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global equity ORGANIZATION

Keeping up with Global Share Plan Developments

Hong Kong

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Agenda

Introduction

Global Share Plans

Country Updates

Presenter

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Global Share Plans

Award Types

- Stock Option: right to acquire shares at a fixed exercise price (usually equal to FMV of shares on grant date)
- Purchase Plans/ESPP: right to purchase shares with contributions made through payroll deductions
    - Usually at discount from FMV at purchase
    - Purchase at FMV, but receive free shares (matching shares)
- Restricted Stock Units (RSUs): promise to issue shares after vesting conditions are met (time and/or performance based)
- Restricted Stock Awards (RSAs): issuance of shares at grant subject to transfer restrictions which lapse after vesting conditions are met (time and/or performance based)

Global Share Plans

Snapshot: Key Considerations

Areas to consider when rolling out and maintaining global share plans:

- Employee tax treatment
  - Availability of tax-qualified plans/programs
- Company tax treatment
  - Withholding/reporting/employer social tax obligations
  - Availability of tax deduction
- Regulatory issues
  - Securities requirements
  - Exchange/currency controls
- Data privacy restrictions
- Labor law issues

Global Share Plans

Global Themes and Key Areas of Focus

- More and more countries seeking to tax share plan income as employment income
  - By imposing income tax withholding/reporting obligations (Belgium, France, Japan, New Zealand)
  - By imposing social security obligations (Belgium, Brazil)
- Currency control restrictions generally relaxed (Eastern Europe, Latin America), but exceptions continue to apply (China, Vietnam)
- Tax-qualified regimes come and go (France, Denmark)

Global Share Plans

Global Themes and Key Areas of Focus

Asia

- Securities/exchange control filings
- But low tax rates
- Low labor law risks

Europe

- Tax audits
- Social security contributions
- Medium to high labor law risks

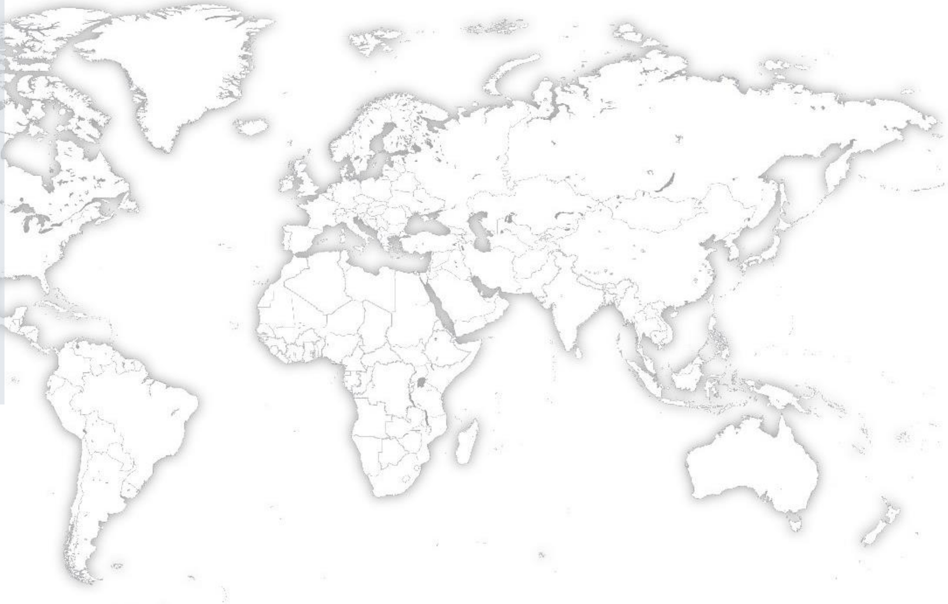
Global Share Plans

Best Practices

- Focus on tax compliance (i.e., compliance with employer withholding/reporting/social tax obligations)
  - Highest audit risk
  - Penalties can be severe
  - **Tip**: Don't leave determination of tax compliance to local entities, but manage centrally
- Conduct compliance assessment and refresh annually
- Prepare plan/grant documents that can be used on global basis
  - Generally not necessary to have country-specific plans or award agreements
  - Protective language important to mitigate labor law risks
  - Review/update annually
- Consider providing employee with material tax information

Country Updates

- China
- Japan
- Philippines
- Saudi Arabia
- Singapore
- Vietnam
- Belgium
- Denmark
- European Union
- France
- United Kingdom



Asia

China

Updates on SAFE Requirements

Background

- Under Circular 7, non-PRC public companies are required to register the underlying equity incentive plan with the State Administration of Foreign Exchange (SAFE) for equity awards granted to "domestic individuals" working in China, followed by ongoing reporting obligations
- Filing in province where issuing company has legal subsidiary
- All funds related to awards must remitted out of/into China through dedicated account
- Company must undertake to immediately repatriate all proceeds to China
- Non-PRC private companies are not authorized to grant share-based awards in China

China

Updates on SAFE Requirements

Updates

- Shanghai SAFE requires new/amendment/re-registrations to be filed with banks if dedicated account (to be) maintained with Bank of China, Citibank or HSBC
- Shanghai SAFE scrutinizing re-registration and quota applications
  - Amounts reported as remitted did not match the records reported by the bank on the quarterly reports
  - Full quota for 2018 not approved due to amounts remitted in 2017
- Banks more closely scrutinizing remittances and may flag employees not included on employee list of SAFE registration
- Payments from terminated employees may not be accepted if the repatriation occurs six months after the termination
- SAFE slow to approve re-registration / quotas due to backlog in some locations
- Beijing SAFE and Shanghai SAFE starting to closely scrutinize quarterly reports
- Beijing SAFE reopens the issue with brokerages firms with different entities for brokerage, booking keeping services and clearance
- Tianjin SAFE no longer requires quarterly reporting

China

Updates on SAFE Requirements

Updates (cont'd)

- On August 15, 2018 CSRC amended the regulations on equity incentive plan to allow non-resident foreigners to receive equity incentive awards
- The Securities Clearing House (CSDC) also promulgated implementation rules to accommodate this change on the same date
- Participating employees (non-resident foreigners) are required to provide an undertaking not to use the brokerage account for the equity incentive to trade other stocks or securities of the China market
- Other implementations rules (e.g., SAFE regulations) are still being developed to accommodate this update

China

Updates on SAFE Requirements

Action Items

- If new applicant, run a cost-benefit analysis on the SAFE registration, taking into consideration of the preferential tax treatment of stock-settled equity awards over cash bonus
- If new applicant, be strategic about where to file and which bank to use for the dedicated account
- Review prior year's approval before re-registration to ensure accurately reflects vesting, quota and remittance data reconciled with bank records
- Submit re-registration applications early (typically will accept starting in October)
- Update employee lists (requires re-registration) to avoid funds for new employees held up by banks
- Promptly notify SAFE if change to broker, acquisition / corporate transaction impacting equity awards, etc. (remittance to wrong entity could have material consequences)

Japan

Potential Changes to Securities Filing Obligations

Background

- Offers of securities to employees in Japan require a prospectus or exemption from registration, unless exemption applies
- Historically, Japanese securities authorities have considered options and purchase plan offerings to be “securities”, but RSUs and other “free” share offerings were not
- Exemption exists if the number of offerees of the securities is fewer than 50 in Japan or the employees receiving the grants work for a 100% owned first or second tier “KK” subsidiary of the issuer

Japan

Potential Changes to Securities Filing Obligations

Updates

- 2017, Japan modified its corporate rules to allow Japanese companies to offer Restricted Shares (historically, they were limited to options)
- Japanese Restricted Shares differ from RSAs or RSUs because they must be “purchased” for a monetary value with “credits” earned or provided by the employer in lieu of compensation
- Japanese securities authorities recently indicated that Restricted Shares are “securities” subject to registration or exemption
- Regulator also opined that RSUs, while not triggering a filing requirement on their own, have to be disclosed in filings that have to be made for other offerings, if granted “in parallel”
- Not quite clear what constitutes parallel offering but recommended to disclose if RSU grant materials distributed within two weeks of offering date of other awards triggering filing requirements
- If parallel offering, need to disclose RSUs in Form 7 or Form 6

Japan

Changes to Securities Registration Exemption Requirements

Action Items

- Review RSU granting practices and report parallel offerings as needed

Philippines

Changes to Securities Registration Exemption Requirements

Background

- Under Securities Regulation Code ("SRC"), registration and prospectus required to offer securities unless an exemption applies
- Offers under share plan to no more than 19 offerees within a 12-month period could qualify as exempt transaction under Section 10.1 of SRC

Updates

- Section 10.1 exemption no longer available for share plan offerings
- All share plan offerings now require confirmation of exemption under Section 10.2
- Section 10.2 exemption confirmation involves cumbersome initial filing, annual reporting, filing fee payments, and new request for exemption to register additional shares
- No regulation or circular will be published as this is the SEC Commission's en banc interpretation of existing legislation

Philippines

Changes to Securities Registration Exemption Requirements

Action Items

- If previously relied on Section 10.1 exemption, need to seek confirmation of exemption under Section 10.2 to continue to grant awards
- If already relying on Section 10.2 exemption, ensure compliance with year-end reporting requirements and filing fee payments
- Consider granting cash-settled awards as an alternative (but beware of fringe benefit tax liability for grants to non-rank-and-file employees)

Saudi Arabia

Changes to Securities Regime

Background

- Historically, companies had to file pre-offer notifications and post-offer reports when granting share-based awards to employees in Saudi Arabia
- Filings had to be made by "Authorized Dealer" (Saudi licensed bank) which charged very high fees

Updates

- Effective April 1, 2018, new securities regime for share-based award offerings:
  - No longer necessary to file pre-offer notification or post-offer reports
  - Quarterly reports required (incl. information on issuer, securities and shares issued in Saudi Arabia) – even if no activity during prior quarter
    - Need to be filed through special online portal but not working yet
  - Authorized Dealer technically no longer required to make filings

Saudi Arabia

Changes to Securities Regime

Action Items

- Complete quarterly reports for any prior offering (no longer necessary to file post-offer report)
- Consider granting awards in Saudi Arabia if previously did not due to high cost to hire Authorized Person

Singapore

Approval for Payroll Deductions

Background

- Ministry of Manpower approval is required for payroll deductions under a share purchase plan for employees covered by Singapore Employment Act (the "EA") (currently, all except managers / executives earning in excess of SGD 4,500 per month)

Updates

- Effective September 2017:
  - Employees' Acknowledgement Form must be signed by 50% of eligible employees or 10 employees (lesser of the two) must sign the form before MOM will issue approval
  - Difficult to have the employees sign the EAF prior to the time offering is made
- Amendents to EA expected to take effect April 1, 2019 will extend the scope of EA to cover all employees
- But MOM also recently announced approval no longer necessary after amendments to EA provided certain conditions met

Singapore

Approval for Payroll Deductions

Action Items

- If currently rolling out share purchase plan or offering to new entities in Singapore, work with advisor to determine how best to obtain EAF sign off / MOM approval
- May want to delay until April 1, 2019 to avoid approval requirement

Vietnam

Experience with SBV Approval

Background

- State Bank of Vietnam (SBV) Issued "Circular 10" on Foreign Direct Investment
- Effective August 13, 2016, new registration and reporting requirements apply for offers of share-based awards in Vietnam
- Circular permits employees to remit currency out of Vietnam, including amounts deducted from payroll (share purchase plan offering possible)
- All proceeds must be repatriated through dedicated account in Vietnam
- Quarterly reporting is required
- Circular arguably does not apply to non-Vietnamese nationals

Vietnam

Experience with SBV Approval

Updates

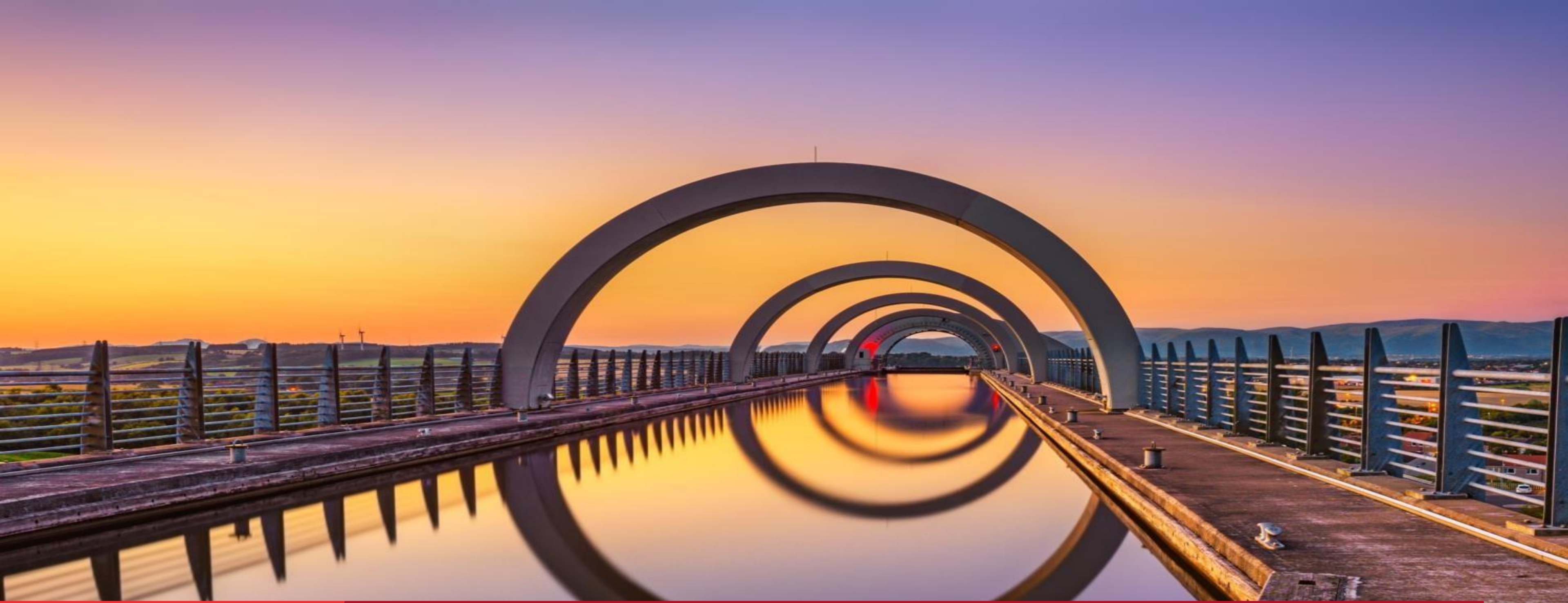
- SBV still struggling to understand share plans, but approvals have been issued
  - Reminiscent of China SAFE of several years ago
- SBV has sent letters to companies with pre-Circular 10 approval to request new approval under Circular 10
- Still little experience with share purchase plans in Vietnam
- Quarterly reports have not been challenging

Vietnam

Experience with SBV Approval

Action Items

- Consider offering share-based awards (including share purchase plans) in Vietnam
- For companies with SBV approval under old rules, prepare new application, open dedicated account, start completing quarterly reports and discontinue annual reporting



Europe

Belgium

New Income Tax Reporting/Withholding Obligations

Background

- Generally, there has been no income tax withholding/reporting required in Belgium on share-based awards, absent reimbursement or local entity involvement
  - Reporting required for options accepted within 60 days of offer date

Updates

- Income tax withholding is expected to be required for all taxable events on or after January 1, 2019
- Income tax reporting is expected to be required for all taxable events occurring during 2018 (first report due in early 2019)

Belgium

Social Security Authorities Release New Position on Social Tax Obligations

Background

- Until now, social security contributions on share-based award income were due only if the local employer was charged for the cost of the awards and/or the local entity was involved in the grant/administration of the awards (e.g., by making grant recommendations)

Updates

- Social Security Authorities recently issued interpretation stating that social security contributions would be due if:
  - Local entity charged for award cost, and/or
  - Awards have been granted to reward employee for worked performed for the local employer or is otherwise linked to the function performed by the employee
- Legal basis for interpretation questionable
- But Social Security Authorities likely to audit for non-compliance

Belgium

New Income Tax Withholding/Reporting and Social Tax Obligations

Action Items

- Prepare for income tax withholding/reporting
- Start withholding/paying employee and employer social security contributions starting on January 1, 2019
  - Employer contributions due at approx. 25% (uncapped) and employee contributions due at 13.07% (uncapped but partially deductible)
- May want to reassess grant practices in Belgium due to high employer social taxes
- May want to consider recharge arrangement to mitigate high employer social taxes with tax deduction
- Update employee tax supplements

Denmark

Pending Changes to Danish Stock Option Act

Background

- Under Danish Stock Option Act (the "Act"), employees involuntarily terminated (except for misconduct) entitled to retain outstanding awards covered by the Act (includes options and RSUs)
- Employees also entitled to receive a pro rata portion of grant they would have been entitled to (if any) in year of termination
- Inconsistent with termination provisions in most share plans
- Act also requires distribution of Danish Employer Statement (in English and Danish) with details of award terms to employees within a month of the grant date

Denmark

Pending Changes to Danish Stock Option Act

Updates

- Pending legislation will amend the Act to permit greater freedom of contract between employer and employee
- Most standard termination provisions in employee share plans will be enforceable
- Involuntarily terminated employees no longer entitled to retain awards or receive pro rata portion of future grants
- If passed, new legislation will apply to grants made after January 1, 2019
- May still need to distribute Employee Statement

Action Items

- If not currently granting in Denmark in light of Act, consider granting after January 1, 2019

European Union

Updates on EU Prospectus Directive

Background

- Public offerings of securities in EU/EEA (mainly share purchase plans) are subject to EU Prospectus Directive which requires filing of EU-compliant prospectus, unless exemption / exclusion applies
- Available exemptions / exclusions:
  - €5 million exclusion
  - 150-person exemption
  - Employee share plan exemption
    - Requires "Information Document" to be distributed to employees but no approval
    - Currently available only for companies incorporated/headquartered in EU/listed on EU exchange

European Union

Updates on EU Prospectus Directive

Updates

- New EU Prospectus Regulation was published in June 2017 which will, in stages, repeal and replace existing EU Prospectus Directive
- Pursuant to Regulation, even issuers not incorporated / headquartered in EU or listed on EU exchange will be able to rely on Employee Share Plan Exemption
  - Effective July 21, 2019
- €5 million exclusion reduced to €1 million
  - Effective July 21, 2018
  - Member states have discretion to increase exclusion up to €8 million

European Union

Updates on EU Prospectus Directive

Action Items

- If historically have relied on €5 million exclusion, monitor member state implementation of increased exclusion; explore alternatives, as necessary
- Need to continue filing EU prospectus in 2018 and early 2019 if cannot rely on exemption/exclusion
- Look forward to 2019 and prepare for availability of employee share plan exemption
  - Review countries to determine if any additional offerings can be made
  - Prepare Information Document for distribution to employees and verify any other country requirements
- Monitor Brexit changes as UK will not be covered by the Regulation after transitional period

France

Changes to French-qualified RSU Regime

Background

- Share plan awards (i.e., Restricted Stock Units) that meet certain requirements may receive special tax and social tax treatment in France, depending on the applicable regime
- For grants authorized as from August 2015, the special RSUs regime is very attractive and known as Macron RSUs regime:
  - Only one-year minimum vesting from grant date and two year minimum sale restriction from grant date
  - No employer social tax at grant but flat social tax at vest for the employer
  - Employees are only taxed at the time of the sale of shares
  - Date on which shareholders last approved share plan or sub-plan under which qualified RSUs to be granted determines the applicable regime
    - If shareholders not required to approve plan under applicable law, date of Board approval is relevant

France

Changes to French-qualified RSU Regime

Updates

- 2018 French Finance Bill introduced revision to the tax regime for qualified RSUs granted under plan or sub-plan approved by shareholders after 12/31/2017 (Macron III) with even more favorable regime
  - Employer social tax is 20% on value of shares at vesting
  - No holding period required to enjoy lower taxation for the employee
  - Taxation at sale of shares
  - For taxable vesting gain up to €300,000/year, gain after a 50% reduction regardless of holding period subject to progressive income tax rate up to 45% ; entire gain subject to 17.2% social taxes
  - For vesting gain in excess of €300,000, subject to progressive income tax rate up to 45% (no reduction for holding period) and to 19.7% social taxes

France

Changes to French-qualified RSU Regime

Action Items

- Review opportunity to grant awards under the most recent and attractive RSUs regime (Macron III regime)
  - If plan will be approved by shareholders (or Board, as applicable) in on or after 1/1/18
- If granting under new regime, update tax supplements, as necessary

France

New Income Tax Withholding Regime

Background

- Historically, there has been no income tax withholding required in France

Updates

- Income withholding requirement will take effect January 1, 2019
- Will apply to non-French-qualified award income, but not to French-qualified award income
- Tax holiday for income earned in 2018 through grant of a tax credit eliminating tax on "2018 non-exceptional income"
  - Not applicable to French-qualified award income
  - Likely not applicable to non-French qualified award income but the tax authorities are flexible to review if such income could be non-exceptional under certain circumstances
- Employer is prohibited to share individual income tax rate as provided by the French tax authorities with third parties (including broker)

France

New Income Tax Withholding Regime

Action Item

- Prepare for income tax withholding on non-French qualified award income starting January 1, 2019
- Consider obtaining tax ruling to clarify application of tax holiday for non-qualified award income earned in 2018
- Update employee tax supplements

United Kingdom

Brexit Impact on Equity Plans

Background

- On June 23, 2016, UK voted to exit from the EU, the so-called "Brexit"
- Implications once UK withdraws from EU could include changes to:
  - Securities laws (e.g., UK may no longer recognize exemptions currently available under EU Prospectus Directive/Regulation)
  - Data privacy laws
  - Anti-discrimination laws

United Kingdom

Brexit Impact on Equity Plans

Updates

- Scheduled departure set for 11 pm UK time on March 29, 2019
- Still no withdrawal agreement

Action Items

- Continue to monitor developments
- Plan to continue complying with EU data privacy, securities laws, anti-discrimination laws pending UK departure from the EU

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