

GMS Flash Alert

2017-041 | March 2, 2017



Chile – Tax Treatment of Stock Options Much Changed under New Rules

New rules which considerably alter the tax treatment of stock options in Chile came into effect on January 1, 2017.

New provisions on stock options, part of a greater legal modification to the Chilean taxation system, were implemented by Laws 20,780 (2014) and 20,899 (2016).¹

WHY THIS MATTERS

The new rules create a tax regime significantly different from that which applied previously.

The legal changes concerning stock option mean that the recipient could be subject to Chilean taxes at the following events:

- (1) at the date of grant of the option, or possibly, vesting, on the intrinsic value of the option;
- (2) in situations where the recipient sells the option and obtains proceeds;
- (3) at the exercise – the taxable basis being the market value of the shares at that time less the intrinsic value of the option that was deemed taxable *and* the purchase price paid by the recipient upon exercise, if any; and,
- (4) the eventual capital gain realized, consisting of the sale proceeds of the shares minus the tax cost of such shares, with the latter being equal to the market value of the shares at exercise (updated if any), as per the provisions of the Tax Circular Order (discussed below).

Taxpayers and their tax service providers need to be aware of the new rules – and employers should review their stock option plans – in order to avoid the risk of being non-compliant and potentially being subject to a heavier tax burden than they need be.

Background

Before the legal change, stock option plans in Chile were first taxable when the shares acquired from the exercise of the options were sold (unless the recipient of a stock option was provided with the shares for free, i.e., he/she did not acquire them with his/her own funds). Upon sale of the acquired shares, the gain realized, if any, was taxed as a capital gain. The capital gain was equal to the excess of the sales proceeds over the purchase price of the shares (this value considered at the exercise of the option).

New Rules

As a result of the new rules, the recipient of a stock option will be deemed to have compensation regardless of whether the option is exercised. In this regard, the Chilean tax authorities (*Servicio de Impuestos Internos* or *SII*) issued Circular Order No. 44, dated July 2016.² The Circular outlined certain aspects of the tax law changes and also defined an “option” as the right to acquire a certain number of shares in the future. Accordingly, the stock option recipient will be subject to Chilean tax upon the acquisition of the option, under the definition outlined in this newsletter. Furthermore, if the option is sold by the recipient, the eventual sales proceeds will also be taxable.

In addition to the above, new rules provide that there will be taxation at the exercise of the option, the taxable basis being the shares’ market value at exercise less the intrinsic value of the options that were deemed taxable (as described above and below), and the price paid by the recipient to purchase the shares upon exercise (if he/she acquired said shares with own funds).

For the taxation events described above, the applicable Chilean taxes will be the Employment Tax (*Impuesto Único de Segunda Categoría*) in the case of employees and the Surtax (*Impuesto Global Complementario*) in the case of Board Directors.³ Both taxes apply the same progressive marginal rates ranging from 0 to 35 percent as of February 2017.

KPMG NOTE

Pending Questions

Despite the clarifications provided by the SII through the Circular Order mentioned above, there are still some issues that require clarification, including:

- Taxable basis: To date, there is no specific guidance regarding the determination of the economic value of the options, other than the general conditions of the stock market.
- Moment of taxation of the option: The Circular provides that a stock option should first become taxable when the recipient acquires the option (option defined as the right to acquire certain shares in the future). Depending on the particular terms of each stock option plan, the acquisition of the option may occur at grant or vest. As such, this is a matter that requires a careful analysis of the terms of the relevant plan.

Next Steps

Under the new tax scenario, it is recommended that employers review their stock option plans in effect under the former rules, as well as their current plans, to determine the impact of the new provisions on them.

The KPMG International member firm in Chile will continue to monitor the new guidance from the SII on the matter and will keep readers informed of any important developments and clarifications when they occur.

FOOTNOTES:

1 *Ley N° 20.780, Reforma Tributaria que Modifica el Sistema de Tributación a la Renta e Introduce Diversos Ajustes en el Sistema Tributario.*

Ley N° 20,899 Simplifica el Sistema de Tributación a la Renta y Perfecciona Otras Disposiciones Legales Tributarias.

2 See [Circular No. 44 \(in Spanish\)](#).

3 This statement only considers the scenario where the recipient of the option is resident or domiciled in Chile for tax purposes.

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Thursday, March 9, 2017 – Tax Reform Thursdays: a Webcast on “The New Administration: What HR/Mobility Professionals Need to Consider”

Uncertainty, change, and opportunity are the headlines kicking off 2017. What does this mean for HR/Mobility professionals? This Webcast will focus on the potential legislative and regulatory changes that could affect:

- compensation and benefits programs (including the Affordable Care Act);
- immigration;
- mobile employees;
- additional areas of interest to the HR community.

Please join KPMG for this engaging panel discussion via Webcast, which will highlight what these potential changes could mean to the HR function, your employees, and your organization’s overall talent management approach.

Date: Thursday, March 9, 2017

Time: 2:00 p.m. - 3:00 p.m. (U.S. EST; GMT -5)

To Register: Click [here](#).

Contact us

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