021 or March 31, 2018, as applicable (File with IRS)
Vietnam	First Quarterly Exchange Control Report	All equity awards	Assuming approval has been received, January 20, 2021

This *White Paper* should be considered guidance only and should not be relied upon as legal advice. 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.

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ENDNOTES

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