

HR & Tax Alert



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Italy – Italian Tax authorities open to more flexible interpretation of the three-year minimum vesting period for Stock Options (SOs)

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Executive summary

On 16 May 2007 the Italian vice minister of Economy and Finance announced a more flexible interpretation of the minimum 3-year vesting requirement for options granted before 3 October 2006.

The interpretation, which is confirmed by the Tax Agency, is more favourable to the taxpayer than the previous clarifications issued by the Tax authorities in 2007.

Background

As a consequence of the 2006 reform, the conditions for the favourable tax treatment of SO income, i.e. a 12.5% flat rate withholding on the capital gain rather than progressive taxation, are as follows:

- The exercise price must not be lower than the fiscal value of the shares at grant;
- The employee's shareholding or voting rights must be less than 10% of the total share issue or voting rights;
- 3-year minimum vesting period for the Option (i.e. three years between grant and the first possible date of exercise);
- The company is listed on a Regulated Market at the time when the option vests and;

- The employee maintains a shareholding worth at least the difference between the value of the shares at exercise and the price paid for the shares. If the shareholding is sold or given as a pledge, the amount that was exempt at exercise will be taxed at the date of disposal.

The Vice Minister recently confirmed (in response to a specific request of the Vice President of the Finance Commission), that the condition regarding the minimum vesting period of 3 years applies regardless of whether the original plan allowed exercise within 3 years, provided the options are exercised more than 3 years from grant. The Tax Agency on 24 May 2007 issued the Circular 33/E confirming the above and stating that the specifications contained in the original Circular are obsolete.

Next steps

Clients should be advised that it is not necessary to insert a three year vesting period in plans granted before 3 October 2006 in order to meet the requirement under 3 above.

However the provision of a 3 year minimum vesting period is still necessary for new plans approved after 3 October 2006.

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