**PHC Holdings Corporation**

**Employee Share Purchase Plan – Global Legal and Tax Compliance Overview November 2022**

# Introduction

This overview is a high-level summary of legal and tax considerations in relation to the operation of the PHC Employee Share Purchase Plan (“**Plan**”) in the countries set out below.

In this overview, we cover the following type of award (“**Award**”) under the Plan:

* Purchase Award – a right to purchase shares using deductions from the net salary of the participant, subject to the payment of a cash bonus to the salary of the participant at the end of year (employer cash contribution), the amount of which is in direct proportion to the amount the participant has chosen to contribute from salary to purchase shares over the preceding year.

This overview is prepared on the basis of the Plan summary (set out in the Appendix). We have assumed that:

* + Deductions from salary will be used to purchase shares and the cash bonus will be settled in cash;
  + Awards are not subject to a specific tax qualified regime in any country. Many countries wish to encourage employee share ownership and so create special rules providing tax advantages for certain awards if certain conditions are met. If you would like advice on where tax qualified Plan are available and how to implement them, please let us know; and
  + Awards will be granted by PHC Holdings Corporation (the “**Company**”) (rather than a trustee or the employing company, if different).

This overview is split into 2 parts:

* + Part 1: covers important points that are generally applicable in most countries covered in this review; and
  + Part 2: is a table setting out country-specific points.

The contents of this overview are correct as at the date of the relevant underlying country report.

# Part 1: general points

## Employees

This overview and the related country reports cover employees of the Company and its majority owned and controlled subsidiaries only. They do not cover, for example, contractors, employees of joint ventures or former employees, to whom different rules may apply. The advice is based on the estimated number of participants provided to us by the Company and included in the table below. If participant numbers in a particular country change, this may affect the advice for, and the risk level of, certain issues.

## Disclosure and acceptance

We assume that the rules of the Plan will be delivered or made available to participants and that the terms will be accepted by the participants. It is highly recommended that the Company requires active and specific acceptance by the participant of terms that may be detrimental to the employee, such as forfeiture and leaver provisions. This will increase the likelihood that the terms are enforceable in many countries. Consent can sometimes be implied by conduct but this is not certain and is harder to prove. Any communication must be accurate and not misleading, and any contractual term that is not communicated to the participant is unlikely to be enforceable.

Where electronic communication is used to communicate Award and/or Plan details, and/or to obtain active acceptance, the communication process should be secure and specific to the participant (e.g. by way of personal login or documents specifically addressed to each participant), it should clearly identify the participant and it should ensure that records of any participant acceptance are stored. Ideally, participants would also accept a term stating that they agree to receive communications electronically. We have only identified in the table below where electronic communication is not enforceable or a specific procedure should be followed.

## Translations

There are 3 main reasons to translate: (i) to achieve the desired incentive effect, as participants will only be incentivised if they understand their Award; (ii) to ensure contractual enforceability; and (iii) to comply with local legal requirements, where applicable. For anyone who is not fluent in English, a translation in their native language is recommended.

Some companies do not provide translations because of the cost involved and the risk of errors being made during translation. Instead, these companies may obtain consent to receiving all Award documents in English (and a declaration that the participant understands English) from the participant in the participant’s native language. The Company may wish to consider obtaining such consent and/or may wish to translate only the critical terms. Where translations are mandatory or highly recommended, we have set this out in the table below. We can arrange translations upon request.

## Securities laws

Offering shares often triggers a requirement under local securities laws for the company to publish a prospectus or similar disclosure. These securities laws are intended to protect individuals and ensure they are fully aware of all relevant issues before acquiring shares. However, a prospectus is usually expensive and inappropriate in the context of an employee offer. There are often exemptions available, from the requirement to publish a prospectus, for employee offers (as these are not considered offers to the public), or where a certain threshold of offerees is not exceeded. We recommend that Award documents contain statements to the effect that any Award is a (non-public) employee offer and that the documents have not been registered with any local regulator.

Where an exemption from securities laws requirements exists, we have identified this in the table below. We have not, however, summarised any detailed requirements of the exemptions which are instead be set out in the relevant country report.

Offers of shares made to employees located within the European Economic Area (“**EEA**”) are governed by the EU Prospectus Regulation (“**EUPR**”), which, broadly, requires publication of a prospectus unless an exemption applies. The EUPR provides an exemption for offers of shares and share awards made to employees. To rely on this employee exemption, certain information must be given to the offerees at the time of the offer, including the number and nature of the shares and the reasons for and details of the offer. This is not onerous and is usually satisfied by including some brief additional wording in the participant communications, including the “special wording” section of the country report for each EEA country. Where this wording is required, this is noted in the table as “**EUPR Wording**” and we can help by checking whether your participant communications contain the relevant information to qualify for the EUPR employee exemption. Other exemptions are available, as set out in the relevant country report, if preferred.

## Special wording

In some countries, it is recommended or required that particular wording is included in Award or Plan documents. Where relevant, this is noted in the table below and further detail is set out in the relevant country report. The most efficient way to incorporate this special wording into your communication process is likely to be to establish a global supplement to your Award documents that includes any recommended or required wording. We can assist with producing this global supplement.

## Data protection

Data protection requirements are not usually primarily driven by incentive arrangements. We have assumed that the Company and each local employing company will already be compliant with applicable data protection laws (such as the General Data Protection Regulation (“**GDPR**”) in the EU), including with regard to the Plan. This may include relevant privacy policies and notices extending to cover the operation of the Plan or obtaining consent in relation to the use of personal data for the Plan. On this basis, the country reports do not set out complete details of local data protection requirements in each country, which are likely to be extensive, and the table below does not cover data protection requirements. The Company should check whether existing data protection arrangements are impacted by the operation of the Plan.

## Acquired rights

There is a general risk that Awards, and payments made in connection with those Awards, will be viewed as forming part of the local employment relationship and may therefore be subject to mandatory local employment law. This may affect the calculation of any pension, severance or other employee benefits and entitlements which are typically linked to the amount of the employee's salary. This acquired rights risk can normally be mitigated by ensuring that Awards are, in practice, made on a discretionary basis and by including disclaimers that, for example, explicitly state that the Awards do not create any guarantees to future or additional rights and are discretionary. These disclaimers are recommended but are not guaranteed to be effective in each jurisdiction.

## Foreign exchange

Foreign exchange rules may prevent participants holding shares overseas (e.g. in a corporate nominee facility) or sending monies overseas (e.g. to purchase shares), or may require repatriation of monies generated overseas (e.g. on selling shares or receiving dividends). Where a foreign exchange issue applies in a jurisdiction, this is identified in the table below and further information is set out in the relevant country report. We have not identified where there is an obligation on the bank, trustee, administrator or employee to make any foreign exchange notification or filing, although, if they exist, they may be identified in the relevant country report. Additionally, as requirements relating to anti-money laundering, such as an obligation to provide a bank or regulator with certain information to verify the source of monies, apply in most jurisdictions and apply generally, they are not covered as part of this review.

## Governing law and jurisdiction

Whatever law the Plan say they are governed by, there is a risk that employment-related provisions in the Award terms, such as forfeiture, notice and any post- termination restrictions, will be subject to mandatory local labour law and may therefore not be enforceable. There is a related risk that a local employment tribunal or court in the participant’s country could seize jurisdiction in the event of the employee bringing a claim there in connection with an Award.

## Transferability

This advice assumes that Awards are not transferable, except in the case of a participant’s death.

## Discrimination

Anti-discrimination laws generally apply and are not covered by this review. The Plan must, in practice, be operated taking into account any applicable anti- discrimination laws, which typically cover discrimination on the grounds of sexual orientation, age, disability, race, religion and ethnicity. For example, there is a risk that age discrimination laws may be breached if termination provisions are operated based on age, particularly in relation to ‘normal’ retirement ages.

## Director / officer notification

Directors or officers who acquire or dispose of an interest in shares in their employer or the employer’s parent company may be obliged to disclose their interest. These requirements apply generally and are not set out in the table below.

## Participant and third-party obligations

The operation of the Plan may give rise to legal or tax obligations for parties other than the Company, such as participants, nominees, trustees, administrators, banks or brokers. This might include licensing issues for nominees, local foreign exchange rules and foreign asset reporting obligations. As these obligations do not generally require the Company to take any action and as most companies leave these obligations to the individual or third-party, we have not identified these requirements below, although they may be identified in the relevant country report. However, it is reasonable for participants to expect some information from their employer about what assets, if any, their employer holds for them. We recommend that participants are advised to seek their own independent advice about any obligations arising as a result of their participation in the Plan.

## Salary deductions

We understand that salary deductions may be used to acquire shares under the Plan. We recommend that the Company seeks explicit participant consent for salary deductions. Where salary deductions are prohibited or specific requirements apply in relation to salary deductions, we have identified this in the table below. Even where salary deductions are permitted countries often set limits on the level of deduction that can be implemented, the country reports contain further details on these limits where applicable.

## Works councils and collective agreements

There may be an obligation for the Company and/or a local employer to inform or consult with an existing works council, trade union or similar employee body in connection with the Plan, either as a result of a legal requirement or a relevant collective bargaining agreement or compromise. We have identified in the table below where there is a legal requirement to engage with these bodies. Even where there is no general legal requirement, it may still be necessary to inform or consult these bodies under a collective bargaining agreement or compromise. The Company should review the terms of any such agreements or compromises to determine whether any additional obligations to engage with employee bodies exist (over and above the legal requirements set out in the table below).

## Taxable moment and withholding

This overview (and the underlying country reports) assume that employees are only tax-resident in one country at all relevant times during the life of an Award. Separate advice should be taken in relation to any internationally mobile employees or employees who are, or may be, subject to tax in more than one jurisdiction.

Certain countries also impose additional taxes, such as a wealth tax. The table below does not cover such extraordinary taxes or charges, however, where applicable, details of any extraordinary taxes are contained in the country reports.

Where there is uncertainty on the tax and social security requirements and charges the generally prudent position is to withhold the tax and to apply social security charges.

Unless indicated otherwise in the table below, the following “**Normal Tax Analysis**” should apply and further detail, including in relation to tax reporting requirements, will be set out in the country reports:

|  |  |  |
| --- | --- | --- |
| **Normal Tax Analysis** | **Employee Share Purchase** | **Employer cash contribution** |
| **Taxable moment** | **Purchase**: Income tax and social security on any discount to the value at the time of purchase. As shares are purchased at fair market value, no discount results and no income tax and social security will arise in practice.  **Transfer to participant**: No income tax. No social security.  **Sale by participant**: Capital gains tax on increase in value since acquisition. No social security. | **Payment of cash**: Income tax and social security. |
| **Withholding** | **Employer income tax withholding:** Yes. | |
| **Employer social security withholding:** Yes. Employer and employee social security.  Employer must withhold the employee contribution. | |

## Share valuation

Except where set out otherwise in the table below, there is no specific method required to calculate the value of shares for tax purposes in the countries covered by this review and, generally, any method should be permitted so long as it is used consistently and reflects the fair market value of the shares on the relevant date. For those countries that require a specific share valuation method for tax purposes, the method is set out in the relevant county reports and there will be a technical risk that a tax charge may arise in relation to shares where a different share valuation method is used for tax purposes. In practice, many companies choose to use a globally consistent valuation method. We can advise on this further, if required.

## Recharge and chargeback

The operation of a recharge or chargeback arrangement, where the costs relating to Awards and/or the Plan are charged to the local subsidiary by the Company (often allowing the local subsidiary to obtain a tax deduction), can be complex and may have accounting and tax implications (including triggering withholding obligations where there may otherwise not have been any). This overview has been prepared on the basis that the Company will not operate a recharge. The country reports contain some information relating to the tax impact of a recharge or chargeback arrangement but specific advice should be obtained if the Company wants to establish such an arrangement. Please note, as the employer company pays the contribution to salary itself, the Plan has an automatic recharge built in relating to the cost of the employer cash contribution which means that the most significant cost has already been passed to the employer. However, the Company could consider recharging the costs of the Company to establish and administer the Plan.

## Country reports

The country reports provide more detail than is identified in the table below. This overview must be read in conjunction with those country reports.

1. **Part 2: country-specific points**

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
| **Canada** (Signed off) (75) | **Securities laws:** Employee Exemption can be relied upon if employees participate voluntarily (i.e. participants are not induced to participate by expectation of continued employment).  **Resale restriction:** no resale restrictions as long as: (i) shares are sold on a non-Canadian exchange or to a non-Canadian person; and (ii) the issuer is not a ‘reporting issuer’ in Canada.  **Special wording:** recommended for: (i) securities law purposes (ii) if translations for participants in Quebec will not be provided; and (iii) (potentially) regarding termination provisions.  **Translations:** if any participants are in Quebec, French translations should be provided unless employees acknowledge they will accept the use of English (suggested wording is included in the report).  **Labour law:** if termination provisions seek to remove a right to receive a benefit (e.g. on termination without cause), the provisions must be unambiguous and it is recommended that employees are given notice of them. Further advice should be obtained on termination provisions. | **Normal Tax Analysis** applies. | 1. Include special wording. 2. Consider if translations required for any employees in Quebec. 3. Review termination provisions and consider if specific advice should be taken on wording. |
| **Germany**  (OnTap) | **Securities laws:** EUPR employee exemption is available. | **Normal Tax Analysis** except that the moment of (notional) taxation for the purchase of shares is | 1. Include EUPR wording. 2. Check works council status. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
| (150) | **Special wording**: EUPR Wording required*.* **Works council:** recommendation to consult with any works councils prior to the implementation or material amendment of any incentive plan, but no requirement to have approval.  **Acquired rights**: risk that German employment law may apply if employment exclusion clause/s found to not apply. If so, it could be held that an employee who terminates their employment will be deemed to be a good leaver and may be entitled to a proportion  of the employer contribution. | when shares are transferred to the participant (if not transferred immediately on purchase). |  |
| **India** (Signed off) (122) | **Securities laws:** generally accepted that no prospectus is required if the shares are offered by a foreign company to employees under an employee incentive plan (but no formal exemption is available). To counsel’s knowledge, no non-Indian companies have filed a prospectus for an employee share plan.  **Exchange controls:** exchange controls are implemented by the Reserve Bank of India (“**RBI**”). Generally, Indian residents will have to fall within an exemption or obtain specific RBI approval for the acquisition of shares, outward remittances, holding an offshore bank account, DRIPs and holding shares through a nominee.  Counsel is of the opinion that the Plan will fall within the exemptions for director or employee offers.  Therefore, RBI consent to operate the Plan in India should not be required. | **Normal tax analysis applies**, except social security is not payable and is therefore not required to be withheld.  **Share valuation:** specific share valuation is required for tax purposes in India. This requires a specific valuation to be obtained from a Category 1 merchant banker registered with the Securities and Exchange Board of India.  **Tax reporting:** the employer must report employees' equity related incentives in the Statement of Perquisites (Form 12BA). | 1. Special wording recommended. 2. Local employing subsidiary to review foreign exchange and asset reporting obligations. 3. Consider if the Company wishes to obtain a specific valuation for tax purposes. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | **Annual return:** the Indian employing subsidiary’s Authorised Dealer bank must file Annex IV report annually reporting the shares allotted to Indian employees during the prior fiscal year (1 April – 31 March). It must be filed as soon as possible after 31 March after the relevant tax year.  **Duty to repatriate funds/DRIP:** unless RBI consent is obtained or the LRS (see below) can be relied on, any foreign funds (e.g. sale proceeds) must be repatriated to India. Proceeds of sale must be repatriated within 90 days of the sale of the shares and dividends must be repatriated within 180 days of receipt. RBI consent must be obtained to operate a DRIP.  **Liberalised Remittance Scheme:** the LRS can be used to acquire and hold shares outside India.  Individual filing and information obligations will arise under the LRS.  **Outward remittances for recharge:** the local subsidiary must ensure that any recharge remittance is certified on Form 15CB by a chartered accountant to confirm whether any tax deduction at source is required and if so at what rate. When remitting the recharge amount, the local subsidiary must provide particulars of the recharge to the Authorised Dealer  on Form 15CA. |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | **Special wording:** counsel recommend the disclaimers included in the report are included in the Plan documents.  **Nominee:** shares acquired in a non-Indian brokerage account, or by a non-Indian nominee must be held in the participant’s name in their personal brokerage or custody account, otherwise RBI consent is required.  **Foreign Asset Reporting:** employing subsidiary in India must file an annual report in the prescribed form if it is relying on the 'director or employee' exemption. The report is filed each year with the RBI, by the company's Authorised Dealer bank. |  |  |
| **Indonesia** (Signed off) (547) | **Securities laws:** restrictions apply where consideration is payable for the shares. If an offer is  i) made to 101 or more participants and shares are sold to more than 51 participants, in any 12-month period and ii) the total amount of the offer exceeds IDR5billion (just under JPY45M), a filing is technically required with the Financial Services Authority. There is no set process: some issuers apply for a no action letter and some choose not to make a filing at all. If the above limits are not exceeded, no filing is required and the private placement exemption can be relied on. | **Normal Tax Analysis** except that:   * no social security arises in Indonesia; * no withholding for income tax arises except in relation to the employer cash contribution; and * income tax arises on the sale of shares and there is no notional taxation point on purchase. | 1. Consider whether the private placement exemption requirements will be met, or if scaling back could be used. 2. If the offer will be a public offer, consider whether to make a filing. 3. Include special wording. 4. Consider translation requirements. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | If a scaling back mechanism is used to limit the size of the offer to IDR5billion, the Plan should fall within the private placement exemption can be relied upon.  **Translations:** Plan documents must be translated into Indonesian for local employees.  **Special wording:** specific wording is recommended if relying on the private placement exemption.  **Salary deductions:** limit on amount of total deductions to 50% of salary.  **Choice of court:** it is possible that an Indonesian court would regard the Plan as part of the employment arrangement and that an employee would be able to bring an action in a local court or  labour tribunal. |  |  |
| **Italy** (OnTap) (68) | **Securities laws:** EUPR employee exemption is available. EUPR employee exemption is available. Other exemptions may be available. However, relying on the EUPR employee exemption is the easiest route to compliance.  **Special wording:** EUPR wording is required. **Electronic communications:** there are technical requirements when delivering documents in connection with an offer of securities. It is unclear whether electronic delivery is compliant. The Company could deliver hard copy offer documents to the office(s) of Italian employees in order to reduce the risk. | **Normal Tax Analysis** except that there is a risk of a tax event on the transfer of shares under the Plan if the purchase price is less than the value for tax purposes using the specified calculation method (see country report for more details on calculation method for tax purposes). | 1. Include EUPR wording. 2. Consider delivering hard copy offer documents. However, we are aware of clients using electronic delivery with no issues. 3. Consider the tax risk. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
| **Netherlands** (OnTap) (109) | **Securities laws:** EUPR employee exemption is available. EUPR employee exemption is available. Other exemptions may be available. However, relying on the EUPR employee exemption is the easiest route to compliance.  **Special wording:** EUPR wording is required. **Works council: i**f a works council exists then consultation prior to the Plan’ implementations will be required as well as on the content of the Plan and on how and when awards can be granted. If the process or content of the Plan changes, another consultation is needed.  **Acquired rights:** an incentive plan is likely to affect employment relationship and give rise to acquired rights issues.  **Salary deductions:** deductions cannot take an individual’s salary below the statutory minimum wage. | **Normal Tax Analysis** except that:   * box 3 income tax may apply on proceeds of sale. | 1. Include EUPR wording. 2. Consultation with any local works council is likely to be required prior to the Plan; implementation and again if the process or content of the Plan are changed. |
| **Poland** (Signed off) (174) | **Securities laws:** EUPR employee exemption is available. For offers relying on the employee exemption, must publish an information document in Polish.  **Filings:** required within 14 of the shares being allocated. Filings to be made on a consolidated basis at least every six months instead.  **Special wording:** if relying on EUPR employee exemption, EUPR Wording needs to be inserted into offer documents and information document. | **Normal Tax Analysis** applies. | 1. Include EUPR wording if required. 2. Publish information document in Polish. 3. Securities laws filings are required. 4. Consider if salary deduction consent will be obtained using wet signature. We note that |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | **Labour law:** risk that local labour law will apply and the Plan will form part of local employment relationship, given local employer participates in the operation of the Plan (e.g. due to payroll deductions). Local counsel note that this risk can be reduced where the Plan and Award documents are executed and communicated between the Company and the employees, not the local employing entity. However, this will not mitigate the risk completely. If the Plan are considered to form part of the local employment relationship additional requirements will apply, e.g. the requirement to translate.  **Salary deductions:** specific express written consent requirements for deductions from salary. Local counsel state that this should be obtained using a wet signature although many companies use electronic in practice and needed again if an amendment to the deduction is made. The amount of salary remaining after a deduction may not be lower than 80% of the minimum net statutory salary. |  | many companies use electronic signature. |
| **Singapore** (OnTap) (98) | **Securities laws:** no issues as the Company can rely on the Qualifying Person Exemption (offer to employees) assuming the Company and the employing Singapore entities are “related corporations” and no selling or promotional expenses are paid in connection with the offer except those incurred for administrative or professional services. | **Normal Tax Analysis** applies, except social security is not payable on share-based payments and is therefore not required to be withheld in relation to the purchase of shares and no capital gains tax is payable on the increase in value since the initial moment of tax, provided shares are held for long-term investment purposes. Where the shares are not held for long-term investments and | 1. Include special wording. 2. Consider electronic communication recommendations. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | **Special wording:** the wording set out in the report is recommended for securities exemption and classification requirements.  **Electronic communications:** where information about the Plan is posted publicly on the Company’s website, the Company will become an Internet Content Provider and subject to certain obligations. This will not apply if the information is hosted only on an intranet site.  **Salary deductions**: deductions cannot represent more than 50% of the employee’s salary for any one salary period and the employee must be able to withdraw consent at any time, without penalty. | are held for trading purposes, they may attract income tax on disposal. Social security is payable on the employer cash contribution.  **Withholding:** no employer withholding requirements except on employer cash contribution where employer must contribute to Central Provident Fund.  **Withholding for departing foreign employees:** if employee ceasing employment with their local employer is:   * neither a Singapore citizen nor a Singapore permanent resident, or * a Singapore permanent resident leaving Singapore permanently,   the local employer is required to inform the IRAS and withhold all sums due to such employee. |  |
| **Spain** (OnTap) (44) | **Securities laws:** EUPR employee exemption is available. EUPR employee exemption is available. Other exemptions may be available. However, relying on the EUPR employee exemption is the easiest route to compliance.  **Special wording:** EUPR wording is required. **Works council:** requirement to inform for the Plan as offer will be addressed to all employees.  **Acquired rights:** if the Plan is in existence for a significant period (e.g. one year) and considered  part of the employment conditions, any amendment | **Normal Tax Analysis** applies. | 1. Include EUPR wording. 2. Consider translations. 3. Inform works council. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | or cancellation could be considered a substantial change in the employees’ working conditions. In this case a specific legal procedure would need to be followed.  **Salary deductions:** deductions cannot lower an employee’s salary below “Minimum Inter- professional Wage” which is currently EUR965 per month. |  |  |
| **Switzerland** (OnTap) (104) | **Securities laws:** no issues.  **Special wording:** prospectus exemption wording required.  **Electronic communications:** forfeiture clauses / non-compete provisions should be made and signed in writing unless a qualified electronic signature is used.  **Labour law:** the Plan is likely to be subject to labour law obligations, giving rise to a requirement to inform the employees' elected representatives.  Employment exclusion clauses are unlikely to be enforceable and the Plan is likely to become employment related. | **Normal tax analysis applies,** except:   * no capital gains tax applies on sale of shares; and * income tax withholding is not likely to be required (income tax withholding is generally only required where the participant is not Swiss tax resident - see the country report for more details).   **Incentive specific reporting:** the employing company should provide participants with an employee annual salary statement and a supplement disclosing details of the Plan including the income resulting from the Plan in the relevant tax year. The annual statement should be filed with the tax authority and certain cantons require a copy to be filed with the tax authorities. | 1. Any forfeiture clauses / non- compete provisions are agreed to electronically, a qualified electronic signature should be used or take view comfortable with risk in practice. 2. Special wording required. 3. Provide the participants with the annual statement and supplement at the relevant times. |
| **United Kingdom**  (OnTap) (263) | **Securities laws:** no issues for an employee offer. | **Normal Tax Analysis** applies generally, however tax is complex and the country report should be carefully reviewed. | 1. Special wording required. 2. The Plan must be registered with HMRC. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | **Special wording:** employee exemption wording required. Financial advice disclaimer wording recommended. | **Incentive specific reporting:** share plan specific reporting also applies and the Plan must be registered with HMRC no later than 6 July following the end of the tax year in which the first Awards are granted under the Plan to UK participants. |  |
| **United States** (Signed off) (944) | **Federal Securities laws:** complex laws. The Company must either rely on Rule 701 to avoid the registration requirements with the SEC. See the country report for more details.  Offers must not exceed, in a 12-month period, the greatest of (1) $1million, (2) 15% of the Company’s total assets, or (3) 15% of the Company’s outstanding securities sold in reliance of Rule 701. A copy of the Plan rules must be made available to participants. If Awards granted in reliance of Rule 701 exceed $10million in any rolling 12-month period, significant extra disclosure will be required.  **Resale restrictions:** if the shares are listed on the TSE, in practice no restrictions.  **State Securities laws:** assuming that the Company relies on Rule 701 no action will be at a state level, as an exemption in each state will apply that is self- executing. | **Normal Tax Analysis** applies, except:   * **S409A:** Awards must be structured to be exempt from, or compliant with, section 409A to avoid accelerated tax; penalty tax and interest charge at vesting. | 1. Confirm which exemption will be relied upon. Assuming Rule 701 will be used, confirm whether the $10million limit in any 12-month period will be exceeded. 2. Special wording is required. 3. Ensure compliance with, or exemption from, S409A. We recommend that US Counsel review the Plan rules and prepare a schedule to ensure S409A compliance/exemption. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Country**  **(OnTap / Signed off (ppts.)** | **Legal issues** | **Tax issues** | **Key actions** |
|  | **Special wording:** required in the Award agreements where a securities law exemption is relied upon. |  |  |

**Appendix** **Plan Summary**

|  |  |
| --- | --- |
| **Topic** | **Provision** |
| **Issuing company** | PHC. |
| **Name of plan** | ESPP. |
| **Type of plan** | An all-employee plan which uses employee deductions from salary to buy shares. Share may be subject to a holding period after purchase. |
| **Eligibility** | All employees of PHC Group in participating countries are eligible. Contractors are excluded.  Participants must be employed by a group employer at the time of award/invitation and not under notice of termination. |
| **Award cycle** | Eligible employees can join in April each year. Each year, an Award Cycle will continue for 12 months, consisting of 12 monthly contributions from salary plus an optional contribution from annual bonus |
| **Cash contributions** | Employees may choose a level of contribution of up to 10% of gross salary. The employer will pay a cash bonus (employer cash contribution) of 15% of the aggregate contributions from monthly salary that employee makes in any Award Cycle.  The chosen amount will then be deducted from net (post tax) salary and used to purchase shares at the current fair market value.  In addition, employee can also contribute up to 50% of the net annual bonus paid to the employee during that Award Cycle. The employer will also pay a 15% cash bonus (employer cash contribution) to salary in relation to this contribution.  After 12 months have elapsed since the start of the Award Cycle, the employer cash contribution(in relation to both deductions from monthly salary and bonus) will become payable providing the shares acquired using such contributions have been held in the Plan until the end of the Award Cycle. There is an aggregate limit to contributions used to purchase shares in any given year of USD 20,000. |
| **Purchase Date** | Within 30 days of deductions being made from salary. |
| **Changes to participation** | **Stopping and starting deductions**  Participants may choose to stop and restart deductions by giving notice. |

|  |  |
| --- | --- |
| **Topic** | **Provision** |
|  | **Withdrawal from the plan**  Participants may withdraw from the plan at any time but can only re-join the next cycle |
| **Source of shares** | Rules should allow for new issue, market purchase and treasury. PHC will decide which shares to use for each plan. |
| **Holding period** | Awards may be subject to a holding period.  Where a holding period applies, leavers need to hold shares in the account of the plan administrator except in Good Leaver cases. |
| **Leavers - general** | No further purchase of shares is possible.  Shares are retained by participants but will be subject to any holding period. |
| **Good leavers** | Holding periods will cease to apply for good leavers.  Good Leaver reasons: Death; Retirement; Disability or Illness; Sale of Business Unit; Redundancy/Restructuring. |
| **Transferability** | The rights are non-transferable except on death to personal representatives. |
| **Non pensionable** | The rights are non-pensionable. |
| **Nominee** | Shares to be held in a nominee arrangement. |
| **Shareholder Rights** | No shareholder rights (dividend or voting) until shares are delivered to the nominee.  Once delivered equal rights as all ordinary shareholders. |
| **Amendment and termination provisions** | PHC may amend, suspend or terminate the plan in its absolute discretion at any time.  Outstanding awards may be amended to the benefit of participants or for minor and administrative reasons. However any material change to the detriment of participants requires agreement of the participants. |
| **Governing law** | Japanese law. |
| **Expiry date** | 10 years after approval by Directors. |