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France

Changes to French-qualified RSUs Under French Finance Bill 2017

Pursuant to the final Finance Bill 2017 approved by the French constitutional court and published on December 30, 2016, the French government adopted two notable changes to the Loi Macron French-qualified RSU regime providing tax preferential treatment for RSU grants to employees in France (the "modified" Loi Macron regime).

First, the employer social contributions payable at the time of vesting on the value of the shares issued in settlement of the vested RSUs has been increased from 20% to 30%. In addition, the portion of the income realized from the RSUs that is taxable at the time of the sale of the shares as capital gains has been limited to the first €300,000 (previously, the entire amount would be taxable as capital gains); any amount in excess of €300,000 will be taxable as salary.

Both changes will apply to the grant of French-qualified RSUs authorized by shareholders after December 30, 2016, and the remaining terms and conditions under the French-qualified RSU regime will remain unchanged. In this regard, our colleagues in Paris confirmed that companies currently granting French-qualified RSUs under the original Loi Macron regime can continue to grant awards under such regime (and such awards will be taxed in the manner contemplated under the original Loi Macron regime) until the company needs to return to shareholders for a new approval. Companies establishing a French-qualified RSU regime for the first time in 2017 will be subject to the new modified Loi Macron regime.

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Iceland

Relaxation of Exchange Control Restrictions in Iceland

In November 2016, the Parliament of Iceland substantially relaxed the local exchange controls impacting the ability of individuals in Iceland to acquire shares of U.S. companies and other non-Icelandic companies.

Under the new rules, citizens of Iceland can purchase shares issued by non-resident companies for up to ISK 30 million (approximately USD 262,000) during calendar year 2016. Further, beginning on January 1, 2017, citizens of Iceland will be able to purchase shares for up to ISK 100 million (approximately USD 880,000) annually (approximately USD 268,000).

Although some of the procedural issues related to the implementation and operation of the new rules remain unclear, Iceland"s easing of its currency restrictions stands as a welcome development for multinational companies looking to grant share-settled equity compensation awards to employees in Iceland, which previously required companies to obtain a specific exemption from the exchange control requirements from the Central Bank of Iceland (and which we expect will no longer be needed).

For additional information on the new exchange control rules in Iceland and necessary actions for granting share-settled stock awards to local employees, please contact your GES attorney.

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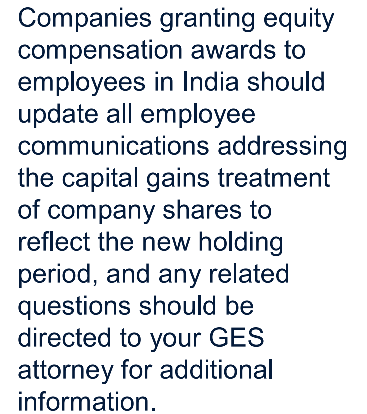
India

Capital Gains Holding Period Reduced in India

In May 2016, the Indian government reduced the holding period for long-term capital gains treatment of shares of companies not listed on recognized stock exchanges in India from 36 months to 24 months. The change is effective for tax years commencing April 1, 2016, and does not affect the long-term capital gains holding period for shares listed on recognized stock exchange in India or other assets ((the holding period remains 36 months).



Companies granting equity compensation awards to employees in India should update all employee communications addressing the capital gains treatment of company shares to reflect the new holding period, and any related questions should be directed to your GES attorney for additional information.

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Japan

Expanded Coverage of Form 9(3) Annual Reporting in Japan

Effective for the tax year ending December 31, 2016, companies granting equity compensation awards to employees in Japan now are subject to Form 9(3) reporting obligations for awards held by non-resident employees and former employees/directors in Japan.

As previously reported in the September 2012 Clients & Friends Newsletter, the Japanese government first initiated the Form 9(3) annual reporting requirement for Japanese resident employees and directors actively employed by an overseas issuer of a Japanese subsidiary or branch entity in receipt of offshore equity awards (e.g., stock options, RSUs) effective for the tax year ending December 31, 2012.

In addition to the expanded class of covered individuals, companies also are now required to provide the covered individual"s tax identification number on the Form 9(3), along with information on residency and the length of the individual"s contract with the Japanese employer. For the tax year ended December 31, 2016, the Form 9(3) will be due by March 31, 2017.

For additional guidance on how the new reporting requirements will apply to your company and what information will be required to include on each Form 9(3), please contact your GES attorney.

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New Zealand

New FMC Exemption Notice Eliminates Financial Reporting Obligations for Issuers Relying on 1978 Act Exemptions

Effective December 1, 2016, New Zealand eliminated the need for non-New Zealand issuers (i.e., "overseas issuers") relying on exemptions under the Securities Act 1978 (the "1978 Act") when granting equity compensation awards to employees in New Zealand from complying with certain financial reporting requirements to the Registrar of Companies when it released the Financial Markets Conduct (Securities Offered under Securities Act 1978 Exemptions Recognising Overseas Regimes) Exemption Notice 2016 (the "2016 Exemption Notice").

These same financial reporting requirements previously were eliminated for overseas issuers relying on exemptions under the Financial Markets Conduct Act 2013 (the "2013 Act"), which replaced the 1978 Act. However, due to a technical issue associated with the transition from the 1978 Act to the 2013 Act, overseas issuers that previously relied on an exemption under 1978 Act were required to continue filing annual financial statements with the Registrar of Companies by reason of having relied on an exemption under the 1978 Act.

Pursuant to the 2016 Exemption Notice, overseas issuers that were subject to these financial reporting requirement now are exempt from such requirements, which effectively should eliminate all filing obligations for the vast majority of overseas issuers granting equity compensation awards to employees in New Zealand.

This exemption applies to accounting periods commencing before December 1 if the financial statements would have otherwise been required to be delivered to the Registrar of Companies after December 1, as well as any subsequent accounting periods.

For additional information on the 2016 Exemption Notice and how it may impact your company"s securities law obligations when granting stock-based awards to employees in New Zealand, please contact your GES attorney.

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New Tax Withholding and Reporting Regime for Equity Awards

Effective April 1, 2017 and in furtherance of the previous commentary in our September 2015 Clients & Friends Newsletter, New Zealand finally enacted the Taxation (Transformation: First Phase Simplification and Other Measures) Bill which will, in part, allow companies in New Zealand to withhold income taxes on equity compensation awards.

In brief, the new rules will allow employers in New Zealand to voluntarily elect to withhold income taxes on taxable income derived from stock-based awards via the PAYE (pay as you earn) withholding system operated for employment income.

If the local subsidiary elects to withhold income taxes on equity awards via the PAYE withholding system, the election will apply to all employees in New Zealand receiving equity compensation income (i.e., the local subsidiary in New Zealand will not be able to withhold taxes for certain employees and not withhold taxes for other employees), the election will be irrevocable, the employer will be responsible for reporting the taxable income derived from the equity awards via its monthly wage schedule that is submitted to New Zealand Inland Revenue, and the employees will not have any tax reporting or payment obligations in connection with the equity compensation awards.

If the local employer chooses not to withhold income taxes on the taxable income derived from equity awards, it still will be responsible for reporting the taxable income derived from the equity awards via its monthly wage schedule that is submitted to New Zealand Inland Revenue but the employee will be responsible for reporting the taxable income on the employee"s personal income tax return and directly paying the applicable taxes by the tax return deadline.

Please contact your GES attorney for additional information about the new tax withholding regime in New Zealand and how your company can voluntarily elect to withhold taxes on equity compensation income.

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United Kingdom

HMRC Continues Formal Approval Process for UK Joint Elections to Transfer Liability for Employer National Insurance Contributions

As previously reported in our July 2016 Clients & Friends Newsletter, HM Revenue & Customs ("HMRC") commenced a consultation procedure on whether to discontinue the practice of formally approving joint employer-employee elections whereby companies granting equity compensation awards to employees in the United Kingdom are allowed to transfer responsibility for the employer portion of National Insurance Contributions ("NICs") to award recipients.

By way of background, companies that formally seek HMRC approval of the joint election are relieved of any liability for the employer NICs if the employee fails to pay such amounts, and HMRC originally introduced the proposal to eliminate the joint election approval process as a cost-savings measure due to its labor-intensive nature.

However, after considering the responses generated by the consultation, HMRC concluded that the formal NIC approval process was still warranted. As a result, companies will continue to be able to seek formal HMRC approval of joint employer-employee elections to transfer employer NICs to award recipients.

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United States

NASDAQ FAQ on Equity Compensation Plan Withholding Rate Amendment

NASDAQ has issued guidance clarifying that an amendment to an equity compensation plan to increase the share withholding rate to satisfy tax obligations would not be considered a material amendment requiring shareholder approval.

Background

As discussed in our July 2016 Clients & Friends Newsletter, the FASB recently amended the accounting rules to allow companies to withhold shares to satisfy tax withholding obligations calculated using the highest rate in a participant"s jurisdiction without incurring liability accounting treatment.

Previously, share withholding to satisfy tax withholding obligations was required to be calculated using the minimum statutory rate to avoid liability accounting treatment. As a result, many equity compensation plans require that share withholding to satisfy tax withholding obligations be calculated using the minimum statutory rate.

We previously reported that the NYSE had issued revised FAQs confirming that an amendment to an equity compensation plan authorizing share withholding at the participant"s maximum tax rate (instead of the minimum statutory tax rate) would not be considered a material amendment that would give rise to shareholder approval, even where shares withheld for taxes are recycled into the share pool, and that NASDAQ was likely to take a consistent position.

NASDAQ FAQ Issued

As anticipated, on October 19, 2016, NASDAQ issued a new FAQ indicating that an amendment to an equity compensation plan to increase the withholding rate used when satisfying tax obligations by withholding in shares would not be considered a material amendment to the plan requiring shareholder approval, regardless of whether such withheld shares may be added back to the plan"s share reserve. As a result, the NYSE and NASDAQ now are consistent on their approach to this issue.

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ISS Updates for 2017 Proxy Season

On November 21, 2016, Institutional Shareholder Services ("ISS") released updates to its proxy voting guidelines for 2017. Some of the more notable updates are summarized as follows.

Equity Plan Scorecard Updates. The 2017 policy updates include two key changes to its "Equity Plan Scorecard," the methodology it uses to review equity compensation plan proposals, for shareholder meetings on or after February 1, 2017. Specifically:

- Minimum Vesting – ISS clarified that it requires a one-year minimum vesting period for all award types granted under a plan in order for that plan to receive full points under the component of the Equity Plan Scorecard relating to minimum vesting periods. It is no longer possible for a plan to receive points on this component of the Scorecard by requiring a minimum vesting period for one type of award only (i.e., full value awards versus appreciation awards). The policy update explicitly provides that no points will be awarded on this factor if the plan allows for individual award agreements that reduce or eliminate the one-year vesting requirement, although this is consistent with our general interpretation of ISS"s existing policy.
- Dividends/Equivalents on Unvested Awards – A new factor in the Equity Plan Scorecard provides points for a plan that expressly prohibits the payment of dividends or dividend equivalents on unvested awards. No points are awarded if the plan permits payment of dividends or dividend equivalents on unvested awards or if it is silent on this point.

Director Compensation. The ISS policy updates also address two aspects of non-employee director compensation:

- ISS added a new policy addressing director compensation program proposals in light of recent litigation regarding director compensation. Among the factors ISS will consider in making a voting recommendation include equity award vesting schedules applicable to director equity awards, the mix of cash and equity-base compensation and meaningful limits on director compensation.
- ISS also revised the factors it considers in its voting recommendation for equity compensation plans that apply only to non-employee directors. In this regard, ISS" voting recommendation will be evaluated on a case-by-case basis after considering the total estimated cost of the company"s equity compensation plan relative to its peers, the company"s three-year burn rate relative to its peers and the presence of "egregious" plan features.

Cash and Equity Plan Amendments. ISS also issued updated guidance on the manner in which it will review different types of proposals involving amendments to cash and equity incentive plans. This update is intended to more clearly differentiate the evaluation framework applicable to amendment proposals presented for Code Section 162(m) purposes only versus proposals involving multiple bundled amendments, amendments with or without new share requests and amendments potentially increasing cost.

In particular, the policy notes that any equity compensation plan proposal that requests additional shares and/or contains amendments that may potentially increase the transfer of shareholder value to employees, as well as a proposal relating to a plan that is being presented to shareholders for the first time since the issuer"s IPO will be evaluated based on the Equity Plan Scorecard and the overall impact of the plan amendments. If an equity compensation plan proposal does not request additional shares and the amendments are not deemed to potentially increase the transfer of shareholder value to employees, ISS"s recommendation will be based entirely on an analysis of the overall impact of the amendments, not on the Equity Plan Scorecard (although the equity evaluation will be conducted for informational purposes).

We will know more about the nuances of these policy updates when ISS releases its FAQs on the Equity Plan Scorecard, which is expected shortly.

Companies that will be seeking shareholder approval for cash incentive or equity compensation plans this proxy season should consider how these updates will impact the proposal, and also should watch for further policy releases from ISS for the 2017 proxy season.

Update on Shareholder Challenges to Section 16(b) Exemption for Discretionary Share Withholding

As reported in our October 2016 Clients & Friends Newsletter, a number of companies have received demand letters from a shareholder seeking to recover "short-swing profits" from Section 16 officers where an officer has elected to exercise a right, or the company has exercised its discretion, authorized under the terms of an equity award agreement, to have shares withheld by the company to satisfy tax withholding obligations within six months of a purchase of shares by the officer that is not exempt from Section 16 short-swing profit liability rules.

As previously reported, the shareholder is arguing that any discretion, including on the part of a Section 16 officer, as to whether shares will be withheld to satisfy taxes results in the loss of the short-swing profit exemption available under Rule 16b-3(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), when this form of withholding is approved by the board or by a compensation committee meeting the requirements of Section 16. Based on this argument that the disposition of shares by a Section 16 officer through discretionary share withholding

was not exempt from Section 16(b) of the Exchange Act, the shareholder is seeking disgorgement of profits calculated as arising out of a non-exempt purchase of shares by the officer that occurred within six months of a share withholding transaction.

We now have learned that the shareholder in question has proceeded to file a complaint in federal court under Section 16(b) of the Exchange Act in at least two separate actions, one in the District of Massachusetts and the other in the Western District of Washington. Although we do not believe that there is a strong legal basis for these claims, particularly where they are based on an exercise of discretion on the part of the Section 16 officer (not the issuer company), we caution companies to review their equity award agreements to assess whether there is discretion around share withholding that could lead a plaintiff shareholder to target their company.

In this regard, we currently are assisting many companies with updates to award agreements to effectively mitigate this risk while preserving key business terms of the awards.

Increase in Social Security Wage Base in 2017

The U.S. Social Security Administration announced that the wage base for Social Security taxes will rise to $127,200 from the 2016 wage base of $118,500. The maximum Old-Age, Survivors and Disability Insurance (OASDI) of the FICA taxes payable by an employee will be 6.2% of the wage base, which is $7,886.40. This amount will also be due by employers.

The Medicare portion of FICA taxes remains unchanged.

Employers should confirm that any references to the specific dollar amount of the Social Security wage base in plan prospectuses or other employee communication materials are revised to reflect the 2017 wage base increase.

Vietnam

State Bank of Vietnam Issues Official Letters to Companies With Pre-Circular 10 Exchange Control Approval

The State Bank of Vietnam (the "SBV") has commenced sending letters to companies with pre-Circular 10 exchange control approval stating that they now must register their equity programs under Circular 10. This is a change from the SBV"s previous position that companies with prior approval from the SBV would not be required to seek a new SBV approval under the new Circular 10 so long as they were not allowing employees to hold shares.

For companies that obtained SBV approval under the old regime, we recommend contacting your local affiliate in Vietnam to determine whether they received a letter from the SBV. Companies that have received such a letter should contact their GES attorney as soon as possible, as the company will be required to obtain a new SBV approval under Circular 10 to offer share-based awards.

Alternatively, the company may be able switch to offering cash awards or awards settled in cash (provided shares are never issued) and paid through local payroll in Vietnam to possibly avoid the need for obtaining a new SBV approval under Circular 10.

For additional about the impact of Circular 10 on your company"s equity compensation plans, please contact your GES attorney.

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