

Ten Tips for Tackling Tricky Territories

October 28, 2010

Veena Bhatia, CEP

**Sr. Equity Compensation Consultant
Stock & Option Solutions, Inc.**

Jon F. Doyle

**Partner
International Law Partners, LLP**



Disclaimer

- This presentation and the examples provided herein are intended for educational purposes only and do not constitute financial, tax, legal, or investment advice. Always consult with your company's advisors for your specific situation.

Topics Covered

- Holding periods
 - France
- Filings
 - China
 - Philippines and Israel
 - Malaysia
- Trustees
 - Israel
 - Italy
- Taxes, Timeframes, and Tasks
 - All Countries





Overview: 10 Tips in Toto

1. France – Use vesting schedules which match holding period
2. France – Utilize broker/transfer agent/trustee (third-party vendor) to hold shares to maintain plan qualification
3. China SAFE filing: Determine process for tracking or forced sale of shares post-termination before filing

Overview: 10 Tips in Toto (Cont'd)

4. Philippines & Israel – Review requirements for securities exemptions
5. Malaysia – Prepare data for filings before grant date in order to meet 7-day deadline for filing
6. Israel – Keep an open dialog with Trustee
7. Italy – Review alternatives for meeting registered financial intermediary requirements

Overview: 10 Tips in Toto (Cont'd)

8. All Countries – Investigate alternatives for determining tax rates for net settled RSUs
9. All Countries – Use calendar to track non-US tax years
10. All Countries – Maintain checklists for grant and vest to ensure all requirements are met

TIP # 1: France – Use vesting schedules which match holding period

- Qualified plans in France are great for saving your company money, but...
 - Qualified options have a 4-year holding period from grant to sale
 - Solution: Vesting schedule = 4-year cliff vesting
 - Qualified RSUs have a 2-year vesting + 2-year holding period from grant to sale
 - Solution: Vesting schedule = 4 years for first vest *or*
 - 50% vest after 2 years, 25% vests annually thereafter, with shares held in escrow or restricted account for holding period
- What if your company wants standardized vesting schedules for all locations?

TIP # 2: France – Utilize third party vendor to hold shares to maintain plan qualification

- Keep standard vesting schedule to maintain employee perceptions of fairness
 - Example: Standard vesting is 25% per year for 4 years. France vesting is 50% at end of 2 years, 25% per year for years 3 and 4
- At vest, issue shares to third party vendor but place blocks on trading until end of holding period
 - Example: Shares held by transfer agent until qualification period has been met

TIP # 3: China – SAFE filing: Determine internal processes before filing

- Decide whether participants will receive underlying shares at RSU vest and option exercise
- Determine process for managing long shares at time of termination
 - Forced sale within specified time period
 - Allow participants to keep shares and determine tracking method
- Choose currency for distribution of proceeds (USD / RMB) and develop processes for:
 - Communicating to employees potential delay in receiving proceeds in RMB
 - Communicating to employees requirement for personal foreign currency accounts to receive proceeds in USD
 - Payment of withholding taxes in RMB by local entity
- Document process and share with local business partners. Get buy-in!

TIP # 4: Philippines & Israel - Review requirements for securities exemptions

- It's not always about headcount!
- Make sure you know what thresholds are based on:
 - Headcount
 - Number of grants
 - Types and number of Plans
- Philippines
 - Securities filing: Exemption available if number of participants is less than 20 on a rolling basis over a 12-month period
 - Number of participants must include everyone on-the-ground, including short-term business travelers
 - Review each grant and keep cumulative totals to monitor threshold
- Israel
 - Section 15D securities exemption available, but must be applied on plan level
 - Consolidate all plans into one application to reduce cost and administrative burden
- Keep a matrix of countries, exemptions, and rules and update regularly

Other countries with filing exemptions

- Australia – securities
- Japan – securities
- Korea – securities
- New Zealand – securities
- Singapore – securities
- EU – securities
- Other...?



TIP # 5: Malaysia – Prepare data for filings before grant date

- Securities and tax filings due after each grant
 - Securities filing must be completed within 7 days of grant
- Create template for gathering required data
- As soon as grant recipients are known, prepare data
- Leverage local business partners to make filing on time
 - Ensure process is communicated ahead of time

TIP # 6: Israel – Keep an open dialog with Trustee

- Maintain a good relationship with trustee
- Have a well-defined and documented process for flow of funds and data between your company, broker and trustee
- Follow the money: track wires to trustee and get timely confirmations
- Have clear communications with mobile employees entering or leaving Israel to inform them of special processes with multiple brokers and tax liabilities
 - Corporate focus may not be same as employee perspective
 - Beware of multiple plans which may have differing treatment (i.e., acquisitions)

TIP # 7: Italy – Review alternatives for meeting registered financial intermediary requirements

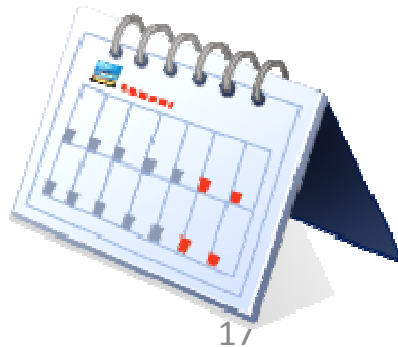
- Service not offered by all vendors, but alternatives are available
- If your vendor doesn't provide the service, contact other vendors
 - Maintain standard process for share delivery and transactions but have additional vendor provide minimum required level of intermediary services
- Beware of administrative issues if online ESPP enrollment is utilized
 - Do not include Italy employees in initial eligibility for online enrollment
 - May need to manually enroll Italy employees once subscription agreements are received from intermediary
 - Review requirements for handling withdrawals and changes with legal counsel

TIP # 8: All Countries – Investigate alternatives for determining tax rates for net settled RSUs

- Obtaining individual tax rates for global employees may not be feasible
 - Liability accounting issue if minimum statutory rate is not used
- Open dialog with internal & external tax and advisors to review alternatives
 - Opinion letter
 - Special grant agreement language
- Will need to be addressed under IFRS2

TIP # 9: Use calendar to track non-US tax years

- Be aware of each country's tax year and how it differs from US
- Monitor tax rates based on each country's tax year. Rates may not change on Jan 1
 - Example: UK rates changed on April 6, 2010
- Set up a calendar with tax year begin dates



Sample Tax Year Calendar

Country	Tax Year Begin Date	ACTION / Comments
Malaysia	Jan 1	Annual year-end filing due Jan 31
China	Jan 1	
India	April 1	Cap gains info due to employees quarterly
UK	April 6	Form 42 due July 6
Australia	July 1	Consolidated reporting now required

Sample Requirements Calendar

	General	January	February	March
France			<p><i>February 21</i> Non-qualified options - Withholding and share plan benefits must be reported on W-2 equivalent (DADS) and must be provided to the employee and the tax authorities.</p>	
Italy	<p>Withholding should be remitted by <i>16th of the month</i> following the month in which the employee received the benefit.</p>			<p><i>March 15</i> Share plan benefit should be reported in employee's annual wage statement ("Modello Cud").</p>
Philippines	N/A			

TIP # 10: Maintain checklists for grant and vest to ensure all requirements are met

- Note any special requirements
 - Grant level processing
 - Restrictions
 - Filters
 - Special identifiers/flags
- Use checklists post-grant / vest to ensure all steps have been completed



Sample Checklist: On-line Grant Agreements for Special Countries

Special Countries	Data Input	Reviewer #1	Reviewer #2
<p>Belgium - Offer Document dated 1 business day after grant date. DELIVER Federal Express & return VIA REGULAR MAIL ONLY</p> <p><input type="checkbox"/> Stock Options – Prepare Offer Documents</p> <p><input type="checkbox"/> RSU – Softcopy agreement fine</p>			
<p>China - SDS Only</p>			
<p>France Options- 3-year cliff/French FMV & Option Term = 6 yrs. & 6 mos; add Begin Hold Date = Grant date End Hold Date = Grant date +4 yrs.</p>			
<p>France RSUs - 2-year cliff; please use RSU-France vest template</p>			
<p>Israel - Use Israeli (FMV); Foreign Disbursement: Subsidiary 1 = Code FD Subsidiary 2= Code FS</p>			
<p>Switzerland - Confirm SDS</p>			
<p>UK - NIC Election Form signed?</p>			

Sample Checklist: Grant

Item	Grant Checklist	Results	Date	Notes	Original Source of Files
	No grants for Stock Administrator without appropriate authorizations				
	No terminated employees on submission				
	Names / IDs match HR database				
	Plan ID				
	Option Type (ISO, NQSO, RSA, RSU, PRSA, PRSU)				
	Grant Types (new hire, focal, merit, strategic)				
	Grant Price (may be different for NQSO outside the US)				
	Grant Date				
	China grant amounts are correct per company/salary plan				
	Vesting schedule				
	Vesting schedule for France				
	Check for grants in Malaysia re securities filings				
	Check for grants in Philippines re securities filings				
	Within Limits for CEO Approval				
	Approval by Compensation Committee				
	Out-of-Period Issues				

Sample Checklist: Vesting

Item	Country	Company Sub Codes	Tax Code	2010 RSU Tax Rates*	ACTION / Comments:
	All				<ol style="list-style-type: none"> 1. Tax Estimate 2. Validate International Rates 3. Check for FICA Exempt 4. Check for Expats & Hypo Tax 5. §16 Affiliates (BoD & Officers) 6. Check for Terminations 7. W-8BEN & W-9 Status
	China		CHN	30%	
	France - Trustee		FRA	0%	Hold Filter for French Grants
	Israel - Trustee		ISR	0%	Israeli Grant Acceptance Required
	Italy		ITA	45%	Italian 'Normal Fair Market Value'
	Malaysia		MYS	26%	
	Philippines		PHL	0%	
	USA		State Code	25% +	Federal, State + Local

***IMPORTANT NOTE:** Tax rates are arbitrary and for example purposes only. They are subject to change at any time by local tax authorities. Non-US Taxpayers must comply with the regulations of local taxing authorities. Be sure to check with your company's advisors.

Sample Country Overview: Options

REGULATORY COMPLIANCE

SECURITIES LAW	No securities requirements apply to offers to employees of a direct and wholly owned subsidiary. There are two types of filings: (i) grant-specific filings; and (ii) periodic corporate reporting requirements. Generally, a Securities Notification Statement (Form 6) is required if the value of the offer is greater than ¥10 million but less than ¥100 million and the award is to 50 or more offerees. Generally, a Securities Registration Statement (Form 7) is required if the value of the offer is greater than ¥100 million and the award is made to 50 or more offerees. A Form 7-2, a simplified version of the Form 7, may be filed in lieu of a Form 7 once the company satisfies ongoing periodic reporting requirement (<i>i.e.</i> , files a Form 8 and a Form 10). There are also aggregation rules for the monetary thresholds (one-year aggregation) and the offeree threshold (six-month aggregation).
DATA PRIVACY	Generally, the processing and transfer of an employee's personal data in connection with the administration of an employee stock plan is permissible with such employee's consent.
FOREIGN EXCHANGE	If the value of the shares acquired exceeds ¥100 million, a report ("Report Concerning Acquisition or Transfer of Securities") must be filed with the Ministry of Finance via the Bank of Japan within 20 days of registration. If the value of the shares acquired exceeds ¥30 million, a report ("Payment Report") must be filed with the Ministry of Finance via the Bank of Japan.

EMPLOYMENT

LABOR ENTITLEMENTS	Stock plan benefits routinely granted to an employee may become a term of employment, which may be included in determining severance benefits. Exposure to possible employee claims can be reduced by including language in the award agreement that, among other things, awards are discretionary and vesting ceases as of termination of employment. The employer should comply with any applicable work rules.
ELECTRONIC EXECUTION	Generally, electronic execution of award agreements by employees is enforceable.
TRANSLATION	Translation of plan materials provided to employees is recommended but not required. Governmental filings must be transmitted.

TAXATION

EMPLOYEE TAX	Tax is imposed on the spread upon exercise. When the shares are sold, tax is imposed on any gain.
EMPLOYER TAX	Subsidiary Deduction. If the subsidiary reimburses the cost of the stock plan benefits (except for those received by officers and directors) to the parent company pursuant to an inter-company agreement and the shares issued to employees are purchased from the market, it should be able to deduct the cost. Withholding and Reporting. If the subsidiary reimburses the cost of the stock plan benefits to the parent company and it participates in the administration of the plan, generally withholding and reporting are required.
SOCIAL INSURANCE CONTRIBUTIONS	If stock plan benefits are considered salary, social insurance contributions are imposed.

Sample Country Overview: RSUs



ISRAEL

REGULATORY COMPLIANCE

SECURITIES LAW	Unless an exemption is satisfied, reporting and disclosure requirements apply to the offer of stock plan awards. A self-executing exemption is available if the number of offerees in Israel does not exceed 35 in a 12-month period. If the self-execution exemption is not available, the company can seek an exemption from the Israeli Securities Authority.
DATA PRIVACY	Employee consent is recommended for the processing and transfer of an employee's personal data. Any database containing an employee's personal data may need to be registered with the data privacy authorities.
FOREIGN EXCHANGE	There are no foreign exchange restrictions applicable to employee stock plans.

EMPLOYMENT

LABOR ENTITLEMENTS	Stock plan benefits routinely granted to an employee may become a term of employment, which may be included in determining severance benefits. Exposure to possible employee claims can be reduced by including language in the award agreement that, among other things, awards are discretionary and vesting ceases as of termination of employment.
ELECTRONIC EXECUTION	Generally, electronic execution of award agreements by employees is enforceable.
TRANSLATION	Generally, translation of plan materials is recommended but not required. However, as a condition of receiving a securities exemption from the Israeli Securities Authority, translation of certain plan materials may be required.

TAXATION

EMPLOYEE TAX	Restricted stock not held in trust is taxed upon grant as employment income, and any gain is taxed upon sale of the shares as capital gain. Restricted stock held in trust for less than two years is taxed upon sale of the shares partly as capital gain and partly as employment income (as opposed to all capital gain if held for two years). RSUs not held in trust are taxed upon sale of the shares as employment income. RSUs held in trust for less than two years are taxed upon the sale of the shares partly as capital gain and partly as employment income (as opposed to capital gain if held for two years).
EMPLOYER TAX	<u>Subsidiary Deduction.</u> Generally, the subsidiary should be able to deduct the cost of the stock plan benefits if the sale proceeds are considered employment income (as opposed to capital gain) and the awards are held by a local trustee. <u>Withholding and Reporting.</u> Withholding and reporting are required for awards that are not held in trust or for awards that are subject to income tax.
SOCIAL INSURANCE CONTRIBUTIONS	Social insurance contributions are imposed on awards that are not held for two years in a local trust or for awards that are subject to income tax.
PREFERENTIAL TAX TREATMENT	There are two types of tax-preferred arrangements in which the awards are held by a local trust. Under the first arrangement, the awards are held in trust for two years from when the shares are sold, and the proceeds are subject to capital gain tax (no National Insurance or Health Tax is imposed). Under the second approach, the awards are held in trust for one year from grant and when the shares are sold, the proceeds are subject to income tax (as employment income) and National Insurance and Health tax is imposed.

Sample Country Overview: ESPP



MEXICO

REGULATORY COMPLIANCE

SECURITIES LAW	An offer of stock awards should be exempt from securities requirements if either the exemption for employee stock plans or private offers is satisfied. To qualify for the private offer exemption, the offer should be made to specified employees and be communicated to individual employees in a private manner.
DATA PRIVACY	Employee consent is recommended for the processing and transfer of an employee's personal data.
FOREIGN EXCHANGE	There are no foreign exchange restrictions applicable to employee stock plans.

EMPLOYMENT

LABOR ENTITLEMENTS	Exposure to possible employee claims can be reduced by including language in the award agreement that, among other things, awards are discretionary and vesting ceases as of termination of employment.
ELECTRONIC EXECUTION	Generally, electronic execution of award agreements by employees is enforceable.
PAYROLL DEDUCTIONS	Payroll deductions from salaries are generally prohibited. An alternative method of contribution should be used.
TRANSLATION	Translation of plan materials provided to employees is recommended but not required. Governmental filings must be translated.

TAXATION

EMPLOYEE TAX	Tax is imposed on the spread upon purchase. When the shares are sold, tax is imposed on any gain.
EMPLOYER TAX	<u>Subsidiary Deduction.</u> If the subsidiary reimburses the cost of the stock plan benefits to the parent company pursuant to an inter-company agreement, it may be able to deduct the cost. <u>Withholding and Reporting.</u> Reporting is required. Withholding is required if the subsidiary reimburses the cost of the stock plan benefits to the parent company.
SOCIAL INSURANCE CONTRIBUTIONS	If the subsidiary reimburses the cost of the stock plan benefits to the parent company, such benefits are subject to social insurance contributions.

Questions?



Thank you for your participation!

Contact Information

Veena Bhatia, CEP

Sr. Equity Compensation Consultant
Stock & Option Solutions, Inc.
vbhatia@sos-team.com
408-979-8718

Jon F. Doyle

Partner
International Law Partners, LLP
jdoyle@ilawpartners.com
415-981-8800

