

# Global Rewards Update: SLOVAKIA

January 2010

## **STOCK OPTIONS: CHANGE IN POINT OF TAXATION EFFECTIVE JANUARY 1, 2010**

### **BACKGROUND**

On December 8, 2009, the Slovak government published an amendment (“new amendment”) to the Slovak Income Taxes Act (“the Act”) in the Collection of Laws that changes the taxable event with respect to employee stock option awards. Since December 15, 2005, employee stock option awards have been subject to Slovak income taxation on the date the employee vested in the award. The new amendment announces that for employee stock options granted from January 1, 2010, taxation will be deferred past vesting to the date the options are exercised.

Under the prior system of taxation, the taxable amount upon vesting was equal to the fair market value of the underlying shares on the date of vesting less the exercise price to be paid by the employee in the future. This approach often led to a timing mismatch since the employee was subject to income tax at vesting even though they did not realize any income until a future exercise.

### **NEW AMENDMENT AND CHANGED POINT OF TAXATION**

#### Options Granted On or After January 1, 2010

The new amendment stipulates that the imposition of tax at exercise, rather than vesting, will apply to all “employee options” granted on or after January 1, 2010. While the type of stock options that would qualify as “employee options” is not separately identified, it is believed that the term incorporates most stock option plans whether the options are granted by the local Slovak entity or its foreign parent company. The taxable value at exercise will be equal to the

fair market value of the underlying shares at the date of exercise less any exercise price paid by the employee.

#### Options Granted Prior to January 1, 2010

The transition rules issued in conjunction with the new amendment provide that all stock options granted before January 1, 2010 will remain subject to income taxation upon vesting. The new amendment does not address any other type of equity compensation, regardless of when granted.

#### Outstanding Issues

The new legislation provides welcomed clarity and, in some cases, relief for many option holders. However, apart from the timing of the taxable event, no formal or informal guidance exists in Slovakia with respect to other tax issues related to stock option awards, including:

- Whether payroll withholding is required? And, if so, by which company: the local Slovak employer or the foreign Parent company granting the options?
- In the case of mobile employees who reside in one or more countries other than Slovakia over the Grant to Vest, or Grant to Exercise, period, how are gains realized from option awards to be apportioned between Slovakia and these foreign countries?
- Is social tax payable with respect to employee stock options?

This new amendment may signal a renewed interest by the Slovak Tax Authority in the taxation of share-settled employee awards. This heightened interest may also result in further guidance, especially with respect to awards granted to mobile employees, who may have a tax obligation years after leaving Slovakia. However, as mentioned above, other than the point of taxation, there is a noticeable lack of guidance with respect to several tax issues impacting stock option awards and the Slovak Tax Authority retains considerable discretion to assess penalties for deemed compliance lapses.

#### **ACTION**

- Employers should review their stock option tracking systems and ensure that grants made pre- and post-January 1, 2010 are clearly and separately identified.
- Employers should relay these changes to their payroll administrators and confirm that Slovak tax is applied at the correct taxable event.

## 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](mailto:globalequity@deloitte.com) and a global rewards consultant will contact you.

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