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The amendment to the law on employee shares was signed by the president. It will be valid from the New Year

Nothing will change, nobody will do ESOPs here, because they are burdened by social and health insurance, assesses investor Ondřej Fryc from Reflex Capital.

The startup world has been calling for the introduction of employee shares (ESOP from English Employee Stock Option Plan) into local legislation for years. In the week before Christmas, the related amendment to the law went from the Senate to the president, who signed it, and it will come into effect on January 1, 2024. However, representatives of startups, investors, funds and lawyers are not happy - the change does not reflect the changes they requested and does not solve the most pressing problems.

ESOPs especially help young companies to motivate important employees so that they do not leave them. They often do not have enough money to offer high-quality people an appropriately high salary, and employee shares can compensate them for this 'loss' in the event of an exit. In more startup-developed countries, employee shares are a key part of the business ecosystem, but this is not the case in the Czech Republic.

The local legislation did not yet recognize ESOPs. Thus, the employee could receive options, in simple terms the right to buy back part of the company, but he had to tax their full value, even when it was basically only theoretical (as is the case with startups). And since it was a salary alternative, social and health insurance had to be included, both from the employee's and the employer's side.

The amendment partially corrects this situation – taxation only occurs when the employee has real income available. This is the moment of so-called liquidation - after ten years, upon termination of employment, change of tax residence, etc. But the new regulation does not solve a much more significant problem, namely that the income from employee shares is still treated as income from employment, and therefore it is necessary to pay social and health insurance from it, instead of being treated as capital income.

According to Ondřej Fryc from the venture capital fund Reflex Capital, the current amendment literally has a 'spoiled' form. 'It's nice that someone from the government is looking into it, but it turned out like it always does. The resulting form, where the ESOP will continue to be treated as income from a dependent activity, is meaningless. So nothing will change, no one here will do ESOPs as before, because they are burdened with social and health insurance, which they do not have abroad,' says one of the most prominent faces from the Czech startup environment.

'The whole spirit of employee shares is supposed to be about the employee becoming an investor in the company, where he buys or becomes entitled to a share. Here, the state takes it as income from an employment relationship, although in principle it is capital income, which is, of course, taxed in a completely different way. I find it terribly unfair to employees compared to entrepreneurs, and from the point of view of motivation, it's completely wrong,' adds Fryc.