

Stockoptions bis: the special case of directors

Previously we wrote about the tax treatment of stock options. Today we further focus on a special rule which applies when a stock option is granted to a director working through a management company.

Reminder: the tax treatment of stock options in a few lines

Stock options are part of the remuneration of an employee or director. Therefore they are taxable. For a longtime it was not clear when this advantage was taxable. The stock option law has finally determined that the option is **taxable at the time it is awarded**.

Additionally the question arise how the advantage should be valued. For option with a duration of maximum five years the value of the option is valued at **18% of the value** of the underlying shares at the time of the offer. When the duration is longer than five years, the value is increased with 1% per additional year. This lump sum can be **reduced to 9%** when (i) the strike price is definitively determined at the time of the offer, (ii) the option cannot be exercised during the first three years or after ten years after the offer, (iii) the option cannot be transferred during live, (iv) in case the risk of depreciation of the shares is not (in)directly covered by the employer, and (v) the option relates to shares of the employer.

What is the issue with directors?

There is a problem with directors working through a **management company**. Directors of management companies do not qualify for the reduced tax rate when they obtain stock options from companies in which the management company holds a director position. They do not fulfill the above mentioned fifth condition: the option should relate to the company-employer. The director of a management company works for the management company and not for the exploitation company-client granting the stock options.

Since there was some uncertainty, the tax authorities have laid down their position in a circular letter. This position applies to the granting of stock options as from 13 April 2017 (=the date of the circular letter).

Even though is not explicitly mentioned in the law, the stock options cannot be granted to the management company. The preparatory works show that only private persons can obtain stock options (under the favorite tax regime).

So is the case closed?

Not completely. According to some tax authors it is defensible that the director of a management company still can benefit from the beneficial valuation (9% of the shares). At least under the condition that the management company holds a director position in the company and that the director is appointed as **'permanent representative'**. If the director is the permanent representative there is after all a direct link between the director/permanent representative and the company/employer.

According to the circular letter the tax authorities do not agree. We will keep you informed on the further developments in this respect.