


LOYENS  LOEFF

Employee participation – “A Guided Tour”

Maarten kleine Kalvenhaar
klei@loyensloeff.com

LOYENS  LOEFF

What I would like to discuss with you

- 1) History of employee participation
- 2) Motives
- 3) Different forms of employee participation and their tax aspects
- 4) Tax considerations

LOYENS  LOEFF

History




3

LOYENS  LOEFF

Motives

- Role of good employership
- Offering an attractive remuneration package
- Attract and retain qualified personnel
- Increase involvement and commitment from personnel with the business
- Create ownership and level of control
- Positive effect on productivity and competition position


4

LOYENS  LOEFF


Different forms

In general equity settled: <i>No cit deduction</i>	Share Participation Plan / Matching Shares
	Stock Option Plan / Warrant Plan
	Convertible bonds
	Restricted Stock Plan
In general cash settled: <i>Cit deduction possible</i>	Restricted Stock Units / Performance Shares
	Phantom stock
	Profit participating loan
	Profit certificate
	Stock Appreciation Right (SAR)
	Bonus

5

LOYENS  LOEFF

Cycle of a plan




Grant (Award) – the grant or award of rights under a specific plan according to the terms of the plan rules.

Vesting – the transition of a conditional right into an unconditional right under a specific plan according to the terms of the plan rules.


Exercise – ‘cashing in’ of the right under a specific plan according to the terms of the plan rules.

Sale – a subsequent disposal of the equity received upon exercise.

6

LOYENS 

The tax system




Box 1

Income from employment and private dwelling

- ✓ Salary
- ✓ Lucrative interest
- ✓ Own house

Rates progressive up to 52% for income > € 67,072




Box 2

Income from substantial interest
(5% or more shareholding)

- ✓ Dividends
- ✓ Capital gains

Rate 25%




Box 3

Income from savings and investment

- ✓ Net wealth

Tax is calculated at a rate of 30% on a deemed return depending on total amount of net assets.


7

LOYENS 

Lucrative interest

A lucrative interest is an interest in a company held by someone working for that company (not necessarily as an employee) which for tax purposes is considered to inter alia form a remuneration for work. In order to qualify as a lucrative interest, in general the interest should offer a potentially disproportional high return for the managers/employees, e.g. a (much) higher return than offered to other investors that are not working for the company.

8

LOYENS 


Dutch wage withholding tax

- ✓ Obligation for the employer to withhold the correct amount of wage taxes on the salary payments and remit the amount of taxes to the tax authorities.

How to deal with benefits in kind????

- ✓ Taxable event creates a cash outflow funded by the employer but withheld on the remuneration paid to the employee.
- ✓ Taxable event puts money at risk.
- ✓ Taxable base = difference between purchase price and fair market value.

9

LOYENS  LOEFF

Employee Share Participation Plan (ESPP)


Key Terms

- Right to receive shares.
- Against consideration or for free.
- Possible restrictions (blocking period).
- Good leaver / bad leaver.

Taxable event

- In general taxation upon acquisition of shares (i.e. exercise) in Box 1.

10

LOYENS  LOEFF

Restricted Stock


Key Terms

- Receipt of full ownership of shares as of date of grant.
- Against consideration or for free.
- Restrictions lifted upon reaching predefined goals/targets:
 - Continued employment.
 - Financial key performance indicators (kpi's).
- Claw back in case predefined goals/targets are not (fully) reached.

Taxable event

- In principle date of grant, i.e. date on which full ownership of shares is received, taxation in Box 1.
- Upon claw back – negative income in respective year.

11

LOYENS  LOEFF

Restricted Stock Units (RSU's)


Key Terms

- Right to receive shares upon meeting vesting conditions.
- Against consideration or for free.
- No legal ownership upon date of grant (possibly dividend equivalents).
- Vesting conditions:
 - Continued employment
 - Financial key performance indicators (Performance shares)

Taxable event

- In principle taxation upon vesting under rules of Box 1.

12

LOYENS  LOEFF

Employee Stock Options (warranten)


Key Terms

- In general the stock option right is granted for free.
- Right to acquire a share
 - During a specified period of time (exercise period);
 - Against payment of the purchase/strike price (exercise price);
- Vesting scheme possible.

Taxable event

- Taxation upon exercise or sale of the stock option under rules of Box 1.

13

LOYENS  LOEFF

Stock Appreciation Right (SAR)


Key Terms

- Right to receive a cash payment.
 - During a specified period of time (exercise period).
 - Against payment of the purchase/strike price (exercise price).
- Scope of cash payment depends on increase in value of underlying shares.
 - 'Appreciation only'
- Vesting scheme possible.

Taxable event

- Taxation upon exercise of SAR under rules of Box 1.

14

LOYENS  LOEFF

Phantom Stock


Key Terms

- Right to receive payment in cash.
- Scope of payment depends on value of underlying share:
 - 'Appreciation only' versus 'full value'
 - Dividend equivalents.
- No exercise price.
- Vesting schedule.

Taxable event

- Taxation upon receipt of cash payment (in general vesting) under rules of Box 1.

15

LOYENS  LOEFF

Tax considerations

- When are taxes due (what creates the taxable event)?
 - Grant
 - Vesting
 - Exercise
 - Sale
- Who will pay for these taxes?
 - Obligation for employer to remit to tax authorities
 - Tax liability of the employee
 - Tax withholding upon benefits in kind
- On what amount are taxes calculated (taxable base) and against what rates?
 - Box 1 – up to 52%
 - Box 2 – flat rate of 25%
 - Box 3 – effective rate of max. 5.5%

16

LOYENS  LOEFF

Maarten kleine Kalvenhaar

Tax adviser
Senior associate


Maarten kleine Kalvenhaar (1977), tax adviser, is a member of the Employment Taxes & Employment Law practice group. He specialises in advising national and international listed companies in their role as employers. He also advises on employee participation (share schemes), tax-efficient remuneration structures, remuneration of board members, pension issues and international secondment of personnel. He was a member of the Tax practice group from 2004 to mid-2011, at the end of which time he worked in the Zurich office for 3.5 years.


Maarten is a member of the Dutch Association of Tax Advisers, the International Fiscal Association (IFA), the Dutch Business Round Table in Zurich and the Swiss American Chamber of Commerce.

Dutch, English, German

Tax economics, University of Tilburg, 2005

T: +31 20 578 55 94
M: +31 651 49 19 84
E: maarten.kleine.kalvenhaar@loyensloeff.com



LOYENS  LOEFF

Amsterdam
Arnhem
Brussels
Dubai
Hong Kong
London
Luxembourg
New York
Paris
Rotterdam
Singapore
Tokyo
Zurich

www.loyensloeff.com
