Comp Talks: International Equity Award Tips and Traps

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International Equity Awards

- Why: What’s the rationale?
- Where: Which jurisdictions?
- Who: Who will receive awards?
- What: What tax efficiencies are available?
- When: What needs to be done by when?
- How: How best to communicate?

Why?

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Why?

- There may be a trigger:
  - International expansion
  - IPO
- There are many advantages:
  - Demonstrates the importance of international operations
  - Enables companies to offer consistent worldwide benefits
  - Assists with an increasingly mobile workforce
  - Is an important tool in the global competition for talent
- Increasingly, a key priority is tax efficiency

Where?

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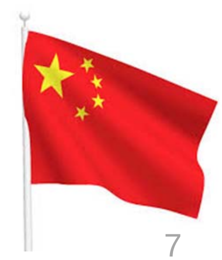
Where - Tips

- Understand the local legal framework
  - Tax: withholding, reporting, employer social taxes
  - Employment: rights on termination, ability to exclude certain employees
  - Securities laws: filings, information to participants
  - Exchange controls: registration, limits

- Ask about upcoming changes
  - General Data Protection Regulation
  - EU Prospectus Regulation

Where: Traps

- Tricky countries: CHINA
  - **Securities Law**: only shares issued in a “public offering of securities” approved by the China Securities Regulatory Commission (CSRC) may be held by a Chinese employee
    - In practice, CSRC approval is very difficult to obtain
    - Workaround: cashless “sell-all” exercise
  - **Currency Exchange Control**: RMB not freely convertible but employees need USD to exercise the options and need to convert the USD proceeds into RMB
    - Registration of options granted with State Administration of Foreign Exchange (SAFE) is required and approval is only given to public companies
    - All option exercises and related currently conversion and tax withholding need to be conducted in designated accounts reportable to SAFE



Where: Traps

- Tricky countries: INDIA
  - **Currency control:** remittance of option exercise price from India to the US must comply with the following:
    - Grant options only to employees or directors of the India company or a subsidiary
    - Grant to be on a uniform basis globally
    - Submission of an annual return to the Reserve Bank of India
    - Repatriation of any sale proceeds of shares obtained to India within 90 days from the date of sale
  - Workaround: a cashless exercise need not comply with the above conditions

Who?

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Who - Tips

- Understand the workforce in the chosen jurisdictions
  - How sophisticated are the local employees?
  - Would the local employees see value in U.S. parent company stock?
  - Is it appropriate to make broad based grants?
  - Should the focus be on executives/managers?

Who: Traps

- Tricky people:
  - Non-employees: may need to rely on different securities laws exemption
  - International assignees: different countries may tax differently and watch out for exit taxes
  - Part-timers: check local employment laws before you exclude

What?

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What tax efficiencies: Tips

- Local tax efficient arrangements
  - UK: Non-qualified options attract income tax together with employee and employer National Insurance Contributions ("NICs"), while tax qualified plans attract lower capital gains tax with reliefs and allowances and no NICs
  - France: Move away from tax qualified options to delivering RSUs as tax qualified free shares

UK Options: EMI

In a nutshell:

- Grant of options with a value up to £250,000 to qualifying employees
- Company must be independent with a presence in the UK, gross assets of <£30 million and <250 full-time employees
- Flexibility to set exercise price below market value

EMI Tax efficiency:

- No income tax on exercise (provided the exercise price equals market value on the date of grant)
- Gains made on sale of the option shares in excess of the exercise price (or market rate value at grant if exercise price set at discount) are subject to capital gains tax

UK Options: CSOP

In a nutshell:

- Grant of options with a value up to £30,000 to employees and full-time directors
- Company must be listed or independent
- Exercise price must not be lower than the market value

CSOP Tax efficiency:

- There is no income tax on exercise providing the option is exercised within 10 years of grant and:
  - at least three years after the grant date; or
  - within 6 months of cessation as “good leaver” or within 6 months of certain cash takeovers
- Gains made on the sale of the option shares in excess of the exercise price are subject to capital gains tax

France: tax qualified free shares

In a nutshell

- Vesting period cannot be less than one (1) year
- If vesting period is less than two (2) years, vesting period plus holding period together cannot be less than two (2) years
- No acceleration on corporate event so as to reduce these periods

Tax efficiency

- No tax or social charges are levied on the local employer at grant
- 30% employer contributions at vesting
- Employee pays tax on sale (although shares are included in personal assets for wealth tax purposes)

What tax efficiencies: Tips

- Recharge arrangements
  - Aim is to generate a local corporate tax deduction
  - Parent charges the spread at exercise/settlement or the grant date fair value to local employing entity
  - Usually requiring written agreement, ideally in place prior to grant
  - In certain jurisdictions you can obtain a local corporation tax deduction without an agreement

What tax efficiency: traps

- Tax efficient sub-plans
  - Potential tax saving
  - Additional costs and reporting requirements
- Recharge agreements
  - Extent of corporate tax deductions
  - Possible impact on withholding and social security payments

When?

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What by when: Tips

- Ensure local systems can capture the process of tax withholding and payroll reporting
  - Determine and communicate to U.S. parent company individual rates or have withholding at highest rate and adjust locally
- Keep a database of participants (both centrally and locally)
  - Track the movement of international assignees for tax withholding and reporting purposes
- Schedule regular compliance reviews
  - Consider using third party administrator

What by when: Traps

- Timing implications of additional steps
  - Tax rulings
  - Registration requirements
- Country specific deadlines for annual filing requirements fall throughout the year
  - Tax
  - Exchange controls
  - Securities compliance

How?

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How to communicate: Tips

- Regular communication with participants: grant/vesting/exercise/delivery
  - Educate participants to build understanding
  - Use most effective method for your business: email, in person, portal
- Regular communication between U.S. parent company HR and payroll and local HR and payroll teams

How to communicate - Traps

- Translations
  - Legally required and/or effectively required
  - Can English language version govern?

- Time zones
  - Date of exercise/settlement
  - Missed withholding obligations

- Currency
  - Make employees explicitly aware of exchange rate risks

Questions????

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