

# Flash News

## Stock Option Plans: introduction of a new reporting requirement

The Luxembourg tax authorities released on 28 December 2015 the Circular Letter L.I.R n°104/2bis introducing a reporting obligation for stock option.

11 January 2016

### Background

On 20 December 2012, the Luxembourg tax authorities issued the Circular L.I.R n°104/2 related to the tax treatment of the stock option plans and providing a lump-sum valuation method for certain types of options for tax purposes.

In the context of increased scrutiny over the use of options/warrants as a remuneration tool in Luxembourg, the tax authorities have now released a new Circular Letter (Circular L.I.R. n°104/2bis) which introduces additional reporting obligations for the employer in connection with stock option/warrant plans.

### Content of the Circular

The Circular Letter applies to **all stock option plans implemented as from 1<sup>st</sup> January 2016**. According to the Circular Letter:

- **The employer must notify the implementation of a stock option plan** to the Préposé of the competent Luxembourg tax office (“Bureau d’imposition RTS”) at least two months before the plan is implemented. The Circular Letter does not provide that the tax authorities shall give an upfront agreement for the implementation of the plan.
- The employer shall also provide the tax office with a **copy of the plan documentation and the list of the participants to the plan**.

**For stock option plans which are intended to be implemented in January or February 2016**, it is our understanding that immediate notification shall be made to the tax authorities.

**For stock option plans implemented before 1<sup>st</sup> January 2016 but for which some or all options/warrants have not yet been allocated**, the employer has to notify the tax authorities.

As per the stipulation of the Circular Letter, it is our understanding that only stock option plans are subject to the new reporting obligation and thus other incentive plans (such as SAR, Share Plans, etc.) should not be concerned.

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## Conclusion

With the publication of this Circular Letter, the tax authorities have equipped themselves with a tool that allows them to have a better view of the extent to which employers use stock options as a remuneration for their employees. It may be expected that more audits will be performed by the tax offices in this respect.

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## Link to the circular

To consult the Circular Letter L.I.R n°104/2bis in its entirety, please click on the following link (available in French only):

[http://www.impotsdirects.public.lu/legislation/legi15/Circulaire-L\\_I\\_R\\_-\\_n\\_104-2-bis-du-28-decembre-2015.pdf](http://www.impotsdirects.public.lu/legislation/legi15/Circulaire-L_I_R_-_n_104-2-bis-du-28-decembre-2015.pdf)

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