



## **Global Reward Update**

### **Romania – Changes to the definition of a Stock Option Plan**

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#### **Introduction**

Under amendments to Romanian legislation effective as of January 1, 2017, the definition of “stock option plan” has changed such that share-settled equity awards over unlisted shares may qualify as capital income (i.e., taxation at sale). Previously, this preferential treatment was only available for share-settled equity awards over listed shares that met the definition of “stock option plan.”

#### **Background**

Effective January 1, 2016, RSUs (and other types of equity awards) over listed shares could qualify for the preferential tax at sale treatment as capital income for share-settled equity awards over listed shares that met the definition of “stock option plan”. Prior to 2016, only options over listed shares that met the “stock option plan” definition could qualify. Where the preferential treatment applies, there is no employer withholding required because the taxable event is at sale.

Cash-settled equity based awards and share-settled equity awards with a vesting period of less than one year, will remain taxable at the date of vesting/delivery and subject to employer withholding if there is a recharge arrangement in place (or under certain circumstances where there is no recharge).

## Change to the definition of “stock option plan”:

Following the changes introduced on January 1, 2017, the tax treatment of equity awards issued by private companies was aligned with the treatment of awards issued by public companies. Share-settled awards with a vesting period of at least one year are subject to capital gains taxation at the date of sale, instead of taxation when shares are issued (e.g., vesting for RSUs). Further, there is no withholding requirement for the employer as the amount is not subject to tax until the point of sale. The employee will be required to report the sale of the shares and pay any tax due in their annual tax return.

The previous definition covered only equity incentive plans which granted shares listed on a regulated market or traded within an alternative trading system. This requirement has been removed from the new definition, increasing the range of equity plans in Romania as more may meet the requirements to be considered a “stock option plan” without being on a regulated market.

As of January 1, 2017, the conditions for meeting the definition of “stock option plan” has changed to:

- equity awards that can only be granted to the employees, directors and/or administrators of the issuing company or of its affiliates at a preferential price or even free of charge;
- The vesting period must be of at least one year.

Therefore, the same tax rules will apply to all types of equity awards (e.g., not just RSUs and stock options over listed shares) which meet the stock option plan definition.

## Deloitte’s view

This change will align the tax treatment for private and public companies. Private companies (in addition to public companies) that grant equity awards in Romania may wish to examine their plan terms to determine if they currently meet or would consider adjusting their award structure to meet the “stock option plan” requirements. This



would defer taxation until sale at capital gains tax rates to the individual and reduce the potential administrative burden for the employer to withhold and report.

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