

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 or to exercise options after termination of employment and/or may grant compensation to the employee in view of the loss of stock options.

If a Works Council is in place, it may be argued that the agreement of the Works Council is required before 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 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 option plans may not be discriminatory. For example, employees who work part time should be treated equally with full time employees.

Communications

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

Generally, the electronic execution of agreements is acceptable.

Regulatory

Securities Compliance

Neither the grant nor the exercise of employee options in the Netherlands is in itself likely to trigger any requirement for a prospectus, provided the options are non-transferable. If options are granted to or exercised by directors, key personnel, other insiders or related persons, there may be filing requirements with the Netherlands supervisory authority, the Authority for the Financial Markets (*Autoriteit Financiële Markten*) 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. 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

As of 1 January 2005, options are taxed on the spread at exercise. Options that were partially taxed prior to 1 January 2005 will be governed by the previous legislation or other applicable transitional rules.

Social Insurance Contributions

Income under the 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 option plan benefits are no longer deductible.

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.