



Optimizing Global Stock Plans with Limited Resources

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Optimizing Global Stock Plans

★ Maximize

- Motivation
- Retention
- Morale
- Shareholder satisfaction

★ Minimize

- Taxes
- Compliance costs
- Administrative burdens



Where to Start

- ✦ Evaluate company's needs and goals
- ✦ Preliminary plan design
- ✦ Country-specific analysis of compliance challenges
- ✦ Implementation
- ✦ Prepare and distribute employee communications
- ✦ Ongoing maintenance and evaluation



Initial Steps

- ✦ Step 1: Determine whether you want to have one broad program for all of your locations, or if you want to customize programs in each location.
 - Pros: Customized programs provide greater ability to implement tax-favored programs and to modify programs in light of new or changed laws.
 - Cons: Customized programs increase administrative burdens.



Initial Steps (continued)

- ✦ Step 2: Determine whether you want to administer your programs centrally from one location, or if you want to delegate administration of your programs to each location.
 - Pros: Decentralized administration reduces the burden for the parent company's HR department, and puts administrative duties in the hands of those who are on the ground.
 - Cons: The ability to monitor compliance with local law and plan rules by the parent company's HR department is diminished when administrative function is decentralized.



Initial Steps (continued)

- ✦ **Step 3:** Involve each relevant department in the administration process (HR, Legal, Corporate).
 - Pros: Involving each department ensures that your program works in a streamlined manner.
 - Cons: Can drain resources in each relevant department in the case of a large program.



Award Types

- ✦ Options
- ✦ Purchase rights
- ✦ Restricted stock
- ✦ Restricted stock units
- ✦ Stock appreciation rights



Plan Design for Global Plans

- ✦ Allow committee control
- ✦ Discretion to adopt rules and procedures for local country nuances
- ✦ Discretion to adopt sub-plans
- ✦ Discretion to expand or restrict exercise alternatives
- ✦ Discretion to modify option term restrictions
- ✦ Contingency language for regulatory approvals



Plan Design – Stock Purchase Plans

- ✦ Payroll deductions and cash contributions
- ✦ Interest
- ✦ Holding of contributions
- ✦ Discrimination against part-timers
- ✦ Branch offices
- ✦ Subsidiary designation
 - Check-the-box



Compliance Challenges

- ✦ Tax
- ✦ Securities
- ✦ Foreign exchange
- ✦ Labor
- ✦ Data privacy
- ✦ Communications



Pitfalls

- ✦ Fines imposed on the company and executives
- ✦ Suspension of business operations
- ✦ Private lawsuits
- ✦ Income tax and social insurance liabilities and penalties
- ✦ Criminal sanctions
- ✦ Negative publicity



The Stakes are Higher Now...

- ✦ Volatile stock market
- ✦ Increased shareholder scrutiny
- ✦ Sarbanes-Oxley requires additional focus
- ✦ Global equity compensation programs are more prevalent and regulators are becoming more active
- ✦ Tax authorities are sharing more information, partly as a result of tax treaty obligations



What Triggers Enforcement

- ✦ Government authorities
- ✦ Disgruntled employees
- ✦ Watchdog and other public interest groups



Tax

- ✦ Withholding and reporting
- ✦ Tax-favored programs
- ✦ Mobile employees
- ✦ Social insurance
- ✦ Subsidiary tax deductions
- ✦ Amnesty programs
- ✦ Non-employee arrangements



Tax Compliance Tips

- ✦ Audit withholding and reporting practices
- ✦ Review subplans/approved plans to ensure continued compliance
- ✦ Track mobile employees
- ✦ M&A due diligence
- ✦ Review non-employee arrangements



Securities

- ✦ Securities regulations vary from country to country
- ✦ Offers pursuant to stock plans
 - Public offer vs. private offer
 - Exempt offer vs. non-exempt offer
- ✦ Key facts and circumstances determining regulation
 - Number of offerees (e.g., employees, consultants, franchisees)
 - Value of offer
 - Method of delivery
 - Previous offers
 - Corporate structure



Securities (continued)

- ✦ EU Prospectus Directive
- ✦ Initial compliance (approval, filing, or self-executing exemption)
- ✦ Ongoing compliance (notifications or filings)



Securities Compliance Tips

- ✦ Consider alternative awards
- ✦ Consider modifying the program (e.g., cashless)
- ✦ Evaluate compliance requirements prior to offer of award
- ✦ Consolidate grants
- ✦ Change corporate structure



Foreign Exchange

- ✦ Annual reporting
- ✦ Central Bank scrutiny
- ✦ Involvement of tax authorities
- ✦ Restrictions on holding foreign shares
- ✦ Repatriation of proceeds
- ✦ Holding of payroll deductions



Foreign Exchange Compliance Tips

- ✦ Know the requirements
- ✦ Continue to monitor compliance and thresholds
- ✦ Establish separate accounts for payroll contributions
- ✦ Notify employees of requirements
- ✦ Obtain blanket approvals
- ✦ Consider alternative awards
- ✦ Modify the program (e.g., cashless)



Labor

- ✦ Plan entitlements
- ✦ Severance pay
- ✦ Restrictions on plan termination
- ✦ Leaves of absence
- ✦ Communications
 - Translation requirements
 - Electronic dissemination/signatures
- ✦ Works councils and unions
- ✦ Discrimination (e.g., part-time employees)
- ✦ Classifications of employees (e.g., fixed-term, agency, part-time)



Labor Compliance Tips

- ✦ Vesting ceases at termination or notice of termination
- ✦ Discretion to amend or terminate the plan
- ✦ Avoid regular or frequent grants
- ✦ Awards from parent company not local employer
- ✦ Plan documents should provide that U.S. law governs
- ✦ Obtain employee signatures on award agreements
- ✦ Employment contract should not discuss awards
- ✦ Awards discretionary, not part of salary for calculating severance
- ✦ Translation where employees don't understand English



Data Privacy

- ✦ Data privacy laws restrict the processing and transfer of personal data
- ✦ Personal data is any data that identifies a natural person
 - Examples of personal data: name, address, date of birth, marital status, mental and physical health information, tax ID#
- ✦ EU Data Protection Directive implemented by detailed national legislation in each Member State
- ✦ Many other countries have used the EU Directive as a model when enacting their data privacy legislation



Data Privacy Compliance Tips

- ✦ Review/develop your privacy policies
- ✦ Designate a chief privacy officer
- ✦ Review and approve new types of information added to database
- ✦ Monitor new legal developments for each country
- ✦ Monitor new uses and users of existing data
- ✦ Educate users about how to handle data
- ✦ Be able to explain who has access to which data and why
- ✦ Processing and use of the data must be relevant and limited to a specific purpose



Data Privacy Compliance Tips (continued)

- ✦ Retain data no longer than necessary
- ✦ Data should be correct and current
- ✦ Notify employees of the purpose for the data processing, the identity of data controller (e.g., employer), and third-party recipient of the data
- ✦ Protect data by security measures commensurate with its sensitivity
- ✦ Provide employees with access to the data, the ability to correct errors and the right to object to some types of processing



Employee Communications

- ★ Typical documents to provide to employees
 - Grant notice
 - Annual agreement
 - Enrollment form
 - Prospectus
 - Tax addenda
- ★ Typical provisions
 - Data privacy consent
 - Labor acknowledgement and waivers
 - Tax and withholding and reporting
- ★ Translation requirements



Common Mistakes

- ✦ Underestimating the complexity and the resulting cost
- ✦ Assuming that since others are doing it, it must be legal or permitted
- ✦ Insufficient advance planning/granting before compliance
- ✦ U.S.-centric plan design
- ✦ Failure to budget/predict social tax costs
- ✦ Insufficient staffing or “ownership” of the program
- ✦ Not centralizing compliance
- ✦ Not consolidating/integrating grants



Best Practices

- ✦ Team approach
- ✦ Advance planning
- ✦ Appreciate the complexity of implementing your plan globally
- ✦ Draft your stock plan with global provisions
- ✦ Engage in a cost-benefit analysis
- ✦ Consider the social insurance consequences
- ✦ Coordinate timing of grants
- ✦ Coordinate the compliance process if you have multiple equity plans
- ✦ Involve outside advisors in your compliance program to ensure you are on top of the changes in the law worldwide



Questions?

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