

Individual tax alert

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Update on the activities from the Ruling Commission on equity related remuneration

Introduction

Whereas in earlier years, the RC's counsel was sought less frequently in relation to equity related remuneration, we have noticed that over the past months/years, the RC has been asked to deliver opinion in this area more regularly. Very recently, the following two interesting decisions have been published.

I. Economic neutral changes to the terms of a stock option plan

Background

Granting stock options is an often used incentive mechanism in Belgium, especially in view of the Stock Option Legislation of 26 March 1999. Assumed all conditions are met, main characteristics of legislation are:

1. Taxation as professional income at the moment of the grant;
2. Lump sum valuation of the taxable base for non-quoted stock options;
3. Reduced lump sum valuation if certain conditions are fulfilled;
4. Normally no taxation upon exercise;
5. Normally no taxation as professional or miscellaneous income at later sale of the acquired shares.

Beneficiaries of stock option plans may be impacted by economic events occurring after stock options are granted. Following such events, the value of the shares underlying the stock options may be subject to, for example, dilution. In order to safeguard the rights of option holders, most stock option plans provide for clauses that guarantee that the number, features and/or class of shares covered by stock options are adjusted if the company recapitalizes, reclassifies its capital stock, or otherwise changes its capital structure.

Decision

In a recent case ([Ruling nr. 2013.089](#)), the RC was sought to confirm that, following a change to the exercise price and number of stock options, due to an exceptional dividend distribution to its shareholders, the intrinsic value of the stock options has remained the same. In this case, beneficiaries had accepted the grant of stock options with the personal commitments to benefit from tax treatment at the lower lump sum valuation. The positive response from the RC to this request meant that the change would be tax neutral, i.e.:

- Does not create a (new or additional) taxable event/benefit (i.e. new grant of stock options);
- Does not create the grant of a (taxable) certain benefit;

- Does not impact date of grant and thus the exercise term of the original grant.

The applicant has provided for an adjustment method which, in the RC's opinion, sufficiently assured that:

- The intrinsic value of the shares before change was equal to the intrinsic value of the shares after change;
- Thus, the conversion has taken place at economic neutral conditions;
- Finally, the conversion can be tax neutral and no additional taxes should arise.

It is diligent not to assume that the Ruling Commission will opine in the same way in all similar cases, but it is also knowledgeable that, where companies find themselves in similar circumstances, the RC can provide legal comfort to companies finding themselves in these circumstances.

II. Remunerate employees through a capital increase

Employees are given the opportunity to subscribe to an employee-reserved capital increase with a 20% discount on the share value. No taxable benefit occurs (art. 609 Corp. code), provided that:

- The reduction is limited to 20% of the fair market value;
- The company has granted at least twice dividends during 3 preceding years;;
- The shares bear voting right;
- The shares are named and are not be transferable during 5 years;
- The capital increase should not amount to more than 20% of the share capital of the company.

Since the application of these conditions is not always straightforward, the application of the regime comes back in a ruling request from time to time, where applicants request the RC to confirm that no taxable benefit arises. Often, one of the circumstances is that employers provide their employees with a premium to allow them to participate. As this premium is subject to tax and social security, it does not impact the reduction which employees are entitled to and no taxable benefit arises. Moreover, the RC re-confirmed that the tax-free discount also applies to Belgian employees who are subscribing to a capital increase of the foreign mother company of their Belgian employer.

While the regime is not often applied, it is worth keeping in mind as an alternative method of remunerating your staff.

Deloitte has a team of experts in equity related remuneration, whom have built up extensive knowledge in relation to these type of services should your company consider implementing an equity incentive plan.

Contact

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