

Summary of German Tax Implications of Stock Based Compensation

Stock options, restricted stock units (RSU) and similar stock based benefits granted to an employee by his employer are considered to be a taxable benefit for the employee, even though the stock might be not issued by the employer itself, but rather by a related party. The tax benefit is subject to German wage tax withholding and German income tax (with a credit of wage taxes withheld).

Except under rare exceptional circumstances and unlike many other countries, the *grant* of stock based compensation per se is not considered a taxable benefit in Germany, i.e. there is no income tax levied at this time. In lieu thereof the benefit is considered to be taxable at the day of *exercise* of the option.

The taxable benefit is generally the difference between the quoted market price of the stock on the date of exercise and the exercise price, if any.

In principle, wage taxes and a so-called “solidarity surcharge” have to be withheld by the employer, similar to any other benefit paid in relation to the employment status. An annual tax free allowance of 360 Euro per employee is possible under certain conditions.

The same applies if a foreign company grants the options to employees of a German subsidiary. The German subsidiary can be released from its withholding obligations only if it did not know that such benefit was granted to its employees by its parent company.

In addition to withholding taxes, social security contributions have to be paid on the benefit. Such contributions must also be deducted by the employer and paid to the competent authority, up to the relevant ceiling amount provided for in German social security laws.

If the employees sell the shares they received in the course of the exercise and/or vesting, any resulting capital gains are generally subject to income tax and solidarity surcharge at a flat rate of 26.375 %. For church members, this rate is increased by the respective percentage of church tax.

Current legislation as of August 2011

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