

Mobility Matters

Considerations for Operating a Global Employee Stock Purchase Plan

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In today's battle for talent, many multinational corporations are seeking to provide Employee Stock Purchase Plans (ESPPs) to employees outside the U.S. While ESPPs can be a powerful tool for motivating and retaining employees, operating such plans internationally requires careful navigation. This article explores key considerations and best practices for companies looking to implement ESPPs in foreign jurisdictions, including considerations within the areas of local security law, tax, labor law, data privacy, currency exchange, and administrative matters.¹



Local Security Law Considerations

When offering equity-based incentive compensation, such as an ESPP, to employees outside the U.S., companies need to consider that many countries have rigorous securities laws that require detailed disclosures, registration of the plan or securities, and adherence to specific reporting and compliance procedures to protect participants and assist transparency.

- 1. Registration Requirements:** Many countries have securities regulations that require the registration of the ESPP unless an exemption applies. This may include the submission of detailed documentation regarding the plan prospectus, legal opinions, and financial statements. In addition, companies may be required to disclose detailed information about the plan, such as the terms and conditions of stock purchases, the rights and obligations of participants, the risks associated with investing in company stock, and the financial health of the issuing company.
- 2. Approval Requirements:** Internationally, the implementation of an ESPP may require approval by the company's board of directors and, in some cases, by the company's shareholders. This approval process often involves a thorough review of the plan's terms and conditions, including eligibility criteria, purchase price discounts, offering periods, and the maximum number of shares that can be issued.

- 3. Disclosure Obligations:** Companies should make sure that their employees receive comprehensive information about the ESPP, including the terms of the plan, the risks associated with investing in the ESPP, and the financial health of the company. Local laws may dictate specific disclosure content and format requirements, including the language(s) required and the method of notification. The obligation to disclose often includes continual reporting on the issuance and transfer of shares, maintaining records of employee participation, and analyzing that all communications about the plan are transparent and meet regulatory standards. Beyond meeting disclosure obligations, employee access to these items can assist in creating a positive employee experience and higher employee participation.



¹ The focus of this article is on general considerations for ESPPs outside of the United States. ESPP treatment within the U.S. is beyond the scope of this article.

4. Ownership Considerations: Some countries impose caps on the percentage of company stock that can be acquired through an ESPP, either on an individual basis or collectively among all participants, to avoid undue influence by any single employee or group of employees. Alternatively, there may be restrictions on the maximum value of shares that an employee can purchase within a given period. In turn, companies need to be vigilant about insider trading regulations, reviewing that any trading activity complies with blackout periods and other country restrictions.



Tax Implications

Both the company and the employee need to understand the tax consequences of purchasing shares through an ESPP. Companies may need to report the income and withhold taxes, both income and social security, and to assist their employees understanding of the tax consequences of participating in an ESPP.

1. Taxation at Purchase: In many countries, the discount received on the stock purchase is considered a taxable benefit, subject to income taxation via payroll. Additionally, the benefit may be subject to social security contributions. For example, in the U.K. the discount is subject to income tax and National Insurance contributions at the time of purchase. Before implementing an ESPP, it's important for companies to understand the payroll implications and align the tax requirements and timing with their local payroll teams.

2. Taxation at Sale: When employees sell their shares acquired through the ESPP, the sale may be subject to capital gains tax. As with common shares, countries may have specific rules regarding the holding period of the shares to obtain favorable tax treatment. While an employee's sale of shares from an ESPP usually does not involve any company involvement, employees need to know and understand their tax impact to foster a positive employee experience.



3. Reporting Requirements: Even if tax withholding is not required from a payroll perspective, employers must be aware of the potential tax and regulatory reporting obligations in each country where they operate an ESPP. This can include reporting the discount as taxable income and providing employees with the necessary documentation for their tax filings.



Labor Law

In designing an ESPP, companies must evaluate each local country's eligibility requirements for participating in an ESPP, as well as the impact of including certain groups of employees within the scope of an ESPP. Participation by certain employees or groups may further complicate the ESPP, so careful consideration of local labor laws would be necessary to maintain compliance, including the following:

1. Non-discrimination: Many countries have stringent labor laws that require employee benefits, including ESPPs, to be offered equitably across all eligible employees, regardless of their position, tenure, or other discriminatory factors. Therefore, companies may need to design their ESPPs to provide equal access and for all employees and understand any allowable limitations on employee participation. Beyond what is required, companies should look at local custom and market trends to make sure that their ESPP is meeting the stated goals.

2. Informed Consent: When offering an ESPP outside the U.S., obtaining informed consent from employees is essential in many jurisdictions. This often involves providing the information in the local language and assessing that employees understand that they have been given the opportunity to participate and the ability to opt out. Proper documentation of consent is crucial to comply with local labor laws and to protect the company from potential legal disputes.



3. Disclosure Obligations: Beyond obtaining employee consent, the labor laws of many countries include obligations to disclose the content of the ESPP agreement, such as clear terms regarding the purchase price, discount rate, and vesting periods. Additionally, companies must make certain that any modifications

to the plan are communicated effectively and agreed upon by the participating employees. Local labor laws may dictate a company's obligation that employees fully understand the terms and conditions of the ESPP, including the risks associated with purchasing company stock.

4. Terminations: Companies should review that the ESPP complies with local laws in specifying how contributions and unpurchased shares are managed upon employee termination, whether through refunds of the withheld amounts or stock purchases. Additionally, clear communication of these terms to employees is essential to avoid misunderstandings and legal disputes.

5. Hourly Employees: In some jurisdictions, participation in an ESPP should not reduce an employee's effective earnings below the statutory minimum wage, so proper planning must be undertaken with hourly wage participants. Additionally, any payroll deductions for ESPP contributions must be carefully managed to check that they do not interfere with overtime pay calculations or violate labor laws regarding wage protections.

6. Collective Bargaining Agreements: In many countries, companies will need to engage with union representatives to review that the terms of the ESPP align with existing Collective Bargaining Agreements and address any specific concerns or requirements.



Data Privacy



Each country has its own data protection regulations, such as the General Data Protection Regulation (GDPR) in the European Union, the Personal Information Protection and Electronic Documents Act (PIPEDA) in Canada, and the Personal Data Protection Act (PDPA) in Singapore. Companies must understand and comply with these laws, which often include requirements for the collection, processing, storage, and transfer of data, which can significantly impact an ESPP offered outside the U.S.

1. Employee Consent and Rights: It is crucial for companies to obtain explicit consent from employees for the collection and use of their personal data. This consent must be informed, meaning employees should be clearly informed about what data will be collected, how it will be used, and who will have access to it. Consent forms should be provided in the local language and be easily understandable. Employees also have rights regarding their personal data, including the right

to access, correct, or delete their data. Companies must establish processes to facilitate these rights and make employees aware of how to exercise them.

2. Data Minimization and Purpose Limitation:

Companies should adhere to the principles of data minimization and purpose limitation, collecting only the data necessary for the administration of the ESPP and using it solely for that purpose. Local labor laws may have explicit privacy law limitations.

3. Cross-Border Data Transfers: When transferring

employee data across borders, companies must comply with the data transfer regulations of both the originating and receiving countries. For example, under GDPR, data transfers outside the EU are only permitted to countries with adequate data protection standards or through mechanisms such as Standard Contractual Clauses (SCCs) or Binding Corporate Rules (BCRs).



Exchange Control Regulations

Exchange control regulations, which govern the flow of foreign currency in and out of a country, can significantly impact the administration of ESPPs outside the U.S. Beyond regulations, dealing with the currencies of multiple countries can create significant administrative issues.

1. Local Exchange Control Laws: Each country has its own exchange control regulations that dictate how foreign currency transactions are handled. These laws can affect how employees purchase company stock, how funds are transferred, and how proceeds from stock sales are repatriated. Companies must familiarize themselves with these regulations to drive compliance and avoid potential penalties.

2. Currency Conversion and Transfer Restrictions: Operating an ESPP internationally usually means dealing with multiple currencies. Companies must decide whether to offer the plan in the local currency or in the company's home currency. Exchange rate fluctuations can impact the value of employees' contributions and stock purchases. To mitigate these risks, companies might consider using hedging strategies.

In addition, some countries impose restrictions on currency conversion and the transfer of funds abroad. There may be limits on the amount of foreign currency that can be purchased or transferred within a given period. China, for example, imposes restrictions on the conversion of local currency into foreign currency, which can complicate the purchase of US company stock by Chinese employees through an ESPP.



Administrative Issues

Beyond the legal requirements that companies need to consider before implementing an ESPP outside the U.S., there are administrative considerations that should be addressed. Doing so will help create an efficient process and a positive employee experience with a high level of participation.

1. Communication and Education: Clear and effective communication is essential to assisting employees understand and engage with the ESPP. Offering educational resources, such as webinars, FAQs, and one-on-one support can help employees make informed decisions and increase their participation.

2. Payroll Integration and Contribution Management:

Companies need to integrate the ESPP with local payroll systems to facilitate seamless deductions and transfers. This may involve working with local payroll providers or adapting existing systems to accommodate different currencies, banking practices, and payroll cycles.

3. Employee Feedback: Receiving feedback from employees often underscores the value of educational resources and personalized assistance to help employees make informed decisions. Additionally, employees tend to respond positively to flexible contribution options and the ability to participate in their local currency, which can enhance their sense of financial security and engagement with the plan.





Conclusion and Design Considerations

As discussed in this article, employers face a multitude of complexities when implementing an ESPP abroad. Multinational employers must consider navigating local securities laws, tax implications, labor laws, data privacy, currency exchange, and administrative matters. These complexities necessitate careful consideration of key design elements to drive compliance and effectiveness.



Participation

Define eligibility criteria to include or exclude certain employee groups while assessing compliance with non-discrimination laws.

Consider local labor laws and employment contracts when determining who can participate.

Offering Periods

Establish offering periods that align with both corporate financial cycles and local market practices.

Decide on the length and frequency of offering periods to balance administrative feasibility and employee engagement.

Purchase Price Discount

Determine the discount rate on stock purchases to provide a meaningful incentive while complying with local tax implications.

Confirm the discount structure aligns with corporate financial goals and local market conditions.

Purchase Limits

Set purchase limits to manage financial exposure and comply with local securities regulations.

Consider both statutory limits and company-specific caps to balance employee participation and risk management.

By focusing on these design elements, companies can create an ESPP that is attractive to employees, compliant with international regulations, and aligned with corporate objectives.

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