FEAS Conference

Employee Ownership

Employee Ownership as a mean to optimise Executive's variable pay

Friday, December 15 2006

ING Belgium SA/NV

Françoise Platteborse

Agenda

- Part I — Introduction
- Part II — The law of March 26, 1999 relating to the grant of stock options
- Part III — The ING Fund Option Plan
- Part IV — The ING Hesop Options
- Part V — The Discounted Share Purchase Plan
- Part VI — ING Structured Credit
- Part VII — Profit Participation

Part I

Introduction

Part II

Analysis of the main aspects
of the law of March 26, 1999
related to stock options

Introduction

- What is an option?
  - An option gives the holder :
    - the right to sell or to buy the underlying asset
    - by a certain date
    - for a certain price
- The price in the contract is known as the “strike price”
- The date in the contract is known as the “exercise date or maturity”
- This is a right but not an obligation: the holder is not obliged to exercise this right.

General considerations

- Why use the law of March 26,1999 ?
  - Taxation
    - at grant (>< vesting, exercise)
    - liberating (no taxation on future capital gain)
    - final (not possible to recuperate the tax if the option is not exercised)
    - valuation at a fixed rate
  - No social security (ONSS/RSZ)
  - Valuation of the option :

① Intrinsic value

Value of the underlying share - exercise price

+

② Time value

(% applicable on the underlying)

Duration options	5 years	per add. year
General rate	**15%**	**1%**
Preferential rate	**7.5 %**	**0.5 %**

General considerations

- Conditions for getting a preferential rate:
  - The exercise price of the option must be determined definitively at the time of the offer
  - Period :
    - minimum blocking period of 3 years
    - maximum total period of 10 years (before 10th calendar year following the offer)
  - The option must be "non-transferable" between living persons

General considerations

- Conditions for getting a preferential rate:
  - The option must relate to shares of the company in favour of which the professional activity is exercised (*or the shares of a company which has a direct or indirect shareholding in the former in the meaning of the Royal Decree of October 8, 1976*).
  - The beneficiary of the option may not be covered directly or indirectly by the person who grants the option or by a person with interdependence links with the latter against the risk inherent in a call option (*i.e. the risk of reduction of the value of the underlying share*).

Calculation of the tax for Plan : COMPANY

- Example:
  - An executive receives 1,000 COMPANY options
  - Exercise price : 43.56 €
  - Fiscal value: 43.52 €
  - Taxable basis :
    1,000 * (43.52 € * 10%) = 4352 €

Taxable basis(1) = 7,5% + 0.5% per additional year after 5 years

  - Amount of tax due : 4352 € * 52% = 2,263 €

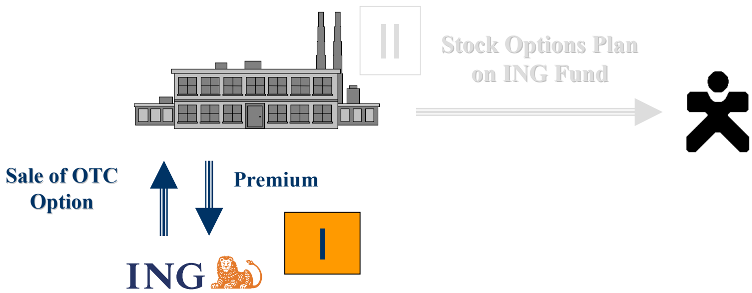
Estimated Marginal Tax rate

  - Tax due per option : 2.263 €
- *(1) Average pers. marginal taxation rate for income 2005 is estimated at 52%.*

Part III

The ING Fund Option Plan

Step I – Sale of options on ING Fund



- The premium paid is a deductible charge.

Step II – SOP on ING Fund

- The company grants stock options to employee-beneficiary in the legal framework of the law of March 26, 1999.
- Blocking period: the beneficiary cannot exercise nor sell the options during a period of one year as from the grant.

Step III – Tax Due

- The options granted for free by an employer to an employee are deemed to be a taxable professional income for the employee.
  - The benefit in kind is taxable at the time the option is granted and subject to the marginal tax rate
  - The option is deemed to be granted on the 60th day following the offer

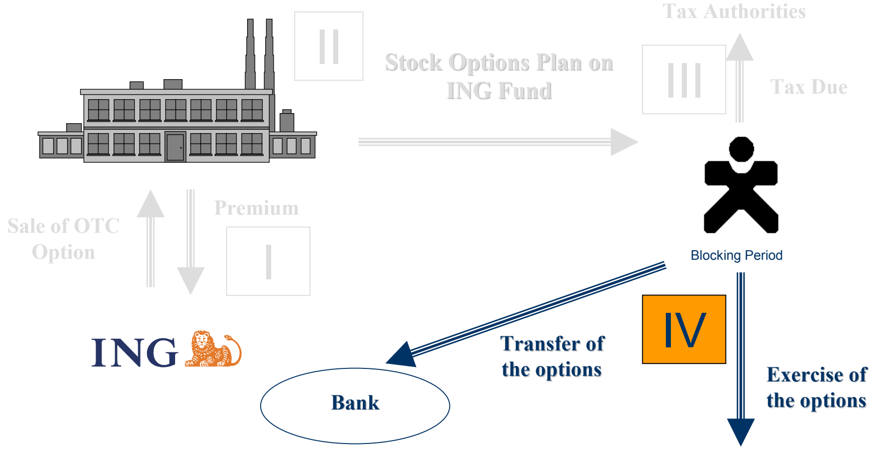
Step III – Tax Due

- Taxable basis:
  - 15% of the value of the underlying share at the time the option is granted + 1% of the value of the underlying share per additional year after the fifth year.
  - Value of the underlying share:
    - ☞Last closing price of the share prior to the day of the offer;

    OR

    - ☞Average closing price of the share during the 30 days prior to the offer.
- Capital gains obtained when exercising the option or the transfer of the option after the blocking period do not constitute a taxable professional income in Belgium.

Step IV – Exercise *or* Transfer of the options



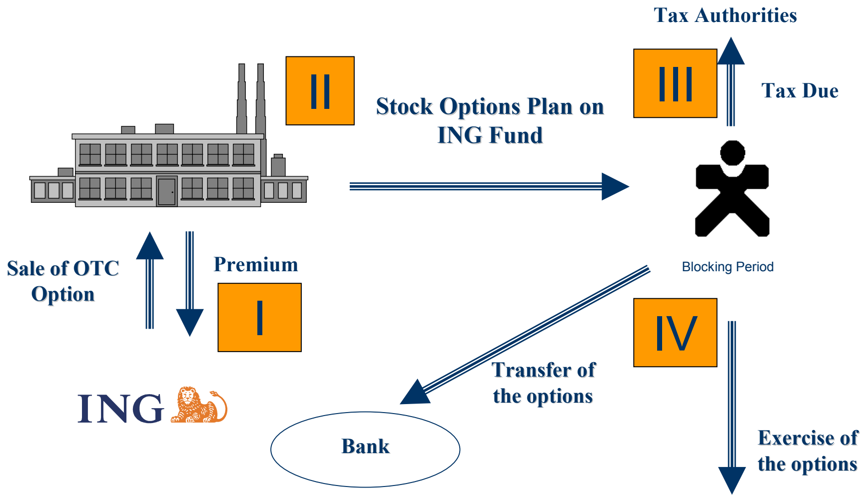
Step IV – Exercise *or* Transfer of the options

- After the blocking period, the employee can (but is not obliged to)
  - **exercise** the options, i.e. purchase of the fund:

    The employee has to pay the exercise price to his company and the additional costs linked to the transaction

  OR
  - **transfer** the options. The employee will sell the options to a buyer (other than the issuer) and receive the financial price of the options
- No tax is due on the capital gain resulting either from:
  - the physical exercise of the options
  - the transfer of the options

Summary



Part IV

The ING Hesop Options

Tax Due

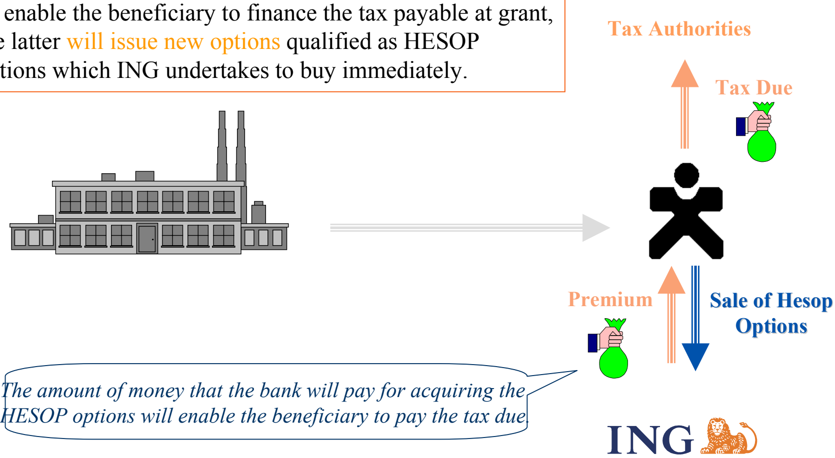
- Situation:
  - Certain immediate taxation >< Uncertain future capital gain
  - Consequences for the employee:
    - problem of financing the tax burden
    - risk of decrease of value of underlying share

➡ HESOP options is the answer

HESOP options

The HESOP option principle:

➔ to enable the beneficiary to finance the tax payable at grant, the latter will issue new options qualified as HESOP options which ING undertakes to buy immediately.



The amount of money that the bank will pay for acquiring the HESOP options will enable the beneficiary to pay the tax due

Part V

Discounted Share Purchase Plan

Principles

Legal context – scenario I

- In accordance with company and tax law (Art. 609 Company code), the following conditions must be fulfilled for the DSPP:
  - Increase of market capitalisation is necessary
  - Employees concerned: ALL employees must participate
  - Blocking period: 5 years
  - Not taxable benefit for a discount on fair value: 20.00%
- The Belgian sourced dividends paid by the acquired shares are subject to the ordinary dividend withholding tax of 25%. The participant will receive net dividends.

Legal context – scenario II

- In accordance with the administrative tax circular (21/06/1995), the following conditions must be fulfilled for the DSPP :
  - Shares buy-back
  - Employees concerned: selected group is allowed
  - Blocking period: 2 years (min.)
  - Not taxable benefit for a discount on fair value: 16.67%

- The Belgian sourced dividends paid by the acquired shares are subject to the ordinary dividend withholding tax of 25%. The participant will receive net dividends.

Tax & Social security considerations

- No employee social security contributions are due provided the shares are blocked during the blocking period (i.e. 2 years or 5 years).
- For a Belgian Tax-resident:
  - The capital gain realised on the sale of the acquired shares is not taxable.
  - A stock market tax of 0.17% per transaction and per party will apply to the purchase and later on the sale of the shares.

Simulation of a DSPP

- With a total cost of 100 € (Gross):
  - The net cash equivalent: 30 €
- With a DSPP:
  - Discounted price: 83.33 € (Non-taxable benefit of 16.67 €)
  - With an equivalent of 100 €, this corresponds to 6 shares sold at the discounted rate (6 * 16.67 € = 100 €)

The employee has to buy the discounted shares…

….potential cash problem ! ING Structured Credit

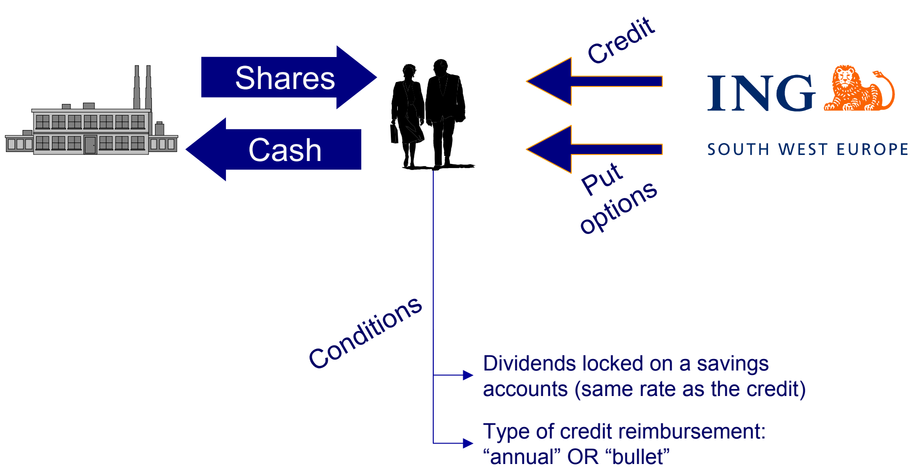
Part VI

The ING structured credit

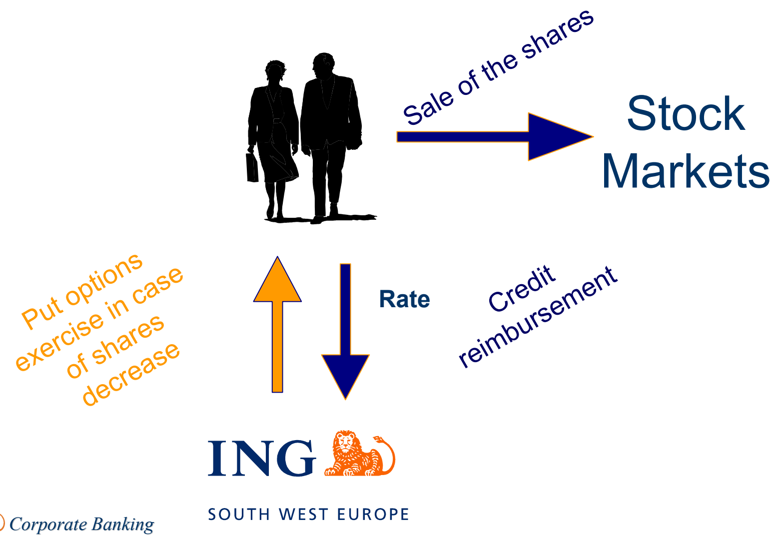
ING Structured Credit - Principle

- Challenges for the employee:
  - An employee who accepts to participate to the proposed DSPP has to pay the discounted price of his company's shares
  - The employee also incurs a financial risk if the share price decreases during the blocking period (i.e. 2 or 5 years)

At the subscription - Principle



At the end of the blocking period - Principle



At the end of the blocking period - Principle

- If the price of the share is **lower** than the strike price of the put,
  - the employee sells the shares on the exchange
  - the put options pay the difference between the strike price and the selling price

The proceeds enable the employees to repay the loan at no financial loss

- If the price of the share is **higher** than the strike price of the put,
  - the put options will not be exercised
  - the employee sells the shares on the exchange

Part VII

Profit Participation

Profit participation - Principle

- Allotment of a portion of the after tax profits in shares or in cash to employees
- Tax favoured treatment if certain conditions are met :

  * Double ceiling: 10% of the gross salary cost (account 102 of Social BS) or 20% of the profit after tax

  * Open to ALL employees of the company:

    - max. 1 year seniority requirement

    - objective criteria for determining participation

  * The employer must be bound by a CLA regarding remuneration for the duration of the plan

  * Profit sharing may not replace existing salary components

  * Blocking period of 2 – 5 years if paid in shares

Profit participation - Principle

- NO social security contributions, but only a (tax deductible) employee solidarity contribution of 13,07% if paid in cash
- Only a final liberating movable withholding tax is due
  - * 25% if paid in cash
  - * 15% (or 23,29 if no 2 to 5 year blocking) if paid in shares
- Beneficial gross-net ratio
  - * 100 before tax profit in shares results in 56,11 net (+87%)
  - * 100 before tax profit in cash results in 43,04 net (+44%)
- Conclusion: favorable means to align individual performance with company performance

Part VIII

Conclusion

DEFI Relations Managers

- **Françoise Platteborse**
  00.32.2/547.33.75
  francoise.platteborse@ing.be
- **Caroline De Moor**
  00.32.2/547.82.40
  caroline.de-moor@ing.be
- **Gauthier Razée**
  00.32.2/547.23.62
  gauthier.razee@ing.be
- **Toon Swevers**
  00.32.2/547.34.11
  toon.swevers@ing.be
- **Fabrice Rittweger**
  00.32.2/547.35.05
  fabrice.rittweger@ing.be
- **Laurent Pierret**
  00.32.2/547.28.16
  laurent.pierret@ing.be
- **Serge Vermaere**
  00.32.2/547.39.44
  serge.vermaere@ing.be