

## Recent Developments Affecting Global Stock Plans<sup>1</sup>

By Scott E. Landau and Bradley A. Benedict

*As noted in Pillsbury's May 12, 2011 Advisory, Going Global with US Employee Stock Plans, sponsors of global stock plans must navigate a host of legal and tax regimes to maintain compliance with applicable rules and laws. This article briefly discusses some recent developments in a number of countries that may have consequences for the administration, operation or design of such plans. The following is intended only to be a high-level summary of legislative changes and other events. Where relevant, companies should seek guidance in coordination with local counsel to evaluate the impact of these or other developments on their global stock plans.*

### France – “Qualified” Stock Options and Free Share Plans

In December 2012, France enacted tax legislation providing for significant changes to the rules governing “qualified” stock options and “free shares” (free shares are similar to stock-settled restricted stock unit plans). “Qualified” stock options and free shares are eligible for special tax treatment, provided that they are structured to comply with certain holding, vesting and other requirements.

Much of the tax benefit for the employee on French qualified awards has been eroded under the new rules, which apply to grants made on and after September 28, 2012. Income tax on qualified awards is now imposed at the prevailing progressive income tax rate (highest marginal rate 45%, not counting the surtax applicable to high earners), instead of the fixed rates of 18%, 30% or 41% that applied prior to the legislation. However, the grantee's social surtax charge has been decreased from 15.5% to 8%, along with the 10% social security contribution. On the company's side, the employer's social tax liability increased from 14% to 30%, effective for grants made on or after July 11, 2012. In light of the new tax regime, sponsors of French qualified share plans should reevaluate whether granting such awards continues to achieve the company's equity compensation objectives.

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The legislation also contains new reporting requirements. Companies must issue a certificate containing details of the issuance to grantees by March 1 of the year following the year stock options are exercised, and they must provide certain data to the tax authorities with their employer annual wage information returns. Failure to comply with the reporting requirements can result in the company having to pay the social surtax charge for both the employer and the employee on the award.

As a result of technical changes under the law pursuant to the Constitutional Court of France, the holding period requirement for French qualified stock options (but not free shares) has been eliminated. Under the prior rules, shares obtained upon the exercise of a French qualified stock option had to be held for four years from the date of grant. It is possible that the French government may seek to restore the condition. In the meantime, plan sponsors may consider removing the holding requirement for French qualified stock options.

### **United Kingdom – Employee Shareholder Designation**

On April 24, 2013, the UK government approved new legislation recognizing a new employment status: the “employee shareholder.” The new law permits employees in the UK to give up certain statutory employment rights in exchange for receiving stock in their employer or its affiliates (including non-UK affiliates). While final implementation rules have yet to be issued, the main provisions of the program are as follows. The rights “employee shareholders” can forego include the right to pursue an unfair dismissal claim (other than for dismissals deemed automatically unfair or that relate to discrimination), statutory redundancy pay and rights concerning flexible working arrangements and time off for training, along with an extension of the time required to notify the company before returning from maternity, parental, paternity or adoption leave from 8 to 16 weeks. Among other requirements, individuals entering shareholder employee agreements must be afforded independent legal advice (at the employer’s expense) and have a seven-day period to revoke. Employers may condition an offer of employment on the prospective employee’s entering an employee shareholder arrangement, but active employees may not be punished for refusing to accept an offer to become an employee shareholder. The program will be effective for grants made on and after September 1, 2013. No income tax or National Insurance Contribution charge will apply for such shares up to the first £2,000 in value. In addition, up to £50,000 of such shares will be exempt from capital gains tax on disposal (in both cases, valued at the date of acquisition, without regard to any restrictions). The grant must be for fully paid-up shares having a value of at least £2,000, which may be subject to certain restrictions, such as company repurchase rights.

### **Singapore – Nonrenewal of ERIS Tax Benefits**

The tax benefits under Singapore’s Equity Remuneration Incentive Scheme (ERIS) are being phased out. ERIS provides for tax exemptions on a portion of the taxable gains incurred by recipients of qualifying compensatory equity awards, provided that certain vesting conditions and administrative requirements are satisfied. In particular, as it relates to global stock plans, the incentives for the “All Corporations” category of ERIS plans (including plans that issue non-Singapore parent stock to participants) will expire as of January 1, 2014. Equity awards that are granted on or before December 31, 2013 will continue to qualify for the beneficial tax treatment for gains that are derived on or before December 31, 2023. Companies may want to notify their Singapore employees if these changes affect their equity compensation and may want to reconsider their overall compensation structure in Singapore to the extent the ERIS phase-out affects the rationale for the equity based component of total compensation.

## Philippines – Taxation of Employee Stock Options

In Revenue Memorandum Circular No. 88-2012 dated December 27, 2012, the Philippine Bureau of Internal Revenue (BIR) clarified the tax treatment of stock options granted to employees in certain situations. The BIR guidance provides that:

- Income or gain realized from the exercise of stock options granted to all employees is considered additional compensation, subject to income tax withholding.
- Such income or gain derived from the exercise of stock options granted to “managerial” and “supervisory” employees (essentially, individuals having authority to establish management policies, hire, discharge, discipline and otherwise manage employees or exercises independent judgment to recommend such managerial actions).
- The taxable amount is based on the difference of (A) the higher of the book value or fair market value of the shares, over (B) the price paid for the shares.

The additional compensation and, as applicable, taxable fringe benefit arises regardless of whether the shares involved are that of a domestic or foreign company. The BIR Circular did not address the issue of whether these rules apply if the Philippine entity does not record the expense in its books or does not ultimately bear the expense of the grant (e.g., through reimbursement of non-Philippine affiliate in a charge-back arrangement). Companies granting equity grants in the Philippines should examine their existing procedures for consistency with the recent guidance.

## Ongoing Management of Global Stock Plans

Equity-based compensation can be a fundamental tool for multinational organizations, but global stock plans face special challenges insofar as the tax, securities, employment, currency control and other laws in the relevant countries by necessity will have a significant impact on the structure and administration of the program. It is important for companies sponsoring global stock plans to keep abreast of developments not only for purposes of compliance with applicable law, but also to evaluate periodically the effectiveness of the program on a jurisdiction-by-jurisdiction basis and opportunities for improvement to help the company achieve its goals.

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If you have any questions about equity compensation plans, including an existing or contemplated global stock plan, Pillsbury’s Executive Compensation & Benefits group is happy to work with you, in coordination with counsel in the relevant local jurisdictions, to address these issues.

## New York

Susan P. Serota (bio)  
+1.212.858.1125  
susan.serota@pillsburylaw.com

Peter J. Hunt (bio)  
+1.212.858.1139  
peter.hunt@pillsburylaw.com

Scott E. Landau (bio)  
+1.212.858.1598  
scott.landau@pillsburylaw.com

Kathleen D. Bardunias (bio)  
+1.212.858.1905  
kathleen.bardunias@pillsburylaw.com

James P. Klein (bio)  
+1.212.858.1447  
james.klein@pillsburylaw.com

Bradley A. Benedict (bio)  
+1.212.858.1523  
bradley.benedict@pillsburylaw.com

### Washington, DC / North Virginia

Howard L. Clemons (bio)  
+1.703.770.7997  
howard.clemons@pillsburylaw.com

Justin Krawitz (bio)  
+1.703.770.7517  
justin.krawitz@pillsburylaw.com

### Los Angeles

Mark C. Jones (bio)  
+1.213.488.7337  
mark.jones@pillsburylaw.com

### San Francisco

Christine L. Richardson (bio)  
+1.415.983.1826  
crichardson@pillsburylaw.com

Marta K. Porwit (bio)  
+1.415.983.1808  
marta.porwit@pillsburylaw.com

### San Diego—North County

Jan H. Webster (bio)  
+1.858.509.4012  
jan.webster@pillsburylaw.com

Daniel N. Riesenber (bio)  
+1.858.847.4130  
daniel.riesenber@pillsburylaw.com

Lori Partrick (bio)  
+1.858.509.4087  
lori.partrick@pillsburylaw.com

### Silicon Valley

Cindy V. Schlaefer (bio)  
+1.650.233.4023  
cindy.schlaefer@pillsburylaw.com

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