KARATZAS & PARTNERS

Tax Law Alert

Stock options & free share award plans

Introduction

By means of two different legislative interventions, at the end of 2019 and in the summer of 2020, the government provided tax incentives for the participation of employees or shareholders in the share capital of their employer or company (or of its parent company) through stock option and free share award plans. The principal incentive is that the difference between the value that the shares have, when the participant acquires them, and the amount (if any) that she/he paid in order to acquire them, is not treated under certain circumstances as income from employment, which may be taxed at a rate up to 44%, but is taxed at a rate of 15% or 5%. Another significant incentive is that income is deemed to arise not upon acquisition but upon disposal of the shares.

Recently the Independent Authority for Public Revenue (IAPR) issued valuable guidance on these plans, which allows for their safe implementation from the tax point of view. Specifically:

Who may benefit from the lower tax rate

Employees or shareholders who participate in plans established by their company, or by a parent company. The guidance note mentions in certain places also plans established by "related entities". However, previous guidance by the IAPR as well as the provisions referred to in the current guidance note concern subsidiaries only, so that it is not entirely clear whether, for example, an employee participating in a stock option plan of a sister company would qualify for the lower rates. The guidance note points out that, in order for a participant to benefit from the lower tax rate, the issuer of the shares must be a societe anonyme, at least insofar as stock option plans are concerned. The same probably applies regarding free share award plans.

Conditions for benefiting from the lower tax rate

Stock option plans:

In order for the difference between the value that the shares have upon exercise of the option and the strike price of the option to be taxed at a rate of 15%, the participant must not dispose of the shares for a period of 24 months after the options are granted to her/him.

The 5% tax rate is applied where:

a. the issuer is not listed;

b. the company is "small" or "very small" under Greek GAAP;

c. the options are granted within 5 years of incorporation of the company;

d. the company is not the result of a merger;

e. the participant does not dispose of the shares for a period of 36 months after the options were granted to her/him.

"Disposal" of the shares includes not only sale, but also donation or transfer by inheritance.

Free share award plans:

The shares must be acquired without consideration in the context of free share award plans, such as restricted Stock Units (RSUs), performance shares or performance units, restricted shares plans, matching shares or employee stock purchase plans, deferred stock, provided that the acquisition of the shares depends on the achievement of specific targets or the occurrence of a specific event. In that case, the rate will be 15%. There is no minimum holding period for the shares, once they are acquired.

In all the above cases, as things stand today, income shall also be subject to the solidarity contribution. The rate of the solidarity contribution rises progressively from 2.2% to 10% and is calculated with reference to both taxable and tax-exempt annual income exceeding EUR 12,000.

Income which the tax incentive concerns

Stock option plans:

Where the shares are listed, the relevant income will be the positive difference between the closing price of the shares upon exercise of the options and the strike price of the options. Particularly as regards shares listed on AthEx, the exercise date is deemed to be the date on which participants receive the shares in their investment accounts. Where the shares are not listed, the relevant income will be the positive difference between the book value of the shares upon exercise of the options and the strike price of the options. It should be noted that the rationale for assessing tax on non-realised gains, particularly in the Greek context where tax is generally assessed only on realised gains, presumably lies with the capacity of the participant to dispose of the shares upon acquisition. This does not take into account, however, plans that may restrict the ability of the participant to dispose of the shares for a certain period of time.

Income will be deemed to have arisen upon disposal of the shares. Any excess capital gains will be taxed under ordinary capital gains provisions, i.e. at a rate of 0% where the shares are listed and the participant holds less than 0.5% of the share capital of the issuer and at 15% otherwise. So, for example, a listed share acquired for a strike price of 2 with a closing price of 4 on the exercise date and a sale price of 7 after more than 24 months as of the option grant shall lead to income tax of 0.30 [(4-2)*0.15 + (7-4)*0)] where the participant holds less than 0.5% of the share capital of the issuer or 0.75 [(4-2)*0.15 + (7-4)*0.15] where the participant holds at least 0.5% of the share capital of the issuer. A listed share acquired for a strike price of 2 with a closing price of 4 on the exercise date and a sale price of 1 after more than 24 months shall lead to income tax of 0.30 [(4-2)*0.15].

Free share award plans:

Where the shares are listed, the relevant income will be the closing price of the shares upon acquisition of the shares. Any excess income will be taxed under ordinary capital gains provisions, as described above. Where the shares are not listed, the relevant income will be the book value of the shares upon acquisition of the shares or the sale price of the shares, whichever is higher, taxed at 15%. So, for example, a listed share with a closing price of 5 on the acquisition date and a sale price of 11 shall lead to income tax of 0.75 [5*0.15 + (11-5)*0)] where the participant holds less than 0.5% of the share capital of the issuer or 1.65 [5*0.15 + (11-5)*0.15] where the participant holds at least 0.5% of the share capital of the issuer. A listed share with a closing price of 7 on the acquisition date and a sale price of 3 shall lead to income tax of 1.05 (7*0.15). A non-listed share with a book value of 3 on the acquisition date sold for 1 shall lead to income tax of 0.45 (3*0.15). If it were sold for 5, income tax would be 0.75 (5*0.15).

Authors:

Sissy Stergiopoulou, Trainee

Maria Chronaki, Senior Associate

Georgios Minoudis, Partner