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Global Equity Services

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Quarterly Newsletter | October 2019

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Jen Kirk Returns to Baker McKenzie

We are excited to welcome back **Jennifer ("Jen") Kirk** as a partner based in our San Francisco office. Until recently, Jen was Director of Global Equity Management at Alphabet Inc., Google's parent company, where she was responsible for the operations, administration, education and global compliance of Alphabet's equity-based compensation plans. Previously, Jen was a partner in our Compensation group between 2006 and 2011 and an associate between 2001 and 2006. In re-joining our team, Jen will advise companies on the tax and regulatory issues related to the implementation and maintenance of global share plans and other incentive compensation arrangements.

GREAT is Coming!

Very shortly we will be sharing information about a new tool that will help companies consider and address the legal and regulatory issues associated with granting various forms of equity compensation on a global basis. Named **"GREAT" – the "Global Regulatory Equity Award Tool"** will help companies identify, on a cost-effective basis, the significant securities, exchange control, employment & labor, data privacy and other key considerations that warrant action when granting stock options, restricted stock units and other equity awards or offering ESPP participation in other countries. We are excited that GREAT will help facilitate legal and regulatory compliance in the global compensation arena without the need for incurring significant advisory fees for obtaining important baseline information.

IPO Readiness Brochure

Finally, for those companies contemplating making the jump from a privately-held company to a publicly-traded company through an initial public offering, we encourage you to review **"From Private to Public: Employment and Compensation Considerations"** to help identify the various employment, compensation and benefits issues that require thoughtful attention as your company makes the plunge. This brochure includes a helpful IPO Readiness Checklist that flags a variety of issues ranging from workforce service models, equity compensation implications, payroll tax requirements and global mobility planning steps that companies must address, and includes a convenient listing of our Employment & Compensation team members that are leading our efforts in the IPO arena and can provide further guidance on these many issues.

Belgium

New Tax Exemption for Stock Distributions in U.S. Spin-Offs

Historically, the Belgian tax administration treated the distribution of shares in the context of a U.S. "spin-off" transaction as a "dividend in kind" subject to Belgian tax withholding (typically imposed at the rate of 30%). However, on May 7, 2019, the Belgian government enacted a new law, effective January 1, 2019, introducing a tax exemption for Belgian residents receiving shares in the context of a U.S. corporation spinning off a portion of its business via the distribution of shares of a subsidiary. Pursuant to the new law, a distribution by an issuer to its stockholders of shares of stock of a subsidiary in the context of a U.S. "spin-off" is now exempt from Belgian tax withholding if certain requirements are satisfied, including: (1) the U.S. corporation distributing the shares of stock must be listed on a recognized stock exchange; and (2) the shares of stock being distributed by the U.S. corporation must be shares of another company listed on a recognized stock exchange. For additional information about this new tax exemption and whether it will be available for stock distributions to Belgian residents, please contact your Compensation attorney.

Canada

Draft Legislation Limits 50% Deduction for Stock Options

On June 17, 2019, the Canadian government introduced draft tax legislation that places limitations on the 50% deduction that applies to stock options granted on or after **January 1, 2020** by corporations other than CCPCs (i.e. Canadian controlled-private corporations) that are not "start-ups, emerging or scale-up companies", as well as mutual fund trusts.

Currently, an employee is entitled to deduct, for Canadian tax purposes, an amount equal to one-half of the stock option benefit arising on exercise (i.e., the option spread), without limitation, provided certain conditions are met. As a result of the proposed legislation, Canadian employees of companies that are not "start-ups, emerging or scale-up companies" will be subject to a \$200,000 annual cap on the favorable tax treatment available to employees exercising employee stock options.

If enacted, the draft legislation may permit employees and employers to claim a tax deduction for any options granted in excess of the \$200,000 limit. However, the deduction may be available only if the employer elects to notify the employees, in writing, at the time of the grant that the options will be non-qualified. This election cannot be made retroactively and likely would be unavailable to a foreign parent corporation currently granting options to employees of its Canadian subsidiary.

The draft legislation still must be passed by the Canadian Parliament to become law. We will continue to monitor this draft legislation and will provide further updates as additional information becomes available.

China

China Extends Preferential Tax Treatment for Equity Income to Non-PRC Tax Residents



Pursuant to Bulletin 35 published on March 14, 2019, the Ministry of Finance and the State Taxation Administration extended preferential tax treatment to equity compensation income realized by non-PRC tax residents, effective January 1, 2019. Previously, uncertainty existed regarding whether preferential tax treatment was available to non-PRC tax residents on income derived from equity compensation awards.

Under Bulletin 35, non-PRC tax residents are allowed to spread the income realized from equity compensation awards within a calendar year over a six-month period for the purpose of determining the applicable income tax rate. In this regard, the income tax rate and quick calculation deduction applied in the formula for non-PRC tax residents under Bulletin 35 are the monthly income tax rate and quick calculation deduction, which contrasts to those for PRC tax residents who use the annual income tax rate and quick calculation deduction. For the sake of clarity, Bulletin 35 should not be confused with Notice 35 (dated March 28, 2005), which historically provided preferential tax treatment for PRC tax residents and has since been replaced by Notice 164 (dated December 27, 2018).

Please contact your Compensation attorney for additional information regarding the application of Bulletin 35 to equity compensation income realized by non-PRC tax residents.



Colombia

New Public Offer Exemption

On July 26, 2019, the Colombian Ministry of Finance & Public Credit published Decree 1351/2019, which amended Colombia's rules governing public offers of securities in Colombia and created a new exemption from the local prospectus and registration requirements for equity compensation awards granted by a foreign parent corporation to employees of its subsidiaries in Colombia. Under the new exemption, the grant of equity compensation awards made by an offshore parent of a Colombian subsidiary to employees of the Colombian subsidiary will not be treated as a public offer of securities (regardless of the number of award recipients), provided that the offer is made in writing, is part of an employee incentive plan and such plan is included in the corresponding Colombian "labor contract" of the award recipient in Colombia.

For additional information about the requirements of this new exemption and the appropriate provisions to include in award agreements and other grant materials, please contact your Compensation attorney.

Croatia

Potential Favorable Tax Treatment for Awards Settled in Treasury Shares

As of January 1, 2019, the Croatian government amended the Croatian Income Tax Act to provide that the "grant of treasury shares" or the grant of an "option to purchase treasury shares" to employees or members of management will be treated as capital income and taxed at capital gains rates (as opposed to "other income in kind," which is subject to gross-up taxes that make such awards very costly). Although it is unclear given the recent nature of the amendment and the lack of any clarifying guidance from the Croatian tax authorities, the income realized from other equity compensation awards settled in treasury shares (e.g., restricted stock units, performance stock units, stock purchase rights) also could be treated as capital income and companies granting equity awards to employees in Croatia should stay tuned for further clarifications. In the interim, companies that are interested in pursuing this favorable treatment prior to the issuance of any clarifying guidance can seek a binding tax ruling from the Croatian tax authorities addressing the contemplated awards.

Please contact your Compensation attorney for additional information regarding the amendment to the Croatian Income Tax Act and the possibility of seeking a ruling from the Croatian tax authorities.

Saudi Arabia

Updates on CMA Quarterly Reporting Requirements

In furtherance of the quarterly reporting obligations that the Saudi Capital Market Authority (the "CMA") issued back in April 2018 to replace the previous requirements governing private placement of securities, the CMA recently indicated on an informal basis that no report is required for a calendar quarter where no securities have been issued pursuant to previously granted equity awards (i.e., no RSU vesting, Option exercise, or ESPP purchase). Also, the CMA has opened its electronic reporting portal, which can be found at <https://cfigate.tadawul.com.sa>. To submit quarterly reports through the portal, companies first must complete and submit an application form to the CMA. Notwithstanding the availability of the electronic reporting portal, companies can continue to email quarterly reports to the CMA at pp@cma.org.sa.

Please contact your Compensation attorney for additional information about the quarterly reporting obligations to the CMA.

Serbia

New Opinion from Serbian SEC Offers Hope for Equity Compensation Awards to Employees in Serbia

Historically, Serbian securities law has been unclear on whether foreign issuers could offer employee share schemes in Serbia. In this regard, the Serbian Securities Commission (the "SEC") had issued several opinions indicating that any type of notification related to employee share schemes provided to employees in Croatia would be considered a public offer under local securities laws, triggering the need for compliance with local registration and prospectus requirements.

In a recent positive development, the Serbian SEC issued an opinion in March 2019 providing that in instances where employees in Serbia initiate the desire to receive equity compensation awards and participate in equity compensation plans offered by a foreign parent company, any subsequent grant or offer to participate by the foreign parent company to the employees in Serbia would not be treated as a public offering in Serbia and would not trigger the local registration and prospectus requirements. Rather, the offering would be deemed to be occurring outside of Serbia. In furtherance of the Serbian SEC's opinion, companies seeking to grant equity compensation awards to employees in Serbia should take specific steps to document the local workforce's interest in receiving equity compensation awards and participating in equity compensation plans. For example, employees in Serbia should express their interest in stock plan participation by sending some type of written notice (either hard copy or electronic) that ultimately is received by the foreign parent company (either directly or via its local subsidiary in Serbia).

For additional information on the recommended actions and steps, please contact your Compensation attorney.

United States

Impact of California Consumer Privacy Act (CCPA) on Employee Data

The California Consumer Privacy Act ("CCPA") takes effect on January 1, 2020 and imposes a wide range of new requirements for the collection and processing of personal data of California residents. Under the CCPA, "consumer" is defined broadly as a natural person who is a California resident. Assembly Bill 25 ("AB 25"), signed into law on October 11, 2019, provides a temporary and limited reprieve for employee data by establishing an exemption to the CCPA's requirements to provide rights of access, correction and opt-out of sale of personal information for California residents who are job applicants, employees, owners, directors, officers, medical staff or contractors (collectively, "employees"). The exemption applies only to the extent that an employee's personal information is collected and used solely within the context of such individual's role as an employee and only until December 31, 2020.

Even with this exemption, the following two CCPA requirements apply as of January 1, 2020:

- *At or before the point of collection* of any personal information, companies must notify California resident employees of (i) the categories of their personal information collected, and (ii) the purposes for which such personal information will be used (see Section 1798.100(b)). With respect to (i), collection of new categories of personal information requires a new, revised notice to be provided to the employee. With regard to (ii), companies may not use personal information for any additional purpose not specified in the initial notice without first disclosing such use to the employee and obtaining the employee's express consent to such additional use.
- California resident employees have a private right of action if their non-encrypted or non-redacted personal information is affected by a data breach via unauthorized access and exfiltration, theft, or disclosure, where the breach is caused by a company's failure to implement and maintain reasonable security procedures (see Section 1798.150).

Companies with employees in California will need to adopt procedures to provide a CCPA-compliant privacy notice to such employees on January 1, 2020, with a look back to January 1, 2019 - i.e., companies must disclose how they collected and used employee information in 2019. Such notices will need to be broad enough to capture all of the specific categories of data that companies need to collect with regard to the employment relationship and all applicable compensation and benefits arrangements. For example, to the extent that companies are granting equity awards to California resident employees, such privacy notices will need to include

any specific categories of employee personal information needed to make and administer such grants. Because the notice must be provided "at or before" the point of collection of the data, it will generally need to be provided in advance of the issuance of equity awards or other benefits. However, companies should include in equity award agreements or other compensation and benefits plan agreements an acknowledgment that employees have received the privacy notice required by CCPA.

As noted, the limited exemption under AB25 will be valid for only one year and expires on January 1, 2021. After the expiration of the exemption, companies will be subject to the full requirements of the CCPA with respect to employee data. For details on the full scope of the CCPA, please refer to the following [alert](#) published by our partner [Lothar Determann](#).

Glass Lewis Provides Subscription-Based Access to its Equity Compensation Plan Evaluation Process

Glass Lewis, a proxy advisor, recently unveiled its new Equity Compensation Model ("ECM"), which is reportedly intended to provide company issuers and investors with access to the process it uses to evaluate whether it will provide a favorable recommendation for shareholder approval of equity compensation plan proposals. Historically, Glass Lewis has been less than transparent regarding the actual criteria and methodology it uses to make its recommendations on equity plan proposals. Companies and investors will now be able to purchase on-demand access to the ECM, which will reportedly allow the user to test and review equity plans using Glass Lewis' 11 key criteria components and scoring system for equity plan proposals. Institutional Shareholder Services ("ISS"), another proxy advisor, through ISS Corporate Services, provides similar access to ISS's criteria and methodology on making its recommendations regarding equity plan proposals.

Companies that have institutional shareholders which subscribe to Glass Lewis advisory services will need to consider for themselves whether purchasing access to the ECM will provide them with an effective tool for assessing and forecasting Glass Lewis' recommendations regarding their equity plan proposals and obviate the need for engaging compensation consultants for similar guidance.



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