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30 June 2009

The Secretary
Senates Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Inquiry into the operation of employee share schemes in Australia
Baker & McKenzie submission

Please find attached our submission to the Senate Economics References Committee in relation to their inquiry regarding the operation of employee share schemes in Australia.

Our submission provides a comparison of the operation of the rules governing employee share schemes in 40 other countries.

Should you have any questions regarding our submission, please do not hesitate to contact us.

Yours sincerely,

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Baker and McKenzie submission

Selected international tax consequences of employee share schemes

We refer to the Federal Government's Consultation Paper and exposure draft Bill (the ***Bill***), announced on 5 June 2009, regarding the 2009/2010 Federal Budget's proposal to amend the employee share plan provisions. We understand that the Government's starting position remains that employees are to be subject to tax on the discount on their shares and rights acquired under an employee share scheme at grant (subject to limited qualifications).

Attached for your review is a comparison of the proposed changes with the tax treatment of employee share plans in 40 other countries (which we also prepared in response to the Government's Consultation Paper).

We consider it would be inappropriate for Australia to implement a tax regime that is inconsistent with global principles, especially in light of the fluidity in which employees can be employed around the world. Differing tax rules between jurisdictions enhance the risk of either double, or nil, taxation on remuneration of employees of global companies. Furthermore, as many companies offer standardized employee share schemes globally to their staff, a unique Australian tax system increases the risk that these schemes will not be appropriate in an Australian context, excluding Australian employees from benefits provided to employees located in other jurisdictions around the world.

Taking into account the proposed changes noted in the Consultation Paper and Bill, we consider that the following general comments can be made:

- the compulsory taxation of employees on acquisition of employee share schemes is out of step with global standards, even with the qualifications proposed. **None** of the 40 countries we have reviewed taxed shares or rights on acquisition in the manner proposed;
- in light of the Government's concerns regarding tax avoidance/evasion, we welcome the Government's proposal to introduce a more comprehensive regime for the reporting of employee share scheme benefits. While there does not appear to be a consistent treatment worldwide, Australia's current reporting withholding and reporting obligations for employee share schemes are, arguably, towards the lower end of compliance obligations – producing a greater than average risk of non-compliance; and
- we welcome the Government's proposed changes to the valuation of shares and rights. Australia's current valuation rules for employee share schemes are extremely complex (and, arguably, inaccurate) by worldwide standards.

We would be happy to discuss any of the issues outlined in our submission. Further if any other information is required, we would be happy to assist.

TAX MATRIX

Provided below is a brief description of what is an employee stock options plan (***SOP***), employee share purchase plan (***ESPP***), a restricted stock unit (***RSU***) and a restricted stock (***RS***) for the purposes of the attached tax matrix.

SOP

Typically under a SOP, the employer company will grant to certain employees options to purchase a number of shares of the company. The option exercise price is generally the market value/fair market value at the time of grant.

These options are not normally transferable except upon death.

The options vest over a period of time after the date of grant. The vesting may be based on the employee remaining in the employment of the employer company or its subsidiaries over the vesting period.

Once the options vest, the employee can exercise his or her options (and thereby purchase shares) at any time prior to their expiration. If an employee chooses to exercise his or her option, the employee can buy shares at the option exercise price, and is then free to keep the stock or sell it. For the purposes of the tax matrix, the option exercise price is equivalent to the fair market value of the share's on the date of grant.

ESPP

Typically under an ESPP, employees are given the right to purchase shares of the company if they work for the company or for one of its local subsidiaries that has been designated as eligible to participate.

The right to participate in the ESPP normally belongs to the employee participant only and is not transferable.

The ESPP may have multiple, consecutive purchase periods. These purchase periods can be six months in length (from the day the purchase right is granted to the day the purchase of the shares is made), but the period can be longer or shorter in length.

Normally, the ESPP permits eligible employees to fund stock purchases through voluntary after-tax payroll deductions, which are held by the company or the local subsidiary until the end of the purchase period when shares are purchased. Once the shares are purchased at the end of a purchase period, there are no restrictions on the shares. The employee is free to hold or sell the shares as they wish.

The purchase price of the shares on the purchase date will be at a discount from the market value/fair market value of the shares of the company on the purchase date. If an employee withdraws from the ESPP prior to the end of the purchase period, normally all accumulated payroll deductions generally will be returned without interest.

RSs

RSs are stock/shares offered by an employer that are subject to restrictions. The restrictions on the RS make such awards subject to a substantial risk of forfeiture upon the occurrence of certain conditions. Such restrictions include but are not limited to, a vesting schedule based on the employee's continued employment with the employer company (or subsidiary) or tying receipt of the shares to certain performance goals of the employer company.

Employees who have been granted RS typically have all of the rights of an ordinary shareholder (*e.g.*, voting rights, dividend rights). The employee is entitled to receive dividends on the RS.

It has been assumed for the purposes of the tax matrix that the employee has not paid any cash consideration to the employer company to receive the RS.

RSU

A RSU is an unfunded promise or a right to receive shares or cash in the employer company granted to an employee. It is only after the employee satisfies the relevant vesting requirements that the employer company distributes the shares or cash. RSUs are "restricted" because they are subject to forfeiture and restrictions until they vest. The restrictions are set out in the relevant agreement. As like RSs, the restrictions on the RSUs make such awards subject to a substantial risk of forfeiture upon the occurrence of certain conditions.

Employees who have been granted RSUs have only a right to payment and have none of the rights of an actual shareholder. Dividend equivalent payments may be paid to the employee when dividends are paid on the shares or only after the RSUs has vested.

It has been assumed for the purposes of the tax matrix that the employee has not paid any cash consideration to the employer company to receive the RSUs.

Baker & McKenzie

Selected International Tax Consequences

Employee Stock Options (***SOP***)

Employee Stock Purchase Rights (***ESOP***)

Restricted Stock (***RS***) and Restricted Stock Units (***RSUs***)

June 2009

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This Matrix should <u>not</u> be relied upon for specific tax/legal advice and is <u>not</u> a substitute for obtaining such advice. Although every effort has been made to provide an accurate and up-to-date summary, foreign laws applicable to stock plans change frequently and are often unclear . Also, specific plan features, structure of legal entities, types of shares used, specific tax rulings obtained, etc. may affect particular legal and tax results. Specifically, depending on the terms of the plan/grant, the tax/legal consequences can vary greatly (*e.g.*, voting rights and/or dividend equivalent payments may accelerate taxable event and RSUs paid out in cash may vary tax and legal treatment). Accordingly, reliance on this chart for answering specific tax/legal questions is not advised. Instead, this Matrix should only be used as a guide to potential tax/legal issues/consequences and you should seek additional information/advice from legal counsel.

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Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
Argentina[1]	SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: No tax at sale unless employee is a sole proprietor or trades in equity on a habitual basis.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written reimbursement agreement, but withholding tax applies to payment and reimbursement may cause labor law and exchange control issues.	SOP/ESPP/RS/RSU: Yes.
Australia	SOP: If the option is a qualifying right (which should be the case), the employee may elect to be taxed on the market value of the option (calculated by reference to the share price) on the date of grant. Otherwise, qualifying rights are generally taxed on spread at exercise/purchase. Value of the shares may be based on weighted average price over the week prior to the event. Non-qualifying rights/shares are taxed at grant. ESPP: Generally, tax on the difference between the purchase price and the weighted average share price over the week prior to purchase. RS/RSU: If the RS or RSU is a qualifying share/right, the employee may elect to be taxed on the market value of the share/right (calculated by reference to the share price) on the date of grant. Otherwise, qualifying rights/shares are generally taxed at vesting. Non-qualifying rights/shares are taxed at grant. Sale: Tax on sale. If shares are held for at least 12 months, 50% of capital gain excluded from tax.	SOP/ESPP/RS/RSU: Allowed if the sub reimburses the parent under a written reimbursement agreement.	SOP/ESPP/RS/RSU: No. Employees must report on annual tax return. If an employee elects tax at grant, he or she must report the income on the personal tax return for the year of grant.
Austria[2]	SOP/ESPP: Generally, tax on spread at exercise/purchase.[3] RS/RSU: Generally, tax at grant for RS; tax at vesting for RSU.[4] Taxable amount is fair market value of the shares on the tax event. Sale: No tax on sale if shares are held for 12 months or more.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written reimbursement agreement.	SOP/ESPP/RS/RSU: Yes.

[1] Payroll deductions are technically not permitted in connection with a foreign company's stock purchase plan.
[2] To avoid violation of banking laws, payroll deductions in an ESPP should be held in a separate interest-bearing trust or escrow account.
[3] Favorable tax regimes may apply provided certain requirements are satisfied. Two of the favorable tax regimes permit a partial exemption and/or deferral of the tax on the spread; a third regime would reduce the tax rate applicable to the taxable amount.
[4] The third favorable tax regime, as mentioned in footnote 3 above, also may be available for RS and RSU.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
Belgium	SOP: Tax at grant for options affirmatively accepted within 60 days of offer[5]. For tax purposes, options affirmatively accepted after 60 days from offer will be taxed like ESPP (*i.e.*, on spread at exercise). ESPP: Tax on discount at purchase. RS/RSU: Tax at grant for RS (though argument can be made for vesting as taxable event); tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: No tax on sale.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent; however, may trigger tax withholding and social insurance issues. A risk exists that reimbursement would be considered a capital loss on shares, which is not deductible.	SOP/ESPP/RS/RSU: No withholding required unless Belgian entity (i) is a branch, (ii) is involved in delivery of options/shares/RS/ RSUs, (iii) is involved in plan administration or (iv) is charged the cost of the awards by the parent. Currently, no tax reporting required unless there is a withholding obligation or for options accepted within 60 days of offer.
Brazil[6]	SOP/ESPP: No tax on spread at exercise/purchase. RS/RSU: Tax at vesting. Taxable amount is fair market value of the shares at vesting. Sale: Tax on sale, subject to a significant monthly exclusion.	SOP/ESPP/RS/RSU: Generally allowed if sub reimburses parent under a written reimbursement agreement and plan is offered to all Brazilian employees without distinction. Taking a deduction would raise risk of employee taxation. Amounts reimbursed relating to administrators, directors or members of the Board are not deductible. However, reimbursement requires prior exchange control approval, which is unlikely to be given.	SOP/ESPP/RS/RSU: No.
Canada	SOP: Tax due on spread at exercise. Two special regimes exist. One provides for a deduction of ½ of the spread at exercise. To benefit from this deduction, shares underlying the options must be “prescribed shares” traded on a recognized exchange. Another regime allows for deferral of income on the first C$100,000 worth of options that vest in a given year until sale of shares, death of employee or employee becoming non-resident. ESPP: Tax is generally due on spread at purchase; no deduction or deferral available.	SOP/ESPP/RS/RSU: Not available.	SOP/ESPP/RS/RSU: Generally, yes. If an election to defer is made for options by filing the election form with the employer at the time of exercise, no withholding is required to the extent the deferral applies.

[5] Note that under Belgium law; “offer” is deemed to occur once the employee is informed of the essential terms of the grant. The offer date may differ from the U.S. grant date.

[6] An ESPP is difficult to implement because payroll deductions are problematic, and it is very difficult to comply with the exchange control rules. Employee tax consequences and withholding will likely change if reimbursement/local deduction were approved by the Central Bank and implemented.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	RS/RSU: Tax at grant for RS. Generally, tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event; no deduction or deferral available. Sale: Tax on sale. Taxable amount is one half of any capital gain.		
Chile	SOP/ESPP: Although not clear, our view is that no tax on spread at exercise/purchase unless sub reimburses parent for spread or takes a local deduction. If reimbursement is made, some risk that employee may be subject to double taxation on the spread at exercise/purchase (once at exercise/purchase and again at sale). This risk has been minimized by a ruling concerning the tax treatment of performance shares and units. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale; taxable amount depends on whether investment registered with the Chilean IRS.	SOP/ESPP: Possible with sub reimbursement but will cause employee tax on exercise/purchase and may cause sub to be taxed on the reimbursement payment to parent. RS/RSU: Possible if sub reimburses parent and grant is included in individual employee contracts.	SOP/ESPP/RS/RSU: No, unless sub reimburses the parent and seeks a local deduction.
China[7]	SOP/ESPP/RS/RSU: Notice 35 filing required prior to implementation of the plan in each province where employees participate. Specific reporting requirements vary by province and local tax office, but generally involve filing grant documents translated into Chinese and details of award(s) granted. Income tax is due on a monthly basis. The amount of tax due on SOP/ESPP/RS/RSU income is determined by a complicated formula which takes into account the amount of tax paid in previous month(s), the number of months the individual employee was present in China and earned equity award income, a standard "quick calculation deduction", and certain other factors. SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU:	SOP/ESPP/RS/RSU: Possible with sub reimbursement, especially if under a written reimbursement agreement between sub and parent. However, if the cost of the plan is categorized as an administration/management fee by the foreign parent, the cost probably will not be eligible for a tax deduction. In addition, if the company operates representative office(s) in China which calculates its taxable income on a deemed profit basis (as opposed to on actual revenue and expenses, depending on the nature of the representative office's activities), the cost of the plan borne by the representative office(s) must be included in the cost of operations.	SOP/ESPP/RS/RSU: Withholding and reporting required at the taxable event.

[7] Labor law regulations prohibit PRC employers from making deductions from employee salaries unless authorized under law; therefore, payroll deductions are technically problematic. However, these restrictions are unlikely to be enforced in the context of an ESPP. The risk may be reduced if employees expressly consent to payroll deductions and it is made clear that the ESPP contributions do not reduce overall remuneration.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	Tax likely at grant for RS; tax likely at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale.		
Colombia	SOP/ESPP: Arguably, no tax at exercise/purchase, unless sub reimburses parent for spread. If sub reimburses parent, spread would be treated as labor income and tax would be due at exercise/purchase. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale.	SOP/ESPP/RS/RSU: Yes, if sub reimburses parent and withholding is made. To mitigate exchange control risk, intercompany accounting entries are preferred.	SOP/ESPP/RS/RSU: Yes, if the sub reimburses parent and claims a local deduction or is otherwise involved in the grant.
Czech Republic	SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU: Tax likely at vesting for RS/RSU. Taxable amount is fair market value of the shares at vesting. No tax at grant unless a statutory valuator determines a non-zero value of the RS/RSU at grant. Sale: Tax on gain at sale unless shares are held for more than six months and certain other conditions are met.	SOP/ESPP/RS/RSU: Generally allowed if (i) sub reimburses parent pursuant to a written reimbursement agreement under which it is clear that the equity award cost was incurred to generate, maintain and assure taxable income; and (ii) sub adequately documents the reimbursement internally, *e.g.*, in employment contract, wage assessment, agreement with employee, CBA or other internal regulation (though may trigger labor issues). Company should not recharge costs of awards to executives or board members. Reimbursement also triggers social insurance contributions (capped as of January 1, 2008) and withholding/reporting obligations.	SOP/ESPP/RS/RSU: Likely no, provided sub is not wholly or partly charged with the cost of the awards or involved with the administration of the awards.
Denmark	SOP/ESPP: Tax on spread at exercise for options for newly issued shares and treasury shares which first vest after January 1, 2001. Tax on spread at purchase for ESPP. RS/RSU: Tax at grant for RS; tax also likely at grant for RSU subject to time-based vesting, unless forfeited at death; tax at vesting for RSU subject to vesting criteria other than continued employment.[8] Taxable amount is fair market value of the shares on the tax event.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written reimbursement agreement. No deduction allowed under the tax-favored regime.	SOP/ESPP/RS/RSU: Reporting required at exercise/purchase/ vesting and sale. There is no withholding obligation.

[8] It is possible to request a tax ruling confirming timing of taxation of RSUs from Danish tax authorities.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	SOP/RS/RSU: A tax-favorable regime is available (provided certain requirements are met) at the election of the employee and the employer which defers tax until sale. Sale: Tax on sale. In some cases, shares acquired before January 1, 2006 may qualify for special tax treatment.		
Finland	SOP/ESPP: Tax on spread at exercise/purchase. For ESPP, may be able to exclude a portion from tax if newly issued shares are used and a ruling is obtained. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale, subject to certain deductions.	SOP/ESPP/RS/RSU: Yes, if sub reimburses parent pursuant to a written agreement and if shares acquired in public trading and grants based on employment relationship.	SOP/ESPP/RS/RSU: Withholding and reporting required at taxable event. Withholding must be from salary.
France	SOP/ESPP: Tax on spread at exercise/purchase. Deferral of tax on spread available for stock options granted pursuant to a French sub-plan.[9] RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Deferral of tax available for RSU granted under a French sub-plan.[10] Sale: Tax on sale if employee's annual stock sales exceed a certain amount.	SOP/ESPP/RS/RSU: Yes, a limited deduction may be available under certain conditions.[11]	SOP/ESPP/ RS/RSU: Generally no withholding. Reporting obligations apply.
Germany[12]	SOP/ESPP: Tax on spread at exercise/purchase.[13] Small deduction	SOP/ESPP/RS/RSU: Only if there is an actual purchase and	SOP/ESPP/RS/RSU:

[9] Tax qualification may be available for stock option grants, resulting in deferral of tax due at exercise for employees as well as elimination of most employee and employer social security contributions if shares not sold for four years from grant. (Note, however, that new employer-paid social taxes apply at grant and employee-paid social taxes apply at sale). A sub-plan should be in place at the time of grant of French-qualified options. Special closed period restrictions may apply to grant of French-qualified options which may preclude grants during specified periods surrounding publication of financial statements and other corporate events. Tax-favored stock purchase plan (P.E.E.) may be considered.

[10] Tax qualification is available for RSU, resulting in deferral of tax due at vesting as well as elimination of most employer and employee social security contributions, if a minimum two year vesting is imposed as well as a two year post-vesting holding period. (Note, however, that a new employer-paid social tax applies at grant and employee social tax applies at sale.) A sub-plan must be in place at the time of grant, which imposes certain other restrictions, such as requirements regarding grants (or perhaps sales) during closed periods. Special closed period restrictions may restrict sale of shares during certain periods surrounding publication of financial statements and after corporate events.

[11] A deduction is allowed only with respect to shares that the parent has repurchased, not newly issued shares, and only with respect to the actual loss sustained and the deduction may be limited to qualified options.

[12] The holding of payroll deductions by the German subsidiary under the ESPP may be considered as conducting a deposit business, requiring a license under German banking laws. In informal discussions, the German Financial Services Supervisory Authority has taken the position that this activity should fall within an exemption from the licensing requirement. Under a conservative approach, company may obtain a formal ruling confirming the availability of the exemption, or set up a separate bank account to hold the payroll deductions in the name of the employees.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	may apply. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: No tax on sale if the stock was acquired before 1/1/08 and is held for 12 months or more and certain other conditions are met. Shares acquired after 12/31/08 will be subject to tax at sale.	sale of the shares by the local subsidiary or an actual reimbursement of the true costs incurred by the parent company in acquiring treasury shares and if local subsidiary can book costs as salary expenses.	Yes.
Hong Kong[14]	SOP/ESPP: Tax on spread at exercise/purchase.[15] RS/RSU: Tax at vesting likely for RS/RSU. Taxable amount is fair market value of the shares on the tax event. Sale: No tax on sale.	SOP/ESPP/RS/RSU: Generally allowed if sub reimburses parent.	SOP/ESPP/RS/RSU: Reporting only.
Hungary	SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the taxable event. Sale: Tax on sale.	SOP/ESPP/RS/RSU: May be possible, if reimbursement made. Written reimbursement agreement advisable.	SOP/ESPP/RS/RSU: No.
India	Effective April 1, 2007, income tax is no longer due on employee equity awards. Instead, an employer-level fringe benefits tax ("FBT") of 33.99% applies on the value of stock benefits provided to employees. It is permissible for the employer by contract to obtain reimbursement of the FBT from employees, but this tax raises several issues. Employer must make quarterly advance payments of FBT. SOP: FBT is due at exercise but based on spread at vesting.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent, but exchange controls may prevent.	SOP/ESPP/ RS/RSU: No.

[13] Taxable event may be delayed until shares are debited from company's books after exercise/purchase. In addition, the fair market value of the shares on the date of the taxable event may be the lowest market price on that date. Therefore, the amount of the spread may be different than in other countries in which the fair market value is determined in accordance with the provisions of the plan. It is not certain if these rules apply to U.S. companies whose shares are not listed on an EU exchange.
[14] Payroll deductions technically are not permitted.
[15] For purchase rights, it may be possible to take the position that the employees will be taxed at grant on the value of the purchase rights as determined by an independent auditor.
[16] Fair market value for FBT must be determined by Merchant Banker for companies with shares not listed on India exchange, but likely can be based on market value on U.S. exchange on the valuation date, although other factors may be considered.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	ESPP: FBT based on discount at purchase. RSU: FBT due on the fair market value[16] of the shares at vesting. RS: FBT due on the fair market value of the shares at grant. Sale: Tax on sale, with some exceptions when employee is not ordinary Indian resident and granting entity is foreign. Basis of shares is increased by taxable amount subject to FBT.		
Indonesia[17]	SOP/ESPP: Tax on spread at exercise/purchase if reimbursement/ local deduction. If no reimbursement/ local deduction, likely tax at exercise/purchase may be deferred until sale. RS/RSU: Tax at grant likely for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale.	SOP/ESPP/RS/RSU: Likely allowed if sub reimburses parent under a written reimbursement agreement, benefit from the plan is treated as cash remuneration and the general requirements of deductibility are satisfied.	SOP/ESPP: To the extent tax is due at exercise/purchase, withholding and reporting likely required only if sub reimburses parent. RS/RSU: Generally, no withholding; likely no reporting.
Ireland	SOP/ESPP: Generally, tax on spread at exercise/purchase.[18] RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale, subject to annual exclusion.	SOP/ESPP/RS/RSU: Generally, allowed if sub reimburses parent under a written reimbursement agreement and certain conditions are met, although availability of deduction may be challenged. Additionally, deduction will be permitted only if Irish resident employees are taxed on the relevant equity award within that tax year or within 9 months of the end of that tax year. Deduction is limited to amount on which employees are taxed.	SOP/ESPP/RS/RSU: Reporting only. (Withholding required for RSUs if settled in cash.)
Israel	SOP/ESPP/RSU: Tax on sale.[19]	SOP/ESPP/RS/RSU: May be allowed with an approved trustee plan if income method chosen	SOP/ESPP/RS/RSU: Reporting and withholding at sale on

[17] New tax laws are expected to be introduced in late 2008 or early 2009 which may affect this tax information.
[18] Tax qualification is available for certain approved share schemes and certain stock purchase arrangements (SAYE), resulting in tax deferral, reduction or exemption for employees. Seven-year deferral is no longer available.
[19] Persons who cease to be resident in Israel are regarded as having disposed of all of their assets, including options and shares granted to employees. Also, please note that for ESPPs, there is a risk that the tax authorities may characterize the ESPP as a “share plan” (as opposed to an “option plan”), in which case tax will be due at purchase. Any increase in value between purchase and sale will be subject to capital gains tax.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	RS: Under a non-trustee plan, RS likely taxed at grant and sale; under trustee plan, RS is taxed at sale. Under a non-trustee plan, employees are taxed at marginal rates and a local tax deduction is not available (except that a deduction may be available for RS taxed at grant). Under an approved trustee plan, the employer may elect either the income method or the capital gain method. Under the income method, employees are taxed at marginal income tax rates at the time of sale and a local deduction is available. Under the capital gain method, employees are taxed at capital gains rates and no local deduction is available. Lock up periods apply to trustee plans.	and if sub reimburses parent under written reimbursement agreement. Generally not available with a non-trustee plan (except for RS taxed at grant).	non-trustee plans or if income method selected for approved trustee plan. In addition, an annual report of stock plan activity must be filed. Deadline currently uncertain due to changes in law.
Italy	ESPP: Exemption under broad-based grant provisions applies for first €2,065 of discount at purchase if shares held 3 years from date of purchase. SOP: Broad-based grant exemption (described above) potentially applicable if grants made to all employees of Italian subsidiary. Otherwise, taxation depends on timing of grant and exercise. For grants between 1/1/98 and 1/15/2000, no tax on exercise if option over newly issued shares. For other grants exercised on or after June 25, 2008, tax on spread at exercise. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written agreement. The deduction may be limited based upon OECD guidelines on transfer pricing and may increase labor risks.	SOP/ESPP/RS/RSU: Withholding and reporting required unless exemption applies.
Japan[20]	SOP/ESPP: Tax on spread at exercise/purchase, probably as salary (remuneration) income.[21] NTA is challenging employees who claim option income as occasional income which is taxable at a lower effective rate. RS/RSU: Likely tax at vesting for RS/RSU; however, tax consequences are uncertain and tax at grant is possible	SOP/ESPP/RS/RSU: Law uncertain; however, probably allowed if the sub buys shares and sells or transfers them to employees. New accounting rules and deduction rules for Japanese companies arguably provide more support for corporate deduction with a chargeback agreement. No deduction allowed for benefits granted	SOP/ESPP/RS/RSU: Some uncertainty exists; generally yes, if the sub bears the cost of providing plan benefits and is significantly involved. Due to recent audit activity,

[20] An agreement between an employee representative and the local entity must be signed for payroll deductions to be permitted in an ESPP.
[21] On January 25, 2005, the Supreme Court upheld a Tokyo High Court's ruling that the income should be characterized as remuneration income (the Tokyo High Court previously had reversed lower court decisions that had characterized the income as occasional income). Because the Supreme Court indicated that its decision was limited to the particular case, it is unclear how the decision will impact outstanding cases on this issue.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	(especially if RS/RSU carries voting/dividend rights). RS/RSU are classified as remuneration income. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale, but non-permanent residents may be able to avoid this tax.	to officers or directors of the sub.	issues of withholding should be revisited on a regular basis.
Korea[22]	SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale, subject to an exclusion.	SOP/ESPP/RS/RSU: Yes, if reimbursement made and certain other conditions satisfied. Exchange control approval required for reimbursement.	SOP/ESPP/RS/RSU: Generally no, provided that sub does not reimburse parent. Tax authorities are actively auditing to collect unpaid tax on options.
Malaysia[23]	SOP/ESPP: According to 2006 Finance Act, for options, tax will be due on the lower of (1) the difference between option price and fair market value of the shares at vesting, and (2) difference between option price and fair market value of shares at exercise, but tax will be due only at exercise.[24] RS/RSU: Likely tax at grant for RS; RSU likely taxed at vesting. Taxable amount is fair market value of the shares[25] on the tax event. Sale: None, unless employee is in business of buying and selling securities.	SOP/ESPP/RS/RSU: Generally yes, if sub reimburses parent for spread or costs associated with plan. Written agreement recommended. Sub may not reimburse for spread or costs allocated to awards made to directors.	SOP/ESPP/RS/RSU: Sub required to notify Inland Revenue Board of each grant. Sub also has to report all vestings/exercises/ purchases on an annual basis on a prescribed form. Withholding will be required unless sub obtains exemption or employee elects in writing to pay income tax on his/her own account or monthly income threshold not exceeded.
Mexico[26]	SOP: Tax on exercise regardless of whether reimbursement is made.	SOP/ESPP: Yes, if sub reimburses parent, but will cause employee tax on spread at	SOP/ESPP/RS/RSU: Reporting and withholding only if

22 Employee payroll deductions should not be commingled with corporate funds in Korea.
23 For employees whose wages do not exceed MYR1,500 (approximately US$440) per month or who engage in manual labor, payroll deductions under ESPP must be approved by the Director-General of Labor.
24 For Malaysian tax purposes, the fair market value of the stock is the average of the high and low price of the stock on a given date. The 2006 Finance Act becomes effective January 1, 2006 and generally applies to options granted and/or vested on or after this date. For options granted prior to January 1, 2006, employee may elect to be taxed under old rules (*i.e.*, tax on the discount at grant using average between high and low price, but tax due at exercise).
25 As for options, the fair market value of the stock is the average of the high and low price on a given date. The right to elect tax under the old rules for options granted prior to January 1, 2006 would likely also apply to RSUs (*i.e.*, employees may elect to be taxed on fair market value at grant, but tax due at vesting).
26 Enrollment forms for ESPP should be modified for labor law considerations.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	ESPP: Tax on purchase only if the sub reimburses parent for discount/seeks a deduction, although new legislation applicable to options granted on or after January 1, 2005 may apply to ESPP depending upon the ESPP terms, in which case tax due on spread at purchase regardless of reimbursement. RS/RSU: Tax at vesting for RS/RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale. Risk of double taxation of spread for shares acquired under SOP.	purchase for ESPP and likely will trigger social insurance contributions on spread. Written reimbursement agreement required. RS/RSU: Yes, if sub reimburses parent, but likely will trigger social insurance contributions. Written reimbursement agreement required.	reimbursement.
Netherlands	SOP/ESPP: For options where the first vesting occurs after January 1, 2005, taxation at exercise. For all options where the first vesting occurred prior to January 1, 2005, tax is imposed as option becomes unconditional (generally, vesting date) on value of option (spread plus "expectation value" based on formula). Certain alternative treatment and special elections applied to older grants. Generally, tax on discount at purchase for ESPP.[27] Dutch Tax Authorities have created a special task force to audit individuals to ensure that they reported option gains properly in prior years, starting in 1992. A Tax Amnesty program is currently available for employees to remit past taxes due without penalties. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is generally fair market value of the shares on the tax event. Sale: None, provided employee does not hold a substantial interest (5%) of company's stock.	SOP/ESPP/RS/RSU: No, the availability of a corporate tax deduction for stock-based compensation was eliminated, effective January 1, 2007.	SOP/ESPP/RS/RSU: Yes.
New Zealand[28]	SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Generally no tax on sale provided shares are not sold	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written reimbursement agreement approved by shareholder(s) of sub and documented.	SOP/ESPP/RS/RSU: No.

[27] If employees cannot withdraw from the ESPP and receive accumulated payroll deductions for some designated period prior to purchase, the employee will generally be taxed at the time they can no longer withdraw based on a Black Scholes valuation as of that date.
[28] Generally, payroll deductions for an ESPP must be placed in a trust account.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	immediately after acquisition.		
Norway	SOP[29]/ESPP: Tax on spread at exercise/purchase. Spread on options realized at exercise may be apportioned over the time period between grant and exercise. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Taxable amount for RSUs may be apportioned over the time period between grant and vesting. SOP/ESPP/RS/RSU: Modest reduction of tax may apply if grants made to all employees. Sale: Tax on sale.	SOP/ESPP/RS/RSU: Probably allowed if sub reimburses parent, especially if treasury shares are issued.	SOP/ESPP/RS/RSU: Yes.
Philippines	SOP/ESPP: Tax on spread at exercise/purchase. If reimbursement is made, fringe benefit tax (payable by employer only) applies for benefits to non-rank-and-file employees. RS/RSU: Tax at vesting for RSU. RS may be taxed at grant, although tax at vesting is likely. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale.	SOP/ESPP/RS/RSU: Probably allowed if sub reimburses parent under a written reimbursement agreement and required withholdings are made; tax ruling advisable.	SOP/ESPP/RS/RSU: Yes, if sub reimburses parent.
Poland	SOP/ESPP: Likely tax on spread at exercise/purchase, subject to possible exemption if shares are newly issued and shareholders approve grant. RS/RSU: Likely at vesting, in which case taxable amount is fair market value of the shares on the tax event. However, the tax authorities have recently suggested tax may not apply until the sale of shares. A tax ruling should be obtained to confirm this. Sale: Tax on sale. There is a risk that tax may be due on the entire sale proceeds resulting in double taxation.	SOP/ESPP/RS/RSU: Likely allowed if sub reimburses parent pursuant to a written reimbursement agreement.	SOP/ESPP/RS/RSU: No, unless the income realized is considered to arise from the employment relationship and/or the sub reimburses the parent.
Portugal	SOP/ESPP[30]:	SOP/ESPP/RS/RSU:	SOP/ESPP/RS/RSU:

[29] Different rules may apply for options granted prior to 1/1/02.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	Tax on spread at exercise/purchase. RS/RSU: Tax likely at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on gain at sale unless shares are held for more than one year.	Yes, if sub reimburses parent.	No withholding. Reporting requirements apply.
Singapore[31]	SOP/ESPP: Tax on spread at exercise/purchase.[32] RS/RSU: Tax at vesting for RS/RSU. Taxable amount is fair market value of the shares on the tax event. SOP/ESPP/RS/RSU: Employee may be able to defer tax or take a (partial) tax exemption for certain qualified grants. Sale: No tax on sale.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written reimbursement agreement.	SOP/ESPP/RS/RSU: Generally no withholding. Reporting requirements apply.
Slovak Republic	SOP/ESPP: Tax at vesting of options on fair market value of shares on vesting date, less the option price. Options vested before 12/15/05 likely will continue to be taxed at exercise rather than vesting. Tax on spread at purchase under ESPP. RS/RSU: Tax at vesting. Taxable amount is fair market value of the shares at vesting. Sale: Tax on sale, subject to a possible exemption. Some risk of double taxation.	SOP/ESPP/RS/RSU: Yes, if reimbursement made. Written reimbursement agreement may be required.	SOP/ESPP/RS/RSU: Yes. Reporting and withholding likely required regardless of reimbursement.

[30] Payroll deductions should be held in a separate account.
[31] Ministry of Manpower approval required for ESPP if payroll deduction will be taken from non-managerial employees' pay.
[32] For options granted on or after January 1, 2003, expatriate employees ceasing employment or leaving Singapore may be deemed to have exercised option and be subject to taxation.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
South Africa	SOP/ESPP: For options/purchase rights granted on or after October 26, 2004, ("Section 8C plans"), generally tax on the spread at exercise/purchase, if there are no restrictions on the shares after exercise/ purchase.[33] RSU: Tax at vesting. Taxable amount is fair market value of the shares at vesting. Sale: Tax on sale, subject to exemption.	SOP/ESPP/RSU: Allowed if the sub reimburses the parent under a written reimbursement agreement. However, subject to exchange control approval which is unlikely to be granted.	SOP/ESPP/RSU: Yes. Local subsidiary must obtain directive from South African Revenue Service to determine appropriate withholding amount prior to withholding for each taxable event.
Spain	SOP/ESPP: Tax on spread at exercise/purchase. Exemption may apply to 40% of taxable income of stock options if the options are not exercisable for more than two years and not granted on a repeated basis. €12,000 exemption may apply to stock options and ESPP if shares are held for at least three years after the exercise/purchase date. RS/RSU: Tax at vesting. Taxable amount is fair market value of the shares. A €12,000 exemption may apply to RS/RSU if shares are held for at least three years after vesting. Sale: Tax on sale.	SOP/ESPP/RS/RSU: May be possible, if reimbursement made. Written reimbursement agreement advisable.	SOP/ESPP/RS/RSU: Yes, payment-on-account required on compensation in-kind unless annual limits exceeded or €12,000 or 40% exemption applies. Withholding required on compensation in cash.
Sweden	SOP/ESPP: Tax on spread at exercise. Tax likely on spread at purchase under ESPP. RS/RSU: Tax at grant for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on sale.	SOP/ESPP/RS/RSU: Yes, if reimbursement made. Written reimbursement agreement advisable.	SOP/ESPP/RS/RSU: Yes.
Switzerland	SOP/ESPP: Taxation varies somewhat by canton. Options may be taxed on grant or vesting unless certain modifications are made and/or a tax ruling is obtained in each canton in which employees reside.[34] ESPP likely to be taxed on spread at purchase.	SOP/ESPP/RS/RSU: Allowed if reimbursement pursuant to written agreement.	SOP/ESPP/ RS/RSU: Sub has to report grant and exercise/purchase/ vesting (including income derived from plan) on employee's

[33] If there are restrictions on the shares, tax may be deferred until the restrictions are lifted or the employee dies.
[34] According to a Federal Circular Letter, options may be taxed at exercise provided certain conditions are met. However, since largest portion of tax is cantonal tax (and not federal tax), it currently is recommended to apply for ruling in each canton in which employees reside and/or modify terms of option according to each respective canton's tax practice. Draft legislation is pending pursuant to which employees may elect to be taxed at vesting or exercise, but timing and likelihood of enactment is uncertain.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	RS/RSU: Generally, tax at grant for RS; tax at vesting for RSU. May vary by canton (in French speaking cantons, may be advisable to obtain tax ruling to confirm taxable event). Taxable amount is fair market value of the shares on the tax event. For RS, employee may be able to reduce taxable amount to take into account restrictions placed on shares. Sale: No tax on the sale of shares. Other Tax: Wealth tax may apply to shares purchased/granted pursuant to the plan.		certificate of salary. Withholding required only for foreign employees with "B" permit and cross-border employees.
Taiwan[35]	SOP/ESPP: Tax on spread at exercise/purchase. RS/RSU: Tax at grant for RS; tax likely at issuance of shares for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: No tax on sale. Alternative Minimum Tax: An AMT regime became effective January 1, 2006. Capital gains from securities not listed in Taiwan must be included in regular taxable income when calculating AMT, starting from January 1, 2009.	SOP/ESPP/RS/RSU: Allowed if sub reimburses parent under a written reimbursement agreement and withholds or reports as required.	SOP/ESPP/S/RSU: No withholding regardless of reimbursement. Reporting required. RS/RSU: Withholding required if sub reimburses parent and claims a local deduction. Reporting likely required.[36] Tax authorities have indicated that withholding is required regardless of reimbursement/ deduction, but there is no official confirmation of this position.
Thailand	SOP/ESPP: Tax on spread at exercise/purchase.[37] RS/RSU: Tax at grant likely for RS; tax at vesting for RSU. Taxable amount is fair market value of the shares	SOP/ESPP/RS/RSU: Theoretically allowed if sub reimburses parent under a written reimbursement agreement approved by Board of Directors of Thai sub, but sub must comply with exchange control requirements.	SOP/ESPP/ RS/RSU: No, unless sub reimburses parent.

[35] Banking law problems may arise in Taiwan under an ESPP if interest is paid on payroll deductions or if payroll deductions will be mixed with the local sub's general funds.
[36] The withholding and reporting requirements in connection with RS/RSU are not clear under the new legislation applicable to SOP/ESPP.
[37] Spread is likely to be considered the difference between the exercise price and the average trading price of the shares during the month preceding exercise/purchase.

Country	Taxation of Employee	Sub Deduction	Income Tax Withholding & Reporting
	(average trading price during preceding month) on the taxable event. Sale: Tax on sale if proceeds are repatriated to Thailand in the same calendar year as the sale (which is generally required by exchange control regulations) and the employee is a Thai tax resident for that year.		
United Kingdom	SOP/ESPP: Tax on spread at exercise/purchase.[38] RS/RSU: Tax at vesting for RS so long as restrictions lapse within five years; otherwise tax at grant. Employer/employee joint election available for taxation of RS at grant. Tax at vesting for RSU. Taxable amount is fair market value of the shares on the tax event. Sale: Tax on gain at sale, subject to annual exclusion. Effective April 6, 2008 taper relief abolished; new flat capital gain rate applies, subject to annual exemption.	SOP/ESPP/RS/RSU: Generally allowed. New legislation (affecting deductions taken on or after January 1, 2003) sets forth qualification criteria and limits deduction to employee's taxable benefit. Administrative costs charged to UK sub may be deducted only if a written reimbursement agreement has been executed.	SOP/ESPP/RS/RSU: Reporting required at grant and taxable event. Withholding required for non-tax-qualified schemes (for grants after November 26, 1996) and for approved options exercised under non-qualifying circumstances. Annual share schemes return due by July 6th of after the end of each UK tax year.
United States	SOP/ESPP: Tax on spread at exercise/purchase, except for incentive stock options/Section 423 ESPP, pursuant to which taxation is deferred until sale of shares if certain conditions and holding periods are met. RS: Tax at vesting for RS, although possible for employee to make an election to be taxed at grant. Taxable amount is fair market value of the shares on the tax event. RSU: Tax at settlement. Taxable amount is fair market value of the shares at settlement. Sale: Tax on gain at sale.	SOP/ESPP/RS/RSU: Allowed to the extent that the employee recognizes ordinary income on the award. Thus, available for incentive stock options/Section 423 ESPP only if there is a "disqualifying disposition".	SOP/ESPP/RS/RSU: Reporting required. Withholding required except for incentive stock options and Section 423 ESPP.

* **The EU Prospectus Directive (the "Directive") took full effect on July 1, 2005 and impacts securities filing requirements in all EU member states and European Economic Area ("EEA") countries. However, the interpretation of the Directive by these countries has not been always been consistent. In general, an EU-compliant prospectus will be required for an offering to 100 persons or more in any EU or EEA member state unless another exemption applies, but it then should be possible to use this prospectus in the other EU or EEA member**

[38] Tax qualification is available for stock option plans (approved share scheme) and certain stock purchase arrangements (SAYE, SIP), resulting in tax deferral or exemption for employees up to a certain limit.

states. The home member state where the prospectus is filed is very important and may be determined by offerings prior to July 1, 2005. Most, but not all, member states have determined that an offer of non-transferable options, RSUs or RS is not an offer subject to the Directive, but that an ESPP offering is. This chart does not provide detailed information regarding the local law interpretations of the Directive, as much uncertainty remains.

** **The EU Council Directive 2000/78/EC covers age discrimination and requires member states to be in compliance by December 2, 2006. As several countries adopt local rules implementing this Directive, it is becoming clear that this will impact design of equity plans in the EU, particularly provisions with age or age and service provisions which give different treatment (*e.g.*, accelerated vesting) for those meeting the criteria than those who do not. We have not attempted to provide in this chart an analysis of these changes, but have noted in a few cases the enactment of local legislation.**