

Labour and Employee Benefits Handbook 2006/07

Volume 2: Employee Incentives

Country Q&A

Mexico

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1.

Is it common in your jurisdiction for employees to be offered participation in an employee share plan, involving either the grant of share options or the purchase of shares?

It is common practice for multinationals to offer participation in an employee share plan to employees sent from abroad to work in a Mexican company. Employee share plans are common practice only in Mexican companies which are subsidiaries of foreign corporations. **[Both share options and plans involving the purchase of shares are used].** Note to author: Are employee share plans common in Mexican companies?

2.

Is it lawful to offer participation in an employee share plan where the shares to be acquired are shares in a foreign parent company?

There are no restrictions on offering shares in a foreign parent company under an employee share plan.

3.

What are the main types of plans available? For each plan, please set out its main features, including any tax advantages available to participants, and provide an indication of its popularity.

Share option plan

Note to author: Which types of company can offer this plan (for example, do they have to be listed or not under the control of another company)? Is it a discretionary plan or must it be offered to all employees on the same basis?

All companies can offer this plan whether or not they are listed or under the control of another company. The plan does not have to be offered to all employees.

Under this plan, employees are given a right to acquire a specified number of shares and the purchase terms are beneficial for employees because the shares are offered at a discount price or at a price in a given date which is usually lower than the price at the date of exercising the option.. **Note to author: Is there a maximum value of shares over which employees can hold options? [Share options can be granted with an exercise price that is at, below or above market value.]** The purchase terms are beneficial for the employees. **Note to author: Please explain how the purchase terms are beneficial for employees.**

No tax is payable when share options are granted. When the options are exercised, income tax is payable on the difference between the market value of the shares at grant and the market value on exercise. If options are granted with an exercise price below market value, an income tax charge also arises on the amount of the original discount. Individuals pay income tax at a progressive rate ranging from 3% to 29%, depending on the amount of income. The employer must withhold the income tax, since the benefit to employees is considered as part of their salary.

When the shares are sold, the employees themselves must pay income tax on any capital gain that arises. **[However, individuals are exempt from income tax on capital gains if the sale takes place on authorised stock or securities markets and certain rules are followed. The rules published by the Tax Administration Bureau contain a list of shares that are entitled to the benefit. They are all shares of Mexican companies placed in authorized security markets]** **Note to author: Please explain to what rules you are referring.**

Share option plans are the most common type of employee share plans. **Note to author: Are there any specific types of company among which these plans are particularly popular? [No there are not specific types of companies where these plans apply].**

Stock unit plan

Note to author: Which types of company can offer this plan? [The plan is offered on a discretionary basis to certain key employees in any kind of Mexican companies].

Under this plan, employees are awarded "units", which represent a right to receive shares in the future if certain conditions are met. The conditions are usually based on time criteria.. **Note to author: Are these conditions usually performance or time-**

based criteria? [Employees have no voting rights and cannot receive any dividends until these vesting conditions are fulfilled.]

No tax is payable when employees are awarded the units. When the employees acquire the shares, income tax is payable on the difference between the market value of the shares at grant and the market value on exercise. Income tax is paid at a progressive rate (*see above, Share option plan*) and is withheld by the employer.

When the shares are sold, the employees themselves must pay income tax on any capital gain that arises **[unless they are exempt from doing so (*see above, Share option plan*)].**

Stock unit plans are frequently used, but share options plans are used more often. **Note to author: Are these plans used more or less often than share option plans? Are there any specific types of company among which these plans are particularly popular?**

Note to author: From the description, this plan has the same key elements and tax treatment as a share option plan. What are the differences?

There are no taxation differences between the share option plans and the stock unit plans.

Cash-based plan

Note to author: Which types of company can offer this plan? [The plan is offered on a discretionary basis to certain key employees].

This plan mirrors the economic effects of a share option plan or a stock unit plan. This plan can be offered on discretionary bases (*see above*). However, employees are entitled to a cash payment under the plan. **Note to author: Please explain in more detail how this plan works. In what circumstances is the cash payment awarded to employees? The cash payment is usually awarded to key employees.** At no stage do they have any interest in shares or a right to acquire shares.

Employees are taxed on the total amount of the cash award. [Tax is only withheld if the Mexican company reimburses a foreign parent company for the amount awarded to the Mexican company's employees], as per an agreement between both companies. **Note to author: The meaning of the information in brackets is not clear. Please explain in what circumstances a Mexican company would reimburse a foreign parent company.**

Cash-based plans are not very common.

4.

Is consultation or agreement with, or notification to, employee representative bodies required before the employee share plan can be launched?

There is no legal requirement to obtain consents, make filings or consult with employees' organisations before a share plan is introduced. This is because share

plans are not implemented as a general employment benefit, but rather as a particular benefit for certain key employees. Specific invitations are usually made to employees before a plan is launched.

5.

Do exchange control regulations prevent employees sending money from your jurisdiction to another to purchase shares under an employee share plan?

There are no exchange control regulations in Mexico.

6.

Do exchange control regulations permit employees to repatriate proceeds derived from selling shares in another jurisdiction?

There are no exchange control regulations in Mexico.

7.

What is the tax position when an employee who is ordinarily resident in your jurisdiction at the time of grant of the share plan leaves your jurisdiction before exercising the option? Will double taxation apply?

If an employee is no longer resident in Mexico when exercising an option, tax is not payable in Mexico unless the employee has a Mexican source of wealth. For income tax purposes, employees' source of wealth is considered to be located in Mexico if they receive their salaries (which includes benefits under share option plans) for work carried out within Mexico. The benefit is treated as arising when it is exercised. **Note to author: Is the benefit treated as arising when the option is granted (in which case a Mexican tax charge will arise) or when it becomes exercisable? Is there any apportionment?** In these circumstances, a double tax charge can be avoided if a double taxation treaty exists between Mexico and the jurisdiction in which the option is exercised.

8.

For the offer and participation in an employee share plan, what:

- **Prospectus requirements (if any) need to be completed and by when? What exemptions (if any) are available?**
- **Other regulatory consents or filings (if any) need to be completed and by when? What exemptions (if any) are available?**

Prospectus requirements

There are no prospectus requirements.

Note to author: The following paragraph has been moved to *Question 3*.

Other regulatory consents and filings

No regulatory consents or filings are required to implement an employee share plan.

9.

Briefly summarise any proposals for reform of the law on employee incentives in your jurisdiction.

There are currently no proposals to reform the law on employee incentives.