Options for the Employee Participation

VON WOOD

Summary

VonWood brings the outdated timber trade into the 21st century. With an online marketplace for timber that directly connects buyers and sellers, without an intermediary. This increases the trading perspective, lowers the price and provides transparency on the origin and quality of the wood. Building with wood is better for the planet. Choosing wood instead of polluting materials such as concrete and steel should be a no-brainer. VonWood makes working with wood accessible to anyone.

	Depositary receipts with full payment of the purchase price	Depositary receipts with indebtment of purchase price	Regular shares	Bonus in money	Stock Appreciation Right ('SAR')
Risk of loss/ devaluation?	Yes	Yes	Yes	No	No, but risk of not getting any grant
Leaver clause?	Yes	Yes	Yes	No	Yes
Vesting?	Yes	Yes	Yes	No	Yes
Wage tax due?	No*	No*	No*	Yes	Yes
Incorporate in yearly Dutch income tax return after purchase/grant?	Yes, in principle in box 3 (inkomen uit sparen en beleggen)	Yes, in principle in box 3 (inkomen uit sparen en beleggen)	Yes, in principle in box 3 (inkomen uit sparen en beleggen)	No	No

*if the purchase price is equal to the fair market value
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Depositary receipts with full payment of the purchase price

General remarks

A depositary receipt (certificaat) ('DR') is a certificate which is issued by, for example, a Stichting Administratiekantoor ('STAK') which represents a share that is held by the STAK. The owner of the DR's is entitled to the economic benefits (and loss) on the shares it represents. For instance, if the Company issues a divdidend on its shares to its shareholders, the STAK (which is the formal shareholder) receives the dividend but is obliged to distribute the dividend accordingly to the holder of the DR's. The holder of the DR's does not have any voting rights in the Company. This is held by the STAK. As the DR's do have value at the time they are being purchased, the DR's should be bought at the fair market value (waarde in het economische verkeer) at that time otherwise the purchase will have Dutch tax consequences (refer to below). In this variant the employee will purchase the DR's and pay the full amount.

Purchase/ Grant/ Agreement

1) Required documentation

(A)The purchase of the DR's will be effectuated in a purchase/participation agreement. In this agreement the conditions regarding the participation/purchase of the DR's will be set out. (B) The DR's will be administered by the STAK. The STAK will have administration condtions (administratievoorwaarden). In this document the conditions relating to employee and the STAK are set out (voting right etcetera).

2) Notable conditions/ clauses*

(A) The purchase price. (B) The leaver conditions: the employee is able to purchase the DR's, because he/she is an employee of the Company. If, for example, the employment agreement is terminated, the (ex-)employee will be obligated to transfer the DR's back to the Company. Depending on the manner and timing of the termination of the agreement, an employee will be regarded as a Good Leaver, Bad Leaver or a Early Leaver. If an employee is considered a Good Leaver, the conditions on which the employee is obligated to transfer the DR's back to the Company are more beneficial than if the employee is considered a Bad Leaver. For instance, the purchase price for the Company for the DR's of the Bad Leaver employee can be set at the par value (nominale waarde), whereas the purchase price for the Good Leaver employee can be set at the fair market value (waarde in het economische verkeer). (C) Vesting period and a cliff. A 'vesting period' and a 'cliff' act as an incentive for employees to stay with the Company and commit to the company. The entitlement of the employee on the DR's will vest over time. For instance, if the vesting period is set at 5 years, including a cliff of 1 year. The DR's will vest each year for 20%. Meaning that if the employee, for instance, would sell the DR's back to the Company within 2 years after the signing the participation agreement, they are only entitled to 40% of the value of the DR's (or an other pre-determined value of the DR's).

Exposure/Risks

The value of the DR's are connected to the value of the corresponding shares in the Company (which are being held by the STAK). This means that if the Company were to go bankrupt or have 'bad' financial results, this will have an impact on the value of the DR's. The value of the DR's might drop below the purchase price of the employee, resulting in a loss. The employees therefore have the risk to lose their money (for the purchase price), similar to buying stocks on a regulated stock exchange. Also, if the company is not able to distribute a dividend, the employee will not receive any benefits (read: dividends) on their DR's. It is also common to incorporate fines for, for example, the breach of any confidintiallity clause or non-compete clause in the participation agreement. This means that the employee might be confronted with these fines if these certain clauses are breached.

Dutch tax consequences

1) Wage tax

If the purchase price of the DR's of the employee is equal to the fair market value (waarde in het economisch verkeer) and this amount is paid in full by the employee, no Dutch wage tax should be due on the purchase of the DR's.

2) Dutch income tax return of the employee

In case no Dutch wage tax is due, there is no Dutch income tax due on the purchase of the DR's. After the purchase of the DR's the employee must include the value of the DR's at January 1st, of the respective tax return year, in their equity of box 3 (inkomen uit sparen en beleggen). However, this only applies for vested DR's. The value of the unvested DR's should not be included in the equity of box 3. Based on the current legislation, the value of the (vested) DR's will then be taxed against an effective tax rate of somewhere around 1,2%

3) Other taxes

If the return on the investement (purchase price) of the DR's grows larger, the Dutch tax authorities might be of the opinion that there is a lucrative interest (lucratief belang). This is the case if certain conditions are met and the return on investment can be regarded as an excessive reward for the work of the employee. If the DR's are to be regarded as an lucrative interest, the benefits on the DR's are to be accounted for as box 1 (inkomen uit werk en woning) income in the Dutch income tax return and are taxed against the progressive rates as mentioned before. It is to be noted that in general a certain leverage-mechanism is required in order to qualify for a lucrative interest, and thus the risk of the DR's being qualified as an lucrative interest is very low.

All of the % and amounts in this document are based on the legislation in the year 2022
*please note that this is not an exhaustive list. Additional clauses and conditions will be incorporated in the documentation
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Depositary receipts with indebtment of the purchase price

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General remarks

Refer to the general remarks regarding the DR with full payment of the purchase price. The only difference is that the employee will not pay the full purchase price of the DR's. The purchase price will remain indebted to the Company for which a loan agreement will be set up. This agreement will contain the repayment obligation, interest etc. the Company is willing to prepay a maximum of 85% of the full purchase price of the DR's. Therefore the employee must at least pay 15% of the full purchase price of the DR's. bvvv

Purchase/ Grant/ Agreement

1) Required documentation

(A) The purchase/participation agreement of the DR's. (B) Administration conditions (administratievoorwaarden). (C) The loan agreement. A loan agreement must be drafted as a maximum of 85% of the purchase price of the DR's will be indebted by the employee. It is key that this loan agreement and the conditions therein are market compliant (zakelijk).

2) Notable conditions/ clauses*

(A) The purchase price. (B) Leaver conditions. (C) Vesting period. (D) Repayment obligation. The repayment obligation can be set up so that the Company will withhold an amount on the monthly wage of the employee and settle this amount with the outstanding indebted amount. (E) Interest on the indebted amount.

Exposure/Risks

The risks/exposure as described under 'DR's with full payment of the purchase price' also apply here. In addition to these risks, the employee is obliged to repay the indebted amount. If the employee does not fulfill is repayment obligations, it could be obligated to transfer the DR's, without any payment, back to the Company with the remainder of the interest still being due. This means the employee will lose its DR's and is still due the accrued interest on the loan.

Dutch tax consequences

1) Wage tax

If the purchase price of the DR's of the employee is equal to the fair market value (waarde in het economisch verkeer) and the conditions of the loan agreement are market compliant (zakelijk), no wage tax should be due on the purchase of the DR's. However, the Dutch tax authorities have taken the position in previous employee participation plans, that if the full amount of the purchase price of the DR's is indebted, the loan agreement is deemed to be non-market compliant (onzakelijk) and Dutch wage tax is due. It is therefore of importance that the employee must at least pay 10%/15% of the purchase price of the DR's, in order to minimise the chance of a discussion with the Dutch tax authorities. However, a possible discussion with the Dutch tax authorities cannot be excluded.

2) Dutch income tax return of the employee

Refer to what is mentioned at 'DR's with full payment of the participation price'. In addition to that, the value of the loan to the Company for the purchase of the DR's should be included in the Dutch tax return as debt in box 3. The net amount of the value of the DR's and the loan to the Company will be taxed against an effective tax rate of somewhere around 1,2%. As the loan has been attracted for / has been indebted relating to the purchase of the DR's, the net amount should be (in the first years) low.

3) Other taxes

Refer to what is mentioned at 'Depositary receips with full payment of the purchase price'.

Regular shares

All of the % and amounts in this document are based on the legislation in the year 2022
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General remarks

The owner of the shares in the capital of the Company is entitled to the economic benefit (and loss) on those shares. The owner also holds the voting rights on those shares in the general meeting of the Company. These shares should be bought at the fair market value (waarde in het economisch verkeer) at that time otherwise the purchase will have Dutch tax consequences (refer to the below). The shares can be purchased for the full purchase price of those shares or for 15% of the full purchase price whereas 85% of the full purchase price will remain indebted. What is mentioned regarding the 'Depositary receipts with full payment of the purchase price' and 'Depositary receipts with indebtment of the purchase price' also applies to a large portion of the purchase of the regular shares.

Purchase/ Grant/ Agreement

1) Required documentation

(A) The purchase of the share(s) will be effectuated in a purchase/participation agreement. (B) A shareholders agreement regarding the shares in the Company with the other shareholders should be set up. (C) A loan agreement must be set up, if the 85% (maximum) of the full purchase price of the shares remains indebted.

2) Notable conditions/ clauses*

Refer to what is mentioned at 'Depositary receips with full payment of the purchase price' and 'Depositary receipts with indebtment of the purchase price'.

Exposure/Risks

Refer to what is mentioned at 'Depositary receips with full payment of the purchase price' and 'Depositary receipts with indebtment of the purchase price'.

Dutch tax consequences

1) Wage tax

Refer to what is mentioned at 'Depositary receips with full payment of the purchase price' and 'Depositary receipts with indebtment of the purchase price'.

2) Dutch income tax return of the employee

Refer to what is mentioned at 'Depositary receips with full payment of the purchase price' and 'Depositary receipts with indebtment of the purchase price'.

3) Other taxes

Refer to what is mentioned at 'Depositary receips with full payment of the purchase price'.

Bonus in money

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General remarks

The employee receives a sum of money as a bonus. This does not fit start-up and scale-up companies, due to the (often) lack of excess liquidities at the company.

Purchase/ Grant/ Agreement

1) Required documentation

(A) A bonus-plan containing the conditions and targets for when an employee can receive a bonus (not required).

2) Notable conditions/ clauses*

None

Exposure/Risks

A large amount of Dutch wage tax is due because of the bonus in money (refer to below).

Dutch tax consequences

1) Wage tax

The full amount of the bonus is to be regarded as wage and is taxed as a 'special reward' against a maximum rate of 49,5% of Dutch wage tax (2022). This means that the Company will be obliged to withhold (a maximum of) 49,5% of the amount of the bonus as Dutch wage tax and that the employee will 'only' receive a net 51,5% of the amount of the bonus.

2) Dutch income tax return of the employee

Refer to what is mentioned at 'Stock Appreciation Right (SAR)'.

3) Other taxes

None

Stock Appreciation Right ('SAR')

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General remarks

The SAR is a claim/right of the employee on the increase of the value of the shares of the Company in a predetermined period. At the end of the predetermined period, the employee will be able to receive the increase of the value of the shares, which is calculated accordingly to a formula. This means that the employee, which has been granted the SAR, does not have any shares, voting rights, or DR's in the Company. They are 'only' entitled to the value increase of the shares on which the SAR has been granted. A (basic) example for illustration purposes: an employee is granted a SAR for 100 shares in the Company for 3 years. The value of the shares at that moment are € 1 per share. After 3 years, the shares are worth € 5 per share. This means that the employee is entitled to € 4 value increase per share, being € 4 * 100 = € 400 for the entire SAR. The SAR will lead to a cash distribution of this amount to the employee in case of a liquidation event such as, for example, an exit of the Company (sale of all of the shares in the Company).

Purchase/ Grant/ Agreement

1) Required documentation

(A) The SAR-plan containing the general conditions of the SAR. (B) The SAR-agreement containing the specific conditions relating to the employee.

2) Notable conditions/ clauses*

(A) The conditions to apply for the SAR. (B) Vesting period. (C) Exercise period of the SAR. In this clause it is incorporated in which period the employee can and must exercise the SAR. (D) Exercise conditions. In this clause it is incorporated under which conditions the employee is able to exercise the SAR. (E) Valuation of the shares at the time of the grant and the formula for the calculation of the grant at the time of exercise of the SAR. (F) Amount of the SAR's. (G) Payment method of the SAR (for example: cash).

Exposure/Risks

The SAR is connected to the value of the shares of the Company. This means that if the Company were to go bankrupt or have 'bad' financial results, the value of the shares would go down. As the SAR gives the employee the right on the increase of the value of the shares, the employee might not receive any grant at the exercise of the SAR if the value of the SAR is lower than the starting value. In that case the employee would be left empty-handed.

Dutch tax consequences

1) Wage tax

The total amount of the grant of the SAR (the increase in value of the shares in the Company the SAR is connected to), is to be considered wage for Dutch tax purposes. This results in the fact that the Company is obliged to withhold 49,5% of Dutch wage tax on the payment of the grant to the employee. For example: if the grant of the employee amounts to € 100, the Company is obliged to withhold € 49,5 and pay this to the Dutch tax authorities. The employee would only receive € 51,5 of the total grant.

2) Dutch income tax return of the employee

In the year the SAR is exercised by the employee, after an liquidation event such as the sale of all of the shares in the Company (for example), the amount of the net grant must be included in the Dutch tax return as wage (loon) in box 1 (inkomen uit werk en woning). This wage, the amount of the grant of the SAR, is taxed against the progressive rate of 37,07% (income until € 69.399) and 49,5% (income from € 69.399). However, the wage tax the Company was obliged to withhold can be set of against the Dutch income tax due.

3) Other taxes

None

The contents of this matrix provide a good image of a 'basic' employee participation. However, please note that the possible contents and tax consequences of an employee participation differ for each specific situation and employee participation. It is therefore highly recommended to consult with an (tax) adviser regarding your own specific situation and employee participation in order to set out the possible tax consequences (for example). Do not hesitate to contact the tax advisers/lawyers of BVDV (https://www.bvdv.nl/), whom were involved in drafting this matrix, about your questions regarding your own employee participation. They can be contacted by e-mail at houwer@bvdv.nl and lokhoff@bvdv.nl or by phone at 030-2322373.