

Global Rewards Update: Belgium

July 2009

ADMINISTRATIVE CIRCULAR ISSUED ON STOCK OPTION PLAN EXTENSION – EXTENDING THE TERM OF UNDER WATER STOCK OPTIONS

To Benefit From This Extension, Action is Required by July 31, 2009

NOTE: This communication is an update to the Belgian Global Rewards Update which was issued in May, 2009.

Background

The Belgian tax authorities recently issued an administrative circular which clarified that subject to certain conditions, companies are able to extend the exercise period for stock options offered between November 2, 2002 and August 31, 2008, without negative Belgian tax consequences.

If stock options are accepted in writing within 60 days of the date of offer, Belgium will tax stock options on the date of grant, which is presumed to be 60 days after the date at which the options are offered. The taxable benefit is calculated as a percentage of the underlying shares' value at the time of the offer.

For stock options granted on or after January 10, 2003 which are not accepted in writing within 60 days of the date of offer, taxation will arise at the date of exercise, on the difference between the fair market value of the shares at the date of exercise, less the exercise price paid by the employee.

Extending the Term of Under Water Stock Options

Market conditions have placed many outstanding options underwater. As a result, employees may choose not to exercise their options, and taxes that have been paid up front (e.g., options which were subject to tax at grant) cannot be recovered. To address this situation, the Economic Recovery Law (published in the April 7, 2009 Belgian Official Journal) allows companies to extend a stock option's exercise period by a maximum of five years, without tax consequences, if conditions outlined in the administrative circular are met.

Stock options must meet the following requirements to benefit from this extension:

- It must still be possible to exercise the options; meaning that the option term has not expired.

- The options must have been offered between November 2, 2002 and August 31, 2008.
 - No extension is possible for options that benefited from an extension under a similar 2002 Program Law.
- The options must have a total fiscal value that does not exceed EUR 100,000 (approximately U.S. \$140,000).
 - According to Belgian tax law, the fiscal value is defined as the in-kind value of the benefit, and is calculated for each taxpayer and each company.
 - As a result, it is possible for a taxpayer to benefit from the stock options extension at a value exceeding EUR 100,000, when the options are granted by different companies.
- Participants who have stock options for which an extension is granted by the company must give written consent accepting the extension. Refusal by some employees does not preclude others from giving their consent and benefiting from the extension.
- The company is required to retain all beneficiary consent documents.
- The Tax administration must be notified regarding extension agreements before July 31, 2009. This notification must contain:
 - A description of the underlying shares, exercise price and period, and any important conditions attached to the options.
 - The identity and location of the participating employees.

ACTION

Companies should:

- Review outstanding stock option awards to determine whether extension relief is available.
- Ensure that the Tax administration is notified before July 31, 2009 in instances where the decision is made to extend the stock options.

People to Contact

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: globalequity@deloitte.com and a global rewards consultant will contact you.

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