

# Certified Equity Professional Institute

## **First Annual CEPI Symposium: Today's Changing Equity Compensation World International Issues**

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# Agenda

- Factors to consider when offering equity plans outside the United States.
- Principal tax, legal and regulatory issues.
- Principal operational/administrative issues.
- Interplay of international issues and new forms of equity awards.
- Traps for the unwary and helpful hints for dealing with international issues.

# Factors to Consider When Offering Equity Plans Outside the U.S.

1. The number of employees in each country
2. The provisions in the plan(s) that may be problematic in non-U.S. jurisdictions, including the following:
  - a) Forfeiture/clawback/bad boy provisions
  - b) Non-compete provisions
  - c) Type of shares that can be issued under the plan(s) (*i.e.*, newly issued and/or treasury shares)
  - d) Treatment of part-time employees
  - e) Whether grants can be made to consultants
  - f) Provisions applying to the consequences of termination of employment
  - g) Beneficiary designations
  - h) Stock-for-stock exercise

# Factors to Consider When Offering Equity Plans Outside the U.S. – cont.

3. Whether the grant(s) will be broad-based grants or grants to key employees only
4. If a purchase plan, whether the plan is a 423 plan or not
5. How the company intends to address currency conversion issues
6. How the company intends to administer the plan (involvement of local entities, outside plan administrator, stock broker, etc.)

# Factors to Consider

## When Offering Equity Plans Outside the U.S. – cont.

7. What types of documents the company intends to distribute in conjunction with the grant (*i.e.*, stock option agreement, employee supplements) and whether the company will translate the grant documents for non-English speaking employees
8. Whether the company would like to distribute grant documents, permit option exercises, etc. through an on-line electronic process
9. Whether the companies' accountants will permit the imposition of cashless exercises without resulting in negative accounting treatment
10. The company's tolerance for risk (*i.e.*, grants in China, payroll deductions in Hong Kong, data privacy issues)

# Factors to Consider

## When Offering Equity Plans Outside the U.S. – cont.

11. How funds will be transferred from the local entity to the U.S. company in the context of purchase plans (*i.e.*, book entry or actual hard currency transfer)
12. What kinds of board/committee approvals will be necessary to make a grant, and timing issues for the approvals, if any
13. Whether the company would consider alternative awards where granting stock options may not be practical (*i.e.*, SARs)

# Tax Issues

- Dealing with Early Taxable Event
  - Belgium
  - Netherlands
  - Switzerland
- Dealing with Adverse Social Taxes
  - France
  - Italy
  - Sweden
  - Norway
  - United Kingdom

# Tax Issues – cont.

- Dealing with Withholding Issues
  - Cashless Exercise of Options
  - ESPPs – Through Payroll?
  - Restricted Stock/RSUs – Sale Through Broker, Share Withholding?

# Tax Issues – cont.

- Dealing with Reporting Issues
  - Reporting at Grant (e.g., Malaysia, Belgium)
  - Reporting at Exercise
  - Special Reporting

# Tax Issues – cont.

- Tax Deductions/Chargebacks
  - Impact on Withholding
  - Impact on Social Taxes
  - Impact on Employee Taxation
  - Impact on Labor/Acquired Rights Issues

# Tax Issues – cont.

- Special Tax Regimes/Qualified Plans
  - France – Qualified Plan
  - U.K. – Approved Plan
  - Italy – “Fair Market Value” Grants
  - India – Guideline Filing
  - Israel – Trusteed Plan
  - Singapore – Qualified Plan

# Legal Issues

- Securities Laws
  - Prospectus/Registration
    - Belgium
    - France
    - Italy
    - Japan
    - Thailand

# Legal Issues – cont.

- Securities Laws – cont.
  - Other Securities Filings/Exemption Request
    - Australia
    - Canada/Quebec
    - Israel
    - New Zealand
  - Creative Solutions
    - Cashless Exercise

# Legal Issues – cont.

- Exchange Controls
  - Brazil
  - India
  - Malaysia
  - Russia
  - Thailand

# Labor Issues

- Acquired/Vested Rights
- Challenges to Forfeiture Provisions (e.g., Denmark)
- Inclusion in Severance
- Part-time Issues (e.g., EU Directive)
- Leaves (e.g., Maternity/Paternity)
- Works Councils/Unions
- Payroll Deduction Issues/Banking Laws (e.g., Mexico, Hong Kong)

# Data Privacy

- Registration Requirements
- Consent Issues
- Transfer Issues
- Contract Issues

# Principal Operational/Administrative Issues

- Adopting a fair value method of accounting for equity incentives complicates the administration and recordkeeping
- Under SFAS 123, the quarterly reporting burden becomes a much larger hurdle for plan administrators
- International plans severely complicate the administration

# Principal Operational/Administrative Issues – cont.

- Precise tracking will be necessary
  - Precise grant date, exercise date, cancellations, forfeitures and terminations for each employee
  - Country by country tracking to recognize appropriate tax deductions where available
  - Impact of cross-border agreements

# Bringing the right team together

- Bring members from your finance, internal audit, legal, investor relations, management, HR, stock administration and accounting functions together
- It is advisable to invite your external auditors, software and recordkeeping providers
- Discuss the data requirements, timing and responsibilities with the team

# Suggestions

- Develop a test schedule to simulate the activity and assumptions required to calculate the answers. Include your extended international team
- Review Infrastructure/Company Issues
  - Increased demands on the equity administration team
  - Equity plan data management
  - Dilution and equity allocation management
- Review your software solution
  - Will it be able to support your plan design?
  - Can modifications be made to either the plan design or the software to assist with the administration?
  - Begin discussions early with your recordkeeper providers

# Plan Administration Issues

- Vendors are working towards a solution for alternative plans. Meet with providers to assist them in understanding your requirements
- Vendors may not yet be prepared to provide the sophisticated reporting you'll require. Additional software or custom designed solutions may be required

# Plan Administration Issues – cont.

- Making these plans available on a global basis creates additional issues
  - Performance measure calculations
  - Performance measure tracking by business unit/employee group/country/etc
  - Timing of taxation to employee
  - Timing of taxation to employer
  - Data privacy and transmission challenges

# Plan Administration Issues – cont.

- Responsibility of ensuring the necessary tracking procedures and processes are in place fall to the plan administrators
- Understand what role your auditor can play
- Prepare for Section 404

# Traps for the Unwary

- Deemed Income on U.K. Failure to Collect
- Belgian/Dutch/Swiss Taxable Event
- “Deemed Exercise” on Departure (e.g., Singapore)

# Helpful Hints

- Plan Document “International” Provisions
- Acknowledgment/Disclaimer/Consent/Withholding Language in Grant Agreements
- “Compliance” Survey
- Control of Compliance Centrally

# Interplay of International Issues – New Plan Design

- Restricted Stock vs. RSUs
- Labor Laws Affecting Cutback/Modification of Benefits
- Lack of Tax-Favored Regimes for New Awards (e.g., Canada, France, Italy, U.K.)
- Withholding Issues
- Uncertainty of Tax Results

**Thank you**