

Selected notes from annual reports and SEC filings.
 Companies: Apple, Bank of America [BA], Duke Energy Family Dollar, Marriott, Park Sterling Bank, SPX, Toll Brothers, Wells Fargo, 3M.

1.0 Major Concepts

- 1.1 Accounting for income tax
- 1.2 Income tax provision
- 1.3 Enacted rates
- 1.4 Income tax expense
- 1.5 Income tax benefit

2.0 Effective Tax Rates

- 2.1 Nature of effective rate
- 2.2 Computation
- 2.3 Impact of foreign earnings
- 2.4 Amount of foreign earnings

3.0 Deferred Tax Assets and Liabilities

- 3.1 In general
- 3.2 Deferred tax asset
- 3.3 Changes in deferred tax assets
- 3.4 Valuation of deferred tax assets
- 3.5 Recording deferred tax assets valuation allowance
- 3.6 Reduction of deferred tax asset valuation allowance
- 3.7 Deferred tax liabilities

4.0 Uncertain Positions – Unrecognized Benefits

- 4.1 Examples of UTBs
- 4.2 Amount of Tax Benefits to be Recognized and amount of unrecognized tax benefits
- 4.2 Examples of UTBs
- 4.3 Changes in Amount of Unrecognized Tax Benefits

5.0 Accounting Methods & Other Matters

1.0 Major Concepts

1.1 Accounting for income tax

The provision for income taxes is computed using the asset and liability method, under which deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, and for operating losses and tax credit carryforwards. [Apple-2013]

1.2 Income Tax Provision

Note 5 – Income Taxes [Apple]

Provision for income taxes for 2013... consisted of the following (in millions):

Federal:

| | | |
|----------|---------|--------|
| Current | \$9,334 | |
| Deferred | 1,878 | 11,212 |

State:

| | | |
|----------|-------|-----|
| Current | 1,084 | |
| Deferred | (311) | 773 |

Foreign:

| | | |
|----------|-------|-------|
| Current | 1,559 | |
| Deferred | (426) | 1,133 |

| | | |
|----------------------------|--|----------|
| Provision for income taxes | | \$13,118 |
|----------------------------|--|----------|

1.3 Enacted Rates

[Apple] Deferred tax assets and liabilities are measured using the currently enacted tax rates that apply to taxable income in effect for the years in which those tax assets are expected to be realized or settled.

1.4 Income Tax Expense

[BA] There are two components of income tax expense: current and deferred. Current income tax expense reflects taxes to be paid or refunded for the current period. Deferred income tax expense results from changes in deferred tax assets and liabilities between periods.

[Wells] Current income tax expense represents our estimated taxes to be paid or refunded for the current period and includes income tax expense related to our uncertain tax positions.

[Toll] Provisions (benefits) for federal and state income taxes are calculated on reported pretax earnings (losses) based on current tax law and also include, in the applicable period, the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities. Such provisions (benefits) differ from the amounts currently receivable or payable because certain items of income and expense are recognized for financial reporting purposes in different periods than for income tax purposes.

The Company establishes reserves for income taxes when, despite the belief that its tax positions are fully supportable, it believes that its positions may be challenged and disallowed by various tax authorities. The consolidated tax provision (benefits) and related accruals include the impact of such reasonably estimable disallowances as deemed appropriate. To the extent that the probable tax outcome of these matters changes, such changes in estimates will impact the income tax provision (benefit) in the period in which such determination is made.

1.5 Income Tax Benefit

[BA] Included in the income tax benefit for 2012 was a \$1.7 billion tax benefit related to the recognition of certain foreign tax credits.

[Toll] Included in FY 2012's net income was a net tax benefit of \$374.2 million, which included the reversal of \$394.7 million of our deferred tax asset valuation reserves against our deferred tax asset, offset by a tax provision of \$20.5 million.

2.0 Effective Tax Rates

2.1 Nature and Factors Affecting the Effective Rate

[3M] Our effective tax rate is calculated by dividing income tax expense by income before income tax expense less the net income from noncontrolling interests.

The effective tax rate for 2013 was 28.1 percent, compared to 29.0 percent in 2012, a decrease of 0.9 percentage points, impacted by many factors. Factors that decreased the Company's effective tax rate included international taxes as a result of changes to the geographic mix of income before taxes, the reinstatement of the U.S. research and development credit in 2013, an increase in the domestic manufacturer's deduction benefit, the restoration of tax basis on certain assets for which depreciation deductions were previously limited, and other items. Combined, these factors decreased the Company's effective tax rate by 4.0 percentage points. This benefit was partially offset by factors that increased the effective tax rate by 3.1 percentage points, which largely related to adjustments to 3M's income tax reserves for 2013 when compared to 2012.

[3M] Included in these interest and penalty amounts are interest and penalties related to tax positions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. Because of the impact of deferred tax accounting, other than interest and penalties, the disallowance of the shorter deductibility period would not affect the annual effective tax rate but would accelerate the payment of cash to the taxing authority to an earlier period.

[Wells] The lower effective tax rates for 2012 and 2011, compared with 2010, were primarily due to the realization, for tax purposes, of tax benefits on previously written down investments.

2.2 Computation

| Apple. Reconciliation | 2013 |
|---|---------|
| Computed expected tax | 17,554 |
| State taxes, net of federal effect | 508 |
| Indefinitely invested earnings-foreign subsidiaries | (4,614) |
| Research and development credit, net | (287) |
| Domestic production activities deduction | (308) |
| Other | 265 |
| Provision for income taxes | 13,118 |
| Effective tax rate | 26% |

2.3 Impact of Foreign Earnings

[Apple] The Company's effective tax rates for all periods differ from the statutory federal income tax rate of 35% due primarily to certain undistributed foreign earnings, a substantial portion of which was

generated by subsidiaries organized in Ireland [which has a statutory tax rate of 12.5%], for which no U.S. taxes are provided because such earnings are intended to be indefinitely reinvested outside the U.S.

[Apple] The foreign provision for income taxes is based on foreign pre-tax earnings of \$30.5 billion in 2013... The Company's consolidated financial statements provide for any related tax liability on undistributed earnings that the Company does not intend to be indefinitely reinvested outside the U.S.

[3M] For those international earnings planned to be reinvested indefinitely, the Company currently has no intention to repatriate these funds. If these international funds are needed for operations in the U.S., 3M would be required to accrue and pay U.S. taxes to repatriate these funds. However, for the international funds considered to be reinvested indefinitely, 3M's current plans do not indicate a need to repatriate these funds for U.S. operations. The Company has not provided deferred taxes on unremitted earnings attributable to international companies that have been considered to be reinvested indefinitely. These earnings relate to ongoing operations and were approximately \$8.6 billion as of December 31, 2012. Because of the availability of U.S. foreign tax credits, it is not practicable to determine the income tax liability that would be payable if such earnings were not indefinitely reinvested.

2.4 Amount of Foreign Earnings

[Duke] Deferred income taxes and foreign withholding taxes have not been provided on undistributed earnings of Duke Energy's foreign subsidiaries when such amounts are deemed to be indefinitely reinvested. The cumulative undistributed earnings as of December 31, 2013 on which Duke Energy has not provided deferred income taxes and foreign withholding taxes is approximately \$2.4 billion. The amount of unrecognized deferred tax liability related to these undistributed earnings is estimated at between \$300 million and \$375 million.

[Apple] As of September 28, 2013, U.S. income taxes have not been provided on a cumulative total of \$54.4 billion of such earnings. The amount of unrecognized deferred tax liability related to these temporary differences is estimated to be approximately \$18.4 billion. As of September 28, 2013... \$111.3 billion ... of the Company's cash, cash equivalents and marketable securities were held by foreign subsidiaries and are generally based in U.S. dollar-denominated holdings. Amounts held by foreign subsidiaries are generally subject to U.S. income taxation on repatriation to the U.S.

[Wells] Foreign taxes paid are generally applied as credits to reduce federal income taxes payable. We account for interest and penalties as a component of income tax expense.

| Toll Brothers | | | | |
|---|------------------|--------|-----------------|-------|
| The following table provides a reconciliation of the Company's effective tax rate from the federal statutory tax rate | | | | |
| (\$ amounts in thousands). | October 31, 2012 | | October 31-2011 | |
| Federal tax benefit- statutory rate | 39,530 | 35% | 10,278 | 35% |
| State taxes, net of federal benefit | 4,711 | 4 | (954) | 3 |
| Reversal of accrual for uncertain tax positions | (34,167) | (30) | (52,306) | 178 |
| Accrued interest on anticipated tax assessments | 5,000 | 4 | 3,055 | (10) |
| Increase in unrecognized tax benefits | 5,489 | 5 | | |
| Increase in deferred tax assets, net | | | (25,948) | 88 |
| Valuation allowance — recognized | | | 43,876 | (149) |
| Valuation allowance — reversed | (394,718) | (350) | (25,689) | 88 |
| Other | (49) | | (917) | 3 |
| Tax benefit | (374,204) | (331%) | (69,161) | 236% |

3.0 Deferred Tax Assets and Liabilities

3.1 In general

[BA] These gross deferred tax assets and liabilities represent decreases or increases in taxes expected to be paid in the future because of future reversals of temporary differences in the bases of assets and liabilities as measured by tax laws and their bases as reported in the financial statements. Deferred tax assets are also recognized for tax attributes such as net operating loss (NOL) carryforwards and tax credit carryforwards.

3.2 Deferred tax asset

[Marriott] Changes in existing tax laws and rates, their related interpretations, and the uncertainty generated by the current economic environment may affect the amounts of our deferred tax liabilities or the valuations of our deferred tax assets over time. Our accounting for deferred tax consequences represents management's best estimate of future events that can be appropriately reflected in the accounting estimates.

Apple. Table shows changes in accrued warranties for 2013 (in millions):

| | |
|----------------------------|--------------|
| Beginning accrued warranty | 1,638 |
| Cost of warranty claims | (3,703) |
| Product warranty accruals | 5,032 |
| Ending accrued warranty | <u>2,967</u> |

[BA] Net deferred tax assets, reported as a component of other assets on the Corporation's Consolidated Balance Sheet, represent the net decrease in taxes

expected to be paid in the future because of net operating loss (NOL) and tax credit carryforwards and because of future reversals of temporary differences in the bases of assets and liabilities as measured by tax laws and their bases as reported in the financial statements. NOL and tax credit carryforwards result in reductions to future tax liabilities, and many of these attributes can expire if not utilized within certain periods. We consider the need for valuation allowances to reduce net deferred tax assets to the amounts we estimate are more-likely-than-not to be realized.

[Wells] Deferred taxes related to net unrealized gains (losses) on securities available for sale, net unrealized gains (losses) on derivatives, foreign currency translation, and employee benefit plan adjustments are recorded in cumulative OCI.

3.3 Changes in Deferred Tax Assets

[BA] The income tax benefit for 2011 was driven by... a \$1.0 billion benefit from the release of the remaining valuation allowance applicable to the Merrill Lynch & Co., Inc. (Merrill Lynch) capital loss carryover deferred tax asset and a benefit of \$823 million for planned realization of previously unrecognized deferred tax assets related to the tax basis in certain subsidiaries.

[Marriott] In 2011, we recorded an income tax expense of \$34 million to write off certain deferred tax assets that we transferred to MVW in conjunction with the spin-off of our timeshare operations and timeshare development business. We impaired these assets because we considered it "more likely than not" that MVW will not be able to realize the value of those deferred tax assets. See Footnote No. 15, "Spin-off" for more information on the transaction.

3.4 Valuation of Deferred Tax Assets

[Apple] The Company records a valuation allowance to reduce deferred tax assets to the amount that is believed more likely than not to be realized.

[Park Sterling Bank] The Company adjusted its net deferred tax asset as a result of reductions in the North Carolina corporate income tax rate that were enacted July 23, 2013, and will become effective January 1, 2014, and January 1, 2015. The lower corporate income tax rate resulted in a reduction in the deferred tax asset in 2013 and an increase in current period income tax expense for the year ended December 31, 2013.

[BA] On July 17, 2012, the U.K. 2012 Finance Bill was enacted, which reduced the U.K. corporate income tax rate by two percent to 23 percent. The first one percent reduction was effective April 1, 2012 and the second will be effective April 1, 2013. These reductions favorably affect income tax expense on future U.K. earnings, but

also required us to **remeasure our U.K. net deferred tax assets using the lower tax rates.** If the corporate income tax rate were to be reduced to 21 percent by 2014 as suggested in U.K. Treasury announcements and assuming no change in the deferred tax asset balance, we would **record a charge to income tax expense of approximately \$800 million in the period of enactment, which we expect to be in 2013.**

[Lowes] The Company operates as a branch in various foreign jurisdictions and cumulatively has **incurred net operating losses of \$474 million at February 1, 2013.** The net operating losses are subject to expiration in 2017 through 2032. **Deferred tax assets have been established for these foreign net operating losses** in the accompanying consolidated balance sheets. Given the uncertainty regarding the realization of foreign net deferred tax assets, the **Company recorded cumulative valuation allowances of \$142 million at February 1, 2013.**

3.5 Recording Deferred Tax Assets Valuation Allowance

[Toll] Significant judgment is applied in assessing the **realizability of deferred tax assets.** In accordance with GAAP, a valuation allowance is established against a deferred tax asset if, based on the available evidence, it is more-likely-than-not that such asset will not be realized. The realization of a deferred tax asset ultimately **depends on the existence of sufficient taxable income** in either the carryback or carryforward periods under tax law.

[Wells] We have determined that a **valuation reserve is required for 2012 in the amount of \$579 million** predominantly attributable to deferred tax assets in various state and foreign jurisdictions where we believe it is more likely than not that these deferred tax assets will not be realized. In these jurisdictions, **carry back limitations, lack of sources of taxable income, and tax planning strategy limitations** contributed to our conclusion that the deferred tax assets would not be realizable. We have concluded that it is more likely than not that the remaining deferred tax assets will be realized based on **our history of earnings, sources of taxable income in carry back periods, and our ability to implement tax planning strategies.**

At January 31, 2010, the company had international net operating loss and capital loss carryforwards totaling approximately \$4.6 billion. Of these carryforwards, approximately \$3.0 billion will expire, if not utilized, in various years through 2020. The remaining carryforwards have no expiration. At January 31, 2010, the company had foreign tax credit carryforwards of \$1.1 billion, which will expire in various years through 2020 if not utilized. **[Walmart]**

3.6 Reduction of Deferred Tax Assets Valuation Allowance

[Toll] We recognized a \$374.2 million tax benefit in fiscal 2012, including the **reversal of \$394.7 million of**

federal and state deferred tax asset valuation allowances.

3.7 Deferred Tax Liabilities

[Apple] On July 23, 2013, HB 998 was signed into law. HB 998 reduces the North Carolina corporate income tax rate from a statutory 6.9 percent to 6.0 percent in January 2014 with a further reduction to 5.0 percent in January 2015. **Duke Energy recorded a net reduction of approximately \$145 million to its North Carolina deferred tax liability in the third quarter of 2013.**

Property, plant and equipment are stated at cost. Depreciation is computed by use of the straight-line method over the estimated useful lives of the assets...

As of September 28, 2013, the Company had deferred tax assets arising from deductible temporary differences, tax losses, and tax credits of \$4.2 billion, and deferred tax liabilities of \$16.5 billion. Management believes it is more likely than not that forecasted income, including income that may be generated as a result of certain tax planning strategies, together with future reversals of existing taxable temporary differences, will be sufficient to fully recover the deferred tax assets. The Company will continue to evaluate the realizability of deferred tax assets quarterly by assessing the need for and amount of a valuation allowance.

4.0 Uncertain Positions – Unrecognized Benefits

[Walmart] In addition to the amounts shown in the table above, **\$1.0 billion of unrecognized tax benefits are considered uncertain tax positions and have been recorded as liabilities.**

[Toll] Differences between amounts taken in a tax return and amounts recognized in the financial statements are considered unrecognized tax benefits. The Company believes that it has a reasonable basis for each of its filing positions and intends to defend those positions if challenged by the IRS or other taxing jurisdiction. **If the IRS or other taxing authorities do not disagree with the Company's position, and after the statute of limitations expires, the Company will recognize the unrecognized tax benefit in the period that the uncertainty of the tax position is eliminated.**

[Walmart] The company reports a **liability for unrecognized tax benefits** resulting from uncertain tax positions taken or expected to be taken in a tax return.

[BA] Income tax benefits are recognized and measured based upon a two-step model: first, a tax position must be more-likely-than-not to be sustained based solely on its technical merits in order to be recognized, and second, the benefit is measured as the largest dollar amount of that position that is more-likely-than-not to be sustained upon settlement. **The difference between the benefit recognized and the tax benefit claimed on a tax return is referred to as an unrecognized tax benefit (UTB).**

[Apple] The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement.

4.1 Examples of UTBs

[BA] The IRS proposed adjustments for two issues in the audit of Merrill Lynch for the tax year 2004 which have been protested to the Appeals Office. The issues involve eligibility for the dividends received deduction and foreign tax credits with respect to a structured investment transaction.

[Walmart] At January 31, 2010 and 2009, the company had an unrecognized tax benefit of \$1.7 billion, which is related to an ordinary worthless stock deduction from the fiscal 2007 disposition of its German operations. Of this, \$ 63 million was recognized in discontinued operations during fiscal 2009 following the resolution of a gain contingency on a discontinued operation sold in fiscal 2004. When effectively settled, any additional benefit will be recorded in discontinued operations. If some portion of the ordinary loss is determined to be a capital loss, the resulting deferred tax asset will be included with the company's non-current assets of discontinued operations. The company cannot predict the ultimate outcome of this matter; however, it is reasonably possible it will be resolved in the next twelve months.

[Marriott] In 2008 we also recorded a \$29 million income tax expense primarily related to an unfavorable U.S. Court of Federal Claims decision involving a refund claim associated with a 1994 tax planning transaction. The tax had been paid, and the issue is now closed.

4.2 Amount of Tax Benefits to be Recognized and amount of unrecognized tax benefits

[Family Dollar] As of August 28, 2010, the Company had a liability related to uncertain tax positions of \$23.4 million, including a gross unrecognized tax benefit of \$18.3 million and accrued interest and penalties of \$5.1 million.

[Lowe's] Company establishes a liability for tax positions for which there is uncertainty as to whether or not the position will be ultimately sustained. The Company includes interest related to tax issues as part of net interest on the consolidated financial statements. The Company records any applicable penalties related to tax issues within the income tax provision.

[Apple] **Uncertain Tax Positions.** Tax positions are evaluated in a two-step process. The Company first determines whether it is more likely than not that a tax position will be sustained upon examination. If a tax

position meets the more-likely-than-not recognition threshold it is then measured to determine the amount of benefit to recognize in the financial statements. The tax position is measured as the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. The Company classifies gross interest and penalties and unrecognized tax benefits that are not expected to result in payment or receipt of cash within one year as non-current liabilities in the Consolidated Balance Sheets. As of September 28, 2013, the total amount of gross unrecognized tax benefits was \$2.7 billion...

[Wells] We monitor relevant tax authorities and revise our estimate of accrued income taxes due to changes in income tax laws and their interpretation by the courts and regulatory authorities on a quarterly basis. Revisions of our estimate of accrued income taxes also may result from our own income tax planning and from the resolution of income tax controversies.

Our interpretations may be subjected to review during examination by taxing authorities and disputes may arise over the respective tax positions. We attempt to resolve these disputes during the tax examination and audit process and ultimately through the court systems when applicable.

[Wells] Of the \$6.1 billion of unrecognized tax benefits at December 31, 2012, approximately \$4.3 billion would, if recognized, affect the effective tax rate. The remaining \$1.8 billion of unrecognized tax benefits relates to income tax positions on temporary differences.

We are also litigating or appealing various issues related to our prior IRS examinations for the periods 1999 and 2003 through 2006. On December 1, 2011, we filed a Notice of Appeal to the U.S. Court of Appeals for the Eighth Circuit relating to our lease restructuring transaction and that case is still pending. For Wachovia's 2003 through 2008 tax years, we are appealing various issues related to their IRS examinations. We have paid the IRS the contested income tax associated with these issues and refund claims have been filed for the respective years. It is possible that one or more of these examinations, appeals or litigation may be resolved within the next twelve months resulting in a decrease of up to \$1.5 billion to our gross unrecognized tax benefits.

4.3 Changes in Amount of Unrecognized Tax Benefits

[BA] Considering all examinations, it is reasonably possible that the UTB balance may decrease by as much as \$2.6 billion during the next twelve months, since resolved items will be removed from the balance whether their resolution results in payment or recognition. If such decrease were to occur, it likely would primarily result from outcomes consistent with

management expectations.

[Apple] For stock options, the Company receives an income tax benefit calculated as the tax effect of the difference between the fair market value of the stock issued at the time of the exercise and the exercise price.

[Apple] The Company includes interest and penalties related to unrecognized tax benefits within the provision for income taxes. As of September 28, 2013 and September 29, 2012, the total amount of gross interest and penalties accrued was \$590 million and \$401 million, respectively, which is classified as non-current liabilities in the Consolidated Balance Sheets. In connection with tax matters, the Company recognized interest and penalty expense in 2013, 2012 and 2011 of \$189 million, \$140 million and \$14 million, respectively.

[Apple] The Company is subject to taxation and files income tax returns in the U.S. federal jurisdiction and in many state and foreign jurisdictions. For U.S. federal income tax purposes, all years prior to 2004 are closed. The Internal Revenue Service (the "IRS") has completed its field audit of the Company's federal income tax returns for the years 2004 through 2006 and proposed certain adjustments. The Company has contested certain of these adjustments through the IRS Appeals Office. The IRS is currently examining the years 2007 through 2012. In addition, the Company is also subject to audits by state, local and foreign tax authorities. In major states and major foreign jurisdictions, the years subsequent to 1989 and 2002, respectively, generally remain open and could be subject to examination by the taxing authorities.

[Apple] Management believes that an adequate provision has been made for any adjustments that may result from tax examinations. However, the outcome of tax audits cannot be predicted with certainty. If any issues addressed in the Company's tax audits are resolved in a manner not consistent with management's expectations, the Company could be required to adjust its provision for income tax in the period such resolution occurs. Although timing of the resolution and/or closure of audits is not certain, the Company believes it is reasonably possible that tax audit resolutions could reduce its unrecognized tax benefits by between \$125 million and \$225 million in the next 12 months.

[3M] The Company currently expects that its effective tax rate for total year 2013 will be approximately 29.5 to 30.0 percent. The rate can vary from quarter to quarter due to discrete items, such as the settlement of income tax audits and changes in tax laws, as well as recurring factors, such as the geographic mix of income before taxes.

[3M] During the first quarter of 2010, the Company paid the agreed upon assessments for the 2005 tax year. During the second quarter of 2010, the Company paid the agreed upon assessments for the 2008 tax year. During the second quarter of 2011, the Company received a refund from the IRS for the 2004 tax year. During the first quarter of 2012, the Company paid the agreed upon assessments for the 2010 tax year. Payments relating to other proposed assessments arising from the 2005 through 2013 examinations may not be made until a final agreement is reached between the Company and the IRS on such assessments or upon a final resolution resulting from the administrative appeals process or judicial action. In addition to the U.S. federal examination, there is also limited audit activity in several U.S. state and foreign jurisdictions.

[3M] The Company recognizes interest and penalties accrued related to unrecognized tax benefits in tax expense. The Company recognized in the consolidated statement of income on a gross basis approximately \$12 million, \$1 million, and \$9 million of benefit in 2012, 2011, and 2010, respectively. At December 31, 2012 and December 31, 2011, accrued interest and penalties in the consolidated balance sheet on a gross basis were \$44 million and \$56 million, respectively.

[Apple] During fiscal year 2008, we reached a settlement with the Internal Revenue Service ("IRS") on its 2000-2003 examination. As a result, **we reduced our unrecognized tax benefits by \$4.8 billion and recognized a tax provision reduction of \$1.2 billion.** We are under audit by the IRS for the tax years 2004-2006. .. As a result of our settlement related to the 2000-2003 examination, **we paid the IRS approximately \$3.1 billion** during the first quarter of fiscal year 2009.

[Lowe's] Equity Method Investments - The Company's investments in certain unconsolidated entities are accounted for under the equity method. The balance of these investments is included in other assets (noncurrent) in the accompanying consolidated balance sheets. The balance is increased to reflect the Company's capital contributions and equity in earnings of the investees. The balance is decreased to reflect its equity in losses of the investees and for distributions received that are not in excess of the carrying amount of the investments. Equity in earnings and losses of the investees has been immaterial and is included in SG&A expense.

[Toll] We recognized a \$69.2 million tax benefit in fiscal 2011. Based upon the federal statutory rate of 35%, our tax benefit would have been \$10.3 million. The difference between the tax benefit recognized and the tax benefit based on the federal statutory rate was

due primarily to the reversal of \$52.3 million of previously accrued taxes on uncertain tax positions that were resolved during fiscal 2011, a reversal of prior valuation allowances of \$25.7 million that were no longer needed, an increase of deferred tax assets, net of \$25.9 million and a tax benefit for state income taxes, net of federal benefit of \$1.0 million. The impact of these items were offset, in part, by \$43.9 million of net new deferred tax valuation allowances and \$3.1 million of accrued interest and penalties.

Income Taxes. Federal and state income taxes are calculated on reported pre-tax earnings (losses) based on current tax law and also include, in the applicable period, the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities. Such provisions (benefits) differ from the amounts currently receivable or payable because certain items of income and expense are recognized for financial reporting purposes in different periods than for income tax purposes. Significant judgment is required in determining income tax provisions (benefits) and evaluating tax positions. The Company establishes reserves for income taxes when, despite the belief that its tax positions are fully supportable, it believes that its positions may be challenged and disallowed by various tax authorities. The consolidated tax provisions (benefits) and related accruals include the impact of such reasonably estimable disallowances as deemed appropriate. To the extent that the probable tax outcome of these matters changes, such changes in estimates will impact the income tax provision (benefit) in the period in which such determination is made.

ASC 740 clarifies the accounting for uncertainty in income taxes recognized and prescribes a recognition threshold and measurement attributes for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. ASC 740 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

ASC 740 requires a company to recognize the financial statement effect of a tax position when it is “more-likely-than-not” (defined as a substantiated likelihood of more than 50%), based on the technical merits of the position, that the position will be sustained upon examination. A tax position that meets the “more-likely-than-not” recognition threshold is measured to determine the amount of benefit to be recognized in the financial statements based upon the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. The

inability of the Company to determine that a tax position meets the “more-likely-than-not” recognition threshold does not mean that the Internal Revenue Service (“IRS”) or any other taxing authority will disagree with the position that the Company has taken. If a tax position does not meet the “more-likely-than-not” recognition threshold, despite the Company’s belief that its filing position is supportable, the benefit of that tax position is not recognized in the Consolidated Statements of Operations and the Company is required to accrue potential interest and penalties until the uncertainty is resolved. Potential interest and penalties are recognized as a component of the provision for income taxes which is consistent with the Company’s historical accounting policy. Differences between amounts taken in a tax return and amounts recognized in the financial statements are considered unrecognized tax benefits. The Company believes that it has a reasonable basis for each of its filing positions and intends to defend those positions if challenged by the IRS or other taxing jurisdiction. If the IRS or other taxing authorities do not disagree with the Company’s position, and after the statute of limitations expires, the Company will recognize the unrecognized tax benefit in the period that the uncertainty of the tax position is eliminated.

5.0 More, Accounting Methods & Other Matters

[Duke] During 2013, we recorded discrete income tax benefits of \$20.1, with \$9.5 related to net reductions in valuation allowances recorded against certain foreign deferred income tax assets, \$6.5 related to various audit settlements and statute expirations, and \$4.1 associated with the Research and Experimentation Credit generated in 2012.

During 2013, our income tax provision was impacted by the following income tax benefits: (i) \$9.5 related to net reductions in valuation allowances recorded against certain foreign deferred income tax assets; (ii) \$6.5 related to various audit settlements and statute expirations; and (iii) \$4.1 associated with the Research and Experimentation Credit generated in 2012.

During 2012, our income tax benefit was impacted by: (i) an income tax benefit of \$26.3 associated with the \$281.4 impairment charge recorded for our Cooling reporting unit, as the majority of the goodwill for the Cooling reporting unit has no basis for income tax purposes; (ii) taxes provided of \$15.4 on foreign dividends and undistributed earnings that were no longer considered to be indefinitely reinvested; (iii) incremental tax expense of \$6.1 associated with the deconsolidation of our dry cooling business in China, as the goodwill allocated to the transaction was not deductible for income tax purposes; and (iv) valuation allowances that were recorded against deferred income tax assets during the year of \$5.4. The unfavorable impact of these items was offset partially by income tax benefits of

\$22.3 associated with audit closures, settlements, statute expirations, and other changes in the accrual for uncertain tax positions, with the most notable being the closure of our German tax examination for the years 2005 through 2009.

During 2011, we adopted an alternative method of allocating certain expenses between foreign and domestic sources for federal income tax purposes. As a result of this method change, we determined that it was more likely than not that we would be able to utilize our then-existing foreign tax credits within the remaining carryforward period.

Accordingly, we released the valuation allowance on our foreign tax credit carryforwards in 2011, resulting in an income tax benefit of \$38.5. In addition, the effective tax rate for the year ended December 31, 2011 was impacted favorably by tax benefits of \$2.5 associated with the conclusion of a Canadian appeals process and \$7.7 of tax credits related to the expansion of our power transformer facility in Waukesha, WI. These tax benefits were offset partially by \$6.9 of federal income taxes that were provided in connection with our plan to repatriate a portion of the earnings of a foreign subsidiary.

We perform reviews of our income tax positions on a continuous basis and accrue for potential uncertain positions when we determine that an uncertain position meets the criteria of the Income Taxes Topic of the Codification. Accruals for these uncertain tax positions are recorded in "Income taxes payable" and "Deferred and other income taxes" in the accompanying consolidated balance sheets based on the expectation as to the timing of when the matters will be resolved. As events change and resolutions occur, these accruals are adjusted, such as in the case of audit settlements with taxing authorities.

As discussed in Note 1, we identified **certain misstatements associated with previously reported income tax accounts**. To correct for these misstatements, and as permitted by SAB No. 108, we have reduced retained earnings, SPX's shareholders' equity, and total equity by \$53.8 as of December 31, 2010, with an offsetting increase primarily to income taxes payable. In addition, we have decreased the income tax benefit for 2012 by \$1.4 and increased the income tax benefit for 2011 by \$10.7, with the offset primarily to income taxes payable, in the respective accompanying consolidated financial statements. See Note 18 for the impact of these corrections on previously reported amounts for the years ended December 31, 2012 and 2011.

General Matters

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. We periodically assess deferred tax assets to determine if they are likely to be realized and the adequacy of deferred tax liabilities, incorporating the results of local, state, federal and foreign tax audits in our estimates and judgments.

At December 31, 2013, we had the following tax loss carryforwards available: state tax loss carryforwards of approximately \$449.0 and tax losses of various foreign jurisdictions of approximately \$817.0, all of which are reported in continuing operations. We also had state tax credit carryforwards of \$4.1. Of these amounts, approximately \$6.0 expire in 2014 and \$506.0 expire at various times between 2014 and 2033. The remaining carryforwards have no expiration date.

Realization of deferred tax assets, including those associated with net operating loss and credit carryforwards, is dependent upon generating sufficient taxable income in the appropriate tax jurisdiction. We believe that it is more likely than not that we may not realize the benefit of certain of these deferred tax assets and, accordingly, have established a valuation allowance against certain of these deferred tax assets. Although realization is not assured for the remaining deferred tax assets, we believe it is more likely than not that the deferred tax assets will be realized through future taxable earnings or tax planning strategies. However, deferred tax assets could be reduced in the near term if our estimates of taxable income are significantly reduced or tax planning strategies are no longer viable. The valuation allowance increased by \$21.2 in 2013 and increased by \$3.6 in 2012. Of the net increase in 2013, \$0.5 was recognized as a decrease in tax expense from continuing operations. Of the net increase in 2012, \$5.4 was recognized as a decrease in tax expense from continuing operations.

IBM

New Standards to be Implemented

In July 2013, the Financial Accounting Standards Board (FASB) issued guidance regarding the presentation of an unrecognized tax benefit when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. Under certain circumstances, unrecognized tax benefits should be presented in the financial statements as a reduction to a deferred tax asset for a net operating loss carryforward, a similar tax loss, or a tax credit carryforward. The guidance was a change in financial statement presentation only and has no material impact in the consolidated financial results. The guidance was effective January 1, 2014, and the company will adopt it on a prospective basis.

In the fourth quarter of 2013, the Internal Revenue Service (IRS) concluded its examination of the company's income tax returns for 2008 through 2010 and issued a final Revenue Agent Report (RAR).

The company agreed with all of the adjustments. The company has redetermined its unrecognized tax benefits, including similar items in open tax years, based on the agreed adjustments in the RAR and associated information and analysis.

The 2013 effective tax rate benefitted by 11.5 points from the completion of the IRS examination discussed above including associated reserve redeterminations. In addition, the effective tax rate also benefitted from the company's geographic mix of pre-tax income and incentives, the impact of foreign tax credits, benefits realized during the year related to the American Taxpayer Relief Act, a favorable tax agreement which required a reassessment of certain valuation allowances on deferred taxes and certain non-U.S. audit settlements.

These benefits were partially offset by 2013 tax charges related to certain intercompany payments made by foreign subsidiaries and the tax costs associated with the intercompany licensing of certain IP.

For income tax return purposes, the company has foreign and domestic loss carryforwards, the tax effect of which is \$626 million, as well as domestic and foreign credit carryforwards of \$1,007 million. Substantially all of these carryforwards are available for at least two years or are available for 10 years or more.

The valuation allowance at December 31, 2013 principally applies to certain foreign, state and local loss carryforwards that, in the opinion of management, are more likely than not to expire unutilized.

However, to the extent that tax benefits related to these carryforwards are realized in the future, the reduction in the valuation allowance will reduce income tax expense. [IBM]

The amount of unrecognized tax benefits at December 31, 2013 decreased by \$1,214 million in 2013 to \$4,458 million. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

| IBM Unrecognized Tax Benefits | 2013 | 2012 |
|---|-------------|-------------|
| Balance at January 1 (in millions) | \$5,672 | \$5,575 |
| Additions based on tax positions | | |
| related to the current year | \$829 | \$401 |
| Additions for tax positions of prior years | \$417 | \$215 |
| Reductions for tax positions of prior years | | |
| (including impacts due to a lapse in statute) | (\$2,201) | (\$425) |
| Settlements | (\$259) | (\$94) |
| Balance at December 31 | \$4,458 | \$5,672 |

The liability at December 31, 2013 of \$4,458 million can be reduced by \$556 million of offsetting tax benefits associated with the correlative effects of potential transfer pricing adjustments, state income taxes and timing adjustments.

In the fourth quarter of 2013, the company received a draft tax assessment notice for approximately \$866 million from the Indian Tax Authorities for 2009. The

company believes it will prevail on these matters and that this amount is not a meaningful indicator of liability. At December 31, 2013, the company has recorded \$433 million as prepaid income taxes in India. A significant portion of this balance represents cash tax deposits paid over time to protect the company's right to appeal various income tax assessments made by the Indian Tax Authorities.

The company has not provided deferred taxes on \$52.3 billion of undistributed earnings of non-U.S. subsidiaries at December 31, 2013, as it is the company's policy to indefinitely reinvest these earnings in non-U.S. operations. However, the company periodically repatriates a portion of these earnings to the extent that it does not incur an additional U.S. tax liability. Quantification of the deferred tax liability, if any, associated with indefinitely reinvested earnings is not practicable.

Bank of America

During 2011, the Corporation and IRS made significant progress toward resolving all federal income tax examinations for Bank of America Corporation tax years through 2009 and Merrill Lynch tax years through 2008. While subject to final agreement, including review by the Joint Committee on Taxation of the U.S. Congress for certain years, the Corporation believes that all federal examinations in the Tax Examination Status table may be concluded during 2012.

In 2005 and 2008, Merrill Lynch paid income tax assessments for the fiscal years April 1, 1998 through March 31, 2007 in relation to the taxation of income that was originally reported in other jurisdictions, primarily the U.S. Upon making these payments, Merrill Lynch began the process of obtaining clarification from international tax authorities on the appropriate allocation of income among multiple jurisdictions (Competent Authority) to prevent double taxation of the income. During 2009, an agreement was reached between Japan and the U.S. on the allocation of income during these years. The impact of these settlements resulted in UTB decreases that are reflected in the previous table. All tax years in Japan subsequent to those settled remain open to examination.

With the acquisition of Merrill Lynch on January 1, 2009, the Corporation established a valuation allowance to reduce certain deferred tax assets to the amount more-likely-than-not to be realized before their expiration. During 2009, the Corporation released \$650 million of the valuation allowance attributable to Merrill Lynch's capital loss carryforward due to utilization against net capital gains generated in 2009. The valuation allowance also increased by \$139

million due to increases in operating loss carryforwards and other deferred tax assets generated in certain state and foreign jurisdictions for which management believes it is more-likely-than-not that realization of these assets will not occur.

The Corporation concluded that no valuation allowance is necessary to reduce the U.K. NOL, U.S. federal NOL, and general business credit carryforwards since estimated future taxable income will be sufficient to utilize these assets prior to their expiration. Merrill Lynch also has U.S. federal capital loss and foreign tax credit carryforwards against which valuation allowances have been recorded to reduce the assets to the amounts the Corporation believes are more-likely-than-not to be realized.

[Marriott] On November 21, 2011 (“the spin-off date”), we completed a spin-off of our timeshare operations and timeshare development business through a special tax-free dividend to our shareholders of all of the issued and outstanding common stock (the “spin-off”) of our wholly owned subsidiary Marriott Vacations Worldwide Corporation (“MVW”).

[Marriott] The IRS has examined our federal income tax returns, and we have settled all issues for tax years through 2009. We participate in the IRS Compliance Assurance Program, which accelerates IRS examination of key transactions with the goal of resolving any issues before the taxpayer files its return. As a result, our open tax years under audit are substantially complete while the 2013 tax year audit is currently ongoing.

The 2011 spin-off of our former Timeshare business could result in significant tax liability to us and our shareholders. As discussed in more detail in Footnote No. 16, "Spin-off" to our Financial Statements, in 2011 we completed the spin-off of our timeshare operations and timeshare development business. Although we received a private letter ruling from the Internal Revenue Service ("IRS") and an opinion from our tax counsel confirming that the distribution of MVW common stock will not result in the recognition, for U.S. federal income tax purposes, of income, gain or loss to us or our shareholders (except to the extent of cash received in lieu of fractional shares of MVW common stock), the private letter ruling and opinion that we received are subject to the continuing validity of any assumptions and representations reflected therein. In addition, an opinion from our tax counsel is not binding on the IRS or a court. Moreover, certain future events that may or may not be within our control, including certain extraordinary purchases of

our stock or MVW's stock, could cause the distribution not to qualify as tax-free. Accordingly, the IRS could determine that the distribution of the MVW common stock was a taxable transaction and a court could agree with the IRS.

The 2011 spin-off also might not produce the cash tax benefits we anticipate. In connection with the spin-off, we completed an internal reorganization, which included transactions that were structured in a manner intended to result, for U.S. federal income tax purposes, in our recognition of built-in losses in properties used in the North American and Luxury segments of the Timeshare division. Our recognition of these built-in losses and corresponding tax deductions has generated and we expect will continue to generate significant cash tax benefits for us. Although we received a private letter ruling from the IRS and an opinion from our tax counsel confirming that these built-in losses may be recognized and deducted by us, the private letter ruling and opinion that we received are subject to the continuing validity of any assumptions and representations reflected therein. Accordingly, the IRS could determine that the built-in losses should not have been recognized or deductions for such losses should be disallowed and a court could agree with the IRS. If we were unable to deduct these losses for U.S. federal income tax purposes, and, instead, the tax basis of the properties attributable to the built-in losses were available to MVW and its subsidiaries, MVW has agreed, pursuant to the tax sharing and indemnification agreement, to indemnify us for certain tax benefits that we otherwise have recognized or would have recognized if we were able to deduct such losses.

[Marriott] In 2010, we reached a settlement with the Internal Revenue Service ("IRS") Appeals Division resolving all issues that arose in the audit of tax years 2005 through 2008. This settlement resulted in an \$85 million decrease in our tax expense for 2010 due to the release of tax liabilities we had previously established for the treatment of funds we received from non-U.S. subsidiaries. Our 2010 income tax expense also reflected a \$12 million benefit we recorded primarily for revisions to estimates of prior years' foreign income tax expenses. We filed an IRS refund claim relating to 2000 and 2001 software development costs. We settled this issue with the IRS in 2011 resulting in a refund of \$8 million.

[Toll] Noncontrolling Interest. The Company has a 67% interest in an entity that is developing land. The financial statements of this entity are consolidated in the Company's consolidated financial statements. The amounts shown in the Company's Consolidated Balance Sheets under

“Noncontrolling interest” represent the noncontrolling interest attributable to the 33% minority interest not owned by the Company.

[IBM] The company records deferred tax assets for [stock] awards that result in deductions on the company’s income tax returns, based on the amount of compensation cost recognized and the statutory tax rate in the jurisdiction in which it will receive a deduction. Differences between the deferred tax assets recognized for financial reporting purposes and the actual tax deduction reported on the income tax return are recorded in additional paid-in capital (if the tax deduction exceeds the deferred tax asset) or in the Consolidated Statement of Earnings (if the deferred tax asset exceeds the tax deduction and no additional paid-in capital exists from previous awards).

| IBM Deferred Tax Assets (\$millions) | At December 31: | |
|---|-----------------|----------|
| | 2013 | 2012 |
| Retirement benefits | \$ 3,704 | \$ 5,870 |
| Share-based and other compensation | 1,262 | 1,666 |
| Domestic tax loss/credit carryforwards | 982 | 954 |
| Deferred income | 964 | 1,018 |
| Foreign tax loss/credit carryforwards | 651 | 681 |
| Bad debt, inventory and warranty reserves | 592 | 586 |
| Depreciation | 382 | 456 |
| Other | 1,774 | 1,659 |
| Gross deferred tax assets | 10,311 | 12,890 |
| Less: valuation allowance | 734 | 1,187 |
| Net deferred tax assets | \$ 9,577 | \$11,703 |
| | | |
| IBM Deferred Tax Liabilities- (\$ millions) | At December 31: | |
| | 2013 | 2012 |
| Depreciation | \$1,346 | \$1,378 |
| Retirement benefits | \$1,219 | \$257 |
| Goodwill and intangible assets | \$1,173 | \$957 |
| Leases | \$1,119 | \$2,216 |
| Software development costs | \$558 | \$542 |
| Deferred transition costs | \$424 | \$440 |
| Other | \$841 | \$993 |
| Gross deferred tax liabilities | \$6,680 | \$6,783 |

On November 6, 2009, the Worker, Homeownership, and Business Assistance Act of 2009 (the “Act”) was enacted into law. The Act amended Section 172 of the Internal Revenue Code to allow net operating losses realized in a tax year ending after December 31, 2007 and

beginning before January 1, 2010 to be carried back for up to five years (such losses were previously limited to a two-year carryback). We must select one tax year to which we may apply the extended carryback. This change will allow us to carry back fiscal 2010 taxable losses to prior years and receive refunds of previously paid federal income taxes. We have approximately \$1.5 billion of taxable income from fiscal 2005 and 2006 available for tax losses to be recognized in fiscal 2010. Based on our projected taxable losses for fiscal 2010, we anticipate that such refunds may be in excess of \$35 million and could be considerably higher. The ultimate amount of such refunds realized is dependent on our actual taxable losses for fiscal 2010, which may vary significantly from our current expectations. We have not reflected the potential benefit of the extended carryback under the Act in our October 31, 2009 consolidated financial statements.

TREASURY STOCK

Treasury stock is recorded at cost. Issuance of treasury stock is accounted for on a first-in, first-out basis. Differences between the cost of treasury stock and the re-issuance proceeds are charged to additional paid-in capital.

As discussed in Note 2, in early March 2011, **3M** acquired a controlling interest in Winterthur Technologie AG (Winterthur), making Winterthur a consolidated subsidiary as of that business acquisition date. Subsequent to this business acquisition date, 3M purchased additional outstanding shares of its Winterthur subsidiary increasing 3M’s ownership interest from approximately 86 percent as of the business acquisition date to 100 percent as of December 31, 2011.

Walmart Disposal of Subsidiary

In July 2006, the Company [Walmart] agreed to dispose of its German operations, which operated 85 stores, to Metro AG, and recorded a pretax loss of \$918 million during fiscal 2007. The transaction was approved by the European competition authorities and closed during the third quarter of fiscal 2007. In addition, the Company recognized a tax benefit of \$126 million related to this transaction in fiscal 2007. The transaction continues to be subject to a post-closing adjustment and other indemnification obligations. In the event there are any additional

charges associated with this divestiture, we will record and report such amounts through discontinued operations in future periods.

During fiscal 2007, the Company [Walmart] recorded a pretax loss of \$918 million on the disposition of its German operations. In addition, the Company recognized a tax benefit of \$126 million related to this transaction. See Note 6, Acquisitions and Disposals, for additional information about this transaction. The Company plans to deduct the tax loss realized on the disposition of its German operations as an ordinary worthless stock deduction. Final resolution of the amount and character of the deduction may result in the recognition of additional tax benefits of up to \$1.6 billion which may be included in discontinued operations in future periods. The Internal Revenue Service often challenges the characterization of such deductions. If the loss is recharacterized as a capital loss, any such capital loss could only be realized by offset against future capital gains and would expire in 2012. Any deferred tax asset, net of its related valuation allowance, resulting from the characterization of the loss as capital may be included with the Company's non-current assets of discontinued operations.

Additionally, as of February 1, 2007, the Company [Walmart] had unrecognized tax benefits of \$1.7 billion which if recognized would be recorded as discontinued operations. Of this, \$1.67 billion is related to a worthless stock deduction to be claimed for the Company's disposition of its German operations in the second quarter of fiscal 2007, as mentioned above. This increased by \$57 million in the second quarter of fiscal 2008 as a result of the final resolution of outstanding purchase price adjustment claims and certain indemnities in conjunction with the disposition of the Company's German operations. The Company cannot predict with reasonable certainty if this matter will be resolved within the next twelve months.

Bank of America - Real Estate Vehicles

The Corporation held investments in unconsolidated real estate vehicles of \$5.4 billion at both December 31, 2012 and 2011, which primarily consist of investments in unconsolidated limited partnerships that finance the construction and rehabilitation of affordable rental housing and commercial real estate. An unrelated third party is typically the general partner and has control over the significant activities of the partnership. The Corporation earns a return primarily through the receipt of tax credits allocated to the real estate projects. The Corporation's risk of loss is mitigated by policies requiring that the project qualify for the expected tax credits prior to making its investment. The Corporation may from time to time be

asked to invest additional amounts to support a troubled project. Such additional investments have not been and are not expected to be significant.

Bank of America – Stock Options. For most awards, expense is generally recognized ratably over the vesting period net of estimated forfeitures, unless the employee meets certain retirement eligibility criteria. For awards to employees that meet retirement eligibility criteria, the Corporation records the expense upon grant. For employees that become retirement eligible during the vesting period, the Corporation recognizes expense from the grant date to the date on which the employee becomes retirement eligible, net of estimated forfeitures. The compensation cost for the stock-based plans was \$2.3 billion, \$2.6 billion and \$2.0 billion in 2012, 2011 and 2010, respectively. The related income tax benefit was \$839 million, \$969 million and \$727 million for 2012, 2011 and 2010, respectively.

[Compare expense recognition here, with the tax rules in Section 83.]

[Park Sterling Bank] Tax Considerations. Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"), and related regulations generally impose a \$1 million cap on the deductibility of compensation paid to certain executive officers by a public corporation, unless an exception applies. One important exception is for qualified "performance-based compensation." To the extent the Company determines it is in its interests, the Company's compensation programs may be designed to meet the performance-based compensation exception under Section 162(m). However, the Company retains the flexibility to pay compensation that is not eligible for such exception if it is in the interest of the Company to do so.

Compliance with Code.

(a) Code Section 422. All Incentive Stock Options to be granted hereunder are intended to comply with Code Section 422, and all provisions of the Plan and all Incentive Stock Options granted hereunder must be construed in such manner as to effectuate that intent.

(b) Code Section 409A. Except to the extent provided otherwise by the Committee, Awards under the Plan are intended to satisfy the requirements of Section 409A of the Code (and the Treasury Department guidance and regulations issued thereunder) so as to avoid the imposition of any additional taxes or penalties under Code Section 409A.