

Russian Federation

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GENERAL

1. Is it common for employees to be offered participation in an employee share plan?

Employee share plans are an increasingly popular employee incentive instrument in Russia. Due to the economic downturn employers view employee share plans as effective long-term incentive instruments.

According to non-official statistical data, about 35% of Russian holding companies offered different forms of employee share plans to their employees in 2007 (data for 2008/2009 is not yet available). Most of these plans apply only to the companies' executives and top management.

2. Is it lawful to offer participation in an employee share plan where the shares to be acquired are shares in a foreign parent company?

Federal Law No. 74-FZ dated 28 April 2009 (New Law), amending Federal Law No. 39-FZ dated 22 April 1996 (Securities Market Law), limits the circumstances in which foreign issuers' shares can be offered and granted (see Questions 2 and 4), and can make employee share plans' implementation more expensive and time consuming. The limitations under the New Law apply to all employee share plans relating to foreign shares, but do not apply to phantom share plans which offer and grant cash only.

SHARE OPTION PLANS

3. Please list each type of share option plan operated in your jurisdiction (if more than one).

Russian companies implement various share option plans in practice. However, these plans are not subject to specific legislation.

The most popular plans are currently:

- Real share option plans.
- Restricted share option plans. In this context, restricted means that the right to exercise options depends on performing certain conditions.

All share option plans on the Russian market share certain characteristics in common (see Question 4, *Real share option plan: Main characteristics*).

In relation to foreign shares, the following plans are commonly used:

- Share option plans.
- Cash unit plans.

4. In relation to the share option plan:

- What are the plan's main characteristics?
- Which types of company can offer the plan?
- Is this type of plan popular? If so, among which types of company is this plan particularly popular?

Real share option plan

Main characteristics. Companies offering share option plans over Russian shares in the Russian market use a special purpose vehicle, known as a programme operator (Operator), which purchases the shares of the company and enters into option agreements with the employees. Tax considerations usually determine the Operator's jurisdiction of incorporation and legal form.

It is possible for a company that issues the shares that are the subject of a plan to operate a share option plan without using an Operator. However, the legal difficulties of the issuing company offering options directly means that this approach is never used in Russia. Therefore, this alternative is not discussed in this chapter.

Real share option plans begin with the Russian subsidiary or the foreign parent company establishing an Operator which:

- Purchases the company's shares at the market price.
- Enters into option agreements with the employees entitling them to purchase a block of the company's shares after a certain period of time at a fixed price (usually the market price of the shares at the beginning of the plan).

As Russian civil law does not distinguish options (except for issuer's options) as an independent form of agreement, they usually take the form of a share purchase agreement, which is subject either to:

- Conditions precedent.
- Delayed performance and other obligations for the employee.

In both cases the option agreement must be drafted very carefully, or it may be unenforceable.

At the completion of the plan, the Operator either:

- Sells the shares to the employees at the fixed price.
- Sells the shares on the securities market and pays the gain above the fixed price to the employees.

Where the share option plan relates to foreign shares, the plan is usually operated by either:

- The foreign company whose shares are acquired. This company issues share plan rules setting out the plan's terms and conditions.
- A plan operator (commonly an offshore company) that holds the shares for the purposes of the plan. Once the plan's conditions are met, the operator either:
 - sells the foreign shares to the eligible employees;
 - transfers an equivalent cash amount.

Alternatively, a foreign broker acquires the foreign shares in the stock exchange to sell to the eligible employees, or transfers the relevant cash amount to the employees.

Companies offering participation in employee share plans relating to foreign shares must consider the New Law (*see Question 2*), amending the Securities Market Law (*see Question 2*). This changed the procedure and rules for placement, circulation (that is, any transaction aimed at alienation of shares) and public circulation of foreign securities in the Russian markets. The amendments came into force on 16 May 2009. Under the New Law, foreign issuers' securities are eligible for circulation in the Russian market if the respective foreign financial instrument both:

- Has international codes ISIN and CFI assigned to it.
- Is qualified by the Russian Federal Financial Markets Service as a security.

Foreign shares satisfying these criteria can be admitted to placement and public circulation in Russia if both:

- The issuer of the respective foreign financial instrument is:
 - incorporated in a jurisdiction that is a member of the Organisation for Economic Co-operation and Development (OECD), a member or observer of the Financial Task Force on Money Laundering (FATF), and/or a member of the CE Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL);
 - incorporated in a jurisdiction whose securities market regulator has made an agreement with the federal executive body responsible for the securities market which provide for a procedure for their interaction;
 - an international financial organisation included in the list endorsed by the Government of the Russian Federation; or
 - a foreign state referred to in the above bullet points (or their central banks).
- The securities' prospectus is registered by the Russian Federal Financial Markets Service.

The foreign financial instruments not admitted to public placement or public circulation in Russia can be circulated only among qualified investors, such as:

- Brokers.
- Dealers.
- Credit institutions.
- Investment funds.
- Insurance companies.
- Pension funds.
- Other professional participants in the market.

Foreign financial instruments that are not classified as securities both:

- Can only be offered to qualified investors (*see above*).
- Must not be offered in any form or by any means to an unlimited circle of persons.

These limitations apply to all employee share plans except for those offering and granting cash only, and there are no exclusions (*see Question 2*).

No share option plans relating to foreign shares appear to have yet been implemented under these revised regulations.

Types of company. Russian open joint stock companies offer real share option plans over their shares. An open joint stock company is a type of company with an unlimited number of shareholders and a minimum registered share capital of 1,000 minimum monthly wages (one minimum monthly wage is equal to RUB100 (about US\$3.2)).

Other forms of company in Russia, the closed joint stock company and the limited liability company, do not offer these plans:

- A closed joint stock company can have no more than 50 shareholders and its registered share capital must be at least 100 minimum monthly wages. Closed joint stock companies do not offer employee share plans as their shareholders' pre-emption rights make the operation of these plans excessively difficult.
- The registered capital of a limited liability company is not divided into shares but is divided between participants as participatory interests. A limited liability company must have no more than 50 participants, and a registered capital of at least 100 minimum monthly wages. Limited liability companies do not offer share option plans as they have participatory interests rather than securities. Although it is formally possible to make an equivalent type of option to acquire rights in a limited liability company, these instruments are not usually the basis for an employee incentive and the pre-emption rights in a limited liability company would make implementation of this option difficult.

Foreign company's offering share plans are usually public companies.

Popularity. Real share option plans are increasingly popular and, after phantom share plans, are the most popular form of employee share plan.

Restricted share option plan

Main characteristics. Restricted share option plans share the same general characteristics as real share option plans (*see above, Real share option plan: Main characteristics*).

At the beginning of the plan the Russian subsidiary or the foreign parent company establishes an Operator that:

- Purchases the shares of the company at the market price.
- Enters into agreements with the employees which enable them to buy shares in the company after:
 - a certain period of time; and/or
 - the employees meet the established criteria or the company performance meets its established target.

After the conditions are met, the employees can buy the shares at the market price, and the Operator will pay them compensation in the amount of the difference between the market price at which the operator purchased the shares and the market price at which the participants bought them (if the latter is greater).

Types of company. Open joint stock companies offer restricted share option plans.

Popularity. Restricted share option plans are less popular than real share option plans and according to the information available are relatively unpopular.

5. In relation to the grant of share options under the plan:

- **Can options be granted on a discretionary basis or must they be offered to all employees on the same terms?**
 - **Is there a maximum value of shares over which options can be granted, either on a per-company or per-employee basis?**
 - **Must the options have an exercise price equivalent to market value at the date of grant?**
 - **What are the tax and social security obligations arising from the grant of the option?**
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Real share option plan

Discretionary/all-employee. There are no Russian regulations on this issue. Generally, it is not prohibited to offer shares in the Russian company at the discretion of the employer and non-discrimination rules do not apply (see *Question 15, Phantom share plan: Discretionary/all-employee*).

Maximum value of shares. Russian legislation does not provide for a maximum value of shares over which an option can be granted.

Market value. Russian legislation does not provide any restrictions on the exercise price. The plan usually sets the exercise price at the beginning of the plan at the level of the market price of the shares at that time (see *Question 4, Real share option plan: Main characteristics*).

Tax/social security. There are no tax or social security obligations arising from the grant of the option.

Restricted share option plan

Discretionary/all-employee. There is no Russian legislation on this issue. The employer can generally grant options on a discretionary basis.

Maximum value of shares. Russian legislation does not provide for a maximum value of shares over which an option can be granted.

Market value. Russian legislation does not provide any restrictions related to the exercise price, although the plan usually provides that the exercise price is equal to the market price of the shares at the time of exercise (see *Question 4, Real share option plan: Main characteristics*).

Tax/social security. There are no tax or social security obligations arising from the grant of the option.

6. In relation to the vesting of share options:

- **Can the company specify that the options are only exercisable if certain performance or time-based vesting conditions are met?**
 - **Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?**
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Real share option plan

Exercisable only on conditions being met. The company can specify that the option is only exercisable if certain performance or time-based vesting conditions are met. However these provisions should be drafted very carefully, to avoid the agreement being considered unenforceable (see *Question 4, Real share option plan: Main characteristics*). Both performance and time-based vesting conditions are common market practice in Russia.

Tax/social security. No tax or social security contributions are payable when the performance or time-based vesting conditions are met.

Restricted share option plan

Exercisable only on conditions being met. See above, *Real share option plan: Exercisable only on conditions being met*.

Tax/social security. See above, *Real share option plan: Tax/social security*.

7. Do any tax or social security implications arise when the:

- **Option is exercised?**
 - **Shares are sold?**
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Real share option plan

Tax/social security on exercise. The tax and social security implications depend on whether the shares are in a foreign or domestic company:

- **The shares are in a foreign company.** If the exercise price of the option is lower than the current market price the employee receives taxable income on the “material benefit”, that is, the amount by which the current market price exceeds the exercise price. This income is not subject to social security contributions.

When, instead of acquiring the shares, the employees are paid a premium equal to the difference between the fixed price and the current market price of the shares, the employees pay income tax on the amount they actually receive from the foreign company. Social security contributions only apply to this remuneration if the employee has an employment contract with the foreign company.

The personal income tax rate is 13% for an employee that is Russian tax-resident (that is, the employee stays in Russia for a period of not less than 183 days within 12 consecutive months). For other employees, the rate is 30%.

If the taxable income is received from abroad and the foreign company does not have a separate branch in Russia, the foreign company has no withholding obligations. The employee must declare his taxable income and pay the tax himself.

(Where the share option plan is implemented through a Russian-incorporated Operator see below, *The shares are in a company incorporated in Russia.*)

- **The shares are in a company incorporated in Russia.** The same rules apply in relation to the calculation of taxable income and the rate of income tax for the employee on the material benefit or compensation received.

If the employee purchases the shares directly from its employer, the employer must act as a tax agent, that is, withhold the tax from the employee's salary and pay it to the Russian treasury itself. The tax agent must file with the tax authorities information on the employees' income as well as the amount of personal income tax accrued and withheld.

Where the shares are sold through a Russian-incorporated Operator, the Operator informs the tax authorities in writing of:

- its inability to withhold the tax;
- the amount of the income tax debt.

In that case, the employee must declare his taxable income and pay the tax himself.

Where a premium is paid to the employee, the company paying the income must act as a tax agent, that is, withhold the tax from the amount paid to the employee, pay it to the Russian treasury and file with the tax authorities information on the employee's income and the amount of personal income tax accrued and withheld. This applies regardless of whether the company paying the premium is an Operator.

If the employer pays the premium to the employee under his employment contract, the employer must pay social security contributions as follows:

- **Unified social tax (UST).** The tax rate is regressive and depends on the amount of the yearly payments made to the employee, including salary, bonuses and other remuneration:
 - RUB280,000 (about US\$9,100) or less: 26%;
 - RUB280,001 to RUB600,000 (about US\$19,500): 10% of the amount exceeding RUB280,000 plus RUB72,800 (about US\$2,370);
 - more than RUB600,000: 2% of the amount exceeding RUB600,000 plus RUB104,800 (about US\$3,410).

From 1 January 2010, UST will be replaced with the requirement to make insurance contributions to four separate non-budgetary funds:

- the federal Obligatory Medical Insurance Fund;
- the territorial Obligatory Medical Insurance Fund;
- the State Social Insurance Fund;
- the State Pension Fund.

The rate will be 26% on any pay below RUB415,000 (about US\$13,400), and insurance contributions will not be imposed on the amount of salary exceeding RUB415,000.

From 2011 the rate will increase from 26% to 34%.

- **Obligatory pension contributions.** The rates vary. This can operate to reduce the level of unified social tax, as the total amount of unified social tax and obligatory pension contributions on the employee's remuneration that is payable by the employer cannot exceed 26%;
- **Accident insurance contributions.** The applicable rate ranges from 0.2% to 8.5% of the employee's gross salary, depending on the class of professional risk that the employee's work involves.

Social security contributions do not apply where the Russian company pays out the premium from its net profit after tax.

Where the premium is paid through an Operator and not under the employee's employment contract, then no social security contributions apply. However, there is a risk that the tax authorities may consider the payment to be a bonus for the employee executing his responsibilities under his employment contract. In that case, the tax authorities impose social security contributions (*see above*).

Tax/social security on sale. The income received from sale of shares (that is, the sale price of the shares less the documentarily supported costs of purchase, sale and holding of those shares) is taxed at 13% for the tax-resident individuals and 30% for non-Russian tax-resident individuals and are paid by individuals themselves, except where the Russian source of income (such as a trustee or securities broker) withholds the tax itself. Therefore, the employee may be exposed to double taxation, although if the tax on the material benefit was paid to the Russian treasury at the acquisition of the shares, the amount of the material benefit may be included in the documentarily supported costs reducing the employee's taxable income.

The employee must declare his taxable income and pay the tax himself. The employer has no withholding obligations and no obligations to pay social security contributions.

Restricted share option plan

Tax/social security on exercise. The tax and social security implications depend on whether the shares are in a foreign or domestic company:

- **The shares are in a foreign company.** There are no tax implications when the employee purchases shares at their market price. Income tax is payable on compensation received by the employees as a difference between the fixed market price at the beginning of the plan and the market price at which the employee purchased them. This is at the usual income tax rates (*see above, Real share option plan: Tax/*

social security on sale). Social security contributions only apply to this remuneration if the employee has an employment contract with the foreign company (see below).

If this taxable income is received from abroad and the foreign company does not have a separate branch registered in Russia, the foreign company has no withholding obligations. The employee must declare his taxable income and pay the tax himself.

The income that the foreign company receives from the sale of shares of the foreign company is not taxable in Russia.

(Where the share option plan is implemented through a Russian-incorporated Operator, see below, *The shares are in a company incorporated in Russia.*)

- **The shares are in a company incorporated in Russia.** The same rules apply in relation to the calculation of taxable income and rate of income tax for the employee on the payment of compensation as for foreign companies.

Profit that the Russian company receives from the sale of shares is subject to profit tax at 20%. There are special rules on calculation of the profit tax base on sale of the shares when the shares are sold at a fixed price which is lower than the market price.

Where compensation is paid to the employee, the company paying the income must act as a tax agent (that is, withhold the tax from the employee's income, pay it to the Russian treasury and file with the tax authorities information on the employee's income and the amount of personal income tax accrued and withheld). This applies regardless of whether the company paying the compensation is an Operator.

Social security contributions are payable on compensation paid under the employment contract at the same rates as for real share option plans (see above, *Real share option plan: Tax/social security on exercise*).

Social security contributions do not apply where the Russian company pays out the compensation from its net profit after tax.

Where the compensation is paid through an Operator and not under the employee's employment contract, then no social security contributions apply. However, there is a risk that the tax authorities may consider the payment to be a bonus for the employee executing his responsibilities under his employment contract. In that case, the tax authorities will impose social security contributions (see above).

Tax/social security on sale. See above, *Real share option plan: Tax/social security on sale*.

SHARE ACQUISITION OR PURCHASE PLANS

8. Please list each type of share acquisition or purchase plan operated in your jurisdiction (if more than one).

Russian legislation does not provide specific regulations on share acquisition or purchase plans. Such plans are subject to the general legal regime but are totally underdeveloped in Russia, and there is no available information on those plans.

9. In relation to the share acquisition or purchase plan:

- What are the plan's main characteristics?
- Which types of company can offer the plan?
- Is this type of plan popular? If so, among which types of company is this plan particularly popular?

Not applicable (see Question 8).

10. In relation to the initial acquisition or purchase of shares:

- Can entitlement to acquire shares be awarded on a discretionary basis or must it be offered to all employees on the same terms?
- Is there a maximum value of shares that can be awarded under the plan, either on a per-company or per-employee basis?
- Must employees pay for the shares and, if so, are there any rules governing the price?
- Is any tax or social security contributions payable when the shares are awarded?

Not applicable (see Question 8).

11. In relation to the vesting of share acquisition or purchase awards:

- Can the company award the shares subject to restrictions that are only removed when performance or time-based vesting conditions are met?
- Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?

Not applicable (see Question 8).

12. What are the tax and social security implications when the shares are sold?

Not applicable (see Question 8).

PHANTOM OR CASH-SETTLED SHARE PLANS

13. Please list each type of phantom or cash-settled share plan operated in your jurisdiction (if more than one).

Phantom share plans are not subject to specific legislation in Russia. A phantom share plan can take the form of either:

- An incentive payment or bonus regulated by Russian employment law, where the Russian employer grants the phantom shares directly or through a Russian-incorporated Operator.

- A specific payment regulated by foreign law, where phantom shares are granted on the shares in a foreign company. In this case, the phantom shares can be granted directly by the foreign company itself or through an Operator.

14. In relation to the phantom or cash-settled share plan:

- What are the plan's main characteristics?
 - Which types of company can offer the plan?
 - Is this type of plan popular? If so, among which types of company is this plan particularly popular?
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Phantom share plan

Main characteristics. Where a Russian company grants the phantom shares directly to an employee, the payment is usually structured as a bonus.

The company introduces internal regulations which set the phantom share plan's terms and conditions. They will usually provide the conditions under which an eligible employee is entitled to receive payments under the plan. Employment contracts with the eligible employees provide, or are amended to provide, the terms for participation.

At the completion of the plan, the company pays a bonus to the employee. This amounts to the margin between the current market price of a block of shares and its cost at the beginning of the plan.

Alternatively, the plan can be implemented through an Operator, set up by the employer at the beginning of the plan. The Operator:

- Establishes the market price of the relevant shares at the beginning of the plan (without buying the shares).
- Enters into agreements with the employees entitling them to receive, after a period of time, the margin between the market price of a block of shares and its cost at the beginning of the plan.

At the completion of the plan, the Operator pays the margin to the employees.

When a foreign parent company grants the phantom shares directly, the conditions of the phantom share plan differ depending on the applicable law. However, the principal characteristics will be similar to those described above.

Types of company. Closed and open joint stock companies and limited liability companies offer this type of plan.

Popularity. Phantom share plans are the most popular type of incentive plan in Russia.

15. In relation to the grant of phantom or cash-settled awards:

- Can the awards be granted on a discretionary basis or must they be offered to all employees on the same terms?
 - Is there a maximum award value that can be granted under the plan, either on a per-company or per-employee basis?
 - Is any tax or social security contributions payable when the award is made?
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Phantom share plan

Discretionary/all-employee. If a foreign company grants phantom share awards, it is not bound by Russian employment law. Therefore, it can grant phantom share awards on a discretionary basis. However, there is a risk that Russian law may need to be considered as the Russian authorities may consider the phantom share plan to be a form of bonus for work performed by the employee and therefore part of his salary. In that case, bonuses that are not granted to all employees that meet the same criteria may be considered discriminatory.

The situation does not usually differ when a foreign parent company grants phantom share awards through an Operator.

If a Russian company grants the awards to its employees directly (as a form of incentive payment), the company's internal regulations set out the conditions for the share plan (see *Question 14, Phantom share plan: Main characteristics*). In these regulations the employer can, at its discretion, define the categories of employees that are entitled to receive phantom share awards (as well as the conditions for these awards). All employees that belong to the same category must be offered the incentive on the same terms.

If the Russian company grants phantom share awards through an Operator, the discretionary principle applies.

Maximum value of awards. Russian legislation does not provide any restrictions on the maximum award value under the plan.

Tax/social security. There are no tax or social security obligations arising from grant of the award.

16. In relation to the vesting of phantom or cash-settled awards:

- Can the awards be made to vest only where performance or time-based vesting conditions are met?
 - Is any tax or social security contributions payable when these performance or time-based vesting conditions are met?
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Phantom share plan

Award vested only on conditions being met. Under Russian law it is possible to specify that the award vests only when certain performance or time-based vesting conditions are met. If the awards are formulated as bonuses, the conditions for vesting should be set out in the internal regulations of the Russian company that

introduces the plan (see *Question 14, Phantom share plan: Main characteristics*). Both performance and time-based vesting conditions are commonly used in Russia.

Tax/social security. There are no tax or social security contributions payable when the performance or time-based vesting conditions are met.

17. What are the tax and social security implications when the award is paid out?

Phantom share plan

The tax and social security implications when the award is paid out depend on whether the payment is made by a foreign company or by a company incorporated in Russia:

- **The payment is made by a foreign company.** The employee pays income tax on the amount that he actually receives, at the usual tax rates (see *Question 7, Real share option plan: Tax/social security on exercise*). The employee must submit the tax declaration and pay the declared amount of tax himself. The foreign company has no income tax withholding obligations unless the income is paid through a separate branch of the foreign company registered in Russia.

Unless the employee has an employment contract with the company paying the remuneration (see *below*), no social security obligations arise.

- **The payment is made by a company incorporated in Russia.** The employee's income (the amount of cash actually received) is taxed at the usual tax rates (see *Question 7, Real share option plan: Tax/social security on exercise*).

The Russian company that pays the award must act as a tax agent. It must calculate, withhold from the income payable to the employee and transfer to the Russian treasury the relevant amount of personal income tax no later than the day the income is actually paid. The Russian company must also file, with the tax authorities, information on the employee's income and on the amount of personal income tax accrued and withheld for the year.

Social security contributions do not apply where the Russian company makes the payment from its net profit after tax.

If the payment is made to the employee under the employment contract, social security contributions are payable by the employer, at the usual rates (see *Question 7, Real share option plan: Tax/social security on exercise*).

Where the payment is paid through a Russian-incorporated Operator and not under the employee's employment contract, then no social security contributions apply. However, there is a risk that the tax authorities may consider the payment to be a bonus for the employee executing his responsibilities under his employment contract. In that case, the tax authorities impose social security contributions (see *above*).

GUIDELINES

18. Are there any institutional, shareholder, market or other guidelines that apply to any of the above plans, and which types of companies are subject to them? What are their principal terms?

There are no specific guidelines on employee share plans in Russia.

EMPLOYEE REPRESENTATIVES

19. Is consultation or agreement with, or notification to, employee representative bodies required before an employee share plan can be launched?

Russian legislation does not require consultation with or notification to employee representatives before implementing an employee share plan.

However, when a Russian company directly grants, without using an Operator, phantom share plans to its employees, it establishes internal regulations that provide for the terms and conditions of remuneration (see *Question 14, Phantom share plan: Main characteristics*). The employer must consult with employee representatives before adopting these regulations.

EXCHANGE CONTROL

20. Do exchange control regulations prevent employees sending money from your jurisdiction to another to purchase shares under an employee share plan?

Exchange control regulations do not prohibit (but do regulate) a "resident" employee sending money to another jurisdiction to purchase shares in a foreign company. Residents, in this context, are:

- Russian citizens (except for those that have a continuous place of residence outside Russia in accordance with the law of their state of residence).
- Non-Russian citizens that reside in Russia as holders of residence permits.

The Russian resident's acquisition of shares in a non-Russian company is considered to be a "currency operation". If the Russian subsidiary (which is also a resident for the purposes of the currency regulations) of the foreign company grants the options over the foreign shares, the shares can be transferred to the employee provided that the:

- Rights to the shares are recorded in a depository established in accordance with Russian law.
- Payment for shares by the eligible employee to the Russian company is made in Rubles.

21. Do exchange control regulations permit employees to repatriate proceeds derived from selling shares in another jurisdiction?

Russian exchange control regulations do not prohibit employees from repatriating proceeds derived from selling shares in another jurisdiction. However, the purchaser should make the payment directly to the employee's bank account. The bank where the employee's bank account is opened can request the employee to provide documents that are the legal grounds for the transfer of the funds. If the purchaser instructs another legal entity to transfer the relevant funds (without any legal grounds), the employee may have difficulty demonstrating the grounds of payment to his bank.

INTERNATIONALLY MOBILE EMPLOYEES

22. What is the tax position when:

- **An employee who is resident in your jurisdiction at the time of grant of a share plan award leaves your jurisdiction before any taxable event affecting the award takes place?**
- **An employee is sent to your jurisdiction holding share plan awards granted to him before he is resident in your jurisdiction?**

Resident employee

The Russian Tax Code states that the following income is subject to personal income tax, depending on the employee's tax-residency status:

- For Russian tax residents: worldwide income received.
- For Russian non-tax residents: Russian-sourced income.

(Tax residency is determined by whether the individual spends a period of not less than 183 days within 12 consecutive months in Russian territory (see *Question 7*.)

Therefore, the tax implications for an employee depend not on his location when the option is exercised but on:

- The source of his taxable income.
- His tax residency at the moment when a tax event arises.

Non-resident employee

If the employee is non-resident, only his Russian-sourced income is taxable in Russia. Therefore, the tax implications depend on whether the employee received the income from performing activity in Russian territory.

PROSPECTUS REQUIREMENTS AND OTHER CONSENTS OR FILINGS

23. For the offer of and participation in an employee share plan:

- **What prospectus requirements (if any) must be completed and by when? What exemptions (if any) are available?**
- **What other regulatory consents or filings (if any) must be completed and by when? What exemptions (if any) are available?**

Prospectus requirements

If the plan relates to Russian shares, the prospectus should be issued and registered in applicable cases (where the shares are placed through open subscription or closed subscription among persons whose number exceeds 500).

Prospectus requirements will apply when an issuer's option is implemented (although such plans are not often implemented in practice) (see *Question 4, Real share option plan: Main characteristics*).

Foreign shares can be placed in Russia if the prospectus is registered (see *Question 4*).

Other regulatory consents or filings

See above, *Prospectus requirements*.

DEVELOPMENTS AND REFORM

24. Please briefly summarise:

- **The main trends and developments relating to employee share plans over the last year.**
- **Any official proposals for reform of the law on employee share plans.**

Trends and developments

Employee share plans are becoming increasingly widespread among big companies on the Russian market (both listed companies and large unlisted companies). It is expected that, for the near future, phantom shares will retain their place as the most popular type of incentive for top management employees.

Reform proposals

There are currently no proposals for reform in Russia in relation to employee share plans.

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