

Proposal for Amendments to the Income Tax Act and the Ordinance on Income Tax Pursuant to AmCham's Proposal for Treatment of Employee Share Plans

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Contents

- Introduction 3**
- Draft amendments to the Income Tax Act 4**
 - Article 21 4
 - Article 68 9
 - Article 70 paragraph 18 11
- Draft amendments to the Ordinance on income tax 12**
 - Article 21 paragraph 1 12
 - Article 22 14
 - Article 54 19
 - Article 70 paragraphs 12 and 13 21
 - Article 71 paragraph 2 22
 - Annex 3 23
 - INO-DOH form Codes..... 24
 - Annex 1: Detailed list of proposed amendments to the Income Tax Act 25
 - Annex 2: Detailed list of proposed amendments to the Ordinance on income tax 27

Introduction

AmCham's position paper "Employee Share Plans Taxation in Croatia" from December 2017 presented a proposal for better treatment of receipts realized from share plans, aimed at encouraging the participation of a greater number of natural persons in such plans.

The proposal put forward the following treatment of receipts based on share plans:

- A unified treatment of receipts based on share plans regardless of whether the participants of such share plans are employees, management board members or other natural persons and whether company shares are listed on the stock exchange. All receipts based on share plans should be considered income from capital;
- The value of granted shares should be considered gross receipt which already contains taxes and surtaxes;
- Receipts based on share plans should be taxed at the rate of 12% (instead of the 24% rate), same as receipts based on interest, dividends and capital gains;
- The Act on Contributions already stipulates that the "income from capital" category is not subject to the contribution payment obligation. In addition, income from capital is not included in the annual income tax calculation;
- Proposed changes would result in an effective tax rate of 14.16% (Zagreb surtax included) instead of the current tax rate, which may reach up to 154.69% depending on the receipt category (income from capital / other income / income from employment).

For the purpose of implementing the proposed changes, it is necessary to amend the Income Tax Act and the Ordinance on income tax. A specific proposal of such changes is presented in this position paper.

Draft amendments to the Income Tax Act

The Income Tax Act is the key document defining the taxation of receipts based on share plans. In order to implement the treatment of this type of income, as proposed by AmCham, it is necessary to include the following changes to the said Act (the text which should be added is in bold, while the text which should be deleted is in bold and strikethrough):

Article 21

Current version of Article 21

(1) The following shall be deemed receipts arising from employment (salaries):

1. all receipts which the employer pays out in cash or in kind or gives to the employee based on employment and according to regulations regulating employment, and these are:

a) a salary which the employer pays out to the employees in connection with current work, with previous work based on previous employment regardless of the current status of that person – pensioner or some other status, and if this is salary for work performed during employment, and possible other payments to which the employee was entitled at the time of employment regardless of when in that year the employment ceased, that is, when the work contract was terminated, or with future work based on the current employment status

b) receipts based on fees, aids, awards and other, which the employer pays out or provides to employees above the prescribed amounts

c) a salary paid to the employee not by the employer but by another person

d) remuneration to the member of the management board and/or director who as an employee in an employment relationship performs certain tasks for the employer pursuant to the act regulating work relations

e) insurance premiums which employers pay for their employees based on life insurance, supplementary, additional and private health insurance, voluntary pension insurance above the prescribed amount and insurance of their assets

f) any other receipts which the employer pays out or provides to the employee related to employment and the relationship between the employer and the employee regardless of the form and the manner of payment or the basis for payment, unless this Act regulates otherwise

2. entrepreneurial salary included in the expenses when determining profit tax

3. receipts (salary) of natural persons posted to work in the Republic of Croatia upon the order of a foreign employer to domestic companies in order to work in those companies

4. receipts (salary) of the members of representative and executive bodies of the government and local and regional self-government units which are paid out for work in those bodies and units and/or

5. salary compensations to persons providing care and assistance to Croatian military invalids of the Homeland War of Group I, according to a special provision.

(2) Receipts based on employment shall also be:

1. pensions realized on the basis of previous payments of contributions for compulsory pension insurance scheme

2. pensions paid by insurers on the basis of earlier payments by employers for the purchase of a part of the pension for its employees at the time of their retiring, if these payments were tax-exempt

3. pensions paid to entrepreneurs who performed a self-employment activity, entrepreneurs who paid profit tax and other persons based on earlier contribution payments in the prescribed compulsory insurance and which were a tax permissible expense or expenditure and/or

4. pensions of residents realized abroad.

(3) Receipts in kind shall include the use of buildings, means of transport, favorable interest when approving loans, awarding or optionally purchasing own shares at favorable terms and other benefits which employers and payers of the receipt, that is, salary from paragraphs 1 and 2 of this Article give to their employees and natural persons who realize receipts from paragraphs 1 and 2 of this Article. A receipt based on more favorable interest shall include a difference between the lower contracted rate and the interest rate of 3% per year, except for interest on loans which are provided or subsidized from the budget, but not to management employees.

(4) By way of derogation from paragraph 1 of this Article, receipts from employment (salary) shall not include receipts which employers or payers of those receipts pay out to their employees and other natural persons who receive receipts (salary), as follows:

1. receipts based on royalties under the condition that the royalties are paid based on a contract on copyright and related rights concluded between the employer/payer of receipts from employment (salary) and those persons for a copyright work, and other conditions in accordance with the regulations regulating copyright and related rights and under the condition that the copyright work was not created during work in employment by performing obligations under the work contract, labor regulations, collective agreement or a special provision.

2. receipts based on the work of members of assemblies and supervisory boards of companies, management boards, governing councils and other similar and appropriate bodies of other legal persons, under the condition that the employee is not simultaneously a member of the management board or an executive director of the employer or payer, and that the receipt is realized based on the work of representatives of employees in the employer's body pursuant to the provisions of the act regulating labor relations and other special provisions and/or

(5) Receipts from paragraph 4 of this Article shall be deemed other income according to Article 39 of this Act.

(6) Within the meaning of paragraph 1 item 1 of this Article, officials, employees and other persons employed according to the regulations regulating the employment relationship shall also be deemed employees.

Explanation

Article 21 should be amended by deleting the provisions prescribing that awarding and optional purchasing of shares received by employees from their employers is considered receipt from employment in kind. Article 21 should explicitly state that receipts received by employees are considered income from capital.

Proposed new wording for Article 21

(1) The following shall be deemed receipts arising from employment (salaries):

1. all receipts which the employer pays out in cash or in kind or gives to the employee based on employment and according to regulations regulating employment, and these are:

a) a salary which the employer pays out to the employees in connection with current work, with previous work based on previous employment regardless of the current status of that person – pensioner or some other status, and if this is salary for work performed during employment, and possible other payments to which the employee was entitled at the time of employment regardless of when in that year the employment ceased, that is, when the work contract was terminated, or with future work based on the current employment status

b) receipts based on fees, aids, awards and other, which the employer pays out or provides to employees above the prescribed amounts

c) a salary paid to the employee not by the employer but by another person

d) remuneration to the member of the management board and/or director who as an employee in an employment relationship performs certain tasks for the employer pursuant to the act regulating work relations

e) insurance premiums which employers pay for their employees based on life insurance, supplementary, additional and private health insurance, voluntary pension insurance above the prescribed amount and insurance of their assets

f) any other receipts which the employer pays out or provides to the employee related to employment and the relationship between the employer and the employee regardless of the form and the manner of payment or the basis for payment, unless this Act regulates otherwise

2. entrepreneurial salary included in the expenses when determining profit tax

3. receipts (salary) of natural persons posted to work in the Republic of Croatia upon the order of a foreign employer to domestic companies in order to work in those companies

4. receipts (salary) of the members of representative and executive bodies of the government and local and regional self-government units which are paid out for work in those bodies and units and/or

5. salary compensations to persons providing care and assistance to Croatian military invalids of the Homeland War of Group I, according to a special provision.

(2) Receipts based on employment shall also be:

1. pensions realized on the basis of previous payments of contributions for compulsory pension insurance scheme

2. pensions paid by insurers on the basis of earlier payments by employers for the purchase of a part of the pension for its employees at the time of their retiring, if these payments were tax-exempt

3. pensions paid to entrepreneurs who performed a self-employment activity, entrepreneurs who paid profit tax and other persons based on earlier contribution payments in the prescribed compulsory insurance and which were a tax permissible expense or expenditure and/or

4. pensions of residents realized abroad.

(3) Receipts in kind shall include the use of buildings, means of transport, favorable interest when approving loans ~~awarding or optionally purchasing own shares at favorable terms~~ and other benefits which employers and payers of the receipt, that is, salary from paragraphs 1 and 2 of this Article give to their employees and natural persons who realize receipts from paragraphs 1 and 2 of this Article. A receipt based on more favorable interest shall include a difference between the lower contracted rate and the interest rate of 3% per year, except for interest on loans which are provided or subsidized from the budget, but not to management employees.

(4) By way of derogation from paragraph 1 of this Article, receipts from employment (salary) shall not include receipts which employers or payers of those receipts pay out to their employees and other natural persons who receive receipts (salary), as follows:

1. receipts based on royalties under the condition that the royalties are paid based on a contract on copyright and related rights concluded between the employer/payer of receipts from employment (salary) and those persons for a copyright work, and other conditions in accordance with the regulations regulating copyright and related rights and under the condition that the copyright work was not created during work in employment by performing obligations under the work contract, labor regulations, collective agreement or a special provision.

2. receipts based on the work of members of assemblies and supervisory boards of companies, management boards, governing councils and other similar and appropriate bodies of other legal persons, under the condition that the employee is not simultaneously a member of the management board or an executive director of the employer or payer, and that the receipt is realized based on the work of representatives of employees in the employer's body pursuant to the provisions of the act regulating labor relations and other special provisions and/or

3. receipts based on awarding or optionally purchasing shares at favorable terms which employers and payers of the receipt, that is, salary from paragraphs 1 and 2 of this Article give to their employees and natural persons who realize receipts from paragraphs 1 and 2 of this Article.

(5) Receipts from paragraph 4 items 1 and 2 of this Article shall be deemed other income according to Article 39 of this Act.

(6) Receipts from paragraph 4 item 3 of this Article shall be deemed income from capital according to Article 68 of this Act.

(67) Within the meaning of paragraph 1 item 1 of this Article, officials, employees and other persons employed according to the regulations regulating the employment relationship shall also be deemed employees.

Article 68

Currently applicable version of Article 68

(1) Income from capital from Article 64 paragraph 1 of this Act shall also include receipts in kind based on the share in the profit of the members of the company management board which is realized by awarding or optionally purchasing own shares.

(2) Income from capital based on optional purchase of shares from paragraph 1 of this Article shall be determined as the difference between the market value of the share and the share price determined by an options contract, if the market value was higher at the moment of the realization of rights from the option.

(3) The moment of the purchase of company shares by options owners (members of the company management board) or the moment of the transfer of the company share purchase rights to a third person shall be deemed the realization of rights from options within the meaning of paragraph 1 of this Article.

(4) Income from capital based on optional purchase of own shares shall be determined for a taxpayer who is the owner of the option at the moment of the realization of the rights from the option according to paragraph 3 of this Article.

(5) Receipts based on shares in the profit that the members of the company management board realize by awarding own shares of those companies shall be determined in the amount of the market value or the difference between the market value of awarded shares and the paid fee if the shares are acquired with a partial remuneration.

(6) Income from capital according to this Article shall only be determined if own company shares, at the moment of awarding the shares and realizing rights from the option, are listed on the stock exchange or organized public markets in accordance with a separate act. If this condition is not met on these grounds, other income shall be determined from Article 39 of this Act.

Explanation

Article 68 should be amended by considering awarding and optional purchasing of shares to be income from capital even when employers give them to employees and/or payers give them to natural persons who are not employed by the payer of the receipt (so far this was prescribed only for awarding of shares to management board members and optional purchasing of shares by management board members who are not employed by the company). Furthermore, it is necessary to add provisions prescribing that the value of shares is considered to be gross receipt, which includes the amount of income tax and surtax on income tax;

Proposed new wording for Article 68

Accordingly, AmCham proposes a new wording of Article 68:

(1) Income from capital from Article 64 paragraph 1 of this Act shall also include receipts ~~in-kind~~ based on the share in the profit of the members of the company management board, which is realized by awarding or optionally purchasing own shares.

(2) Income from capital from Article 64 paragraph 1 of this Act shall also include receipts based on awarding or optionally purchasing shares that employers and/or payers give to their employees and/or natural persons who are not employed by the payer of the receipt.

(23) Income from capital based on optional purchase of shares from ~~paragraph 1 paragraphs 1 and 2~~ of this Article shall be determined as the difference between the market value of the share and the share price determined by an options contract, if the market value was higher at the moment of the realization of rights from the option, whereby thus determined value shall be deemed gross receipt, which includes the amount of personal income tax and surtax on personal income tax.

(34) The moment of the purchase of company shares by options owners (members of the company management board, employees and other natural persons) or the moment of the transfer of the company share purchase rights to a third person shall be deemed the realization of rights from options within the meaning of ~~paragraph 1 paragraphs 1 and 2~~ of this Article.

(45) Income from capital based on optional purchase of own shares shall be determined for a taxpayer who is the owner of the option at the moment of the realization of the rights from the option according to ~~paragraph 3 paragraph 4~~ of this Article.

(56) Receipts based on shares in the profit that the members of the company management board realize by awarding own shares of those companies as well as based on awarding of shares that employers and/or payers give to employees and/or natural persons who are not employed by the payer of the receipt shall be determined in the amount of the market value or the difference between the market value of awarded shares and the paid fee if the shares are acquired with a partial remuneration, whereby thus determined value shall be deemed gross receipt, which includes the amount of personal income tax and surtax on personal income tax.

~~(6) Income from capital according to this Article shall only be determined if own company shares, at the moment of awarding the shares and realizing rights from the option, are listed on the stock exchange or organized public markets in accordance with a separate act. If this condition is not met on these grounds, other income shall be determined from Article 39 of this Act.~~

Article 70 paragraph 18

Currently applicable version of Article 70 paragraph 18

(18) Tax on income from capital based on awarding or optionally purchasing own shares from Article 68 of this Act shall be paid at source, at the rate of 24%.

Explanation

Article 70 should be amended by reducing the tax rate of income from capital based on awarding or optionally purchasing own shares from 24% to 12%.

Proposed new wording for Article 70 paragraph 18

(18) Tax on income from capital based on awarding or optionally purchasing own shares from Article 68 of this Act shall be paid at source, ~~at the rate of 24%~~ at the rate of 12%.

Draft amendments to the Ordinance on income tax

In addition to the amendments to the Income Tax Act, in order to fully adopt and apply AmCham's recommendations, it is also necessary to implement the following amendments to the Ordinance on income tax:

Article 21 paragraph 1

Currently applicable version of Article 21 paragraph 1

(1) Receipts based on employment in accordance with Article 21 paragraph 3 of the Act shall also include the receipts of employees and persons who realize receipts from Article 21 of the Act for goods and services with monetary value (goods, services, rights and other receipts in kind), that include in particular:

- 1. use of business premises and parts thereof, garages, holiday resorts and accommodation, residential buildings and apartments, means of transport provided by the employer and the payer of the receipt or salary to the employee and persons who realize receipts from Article 21 of the Act*
- 2. use of loans at interest rates below 3% per year*
- 3. receipts realized in goods and services that are free of charge or with partial remuneration, as well as various gifts and forms of entertainment. Entertainment shall be deemed a receipt which the employer and payer of the receipt or salary provide to the employee and other persons who realize receipts from Article 21 of the Act in the form of food consumption, drinks, accommodation, recreation and the like. Entertainment within the meaning of this Ordinance shall not include entertainment provided for business partners' representatives when records of such expenses state the name of the entrepreneur whose representatives were entertained*
- 4. receipts based on remunerations and awards granted for work in shares, including receipts based on awarding or optionally purchasing own shares at favorable terms*
- 5. all other receipts related to and based on employment that are given in kind, other than direct or indirect monetary payments and transfers.*

Proposed new wording for Article 21

(1) Receipts based on employment in accordance with Article 21 paragraph 3 of the Act shall also include the receipts of employees and persons who realize receipts from Article 21 of the Act for goods and services with monetary value (goods, services, rights and other receipts in kind), that include in particular:

1. use of business premises and parts thereof, garages, holiday resorts and accommodation, residential buildings and apartments, means of transport provided by the employer and the payer of the receipt or salary to the employee and persons who realize receipts from Article 21 of the Act
2. use of loans at interest rates below 3% per year
3. receipts realized in goods and services that are free of charge or with partial remuneration, as well as various gifts and forms of entertainment. Entertainment shall be deemed a receipt which the employer and payer of the receipt or salary provide to the employee and other persons who realize receipts from Article 21 of the Act in the form of food consumption, drinks, accommodation, recreation and the like. Entertainment within the meaning of this Ordinance shall not include entertainment provided for business partners' representatives when records of such expenses state the name of the entrepreneur whose representatives were entertained
- ~~4. receipts based on remunerations and awards granted for work in shares, including receipts based on awarding or optionally purchasing own shares at favorable terms~~
54. all other receipts related to and based on employment that are given in kind, other than direct or indirect monetary payments and transfers.

Article 22

Currently applicable version of Article 22

(1) The value of receipts in kind shall be determined by the market value of such receipts applicable in the place of their granting (value added tax inclusive).

(2) When an employee is granted receipts in kind with the payment of a fee lower than its market value, the employer and the payer of the receipt shall determine the difference between the market price and the fee paid by the employee. Thus determined difference is deemed a receipt based on employment.

(3) The value of receipts in kind shall be determined as follows:

1. in the use of business premises and parts thereof – the receipt consists of the market price amount of rent or lease for the area where business premises or parts thereof are located

2. in the use of residential buildings and apartments – the receipt is the market price amount of rent for the area where residential buildings or parts thereof are located

3. in the use of holiday resorts and accommodation – the receipt is the market value of accommodation, food and other services

4. in the use of garages – the receipt is the market price amount of rent according to the market prices for the area where the garage is located

5. in the use of means of transport – the receipt is the amount of 1% of the purchase price of means of transport per month (increased for value added tax) or the amount of 20% of the monthly installment of operating or long-term lease (increased for value added tax), regardless of the scope of use of such means of transport for private purposes. Receipt can also be determined according to the scope of actual use:

5.1. when means of transport may be used for private purposes, the employer and the payer of the receipt or salary shall make a decision on the manner and conditions of such use, as well as the manner of determining the salaries of employees and persons who realize receipts from Article 21 of the Act on that basis

5.2. when the salary based on the use of means of transport for private purposes is determined according to the scope of actual use, the employer and the payer of the receipt or salary shall keep records of mileage and time of use for private purposes, whereby the manner of keeping such records shall be established by the decision from item 5.1 of this paragraph

5.3. when no records from item 5.2 of this paragraph are kept, the receipt in kind in the use of means of transport for private purposes is determined in the amount of 1% of the purchase price of means of transport per month or the amount of 20% of the monthly installment of operating or long-term lease

5.4. when more than one employee or person who realizes receipts from Article 21 of the Act uses the same means of transport during the month, and the employer and the payer of the receipt or salary determines the base in the amount of 1% of the purchase price of means of transport per month or the amount of 20% of the

monthly installment of operating or long-term lease, the corresponding amount of receipt on that basis shall be applicable to each employee and person

5.5. receipt based on the use of means of transport for private purposes shall be determined according to the actual scope of use in the following manner:

5.5.1. for road motor vehicles – based on the amount obtained by total mileage for private purposes multiplied by HRK 2.00 per kilometer

5.5.2. for vessels – based on the amount obtained by multiplying the number of hours of use and the market price of the use of the vessel per hour in the place where the vessel is registered

5.5.3. for aircrafts – based on the amount obtained by multiplying the number of hours of use and the market price of the use per hour in the place of registration

6. in the use of loans at interest rates below 3% per year – based on the difference between the interest calculated using the interest rate of 3% per year and the lower contracted rate

7. in the granting of gifts, gratuitous services and the like, whose individual value exceeds HRK 600.00 per employee or person who realizes receipts from Article 21 of the Act per year – based on the value of the same or similar type of goods or service at market prices in the place of granting the gift or service. Gifts within the meaning of this Ordinance shall be only those given in kind

8. in entertainment – based on the value of entertainment at market prices in the place of entertainment

9. in awarding of shares, including awarding of own shares that are not listed on the stock exchange or regulated public markets – based on the nominal value of shares or the market value of shares when the market value is greater than nominal. The difference in the price between the sale, that is, nominal and market price of shares that the employer/payer of salary sells to his employees or persons who realize receipts from Article 21 of the Act is a receipt in kind based on employment

10. at optional purchase of shares – the receipt from employment is the difference between the market value of the share and the price of the share established in the options contract which the employer/payer of salary sells to his employees or persons who realize receipts from Article 21 of the Act, if the market value was higher at the moment of the realization of rights from the option. The realization of rights from the option is considered the moment of the purchase of company shares by the owner of the option (the employee or the person who realizes receipts from Article 21 of the Act) or the moment of the transfer of the right to purchase company shares to a third person and/or

11. at awarding of own shares quoted on the stock exchange or regulated public markets – the receipt is determined at the level of market value or the difference between the market value of awarded shares and the paid fee if shares are acquired with partial remuneration.

(4) For the purpose of calculating and paying the income tax in accordance with the Act, in the calculation and payment of income tax advance, the market value or the

value of receipts in kind is increased for compulsory insurance on receipts, income tax and surtax on income tax.

Proposed new wording for Article 22

(1) *The value of receipts in kind shall be determined by the market value of such receipts applicable in the place of their granting (value added tax inclusive).*

(2) *When an employee is granted receipts in kind with the payment of a fee lower than its market value, the employer and the payer of the receipt shall determine the difference between the market price and the fee paid by the employee. Thus determined difference is deemed a receipt based on employment.*

(3) *The value of receipts in kind shall be determined as follows:*

1. *in the use of business premises and parts thereof – the receipt consists of the market price amount of rent or lease for the area where business premises or parts thereof are located*

2. *in the use of residential buildings and apartments – the receipt is the market price amount of rent for the area where residential buildings or parts thereof are located*

3. *in the use of holiday resorts and accommodation – the receipt is the market value of accommodation, food and other services*

4. *in the use of garages – the receipt is the market price amount of rent according to the market prices for the area where the garage is located*

5. *in the use of means of transport – the receipt is the amount of 1% of the purchase price of means of transport per month (increased for value added tax) or the amount of 20% of the monthly installment of operating or long-term lease (increased for value added tax), regardless of the scope of use of such means of transport for private purposes. Receipt can also be determined according to the scope of actual use:*

5.1. *when means of transport may be used for private purposes, the employer and the payer of the receipt or salary shall make a decision on the manner and conditions of such use, as well as the manner of determining the salaries of employees and persons who realize receipts from Article 21 of the Act on that basis*

5.2. *when the salary based on the use of means of transport for private purposes is determined according to the scope of actual use, the employer and the payer of the receipt or salary shall keep records of mileage and time of use for private purposes, whereby the manner of keeping such records shall be established by the decision from item 5.1 of this paragraph*

5.3. *when no records from item 5.2 of this paragraph are kept, the receipt in kind in the use of means of transport for private purposes is determined in the amount of 1% of the purchase price of means of transport per month or the amount of 20% of the monthly installment of operating or long-term lease*

5.4. *when more than one employee or person who realizes receipts from Article 21 of the Act uses the same means of transport during the month, and the employer*

and the payer of the receipt or salary determines the base in the amount of 1% of the purchase price of means of transport per month or the amount of 20% of the monthly installment of operating or long-term lease, the corresponding amount of receipt on that basis shall be applicable to each employee and person

5.5. receipt based on the use of means of transport for private purposes shall be determined according to the actual scope of use in the following manner:

5.5.1. for road motor vehicles – based on the amount obtained by total mileage for private purposes multiplied by HRK 2.00 per kilometer

5.5.2. for vessels – based on the amount obtained by multiplying the number of hours of use and the market price of the use of the vessel per hour in the place where the vessel is registered

5.5.3. for aircrafts – based on the amount obtained by multiplying the number of hours of use and the market price of the use per hour in the place of registration

6. in the use of loans at interest rates below 3% per year – based on the difference between the interest calculated using the interest rate of 3% per year and the lower contracted rate

7. in the granting of gifts, gratuitous services and the like, whose individual value exceeds HRK 600.00 per employee or person who realizes receipts from Article 21 of the Act per year – based on the value of the same or similar type of goods or service at market prices in the place of granting the gift or service. Gifts within the meaning of this Ordinance shall be only those given in kind

8. in entertainment – based on the value of entertainment at market prices in the place of entertainment.

~~9. in awarding of shares, including awarding of own shares that are not listed on the stock exchange or regulated public markets – based on the nominal value of shares or the market value of shares when the market value is greater than nominal. The difference in the price between the sale, that is, nominal and market price of shares that the employer/payer of salary sells to his employees or persons who realize receipts from Article 21 of the Act is a receipt in kind based on employment~~

~~10. at optional purchase of shares – the receipt from employment is the difference between the market value of the share and the price of the share established in the options contract which the employer/payer of salary sells to his employees or persons who realize receipts from Article 21 of the Act, if the market value was higher at the moment of the realization of rights from the option. The realization of rights from the option is considered the moment of the purchase of company shares by the owner of the option (the employee or the person who realizes receipts from Article 21 of the Act) or the moment of the transfer of the right to purchase company shares to a third person and/or~~

~~11. at awarding of own shares quoted on the stock exchange or regulated public markets – the receipt is determined at the level of market value or~~

~~**the difference between the market value of awarded shares and the paid fee if shares are acquired with partial remuneration:**~~

(4) For the purpose of calculating and paying the income tax in accordance with the Act, in the calculation and payment of income tax advance, the market value or the value of receipts in kind is increased for compulsory insurance on receipts, income tax and surtax on income tax.

Article 54

Current version of Article 54

(1) Receipts in kind from Article 39 paragraph 3 item 5 of the Act that providers of such receipts provide to natural persons who are neither their employees nor persons realizing receipts from Article 21 of the Act, are deemed receipts based on which other income shall be determined. The value of receipts in kind shall be determined pursuant to Article 22 of this Ordinance.

(2) Receipts in kind based on which other income shall be determined also include:

1. receipts realized by employees of domestic company at awarding of own shares of affiliated domestic or overseas company, or in the realization of rights established by the options contract concluded with the affiliated domestic or overseas company

2. receipts from Article 64 of the Act having features of hidden profit payments, that is, withdrawals realized by natural persons who are not shareholders or members of the company or employees or natural persons who are payers of income tax.

(3) Receipts in kind from paragraph 1 of this Article shall not include receipts that non-profit organizations provide to all their members under the same conditions, but shall be related to performing the non-profit organization activity, that is, the fulfillment of the purpose of a non-profit organization, in particular: special work and formal clothes marked with the name or sign of the non-profit organization in accordance with special regulations on occupational safety or as determined by the articles of association of the non-profit organization, obligatory medical examinations according to special regulations, systematic medical check-ups, education and training in connection with the activity of the non-profit organization.

Proposed new wording for Article 54

(1) Receipts in kind from Article 39 paragraph 3 item 5 of the Act that providers of such receipts provide to natural persons who are neither their employees nor persons realizing receipts from Article 21 of the Act, are deemed receipts based on which other income shall be determined. The value of receipts in kind shall be determined pursuant to Article 22 of this Ordinance.

~~(2) Receipts in kind based on which other income shall be determined also include:~~

~~1. receipts realized by employees of domestic company at awarding of own shares of affiliated domestic or overseas company, or in the realization of rights established by the options contract concluded with the affiliated domestic or overseas company~~

~~2. receipts from Article 64 of the Act having features of hidden profit payments, that is, withdrawals realized by natural persons who are not~~

~~shareholders or members of the company or employees or natural persons who are payers of income tax:~~

(2) Receipts in kind based on which other income shall be determined shall also include receipts from Article 64 of the Act having features of hidden profit payments, that is, withdrawals realized by natural persons who are not shareholders or members of the company or employees or natural persons who are payers of corporate income tax.

(3) Receipts in kind from paragraph 1 of this Article shall not include receipts that non-profit organizations provide to all their members under the same conditions, but shall be related to performing the non-profit organization activity, that is, the fulfillment of the purpose of a non-profit organization, in particular: special work and formal clothes marked with the name or sign of the non-profit organization in accordance with special regulations on occupational safety or as determined by the articles of association of the non-profit organization, obligatory medical examinations according to special regulations, systematic medical check-ups, education and training in connection with the activity of the non-profit organization.

Article 70 paragraphs 12 and 13

Currently applicable version of Article 70 paragraphs 12 and 13

(12) Receipts from capital from paragraph 64 of the Act realized by rights, goods and services with monetary value are deemed receipts in kind, whereby the value of such receipts in kind (including the potential value added tax) shall in the calculation and payment of income tax be increased for income tax and surtax on income tax.

(13) By way of derogation from paragraph 2 of this Article, where a natural person who is a payer of income tax retains certain assets under liquidation or termination of self-employment activity, they shall not be deemed withdrawals, provided that the delivery (sale) of such assets are indicated in financial records in accordance with the provisions on the taxation of profit at market or fair value of assets and that obligations arising from such delivery are settled.

Proposed new wording for Article 70 paragraphs 12, 13 and 14

(12) The value of the receipt based on awarding or optional purchasing of shares shall be deemed gross receipt which includes the amount of personal income tax and surtax on personal income tax in the following manner:

1. at awarding of shares, including awarding of shares that are not listed on the stock exchange or regulated public markets – based on the nominal value of shares or the market value of shares when the market value is greater than nominal. The difference in the price between the sale, that is, nominal and market price of shares that the employer/payer of the receipt gives to his employees and/or natural persons shall be deemed gross receipt.

2. at the optional purchase of shares – the difference between the market value of the share and the price of the share established in the options contract which the employer/payer of the receipt sells to his employees and/or natural persons, if the market value was higher at the moment of the realization of rights from the option, shall represent gross receipt. The moment of the purchase of company shares by options owners (member of the company management board, employee and/or natural person) or the moment of the transfer of the company share purchase rights to a third person shall be deemed the realization of rights from options.

3. at awarding of shares quoted on the stock exchange or regulated public markets – it is determined as gross receipt at the amount of market value or the difference between the market value of awarded shares and the paid fee if shares are acquired with partial remuneration.

(1213) Receipts from capital from paragraph 64 of the Act realized by rights, goods and services with monetary value, except receipts based on awarding or

optionally purchasing shares, are deemed receipts in kind, whereby the value of such receipts in kind (including the potential value added tax) shall in the calculation and payment of income tax be increased for income tax and surtax on income tax.

~~(1314)~~ By way of derogation from paragraph 2 of this Article, where a natural person who is a payer of income tax retains certain assets under liquidation or termination of self-employment activity, they shall not be deemed withdrawals, provided that the delivery (sale) of such assets are indicated in financial records in accordance with the provisions on the taxation of profit at market or fair value of assets and that obligations arising from such delivery are settled.

Article 71 paragraph 2

Currently applicable version of Article 71 paragraph 2

(2) Pursuant to Article 70 paragraph 18 of the Act, tax on income from receipts based on awarding or optionally purchasing own shares shall be withheld and paid by payers of the total receipts simultaneously with the payment of the receipt as withholding tax at the rate of 24%, without recognizing personal allowance from Article 14 of the Act.

Proposed new wording for Article 71 paragraph 2

(2) Pursuant to Article 70 paragraph 18 of the Act, tax on income from receipts based on awarding or optionally purchasing own shares shall be withheld and paid by payers of the total receipts simultaneously with the payment of the receipt as withholding tax ~~at the rate of 24%~~ **at the rate of 12%**, without recognizing personal allowance from Article 14 of the Act.

Annex 3

RECEIPTS FROM CAPITAL	
1001-1099	Receipts for determining income from capital
1001	<i>Receipts for determining income from capital based on dividends and share in the profit according to share in the capital</i>
1002	<i>Receipts for determining income from capital based on withdrawals and use of services provided to members of companies for private purposes (hidden profit payments) and withdrawals by natural persons who carry out self-employment activity subject to the payment of income tax</i>
1003	Receipts in kind for determining income from capital based on share in the profit of management board members and employees of companies that are realized by awarding or optionally purchasing own shares Receipts for determining income from capital based on awarding or optionally purchasing own shares

INO-DOH form Codes

RECEIPTS FROM CAPITAL	
1001-1099	Receipts for determining income from capital
1001	<i>Receipts for determining income from capital based on dividends and share in the profit according to share in the capital</i>
1002	<i>Receipts for determining income from capital based on withdrawals and use of services provided to members of companies for private purposes (hidden profit payments) and withdrawals by natural persons who carry out self-employment activity subject to the payment of income tax</i>
1003	<i>Receipts in kind for determining income from capital based on share in the profit of management board members and employees of companies that are realized by awarding or optionally purchasing own shares</i> <i>Receipts for determining income from capital based on awarding or optionally purchasing own shares</i>

Annex 1: Detailed list of proposed amendments to the Income Tax Act

Article 21

In Article 21 paragraph 3 of the Personal Income Tax Act (Official Gazette, No. 115/2016), after the words: “approving loans”, the comma and the words: “awarding or optionally purchasing own shares at favorable terms” are deleted.

In paragraph 4, after item 2, the following item 3 is added:

“3. receipts based on awarding or optionally purchasing shares at favorable terms which employers and payers of the receipt, that is, salary from paragraphs 1 and 2 of this Article give to their employees and natural persons who realize receipts from paragraphs 1 and 2 of this Article.”.

In paragraph 5, after the words: “paragraph 4”, the words “items 1 and 2” are added.

After paragraph 5, a new paragraph 6 is added, reading as follows:

“(6) Receipts from paragraph 4 item 3 of this Article shall be deemed income from capital according to Article 68 of this Act.”

The former paragraph 6 is to become paragraph 7.

Article 68

In Article 68 paragraph 1, the words “in kind” are deleted.

After paragraph 1, a new paragraph 2 is added, reading as follows:

“(2) Income from capital from Article 64 paragraph 1 of this Act shall also include receipts based on awarding or optionally purchasing shares that employers and/or payers give to their employees and/or natural persons who are not employed by the payer of the receipt.”.

In the former paragraph 2, which is to become paragraph 3, the words: “paragraph 1” are replaced by the words “paragraphs 1 and 2” and after the word “option” the comma and the following words are added: “whereby thus determined value shall be deemed gross receipt, which includes the amount of personal income tax and surtax on personal income tax”.

In the former paragraph 3, which is to become paragraph 4, the words: “paragraph 1” are replaced by the words: “paragraphs 1 and 2” and after the words: “company management board” the comma and the following words are added: “employees and other natural persons”.

In the former paragraph 4, which is to become paragraph 5, the words: “paragraph 3” are replaced by the words: “paragraph 4”.

In the former paragraph 5, which is to become paragraph 6, after the words: “those companies”, the following words are added: “as well as based on awarding of shares that employers and/or payers give to employees and/or natural persons who are not employed by the payer of the receipt”, and after the words: “partial remuneration” the comma and the following words are added: “whereby thus determined value shall be deemed gross receipt, which includes the amount of personal income tax and surtax on personal income tax”.

The former paragraph 6 is deleted.

Article 70

In Article 70 paragraph 18, the words: “at the rate of 24%” are replaced by the words: “at the rate of 12%”.

Annex 2: Detailed list of proposed amendments to the Ordinance on income tax

Article 21

In Article 21 paragraph 1 of the Ordinance on Personal income tax (Official Gazette, Nos. 10/2017 and 128/2017), item 4 is deleted.

The former item 5 is to become item 4.

Article 22

In Article 22 paragraph 3 item 8, the full stop is inserted after the words: "in the place of entertainment", while items 9, 10 and 11 are deleted.

Article 54

Article 54 paragraph 2 is amended to read as follows:

"(2) Receipts in kind based on which other income shall be determined shall also include receipts from Article 64 of the Act having features of hidden profit payments, that is, withdrawals realized by natural persons who are not shareholders or members of the company or employees or natural persons who are payers of corporate income tax."

Article 70

In Article 70, after paragraph 11, a new paragraph 12 is added, reading as follows:

"(12) The value of the receipt based on awarding or optional purchasing of shares shall be deemed gross receipt which includes the amount of personal income tax and surtax on personal income tax in the following manner:

1. at awarding of shares, including awarding of shares that are not listed on the stock exchange or regulated public markets – based on the nominal value of shares or the market value of shares when the market value is greater than nominal. The difference in the price between the sale, that is, nominal and market price of shares that the employer/payer of the receipt gives to his employees and/or natural persons shall be deemed gross receipt.

2. at the optional purchase of shares – the difference between the market value of the share and the price of the share established in the options contract which the employer/payer of the receipt gives to his employees and/or natural persons, if the market value was higher at the moment of the realization of rights from the option, shall represent gross receipt. The moment of the purchase of company shares by options owners (member of the company management board, employee and/or natural person) or the moment of the transfer of the company share purchase rights to a third person shall be deemed the realization of rights from options.

3. at awarding of shares quoted on the stock exchange or regulated public markets – it is determined as gross receipt at the amount of market value or the difference between the market value of awarded shares and the paid fee if shares are acquired with partial remuneration.”.

In the former paragraph 12, which is to become paragraph 13, after the words: “with monetary value”, the comma and the words: “except receipts based on awarding or optionally purchasing shares” are added.

The former paragraph 13 is to become paragraph 14.

Article 71

In Article 71 paragraph 2, the words: “at the rate of 24%” are replaced by the words: “at the rate of 12%”.

Annex 3

In Annex 3, Receipts / contribution obligations on the JOPPD form, which constitutes an integral part of this Ordinance, the description of receipt under the code 1003 is amended to read: “Receipts for determining income from capital based on awarding or optionally purchasing own shares”.

INO-DOH form Codes

In INO-DOH form Codes, that constitute an integral part of this Ordinance, the description of receipt under the code 1003 is amended to read: “Receipts for determining income from capital based on awarding or optionally purchasing own shares”.