Global Stock Options

PHILIPPINES
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To understand the answers given below it is important to first read the survey scenario, which can be accessed by CLICKING HERE>>.

1. Are there any corporate actions that need to be undertaken by the Committee or the shareholders to establish the plan?

Yes. Company X will need the approval by a majority vote of the Board of Directors and shareholders holding at least 2/3 of the outstanding capital stock to establish the plan.

2. Are there any requirements in your jurisdiction about the composition or authority of the Committee?

There are no specific requirements with respect to the composition or authority of the Committee.

3. What does the Committee have to publicly disclose about its Plan-related decision and when must those disclosures be made?
The issuance of stock options must be registered with the Securities and Exchange Commission, except if the security is considered exempt from registration. The registration process involves the filing of a registration statement disclosing terms and conditions of the option plan.

4. Is a participant subject to taxation: on receipt of the option; on exercise; or otherwise?

The receipt of options which have restrictions on transferability and exercise are generally not taxable. Upon exercise, the excess of the market value of the shares at the time of exercise over the exercise price will be subject to the 32% fringe benefits tax under Section 33(A) of the Tax Code.

5. Does the tax treatment vary depending on where the Participant resides or habitually exercises his duties (i.e. outside your jurisdiction)?

Yes, the treatment depends on where the Participant performs the service or where he habitually exercises his duties. If the participant is not a Philippine resident income realized upon receipt or exercise of the option will not be taxable in the Philippines.

6. Does the tax treatment vary depending on the type of option or specific Plan provisions concerning the option?

Yes, the tax treatment varies depending on the terms and conditions of the Plan concerning the option. No tax is payable if the exercise price is higher than the prevailing market value at the time of exercise.

7. Is Company X entitled to claim a deduction from (or other reduction of) taxable income with respect to the option and, if so, when and how is this calculated?

The amount shouldered by Company X upon grant or exercise of the option for the benefit of its employees would be available as a deduction during the year when the related expense is incurred.

8. Does the tax treatment under 7 vary depending on where the Participant resides or habitually exercises his duties (i.e. outside your jurisdiction)?

No. The tax treatment under 7 does not vary depending on where the Participant resides or habitually exercises his duties.

9. Are there any special rules for significant shareholders (for example, more than 10% shareholders of the Company)?

No, there are no special rules for significant shareholders with respect to stock options.

10. What are the other principal tax considerations, if any, such as withholding for social insurance, employment taxes, unemployment taxes, etc. for Company X or its local subsidiary or branch office in your jurisdiction, and the participant?
The Philippines does not impose any employment taxes or unemployment taxes. The grant and exercise of the options is not expected to have an effect on the amount of social security contributions payable by the employer.

11. **What needs to be done, if anything, under your local law so that Participants obtain the favorable tax treatment offered by your jurisdiction?**

   It is not necessary to obtain a tax ruling to obtain any favorable tax treatment of benefits under the Plan.

12. **What securities law or other regulatory (or exchange) requirements are there, if any, such as: filing requirements; prospectus requirements; offering exemptions; size of offering limitations; and currency requirements?**

   As a general rule, selling or offering of shares of stock in the Philippines is subject to registration under the Securities Regulation Code (“SRC”). However, the SRC allows exemptions if the Securities and Exchange Commission (“SEC”) finds that the registration of the transaction is not necessary for the protection of the investors by reason of the small amount or limited character of the offering. If the Plan is limited in character, it could be exempted from registration provided that it complies with the following requirements which should be filed prior to its implementation: (1) filing of a request for exemption stating the reason for exemption under the SRC; (2) payment of fees equal to one-tenth of one per centum of the value of the securities; (3) and such other requirements as the SEC may from time to time require.

13. **Is a cashless exercise permissible?**

   Yes, a cashless exercise is permissible under Philippine law.

14. **Are there any rules in your jurisdiction that prohibit or discourage a foreign subsidiary of Company X from granting options to acquire shares of common stock of Company X to the subsidiary’s executives?**

   There are none.

15. **Are the rules addressed in this survey applied differently based on whether the multinational operates in a particular jurisdiction as a branch office or as a domestic subsidiary? If so, what are these differences?**

   No, the rules will not be applied differently depending on whether the multinational is a branch or a domestic subsidiary.

16. **Do executive employees in other jurisdictions need to be covered by a plan of the subsidiary or a plan separate from your Plan to comply with your jurisdiction’s law?**

   No.
17. **If known, please comment on the accounting issues which are relevant for this Plan.**

Philippine Financial Reporting Standard (PFRS) 2 on share-based payments govern the financial accounting treatment of these stock options. This standard requires that Company X should record the expense in its books when its executives render the services even though they will not realize the benefits immediately.

The grant of stock options to the Participants may result in the recognition of an expense for financial accounting purposes based on the fair value of the stock option but that expense is not yet tax deductible. The expense will only be tax deductible when the Participants exercise the stock options. At the time of exercise, the amount of tax deduction will be the difference between the exercise price and the fair market value of the shares of stock, which is higher than the exercise price. In addition, the said difference will be subject to fringe benefit tax at a rate of 32%.

18. **List any other requirements of importance in your jurisdiction.**

There do not appear to be any other requirements apart from what has been already discussed in this jurisdiction.

19. **Severance Risks: Will the value of granted options legally need to be included in severance calculations?**

It depends on the agreement between the Participant and Company X. Stock option plans similar to the Plan are contractual by nature. If the agreement states that the value of the granted options are to be included in the severance calculations of the Participant, then such shall be included. Otherwise, the values of the granted options are not to be included in the severance calculations.

20. **Acquired Rights: Will Plan Participants become legally entitled to future grants or immediate vesting at termination of employment or service?**

It depends on the terms and conditions of the Plan. If the Plan provides for immediate vesting or future grants at termination, then the Participants shall be entitled to these benefits. Otherwise, they are not.

21. **Will Company X or the local subsidiary or branch office need to take additional measures to adhere to local data privacy laws?**

Yes, since Company X is headquartered in the Philippines, it will have to adhere to the obligation of confidentiality under the Electronic Commerce Act of 2000 (RA 8792) and Department of Trade and Industry Administrative Order No. 08-06 requiring any person having access to information under the same not to convey or share the information with any other person.