Real World Recharges
TripAdvisor's Quest for Repatriation

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Overview

- TripAdvisor: At a Glance
- Repatriation 101
- Recharge 101
- The Challenges
  - IRC Section 1032
  - Treasury Shares
  - Retroactivity
  - Local Tax Authorities
- Tips for Recharge Roll-Out Success
TripAdvisor® is the world’s largest travel site, enabling travelers to plan and have the perfect trip. TripAdvisor offers trusted advice from real travelers and a wide variety of travel choices and planning features with seamless links to booking tools. TripAdvisor branded sites make up the largest travel community in the world, with more than 200 million unique monthly visitors, and over 100 million reviews and opinions covering more than 2.5 million accommodations, restaurants, and attractions. The sites operate in 30 countries worldwide, including China under daodao.com. TripAdvisor also includes TripAdvisor for Business, a dedicated division that provides the tourism industry access to millions of monthly TripAdvisor visitors.
The genesis

Lot’s o’ cash abroad
Primary goal

Get the cash back to the mother ship w/o incurring a significant US tax liability
Additional objectives

- Create a local deduction
- Reduce US GAAP expense
- Minimal payroll disruption
Reasons to start charging back equity plan costs (2012 PwC Survey)

- To secure local tax deductions: 45%
- Both of the above: 40%
- To mitigate expensing costs: 30%
- Other: 5%

How do these drivers compare?
The World According to TRIP

TRIP’s roll-out of a broad based equity program in 2012 combined with impressive stock price performance presented a prime repatriation opportunity.

Legend
- US Parent
- Foreign Subsidiary w/ Significant Cash Repatriation Opportunities
Why repatriate?
- When the $ comes back to the US it can be
  - Invested by the companies or
  - Spent on providing dividends to shareholders

Why not repatriate (a vast oversimplification)?
- US Corporations only pay US corporate income tax on
  - Profits made inside the US or
  - Foreign profits brought back to the US
- Since the US rate is 35% - one of the highest in the world - there’s a reluctance to bring foreign profits back
- The conclusion of many US-based multinationals is therefore to
  - Park the profits offshore and don’t take the 35% tax hit
A strategy exists that will allow US companies to repatriate foreign earnings tax-free and achieve a local tax deduction via the implementation of global stock award chargebacks. This is also potentially a significant accounting benefit associated with this technique.

A chargeback agreement is an agreement between the US Parent and its foreign subsidiaries which provides that the foreign subsidiary will reimburse the US Parent for the amount of the taxable benefit received by the local employee.

This agreement provides that the foreign subsidiary will incur a cost associated with the equity plan and, in many cases, be entitled to a corporate tax deduction.
The Global Equity Recharge

Benefits

- Reduce global effective tax rate
- Corporate tax benefit for foreign subsidiaries
- Tax-free repatriation of foreign earnings (Treas. Reg. Sec. 1.1032-3)
- Creates a deferred tax asset to offset US GAAP expense

Considerations

- Is a corporate tax deduction permitted?
- Are there requirements to use a specific share type?
- Is cash repatriation desirable?
- What is impact on local withholding and reporting?
- Will the local subsidiary be subject to increased scrutiny for past non-compliance?
- Will the local subsidiaries be resistant to change in procedure?
The Challenges: IRC 1032

The Code

§ 1032. Exchange of stock for property
(a) Nonrecognition of gain or loss

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with respect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

(b) Basis

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.
Under 1.1032-3, IRS uses cash purchase model:
- Parent deemed to contribute cash to Subsidiary
- Subsidiary deemed to purchase stock at FMV from Parent
- Requires IMMEDIATE transfer of the stock by Subsidiary to Employee
The Challenges: IRC 1032

- **Effect on Subsidiary**
  - Subsidiary deemed to have purchased the stock immediately before the transfer to Employee: recognized no gain or loss
  - Subsidiary gets corporate tax deduction without offset

- **Effect on Parent:**
  - Basis in Subsidiary will be increased by the deemed contribution of cash - Section 358
The Challenges: IRC 1032

- The Benefit
  - Repatriate cash without dividend taint
    - A payment in return for shares is specifically protected from taxation under Section 1032
    - Comment: payment of accounting value may not be Section 1032 protected
  - Difficult for IRS to challenge foreign tax credit utilization because company has taken steps to reduce non-US corporate income tax
    - Otherwise, foreign tax payments could be viewed as “voluntary”
The Challenges: Treasury Shares

- Treasury Shares
  - Definition
    - Shares repurchased by the company on the open market
  - Recommended in some locations to secure a corporate tax deduction abroad because such shares demonstrate that an actual “cost” was incurred
  - Required and/or strongly recommended countries include:
    - France
    - Japan
    - Germany
    - Singapore
The Challenges: Treasury Shares

- TRIP’s Treasury Share Dilemma
  - Was securing a 5% deduction in Singapore an efficient use of shares purchased at $70?

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<th>Plan Design</th>
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<td>1. Confirm that equity plan permits use of treasury stock</td>
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1a. If Task = No, draft amendment to plan document
1b. If Task = Yes, submit amended plan document to shareholders for approval

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<th>Tax and Regulatory Compliance</th>
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<td>2. Determine share tracking requirements in foreign locations</td>
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3. Determine how to manage share tracking requirements
4. Discuss ability to move shares from Treasury to settle equity awards
5. Coordinate conference call between Finance, Treasury, Legal and SEC reporting to discuss treasury share requirements

Making Connections, Crossing Boundaries, Expanding Your World
The Challenges: Retroactivity

- Recharge Timing
  - Should be in place at time of grant – but agreements executed after the grant date of awards may be respected
    - Some jurisdictions more forgiving than others
  - Requires periodic cash settlement via inter-company accounts
  - Requires proper accounting at foreign subsidiary level in statutory books and records
The Challenges: Local Tax Authorities

- Audit Activity
  - Deduction generally allowed upon audit if documentation is in place
  - Treasury shares/cost of shares usually questioned
  - Need to show employees recognized ordinary income at stock transfer date, where applicable
  - Need to show wage withholding and/or information reporting at employee level, where applicable
  - Special consideration for employees who relocate internationally between grant and vesting/exercise date of the awards
  - Recent tax authority guidance in Hong Kong, India and Spain
Tips for Rollout Success

- The “Tools” of the Trade
  - Recharge agreement
  - Invoice
    - Should include adequate back-up documentation
  - Journal entries
Tips for Rollout Success

- As with any change management exercise
  - Communication of new responsibilities and procedures is key
- TRIP embraced the recharge rollout as an opportunity to optimize other stock plan compliance practices
  - Developed administrative manual detailing
    - Operational procedures, including clear delineation of new roles
    - Local tax withholding and reporting requirements
    - Links to documentation / information sources
    - Mobility exception procedures
    - Sample recharge journal entries
Thank You

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