



Tax treatment of stock option plans etc.

Recently, the Public Revenue Independent Authority issued instructions on the interpretation and application of the provisions of laws 4646/2019 and 4714/2020 on the new favorable income tax regime from the granting of stock options and in the framework of free share distribution programs, as follows:

Stock Options

Tax point for stock option plans

- ▶ Regarding stock options, there are three crucial time points taken into account for determining income tax treatment: 1) the grant date, 2) the exercise date, and 3) the time of transfer of shares due to sale, donation, parental grant, inheritance.
 - ▶ Provided that the minimum 24 month holding period (or 36 months for start-ups businesses)
- from the grant of the right (point 1) to the transfer of shares (point 3) has passed, the benefit as calculated on the date that the shares were acquired is classified as capital gain income and is subject to tax at the time of the transfer of the shares at a rate of 15% (or 5% for start-ups businesses) plus special solidarity tax.

- ▶ Otherwise, if the transfer does not exceed the minimum 24 month holding period (or 36 months for start-ups businesses) from the grant of the right to the transfer point, the benefit is then considered employment income and is subject to income tax based according to the progressive income tax scale for employment income plus solidarity tax at the time of the transfer of the shares.

Calculation of the taxable benefit (point 2, exercise date)

- ▶ As of listed shares, the taxable benefit is equal to the closing price of the share on the stock exchange at the time of the exercise of the right, reduced by the exercise price of the right (exercise price), however, the ultimate taxation of the benefit in the name of the individual occurs at the transfer date of the shares.
- ▶ As of non-listed shares, the taxable benefit is equal to the share price based on the value of the company's equity (as reflected in its books) at the time of exercise of the right, reduced by the exercise price of the right (exercise price).

Method of taxation of capital gain arising between the exercise time of the right (point 2, exercise date) and the transfer time of the shares (point 3, transfer date)

- ▶ In case the value of the share has increased between the time of exercise of the right (point 2, exercise date) and the time of transfer (point 3), said capital gain income is exempt from income tax and is subject only to special solidarity tax, provided that the transferor participates in the share capital of the company with a percentage of less than 0.5%. In a different case (ie participation over 0.5%) an income tax of 15% is imposed.
- ▶ In case of non-listed shares, said capital gain is taxed at a rate of 15% plus solidarity tax.

Reporting obligations of employer and beneficiary for income from stock option plans

The employer is obliged to:

- ▶ Issue a written confirmation statement to the employee at year-end, which should indicate the amount of the taxable benefit from shares acquired during the year and to also include this amount in the relevant monthly electronic withholding tax return for reporting purposes.

Even though there is no guidelines in the current legislation concerning stock option plans, it is clearly implied that at the time of the transfer (point 3) the individual themselves (or the heirs

etc.) when they submit their annual income tax return in the tax year of transfer of the shares will be obliged to declare the gain as calculated at the exercise date of the option and on the other hand the capital gain arising between the value exercise date of the right (point 2, exercise date) and the transfer date (further guidelines are expected to this respect).

The above also applies to the tax treatment of income arising from options of affiliate companies (domestic and foreign). The obligation of the employer to issue a written confirmation statement to the employee at year-end, which should indicate the amount of the taxable benefit from shares acquired during the year and to also include this amount in the relevant monthly electronic withholding tax return for reporting purposes applies to this case as well.

The new provisions apply to stock options exercised from 1.1.2020 onwards.

Free share distribution programs

Tax point for tax-free schemes

- ▶ When considering free share distribution equity plans, two are the critical time points taken into account for determining the taxation value and taxation point of the income: a) the time of distribution of shares to the individuals and b) the time of transfer of shares.
- ▶ The tax point of the benefit arising is at the transfer date of the shares by the benefiting individual. Regardless of whether the shares are transferred immediately or later in the future - there is no minimum holding time and in every case the benefit is taxed as capital gain income at 15% plus solidarity tax.

Calculation of the taxable benefit for free share distribution programs

The taxable benefit is determined at the date the shares are acquired by using the closing price of the share for listed shares on that date.

Method of taxation of goodwill arising between the time of disposal of the shares (point 1) and the time of transfer of the shares (point 2) - Contrary to the stock option plans in which three crucial time points taken into account for determining income tax

- ▶ If the value of the share has increased between the disposal of the shares (point 1) and the time of their transfer (point 2), then in the case of listed shares said capital gain income during the

transfer (point 2) is exempt from income tax and is subject only to a special solidarity tax, provided that the transferor participates in the share capital of the company with a percentage of less than 0.5%. Otherwise (ie participation over 0.5%) income tax of 15% is imposed on capital gain.

- ▶ In the case of non-listed shares, said capital gain is taxed at a rate of 15% plus solidarity tax.

Reporting obligations of employer and beneficiary of income for free share distribution programs

The employer is obliged to:

- ▶ Issue a separate remuneration statement to the individual during the tax year in which the free shares are provided with the number of shares issued and the value of the shares at the time of their free distribution,
- ▶ Include this amount in the relevant monthly withholding tax return for reporting purposes (excluding income tax withholding).

Even though there is no guidelines in the law to date, it is clearly implied that at the time of transfer (point 2) the employee themselves will be obliged to declare when submitting their annual personal income tax return the value of the gain as determined at the time the shares were acquired and on the other hand the capital gain arising between the value of the share at the acquisition date and the actual selling price of the shares (further guidelines are expected to this respect).

The above also applies to the tax treatment of income derived from free share distribution programs to employees/ partners/shareholders of affiliated (domestic and foreign) companies.

The new provisions apply to free shares received from 1.1.2020 onwards.

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