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**India:
Sale of unexercised stock options – Period of holding to be reckoned from grant date**

Background and facts

N.R. Ravikrishnan (the “individual”) was granted 6,000 stock options during different Indian tax years under an employee stock option scheme. These options were subsequently bought back by the employer under an option transfer agreement. There was no exercise by the individual prior to such buy-back.

The individual, while filing his India tax return for the year 2007 – 08, considered 3,750 options as long-term capital assets and the remaining as short-term capital assets for determining the gain pursuant to the buy-back.

Further, he claimed a deduction against the long-term capital gain based on investments made in specified securities.

The jurisdictional tax officer – in the course of auditing the return – rejected the claim, treated the entire capital gain as short term, and consequently denied the deduction claimed, as well.

The decision of the jurisdictional tax officer was upheld upon appeal to the first-level appellate authority.

The matter was brought before the income tax appellate tribunal (second-level appellate authority) to decide if the gain in question is a short-term capital gain or a long-term capital gain.

Ruling of the Tribunal¹

The Tribunal dismissed the ruling of the first-level appellate authority and held that the individual has the right to the capital asset (options) on the date of grant. Further, since the sale has happened without exercise of options, the period of holding had to be considered from the date of granting such options. As a result, the gain on the transfer of 3,750 options would be long term in nature based on the date of the grant, as rightly claimed by the individual. Further, the Tribunal also allowed the individual's claim for deduction based on the investment he made.

Deloitte's view

Considering that stock options are usually granted by an employer to its employees over different time periods, the period for holding such options is the most critical aspect to determine the taxability of any capital gains arising on exercising such options. Given this scenario, this Tribunal ruling has provided clarity with respect to the period of holding to be considered when the transfer of stock options takes place prior to the exercising of options.

- Anis Chakravarty (Mumbai)
Partner
Deloitte India
anchakravarty@deloitte.com

Norway: New flat tax regime for non-residents and first-year residents

What is the change?

In January 2019, a new flat tax regime for foreign employees will be introduced in Norway. The intention behind the new tax regime is to simplify the tax administration. The new regime is similar to PAYE, in which the final tax settlement is done via payroll, and no tax return filing is required.

Key points

- The regime is optional, and it is possible to choose regular taxation and file a regular tax return instead.
- The option applies to non-residents and first-year residents provided that taxable capital income is under a certain threshold (see below).
- The option does not apply to seafarers and workers on the continental shelf, self-employed individuals who have business activity in Norway, and individuals who have rental income from Norwegian properties.
- The annual cap on taxable gross income will be NOK 617,500 per income year in 2019 (and will change annually).
- The annual cap on global capital income for first-year residents will be NOK 10,000.
- The flat tax rate will be 25 percent (including social security tax) and 16.8 percent (excluding social security tax).
- The tax deduction card must reflect the new regime.
- No deductions will be allowed.
- Taxable benefits in kind are included in the tax base.

Benefits

The benefits of taxation under the new regime are numerous for both individuals and employers. The main positive outcomes are predictable and reduced costs and less administrative tasks. The tax is calculated with the flat rate and the tax settlement is ready when the withheld tax is paid through the payroll. When the employer is responsible for

¹ Source: ITA No 2348/Bang/2018

tax payments on behalf of employees (net pay agreements), an effective recharge can be achieved if the employees are taxed under the new tax regime. In addition, when avoiding double taxation in a home country, the documentation necessary to claim foreign tax credit deduction in the home country can be obtained at an earlier stage.

Who can benefit?

Not all foreign individuals working on assignment in Norway will benefit from the new regime. Since the flat tax rate regime is limited to NOK 617,500 per calendar year, it will be possible to have a significant tax reduction compared to normal taxation if the work period is short and the income high is within the limit. The regime could be beneficial for:

- Non-resident individuals on a short-term assignment;
- Foreign board members; and
- Business travelers.

The regime could be beneficial for full-year residents with gross earnings between NOK 464,000 and NOK 617,500, provided that taxable capital income is under a certain threshold. The situation can differ depending on total income, length of stay in Norway, and level of expenses eligible for deduction. A thorough calculation might be necessary to determine cost-benefit of the new regime.

Preparations needed

The new regime is applicable only for foreign individuals who fulfill conditions set by the Norwegian tax administration. However, this will not be beneficial for everyone. The employer must be able to identify which individuals the new regime is applicable and beneficial for. Employers should also consider if policy and/or assignment letters should be updated. It is important to implement good processes for the application of A1/COC and the tax deduction card to ensure that the correct tax rate is used. Employers should also initiate necessary preparations for payroll reporting.

Deloitte's view

Today's tax administration rules are quite complicated for reporting of business travellers, foreign board members, and individuals on a short assignment in Norway. With the new tax regime, it will be easier to report and finalize taxes for these groups. Even if the annual cap on taxable gross income will exclude many individuals from taxation in the new regime, the new rules will lead to more beneficial taxation and less administration burdens for many short-term visitors. Deloitte Norway expects this to be the first step towards a more simplified tax administration for all foreign individuals on temporary stay in Norway.

The time when the new regime will become effective is approaching, and we recommend that employers start the preparation process as soon as possible. Deloitte Norway can assist with any advisory and services related to implementing the new regime.

— Stig Sperre (Oslo)
Partner
Deloitte Norway
ssperre@deloitte.no

Erik Larsen (Stavanger)
Partner
Deloitte Norway
erlarsen@deloitte.no

Alena Usovik (Stavanger)
Manager
Deloitte Norway
ausovik@deloitte.no

Nikolai N. Smith (Oslo)
Director
Deloitte Norway
nnsmith@deloitte.no

Stine Tapaninen (Stavanger)
Manager
Deloitte Norway
stinetapaninen@deloitte.no

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