TAPESTRY

INTERNATIONAL SHARE PLANS

TRAINING MANUAL

Module 3 – Global Plan Types and Structures

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Plan Types and Plan Structures

This is a short module. In this module we will look at:

- Whether a company can have one plan to operate around the world.
- What are the different plan structures most common for operating global plans?
- How can you help employees once they become shareholders?

1 Plan Types

As you will know by now there are many different types of share plan. These can involve:

- options
- conditional free shares
- savings related share plans
- phantom plans
- employee share purchase plans
- performance share plans
- restricted stock
- restricted stock plans
- share match plans
- and many more!

It is possible to operate any of these kinds of plan on a global basis. However, it is the case that certain types of plan are more complicated and expensive to operate on a global basis than other types. For example any plan which involves regular remittances of currency around the world on a regular basis is going to be more expensive to administer than one which does not. In this module we are going to look at how to take one of the above plans, say a performance share plan or a share match plan, and set it up so that the company can make those awards globally. We are not going to look at specific plans as such. These modules focus on issues specific to global plans.

2 Plan Structures

In addition to choosing the type of plan there are different **structures** one can adopt for global plan management. The main types are as follows:

2.1 Home country plan

Some companies simply take the plan they already operate in their home country and try and operate that plan on a global basis. The advantages of this approach are:

- that the people operating the plan are familiar with the structure
- they are able to roll out a uniform plan globally
- employees participate in one plan and do not have to come out of it if they move to another country.

However, most plans designed for a particular country are designed to satisfy the particular requirements of that country. For example a UK tax approved plan is drafted so that it complies with the relevant tax legislation (ITEPA) which governs that kind of plan. A US 423 employee stock purchase plan is designed specifically to meet US rules. Some of the requirements would not need to be set for a plan operating outside the US.

When operating out of the UK all that UK tax legislation is irrelevant and similarly US/US tax legislation and so it is not appropriate to use a plan designed for the UK outside of the UK or US outside the US.

Also, if a particular national plan is operated globally, that may offend some national sentiments within the company. For example a French subsidiary may object if the company attempts to operate a plan in France which, while in the style of a UK tax approved plan, does not meet the French tax requirements to attract favourable treatment in France.

A home country plan can be extended if it is not tax approved. This approach is sometimes used for executive plans or at the start of a process of inviting people outside the home country to have shares.

2.2 Local plans

A company may choose to operate a different plan in each country specifically designed for that country.

The advantage of this is that the requirements of each country will be met and any available tax breaks in each country will be achieved.

However the disadvantage is that this will create many different plans which will not be consistent and which will be very difficult to manage on a global basis. For example a mobile employee moving from one country to another will have to move from one plan to another which will be difficult to manage and unattractive to the employee.

This type of approach is now very rare.

2.3 Global plan

Usually the best approach is to develop a plan which is designed to be global. What this means is that the plan is not constrained by any particular national tax law, not even the home country, and is designed to be flexible enough to work in a wide range of countries. The definitions and details in such a plan are designed to be flexible. For example in the UK there is a very specific definition of redundancy. That definition is created by English statute and case law. That definition will not, however, apply in any other country. The company may want to have a general global concept of redundancy but this must not be so narrowly defined that it will not work on a global basis. This means that many provisions in a global plan need to be carefully drafted to enable sufficient flexibility and local application. It also means that the plan may be operated slightly differently in order to fit with local market conditions. However the company is able to maintain a single plan with a single set of principles.

The main advantage is that an employee can stay in the same plan even though he may change country location. This type of plan structure should also help to keep costs down.

2.4 Umbrella Plan

There is therefore a tension between wanting global consistency and wanting to take advantage of regional opportunities. Most companies in fact adopt a global plan with one or two variations which apply to particular countries. For example one of the main things which a company wants to take advantage of is local tax qualified arrangements. What that means is in some countries if you operate a plan in a particular way you may get favourable tax treatment. Therefore it may be worthwhile to ensure that the plan is operated in that way in that jurisdiction. Sometimes the company may not think it is worth the effort but sometimes it may be - that depends on the numbers of people in that jurisdiction and the value of the tax break. As a result there may be a global plan with separate schedules, for example, for the United States, for the UK and for France. This way most of the plan is consistent globally but in certain specific ways (as set out in the relevant schedule) the plan will work differently in those three countries.

These variations may take different forms - for example, the plan might contain a separate schedule setting out the different requirements which would apply in France, like an increased holding period.

There may be another schedule – called cash equivalent awards - which specifies how participants will receive cash instead of shares on settlement.

The plan needs to enable the company to vary the plan as is required in any given set of circumstances.

2.5 Best approach

It does depend on many factors, particularly the company's objectives, as well as type of plan (executive/employee), number of employees and number of countries and which countries.

3 Nominee or brokerage arrangements

The whole purpose of operating a share plan is to deliver shares to employees. However, if the employees are scattered around the world then it can be very difficult for those employees to be able to hold those shares at the time of vesting. For example it may be very difficult in Botswana to set up a brokerage account to hold a UK or US company shares. It may also be very difficult to receive dividends in Stirling or to give voting instructions through a Botswana brokerage account.

Therefore, you should consider what is going to happen once the shares vest when you first set up the plan!

Some companies do still send share certificates to employees all around the globe but there are obvious problems with this. For example the share certificates may get lost and if a company sends cheques in relation to dividend payments those cheques may not be worth cashing if the amount of the dividend is lower than the cost of the bank charges.

Another alternative is that at the time of vesting the shares are simply sold and money is paid out to people around the world. The problem with this approach is that there is no ongoing shareholding and therefore no continued alignment between employees and shareholders.

Therefore what companies tend to do more and more is to establish some arrangement which can hold shares post-vesting. This often involves a brokerage account or nominee. The purpose of the nominee is to perform the following functions:

- hold shares
- receive dividends
- enable dividend reinvestment
- provide a mechanism for voting instructions
- provide a mechanism to sell shares
- provide a mechanism to deliver cash to participants on the sale of shares

These arrangements are extremely convenient for companies and for shareholders and work very well. From a legal point of view they involve the provision of services by a company or a provider which may need to be checked in each country it is offered. (There is high-level coverage on the database in the legal reports).

4 Action!

Which plan structure has your company gone for, or has it got different plan structures for different programs?