

TAMIR FISHMAN

Equity Plan Services



NEWSLETTER Q4 2011

Happy New Year:

Receive the New Year full of peace
With new hope in your heart
This year, dare to dream
May everyone you love, be with you
And say wholeheartedly Thank you for all that exists
Thank you for a good year, filled with challenges
Thank you for pleasant surprises along the way
Thank you for the power and beauty in every day
May this year be blessed.



Past events:

November Performance-Based Awards Conference

➤ The section below was contributed by Tamir Fishman Equity Plan Services

On November 15th we had our quarterly conference for clients and partners.

The main topic discussed was Performance-Based Awards.

Representatives from private, public and international companies, lawyers and accountants participated in the conference.

Our main goal was to focus on Performance-Based Awards and explore this subject from a number of angles. We hope that each of you learned and absorbed a variety of insights from the lectures.

At the conference, we presented a variety of issues: Accounting, taxation, law, how to create and handle a Performance-Based Awards plan and more.

One of the most fascinating questions discussed was: "Do the Performance-Based Awards have the potential to direct an employee's behavior or is it only a device which is designed to share the wealth between the shareholders and the managers in a fair way"?

The presented issues:

- Leading practices of Performance-Based Awards, Presented by PWC.
- Legal and accounting aspects of Performance-Based Awards allocations, Presented by GOLDFARB, ZELIGMAN, LEVY, ERAN & Co. Law Offices.
- Designing a Performance Based Equity Plan, Presented by Nice Systems.

For those of you who would like to receive the full presentation from the conference, please write to: shahars@tamfish.com

December Webcast

Foreign Private Issuers: Maintaining Compliance; Dodd Frank Considerations; and Raising Capital

➤ The section below was contributed by Morrison Foerster Law Firm

The webcast covered a broad array of topics, from the benefits available to foreign private issuers in the United States to a number of the changes brought about by the Dodd-Frank Act. Especially following the enactment of the Dodd-Frank Act, it is more important than ever that foreign issuers considering a public offering in the United States or seeking a listing of their securities on a securities exchange in the United States consider carefully qualification as a “foreign private issuer.” Foreign private issuers are entitled to a number of benefits not accorded in the United States to domestic reporting companies. These include, for example, exemptions from certain ownership reporting requirements, as well as exemptions from certain disclosure obligations related to executive compensation.

The presenters discussed various provisions of the Dodd-Frank Act that apply to SEC reporting companies, not only financial institutions, and which may have extraterritorial effect and apply to foreign issuers. These provisions may include certain executive compensation and corporate governance related sections, including Section 952 (compensation committee independence); Section 953 (pay versus performance and pay disparity); Section 954 (compensation clawbacks); Section 955 (employee and director hedging disclosure); and Section 972 (disclosure of CEO and Chairman separation).

As to a number of these sections, further guidance is required from the securities exchanges and/or the SEC, so foreign issuers and their advisers should be attentive to announcements relating to these matters. Various provisions of Dodd-Frank affect foreign issuers that are financial institutions. These were discussed during the webcast. Also, the presenters discussed the specialized disclosures relating to conflict minerals and those affecting companies engaged in resource extraction. The conflict minerals provision may apply to technology companies whose products include raw materials that are the subject of the provision. As yet, it is not clear whether any relief will be provided for foreign issuers. The presenters also discussed the new eligibility criteria for use of Form F-3 (the short form registration statement for foreign issuers). Foreign issuers that have been reporting for at least 12 months may be eligible to use this short-form registration statement and should become familiar with the new criteria introduced to replace the prior eligibility criteria, which had referenced credit ratings.

The webcast also addressed a number of alternative capital raising strategies available to foreign issuers, including private placement transactions, Rule 144A/Reg S offerings, and offerings of ADRs. Finally, the presenters concluded by reminding foreign issuers now engaged in preparing their annual reports on Form 20-F to pay particular attention to some of the SEC’s announced areas of focus.

Important New Policy Affecting Foreign Issuers

Just two days following the webcast, the SEC announced a new policy regarding confidential filings of registration statements by foreign private issuers. The SEC has historically afforded to foreign private issuers and foreign governments the ability to submit their first-time registration statements (and amendments) on a non-public basis. Under the new policy, the SEC will only review initial registration statements on a confidential basis where the issuer is:

- A foreign government registering its debt securities.
- A foreign private issuer that is listed or is concurrently listing its securities on a non-U.S. securities exchange.
- A foreign private issuer that is being privatized by a foreign government.

- A foreign private issuer that can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

In addition, shell companies, blank check companies and issuers with no or substantially no business operations will not be permitted to use the non-public submission procedure. A full report is available at:

<http://www.mofo.com/files/Uploads/Images/111209-SEC-Limits-Confidential-Submissions.pdf>.

Anna Pinedo, a MoFo partner ranked by Chambers Global as one of the world's leading lawyers in capital markets and derivatives, was the speaker in the webinar.

For further information please contact Shahar Sharaga at 972-3-6849210 or shahars@tamfish.com

Industry News and Trends:

We do not see any dramatic trends for the last quarter of 2011 or early 2012.

Several global surveys indicate an uptick of interest in global ESPPs (either new ones or the expansion of existing ESPPs to international employees) which is also supported by increase interest with several of our clients.

Survey Shows ESPPs Remain Key Part of Equity Strategies, Results from the 2011 National Association of Stock Plan Professionals/Deloitte Consulting survey

The survey shows that ESPPs continue to be an important part of public companies' equity strategies. The survey attracted 598 respondents, all of which are from publicly traded companies. Twenty-eight percent had 10,000 or more employees, 32% had between 1,500 and 10,000, 24% between 250 and 1,500, and 7% under 250. Companies were broadly distributed among industries. Fifty-two percent of the companies have employee stock purchase plans (ESPPs). Of the remaining 48% without plans, 29% (14% of the entire sample) once had a plan but eliminated it.

Research on the Behavioral Impact of Stock Options

How do stock options affect employee behavior? Traditional economics suggests that holding options gives employees an incentive to promote future company success, but a new approach based on the psychology of gift exchanges suggests that exercising options creates a sense among employees of a reciprocal obligation to the company. Two researchers from the Wharton School, Peter Cappelli and Martin J. Conyon, published an extensive analysis of option awards, option exercises, and on-the-job behavior of 4,500 individual employees in a paper titled "Stock Option Exercise and Gift Exchange Relationships: Evidence for a Large US Company" and published the National Bureau for Economic Research. Their results are especially robust because the conditions under which the options were granted and the extensive data covering more than seven years in a single publicly traded company created a quasi-experiment.

Cappelli and Conyon found that both traditional and gift-exchange hypotheses explained employee behavior. In particular, they noted that higher profits [from exercising stock options] in turn cause them to reciprocate with better job performance in the subsequent period." In other words, an option grant affects behavior before and after exercise. They conclude, "We find significant and economically meaningful positive relationships between the variation in profit per share of the options sold and standard measures of subsequent job performance for individual employees." Their research is available [**NBER Working Paper No. 16814**](#)

Israeli Tax News:

The Law for Changing the Tax Burden in Israel – Principal Tax Aspects

➤ The section below was contributed by GKH Law Firm

Background

The Law For Changing the Tax Burden in Israel (the “Tax Change Law”) was enacted into law on December 5, 2011. The Tax Change Law was promulgated on the basis of the recommendations of the Trachtenberg Committee for Social and Economic Change (the “Committee”). At this point, not all of the Committee’s recommendations have been enacted into law. For example, the Committee’s recommendation to impose a surcharge on “high income” taxpayers has not yet been implemented.

Tax Amendments Under the Tax Change Law

The summary below addresses the most significant tax changes introduced by the Tax Change Law and is not meant to be an exhaustive review of the law. The tax changes described below became effective on January 1, 2012 (the “**Commencement Date**”):

Corporate Tax Rates

Prior to the enactment of the Tax Change Law, the corporate tax rates were scheduled to be reduced from 24% in 2011 to 23% in 2012 and ultimately to 18% by 2016. This scheduled gradual reduction in corporate tax rates has been abolished. Instead, the Tax Change Law provides that the corporate tax rate has been increased to 25% as of the Commencement Date.

Individual Tax Rates

Prior to the enactment of the Tax Change Law the individual tax rate for the highest tax bracket was scheduled to be reduced from 45% in 2011 to 44% in 2012 and ultimately to 39% in 2016. Under the Tax Change Law, most of the scheduled gradual reduction in individual tax rates have been abolished. In addition, under the Tax Change Law, the individual tax rate for the highest tax bracket (monthly income of more than NIS41,830) has been increased to 48% as of the Commencement Date.

Increased Tax Rates on Dividends and Interest Received by Individuals

Under the Tax Change Law, dividends distributed on or after the Commencement Date to an individual who is not a Controlling Shareholder are subject to an increased tax rate of 25% (instead of the previously 20% tax rate); dividend distributions to “controlling shareholders” are subject to a tax rate of 30% (instead of the previously 25% tax rate).

Interest income generated as of the Commencement Date by an individual (who is not a Controlling Shareholder of the paying entity) is subject to an increased tax rate of 25% (instead of the previously 20% tax rate). There is no change in the tax rate of 15% levied on interest which is not linked to Consumer Price Index or to foreign currency.

Increased Tax Rates on Capital Gains Generated by Individuals

Under the Tax Change law, capital gains generated by an individual, including capital gains generated from the sale of shares in a company in which the individual is not a Controlling Shareholder, are taxed at the

increased tax rate of 25% (instead of the previously 20% tax rate); capital gains generated by an individual from the sale of shares in a company in which the individual is a Controlling Shareholder are subject to an increased tax rate of 30% (instead of the previously 25% tax rate). There was no change in the tax rates (20% for a Controlling Shareholder/15% for an individual who is not Controlling Shareholder), levied on capital gains derived from the sale of bonds and loans which are not linked to the Consumer Price Index or to a foreign currency.

In order to alleviate the increase in the capital gains tax rate relating to capital gains which are attributed to the period prior to the Commencement Date, the Tax Change Law provides for the following mechanisms:

Privately Held Capital Assets

The calculation of capital gains from the sale of privately held capital assets acquired before the Commencement Date is based on a time apportionment ratio relating to the holding period of such assets, as follows:

- If the asset were acquired prior to January 1, 2003, a marginal tax rate for individuals (up to 48% in 2012) applies to the relative portion of gain attributable to the holding period commencing on the date of the acquisition and ending on January 1, 2003;
- A 20%/25% tax rate (the 25% tax rate is applicable to Controlling Shareholders) applies to the portion of the gain attributable to the period between January 1, 2003 and the Commencement Date; and
- A 25%/30% (the 30% tax rate is applicable to Controlling Shareholders) applies to the remainder of the realized gain.

Publicly Traded Capital Assets

Holders of publicly traded securities and units of exempted trust funds (either individuals or corporations) had the right during December 2011 to perform a "notional sale" of such assets under certain circumstances, limiting the application of the new tax rates under the Tax Change Law only to gains generated after the date of such sale. Any holder who has not made such election by year end 2011 is subject to capital gain tax at the current rates.

Tax Credit Points to Fathers

The Tax Change Law provides that Tax credit points are granted to fathers of children under the age of three (each tax credit point equals NIS 2,580 in 2012). The tax credit points to be granted to the father are in addition to the tax credit points received by the mother. The tax credit points apply to the tax imposed on the father's "earned income". A father may receive a total of six tax credit points per child as follows: (i) during each of the tax year in which the child is born and the tax year in which the child becomes three (3) years old, the father receives one (1) tax credit point; and (ii) during the first and second year following the child's birth, the father receives two (2) tax credit points per year.

National Insurance Payments (Bituach Leumi)

Under the Tax Change Law, the monthly ceiling which is subject for National Insurance payments has been reduced from nine times the average salary in Israel (NIS 73,422 in 2011) to five times the average salary in Israel (NIS 40,790 in 2011) as of the Commencement Date.

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A New Tax Ruling was recently published on taxation of deferred cash payments for unvested Section 102 qualified options, in the framework of a cash acquisition transaction.

► The section below was contributed by Goldfarb Seligman & Co. Law Firm

In many cases of acquisition transactions where the consideration is paid solely in cash, only **vested** options are cashed-out. In such cases, the relevant tax ruling in respect of such vested options issued under the capital gains tax route of Section 102 of the Israeli Tax Ordinance, generally indicates that 25% of the cash-out consideration paid to the option holders will be deducted and paid to the Israeli Tax Authority (“**ITA**”) at closing, and that the remaining cash consideration shall be held in trust until the end of the original mandatory trust holding period (release of the remaining consideration prior to the lapse of the mandatory trust holding period is possible but will result in taxation as ordinary income).

However, in similar transactions, in which **unvested** options are cashed-out but the release of the cash component is contingent upon continued vesting, the ITA’s position is that if on the vesting date of the relevant cash release (the vesting date) the per-share fair market value of the **purchasing** company is **lower** than the per-share fair market value of the **purchasing** company on the closing date, such difference shall be taxed as ordinary income. The reasoning for this position is that the cash-out of unvested options which is subject to continued vesting should be viewed as a substitution of options of the target company for options of the purchasing company and therefore any excess value paid to the employee above the per-share fair market value of the purchasing company at the vesting date should be classified as a bonus and not as consideration for the cashed-out options.

This position has been reflected in rulings granted in the past where the purchasing company is a publicly traded company and the share price at the vesting date can be easily determined. Recently the ITA published a new tax ruling, implementing such position also in cases where the purchasing company is a privately held company, provided that the purchasing company conducts, from time to time, a valuation of its fair market value for the purpose of compliance with Section 409A of the US Tax Code and will represent such valuation for the relevant vesting dates to the ITA. In cases where such valuations are not conducted, the ITA’s position is that the entire cash consideration which is subject to continued vesting after closing will be taxed as ordinary income.

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Countries at a Glance:

In this section, we highlight some recent developments which may affect your equity plans around the world.

► The section below contributed by Baker & McKenzie Global Equity Services (“GES”) group in San Francisco, Chicago and New York

Belgium

Belgian Tax Reform Announced for Stock Options and Capital Gains Taxes

The political parties forming a new Belgian federal government announced in November 2011 a tax reform measure concerning stock options and capital gains taxes. No official texts have been published so it is not clear when these changes will take effect. Under the new measure, employees who accept their stock options within 60 days of the offer by the issuer are still to be taxed at grant but the amount of taxes due on the stock options has increased. Under existing law, for qualifying options (with a 3-year exercise restriction undertaking) the taxable amount of the option is 7.5% of the value of the underlying shares, and for non-qualifying options, the taxable amount of the option is 15% of the value of the shares. For options that have a term of more than 5 years, 0.5% is added for each year. Under the new tax measure, expected to take effect in 2012, the rates are increased to 9% and 18% respectively (plus 0.5% for each additional year past 5).

China

Social Insurance Contributions Now Required for Cash Awards Granted to Expatriates Working in China

Under the Provisional Measures for Foreigners Working in China to Participate in the Social Insurance System (the “Measures”) which became effective on October 15, 2011, both employer and employee social insurance contributions are now due on the monthly salary of foreign nationals working in China.

France

Update on New Tax Withholding Obligation for Outbound Transferees

To date, the French tax administration has still not issued the guidelines to clarify the new tax withholding obligation (effective April 1, 2011) applicable to employees who transfer out of France after receiving an equity award in France. As previously reported, the payment of taxes due as a result of covered taxable events since April 1, 2011, had been postponed to October 15, 2011, at which time the guidelines were expected to be available. Even though the guidelines have not been issued yet, the form for reporting and paying the new withholding tax has been posted on the French tax administration’s website which could imply that the tax authorities expect payment of the tax even prior to issuance of the guidelines. According to the form, the taxable amount subject to the withholding tax is based on the “French source gain as determined for the period of activity in France.”

Germany

Federal Tax Court Case Held RSAs May be Taxed at Vesting

In a June 30, 2011 decision, the German Federal Tax Court held that RSAs should be taxed at vesting where the restrictions on sale and disposal of the shares in the award agreement prevent the legal effectiveness of any transfer of the shares (as opposed to a provision that merely provides that the employee is contractually obligated to not transfer the shares, but does not negate the legal effectiveness of such transfer). Prior to this decision, it was understood that RSAs would be taxed at grant because the employee generally had all of the rights of a shareholder at grant, despite any transfer restrictions.

India

Stock Option Treated as Capital Asset for Tax Purposes as of Date of Acceptance

The Delhi Bench of the Income Tax Appellate Tribunal (“ITAT”) recently ruled that stock options over shares held in a trust qualified as a capital asset as of the date the employee accepted the grant. As a consequence, the holding period which determines whether the gain realized at sale of the underlying shares was a long-term capital gain (subject to a lower tax rate) or short-term capital gain (subject to tax at the employee’s marginal tax rate) had started to run from the date of acceptance, allowing the employee to claim a long-term capital gain even though the shares were sold within one year of exercise.

Italy

Expanded 10% Employee-Paid Tax on Equity Awards and Bonuses for Certain Employees, Contractors, and Directors in the Financial Services Industry

As indicated in our second and third quarter 2010 Clients & Friends newsletters, the Italian Parliament issued Law Decree no. 78 on May 31, 2010, introducing an additional 10% employee-paid tax on income derived from variable compensation paid to management level workers (*dirigenti*) and certain directors and contractors (*i.e.*, contractors in a non-subordinate role) in the financial services industry (“covered employees”), to the extent that the amount of variable compensation exceeds three times the fixed-compensation amounts paid. Under Article 33 of the Law Decree, variable compensation includes remuneration in the form of bonuses and stock options. Equity awards other than stock options, such as RS and RSUs, should fall within this definition as well. On July 20, 2010, the Italian Parliament adopted the Law Decree into Law no. 122, and the provisions thereof applied to all variable compensation paid on or after March 31, 2010.

Japan

Avoiding Securities Filing Requirements Through Alternative Stock Plan Structure

Stock option grants and ESPP offerings to 50 or more employees in Japan with a value of more than ¥100,000,000 can trigger onerous and costly securities filing requirements, unless a limited exemption applies. RSUs generally are exempt from such securities laws.

In light of the burden presented by securities filing requirements, some companies have been considering alternative award programs. One such program is a Mochikabukai plan, which is a common benefit plan offered by Japanese companies to their employees but is not typically offered by the U.S. or other non-Japanese companies. A Mochikabukai is not actually a stock plan. It involves the creation of an organization that may be used to facilitate the employees' purchase of company shares. Contributions by employees can be made by means of payroll deductions. Under the Mochikabukai, employees form a partnership and hold shares through the partnership. The partnership is viewed as a single offeree; therefore, the securities filing requirements can be avoided because the 50-offeree threshold is not exceeded.

United Kingdom

Amendments to EU Prospectus Directive Partially Implemented into U.K. Securities Laws

The European Parliament approved amendments to the EU Prospectus Directive on June 17, 2010, which became effective on December 31, 2010. Each EU member state is required to implement the amendments into local law within 18 months of the effective date, i.e., by July 1, 2012.

The United Kingdom has recently adopted amendments to the Financial Services and Markets Act 2000 to implement two of the EU Prospectus Directive amendments which are relevant to the offering of equity awards in the UK. Effective from July 31, 2011, the 100-person exemption from the prospectus filing requirement has been increased to 150. In addition, the threshold for the value of the offer that may be made before a prospectus is required has been increased from €2.5 million to €5 million in total consideration of the offer calculated over a 12-month period. Although these amendments have not yet been implemented into local law in all other EU member states, these thresholds may now be considered when offering securities solely in the United Kingdom.

United States

Social Security Wage Base to Increase in 2012

The maximum amount of earnings subject to Social Security taxes will increase to \$110,100 for 2012, up from \$106,800 which is the rate in effect for 2009 through 2011. With this increase, the employee and employer will each be subject to a maximum payment of \$6,826.20.

For 2011, there has been a temporary 4.2% rate in effect for employees, down from the regular 6.2% rate. This special rate is scheduled to expire in 2012, although President Obama's administration has proposed a 3.1% rate for 2012 as part of its jobs package which was recently voted down in the Senate. Most advisors think some Social Security tax relief.

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Upcoming Events & Announcements

▶ Tamir Fishman's February Round Table Event: A Closer Look at FAS 123(R) (Now ASC Topic 718)

About This Meeting

It's been five years since most companies adopted FAS 123(R), now known as ASC Topic 718, and oh what a ride it's been. Forfeiture rates and lattice models, accelerated expensing for retirement provisions, and all the different types of modifications - all were new to most of us in 2006. Add to that the newest trends in equity compensation such as performance awards and the latest demands by auditors, such as allocating expense for mobile employees and you have quite a stack of issues to sort through each quarter and year end.

Join our panel of experts as we dig into the issues mentioned above, discuss where we started, where we are now and our predictions for the future on each topic.

This session assumes a basic, working knowledge of FAS 123(R)/Topic 718 as we will delve into some of the more complicated aspects and minutiae of the standard and the challenges faces companies today and into the future.

A "Save to Date" and detailed agenda of the event will be sent out shortly.

A detailed agenda of the event will be sent out shortly. For further information please contact Shahar Sharaga at: 972-3-6849210 or: shahars@tamfish.com

▶ Tamir Fishman's Open University

Join our new enriching unique programs for our clients:

- **Key Concepts In Asset Management: A guide to maximizing returns and managing risk in your portfolio**

We invite you to an exclusive program, aimed at giving top executives practical tools to managing their personal wealth.

The three hours comprehensive program will cover asset management basics, including: Security selection, asset diversification, portfolio optimization, risk management, alternative asset classes, and more.

The program will be conducted by Mr. Ariel Bino. Ariel is a Managing Partner and Chief Investment Officer at Tamir Fishman Equity Opportunity Fund. Ariel has 12 years of asset management experience. Prior to joining Tamir Fishman, Ariel served as an Analyst and Senior Analyst at Alverstoke Capital Group, a NY based hedge fund. Previously he served as a portfolio manager at Evergreen Investment Management. Ariel holds a BA in Business and Economics from the Hebrew University in Jerusalem and an MBA from NYU Stern School Of Business (both with Honors).

- **Equity Compensation Fundamentals: A guide to best practices for effective plan design and management**

The complex, overlapping standards governing stock plans – plus recent changes in accounting, taxation and required public disclosure – make it critical that anyone involved in plan design and management develop a solid, working knowledge of the prevailing regulatory framework and best practices for effective plan adoption and management.

The program will cover the equity compensation essentials including:

- Overview of equity compensation concepts, terminology, and functional interactions
- Characteristics, requirements, and tax treatment of Non-qualified and qualified option awards, restricted stock and employee stock purchase plans
- Accounting treatment of equity compensation, including an introduction to option valuation and expensing

The two programs will take place every quarter (Subject to minimum registrants) and will be free.

For registration please contact Shahar Shruga at: 03-6849210 or via e-mail:

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Promotion

Share a Little Upside with Society

Tmura – The Israeli Public Service Venture Fund recently announced the allocation of over NIS 600,000 to four wonderful non-profits focusing on youth and education:

- **Knafayim Shel Krembo** (www.krembo.org.il) – a national youth movement for children with special needs
- **Sifriyat Pyjama** (www.pjisrael.org) – a pre-literacy and Jewish values program, based on successful model operating in the US
- **Tovanot B'chinuch** – program to empower elementary and high school principals, managed by Karen Tal, former Bialik-Rogozin principal
- **ValueSports** (www.valuesports.org) – program utilizes sports activity to teach sportsmanship, values and character building

Tmura, an innovative philanthropic model for the high-tech sector, receives grants of stock from Israeli and Israel-related high-tech companies, enabling companies who are not yet cash-flow positive to contribute equity to support charitable causes. The model is simple: early-stage companies give Tmura a warrant, convertible (at exit) into a small portion of their equity. If the company succeeds, Tmura sells its shares and donates the proceeds to charities in Israel with a focus on education and youth-related activities.

Tmura has now received **grants from 224 high-tech companies**, with new donations received recently from NiTi Surgical Solutions, MyWebees, LoyalBlocks, GreenSQL, Evoz, Jems, Pursway and others, and has now generated **over \$5,700,000** which has been contributed to a broad array of worthy organizations promoting youth and education in Israel.

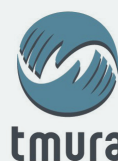
Tmura's upcoming networking event will take place at Jem's Beer Factory on Tues evening February 28th. Keynote speaker: Prof. David Passig on the topic of "21st century megatrends".

For details, see

www.tmura.org/news-and-events

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Let us know what you think!

Your feedback will help make our newsletter, webinars and programs a valuable resource for furthering your stock plan knowledge.

Please send your comments to: shahars@tamfish.com

This publication is prepared for the general information of our clients and other interested persons.

It is not, and does not attempt to be, comprehensive in nature.

Due to the general nature of its content, it should not be regarded as legal or tax advice.