



JONES DAY
COMMENTARY

BELGIAN QUALIFIED STOCK OPTION PLANS CAN BE EXTENDED BY FIVE YEARS—BUT ONLY BY ELECTING BEFORE JULY 31ST

Belgian corporate taxpayers that have a Regulated Stock Option Plan (“RSOP”) in place that complies with the Law of March 26, 1999, can extend the exercise term of those options by up to five years without triggering additional Belgian income tax for the beneficiaries, provided appropriate action is taken before July 31, 2009.

BELGIAN RSOPs

Under the Law of March 26, 1999, a Belgian corporate taxpayer (whether a Belgian company or a Belgian branch of a foreign company) can establish an RSOP, which essentially offers two attractive benefits:

- First, the fair market value of the stock options granted under an RSOP is exempt from social security contributions, the combined rate of which can

be as high as approximately 48 percent (plus or minus 35 percent employer contribution plus 13.07 percent employee contribution).

- In addition, qualifying stock options are deemed to be taxable upon grant and exempt from income tax in the hands of the beneficiary when they are exercised. The taxable value of a qualifying stock option at grant is a flat 15 percent of the value of the underlying shares at the time of grant, but if certain conditions are satisfied, the taxable value is set at only 7.5 percent of the value of the underlying shares. The 7.5-percent regime applies if, *inter alia*, the options can be exercised neither before the fourth year following the year of grant nor after the 10th year after the year of grant. Therefore, many Belgian RSOPs contain a clause allowing the beneficiary to exercise his or her stock options anywhere between four and 10 years after grant.

Of course, as the beneficiaries of a qualifying RSOP pay income tax on their options at grant, if the market value of the underlying shares tumbles below the share price or value at the time of grant, the beneficiaries will not exercise their options. Nevertheless, they will have paid the applicable Belgian income tax at the time of grant and will therefore be out of pocket.

EXTENSION OF EXERCISE PERIOD

In order to accommodate beneficiaries of RSOPs with an exercise end date that may be fast approaching but with underlying stock that is worth less than the initial exercise price, a change was made to the Law so as to allow an extension of the exercise period by up to five years, without triggering additional income tax or social security contributions (Article 21 of the Law of March 27, 2009, on the Economic Recovery). Without this amendment, the extension of the exercise period would have been considered as a grant of a new stock option, triggering yet another tranche of income tax for the beneficiaries.

CONDITIONS AND LIMITATIONS

- For RSOPs that entered into effect between January 1, 2003, and August 31, 2008, an extension of the exercise period could be agreed upon between the grantor and the beneficiary/beneficiaries until June 29, 2009, and will not trigger social security premiums or additional income tax for the beneficiaries, provided that such extension is officially communicated to the Belgian tax authorities *prior to July 31, 2009*.
- This tax-free extension of the exercise period for qualifying RSOPs is restricted to a “tax value” of €100,000 per beneficiary. The “tax value” is the flat amount of (deemed) income that was added to the beneficiary’s taxable income when the stock options were initially granted.
- It is not required that an agreement be reached with all of the beneficiaries of a qualifying RSOP. If an extension is agreed upon with only one or a limited group of beneficiaries, the tax-free extension will still be available for those stock options for which an extension was timely agreed upon and communicated to the authorities.

The Belgian Tax Administration has also just recently published a circular letter on its web site (Circular Letter No. Ci.RH.241/598.219, AOIF No. 24/2009, dated May 8, 2009), which contains more details as to how to effect the required official communication to the authorities of an extension for these purposes.

LAWYER CONTACTS

For further information or assistance with the drafting of an agreement to extend the exercise period or the official communication to the tax authorities, please contact one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Werner Heyvaert

+32 2 645 1580

wheyvaert@jonesday.com

Olivier Rousselle

+32 2 645 1518

orousselle@jonesday.com

Howard Liebman

+32 2 645 1557

hliebman@jonesday.com

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