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GMS Flash Alert

Global Compensation Edition

2023-229 | December 1, 2023

Czech Republic - Proposed Changes in Taxation of Employee Share and Stock Option Plans

Currently moving through the Czech legislative system is a bill concerning employer-provided benefits in the form of employee stock options or shares in the business – typically in cases where shares are transferred as part of an employee share or stock option plan. Should it clear all legislative stages, the amendments in the bill are expected to come into effect on 1 January 2024.

WHY THIS MATTERS

Employers that have implemented or are considering implementing employee share or stock option plans may wish to re-evaluate their plans in light of the proposed amendment. While the new legislation – if it becomes effective from 1 January 2024 – helps some employees by allowing them to defer taxation of their employment income realised from share or stock option plans, there are still many unclear issues, namely for cross-border employees.

More Details

The amending proposal[1] – already approved by the Chamber of Deputies – regulates the taxation of employee share and stock option plans in the Income Tax Act. It will apply to the acquisition of options and shares in a “business corporation” that is the employee's employer, as well as the acquisition of options/shares in a business corporation from the employer’s parent company, subsidiary, or a corporation related (by means of capital) to the employer.

The amendment explicitly defines the point in time **when this non-monetary benefit (employment income) is to be taxed on the part of the employee.** The taxable moment has been completely redefined for most situations. Possible taxable moments are:

- the employee ceases to perform dependent activity with the employer;

- the employee or employer ceases to be a Czech tax resident;
- transfer of shares or options;
- exercise of an option;
- expiration of 10 years from the date a share in a business corporation or an option was acquired.

Transferable or Non-Transferable Options

The proposed wording of the amendment does not specify whether it applies to freely transferable or non-transferable options.

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According to the Supreme Administrative Court's established case law, the allocation of a non-transferable option does not currently establish a taxable moment on the part of the employee. According to the unofficial statement of the Ministry of Finance, the proposed regulation is aimed mainly at the taxation of transferable options and not non-transferable ones. However, time will tell whether this interpretation will actually be applied, mainly considering that this conclusion is not clearly evident from the proposed wording of the law.

When calculating taxable income, it should now be possible to consider any impairment (i.e., decrease in value) of shares or options that may occur over time.

Obligations of Employees and Employers

Employees – Employees will be obliged to inform their employers about the transfer of shares or options by the end of the calendar month in which the transfer took place.

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This is the only notification obligation that the amendment introduces for employees. How an employer will determine other facts relevant to taxation on the part of the employee (such as a change in tax residency) therefore remains unknown. Since the determination of an employee's tax residency is time-consuming and the necessary facts can be determined with certainty only after the end of the relevant taxable period (and the other state may have a different taxable period from the Czech Republic), it can be expected that the employer will often experience a delay with the payment of relevant tax, social security and health insurance contributions and will thus be subject to possible penalties.

Employers and Employees – If shares or options are acquired from another company in the group that is not considered a taxpayer, and the related expenses are not borne by the employer, the employee will be obliged to report this income in his/her Czech personal income tax return for the taxable period in which one of the taxable moments occurs.

Next Steps

The bill needs to be approved by the Senate and signed by the president to be enacted.

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The new rules are intended to bring greater clarity to employee share plans and stock option plans, which should help encourage this form of compensation, incentivise the workforce, boost capital markets, and help provide a new savings/investment vehicle for individuals. However, there are still several questions that need clarification by the government.

Employers and employees that have questions or require additional information, especially regarding their reporting and compliance obligations, should speak with their global compensation specialists or a member of the tax and global reward services team with KPMG in the Czech Republic (see the Contacts section).

FOOTNOTE:

1 Act which changes the acts in the area of financial market development and old age financial support – approved text in Czech (*Schválený text tisku 474. Vl.n.z., kterým se mění zákony s rozvojem finančního trhu*) at: https://www.psp.cz/sqw/text/tiskt.sqw?o=9&ct=474&ct1=0&v=PZ&pn=2&pt=1 .

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Contact us

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