

What is the tax treatment of stock options?

An employee or a director obtaining stock options as part of his remuneration package, receives a taxable benefit in kind. How should this benefit in kind be calculated exactly? And when? Upon granting or upon exercising the option? We herewith explain more in detail.

Stock options?

A stock option gives the right during a certain **exercise period** to buy shares against a whether or not previously determined price (the exercise price). Employees and directors can in this way obtain shares. In most cases these are shares of the company for which the employee is working, but these can also be shares in another company.

This system has several advantages:

- *Advantage for the employer:* the employees obtain extra motivation since the final yield of the option depends on the growth of the company;
- *Advantage for the employee:* the employee can obtain a financial advantage if the value of the shares increases. The employee can then exercise the option against a previously determined price and sell against the higher market price. In case the price of the shares remains low, it is better for the employee not to exercise the option.

When is it taxable?

Stock options are part of the remuneration package and therefore taxable. Two questions occur. How should the value of the benefit in kind be calculated? Which moment is determining: the moment the employee receives the option or the moment the option is exercised?

The legislator has chosen to tax stock options **at the time they are granted**. When are the stock options granted? First there is a **proposal by the company**. This proposal should be communicated to the employee in writing. Afterwards the employee has sixty days to **accept the offer in writing**. In case the employee accepts, the options are granted the sixtieth day following the date of the proposal. If the employee does not accept within sixty days, this is treated as a refusal. In such case no granting occurs.

What is exactly taxable?

For non-listed companies the benefit in kind is estimated at **18% of the value of the underlying shares at the time of the offer**. As a general rule the offer stands for a period of five years. In case this period is extended the value of the benefit in kind is increased with 1% per year or part of the year exceeding this period.

When the below conditions are met, the rate is halved to **9%** and for possible augmentations when the exercising period is longer than five years, to 0,5% per year:

- the exercise price is determined at the time of the offer
- in the proposal is stated that the option cannot be exercised (i) before the end of the third calendar year following the one in which the offer was granted or (ii) after the end of the tenth year in which the offer took place
- the option cannot be transferred 'among the living'
- the risk of value reduction of the underlying shares cannot be covered by the person granting the option or by a person with whom there is a band of mutual dependence

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- the option itself relates to shares of a company for which the employee works (or an affiliated company)

In case the employee or the director makes a contribution to fulfill the option, this will be deducted when calculating the benefit in kind.

In case the exercising price of the option is lower than the value of the underlying shares at the time when granting the offer (*in the money*), the lump sum basis is increased with the difference between both.

Formalities

The employer should quote the value of the option on the **individual sheet** and the recapitulative statement of the employee. Additionally he should withhold withholding taxes.

The employee should report the benefits in its **personal tax return**.

Benefits in kind are in general subject to **withholding tax**. No special provisions are foreseen in the stock option legislation, so the normal rules to withhold withholding tax apply to stock options.

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