Client Alert

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More Recent Developments Affecting Global Stock Plans – Summer 2013

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As the use of equity-based compensation continues to grow around the world, different jurisdictions are striving for the right balance in the regulatory frameworks governing equity-based compensation arrangements.[1] *This update follows up on our July 25, 2013 Client Alert –* Recent Developments Affecting Global Stock Plans *– to take note of a few additional legislative and regulatory changes that have occurred over the last few months.*

The following is only a high-level summary; companies should seek guidance in coordination with local counsel to evaluate the impact of any developments that are relevant to their global stock plans.

United Kingdom – Employee Share Scheme Simplification

Most of the provisions in the UK Finance Act 2013 designed to ease requirements for tax-advantaged employee share plans took effect on July 17, 2013. The Act affects Share Incentive Plans (SIPs), Save As You Earn (SAYE) schemes, Company Share Option Plans (CSOPs) and Enterprise Management Incentive (EMI) schemes. Among the numerous changes are:

- Restricted shares may now be issued under SIPs, CSOPs and SAYE schemes, provided that participants are notified of the restrictions when options are awarded.
- The requirement to set a specific age for certain retirement-related benefits has been eliminated so that new retirees are permitted to exercise SAYE and CSOP options, and withdraw SIP shares, on a tax-free basis regardless of the age at which they retire.
- Tax relief has been extended for the exercise of SAYE and CSOP options, and the withdrawal of SIP shares, in connection with a cash takeover of a group company (even if the takeover occurs within three years after the grant), provided certain conditions are satisfied.

[1] For an overview of some of the legal, tax, securities and other considerations for global stock plans from an plan sponsor's perspective, see Pillsbury's May 12, 2011 Advisory, Going Global with US Employee Stock Plans.

- The application of certain "good leaver" rules for SAYE schemes and CSOPs have been expanded (*e.g.*, allowing participants to retain favorable tax treatment in the event of a transfer or sale of a group company or a transaction covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006).

- Employees having a "material interest" in their employer will no longer be prohibited from participating in SIPs and SAYE schemes, while the material interest percentage limitation for CSOPs has been increased from 25% to 30%.

- SIPs now have three alternatives for setting the purchase price per share during accumulation periods: (A) the market price as of the beginning of the accumulation period, (B) the market price at the time of acquisition or (C) the lesser of (A) or (B) (which is the current method).

- The annual £1,500 limitation on dividend reinvestment for SIPs has been eliminated (effective April 6, 2013).

- The period in which EMI options can be exercised on a tax-favorable basis after a disqualifying event has been extended from 40 to 90 days, and capital gains tax relief will apply for qualifying EMI options exercised after April 6, 2013.

Other important upcoming changes for UK employee share schemes include the development of new online registration, filing and self-certification procedures. Her Majesty's Revenue and Customs (HMRC) expects to issue guidance later this year for companies to comply with applicable reporting requirements beginning in April 2014. Incorporating a self-certification process for tax-advantaged share plans as part of the new guidelines should significantly facilitate the implementation of such schemes by replacing the existing HMRC preapproval requirement.

Switzerland – Equity Based Compensation Taxation Guidance

The Swiss Federal Tax Administration issued the final version of its Tax Circular 37, which provides important guidance on recent changes to Swiss legislation under the Federal Law on the Taxation of Equity-Based Compensation Instruments and the Federal Law on Direct Federal Tax. Among the topics covered are (i) valuation of listed and non-listed shares, (ii) taxation of stock options, share awards and phantom stock cash-settled awards, (iii) employer reporting obligations and (iv) expatriate taxation. The new guidance is effective retroactively as of January 1, 2013.

Philippines – Deductibility of Equity Based Compensation

New Revenue Regulation 12-2013 clarifies that a Philippine employer will not be eligible for a compensation-related deduction for equity plan costs if the employer does not comply with its withholding obligations, even if the failure to withhold is later corrected in the course of a tax audit or investigation. The rule underscores the applicability of tax withholding obligations on income from equity awards where the Philippine employer incurs the compensation expense directly or bears the cost through a recharge agreement with a non-Philippine parent entity.

Ongoing Management of Global Stock Plans

Global stock plan sponsors must keep up-to-date on the tax, securities, employment, currency control and other legal regimes in all the relevant jurisdictions. Awareness of the constantly evolving regulatory and legislative landscape is essential to an organization's ability to adopt structural, administrative or operational changes needed to manage a compliant and effective equity-based compensation program.

If you have any questions, Pillsbury's Executive Compensation & Benefits group is happy to work with you.

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