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Global Employer Services (GES)

Global Rewards Update:
People's Republic of China — Intensified SAFE and Tax Registration Requirements for Equity Awards in China

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Background

Many multinational companies have implemented equity plans in People's Republic of China ("China" or PRC) and learned that it is not always a straightforward task. In addition to designing a suitable equity plan to support human resources and business strategies in China, companies should also consider various registration requirements from local compliance and planning perspectives. These requirements include the registration of equity plans with the local tax bureau and, if participants in the plan will include PRC nationals, registration with the State Administration of Foreign Exchange (SAFE).

With a growing volume of equity plans already registered and increasing interest from companies in equity incentives, the tax and SAFE authorities in China have increased their scrutiny of the registration process.

SAFE registration

On 20 February 2012, SAFE issued Circular 7 to supersede the previous Circular 78 and introduce new guidance on the initial registration and ongoing reporting requirements for equity plans. The new circular emphasizes employers' obligations to comply with the registration requirements and signals the authorities' continual efforts to strengthen reporting and administration in this area.

Beijing

- Further to the issuance of Circular 7, Beijing SAFE now requires all companies to strictly follow the new circular for SAFE registration purposes. A reregistration of equity plans according to the new circular is required even if a company has registered its equity plan under Circular 78. Without proper reregistration, companies may face challenges when performing ongoing quarterly SAFE reporting, annual quota application, and/or repatriation of equity funds to China.

- An in-depth review process will take place in Beijing before SAFE registration can be completed. Local SAFE authorities have recently become more attentive to details, such as specific wording that must be clearly stated on the relevant documents to support the authenticity of the plan(s) to be implemented.

Shanghai

- Given that Circular 7 has, to some extent, shifted the responsibility for monitoring the transfer of foreign currency in connection with equity plans to local financial institutions, banks in Shanghai are tightening internal controls on equity-related transactions.

- Equity-related funds which relate to PRC nationals may be rejected by banks where SAFE ongoing reporting is not performed on time.

- Some banks request a statement of the inbound annual quota for equity funds when companies submit an annual report to SAFE, although this is not explicitly required under Circular 7.

Jiangsu

- In Jiangsu province, internal training has been conducted at the municipal level of SAFE bureaus to highlight noncompliant transactions with respect to equity awards offered in China.

- Some municipal SAFE bureaus have also raised inquiries about the current foreign exchange status of prior grants as part of the SAFE registration process of new plans. Internal guidelines setting out penalties for noncompliance have also been circulated.

Tax registration

All equity plans offered in China must be registered with the company's in-charge tax bureau(s), and technically, this must be done before the rollout of the plan. Failure to fulfill this regulatory requirement would result in penalties to the company and further disqualify participants from adopting the preferential tax treatment on stock option income.

Beijing

- Most Beijing tax bureaus have developed formal procedures and requirements concerning the tax registration of equity plans, under which a detailed list of documents is requested for review and approval purposes.

- In some tax bureaus, the tax officer may request an on-site interview with the company/authorized agent to conduct a thorough review of the documents submitted in order to complete the registration.

Shanghai

- Local tax bureaus have powers to impose penalties on a company where they consider there is a failure or delay in complying with tax registration requirements. Recent practices/trends in Shanghai indicate that an increasing number of companies are facing challenges when they fail to perform tax registration on time. Untimely registration may lead to further inquiries about the tax compliance status of equity gains realized from the same plans.

- Some tax bureaus require that ongoing tax reporting should be performed upon new grants of equity awards by providing detailed grant information. Failure to fulfill such requirements on time would disqualify the participants concerned from adopting the preferential tax treatment even if the initial tax registration was performed with the local tax bureau.

- Furthermore, companies should notify the local tax bureau for any subsequent amendments made to the registered plan by providing updated documentation.

Jiangsu

- Both initial tax registration and ongoing reporting for equity plans is required, and standardized processes have been established.

- Registration of equity plans is becoming one of the important areas of scrutiny. When de-registering individuals for tax purposes, some local tax bureaus may even request the registration certificate of the equity plan for those individuals with equity awards.

Action

Given the increased level of scrutiny, it is recommended that:

- Companies that have not yet registered their equity plans under the tax and/or SAFE rules should evaluate any previous compliance failures and take a proactive approach to addressing these failures to mitigate future risk.

- Companies that have already registered their equity plans should monitor local requirements to ensure that ongoing reporting is aligned with the new processes for both tax and SAFE filings.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at **globalequity@deloitte.com**, and a global rewards consultant will contact you.

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