Five Most Common International Stock Plan Compliance Errors

In our consulting practice here at SOS, we see the same sorts of compliance issues again and again. Last month we focused on our "favorite" ESPP issues. This month we're tackling the oft-dreaded topic of international compliance.

1. Using US counsel for international issues rather than getting advice from international advisors.

We see many US companies relying on internal or US counsel to attempt to understand and interpret international regulations rather than reaching out to firms that specialize in international equity issues. It's difficult for even the biggest law and consulting firms to keep up with the ever-evolving international compliance landscape, so imagine the challenge for your internal counsel or local law firm. In addition, using a specialized firm rather than a local US-based firm will often end up costing your company less, because they don't have to consult with experts from outside their own firms, resulting in added fees in addition to their own hourly rates. And yet we continue to hear from our clients "But legal approved that. How can that be wrong?"

2. Assuming that US plans can be used in other countries without modifications/ addendums/ shadow plans, etc., for local compliance.

We've heard this quite a few times in our international practice "but we're a US company and it's a US plan, so it's compliant with US regs"... and that works fine… right up until you begin granting to participants outside the US.

For example, grant agreements for participants in any European Union (EU) country need to have special language to address the data privacy requirements of the EU. In many cases, this just requires expanding and extending language that you already have for US participants, but doesn't go far enough to be compliant in the EU.

One best practice we recommend for these agreements is using one master agreement with addendums for each country in which you have participants. Every participant receives an agreement with all the language. This may seem like a waste of paper, right up until that one manager's assignment changes from Canada to the Netherlands, then the trees start to seem well-spent. Also, when you have changes to your "master" agreement, you'll only have one document to update, rather than many.

3. Assuming grants can be made in other countries without conducting adequate legal, tax, or regulatory due diligence.

We've seen companies that have been granting RSAs to executives for years and blithely expand their equity compensation programs to France, not realizing that here the grants will require taxation at grant. And it's not a pleasant surprise for employees either!

We often advise companies that to roll out an equity plan to a new country, you need 2 to 3 months of research, analysis and preparation to avoid common (and uncommon) compliance issues that can put your company at risk. That timeframe might be longer if you decide to offer a locally tax-qualified program or enter a "difficult" country such as China. For those situations, we generally recommend having a 4 to 5 month window for roll-out.

4. Assuming that decentralized compliance works for international locations.

Some companies put country compliance solely in the hands of the international location, from employee education to tax treatment to compliance with securities laws. In our experience this approach is often problematic since many international countries are only just now beginning to understand the basics of restricted stock or units, let alone some of the more complicated international taxation or legal issues. Also, your local contacts may not have expertise in equity compensation and may not realize that their practices are not compliant with their own country's regulations.

We have found that centralized compliance with input from remote locations generally produces better results and gives you control over your compliance procedures.

5. Employee Mobility Tracking

We've all heard more on this topic lately, and it is true that more countries are actively pursuing the revenue at stake from "shares earned" while participants resided in their country.

When confronted with this formidable issue, some companies throw their hands up and don't even attempt to comply. But truly, most of the time, doing something is better than doing nothing. In our experience, making even a limited effort can go a long way during the audit process. In general the countries that audit your firm or your participants won't have significantly better information than you do. They rely on you to keep track of personnel movements. If you can, focus on tracking people at critical events: grant, vest, exercise, and (if possible) payout.

If you have questions on any portion of this article, please e-mail us at: xtra@sos-team.com.

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