

## Assessment on share acquisition plans provided to employees in terms of income tax

Multinational companies recently started to develop diversified and encouraging wage schemes intended to increase employee engagement and motivation against the rapid circulation of company employees. Share acquisition plans take the lead among those practices and encouraging wage schemes.

Within the scope of share acquisition plans, corporate stocks are granted as bonus shares to particularly the high level executives or the purchasing rights of share plans are granted to the employee at a lower cost. The purpose of these plans is to increase the employees' loyalty to the employer, to create a center of attraction for qualified employees outside the company and to create a win-win situation by bringing the employer and employee together in a common denominator.

The share plans implemented by the multinational companies in our country generally are as follows:

- *Stock option plans*
- *Employee stock purchase plan*
- *Stock appreciation rights*
- *Phantom shares*
- *Restricted stock units*

The basic processes of share acquisition plans are; grant date, vesting date, holding period, exercising date and selling date. Employee entitlement to take the shares of the company as a result of fulfilling the requirements in the share purchase plan is not sufficient for the tax to arise. The event that gave rise to tax in the share acquisition plan occurs when the stock options start to be in the possession of the employee legally and economically.

It would be necessary to review the Article 61 of the Income Tax Law in order to clarify the state of the income obtained from the shares acquired by the employee as a result of fulfilling the specified time and performance target conditions in the stock plans. Within Article 61 of the Income Tax Law, the definition of the wage is made as the benefits provided as money and property and may be represented by money for the service of employees performing jobs with a liability to the employer and dependent to a certain workplace. In that situation, the share options which are granted to the employees free or under the market value, will be considered as wage since they are considered as a benefit to the employee.

In the circumstance that the benefits of a share acquisition plan is provided by an employer resident in Turkey or provided by an employer resident abroad and charged out to an employer resident in Turkey, provisions of Article 94 of the Income Tax Law shall apply.

In that case, the share under the possession of the employee legally and economically will be considered as wage and income tax withholding liability shall be fulfilled by the employer through declaring it by a withholding tax return.

Under the situation that income provided within the scope of a share acquisition plan is directly paid by an employer resident abroad and charged out to a Turkish resident employer, the provisions of Article 95 within the Income Tax Law no.193 shall apply. The employee will be required to declare his income through the annual income tax return for the period in which the shares started to be under his possession legally and economically.

In case that the employee divests from the share acquisition plans with his own will, the repetitive Article 80 of the Income Tax Law will be required to take into account. The income obtained through the stocks that the employee divested out voluntarily will be considered as a gain of appreciation and should be declared through an annual income tax return.

If it is detected that the share option is related to the services performed in more than one country, it will be important to determine how much of the benefit provided by these plans is related to the service in each country. The suggestion made by Organisation for Economic Co-operation and Development (OECD) at this point is that this determination should be made in each country within the scope of the share acquisition plan within the term of the progress period. Another approach in this matter is to examine the agreements if there is a bilateral agreement between the countries concerning the taxation of the benefits provided under the share acquisition plan. However, for the sake of an appropriate taxation, it will be more accurate to evaluate each share acquisition plan in its own circumstances.

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