

INTERPRETATION OF THE TAX AUTHORITY ON THE WITHHOLDING TAX APPLICABLE TO SPECIFIC STOCK OPTION PLANS

Last February, the Colombian tax authority issued a concept interpreting article 108-4 of the Tax Code that regulates two types of stock option plans. The first type consists of granting options to acquire shares and the second consists of giving shares as part of the employee's compensation.

The tax authority reconfirmed that the employer company should withhold income tax whenever the employee derives income through this concept. This would happen when the employee exercises the option to subscribe shares in the case of the first stock option plan or when the employee becomes a shareholder in the case of the second type of stock option plan.

The tax authority also confirmed that the employer company is obliged to withhold income tax when the shares acquired by its employee, under a stock option plan, belong to a related company. In addition, it stated that even when the employer company does not deduct any sum relating to the shares granted to the employee, it would still be obliged to withhold income tax.

This interpretation of the tax authority may oppose other possible interpretations of the laws that regulate the taxation of stock option plans offered by multinational enterprises. We recommend analysing the potential risks derived from the current structure of the stock option plans offered to Colombian employees and evaluating eventual alternatives, if necessary.

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