

China

This information is taken from the GlobalSharePlans database and should be treated as regulatory and tax information only. We would strongly recommend getting the information signed off specifically for any individual share plan. The advice is also based on a situation where the local company is not charged the cost of the plan and does not contribute to the costs in any way.

SECURITIES LAWS

Are there any securities filings, registrations or government consents required for an offer of shares by a parent company to employees of its subsidiary in China?

1. Where those shares are offered for consideration i.e. there is a price to pay for the shares

Where there are less than 200 employees there will generally be no securities laws issues. Where there are more than 200 employees and the company is offering shares, there is a risk that the offer will be considered a public offer. In this case, the company will need to deal with any securities laws issues along with the SAFE registration and exchange control issues .

2. Where the shares are offered for free

Where there are less than 200 employees there will generally be no securities laws issues. Where there are more than 200 employees and the company is offering shares, there is a risk that the offer will be considered a public offer. In this case, the company will need to deal with any securities laws issues along with the SAFE registration and exchange control issues.

3. Where only a cash based plan is offered

No, there are no securities law restrictions or registrations/filing required for an employee offer.

EXCHANGE CONTROLS

Are there any exchange control restrictions/notifications?

1. Where shares are offered for consideration i.e. there is a price to pay for the shares and therefore funds are remitted from China to acquire the shares

If the plan involves the offer of shares to Chinese nationals or there is to be a remittance of funds from China, SAFE approval is required. The SAFE approval (amongst other requirements) will require personal meetings with local SAFE bodies, the production of Plan and corporate documents (in Chinese) and the opening of a fiduciary account in China run by the local company. It is likely to take several months to complete. Local advice is essential. An exchange control permit is also required to transfer and/or receive funds and the maximum amount which can be converted into Chinese CNY is the equivalent of \$50,000 per year.

2. Where the shares are offered for free and therefore there will be no remittance from China

If the plan involves the offer of shares to Chinese nationals or there is to be a remittance of funds from China, SAFE approval is required. The SAFE approval (amongst other requirements) will require personal meetings with local SAFE bodies, the production of Plan and corporate documents (in Chinese) and the opening of a fiduciary account in China run by the local company. It is likely to take several months to complete. Local advice is essential. An exchange control permit is also required to transfer and/or receive funds and the maximum amount which can be converted into Chinese CNY is the equivalent of \$50,000 per year.

3. Where the employee receives a cash transfer into China under a cash based plan

The participant will need to notify the State Bank of China on the receipt of funds particularly if the amount is more than US\$50,000 in CNY equivalent. If funds of the CNY equivalent of more than \$50,000 are received by a Chinese

national the employee will need to apply for further exchange control permits which can be complex.

DOCUMENTATION

Is there a legal requirement to provide employees with a copy of the Plan rules?

There is no legal requirement to provide participants with a copy of the Plan rules. However, participants should be provided with a copy of the Plan rules to avoid misinterpretation of any particular restriction of their rights under the Plan rules.

Is there a legal requirement to translate the Plan rules or related documents into the local language?

There is no legal requirement to give the participants a translated version of the Plan rules or related documents. Although, if there is any doubt as to whether all the participants understand the rules, it is recommended the participants be provided with a translation of the rules.

Are there any issues with the use of electronic communications?

The legal, securities and other advice in this report applies equally to communications made electronically as to written (hard copy) communications.

SALARY DEDUCTIONS

Under an option plan or a share purchase plan where employees can sometimes be given the option to save towards the exercise or purchase price, can the local company make deductions from the employees' after tax salary to make contributions under the Plan?

The local company can make deductions from the participants salary in order to contribute to the Plan. These must be agreed to in writing by the participant and payroll deductions can only be carried out by the employer.

EMPLOYEE CONSULTATION

Are there any obligations to consult or inform any works councils or similar bodies before introducing the Plan?

There is no legal obligation to consult works councils before implementing the Plan unless the employer is bound to do so under the terms of an industrial agreement or collective bargaining arrangement.

EXCLUSION WORDING ACQUIRED RIGHTS

Are there any requirements to prevent the Plan being incorporated into the employee's employment contract?

While there is an acquired rights risk that benefits under the Plan may be included as a permanent part of the employment contract (for example being recovered in an unfair dismissal claim), a specifically drafted exclusion clause is likely to protect the parent company from any claims on severance of employment.

DATA PROTECTION REGISTRATION

Will the operation of the Plan require the Company to make a specific data protection filing or registration?

There is no requirement to make a specific data protection filing for the Plan.

GOVERNING LAW CLAUSE

Will a provision stating that there is a specific governing law be effective in China?

Where there is a choice of law clause in the Plan rules, even though the local courts may still exercise jurisdiction over the Plan, they will generally respect the choice of law clause if there is sufficient nexus to the parties, or is a neutral choice and the clause is not designed to circumvent any law nor against public policy.

USE OF TRUSTS

Does the use of trusts affect the advice given above?

The use of a trust does not generally affect the advice given above, however if it is intended to use a trust in connection with the Plan it is always advisable to seek confirmation that this is the case.

TREASURY SHARES

Does the use of treasury shares rather than newly issued shares affect the advice given above?

The use of treasury shares will not affect the advice given above.

INCOME TAX PAYABLE

Option Plan

There is no tax on grant.

There is no tax when the options become exercisable.

Income tax is payable on exercise, on the difference between the market value of the shares and the option price.

The maximum rate applicable is 45%.

Share Purchase Plan

There is no tax on award.

Income tax is payable on purchase on the difference between the fair market value of the shares and the purchase price.

The maximum rate applicable is 45%.

Restricted Stock Plan

There is no tax on award.

Income tax is payable on the value of the shares on vesting.

The maximum rate applicable is 45%.

Restricted Stock Unit Plan

There is no tax on award.

Income tax is payable on the value of the shares on vesting.

The maximum rate applicable is 45%.

Cash Plan

There is no tax on award.

On receipt income tax is assessed on the cash payment.

The maximum rate applicable is 45%.

TAX ON SALE OF SHARES

Any chargeable gain made on the sale of shares is taxed at rates up to 20%.

CGT is only payable by non-Chinese nationals if they have been resident in China for over 5 years.

WITHHOLDING OBLIGATION

Option Plan

Withholding is required by law.

Share Purchase Plan

Withholding is required by law.

Restricted Stock Plan

Withholding is required by law.

Restricted Stock Unit Plan

Withholding is required by law.

Cash Plan

Withholding is required by law.

SOCIAL SECURITY

Option Plan

Employee

Social taxes are levied on the employee at a rate of 18.5% on the amount recognized as taxable income.

For regular income there is an upper earnings limit on income subject to employee social taxes of CNY 100,000 per year. Employees may already have exceeded this limit with their regular income.

Local Company

The employer is liable to pay social taxes on employee taxable income under the Plan. The employer pays social taxes at a rate of 50%, capped on earnings of CNY 100,000 per year.

Share Purchase Plan

Employee

Social taxes are levied on the employee at a rate of 18.5% on the amount recognized as taxable income.

For regular income there is an upper earnings limit on income subject to employee social taxes of CNY 100,000. Employees may already have exceeded this limit with their regular income.

Local Company

The employer is liable to pay social taxes on employee taxable income under the Plan. The employer pays social taxes at a rate of 50%, capped on earnings of CNY 100,000.

Restricted Stock Plan

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Local Company

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TAX NOTES

The actual rates of social security and tax can vary slightly by region and specific payroll advice should be taken in each individual Chinese Region to determine exact rates. In addition, many social taxes are capped at low rates and the employer and employee may already be paying the maximum amount. Social taxes include contributions for:

- Pension funds
- Collective housing funds
- Unemployment insurance
- Medical insurance

RECHARGE SECTION

If the local company is recharged any costs relating to the plan, the local company can normally claim a deduction for:

- Any costs of administering the Plan.
- The cost of the benefit (in shares, discounts or cash) given to the employees.
- Any reasonable costs connected with the Plan.

A recharge of the costs of the Plan to the local company makes no difference to the tax treatment as set out above.

While the local company ought to be able to claim a deduction for any reimbursement of costs to the parent, the law on deductions and withholding is unclear and may be subject to the interpretation of local tax bureaus. Local advice is recommended

This information was last updated on January 28, 2010.