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Cyprus

EMPLOYEE INCENTIVES

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This country-specific Q&A provides an overview of employee incentives laws and regulations applicable in Cyprus.

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CYPRUS

EMPLOYEE INCENTIVES



1. What kinds of incentive plan are most commonly offered and to whom?

Incentive plans are usually offered by organisations/employers to their employees. Both private and public companies may upon their discretion operate an incentive plan usually based on performance metrics. The most commonly offered incentive plans in Cyprus are monetary bonuses, benefits in kind and the granting of possibilities for the acquisition of shares by the employees within the organisation.

Monetary bonuses are traditionally based on the performance of the employee or the employee's seniority within the organisation.

In Cyprus, an employer may offer shares in their organisation to their employees, or they can provide for the possibility to enter into a share acquisition scheme. There is no specific law governing the share acquisition or profit-sharing scheme in Cyprus. However, under the Cypriot Company Law Cap.113 shareholders in a private company are limited to 50, excluding current or past employees.

2. What kinds of share option plan can be offered?

Cyprus does not have a specific legislation governing the granting of shares. Employers are entitled to offer various shares option plans to their employees provided that such plan complies with the general legislation and it is in accordance with the Memorandum and Articles of Association of the company. Companies in Cyprus are governed by the Cyprus Company Law Cap.113 which contains no special provision regarding employee share ownership.

3. What kinds of share acquisition/share purchase plan can be offered?

As there is no legislation governing the share acquisition/share purchase plan in Cyprus, organisations

are flexible to offer different types of plans.

4. What other forms of long-term incentives (including cash plans) can be offered?

Depending on the organisation there are a variety of long-term incentives that can be offered to employees. Traditionally, performance based monetary bonuses are offered to employees when the organisation's targets are met.

In addition, performance share plans or share option plan can be offered as abovementioned.

Lately, there is a shift in granting benefits in kind including: car-related benefits, use of assets including accommodation, repayment of personal bills (utility bills, school fees).

5. Are there any limits on who can participate in an incentive plan and the extent to which they can participate?

In Cyprus, a limited private company by shares is restricted to having 50 shareholders at any given time. This is without the current or past employees. Consequently, the number of employees is a limiting factor. Nevertheless, Cyprus Company Law allows a company to acquire its own shares without a special resolution of the general shareholders assembly when these are acquired for the purpose of being transferred to the company's employees or to the employees of an associate company.

6. Can awards be made subject to performance criteria, vesting schedules and forfeiture?

Yes, awards are often subject to performance criteria, vesting schedules and forfeiture.

7. Can awards be made subject to post-vesting and/or post-employment holding periods. If so, how prevalent are these provisions both generally and by reference to specific sectors?

Depending on the contractual provisions awards can be made subject to post-vesting and post-employment holding periods. It is normal for organisations offering incentive plans to include provisions pertaining to post-vesting and post-employment holding period irrespective of the sector.

8. How prevalent malus and clawback provisions are and both generally and by reference to specific sectors?

It is a common practice for organisations that have implemented an incentive plan to have attached malus and clawback provisions irrespective of the sector in the contract governing the plan. The latest practice suggests that a detailed list of circumstances is usually included within the contract which enables the malus and clawback provisions.

9. What are the tax and social security consequences for participants in an incentive plan?

- on grant; *Grants (or bonuses) provided by the employer are subject to Personal Income Taxation, under the relevant scales; subject to Social Insurance Contributions at 8.3% and subject to Gesy (National Health System) at 2.65%.*
- on the acquisition, holding and/or disposal of any underlying shares or securities; and *Employees will receive dividends from the profits of the company, by holding shares. Dividends are subject to Special Defence Contribution at 17% and to Gesy at 2.65%. There are not any Social Security consequences or personal income tax consequences.*

10. What are the tax and social security consequences for companies operating an incentive plan?

- on grant; *Grants (or bonuses) provided by the company are subject to the normal Social Insurance Contributions payable by the employer and subject to Gesy at 2.90%.*

- on the acquisition, holding and/or disposal of any underlying shares or securities; *No tax or social security consequences for the companies.*

11. What are the reporting/notification/filing requirements applicable to an incentive plan?

The granting of monetary bonuses or benefits in kind are not subject to any reporting/notification/filing requirements. However, the granting of shares to employers must be notified to the Registrar of Companies.

12. Do participants in incentive plans have a right to compensation for loss of their awards when their employment terminates? Does the reason for the termination matter?

The right to compensation for loss of the employees' award when employment terminates depends on the contractual provisions stipulated in the employment contract.

In the absence of such provision, an employee is entitled to compensation for loss of the employees' award regardless the discretionary nature of the award if the granting of the award has become an established and expected practice within the organisation.

13. Do any data protection requirements apply to the operation of an incentive plan?

Any data relating to any incentive plan must comply with the General Data Protection Regulation enacted on the 25th May 2018 ('GDPR'). According to the provisions of the regulation the processing of any employees' data is subjected to principles pertaining to transparency, limitation of use for a specific reason, determined and specified time period.

Further requirements of transparency must be met when third parties or third countries (outside the jurisdiction of GDPR) are involved. The employee's consent must be secured prior to any such disclosure.

14. Are there any corporate governance guidelines that apply to the operation of

incentive plans?

In Cyprus, any share-based remuneration of a listed company is subject to the Cyprus Stock Exchange ('CSE') Corporate Governance Code which lists good practice pertaining to remuneration.

Cyprus Securities and Exchange Commission ('CySec') has also issued guidelines on remuneration policies and practices in relation to investment firms operating in Cyprus.

15. Are there any prospectus or securities law requirements that apply to the operation of incentive plans?

There are no prospectus or securities law requirements that apply to the operation of incentive plans in Cyprus.

16. Do any specialist regulatory regimes apply to incentive plans?

Companies that have implemented an incentive plan must adhere to all applicable legislation pertaining to company, employment, discrimination as well as consumer rights. Depending on the nature of the company, there are also sector specific regulatory regimes that a company must comply with such as for example investment firms operating in Cyprus.

17. Are there any exchange control restrictions that affect the operation of incentive plans?

While there are no specific exchange control restrictions in Cyprus, all travellers must report cash sums greater than 10.000 euros.

18. What is the formal process for granting awards under an incentive plan?

Depending on the type of awards granted there is a different formal process in place. The granting of monetary bonuses is not subject to any formal process, while, any share option plans, including the option of an increase in the company's share capital as well as a distribution of shares must be notified to the Registrar of Companies.

19. Can an overseas corporation operate

an incentive plan?

An overseas corporation is entitled to operate an incentive plan in Cyprus provided that it complies with the applicable national legislation.

20. Can an overseas employee participate in an incentive plan?

An overseas employee can participate in an incentive plan just like an employee based on the island. The issue that raises in relation to an overseas employee is whether the employee is considered a Cypriot tax resident whose income tax is taxable in Cyprus.

21. How are share options or awards held by an internationally mobile employee taxed?

Normally any income earned from Cyprus sources (i.e. employment income, bonuses, benefits in kind etc) is taxed in Cyprus, under the Cyprus Income Tax Laws, even if the employee is a non-Cyprus tax resident.

If the non-Cyprus tax resident employee, earns dividends from the shares he has in the Cyprus employer company, then in Cyprus he will be liable to pay only Gesy of 2.65%. However, his dividend income may be subject to his country of tax residency.

22. How are cash-based incentives held by an internationally mobile employee taxed?

Cash-based incentives are taxed in Cyprus. Any cash-based bonus offered to employees forms part of the employee's remuneration and it is subject to the individual's income tax. There are various exemptions applicable for people moving in Cyprus and commence employment:

- For employments starting as of 1 January 2012, provided that the individual was not a Cypriot resident before there is a 50% exemption from PIT for a maximum of 10 years in cases where the remuneration exceeds EUR 100.000 per year.
- For employments starting as of 1 January 2015, the abovementioned exemption is not applicable in cases where the said individual was Cyprus tax resident for three (or more) tax years of the five tax years right before the starting of the employment or Cyprus tax resident in the tax year preceding the starting of employment.

- For remuneration earned from employment in Cyprus by a non-Cyprus tax resident prior to the starting of the employment a 20% exemption from PIT (up to a maximum exemption amount of EUR 8,550 per year). This is applicable for a period of five years commencing from 1 January in the year following the year of employment commencement, with the last eligible year being 2030. This exemption is not applicable alongside the 50% abovementioned employment income.
- For employment exercised outside Cyprus for a period of more than 90 days during a tax year for a non- Cyprus tax resident employer/foreign PR of tax resident employer a 100% exemption from PIT is granted.
- Any lump sum acquired due to retirement, commutation of pension or compensation for death or injuries are exempt in total from PIT
- Capital sums accruing to individuals from any payment to approved funds (e.g. provident funds) are fully exempt from PIT.

23. What trends in incentive plan design have you observed over the last 12 months?

The Covid 19 pandemic has affected companies' approach in relation to incentive plans. The latest trend appears to be for companies to offer benefits in kind to their employees. This includes but is not limited to, use of cars, provision of accommodation, provision of assets at subsidized prices, repayment of personal expenses (benefits, fees, etc.), free supply of goods or the sale of goods and services with discounts such as travel, entertainment, meals, domestic services, professional advice, transport etc.

24. What are the current developments and proposals for reform that will affect the operation of incentive plans over the next 12 months?

There is currently as abovementioned a shift in organisation in granting benefits in kind. More developments are expected to be seen in this area over the next 12 months.

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