

The Netherlands

Employment

Labor Concerns

Employee entitlement claims are becoming more common.

The risk of employee claims for additional benefits can be reduced by having the employee agree to standard waiver and consent provisions. Note that a court may allow an employee to continue vesting after termination of employment and/or may grant compensation to the employee in view of the loss of stock rights. Payroll deductions may be problematic for a purchase plan. If a Works Council is in place, it may be argued that the agreement of the Works Council is required before an employee stock plan benefits may be offered in the Netherlands. If so, any amendments to, or the withdrawal of, an employee stock plan, require the Works Council's prior consent as well. However, a more practical alternative may be to merely inform the Works Council in a consultative meeting on the decision to implement the Plan. If the Works Council subsequently fails to claim its right of approval within one month, it forfeits its right to do so.

Stock plans may not be discriminatory. For example, employees who work part time should be treated equally as full time employees.

Communications

Translation of plan documents for employees is recommended but is not required. Government filings must be made in Dutch.

Generally, the electronic execution of agreements is acceptable.

Regulatory

Securities Compliance

No prospectus is required for the offering or allotment of securities by an employer or an affiliate undertaking, to existing or former directors, members of the supervisory board, or employees, provided that a document is made available containing information in respect of the securities offered, the specifics of those securities, the reason for the offering (and the particulars of the offering) and provided that the employer (or the entity belonging to the group of companies employer forms part of) has its corporate seat:

- (i) In the European Economic Area;
- (ii) Outside the European Economic Area and with securities listed on a regulated market within the European Economic Area; or
- (iii) Outside the European Economic Area with securities admitted to listing on a market of a third country (i.e. a country not belonging to the European Economic Area), provided that there is adequate documentation in place (which includes the document referred to above) in a language customary in the sphere of international finance and provided that the European Commission has adopted an equivalence decision regarding the third-country market concerned (as described in the prospectus directive).

Might such exemption not apply, the employer would have to fall back on the regular exemptions available which are inter alia:

- (i) the offering of securities in the Netherlands is made to less than 150 natural or legal persons (not being professional investors);
- (ii) the securities offered can only be obtained in a package with a value of at least EUR 100,000 or the securities have a nominal value of at least EUR 100,000; or
- (iii) the total value of the entire offering of the same securities within the European Economic Area is less than EUR 100,000, which amount is calculated over a period of 12 months.

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans. With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.

Might one of those exemptions apply, all documents relating to the offering of the securities, should contain a disclaimer picture, in the form as mandatory prescribed by the Netherlands supervisory authority, the Authority for the Financial Markets (*Autoriteit Financiële Markten, AFM*).

If securities are granted to directors, key personnel, other insiders or related persons, there may be filing requirements with the AFM in respect of market abuse or notification of major interest.

Foreign Exchange

None.

Data Protection

Employee consent may be difficult to use for the processing and transfer of personal data as consent should be freely given. The Dutch Data Protection Authority is reluctant to accept this as the ground for processing as consent should be freely given which is difficult to realize in the hierarchical employer/employee relationship. It is not certain if this opinion also extends to stock purchase plans. Other grounds could also be used for the processing and transfer of data. Generally an employer must register data processing activities with the national data protection authority. Only the most common processing activities are exempt from notification provided all requirements as listed in the Exemption Decree are fulfilled.

Tax

Employee Tax Treatment

Income tax is charged on the spread at purchase. There is generally no capital gains tax on the subsequent sale of Stock. Certain specific kinds of shares however, can be deemed a so-called '*lucrative interest*', which leads to a different tax treatment. The scope does not include shares issued to employees if no specific conditions are attached to such shares.

Social Insurance Contributions

Income under a purchase plan is subject to social insurance contributions, but most employees will likely have exceeded the wage base for social insurance contributions.

Tax-Favored Program

None.

Withholding and Reporting

Withholding and reporting are required.

Employer Tax Treatment

As of 1 January 2007, the cost of plan benefits are no longer deductible.

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