

RELIEF FOR DOUBLE TAXATION ON GAINS FROM EMPLOYEE SHARE OPTIONS

INTRODUCTION

- 1 The tax treatment of gains on share option differs from country to country. Specifically, countries adopt different rules for determining the timing for recognising such gains, the amount of taxable gains and the source of such gains. In determining source, some countries adopt the position that gains on stock option are derived from the country where the employment is exercised at the time of grant. Yet there are others who tax the gains based on where the employment is exercised at the time of exercise of the share option.
- 2 In Singapore, gains from share option are brought to tax at the time of exercise of the option. The amount of gains is generally computed by reference to the market price of the shares prevailing at the time of exercise.
- 3 Generally, gains from share option are regarded as derived from Singapore if the option is exercised while the individual is physically present in Singapore or exercising employment in Singapore. Therefore, an individual who was granted a share option while he was exercising employment outside Singapore would be taxed in Singapore on any gains derived from the share option if he were to exercise it while he is in Singapore or holds an employment in Singapore.
- 4 As the share option was granted while he was exercising employment in another country, the gains may also be taxed in that other country. However, Singapore would not allow a relief for any tax paid on the gains in the other country since the gains are derived from Singapore. The individual may also not be able to claim a credit for the tax paid in Singapore. As such, the gains may be taxed more than once.
- 5 The Government recognises that any double taxation on share option gains may make it harder for our employers to attract and recruit talents to Singapore. It has therefore decided to consider, on a case-by-case basis, relief for double taxation by way of Ministerial remission under section 92(2) of the Income Tax Act.
- 6 This Practice Note provides details of the Ministerial remission, including the procedure for making an application for the remission.

ADMINISTRATIVE PRACTICE

Relief

- 7 Relief from double taxation would be given to a resident of Singapore for any foreign income tax paid on any share option gains which have been assessed to the foreign tax as income derived from the foreign country. The amount of relief to be given through the remission shall be subject to the normal rules governing the granting of foreign tax credits.

Qualifying conditions

- 8 To be eligible for the remission, the following conditions must be met:

- (a) the share option must be granted outside Singapore, i.e. the share option was granted at the time when the individual was exercising employment outside Singapore;
- (b) the share option is exercised on or after 1st January 1999; and
- (c) the share option gains have been or will be subject to tax in a foreign country.

Application procedure

9 Any eligible taxpayer who wants to be considered for the remission would have to make an application, in writing, at the time of filing the relevant income tax return. For those who file their tax returns by Phone or Internet (i.e. e-filing), the application would have to be submitted separately to IRAS.

10 In the application, the taxpayers must provide the following details:

- (a) how he has been or will be taxed in the foreign country on the share option gains;
- (b) extracts of the relevant tax rules or regulations under which the share option gains is brought to tax by the foreign country, if available;
- (c) computation of the amount of share option gains which is regarded by the foreign country as being derived from that country;
- (d) computation of the foreign tax attributable to the amount of gains computed in (c); and
- (e) any other relevant information which will assist the Comptroller of Income Tax in assessing his application for the remission.

11 In the event that the taxpayer is unable to ascertain at the time of filing his income tax return whether or not he would be assessed to tax in the foreign country, the taxpayer may still make an application for the remission at the time of filing. However, the taxpayer would have to provide the details set out in paragraph 10 within 2 years after the end of the year of assessment concerned if he wishes to have his application considered. The relief from double taxation would be allowed only when his application is approved.

Enquiries

12 Taxpayers who have any enquiries on this Practice Note may call our Taxpayer Services Division for clarification.