Mexico

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GENERAL

1. Is it common for employees to be offered participation in an employee share plan?

Multinational companies located in Mexico commonly offer their employees participation in employee share plans. This is particularly the case for companies in the financial sector.

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 companies offering employees shares issued by a foreign parent company or any other subsidiary foreign company.

SHARE OPTION PLANS

3. Please list each type of share option plan operated in your jurisdiction (if more than one).

Standard share option plans are operated in Mexico. Some minor variations are observed from one plan to another related to employee participation, vesting periods and so on.

4. In relation to the share option plan:

- **What are the plan's main characteristics?**
- **Which types of company can offer the plan?**
- **Is this type of plan popular? If so, among which types of company is this plan particularly popular?**

Share option plan

Main characteristics. In share option plans employees are given the right to acquire newly issued shares, treasury shares or existing shares of a foreign parent company when options vest. In share option plans linked to share purchase plans (*see Questions 8 to 12*), options (matching share options) are granted in certain proportion to shares purchased by the participant. If the purchased shares are held for a certain period of time and the employee remains in the company, the options become exercisable.

Types of company. All types of company can offer share option plans.

Popularity. Share options plans are the most common type of employee share plan, particularly among multinational companies located in Mexico.

5. In relation to the grant of share options under the plan:

- **Can options be granted on a discretionary basis or must they be offered to all employees on the same terms?**
- **Is there a maximum value of shares over which options can be granted, either on a per-company or per-employee basis?**
- **Must the options have an exercise price equivalent to market value at the date of grant?**
- **What are the tax and social security obligations arising from the grant of the option?**

Share option plan

Discretionary/all-employee. Share options can be granted on a discretionary basis and not to all the employees.

Maximum value of shares. There is no restriction or regulations for a maximum value of shares. Usually, the maximum value is the market value.

Market value. Shares under options are offered at market value or at a discount to market value.

Tax/social security. No tax or social security implications arise when options are granted.

6. In relation to the vesting of share options:

- **Can the company specify that the options are only exercisable if certain performance or time-based vesting conditions are met?**
- **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**

Share option plan

Exercisable only on conditions being met. Commonly, options vest when certain time-based conditions are met, such as either:

- The fulfilment of performance over a certain period.

- Continuous employment with the company or group of companies for a given time.

Tax/social security. No tax consequences arise by the vesting of the share options.

7. Do any tax or social security implications arise when the:

- **Option is exercised?**
- **Shares are sold?**

Share option plan

Tax/social security on exercise. For tax purposes, benefits under share plans are treated as salary and generate income tax at the time the option is exercised (whether or not the grantor is the employer or a foreign parent company).

The employer must withhold the income tax when the options are exercised. The tax base is the difference between the market value of the shares at exercise and the price established when the option was granted. Individuals pay income tax at progressive rates from 1.92% to 28%. The employer pays the withholding tax to the tax authorities on a monthly basis.

The employer must report in February each year the income received during the previous year by its employees under share plans.

When a reimbursement to the parent company is made by the local employing company (chargeback), the employing company is entitled to take the corresponding deduction or credit from its income tax base and flat rate business burden. Social security obligations arise only when there is a chargeback to the local company, because benefits from the exercise of the option are considered to be of a labour nature.

The employing company must file statements to the social security system only in respect of those payments received by the employees not exceeding the quotation basis limit in the social security law (25 times the daily minimum salary). These statements must be filed within five days after the end of the two-month period during which the employee received the benefit.

Tax/social security on sale. Employees must directly pay the capital gains tax derived from the sale of shares as well as tax on dividends obtained from shares. Individuals are exempt from income tax on capital gains if the sale of listed shares takes place on authorised security markets in conformity with the Securities Market Law and certain other requirements are met.

There are no social security consequences after the sale of the shares or for dividends received by participants in share option plans.

SHARE ACQUISITION OR PURCHASE PLANS

8. Please list each type of share acquisition or purchase plan operated in your jurisdiction (if more than one).

The following types of share acquisition or purchase plans are operated:

- Share acquisition plans.
- Share unit plans.

9. In relation to the share acquisition or purchase plan:

- **What are the plan's main characteristics?**
- **Which types of company can offer the plan?**
- **Is this type of plan popular? If so, among which types of company is this plan particularly popular?**

Share acquisition or purchase plans

Main characteristics. Employees are granted the right to acquire shares at a discounted price. After the purchase, the participant becomes the unrestricted owner of the shares.

Types of company. This kind of plan is used by all types of companies.

Popularity. This type of plan is second in popularity among the companies setting up share plans for employees after the share option plan (*see Question 4*). These plans are particularly popular among multinational companies located in Mexico.

Share unit plans

Main characteristics. Employees are awarded units which represent a right to receive shares in the future if certain conditions are met. These awards are typically granted for free to employees. Employees have no voting rights and cannot receive any dividends until the vesting conditions are fulfilled.

Types of company. All types of companies can offer these plans.

Popularity. These plans are not commonly used.

10. In relation to the initial acquisition or purchase of shares:

- **Can entitlement to acquire shares be awarded on a discretionary basis or must it be offered to all employees on the same terms?**
- **Is there a maximum value of shares that can be awarded under the plan, either on a per-company or per-employee basis?**
- **Must employees pay for the shares and, if so, are there any rules governing the price?**
- **Is any tax or social security contributions payable when the shares are awarded?**

Share acquisition or purchase plans

Discretionary/all-employee. Shares can be awarded on a discretionary basis and normally are only offered to certain employees.

Maximum value of shares. There are no maximum values for shares. However, under this type of share plan, shares are usually offered at a discounted price.

Payment of shares and price. Employees pay to acquire the shares through either:

- Commensurate salary reductions.
- The allocation of certain bonuses and awards to the acquisition.

Salary reductions cannot exceed 30% of the difference between the employee's salary and the minimum official salary. The employing company must obtain the consent of the employees before discounting any amount from salaries.

Tax/social security. There is no tax or social security consequence when shares are awarded if the awards are subject to forfeiture.

Share unit plans

Discretionary/all-employee. Share units can be awarded on a discretionary basis and normally are offered to certain employees.

Maximum value of shares. Share units are typically granted for free.

Payment of shares and price. Employees are not requested to pay for the share units.

Tax/social security. There is no tax or social security consequence when shares are awarded if the awards are subject to forfeiture.

11. In relation to the vesting of share acquisition or purchase awards:

- **Can the company award the shares subject to restrictions that are only removed when performance or time-based vesting conditions are met?**
- **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**

Share acquisition or purchase plans

Restrictions removed only on conditions being met. The vesting of shares can be subject to performance or time-based conditions. Importantly, when rights are subject to forfeiture, the rights are deemed as not already owned by the beneficiary.

Tax/social security. If shares are granted by a foreign parent company there are income tax implications as the employing company must withhold the tax on the difference between:

- The discounted price of the shares.
- The market price of the shares at vesting.

The reporting, filing and social security obligations are the same as for share option plans (*see Question 7, Share option plans*).

Share unit plans

Restrictions removed only on conditions being met. The vesting of shares can be subject to performance or time-based conditions.

Tax/social security. If shares are granted by a foreign parent company, the employing company must withhold income tax on the market value of the shares.

The reporting, filing and social security obligations are the same as for share option plans (*see Question 7, Share option plans*).

12. What are the tax and social security implications when the shares are sold?

Employees must directly pay the capital gains tax derived from the sale of shares as well as the tax on dividends obtained from shares (this applies to the sale of shares from share acquisition/purchase plans and share unit plans). Individuals are exempt from income tax on capital gains if the sale of listed shares takes place on authorised security markets in conformity with the Securities Market Law and certain other requirements are met.

There are no social security implications for the sale of the shares or for dividends received by participants in share option plans.

PHANTOM OR CASH-SETTLED SHARE PLANS

13. Please list each type of phantom or cash-settled share plan operated in your jurisdiction (if more than one).

Cash-based plans are operated in Mexico.

14. In relation to the phantom or cash-settled share plan:

- **What are the plan's main characteristics?**
- **Which types of company can offer the plan?**
- **Is this type of plan popular? If so, among which types of company is this plan particularly popular?**

Cash-based plans

Main characteristics. These plans mirror the economic effects of a share option plan or a share acquisition or purchase plan. The value of the shares at grant and at exercise is notional and at no stage do participants have any interest in shares or right to acquire them.

Types of company. The plan applies to all kinds of companies.

Popularity. Cash-based plans are not very common.

15. In relation to the grant of phantom or cash-settled awards:

- **Can the awards be granted on a discretionary basis or must they be offered to all employees on the same terms?**
- **Is there a maximum award value that can be granted under the plan, either on a per-company or per-employee basis?**
- **Is any tax or social security contributions payable when the award is made?**

Cash-based plans

Discretionary/all-employee. Cash-based plans can be granted on a discretionary basis.

Maximum value of awards. There is no maximum or minimum value for awards.

Tax/social security. Benefits under cash-based plans are not subject to tax and social security contributions when the award is made. Tax consequences arise when the award is paid out.

16. In relation to the vesting of phantom or cash-settled awards:

- **Can the awards be made to vest only where performance or time-based vesting conditions are met?**
- **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**

Cash-based plan

Award vested only on conditions being met. Awards can be made to vest only where performance or time-based vesting conditions are met.

Tax/social security. There are no tax or social security consequences at vesting and the benefits are subject to tax and social security contributions when they are effectively paid to employees.

17. What are the tax and social security implications when the award is paid out?

Cash-based plan

Employees are taxed on the total amount of the cash award. Income tax and social security obligations arise when both:

- The plan is paid out by the foreign parent company.
- The Mexican company reimburses the foreign parent company for the amount awarded.

If the plan is paid out directly by the Mexican employer income tax must be withheld and the reporting, filing and social security obligations are the same as for share option plans (*see Question 7, Share option plans*).

In other cases, income tax is payable directly by the employee and there is no obligation for the local company to report the employee's income.

GUIDELINES

18. Are there any institutional, shareholder, market or other guidelines that apply to any of the above plans, and which types of companies are subject to them? What are their principal terms?

There are no institutional, shareholder, market or other guidelines that apply to any of the plans outlined above.

EMPLOYEE REPRESENTATIVES

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

Consultation, filing or notification to employee representative bodies is not needed before, during or after the plan is implemented. Share plans are not customarily implemented as a general employee benefit but as a particular benefit for certain key employees. Specific invitations are usually made to employees before the plan is launched.

EXCHANGE CONTROL

20. 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.

The more important consequences are related to investments on preferential tax regimes but these rules do not apply if individuals demonstrate absence of control in the investment abroad. Absence of control in the investment means that taxpayer cannot decide the moment of the distribution of profits or dividends.

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

As there are no exchange control regulations in Mexico, employees are entitled to repatriate the proceeds derived from selling shares in other jurisdictions (*see also Question 20*).

INTERNATIONALLY MOBILE EMPLOYEES

22. What is the tax position when:

- **An employee who is resident in your jurisdiction at the time of grant of a share plan award leaves your jurisdiction before any taxable event affecting the award takes place?**
- **An employee is sent to your jurisdiction holding share plan awards granted to him before he is resident in your jurisdiction?**

Resident employee

When an individual leaves the country and is no longer considered to be a Mexican tax resident, tax is not triggered in Mexico for receiving benefits under a share plan.

Mexican individuals who leave the country and reside in a preferential tax regime are considered Mexican tax residents during the

tax year in which they left and the three subsequent years, unless they move to a country that has a non-restricted agreement for exchange of information with Mexico.

Non-resident employee

Payments or benefits from share plans granted abroad to non-residents that are not supported by a Mexican employing company or by a permanent establishment in Mexico and such benefits are not related to work performed in Mexico. They are not subject to tax in Mexico when the employee remains in the country for fewer than 183 days. Otherwise payments are taxable when options are exercised.

Income from salaries is deemed to be sourced in Mexico when work generating such income is performed within the Mexican territory.

PROSPECTUS REQUIREMENTS AND OTHER CONSENTS OR FILINGS

23. For the offer of and participation in an employee share plan:

- **What prospectus requirements (if any) must be completed and by when? What exemptions (if any) are available?**
- **What other regulatory consents or filings (if any) must be completed and by when? What exemptions (if any) are available?**

Prospectus requirements

There are no prospectus requirements that must be completed and no exemptions are available in Mexico for employee share plans. Therefore, income from employee share plans is treated under the general scope of income from salaries, capital gains, dividends and interest, when applicable.

Other regulatory consents or filings

There are no regulatory consents or filings in the implementation of an employee share plan in Mexico.

DEVELOPMENTS AND REFORM

24. Please briefly summarise:

- **The main trends and developments relating to employee share plans over the last year.**
- **Any official proposals for reform of the law on employee share plans.**

Trends and developments

There are no trends or developments related to employee share plans.

Reform proposals

As it is not a general practice in Mexico, this matter has not been addressed in reform proposals or bills recently.

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