

Analysis

consists of articles - one in each issue - contributed by Chamber members in accounting, law and consultancy companies on technical subjects of special interest to foreign businessmen active in Greece.

Stock Option Plans & their Implementation in Greece

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Recent publications in the Greek financial press and in legal magazines prompted us to express our views regarding the implementation of Stock Option Plans in Greece and the possible problems that it may create. Our view is based on the long experience that we have acquired from our involvement in the structure and implementation of a large number of Stock Option Plans by multinational companies in their subsidiary companies in Greece.

Stock Option Plans grant to employees of a company the option to buy shares of that company (in the future,) under preferential terms. Stock Option Plans are implemented in Greek Companies Limited by Shares (S.A) as well as in Greek subsidiary companies of foreign parent companies based abroad, whose shares are listed in a foreign Stock Exchange.

STOCK OPTION PLANS TO THE EMPLOYEES OF A GREEK COMPANY LIMITED BY SHARES (S.A).

Law 2741/1999 article 10, paragraph 10 adds a new paragraph in article 13 of Law 2190/1920 for Companies Limited by Shares (S.A) as it stands today. That law regulates all issues concerning the granting of shares from companies to their employees by means of a Stock Option Plan.

Companies Limited by Shares (S.A) wishing to implement such a plan should follow the following procedure:

- The General Assembly of the shareholders of a Company Limited by Shares decides to implement the Stock Option Plan and authorizes the Board of Directors of the company to implement it. The resolution of the above General Assembly is taken by the majority, defined in article 29 paragraphs 3 and 4, and in article 31 paragraph 2 of Law 2190/1920 as it stands today. A summary of this resolution is published in the Government Gazette.

- The Board of Directors drafts a contract between the company and the employees—the same for each category of employees—and invites the employees to sign it.

- The terms of the contract in relation to the duration of the Stock Option Plan, the price of shares on the grant of the option, the percentage of shares to be granted, and the categories of the employees to participate to the Plan are determined by the General Assembly of the Shareholders.

- The maximum number of shares to be issued on the basis of the Stock Option Plan may not exceed 1/10 of the existing shares of the company.

- According to the above contract, the employees participating in the Stock Option Plan should notify the company in the month of November of the year previous to the implementation of the plan whether they intend to make use of their rights or not.

- In the month of December of the same year, the Board of Directors would increase the share capital of the company and certify such increase, in the frame of such Increase, the shareholders surrender their right of preference. Thus, the employees acquire shares of the company and have the same rights and responsibilities that a shareholder of the company has.

According to a recent common Circular of the Ministers of Finance and Development, employees are not subject to taxation at the time of the grant of the option. However, in the case that such employees decide to sell the shares at a price greater than the one at the time of the grant of the shares, the income that they acquire therefrom would be taxed according to the existing provisions of tax law: 5% for unlisted shares and 0.6% for listed shares.

Stock Option Plans, although cautiously approached by some, and despite the issues they create, are implemented by many Greek companies. Stock Option Plans contribute to the development of a mutually beneficial relationship between companies and their employees. Such plans (a) offer employees an incentive for productivity and dedication toward the company, (b) encourage the work of the company's best employees for a longer term, and (c) relate the profits of the employees with those of the shareholders of the company. As a result, the company motivates the employee to behave as a shareholder toward any decision taken by the company.

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STOCK OPTION PLANS FOR THE EMPLOYEES OF GREEK SUBSIDIARY COMPANIES OF FOREIGN PARENT COMPANIES

A large number of foreign multi-national companies, whose shares are usually listed in a Stock Exchange abroad, grant shares to those personnel of their Greek subsidiaries who wish to participate in the Stock Option Plan, either free or as an investment opportunity under preferential terms.

All employees of a subsidiary company may participate in Stock Option Plans. However, there may be some requirements regarding participation in the Plan, such as completion of certain years of employment and specialization—a policy not prohibited by Law.

TAX CONSEQUENCES OF THE IMPLEMENTATION OF STOCK OPTION PLANS:

Upon granting the Option:

At the time of granting the Option, during employee participation in the Stock Option Plan, there is no tax obligation on the part of the employees since they do not acquire any income.

Upon maturity of the grant of the Stock Option Plan:

At the time that all the pre-determined terms of the Stock Option Plan mature, employees may exercise their right to buy the pre-determined shares. In that case, there is still no tax obligation for the employee, even though he or she has the right to acquire the shares, has not yet acquired same.

Upon exercise of the Option:

At the time that the pre-determined terms of the Stock Option Plan mature, the employee may exercise his or her option to buy the shares he or she was offered, in which case such shares pass to his ownership. Then, provided that the stock exchange price of the share at the time of the exercise of the option is greater than that of the pre-determined preferential price in the Stock Option Plan, this difference is regarded as profit for the employee and will be taxed as follows: If this difference is wholly

charged on the foreign parent company, then, one opinion holds that the employees would not be taxed, as Greek Law does not regulate such issues. However, according to another opinion, the profit may be considered as a donation given by a third party and not by the employer (the Greek subsidiary company), without any exchange thereof and, therefore, should be subject to a donation tax.

In case the above difference is charged on the employer (the Greek subsidiary), one should note the following: provided that this difference is paid by the employer (the Greek subsidiary) whether directly to the foreign parent company that would buy the shares for the employees, or to the employees through their salaries, and provided that the employees would pay all the amount to the foreign parent company, this amount, acquired at the time of the exercise of the option, would be regarded as taxable income of the recipient employees. The acquisition of shares by the employees will be taxed according to the income tax scale. Furthermore, insurance contributions, stamp duties, and other contributions would be measured on the basis of such difference.

SALE OF SHARES ACQUIRED BY VIRTUE OF A STOCK OPTION PLAN

When employees exercise the right of option they have, and acquire the shares of the foreign parent company, they may later resell such shares to a third person through the foreign Stock Exchange where the shares are listed. In this case, a tax of 0.6% is imposed on the total value of the shares.

In conclusion, Stock Option Plans are implemented successfully in many Greek subsidiaries of foreign companies. However, various problems arise as there is not yet a legislative framework in Greece to monitor the implementation of such Stock Option Plans. The above-mentioned taxation system is expected to undergo changes with the issuance of a new Law or Presidential Decree that is expected in the near future. Such new legislation, is hoped to be based on the tactics adopted by other countries and regulate all above issues in a clean manner. L3

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