

FRS Equity Strategies

A Consulting, Outsourcing, and Educational Institute for Equity Compensation

International Considerations of Offering Stock Options

The "Intl Starter Chart" is for any global company who has employees living and working outside the US. The Chart and the "International Considerations for Offering Stock Options" identify some of the tax considerations for reporting and withholding requirements. This is NOT tax advice, NOR is it tax information that should be used to make corporate decisions in order to be compliant with the laws and regulations outside the US. It is a guide only. Please seek written advice from the company's audit or legal firm for final guidance in all matters. FRS Equity Strategies, Inc. Sept 2008

Canada

There are two special rules that can impact withholding/ taxation

- 1) Options that qualify as qualified stock options result in capital gains treatment upon exercise, i.e., only 50% of the spread is taxable.
- 2) Residents can defer taxation on the first C\$ 100,000 of stock acquired upon exercise of qualifying options (valued as of the grant date) that became exercisable in a particular year.

Germany

"On December 18, 2007, the German Federal Supreme Tax Court decided that benefits in kind received under stock option plans can be regarded as income earned for a period of more than one year as long as the period between grant and exercise exceeds one year. Therefore, a special tax calculation method which mitigates the progressive effect of the German income tax rates may be applicable to income from stock option exercises. This GEU does not apply to other forms of equity compensation.

As a result of this method, the income tax payable on the stock option income will be five times of the tax payable on one-fifth of the total stock option income. In other words, only one-fifth of the stock option income will be added to the ordinary income to determine the payable income tax and then the tax due on that one-fifth stock option income will be multiplied by five to determine the full income taxes due on the total stock option income. The intention of this method is to ease the impact of the progressive tax rate system. The point of taxation will not change."

Deloitte Global Equity Update: Germany. April 2008

India

FBT regimes allow employers to transfer FBT liability to employees. Many companies are doing so with new awards in India. Transferring liability on existing awards **may have implications under US tender offer rules.**

Also, to determine value of shares not traded on India stock exchange, companies need valuation from a Category 1 Merchant Banker registered with the Securities and Exchanges Board of India. Baker & McKenzie Global Update 3/25/08

Parliament approves Fringe Benefit Tax Treatment of Equity Awards 20 June 2007 Contributed By: PricewaterhouseCoopers. As previously reported in our June 2007 India Alert forwarded on May 25, 2007, the Indian Parliament has approved the 2007-2008 Finance Bill (the "Bill"), which reclassifies the stock benefit employees receive from employment income subject to individual income tax to a fringe benefit subject to Fringe Benefit Tax ("FBT"). Under the final legislation, any award that meets the definition of a "specified security" or "sweat equity" under the Securities Contracts and Regulation Act will be subject to the FBT. Specifically, FBT is imposed on the fair market value ("FMV") of the stock award on the date of vesting, reduced by any amount payable by the employee. The FBT will be payable on the date of allotment or transfer (e.g., upon option exercise, restricted stock unit vesting and ESPP purchase). In a limited number of instances an equity award may be excluded from the definition of a fringe benefit; for example, an equity award delivered in cash (as opposed to shares) may be considered a perquisite to the employee rather than a fringe benefit. Although the FBT is payable on the date the shares are transferred to the employee, the fringe benefit (that will be subject to tax) is valued on the date of vesting, reduced by any amount payable by the employee. Consequently, companies will not owe FBT on options that are never exercised or options with a FMV on the vesting date that is less than the exercise price. Please note that the Central Board of Direct Taxes ("CBDT") announced today that it is currently in the process of establishing the method(s) to be used in calculating the FMV of the equity. Fringe benefits tax is imposed on the employer at a rate of approximately 33.99% (consisting of 30% FBT and applicable surcharges) and is not deductible by the local Indian company.

PwC Tax and Regulatory Services Jan 23, 2008 Fringe Benefit Tax on Employee Stock Plans: Central Government amends rule notified for determining Fair Market Value (FMV) of specified securities. Background: The Finance Act, 2007 introduced a new provision for the levy of Fringe Benefit Tax (FBT) on value of Employee Stock Plan benefits provided to employees by their employers. FBT is to be levied on the Fair Market Value (FMV) on the date of vesting of the specified security/sweat equity share, as reduced by the amount actually paid by or recovered from the employee. The FMV for this purpose is to be determined in accordance with the rules prescribed by the Government. The Central Government had notified Rule 40C of the Income Tax Rules, 1962 ("Rules") in October 2007 prescribing the methods for determining the FMV of equity shares allotted under Employee Stock Plans. The said rules provided for the valuation methodology of equity shares only. Additionally, 'equity share' was defined in terms of section 85 of the Companies Act, 1956. Amended Rules: The Central Government has issued its Notification No. 11/20081 whereby - a) the definition of 'equity share' in Rule 40C has been deleted and b) a new rule 40D has been inserted in the Rules prescribing the methodology for determining the FMV of all securities, other than equity shares in a company, which may be granted under an Employee Stock Plan. The new rule 40D prescribes that for all securities, other than equity share granted/allotted under an Employee Stock Plan, the FMV on the date of vesting will be determined by a Category 1 Merchant Banker registered with the Securities Exchange Board of India. It has been explained that the definition of 'equity share' earlier included in Rule 40C has been deleted as the statutory provisions (of the Act) do not provide any such definition. The amended rules will be applicable for assessment year 2008- 09 i.e., for charge of FBT for the financial year ending on March 31, 2008. Conclusion The amendment/new rule, it is believed, are intended to rectify the shortcomings of the earlier rule notified for determining FMV. Based on the definition of 'equity shares' as provided earlier, a view could be taken that FBT could be levied only in cases where equity shares of Indian companies were allotted to the employees under an Employee Stock Plan. Such restriction will be removed by deletion of the definition of equity share in the valuation rules. 1 Dated January 18, 2008

Italy

"Individuals working in Italy are generally subject to social security contributions to the Italian Social Security Authority (INPS). Rates vary according to the sector of activity and job title of the employee. Social security in respect of the state pension fund borne by the employee is generally equal to 9.19% plus 1% over EUR 40,083. Some employees may pay social security up to a fixed cap of EUR 88,669" (Deloitte International Tax and Business Guide: Italy 6/08)

In other words, the amount of social tax to be collected is not easily determined.

Malaysia

Companies are now legally required to report grants of equity awards within 30 days.

Baker & McKenzie Global Update 3/25/08

Vietnam

Income tax rates for Vietnamese employees

Average monthly receipts (VND m)

0-5	Rate of Taxation - 0%
5-15	Rate of Taxation - 10%
15-25	Rate of Taxation - 20%
25-40	Rate of Taxation - 30%
40 and above	Rate of Taxation - 40%