

# GLOBAL EXPANSION GUIDEBOOK GLOBAL EQUITY

*Austria*



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## INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Global Equity*.

### GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, and tax laws in key jurisdictions around the world.

### GLOBAL EQUITY

Our philosophy for providing services to our clients can best be described as a partnership. We strive to provide our clients with a solutions-oriented approach to address their current and future legal needs. Specifically, we analyze each project from a risk and cost-benefit standpoint. We also advise our clients of current best practices and keep them apprised of any legal, cultural, and business changes that may affect their programs. We hope that you find the information in this guide useful for the implementation of your company's equity compensation programs. In preparing the guide, we have made several assumptions about the stock awards that may or may not be applicable to your company. The assumptions include: (i) the local entity is a wholly-owned subsidiary of the issuing company; and (ii) the participants are employees of the local entity or the issuing company.

In addition, you should be aware that the information provided in the guide is presented in a general format and is not a comprehensive summary of all the tax and regulatory issues that may be applicable to your company's specific circumstances (i.e., plan design, corporate governance, tax practices and administration). Furthermore, the laws and regulations applicable to stock awards are constantly changing. These changes may not be incorporated into this version of the guide. With these factors in mind, it is important that you do not consider this guide to be legal advice and do not rely solely on the information provided when implementing an equity award plan abroad. We would be pleased to help you review all pertinent information and can assist you in developing a comprehensive strategy to offer an equity award plan globally.

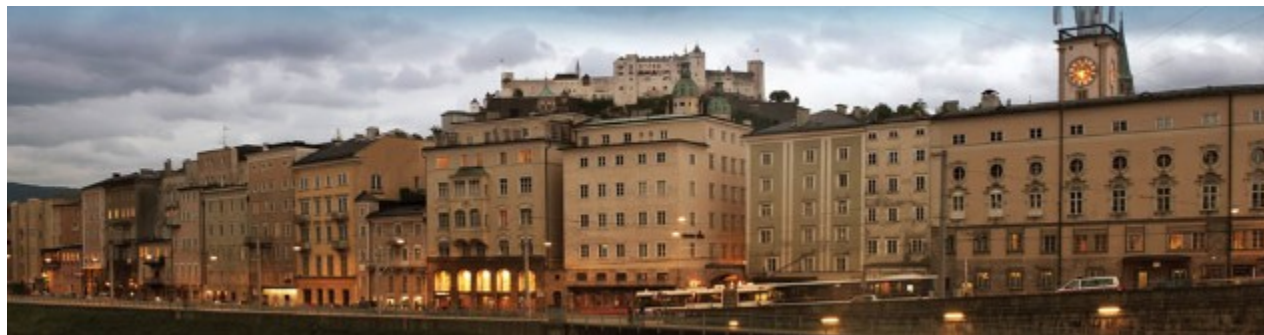
We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that global equity law is dynamic, and the legal regime in the countries surveyed could change.

## AUSTRIA



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### RESTRICTED STOCK AND RSUS

#### *Securities*

The EU Prospectus Directive has been implemented into Austrian law. In general, a prospectus will be required for an offering of transferable securities unless an exemption or exclusion applies. As long as no consideration is paid by the employee for the restricted stock or RSUs, the award should be exempt from prospectus requirements (eg, 150-person exemption; possible other exemptions). However, non-transferable free offers of restricted stock or RSUs are not considered "transferable securities" subject to the EU Prospectus Directive.

#### *Foreign exchange*

Reporting to the Austrian National Bank is required under certain circumstances.

#### *Tax*

##### *Employee*

Benefits from restricted stock are taxed upon grant. RSUs are taxed upon vesting.

Shares acquired before January 1, 2011: gains from the sale of shares held more than 12 months generally are not taxed. If the shares were held less than 12 months gains are taxed.

Gains from the sale of shares acquired on or after January 1, 2011 are subject to tax irrespective of the holding period.

##### *Employer*

##### *Withholding & Reporting*

Tax withholding and reporting are required.

##### *Deduction*

Reimbursement of the parent company for the cost of the benefit pursuant to a written reimbursement agreement should enable the subsidiary to deduct such cost from its income taxes.

## *Tax-favored*

In case of a direct participation in the company and economic ownership of the employee (not only by means of funds) preferential tax treatment may apply if certain requirements are met.

## *Social insurance*

Social insurance contributions are payable on restricted stock and RSUs, subject to a cap. Withholding is required.

## *Data protection*

All data protection requirements must be met. Strict rules apply to data transfer outside the EEA.

## *Labor*

Benefits received from restricted stock and RSUs may be considered as part of the employment relationship and thus, included in a possible severance payment if restricted stock and RSUs are regularly granted to an employee. Upon termination of employment, an employee may be entitled to continued vesting and other rights with respect to his or her award. Such entitlement risks can be mitigated contractually by the parties for certain cases. In order to reduce the risk of claims, the award agreement signed by an employee should provide, among other things, that the vesting of restricted stock and RSUs ceases upon termination of employment, and that the plan and any awards under it are discretionary. In addition, anti-discrimination rules need to be considered when awarding restricted stock or RSUs. If the Austrian employer has a works council, prior notice should be given before an offer is made.

## *Communications*

Although plan materials are not required to be translated initially, a German translation might be necessary at a later stage.

## **STOCK OPTIONS**

### *Securities*

The EU Prospectus Directive has been implemented into Austrian law. Even if options are considered securities that require a prospectus, they may nonetheless be exempt from the prospectus requirements (eg, the 150-person exemption or other exemptions). However, non-transferable free offers of restricted stock or RSUs are not considered "transferable securities" subject to the EU Prospectus Directive.

### *Foreign exchange*

Reporting to the Austrian National Bank is required under certain circumstances.

### *Tax*

## Employee

Generally, the employee is taxed on the spread (difference between exercise price at discount and market values) upon exercise.

Gains from the sale of shares acquired before January 1, 2011: if shares were held more than 12 months, generally gains are not taxable; if shares held less than 12 months gains are taxable.

Gains from the sale of shares acquired on or after January 1, 2011 are subject to tax irrespective of the holding period.

## Employer

### *Withholding & Reporting*

Tax withholding and reporting are required upon exercise.

### *Deduction*

Reimbursement of the parent company for the cost of the benefit (eg, the spread) pursuant to a written reimbursement agreement should enable the subsidiary to deduct such cost from its income taxes.

### *Tax-favored*

A preferential tax treatment for the benefits out of the granting itself is possible if certain circumstances are met.

### *Social insurance*

Social insurance contributions are payable on the spread and are subject to a cap. Withholding is required.

### *Data protection*

All data protection requirements must be met. Strict rules apply to data transfer outside the EEA.

## Labor

Benefits received from restricted stock and RSUs may be considered as part of the employment relationship and thus, included in a possible severance payment if restricted stock and RSUs are regularly granted to an employee. Upon termination of employment, an employee may be entitled to continued vesting and other rights with respect to his or her award. Such entitlement risks can be mitigated contractually by the parties for certain cases. In order to reduce the risk of claims, the award agreement signed by an employee should provide, among other things, that the vesting of restricted stock and RSUs ceases upon termination of employment, and that the plan and any awards under it are discretionary. In addition, anti-discrimination rules need to be considered when awarding restricted stock or RSUs. If the Austrian employer has a works council, prior notice should be given before an offer is made.

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## **STOCK PURCHASE RIGHTS**

### *Securities*

The EU Prospectus Directive has been implemented into Austrian law. Even if purchase rights are considered securities that require a prospectus, they may nonetheless be exempt from the prospectus requirements (eg, the 150-person exemption or other exemptions).

### *Foreign exchange*

Reporting to the Austrian National Bank is required under certain circumstances.

### *Tax*

#### *Employee*

Generally, the benefit upon purchase is subject to tax (the difference between the reduced purchase price and the market value).

Shares acquired before January 1, 2011: gains from the sale of shares held more than 12 months generally are not taxed. If the shares were held for less than 12 months, gains are taxed.

Gains from the sale of shares acquired on or after January 1, 2011, are subject to tax irrespective of the holding period.

#### *Employer*

#### *Withholding & Reporting*

Tax withholding and reporting, especially the proof of the holding period, are required.

#### *Deduction*

Reimbursement of the parent company for the cost of the benefit (ie, the discount at the time of purchase) pursuant to a written reimbursement agreement should enable the subsidiary to deduct such cost from its income taxes.

#### *Tax-favored*

Preferential tax treatment, in the form of a designated tax-exempt amount for the given benefit, may apply if certain requirements are met.



## *Social insurance*

Social insurance contributions are payable on the spread, subject to a cap. Withholding is required.

## *Data protection*

Strict rules apply to data transfer outside the EEA.

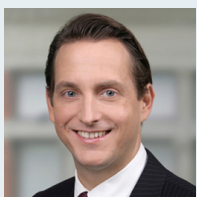
## *Labor*

Benefits received from restricted stock and RSUs may be considered as part of the employment relationship and thus, included in a possible severance payment if restricted stock and RSUs are regularly granted to an employee. Upon termination of employment, an employee may be entitled to continued vesting and other rights with respect to his or her award. Such entitlement risks can be mitigated contractually by the parties for certain cases. In order to reduce the risk of claims, the award agreement signed by an employee should provide, among other things, that vesting of restricted stock and RSUs ceases upon termination of employment, and that the plan and any awards under it are discretionary. In addition, anti-discrimination rules need to be considered when awarding restricted stock or RSUs. If the Austrian employer has a works council, prior notice should be given before an offer is made.

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### KEY CONTACTS



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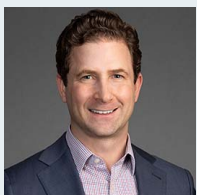
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