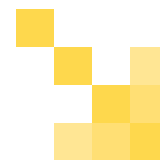


Mexico

Raúl Moreyra, Goodrich Riquelme & Asociados



www.practicallaw.com/3-375-9318

GENERAL

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

Many listed and some private companies offer share plans to their employees. Participation is usually restricted to senior executives. Usually, multinational companies offer employee share plans. Typically, Mexican companies only offer them if they are subsidiaries of foreign 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 legal restrictions on offering shares in a foreign parent company. In fact, this is common practice.

SHARE OPTION PLANS

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

There are no specific legal types of share option plan.

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 a typical share option plan, the employer grants an employee a free option to buy shares. Often, a foreign parent company grants the share options (see *Questions 1 and 2*). In that case, the foreign parent company usually bears the cost of offering the plan (non-reimbursed plan). Sometimes, the local Mexican subsidiary reimburses the parent company for the cost of offering the plan (reimbursed plan).

Types of company. Any type of company can offer a share option plan.

Popularity. Share option plans are the most common type of employee share plan. Non-reimbursed plans are more popular than reimbursed plans.

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/non-discretionary. Share option plans are discretionary, so options can be granted to any employees and on any terms. Their terms can differ between employees, even for options granted on the same date. The employer must also bear anti-discrimination legislation in mind, that prohibits discrimination on the grounds of race, nationality, gender, age, status, religion and others.

Maximum value of shares. There is no maximum value of shares over which options can be granted.

Market value. Options can be granted at above or below market value.

Tax/social security. No tax or social security contributions arise on grant.

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. The employer can place performance or time-based vesting conditions on the exercise of the option.

Tax/social security. No additional tax arises on vesting.

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. On exercise, income tax arises whether the plan is reimbursable or not, but social security contributions arise only when a plan is reimbursed or offered by a Mexican company.

Income tax is charged at progressive rates ranging from 2% to 28%, depending on the employee's income. The employer withholds it from the employee's salary.

The employee pays social security contributions of 3% to 5% of salary. The employer pays contributions of 25% to 28% of salary. These contributions are capped at MXN37,927.5 (about US\$3,530) each (25 times the minimum daily wage).

The employer and employee both pay social security contributions. The employer withholds income tax on benefits (but not income tax on capital gains) and social security charges.

The taxable base is the difference between the exercise price and the shares' market value on exercise.

Tax/social security on sale. On sale, capital gains tax is charged on the difference between the shares' market value on grant and sale price.

The employee pays capital gains tax in two stages:

- He makes an advance payment of 20% of the shares' sale price within 15 days of the sale.
- He pays the remainder, if any, in the annual tax return, which is filed in April of the following calendar year.

If the 20% is more than the tax that was due, the employee is reimbursed for any balance in its favour.

Employees are exempt from income tax on capital gains if the sale takes place on an authorised stock or security market and certain rules are followed. The rules published by the Tax Administration Bureau contain a list of the shares to which this exemption applies.

Employers are not required to deduct or account for withholding tax or social security contributions for capital gains, and they have no reporting requirements.

SHARE ACQUISITION OR PURCHASE PLANS

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

Two types of share purchase plan are operated in Mexico:

- Gross bonus deferral plans.
- Share acquisition arrangements.

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?

Gross bonus deferral plan

Main characteristics. The employer gives employees a deferred conditional right to receive shares instead of a bonus. In addition to shares that represent the bonus, the employee may be entitled to further shares if performance conditions are met during the deferral period.

Types of company. Any company can offer a gross bonus deferral plan.

Popularity. Gross bonus deferral plans are not common.

Share acquisition arrangement

Main characteristics. This is any other share purchase plan. Employees acquire shares in their employer or a related company.

Types of company. Any company can offer a share acquisition arrangement.

Popularity. Share acquisition arrangements are the most commonly used type of share purchase plan.

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?

Gross bonus deferral plan

Discretionary/non-discretionary. Gross bonus deferral plans are discretionary. The employer can also decide whether the deferral of part of the employees' bonus is optional or mandatory.

Maximum value of shares. There is no limit to the value of shares that can be placed under the plan or awarded to an individual employee.

Payment of shares and price. Employees do not have to pay for the shares.

Tax/social security. Income tax is charged on any discount of the shares' purchase price against their market value. The employer withholds this tax from the employee's salary. Social security contributions are only payable if the plan is reimbursed or offered by a Mexican company.

Share acquisition arrangement

Discretionary/non-discretionary. Share acquisition arrangements are discretionary. In addition, a company can choose which categories of share it offers, and can set caps on the levels at which shares can be acquired.

Maximum value of shares. There is no maximum value of shares that can be awarded.

Payment of shares and price. Employees do not have to pay for the shares.

Tax/social security. Income tax is charged on any discount of the shares' purchase price against their market value. The employer withholds this tax from the employee's salary. Social security contributions are only payable if the plan is reimbursed or offered by a Mexican company.

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?

Gross bonus deferral plan

Restrictions removed only on conditions being met. The shares always have vesting conditions attached to them.

Tax/social security. No additional tax charge or social security contributions arise on vesting.

Share acquisition arrangement

Restrictions removed only on conditions being met. Employers can, and typically do, place performance and time-based vesting conditions, such as years working for the company, holding periods, and so on.

Tax/social security. No additional tax charge or social security contributions arise on vesting.

12. What are the tax and social security implications when the shares are sold?**Gross bonus deferral plan**

When employees sell the shares, income tax is charged on the capital gain, which consists of the difference between the shares' purchase price and sale price. Unlike for income tax on a benefit, the employee pays income tax on the gain.

No social security contributions are payable on sale.

Share acquisition arrangement

The tax treatment on sale is the same as for gross bonus deferral plans (*see above, Gross bonus deferral plan*).

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).**

There are no specific legal types of phantom share plan.

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?

Phantom share plan

Main characteristics. A phantom share plan is typically structured to offer employees the same economic reward that they would have received if they had been granted a market value share option and in due course exercised it and sold the resultant shares.

Types of company. All types of company can offer a phantom share plan.

Popularity. Phantom share plans are very uncommon.

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?

Phantom share plan

Discretionary/non-discretionary. Phantom share awards can be granted on a discretionary basis.

Maximum value of awards. There is no limit to the maximum value of awards that can be made under a phantom share plan.

Tax/social security. No tax or social security contributions arise when the award is made.

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?

Phantom share plan

Award vested only on conditions being met. Phantom awards can be structured to vest only when performance or time-based conditions are met.

Tax/social security. No tax or social security contribution liability is triggered when vesting conditions are met.

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

Income tax is charged at progressive rates on the total value of the award when it is paid out. The employer withholds this from the employee's wages.

GUIDELINES**18. Are there any institutional, shareholder, market or other non-statutory 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 general guidelines or obligations that apply to companies that operate share plans.

Private companies that are incorporated in Mexico are subject to the provisions of their bye-laws and Mexican company law. These may prevent, for example, adopting a share plan without the authorisation or approval of the company's shareholders or board of directors.

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

Consultation with employee representatives is not required, because employee share plans are not implemented as a general employment benefit, but as a particular benefit for certain employees.

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 restrictions in force in Mexico.

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

See *Question 20*.

INTERNATIONALLY MOBILE EMPLOYEES

22. What is the tax position when:

- An employee who is ordinarily resident in your jurisdiction at the time of grant of a share plan leaves your jurisdiction before exercising the option?
- An employee who is not ordinarily resident in your jurisdiction is sent to your jurisdiction holding share awards already granted in another jurisdiction?

Resident employee

If a resident employee leaves Mexico and exercises the share option abroad, no tax is charged just because of the employee's departure. Tax is only charged on exercise if the employee has a Mexican source of wealth. For income tax purposes, employees' wealth is considered to be located in Mexico if they receive their salaries (which include benefits under share option plans) for work carried out in Mexico. If tax is charged, a double taxation treaty may avoid any overlap in taxation between Mexico and the other jurisdiction.

Non-resident employee

A non-resident employee who moves to Mexico and becomes tax resident after the grant of an option pays income tax on exercise of the option and capital gains tax on the sale of the shares.

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.

Other regulatory consents or filings

No other regulatory consents or filings are necessary.

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 have not been any recent trends or developments relating to employee share plans.

Reform proposals

There are no proposals to reform the law on employee share plans.

PLC Employment
Essential know-how 

PRACTICAL LAW COMPANY

“It has comprehensive precedents and guidance notes and its responsiveness to new situations is first rate.”

Dr John McMullen, Head of Employment Law, Watson Burton LLP.

^{PLC}Employment is the premium web service for employment lawyers. It keeps users up to date with all relevant developments by e-mail and gives them access to practical support via continuously updated practice notes and standard documents. www.practicallaw.com/employment