



The Changing Face Of Global Stock Plans

On July 10, 2003, Microsoft Corporation announced its decision to begin making outright grants of stock to its employees in lieu of its previous practice of issuing stock options. Companies such as DaimlerChrysler, Siemens, and SAP have indicated that they may follow suit. Given the high risk associated with stock options due to current market volatility, combined with the possibility that stock options may be expensed for accounting purposes, some companies believe that the switch from stock options to outright stock awards will provide employees with a more predictable and stable incentive plan and align the company's financials with the anticipated accounting trend. Unlike stock options, outright stock awards provide immediate value to employees even if the company's share price declines.

In an effort to assist you in this changing environment and to provide you with a framework for quickly assessing the potential impact of the use of restricted stock in various countries, we have created this newsletter as a means (1) of highlighting certain tax consequences associated with offering stock awards in 20 countries, and (2) to demonstrate the World Law Group's commitment to the global stock area and our ability to rapidly respond to any questions that you may have.

Legal advisors from the countries covered in this newsletter were asked to prepare a tax analysis addressing the following hypothetical stock award grant:

- The stock award was granted outright (and the employee is not required to pay anything for the shares).
- The stock award was assumed to have a time-lapse restriction, with the shares being subject to a three-year vesting schedule (the "restriction").
- The employee may not pledge, sell or transfer the shares of stock until the restriction lapses (until the shares vest). However, the employee will receive dividend and voting rights during the vesting/restriction period.
- Once the stated restrictions lapse, the employee obtains full ownership of the unrestricted shares and they may be pledged, sold or transferred. In the event that the employee does not meet the stated restrictions, the unvested portion of the restricted stock award will be forfeited.

Counsel has analyzed for you in the following pages the tax issues that may arise from the granting of the hypothetical stock awards described above. *Such analyses are merely for demonstrative and informational purposes and should not be interpreted as legal advice with respect to any particular country.*

We hope you find this newsletter helpful in assessing tax issues you may be encountering in the changing global stock plan area. For a more detailed legal analysis by country, please see our book entitled "International Employee Equity Plans: Participation Beyond Borders" which was recently released through Kluwer Publishing in London. If you have more detailed questions regarding any analysis, please feel free to contact the identified author.

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ARGENTINA

In Argentina, companies may be able to implement programs of restricted stock awards locally by taking into account specific limitations established by the Civil and Commercial Codes on ownership property rights. Assuming these compliance issues are met, companies and benefited employees should be aware of the following tax issues:

During the Vesting/Restriction Period

During this period, because the employee does not become a full owner of the stock, only dividends will be subject to tax and the Argentine company shall be required to act as a withholding agent. The dividends will be considered as part of the Argentine employee's salary.

The Argentine company shall include in the gross income of its employee the value of the dividends and make the appropriate deductions for social security, medicare, life insurance, and other social workers obligations, as well as any other family or dependent deductions allowed by the law. The tax will be applied on the net result at a progressive rate with the range of 9% to 35% according to the employee's level of income.



After the Vesting/Restriction Period

The Employee Keeps the Stock

When the employee receives the stock, he will become full owner and will have to include the full value of the stock as of the date of vesting in his tax return. The employee will be treated as any other independent stockholder and therefore, will be subject to the general principles applicable to the payment of dividends. In Argentina, the payment of dividends is not taxed because the Argentine corporation has already paid income tax at a rate of 35% before dividends are assigned and paid. An exemption may apply in the case where the distribution of dividends exceeds the income of the Argentine corporation declared for tax purposes. In this case, the Argentine company shall withhold 35% of the dividends paid over the difference.

Personal Asset Tax

A tax is required to be paid by anybody with assets in Argentina which exceed \$102,300 (Argentine pesos), which is the minimum threshold. However, tax regulations oblige Argentine companies to withhold 0.50% of the assigned value of the stock according to the balance sheet for the respective year without regard to the minimum threshold. The Argentine company may thereafter request the reimbursement from the beneficiary.

The Employee Sells the Stock

Income arising from the sale of the shares by employees resident in Argentina is subject to income tax at the applicable rate ranging from 9% to 35%. This rate is capped at 15% if the employee has held the shares for more than one (1) year. Income is exempt if the stock is quoted on the stock exchange.

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AUSTRALIA

The full value of the shares awarded under a restricted stock plan (as nothing is paid for the shares) will be taxable at the time of the award, notwithstanding that the shares remain liable to forfeiture. Deferral of the tax charge until vesting of the award is possible, but only if the share is a “qualifying share” and the taxpayer has not made an election to be taxed on grant (see below).



Shares are “qualifying shares” if, among other conditions, the shares are acquired at a time when at least 75% of the employees of the relevant employer have been entitled to acquire shares under the plan or under another employee share plan of the employer or its holding company. The tax charge can then be deferred until the earliest of: (i) the disposal of the shares, (ii) cessation of employment or (iii) any restrictions preventing the taxpayer from disposing of the shares (and any conditions that could result in the forfeiture of the share) have ceased to apply.

It is also possible to defer the tax charge until vesting if the “award” is designed as a nil cost option, but employees would then not be able to enjoy dividend or voting rights until the option is exercised.

Employees may choose to make an election not to defer the taxation charge. Future gains in the value of the shares would then be taxable as capital gains and only half of

any gain is taxable if the shares are held for 12 months or more. Note that if the shares are held during the restricted period by a trustee, and not by the employee, the 12 months qualifying period for the capital gains tax discount will not begin to run for the employee until the shares are transferred to the employee on vesting of the award.

Although an annual tax exemption for up to AUD1,000 of share plan benefits can be available in Australia, this exemption will not be available in the case of a restricted stock award as the shares awarded are liable to forfeiture. It may be possible to construct special plan rules which can give employees the benefit of this tax exemption, although it will be at the cost of the ability to defer the tax charge until vesting of the award.

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AUSTRIA

Generally, employee participation schemes trigger a liability for income tax (on employment income) if the employee receives an economic benefit for which he does not pay market value.

The Austrian income tax system provides for the taxation of employment income at the time of receipt. If there is no receipt of cash, the liability for income tax arises at the time when the taxable person is in a position to dispose of the economic benefit. Under this principle, the award of shares at a discount to market value gives rise to an income tax liability at the time when the shares are issued and allotted or transferred to the purchaser. The taxable benefit of stock awarded is the difference between the market value of the stock at the date of grant and any consideration paid by the employee (in this situation: none).

However, since the stock awarded may be forfeited (“restricted stock award”) within the vesting period (*i.e.*, 3 years) and may not be pledged, sold or transferred within this period, it is (depending on the actual structure of the restricted stock award plan) possible that the tax authorities would treat the restricted stock as an asset not yet received. Consequently, the award of restricted stock would be tax neutral, just as the award of “non-transferable stock options.” The liability for income tax would then only arise at the end of the vesting period. The income tax would in this



case be calculated on the difference between the market price of the stock at vesting and any cash outlay of the employee (in this situation: none).

In Austria, the income tax rate is progressive and the effective average tax rate depends on the total amount of the Austrian employee’s taxable income. As a result of this variable tax rate, there is no standard tax rate applicable to the benefit of restricted stock awards. The Austrian income tax rate ranges from 0% to 50%; the rate of 50% applies to all taxable income exceeding EURO 50,870 per annum. Employers must calculate and withhold income tax on any benefits derived by their employees from employment on a monthly basis. Moreover, the benefit may be subject to social security contributions.

Benefits gained from a direct investment in the employer’s business (or a group company) are exempt

from income tax up to an amount of EURO 1,460 per year. The investment must be held for five years and a transfer during this period is taxable on the original value of the benefit, unless the employment is or has been terminated. As the investment in this situation is in the form of securities, the shares must be deposited with an Austrian (or EEA) bank (or another trustee nominated unanimously by the employer and the employees’ representative board).

Any dividends received by the employee are, as a rule, subject to a 25 % tax rate. In this case no further income tax would be levied.

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BELGIUM

The granting of restricted stock awards is possible under Belgian law but does not receive a favourable tax or social security treatment except in very limited circumstances. Those limited circumstances are provided for in:

- (i) Article 609 of the Companies Code regarding a capital increase in favour of employees (where it is possible to grant the employee a tax favourable reduction up to 20% of the value of the shares);
- (ii) the Act of 22 May 2001 regarding employee participation in the profits and the share capital (where amongst others, all employees must participate in the plan, several conditions of labour law must be complied with and the shares as well as all rights attached to those shares (voting rights, right to dividend) must remain unavailable for the employees during a period of minimum 2 to maximum 5 years). However, if a company wishes to implement an employee participation plan in its share capital whereby the profits of the company are used to grant shares for free to the employees, the act provides for a favourable tax treatment where the employee will only pay a tax of 15% of the value of the shares.

If the restricted stock awards do not benefit from the favourable tax or social security treatment provided for in Article 609 of the Companies Code or the Act of 22 May 2001, the grant of the restricted stock awards will be considered as the granting of an advantage in kind to the employee.

Where restricted stock award are classified as advantages in kind, this results in the gain from the grant of the restricted stock awards being considered as remuneration to the employee and hence, taxation on such gain in accordance with the progressive tax rates applicable to the personal income tax of the employee. The gain from the grant of the restricted stock awards will be calculated as the difference between the price paid by the employee for the shares (in this case none) and the real value of the shares.

Moreover, as the gain from the grant of the restricted stock awards is considered as remuneration, social security contributions will be due.

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BRAZIL

Tax effects to employer

Provided that the restricted stock award will be offered by a foreign parent company, no tax effects will apply to the subsidiary in Brazil.

However, in case the Brazilian subsidiary incurs expenses in relation to the restricted stock award, the applicable tax treatment with respect to such expense will need to be analyzed. In the event that the Brazilian company grants a benefit to its employee under the parent company's restricted stock award plan, this expense may be considered a gift and, in such case, it would not be deductible by the subsidiary in Brazil for purposes of calculating the taxes on income, which are: Corporate Income Tax ("IRPJ") and Social Contribution on Profits ("CSLL").

Tax effects to employees

Once the employees of Brazilian companies are considered to be residents in Brazil for tax purposes, such individuals (whether Brazilian or foreigners) are subject to income tax in Brazil on their worldwide income. Thus, for individuals resident in Brazil, there is no distinction between income derived from Brazil and income generated abroad.

In principle, taking into consideration that the foreign parent company which will grant the equity interest (restricted stock) to the employee will not require a payment for the shares, the fair market value of the stock on the date of grant will be considered to be income to the employee, which will be subject to the individual income tax ("IRPF"). The IRPF shall be calculated by the beneficiary himself (*i.e.*, self-assessment), according to a monthly progressive table, which establishes the maximum rate equivalent at 27.5%. The tax payment must be submitted by the last business day of the month following the month in which

the income was received. On the other hand, IRPF on income obtained from Brazilian companies will be withheld on by such companies.

As the employee cannot dispose of the restricted shares during the restriction period, it is possible to argue that the employee would only be required to pay the IRPF on the capital gain obtained with the sale of the shares. The capital gain is the difference between the sale (or realization) price and the acquisition cost of the stocks. The IRPF levied on ordinary income has a maximum rate of 27.5%, while the maximum rate of the same tax levied on capital gain is 15%. Therefore, the success of this tax argument would reduce the tax burden imposed upon the Brazilian employee.

Notwithstanding this taxation deferral argument, Brazilian employees will be subject to taxation on capital gains when they ultimately dispose of their shares (at a rate of 15%), whether or not the corresponding sales proceeds are transferred to Brazil. Such capital gains tax will be calculated and paid by the Brazilian employee himself. However, Brazilian tax regulations establishes that if the sales price does not exceed R\$20,000, the capital gain is exempt from income tax.

When a Brazilian employee receives dividends from a Brazilian company, there is no taxation. However, dividends paid by a foreign company to the Brazilian employee are taxable as ordinary income at the time of the payment, whether or not the funds are transferred to Brazil. The IRPF levied on dividends received from a foreign company under a restricted stock award can reach a maximum rate of 27.5% and shall also be calculated and paid by the Brazilian employee himself.



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CANADA

An employee who receives an award of restricted stock generally would be required to include the fair market value of the restricted stock in computing his or her employment income for the year in which the stock is received. Accordingly, the employee would be taxed on the value of the restricted stock at the time the shares are issued, even though the employee is precluded from dealing freely with the shares until the end of the three-year restriction period. If the employee were to forfeit the restricted stock at any time during the three-year period, the employee would realize a capital loss at that time in an amount equal to the fair market value of the restricted stock at the time it was issued to the employee. However, only one-half of the capital loss may be used to offset taxable capital gains (but not employment income or other ordinary



income). In light of the unfavourable Canadian tax consequences generally associated with the grant of restricted stock awards, alternatives such as “restricted stock unit” awards or restricted stock awards implemented through certain trust arrangements should be considered.

If the restricted stock is issued by a “Canadian-controlled private corporation”,¹ the tax treatment of the employee is more favourable in that the employee would not be taxed on the value of the restricted stock in the year in which the stock is acquired, but rather, in the year in which the employee disposes of such stock. Moreover, if the employee meets a two-year holding period, only 50% of the value of the restricted stock would be taxed.

From the employer’s perspective, the issuance of stock to its employees would not give rise to a deduction for corporate income tax purposes.



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¹ In general terms, this is a Canadian private corporation that is not controlled (legally or in fact) by non-residents or public corporations (or a combination of the two).

FRANCE

The notion of “restricted stock awards” is not currently recognized as a legally distinct form of employee compensation giving rise to special tax treatment under French law. As a general rule, all benefits and advantages granted to employees that do not correspond to a plan or scheme which is duly regulated under existing law will ordinarily be treated by the French tax authorities as a form of personal income as of the time of the grant, notwithstanding the vesting or other conditions attached to the grant.

The foregoing rule is illustrated by French tax authority Instruction n° 5F-9-95, dated May 12, 1995, pertaining to the taxation of stock options, which states that:

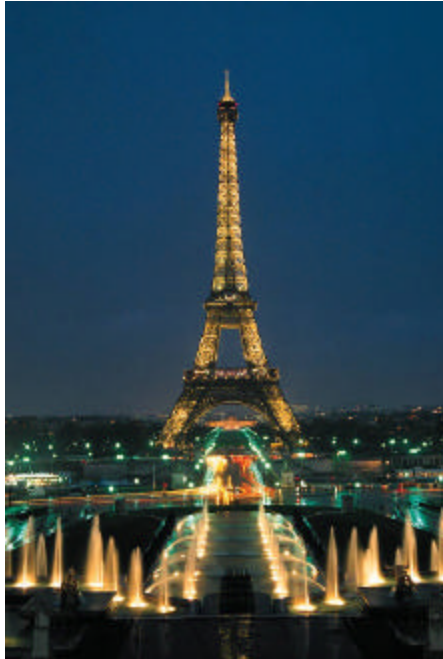
- (i) the favorable French tax regime is only reserved to the beneficiary of stock options which comply with Articles L 225-177 to L 225-186 of the French Commercial Code and which satisfy with all of the relevant provisions of the Legislative Decree number 86-1134 of October 21, 1986; and
- (ii) when an employee or whoever else benefits from a stock option granted outside the legal regime provided for under Articles L 225-177 to L 225-186 of the French Commercial Code, or is given the opportunity to buy and sell stock under preferential conditions, the French tax authorities may re-qualify the gain realized and tax it according to the income category effectively corresponding to the operation (as opposed to the generally more favorable capital gain taxation).

The gain is thus taxed according to the graduated rates applicable to personal income tax:

(A) either as salary income if the counterpart may be linked to the execution of an employment agreement, or

(B) as professional income if the counterpart corresponds to a personal activity, or

(C) as dividends in the event of occult benefits, or a mismanagement act of the company, or if the global remuneration of the beneficiary is considered by the French tax authorities as exaggerated.



Considering the current absence of regulations in respect of stock awards, any typical form of restricted stock award could be re-qualified by the French Tax Authorities and taxed at the graduated rates applicable to personal income tax (up to 49.58 %, plus 10% of various social securities contributions) based on their fair market value according to one of the above categories as the case may be.

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GERMANY

Under German Law, it is legally possible to initiate and to create various schemes of Employees Share Ownership Plans (ESOPs) such as restricted stock award plans. But in creating such plans, it has to be observed that any benefit (e.g. cash and/or equity interests) an employee receives in relation to his employment is subject to income taxation.

In Germany, a beneficiary should be able to pay the amount of income tax due with financial means he receives by converting equity interests received in the course of the respective ESOP into cash. Otherwise, the grant of equity interests under an ESOP would initially negatively affect the beneficiary's liquidity. For this reason, the taxation date (the date income tax on the received benefit becomes due) is crucial for employee acceptance of an ESOP.

Under German Tax Law, any equity-based benefits (except for stock options) are subject to income taxation at the granting date ("Anfangsbesteuerung"). This is true even if the beneficiary is not able to refinance the amount of income tax due to the conditions of the respective ESOP. Restricted stock is not privileged under German Tax Law in that or any other respect. German Tax Law does not provide for any substantial incentives (either for employers or for employees) to initiate equity-based remuneration-schemes.

Given the above, it is not possible to create a restricted stock award plan under German Tax Law that would be appreciated by its beneficiaries. Therefore, restricted stock has not been and still is not a reasonable possibility to motivate and to bind employees in Germany. For these reasons, German Tax Law often prevents the creation and introduction of equity-based remuneration schemes.

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GREECE

Under Greek legislation, the concept of “restricted stock awards” does not exist per se. As such, the following analysis of restricted stock awards can be approached only in hypothetical terms. If a restricted stock award is subject to future implementation in Greece, we would assume that the Greek tax consequences would be as follows:

Taxation of the Employee

The employee will not be taxed on the grant and/or vesting of a restricted stock award.

Taking into account that the employee does not pay for the acquisition of the shares, this could be considered to be a “benefit” and therefore, it would be subject to taxation according to the following legal opinions:

- Any benefit given to the employees by the employer may be considered not taxable, because Greek Law does not regulate such cases;
- Such a benefit may be considered as a donation (*i.e.*, gift) given by a third party and therefore, it should be subject to a donation tax of 20%; or
- Any benefit granted by the employer to the employee will be taxed as “income from salaried services.”

If the restricted stock benefit would be considered “salary,” the relevant income tax will be calculated on the full market value of the shares at the time of vesting (*i.e.*, after the lapse of time) and will be taxed at progressive rates between 0% and 40%. If the restricted stock benefit would not be classified as “salary,” then the relevant income tax will be calculated as provided for above and will be taxed at a flat progressive rate of 35%. In either case, the Greek employer will be required to withhold the tax.

Upon ultimate disposition of the restricted shares (following the lapse of the restriction), capital gains derived by individuals on the sale of foreign listed shares are subject to a tax of 0.6% of the total fair market value of the shares on the date of sale.

Additionally, dividends paid to Greek residents from abroad are taxable at progressive tax rates of 0% to 40%. Double taxation relief is available under the relevant Double Tax Treaty.



Taxation of the Employer

Dilution costs of issuing shares are considered as the difference between the exercise price of the share and the current market value of the share. The dilution costs of issuing shares are reported to Greek Tax Authorities as follows:

- the parent company is charged the dilution costs of issuing shares; or
- the parent company may recharge the dilution costs of issuing shares at an undervalue to the Greek subsidiary at the time the restricted stock vests. The charge back should be accounted for as salaries, and in principle should be deductible by the subsidiary in Greece.

The subsidiary is required to do the following in order to claim the deduction:

- report the value of the benefit received by the employees to the local tax authorities;
- withhold and pay payroll tax and both employee and employer social security contributions; and
- the subsidiary may recharge the dilution costs of issuing shares at an undervalue to its employees. In this case, the above costs may be considered as “a donation” by local tax authorities and will be subject to a donation tax.

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INDIA

Under the current Tax Laws in India, no distinction is made between stock options (where an option is granted to receive shares at a later date) and between restricted stock awards (where shares are allotted/transferred outright subject to certain conditions). If the restricted stock award scheme is in accordance with the Guidelines issued by the Government of India, the benefit arising to the employee on account of the shares being allotted/transferred free of cost, is not taxed in the hands of the employee in the year of allotment/transfer. The gains arising from such shares are liable to be taxed as “capital gains” only in the year in which such shares are actually and ultimately sold by the employee. If, however, the restricted stock award scheme is not in accordance with the Guidelines, the benefit arising (being the difference between the fair market value of the shares and the price, if any, to be paid by the employee) would be liable to tax in the year of allotment/transfer.

Also, the restrictions on the transfer/pledge of the shares during the vesting period would not technically make any difference to the taxability or otherwise in the hands of the employee. Dividends received during the vesting period would be liable to tax under the general provisions applicable to such income streams.

Since under a restricted stock award the shares are granted outright to the employee and he also exercises partial ownership rights during the vesting period, any subsequent forfeiture of the stock award would, under the currently applicable legal provisions, be treated as a retransfer of the shares from the employee to the company/its nominee. The current tax laws do not provide any specific relief in cases where the benefit has already been taxed in the hands of the employee but the stock award is subsequently forfeited. This matter may be looked at from two angles:

- An employee who was to return the shares during the vesting period may seek to contend that since the vesting of the absolute rights in the shares takes place only after the vesting period is over, the benefit arising, if any, in the year in which the shares are allotted/transferred is merely contingent and therefore should not, in the first place, be subject to tax in that year. This legal position is not settled and the contention is likely to face strong resistance from the tax authorities.

- Alternatively, since such forfeiture implies a retransfer of the shares, it should be possible to claim the amount already considered for taxation earlier as a capital loss accruing to the employee. Such a capital loss, although not entitled for deduction from the taxable salary of the employee for the year, can be utilized for set off against any other income from capital gains of the employee in that year or specified subsequent years.

In the hands of the employer company, there is no distinction in the tax treatment between a stock option and restricted stock award scheme. The expenditure/loss incurred by the employer on account of allotment/transfer of shares to the employee is not a permissible deduction for computing the business income of the employer. The revenue expenditure incurred in managing the scheme (other than the loss on account of concessional price) can be claimed by the employer as employee welfare expenses while computing the company’s taxable income.

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ISRAEL

Following a recent tax reform, grants made on or after 1 January 2003 under an employee stock benefit plan are subject to a new taxation regime. Under the new regime, grants may be made under either a trustee plan or a non-trustee plan. Under a trustee plan, the company may elect either an income route or a capital gain route. Under a trustee plan, the stock (in this case, restricted stock) is deposited with a trustee for a lock-up period and the employee's tax liability is deferred until the time of sale of the stock. Under a non-trustee plan, the employee is taxed immediately on the grant date.

Under the trustee-plan income route, the restricted stock must be deposited with a trustee for at least 12 months following the end of the tax year in which the grant is made. At the time of sale, the employee's earnings are taxed as work income at his marginal tax income rate (up to 50%) and, in addition, subject to social insurance payments. The company is entitled to a tax deduction.

Under the trustee-plan capital gain route, the restricted stock must be deposited with a trustee for at least 24 months following the end of the tax year in which the

grant is made. At the time of sale, the portion of the employee's earnings representing the market value of the stock on the grant date is taxed as work income at the employee's marginal income tax rate; any excess earnings are taxed as capital gain at a rate of 25%. The company is entitled to a tax deduction in respect of the earnings element taxed as work income.

Under a non-trustee plan, the employee is taxed on grant on the market value of the restricted stock grant at his marginal income tax rate. Any gain arising on a subsequent sale of the stock will be taxed as capital gain.

The current tax rate for capital gains on foreign listed securities is 35%.

In the case of a grant of restricted stock units (RSUs), the tax treatment should be the same except that RSUs granted under a non-trustee plan are arguably not taxed until the sale of the stock. At that time, the employee's entire gain is taxed as work income at his marginal income tax rate.



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ITALY

Article 48 (2) (g) of Italian Tax Code (“**TTC**”) provides for an exemption regime, applicable to Restricted Stock Awards (“**RSA**”). In order to benefit under the exemption regime, the following requirements must be met:

1. The RSA must be granted to all employees;
2. The employees must keep the shares for at least three years following the granting date; and
3. The stock granted under the RSA shall be issued by the employing company, or by a company which controls, is controlled by or is under the common control of the employing company.

In such a case, an amount equal to Euro 2,065.83 will be exempt from income taxes in the hands of the employee (the “**Exempt Amount**”). The difference between the fair market value of the shares at the granting date and the Exempt Amount shall be deemed as employment

income and subject to taxation and social security contributions, to be withheld by the employing company.

If the employee does not meet the three-year time restriction, then the Exempt Amount will also be subject to taxation.

Upon the employee transferring the shares, any gain realised will be subject to a substitute tax on capital gains, applicable on the difference between:

- i. The sale price of the shares and
- ii. The tax basis thereof, equal to the amount already taxed as employment income, if any.

The applicable tax rate is 27% or 12.5%, depending on whether the transferred shares can be deemed, respectively, as (i) “qualified” or (ii) “not-qualified” participation:

- A. The participation is deemed to be “qualified” if, in a 12 months period,
 - more than 2% of the voting rights or 5% of the stated capital, for listed shares; or
 - more than 20% of the voting rights or 25% of the stated capital, for unlisted shares are transferred; and



- B. In all other cases, the participation is deemed to be “not-qualified”.



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MALAYSIA

Restricted stock awards granted to Malaysian employees would be a perquisite received by the Malaysian employees in respect of having or exercised employment and as such, taxable pursuant to Section 13(1) of the Income Tax Act 1967. In this regard, the Inland Revenue Board (“IRB”) has issued the “Guidelines for Valuation of Benefits in Kind (BIK) provided to Employees (“the Guidelines”).

Restricted stock awards are not common in Malaysia and as such, there is no Malaysian reported case on the exact tax consequences. The case of *Williamson (Inspector of Taxes) v. Dalton* [1981] STC 753 is of persuasive authority and restricted stock awards would be taxable perquisites at the time they were granted to the employees. The value of the perquisite is the market price of the stocks at the time of grant.

Malaysian employers should inform the Technical Division of the IRB within thirty days from the date the stock plan is launched. This will enable the IRB to review the plan and agree on a value attributable to the benefit. The IRB Guidelines are, however, merely guidelines and do not have the force of law.

Dividend income received by Malaysian employees after the date of grant but prior to the date of vesting of the restricted stock awards are taxable by virtue of Section 4(c) of the Income Tax Act 1967. For dividends received from outside of Malaysia, tax is payable as and when the dividends are received in Malaysia.

There is generally no capital gains tax on disposal of stocks in Malaysia. Only gains arising from the disposal of shares in real property company (which is incorporated in Malaysia) are subject to real property gains tax.

From the employers’ perspective, the expenses incurred by the employers in connection with the stock award plan may only be deducted if the expense is incurred “wholly and exclusively in the production of gross income” pursuant to Section 33(1) of the Income Tax Act 1967.

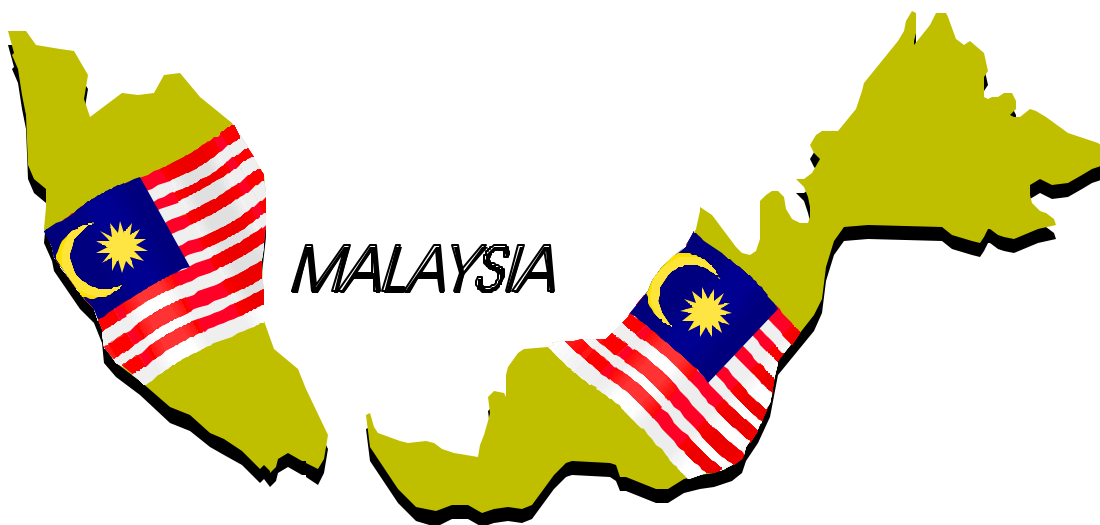
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MALAYSIA

MEXICO

If a stock award is granted by a third company (a non-Mexican company) different from the employer, which makes no charge back of the cost to the employer, under Mexican law, the restricted stock award would have the following effects: The stock received increases the individual's patrimony and therefore, this "income in kind" is subject to personal income tax by the recipient of the award. The individual receiving the stock will be obliged to file an annual tax return and considering the overall taxable profit (income minus certain deductions), a tax at a rate that ranges from 3% to 32%² must be paid. In case the award is granted by a Mexican entity, also different from the employer and also without charge back to the employer, a provisional tax equal to 20% of the fair market value of the stock must be paid. The recipient will also be obliged to file an annual return, at which time, the provisional tax may be credited against the annual tax due.

If the stock award is granted by a Mexican company (who is also the employer of the recipient of the award), the fair market value of the stock shall be considered as labor compensation and shall be treated as part of the employee's income.

In the situation where dividends are paid on the stock, the revenues obtained shall be accrued as taxable income



by the individual. In this case, if the payor of the dividend is a Mexican taxpayer, the tax paid by the company that distributed such dividend may be credited in the individual's annual return, provided a record evidencing the tax payment is obtained. In the event the payor of the dividend is not a Mexican taxpayer, the full amount of the dividend would be taxable income for the recipient thereof.

In the event the condition subsequent is not met and the stock must be returned to the grantor of the award, under Mexican law, the stock award never existed and, therefore, the personal income tax paid by the recipient of the stock award was improperly paid and the individual should be entitled to a tax refund. In the case of the company, if the stock award was granted by a foreign entity or by a third Mexican company, without charge back to the employer, no further tax consequences should arise, due to the fact that the award given should not have been a deductible concept. Conversely, if the stock award was given by the Mexican employer or, if given by a third Mexican company, and the cost thereof was charged back to the employer, the employer must reverse the deduction.



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² 34% for 2003, and 33% for 2004

NETHERLANDS

In the Netherlands, an employee is taxed from 1.7% up to 52% (tax rates for 2003) for every remuneration received from the employment contract in whatever form. A “stock award” is viewed as an outright award of stock either with or without restrictions attached to the disposition of the stock. In general, the Dutch employee will be taxed on the fair market value of the shares at the time they are received unconditionally.

If the stock award is received with restrictions attached, then for Dutch fiscal purposes, it must be determined whether the conditional stock award has a resolutive clause or a suspending clause. A stock award with a resolutive clause is considered taxable income at the time the stock award is granted. A stock award with a suspending clause is considered taxable income at the time the suspending clause is fulfilled. However, in general, having a suspending time clause (vesting schedule) alone does not make the stock award conditional.

Nonetheless, having a suspending time clause together with a resolutive clause (employment condition) does make the stock award conditional. If in this scheme the stock award only has a vesting period of three years, it can be concluded that tax is chargeable at normal rates at the time the stock award is granted.

For social security purposes, the same as mentioned above applies. Social security contributions will be due at the moment the stock award becomes unconditional.

There is a very minor facility governing stock awards. Under the Employee Savings Scheme, it is possible to grant employees stock in the company of the employer up to an amount of EUR 1,226 (tax year 2003) per year.

In situations where the requirements of the Employee Savings Scheme are met, the stocks are deemed to be purchased with a part of the employee’s gross salary. Over this part (how is this part calculated?), wage tax will only be due at a flat rate of 15%. No social security premiums are due. One of the conditions under the Employee Savings Scheme is that the amounts saved are blocked for a period of four (4) years.

For corporate tax purposes, the amount equal to the taxable benefit for the Dutch employees and subject to wage taxes is deductible at the time the stock award is granted unconditionally or becomes unconditional. If

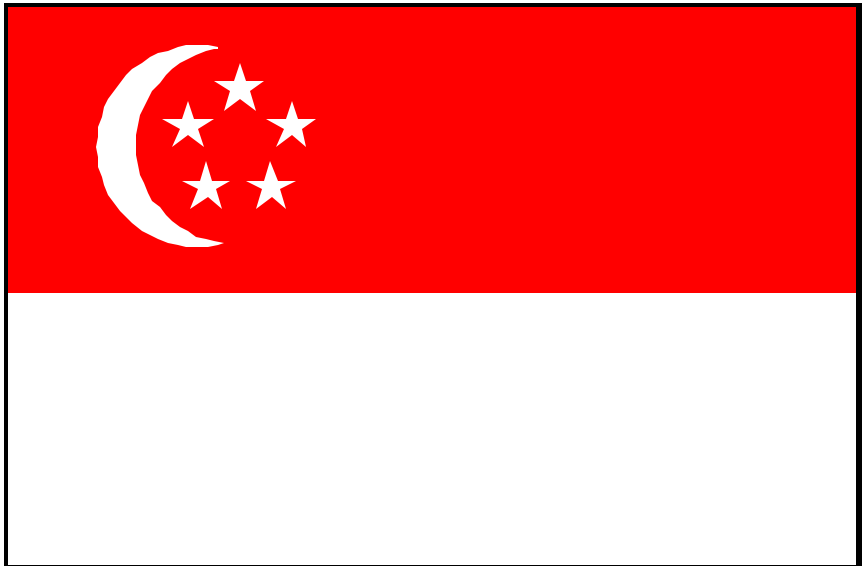
shares are granted over newly issued shares, a capital tax of 0.55% is due.



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SINGAPORE

Generally, gains from share awards under an employee share ownership plan are deemed to accrue to an employee in the year during which the shares are awarded or the employee gains ownership of the shares and accordingly, the employee would be taxed on such gains. However with respect to restricted share awards granted on or after 1 January 2003, gains derived by an employee will only constitute gains accruing to him on the date that the restrictions on the sale of the shares lapse. The amount of the taxable gains will be the difference between the open market price of the shares on the date that the restrictions lapse and the price paid, if any, by the



employee for the shares. It should be noted that where an employee (non-Singapore citizen or non-permanent resident) leaves Singapore, the vesting is accelerated and the employee is deemed to have derived a final gain generally based on the open market price of the shares as of one month before the employee ceases employment in Singapore or the date of the grant of share shares, whichever is the later (less price paid, if any).

The Singapore government recently extended the favourable tax treatment of share options to other forms of employee share ownership plans, including share awards. In order to qualify for the tax incentive schemes, one of the conditions is that the restricted share award scheme must have a moratorium period on disposal of the shares of between 6 months to 1 year.

There are three existing tax incentive schemes available: (1) the Qualified EEBR Scheme (“Employee Equity-Based Remuneration Scheme”), (2) the Entrepreneurial EEBR Scheme, and (3) the Company EEBR Scheme. Some of the benefits under these schemes include:

- Deferment of taxable gains for up to 5 years (subject to an interest charge) under the Qualified EEBR Scheme;
- Tax exemption of 50% of up to S\$10 million of aggregate amount of gains over 10 years under the Entrepreneurial EEBR Scheme; or
- Tax exemption on aggregate amount of gains of up to S\$1 million over 10 years under the Company EEBR Scheme.

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SWEDEN

In Sweden, an employee is taxed on remuneration received resulting from his or her employment in whatever form. A stock award, as described in the introduction, is normally viewed as an outright award of stock either with or without restrictions attached to the disposition of the stock. In general, the Swedish employee will be taxed on the fair market value of the shares at the time they are received.

In Sweden, the income tax rate is progressive and the effective average tax rate depends on the total amount of the Swedish employee's taxable income. As a result of this variable tax rate, there is no standard tax rate applicable to the benefit of restricted

stock awards. The Swedish income tax rate ranges from 0% to 57%; the rate of 57% applies to all taxable income exceeding approximately EURO 30,000 per annum.

Capital tax will be levied on any dividend or profit realized by the Swedish employee as a result of a subsequent sale of the shares acquired under the stock award. The capital gain is calculated as the difference between the sales price in respect of sold shares and an amount corresponding to the aggregate of the value of the benefit, which has been taxed as employment income, and the price paid for acquiring said shares. Capital incomes are taxed at a flat rate of 30 percent in Sweden. Special rules may apply to capital gains related to shares in closely held companies.

For social security purposes, the same as mentioned above applies. Social security contributions will be due at the moment the employee receives the stock award. The social security contributions are 33% and should be paid by the Swedish employer.

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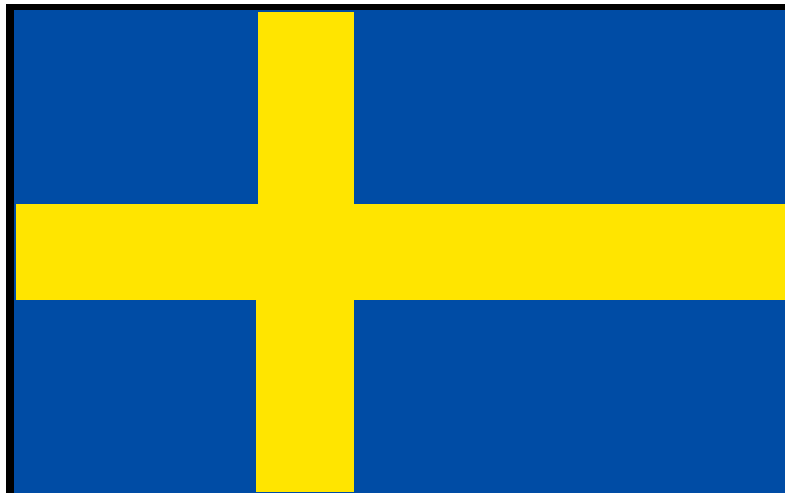
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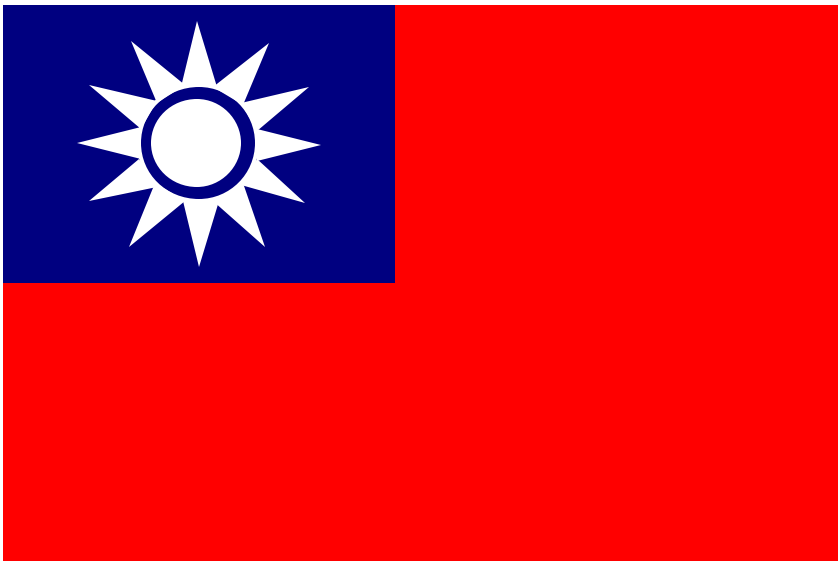
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TAIWAN

Under Taiwan Company Law and the interpretation from the governmental authority, a company cannot prohibit or restrict the transfer of its shares, except for the shares reserved for subscription by its employees at the company's issuance of new shares. However, such restrictions on transferability cannot be longer than two years. Further, the employee who subscribes those shares shall be entitled to the full rights and benefits of the subscribed shares as a vested owner subject only to the above restriction on transfer, and his right to those shares cannot be forfeited. Therefore, the restricted stock awards described in the Introduction (with a three year vesting schedule) are not applicable in Taiwan and no tax issues can be specifically addressed here.



Notwithstanding the above, in Taiwan there are still other alternatives which can be adopted as incentives to employees. The alternatives are as follows:

Employee Stock Options

Although employee stock options may no longer be the first choice of employers in the US, such equity benefits are still a new concept in Taiwan. For listed or OTC-traded companies which use treasury shares to satisfy its obligations under the stock award program, a 3% Securities Transaction Tax will be assessed on such transfer of shares. For other companies which are only

allowed to use newly issued shares as the source, no Securities Transaction Tax will be assessed. In addition, no Income Tax will be imposed on the shares received by the employees under the stock awards.

Issuing New Shares and Reserving Certain Shares for Subscription by Employees

Under Taiwan Company Law, when a company issues new shares, there shall be ten to fifteen percent of such new shares reserved for subscription by its employees. The company may restrain those shares subscribed by its employees from being transferred or assigned to others within a specific period of time which shall in no case be longer than two years. Neither Securities Transaction Tax nor Income Tax would be imposed on transactions involved in this alternative.

Distribution of Bonus in the Form of Newly Issued Shares to Employees

The employers may also consider distributing bonuses in the form of newly issued shares to employees as an alternative. Under Taiwan Company Law, the bonus distributable to the employees under the company's Articles of Incorporation may be paid either in the form of newly issued shares or in the form of cash. In either case, Income Tax will be assessed upon the distributed bonuses.

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UNITED KINGDOM

This year there have been major changes to the tax treatment of restricted shares in the UK. The new rules are complex and so the outline below is necessarily a simplified version (in particular the National Insurance contributions issues are not addressed).



In the example given in the Introduction, the basic position is that there would be no up-front tax liability on the initial receipt of the shares. However, the value of the shares at the point at which the restrictions lift (normally after three years) would be fully taxable as employment income. The highest marginal rate of income tax in the UK is currently 40%.

However, the employer and the employee can together make certain elections for different tax treatment. The most extreme election would result in the employee being regarded as having employment income equal to the initial unrestricted market value of the shares at the time that

they are originally received. If this election is made, then there would be no employment income for tax purposes when the restriction ceased to apply. The eventual sale of the shares would be subject to the potentially very favourable capital gains tax ("CGT") regime. The CGT rate paid by employees selling shares in their employer or its holding company can reduce to as little as 10% once the shares have been held for at least 2 years.

In many cases, the advantages of long term CGT treatment will not be great enough for the employee to wish to incur an up-front income tax liability. However, if the restricted stock is in an unquoted company which is currently worth very little but which has significant growth potential, the election route may be more attractive.

The employer will gain a corporation tax deduction for the amounts on which the employee is subject to income tax.

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UNITED STATES

Tax Treatment – Employee

When an employee receives a restricted stock award, the employee will not recognize any taxable income unless the employee makes a timely election to the contrary under Internal Revenue Code (“Code”) Section 83(b) (referred to as an “83(b) election”). An 83(b) election must be made no later than 30 days after the restricted stock is transferred to the employee. The employee may elect to be taxed at ordinary income rates as of the grant date, particularly if the value of the restricted shares is low, so future appreciation in the shares will be eligible for favorable capital gains tax. The employee’s ordinary income will equal the fair market value of the shares, minus the amount, if any, that the employee paid for the shares. However, if the employee elects to be taxed currently by making an 83(b) election and later forfeits the stock the vesting requirements are not satisfied, the employee will have paid tax on income that was never realized (the IRS does not permit recognition of the loss).

Unless the employee makes an 83(b) election, the value of the restricted stock will not be taxable as long as the stock is non-transferable and subject to a substantial risk of forfeiture. As the restriction on the stock award lapses (*i.e.*, the award becomes vested), the then fair market value of such stock is recognized as ordinary compensation income (unless the employee made an 83(b) election) on the vesting date. Withholding (for income and employment taxes) is required at that time, even though the compensation is paid in property rather than cash. When the employee disposes of the stock, any realized appreciation (or depreciation) in the stock value since the date on which the employee recognized ordinary compensation income with respect to such grant will be treated as a capital gain (or loss).

If the employee receives dividends attributable to the stock, the dividends generally are taxable as compensation. As a result of a recent change in U.S. tax law, dividends paid on shares held for more than 60 days are now taxable at a 15% rate.

Tax Treatment – Employer

An employer generally is not entitled to a compensation deduction upon the grant of restricted stock. However, the employer may claim a compensation deduction under Code Section 162 related to the grant of restricted stock at the time and in the amount that the employee recognizes income due to such grant. The employer will not be entitled to a deduction on the sale or disposition of restricted stock.

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