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FEATURED PERSPECTIVE

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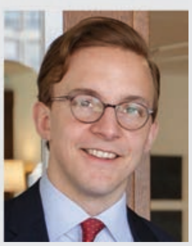
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There is an ever-increasing stream of management incentive programs, and as the programs become more complicated, so do the potential tax implications. Properly structured, an incentive program is a great way to motivate management and key employees, but if the details are not correctly handled, significant adverse tax consequences may occur. In this article, the authors examine those issues in Finland, Russia, and Sweden.

Incentive programs are a popular way to motivate and retain management and key personnel, as well as to align the interests of the parties. Setting aside any discussion regarding the effectiveness of those programs, the fact is that the programs are as numerous as they are multifaceted — as are the potential tax issues and hidden hazards.

Incentive programs are nothing new, but their use — as well as their complexity — has exploded following the rise of private equity. Listed companies, which traditionally have used different kinds of incentive programs, and, to an increasing extent, growth sector companies have followed in the steps of private equity and introduced more sophisticated programs.

In Russia, labor law is overly formalistic and does not directly regulate share-based incentive programs. Despite that, business demands have resulted in the use of various complex constructions to create conditions similar to equity-based programs that involve the use of options. More traditional bonus-based incentive programs are also used in Russia. Both equity- and bonus-based incentive programs are subject to general tax rules.

Stock options and warrants are regularly used by Finnish companies to incentivize management and key employees, especially in public limited companies. In start-up companies and venture capital investments, options and warrants are used to align the interests of key employees and investors with a possibility to invest in the employing company or a subsidiary with a lower entry cost.

However, share incentives have begun gaining ground the past few years for both public and private companies. While the taxation of share incentives can be more beneficial than stock options, the entry cost is always higher. Recent supreme administrative court case law, however, has made the taxation of share incentives more stringent, and its long-term effect on management investments is still to be seen.

In Sweden, the long-standing trend has been to build share-based incentive programs following the unforeseen, adverse tax consequences affecting many creative non-share-based incentive programs used in the past. However, in the last decade we have seen a gradual revival of warrant-based incentive programs because of changes in case law and the flexibility and convenience warrants offer over shares as a way to leverage invested equity.

We examine those topics further below.[1]

I. Finland

In Finland, private individuals can receive two types of income: capital income and earned income. Capital income is generally not subject to an employer's social security contributions of approximately 30 percent. Earned income is taxed more moderately (30 to 33 percent) than capital income (31 to 62 percent; social security premiums included).

Also, management and key employees often participate in management investment programs in which they subscribe for or buy shares in their employer companies. The return from those investments is, as a starting point, capital income. However, tax authorities have an incentive to scrutinize those investments in order to tax the income as earned income.

A. Employee Share Issues and Stock Options

An employee's benefit from a right to subscribe shares below fair market value is taxed as earned income.[2] That rule implies that the right to subscribe has to be received based on employment and that the subscription has to take place below FMV.

An employee's right to receive or to acquire shares below FMV by means of convertible loans, option loans, option rights, or other similar contractual agreements is also taxed as earned income. That rule implies that:

- the right to receive or acquire has to be based on employment;
- the shares have to be received or acquired for less than fair market consideration; and
- the receipt or acquisition has to be based on specific contractual arrangements.

The Finnish Income Tax Act (FITA) further specifies that the taxable event occurs when the contractual arrangement (stock option, etc.) is exercised. Any difference at that time between the FMV of the shares and the exercise price of the stock option and other payments made by the employee to receive the option is taxed as earned income in the year of exercise.

The main difference in employee share issues as opposed to employee stock options from an employee's perspective is thus not the tax category of income but instead the timing of taxation. The taxable benefit for stock options is determined when the stock options are exercised, while shares given free of charge or with a discount[3] are taxed upfront on the difference between the fair value of shares at the time of subscription and the entry cost paid for the shares.

After the shares have been acquired — either through an exercise of stock options or through a share issue — and the benefit has been taxed as earned income, any subsequent realized value increase or decrease from the so-acquired shares is taxed as capital income.

The rule on stock options is clear and stipulates that an employee's earned income is determined at the time of the exercise of the stock options. The rule on employee share issues does not address the correct time of taxation, and determining the exact time when the earned income benefit realizes (and capital income taxation begins) requires an analysis of case law.

In Finnish Supreme Administrative Court (FSAC) cases, the time of taxation of employee share issues has been deemed to be the time of subscription. That has been the case even when lockups have prevented the employee from disposing of the shares even though he received ownership of the shares.[4]

In FSAC 27.8.2002-t-1959, employees were able to subscribe shares based on stock options in early 2000, but a lockup prevented them from selling the shares before December 15, 2000. After the stock options were exercised, the shares were listed in an initial public offering at €13, but in the end of 2000 when the

[1]We have not considered the implications of European law and tax treaties because our intent is to outline and compare the systems in Finland, Russia, and Sweden. However, those matters should be considered in the case of incentive programs that affect individuals who work in several countries when the shares are vested.

[2]This article focuses only on the income taxation of the key employees participating in the management investment plan. Other important Finnish tax implications include, for instance, the employer company's right to claim deductions in its income taxation and Finnish transfer tax implications from management incentive programs.

[3]The rule on employee share issues gives relief to share issues directed to the majority of employees. In those issues, a discount (maximum 10 percent) can be given to employees without triggering earned income taxation. However, because that discount is allowed only in issues directed to the majority of employees, it rarely applies in management investment programs or key employees' share-based incentives.

[4]In some cases, in addition to a lockup, the employee also had an obligation to return the subscribed shares under specific conditions. Despite that, the correct year of taxation has been deemed the year of subscription.

employee lockups ceased, the value was €4 to €5. The FSAC ruled that the benefit from options should be determined using the value at the cessation of the lockups as basis.

In FSAC 2011:91, an employee participated in an incentive program in which she received both cash and listed shares of her employer in 2006 and 2007 when performance targets were met. The program included a lockup period of two years, during which the value of the shares decreased significantly. The employee claimed that for tax purposes, her shares should be valued using the FMV at the cessation of the lockup, but the FSAC ruled that the lockup is not decisive when determining time of taxation; otherwise, taxpayers could postpone their taxable event by mutual agreement. Therefore, the court determined the fair value to be at the time of subscription, not at the cessation of the lockup.

Based on FSAC case law, it seems that for employee share issues, taxation occurs at the subscription of shares — regardless of any lockups or contractual agreements — and the received shares are valued for tax purposes at the same time. Lockups have postponed the taxation only in exceptional cases such as FSAC 27.8.2002-t-1959, in which the shares were actually subscribed based on stock options (when the law in fact stipulates that the timing of taxation is when the stock option is exercised).

In FSAC 2009:8, a company had made a share issue to key employees in 2008. According to the terms of the issue, the key employees were entitled to subscribe shares after year-ends 2008, 2009, and 2010. The subscription price was set at the FMV of the shares at the time of the share issue decision in 2008. The employees were allowed to subscribe shares if they met performance targets. FSAC decided that the meaning of the incentive program was to allocate to key employees a benefit from a potential future value increase of the shares, so the arrangement had to be deemed a stock option for tax purposes. It made no difference that the subscription price of the shares was set at the FMV in 2008.

According to guidelines on the taxation of stock options issued by Finnish tax authorities in 2014, so-called restricted stock awards can be taxed either as employee share issues or as employee stock options. Restricted stock awards are arrangements in which employees receive shares subject to some restrictions and are obligated to return the shares under some conditions (for example, cessation of employment). According to the guidelines, restricted stock awards are taxed as stock options if the shares are registered to the employees before they receive full ownership.

However, the mere occurrence of a condition under which the shares have to be returned does not cause the arrangement to be treated as a stock option for tax purposes. Further, an incentive arrangement in which the employee's profit rights and voting rights are restricted from the Companies Act can be deemed stock options for tax purposes under the new guidelines. As explained above, the main difference between the taxation of employee issues and employee stock options is the time of taxation, which is also when the valuation of the received benefit occurs (subject to high, progressive tax rates). Therefore, even though the guidelines do not specify this, it would appear that as a general rule, the tax timing of restricted shares is the time of subscription, even when there are normal restrictions on those shares — that is, restricted shares are taxed according to employee issue rules.

As an exception to that, if the shares are registered as owned by the key employee before she actually receives ownership, the guidelines seem to indicate that she could successfully postpone the time of taxation until actual receipt of ownership — that is, taxation as a stock option. Under another exception, the guidelines mention cases when the profit rights and voting rights are materially restricted compared with the Companies Act.

At first glance, that seems to contradict the FSAC case law, because significant importance is put on the agreement between the company and the key employee. It is also hard to estimate what is deemed a restriction, and that vague characterization as a basis for taxation is not in line with the principle of legality.

However, if the trail of thought of the guidelines is followed, then by making significant reductions to profit and voting rights, the parties could postpone the time of taxation to when the restrictions either cease (by mutual agreement) or the restricted shares are sold. That seems to be in clear conflict with earlier FSAC case law.

A final interesting case is FSAC 2014:66, in which the managers of a company incorporated a holding company that acquired shares in the managers' employer company. The employer company granted a loan to the holding company for that purpose that covered 80 percent of the acquisition cost of the employer company's shares. The managers invested 20 percent themselves. The only security for the loan was the acquired shares in the employer company, and the maturity date and interest could be postponed if the holding company was unable to pay the loan.

There was a shareholders agreement between the employer company and the managers that stipulated that the managers and the holding company were unable to sell their shares during the arrangement and outlined rules in case of cessation of employment. The arrangement was agreed to be discontinued after a specific period, and there was a possibility to postpone the winding down of the arrangement if the acquired shares were at a loss. The FSAC applied the general antiavoidance rule and the rules governing employee stock options, even though they were not applicable per se, because it deemed the legal form of the transaction was chosen to avoid taxation of employee stock options.[5] Therefore, the benefit received by the managers should be taxed as earned income, according to the court.

B. Additional Comments

The main difference in Finland between taxation of employee stock options and employee share issues has been the time of taxation. At least until FSAC 2011:91, the Finnish tax treatment of stock options and employee share issues was clear. The earned income benefit received from stock options was determined when the options were exercised. The only notable exception had been FSAC 27.8.2002-t-1959, in which the value of the shares decreased during the year when the exercise took place and a lockup agreement was in force.

Regarding employee share issues, lockups of two years and a significant decrease in the value of shares during that time were not sufficient to postpone the taxation of the employee issue benefit from the time of the subscription (FSAC 2011:91). Also, a key employee's liability to return the shares or an agreement whereby the shares and dividends were placed in escrow was insufficient to postpone the tax effects.

In FSAC 2009:8, the court decided that if the subscription of shares takes place one to three years after the share issue decision is made and the subscription price is set as the FMV at the time of the share issue decision, then the whole arrangement is deemed a stock option, and the value increase between issue and subscription is taxed as a stock option benefit. The wording of the law was deemed to make that interpretation possible.[6]

In 2014 the division between stock options and employee share issues became more blurry. In FSAC 2014:66, the court for the first time applied the GAAR to a management investment program. The decision was based on several background facts with no clear emphasis on any single fact. Before the FSAC ruling, there was wide public discussion regarding whether management holding companies, which are to a large extent financed by the employer, are even permitted under the Companies Act.

In the case at hand, the employer company had financed 80 percent of the entry cost by giving a loan to the holding company. The FSAC determined that the rules of the loan were favorable to the managers. It decided that all income from the arrangement (also any gains from the realized value increase of the 20 percent that the managers financed themselves) was to be taxed as earned income. Traditionally, shares received by managers in an employee share issue have not been taxed as earned income after the share subscription; thus, FSAC 2014:66 is a clear exception in which the overall facts led to application of the GAAR.

In 2014 the tax administration issued new guidelines regarding stock options that include provisions on restricted stock arrangements. Under those guidelines, issues of restricted shares can be taxed either as employee share issues or as stock options (not on the basis of the GAAR as in FSAC 2014:66 but directly by application of tax law). Also, in FSAC 2009:8, the definition of stock options was under some circumstances considered to extend the rules to employee share issues. However, the facts in the guidelines that could cause the restricted stock to be taxed as stock options can be argued to partly contradict FSAC case law.

According to the guidelines, restricted shares are considered stock options if they are registered to the employee before she receives full ownership. The transfer of ownership might depend on, for example, meeting predetermined performance goals, which is perhaps not so in conflict with earlier case law. After all, in FSAC 2009:8 the correct time of taxation was the subscription (and transfer of ownership).

A requirement to return shares on cessation of employment would not cause the restricted shares to be taxed as stock options if ownership had already been transferred to the employee, which is in line with earlier case law. The guidelines expand that notion so that if during a particular period, the economic and voting rights of the transferred shares are materially limited from the rights granted to the shareholders under the Companies Act, the shares can be taxed as stock options. That clearly contradicts the principle expressed in FSAC 2011:91 that the parties cannot postpone the time of taxation by mutual (lockup) agreement.

In FSAC 2011:91, the court said taxpayers should not have the ability to determine time of taxation via agreement and that the time of taxation should hinge on more objective factors. It also expressed concern that those kinds of agreements can vary between different participants in management investment programs and that the parties can later, by mutual agreement, change the scope of the agreed restrictions.

It seems that 2014 brought an inclination toward changing the rules on taxation of management investment programs. For the first time, the FSAC applied GAAR on a large scale to investment plans. FSAC 2014:66 is clearly an exception to the rule, and from the perspective of the principle of legality, there should always be a high bar for the use of GAARs.

Also, the Finnish tax administration has been proactive and issued new guidelines that seem to imply that more emphasis should be put on the overall consideration of contractual arrangements between the parties.

[5]That is, an analogous interpretation of the law allowed under the GAARs.

[6]The definition of a stock option in Finnish tax law is "a right based on employment to receive or to acquire shares below fair market value by means of convertible loans, option loans, option rights or other similar contractual agreements."

That does, however, seem to be in clear contradiction with earlier FSAC rulings, and uncertainty is likely to follow until either new guidelines are issued or new court cases emerge.

II. Russia

In Russia, there is no delineation between capital income and earned income. Most types of income, including wages and bonuses, are taxed at a flat rate of 13 percent for tax residents and 30 percent for nontax residents. Tax residents must pay personal income tax on global earnings if applicable; however, nontax residents pay only on income received in Russia. All such Russian income is paid on behalf of all taxpayers or employees directly by the tax agent or employer.

Tax residency is given regardless of citizenship and is based on the actual number of days the individual is present in Russia (at least 183 days in a calendar year). Most foreign managers of Russian companies are given highly qualified specialist status, and therefore their income is taxed at a rate of 13 percent regardless of that residency requirement.

Employers are also obligated to pay social contributions, including payments to pension fund and state health insurance, the amount and payment of which depends on the employee's citizenship, status, and salary.

Russian labor law does not provide employers with any real tools for employee incentive programs (inasmuch as that meaning is understood in Sweden and Finland). In general, Russian labor law is slow to change to the demands of the modern labor market, and therefore employers are left to use other legal instruments and jurisdictions to provide incentives to their top managers and employees. The Russian Tax Code also does not provide any direct regulation of income from equity- or non-equity-based incentive programs, which means that the income is taxed based on general rules applicable to the specific type of income.

A. Non-Equity-Based Incentive Programs

Non-equity-based incentive programs are the most common and simple to implement in Russia. It is important, however, for employers to closely follow the overly formal requirements for those kinds of programs, which are more or less based on the general principles of labor law designed to protect employees and the original agreement between them and their employers. For a non-equity-based incentive program to be binding, a series of formal documents must be introduced by the employer and signed by the employee with specific, performance-based indicators set out in detail. Non-equity-based incentive programs are taxed according to the same rules as wages as described above (compare Section III.A of this article).

B. Equity-Based Incentive Programs

The absence of the proper legal framework in Russian labor law to introduce equity-based incentive programs, combined with the need by business to incentivize company employees, has resulted in the creation of other legal constructions to fill the gap. The most common tools are the use of options (regulated by securities and civil law) and companies in other jurisdictions that, when combined with labor requirements, are provided as a complex package to employees. Options have undergone recent changes connected with amendments to the Russian Civil Code that became effective June 1. However, employee stock options remain foreign to Russian labor law.

Most arrangements in use are put into place using a special purpose vehicle (SPV) and therefore are not directly related to the employer and can be classified as either a classic or phantom option. Depending on the circumstances, both Russian and foreign companies are used for the SPV.

The classic option gives the employee (usually top managers) the right to acquire shares at a set price after a set period of employment and upon reaching performance indicators. The employee himself will need to make the payment at the set price if he decides to use the option. There are various difficulties with this scheme, including time restrictions on the issue of shares before payment, the need to observe the rights of all other shareholders, the FMV of the shares, and the need for future corporate decisions, which make it difficult to implement this kind of an arrangement without the use of an SPV. Even so, the exact scheme needs to protect both the employee and employer, and it is often difficult to find a compromise.

No specific taxation rules apply to the classic option; therefore, general tax rules apply. The tax base is the amount of the difference between the FMV of the shares and the set price at which they are acquired by the employee (as stated in the original agreement or arrangement). For residents, that rate is 13 percent regardless of the jurisdiction in which the shares are issued. For nonresidents, the tax rate is 30 percent if the shares are issued in Russia.

When entering into the original option agreement or arrangement, the employee does not receive any material benefits, and therefore there is no tax base on which taxes should be paid. It is when the option is exercised — that is, when the shares or other securities are transferred to the employee — that the employee receives a material benefit on which personal income tax is collected.

If the employer gives the shares directly to the employee, the employer must withhold taxes from the employee's salary (considering various restrictions) and pay them to the state treasury. If a company other than the employer will transfer the shares, the employee will himself pay the taxes. If the shares are transferred by a Russian company, that company will be obligated to notify the tax authorities about the transfer. The general taxation rules and social contributions as described above apply.

When the employee sells the shares, he may include the taxes paid on the exercise of the option as expenses to lower his tax burden from the income for the sale of the shares.[7]

The phantom option results in paying the employee the difference between the FMV of the shares when the option is first provided and the FMV of the shares when the option is exercised. Although the shares are not actually transferred to the employee, the phantom option scheme is more common in Russia mainly because it does not require any monetary contribution by the employee and is a cleaner construction under Russian law, under which it is often easier to find a compromise between the risks for the employer and the employee. The amount of payment is taxable based on general taxation rules for the personal income tax, as described above. Again, the payment is made when the employee receives the material benefit.

Although numerous changes are constantly being made to Russian civil and labor law, we do not expect any radical changes to labor law, which would make it easier to implement a scheme more similar to those used in Finland and Sweden. Even so, there are options available in Russia if the employer is willing to use more complex schemes to provide employees with incentives.

III. Sweden

In Sweden, salary payments, including bonuses and benefits, are subject to a progressive tax rate of approximately 30 to 58 percent. The employer also must pay social security contributions normally totaling 31.42 percent (lower social surcharges apply to categories of employees). Hence, the tax burden on labor is rather high compared with most other EU and OECD member states.

Individuals receiving capital income — capital gains as well as divided distributions — are normally taxed on that income at a flat rate of 30 percent. Further, if capital income is derived from non-listed shares, only 5/6 of the income is deemed taxable, bringing the effective tax rate down to 25 percent. Capital income from closely held companies, however, may in part be considered salary and taxed at a progressive scale of approximately 20 to 58 percent. The tax burden on capital income is more in line with international standards, creating an unusually large gap between the taxation of salary and capital income.

Considering the above, it is only natural that employers and employees alike have a mutual interest in structuring incentive programs so that the income is deemed capital income rather than salary income. Consequently, it is unsurprising that the Swedish Tax Agency (and sometimes even the relevant courts) often takes a slightly aggressive position when arguing that income labeled as capital income in fact should be taxed as salary under a substance-over-form approach.

There is fairly extensive case law on the subject dating back to 2009 from the Swedish Supreme Administrative Court (SSAC), clarifying the line between the different types of income.[8] However, structuring an incentive program to ensure capital income taxation is still difficult because securing favorable tax treatment often means relinquishing some mechanisms needed to ensure alignment of interest between employees taking part in the incentive scheme and employers or majority owners.

A. Non-Equity-Based Incentive Programs

The most basic incentive program possible is probably to provide for performance-based bonuses. As mentioned above, employees will be taxed on those kinds of payments as ordinary salary at a progressive tax rate of approximately 30 to 58 percent with additional social contributions normally totaling 31.42 percent for the employer.

B. Equity-Based Incentive Programs

In any form of equity-based program, the first issue to analyze from a tax perspective is the pricing of the security an employee receives.

If the instruments acquired by the employee of a group company are considered securities for tax purposes, any benefit from acquiring the securities at a price below FMV will be taxed as salary income at the time of the acquisition. Because it is considered salary, the amount will be subject to social security contributions. The employee will receive a tax base equaling any remuneration paid plus an amount equaling the taxed benefit. Dividend distributions and gains on a future divestment will be taxed as capital income. A future capital loss on a sale of the security is usually tax deductible.

If the right to dispose of the securities in a shareholders agreement, for example, is extensively restricted, or if the securities are too strongly linked to employment, there is a risk that the securities are not considered securities for tax purposes. In that case, tax may be levied in a way that corresponds to that of the so-called employee options, and any benefit in the pricing at the time of the acquisition is not subject to tax at that time (compare with Section III.C of this article).

Instead, the taxation is determined when the value is realized (for example, when the shares are disposed of) or the restrictions are lifted. The taxable benefit then totals the difference between remuneration paid by the employee for the security, if any, and the FMV

[7]Russian Tax Code, article 214.1, clause 13.

[8]RÅ 2009 ref. 86 and RÅ 2009 not. 206.

of that security. The entire benefit, including any increase in value since time of acquisition, is then taxed as a salary payment resulting in additional tax in the form of social security contributions.

The SSAC has often, in cases regarding both shares and subscription warrants, accepted some restrictions without treating the securities as anything but for tax purposes. Restrictions accepted in those cases may be summarized as:

- An employee was not allowed to sell or dispose of the securities until five years after the acquisition year (in effect, a six-year vesting period). Similar restrictions have sometimes been combined with different types of ''drag along'' and ''tag along'' clauses in relevant shareholder agreements.
- If the employment ends during the vesting period, the employee was to return the securities at cost (which in one case was nothing).
- Without the employee's consent, the restrictions were noted with the Central Securities Depository, and the shares were to be transferred to the employer if a breach of those restrictions occurred.
- The securities were pledged in favor of the majority owner to ensure the compliance with the restrictions.

The Swedish Board for Advance Rulings once accepted a preemptive purchase right for the majority owner even though that right lacked a time limit. In that case, however, the employee could have at any point freely divested the shares as long as the majority owner had already been given the right to purchase the shares at identical terms and price as the potential third-party buyer offered.

Hence, rather extensive restrictions have been accepted. It is important to note, however, that the employee should be recorded in the share register as having the right to dividend distributions and to exercise the voting power attached to the shares, even during the vesting period. In essence, it can be said that the securities cannot be deprived of their characteristics (for example, the right to vote and to receive dividends) if they are to retain their status as securities for tax purposes. An overall assessment must be made when determining whether the instruments are securities for tax purposes. Hence, cherry picking from the different cases in which restrictions have been allowed is not recommended when setting up an incentive program.

Further, much of the case law in which shares and subscription warrants for tax purposes have been deemed not to be securities predates current legislation, leaving doubts regarding whether those cases can be applied now. Several cases — both concerning previous and current law — also address different types of warrants and synthetic instruments, as opposed to shares and regular subscription warrants, making it more difficult to determine whether those cases apply to investments in regular shares and subscription warrants. However, in principle, there should not be any differences between shares and other securities.

In a landmark case from 1996 decided under current legislation concerning a share-based incentive plan, an acquisition of shares was not deemed an acquisition of securities for tax purposes until the vesting period ended.[9] There are numerous angles to the case, but among the more important are that the employee did not have the right to receive dividend distributions and had a limited ability to vote the shares during the vesting period. That is perhaps the prime example of what was stated above: Securities may not be deprived of their characteristics if they are to retain their status as such for tax purposes.

The conclusion to be drawn from the 1996 and the 2009 cases mentioned above has been summarized as:

> The conclusion to be drawn from the new cases are that shares also for tax purposes constitute securities even if restrictions apply due to shareholders agreements or other agreements that constitute fairly far reaching disposal restrictions. . . . The period which the restrictions are in place should probably not be too long. In the ''free shares''-case it was two years, and in the ''private equity''-case it was 6 years. Hence, longer lock-up periods should be avoided.[10]

C. Special Tax Regimes

Swedish tax law defines employee options as a company granting an employee the right to a future acquisition of shares in the company at a fixed price. Hence, it is a type of option, but it is nontransferable and consequently not a security for tax or civil law purposes. Normally the employee option can be exercised only after a vesting period and provided the employee remains employed by the company.

A taxable benefit is not deemed to arise when the employee option is received regardless of whether a benefit exists in economic terms. Instead, as suggested above in Section III.B of this article, the difference between the FMV of the underlying security at the time of exercise and whatever the employee paid for the employee option is deemed a benefit taxed as a salary payment.

The SSAC has found that synthetic options not deemed to be securities for tax purposes because of restrictions going beyond what is acceptable (compare under Section III.B of this article) may be taxed similarly to employee options insofar as the benefit was not deemed taxable at the point of the acquisition but

[9]RÅ 1996 ref. 92.

[10]Sara Jacobsson and Ulf Tivéus, *Taxation of Financial Instruments* (*Sw. Skatt på finansiella instrument*) 301 (2013). The book is published only in Swedish; the translation is the authors'.

rather both at the end of the vesting period and at exercise.[11] In a worst-case scenario, the end of the vesting period and the actual exercise could take place in different years, resulting in dry income for the taxpayer.

IV. Conclusion

Of the three countries, Russia, in a sense, has the least developed legal framework for incentive programs. That is not necessarily bad, because it also makes understanding any related tax consequences easier. In short, any benefit arising from an equity-based program — or otherwise — is taxed when the benefit materializes. The tax rate is, by almost any standard, very low (normally a flat rate of 13 percent), making Russia an ideal place to take part in an incentive program.

In Sweden and Finland, the situation is more complex, and both the tax rate and timing may vary greatly depending on how the incentive program is structured. Although the tax rate will never be as low as in Russia, under a well-structured program it is possible for the employee to be taxed at flat rates of 30 percent in Sweden and between 30 and 33 percent in Finland. In ballpark figures, those percentages are about half the tax burden compared with what will apply if close attention is not paid to the complicated case law briefly outlined in this article. Given that double the expected tax is hardly the way to incentivize key team members, employers should not underestimate the importance of doing their homework before launching incentive programs. ◆

[11] RÅ 2007 not. 177.