

# IRAS CIRCULAR

## **COMPANY STOCK OPTION SCHEME**

[Renamed as Equity Remuneration Incentive Scheme “ERIS” (All Corporations) with effect from 16<sup>th</sup> February 2008]



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# COMPANY STOCK OPTION SCHEME

[Renamed as Equity Remuneration Incentive Scheme “ERIS” (All Corporations) with effect from 16<sup>th</sup> February 2008]

## Introduction

Gains from employee stock options (ESOP) are assessed to tax as income in the year in which the options are exercised. Unless the employee has arranged to pay his tax by installments, including the tax on stock option gains, the tax becomes due within one month after it is assessed.

2. The Government has recently implemented a number of measures to enhance the tax treatment of ESOP gains.

3. In October 1999, the Government implemented the Qualified ESOP Scheme<sup>1</sup>, which allows employees to defer payment of tax on gains arising from stock options for up to 5 years, subject to an interest charge at prime rate. The Scheme was introduced to alleviate the cash flow problems faced by some employees who do not sell their shares after exercising the options.

4. Last May, the Government put in place the Entrepreneurial ESOP Scheme<sup>1</sup>, which allows an employee of a start-up company to enjoy tax exemption of 50% of up to \$10 million of stock option gains arising over a period of 10 years, if certain criteria are met. In his Ministerial Statement in Parliament on 22 May 2000, the Minister for Finance also indicated that the tax treatment of gains from ESOP granted by more established companies would be reviewed.

5. To encourage companies to extend stock option schemes to employees at all levels, the Minister for Finance announced in his Budget Statement on 23 Feb 2001 the Company Stock Option (CSOP) Scheme<sup>1</sup>. The Scheme enhances the tax treatment of gains derived by employees from stock options granted by more established companies, which do not qualify for the 50% tax exemption under the Entrepreneurial ESOP Scheme<sup>1</sup>. Under the CSOP Scheme<sup>1</sup>, for each year, an employee of a company can enjoy tax exemption on stock option gains of up to \$1 million arising over a period of 10 years as follows, if certain criteria are met:

- full tax exemption on the first \$2,000 of stock option gains
- tax exemption of 25% on the remaining amount of stock option gains

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<sup>1</sup> Qualified ESOP Scheme was renamed in 2002 as Qualified Employee Equity-Based Remuneration Scheme (“Qualified EEBR Scheme”). Entrepreneurial ESOP Scheme and Company Stock Option Scheme were introduced in the year 2000 and 2001 respectively. Both were subsequently renamed in 2002 as Entrepreneurial Employee Equity-Based Remuneration Scheme (“Entrepreneurial EEBR Scheme”) and Company Employee Equity-Based Remuneration Scheme (“Company EEBR Scheme”) respectively. Following the 2008 Budget Statement on 15<sup>th</sup> February 2008, the Entrepreneurial EEBR Scheme and Company EEBR Scheme are renamed to Equity Remuneration Incentive Scheme ERIS (SMEs) and ERIS (All Corporations) respectively.

6. This circular provides details of the CSOP Scheme<sup>1</sup>. It should be noted that as stated in Budget Statement 2002, the exemption under CSOP Scheme<sup>1</sup> has been extended to shares granted under any Employee Share Ownership Plans (“ESOW”); provided that all the qualifying criteria for the CSOP scheme<sup>1</sup> are met. Full details of the extension is available in IRAS circular on “Changes to tax treatment of employee stock options and other forms of employee share ownership plans” issued on 31 August 2002 (updated on 5 August 2008).

## **COMPANY STOCK OPTION SCHEME**

### **[Renamed as Equity Remuneration Incentive Scheme “ERIS” (All Corporations) with effect from 16<sup>th</sup> February 2008]**

#### **EFFECTIVE DATE**

7. The CSOP Scheme<sup>1</sup> is available to all stock options granted to a qualifying employee on or after 1 April 2001 under a company stock option plan to acquire ordinary shares of the qualifying company or ordinary shares of its parent company<sup>2</sup>. Accordingly, stock options granted to an employee to acquire any redeemable or convertible shares or shares of a preferential nature are excluded.

8. Like the Entrepreneurial ESOP Scheme<sup>1</sup>, the CSOP Scheme<sup>1</sup> will be subject to review after 5 years.

#### **QUALIFYING CRITERIA**

##### **COMPANY STOCK OPTION PLAN** **[Renamed as ERIS (All Corporations) Plan]**

9. An ESOP Plan of a qualifying company<sup>3</sup> can qualify to be a company stock option (CSOP) Plan if the ESOP Plan:

- (a) satisfies the vesting period requirement as prescribed by the Singapore Exchange (SGX) for companies listed on the SGX; and
- (b) offers stock options to at least 50% **(this is lowered to 25% with effect from 16 February 2008)** of the employees of the qualifying company (referred hereafter as the “50% requirement<sup>4</sup>”), as

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<sup>2</sup> This relates to cases where stock options are granted to employees of a qualifying company under a Group ESOP Plan operated by its parent company.

<sup>3</sup> This covers a Group ESOP Plan operated by the parent company of the qualifying company.

<sup>4</sup> Following the 2008 Budget Statement, the lower 25% requirement applies only to new tranches of ESOPs or shares under ESOW plan granted on or after 16 Feb 2008. Please refer to Annex 1

determined in accordance to the formula set out in paragraph 14 on a yearly basis.

#### Vesting Period Requirement

10. For ease of reference, the current SGX's rules on vesting period for ESOP Plans of companies listed on the SGX are reproduced below:

- (a) where the exercise price of the option to acquire share is equivalent to or exceeds the market value of the share at the time of grant of option, the option given on the share may not be exercised within 1 year from the grant of the option;
- (b) where the exercise price of the option to acquire share is at a discount to the market value of the share at the time of grant of option, the option given on the share may not be exercised within 2 years from the grant of the option.

11. ESOP Plans of companies not listed on the SGX must also satisfy the above vesting period requirement in order to qualify to be a CSOP Plan. For unlisted companies where the market value of their shares is not readily available to determine which vesting period shall apply, the net asset value of the shares could be used instead<sup>5</sup>.

12. If SGX were to change the above vesting period rules subsequently, an ESOP Plan will have to comply with the amended rules from the date the change in rules takes effect in order for the Plan to qualify to be a CSOP Plan.

13. The market value mentioned in paragraph 10 refers to the market value of the shares at the time the option is granted. For a company listed on the SGX, the SGX rules on ESOPs provide that the market value is the average market price prevailing during the price fixing period immediately before the options are granted. The price fixing period is explicitly defined for each stock option scheme in the company circular to the shareholders, which informs them of the proposed motion to approve the stock option scheme. The computation of the average market price is decided by the company and is also stated in the same circular. Consequently, in the case of an SGX listed company, if the exercise price were fixed at or exceed the average market price prevailing during the price fixing period, a one-year vesting period would apply for the purposes of the CSOP Plan. If, however, it were fixed at a discount to the average market price, the vesting period would be two years for the purposes of the CSOP Plan.

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(Example 2) on how the 50% requirement applicable to ESOP plan granted prior to 16 February 2008 is computed with the change in the participation rate to 25% as at 31 Dec 2008.

<sup>5</sup> However, where the market value of the shares of the company can be ascertained, such market value of shares should be used for purposes of determining which vesting period shall apply. Net asset value of the shares could be used only if the market value of the shares were not readily available, rather than because the company is an unlisted company.

### 50% Requirement<sup>4</sup>

14. The 50% requirement<sup>4</sup> referred to in paragraph 9(b), in relation to a qualifying company, is to be determined at the end of each calendar year based on the following formula:

Total number of the qualifying company's employees offered  
stock options under ESOP Plan during the year (N)

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Total number of the qualifying company's employees  
as at 31 December of the year (D)

With effect from 1 January 2002, ESOPs granted under different ESOP plans that satisfy the vesting period requirement or shares granted under different ESOW plans that satisfy the minimum holding period requirement, subject to circumstances<sup>6</sup>, can be aggregated on a company's basis as shown in the formula below:

Total number of the qualifying company's employees who are offered  
ESOPs under any ESOP Plan that satisfies the minimum vesting period  
requirement and/or shares under any ESOW Plan that satisfies the  
minimum holding period requirement during the year (N)

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Total number of the qualifying company's employees  
as at 31 December of the year (D)

15. In cases where stock options are granted to employees of a qualifying company under a Group ESOP Plan operated by its parent company, the determination of whether or not the 50% requirement<sup>4</sup> has been met shall be made with reference to the employees of the qualifying company, and not the employees of the Corporate Group.

16. For purposes of determining the 50% requirement<sup>4</sup> under a CSOP Plan:

- (a) subject to paragraphs 16 (c) to (e) and 17 to 19, (N) in the formula referred to in paragraph 14 shall include all employees of the qualifying company who are offered stock options during the calendar year. Such employees must be exercising employment for the qualifying company at the time the stock options are offered to them;

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<sup>6</sup> Where any of the ESOP Plans or ESOW Plans can meet all the qualifying conditions under both the ERIS (SMEs) and ERIS (All Corporations), the qualifying company can however opt for tax exemption under ERIS (SMEs) to apply in respect of gains from ESOPs or shares under any of these ESOP Plans or ESOW Plans. Once the option is made, the employees under such plans should be excluded from the numerator (N), for the purpose of determining the 50% requirement under the ERIS (All Corporations). Please refer to IRAS circular on "Changes to tax treatment of employee stock options and other forms of employee share ownership plans" issued on 31 August 2002 (updated on 5 August 2008).

- (b) subject to paragraphs 16 (c) to (e) and 17 to 19, (D) in the formula referred to in paragraph 14 shall include all employees who are exercising employment for the qualifying company as at 31 December of the year.
- (c) where 2 or more tranches of stock options were offered by a qualifying company to its employees in the same calendar year under the same ESOP Plan, (N) in the formula referred to in paragraph 14 shall include all employees of the qualifying company who were offered the stock options in that year via the different tranches. However, in cases where an employee is offered stock options under the same ESOP Plan more than once in the same calendar year, the employee shall only be accounted for in (N) once;
- (d) where a qualifying company does not offer stock options under its ESOP Plan to any of its part-time employees<sup>7</sup> in any calendar year, (D) in the formula referred to in paragraph 14 can exclude all part-time employees employed by the qualifying company as at 31 December of that year. However, where the qualifying company offers stock options under its ESOP Plan to any of its part-time employees in any calendar year, (D) shall include all part-time employees, regardless of their length of service with the company;
- (e) a non-executive director of a qualifying company shall be treated as if he were an employee (other than a part-time employee, or a short-term contract employee described in paragraph 19) of the company in all cases. Accordingly, (D) in the formula referred to in paragraph 14 shall include all non-executive directors of a qualifying company as at 31 December of the year.

17. Generally, except for the situation mentioned in paragraph 16(d), (D) in the formula referred to in paragraph 14 shall include all employees (which include all non-executive directors) of the qualifying company as at 31 December of the year for purposes of determining whether or not the 50% requirement<sup>4</sup> is met. However, it is recognized that companies may not offer stock options to employees who have only joined them for relatively short periods of time or employees who are contracted to work for them for relatively short periods of time. Accordingly, if the formula were to be strictly applied in such cases, companies with a sizeable number of such employees may find it difficult to meet the 50%

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<sup>7</sup> For purposes of the CSOP Scheme, the term “part-time employees” refers to employees who are officially not required to spend at least 30 hours per week on the business of his employer (excluding overtime and lunch time). Basically, this includes any time they would have been officially required to spend on the business of their employers but for:

- i. injury, ill-health or disability;
- ii. maternity or paternity leave;
- iii. leave entitlement;
- iv. paid training or study leave;
- v. not being required to work during a period of notice of termination of employment.

requirement<sup>4</sup>. Therefore, it has been decided that for companies under such circumstances, a concession, as described in paragraphs 18 and 19, will apply in determining whether or not their ESOP Plans meet the 50% requirement<sup>4</sup>.

18. As a concession, in cases where a qualifying company does not offer stock options under its ESOP Plan to any of its employees with less than one year's service with the company in any calendar year, (D) can, subject to paragraph 16(d), exclude such employees of the company as at 31 December of the year for purposes of determining whether or not the 50% requirement<sup>4</sup> is met for that year. As part of the concession, but subject to paragraph 16(d), where a qualifying company does not offer stock options to any of its employees with less than a certain other number, say two or three, years of service with the company in any calendar year, (D) can also but only exclude employees with less than one year's service with the company for purposes of determining whether or not the 50% requirement<sup>4</sup> is met for that year. In applying the concession, a non-executive director shall be treated as an employee with more than one year of service with the company in all cases.

19. Likewise, where a qualifying company does not offer stock options to any of its contract employees<sup>8</sup> who are only contracted to work for the company for not more than two years (referred hereafter as "short term contract employees"), (D) can as a concession, subject to paragraph 16(d), exclude such short term contract employees of the company as at 31 December of the year, for purposes of determining whether or not the 50% requirement<sup>4</sup> is met for that year. Where a qualifying company has contract employees who are contracted to work for the company for varying periods of time (say, some employees are on 2-year contracts, while some other employees are on contracts with term exceeding 2 years) and the company does not offer stock options to any of its contract employees in any calendar year, (D) can subject to paragraph 16(d) also but only exclude contract employees who are contracted to work for the company for not more than 2 years, for purposes of determining whether or not the 50% requirement<sup>4</sup> is met for that year.

20. Based on the above formula, a qualifying company is to determine whether or not it has met the 50% requirement<sup>4</sup> only at the end of each calendar year. Once the 50% requirement<sup>4</sup> is determined by a qualifying company to have been met as at 31 December of the year, all stock options offered, whether via one or more tranches, by the company to its employees under its ESOP Plan during that year would qualify to be stock options offered under a CSOP Plan, provided that the vesting period requirement has also been met. As a corollary, if the 50% requirement<sup>4</sup> as determined by the qualifying company is not met as at 31 December of the year, then all stock options offered, whether via one or more tranches, by the company to its employees under its ESOP Plan during that year would not qualify to be stock options offered under a CSOP Plan.

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<sup>8</sup> Where contracts of employment between a qualifying company and its employees do not state the period the employees are required to work for the company, all such employees shall not be regarded as contract employees for purposes of applying the concession in paragraph 19. As such, they are to be included in (D) for purposes of determining whether or not the 50% requirement<sup>4</sup> is met if they remain employed by the company as at 31 December of the year.

21. The examples in Annex 1 illustrate how the 50% requirement<sup>4</sup> is determined under different situations.

22. Companies do not have to apply for approval from the Comptroller of Income Tax (referred hereafter as “the Comptroller”) to have their ESOP Plans considered as CSOP Plans, whether the Plans are operated by them or by their parent companies under a Group ESOP Plan. However, companies that wish to operate ESOP Plans that qualify as CSOP Plans have to keep sufficient documentation to show, when required by the Comptroller, that their ESOP Plans satisfy the requirements of a CSOP Plan referred to in paragraph 9 above. In addition, they are required to comply with the administrative requirements under the CSOP Scheme<sup>1</sup> as set out in paragraphs 39 to 42 of this circular and such other administrative requirements as the Comptroller may from time to time impose under the Scheme.

### **QUALIFYING COMPANY**

23. A qualifying company is any company that meets the following requirements:

- (a) it is a company incorporated in Singapore or a branch of a foreign-incorporated company registered in Singapore under the Companies Act; and
- (b) it must carry out business activities in Singapore.

### **QUALIFYING EMPLOYEE**

24. A qualifying employee is one who is granted stock options by a qualifying company<sup>9</sup> and also meets the following requirements at the time of the grant of the options:

- (a) he is exercising employment for the qualifying company; and
- (b) he does not have effective control of the qualifying company.

25. As mentioned in paragraph 16(e), a non-executive director of a company is treated as an employee for the purposes of the CSOP Scheme<sup>1</sup>. Accordingly, a non-executive director can be a qualifying employee provided that he does not have effective control of the company.

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<sup>9</sup> An employee of a qualifying company who is granted any stock option under a Group ESOP Plan operated by the parent company of the qualifying company can also be a qualifying employee so long as the requirements referred to in paragraphs 24(a) and 24(b) are met at the time of the grant of options.

26. Under the CSOP Scheme<sup>1</sup>, an employee is considered as having effective control of a company if he were to beneficially own, directly or indirectly, voting shares that give the right to exercise, or control the exercise of not less than 25% of voting power in the company. In most cases, the determination of whether or not an employee has effective control of the company based on this rule should not pose any problem. However, in some cases where a company is unable to determine definitively whether an employee has effective control of the company due to reasons such as the use of nominees, it can require the employee to provide a declaration on his beneficial ownership, directly or indirectly, of such voting shares in the company. For such cases, if the employee does not give the requisite declaration to the company, he cannot be considered as a qualifying employee under the Scheme.

### **COMPUTATION OF TAXABLE ESOP GAINS UNDER THE COMPANY STOCK OPTION SCHEME**

27. The CSOP Scheme<sup>1</sup> does not change the current basis of determining when ESOP gains accrue to an employee and the amount, as provided in section 10(5) of the Income Tax Act. ESOP gains accrue to an employee at the time the options are exercised. As stated in Budget Statement 2002, where there is a moratorium on shares acquired under any ESOP, ESOP gains accrue to an employee on the date the moratorium is lifted<sup>10</sup>. The amount of taxable ESOP gains is determined based on the difference between the market value or net asset value of the shares, as the case may be, and the exercise price. However, under the CSOP Scheme<sup>1</sup>, an amount of up to the first \$2,000 of ESOP gains and 25% of the remaining ESOP gains will, subject to paragraph 29, be exempt from income tax for each year. This exemption granted is however limited to \$1 million of taxable ESOP gains accruing to an employee, over a period of 10 years commencing from the year the employee first enjoys the abovementioned tax exemption on his ESOP gains under the CSOP Scheme<sup>1</sup>.

28. To illustrate, if an employee exercises his stock options in Year 1 and Year 2 resulting in ESOP gains of \$100,000 and \$200,000 respectively, \$26,500 and \$51,500 of the gains, as computed below, will be exempt from tax in Year 1 and Year 2 respectively. Over the next 8 years, he can enjoy tax exemption computed in the same manner on further ESOP gains of up to another \$700,000 (i.e. \$1 million - \$100,000 - \$200,000).

#### **Year 1**

First \$2,000 of ESOP gains	Full tax exemption applies	\$ 2,000
Remaining \$98,000 of ESOP gains*	Tax exemption of 25% applies	<u>\$24,500</u>
		<u>\$26,500</u>

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<sup>10</sup> The taxable gains will be determined based on the difference between the open market price of the shares on the date the moratorium is lifted and the exercise price.

## Year 2

First \$2,000 of ESOP gains	Full tax exemption applies	\$ 2,000
Remaining \$198,000 of ESOP gains*	Tax exemption of 25% applies	<u>\$49,500</u>
		<u>\$51,500</u>

\* The amount of cumulative ESOP gains that have enjoyed tax exemption under the CSOP Scheme<sup>1</sup> stands at \$100,000 as at end of Year 1 and \$300,000 (i.e. \$100,000 + \$200,000) as at end of Year 2.

29. Where discounted stock options (i.e. where the exercise price is lower than the market value of the underlying shares at the time of grant) are granted by a qualifying company to a qualifying employee under a CSOP Plan, the income tax exemption will only be applicable to the ESOP gains less the amount of the discount enjoyed. Correspondingly, the discounts are excluded from the \$1 million exempt income threshold as mentioned in paragraph 27.

30. The example in Annex 2 further illustrates the application of the tax exemption under the CSOP Scheme<sup>1</sup>.

### **50% TAX EXEMPTION ON GAINS FROM STOCK OPTIONS UNDER THE ENTREPRENEURIAL ESOP SCHEME<sup>1</sup>**

31. An employee who enjoys the 50% income tax exemption on any ESOP gains which arise from his exercise of a tranche of stock options, of up to \$10 million over 10 years under the Entrepreneurial ESOP Scheme<sup>1</sup>, may concurrently enjoy the income tax exemption accorded under the CSOP Scheme<sup>1</sup> on his ESOP gains arising from the exercise of another tranche of stock options of up to \$1 million over 10 years that do not come within the Entrepreneurial ESOP Scheme<sup>1</sup>, provided the terms and conditions for CSOP Scheme<sup>1</sup> are met. This is regardless of whether he has derived the ESOP gains from the same<sup>11</sup> or different<sup>12</sup>

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<sup>11</sup> For example, Employee Dick may be granted stock options by Company B, his employer, via different tranches of stock options on different dates under the company's ESOP Plan. The 1<sup>st</sup> tranche of stock options granted to Employee Dick under the company's ESOP Plan meets all the conditions of Entrepreneurial ESOP Scheme and hence any ESOP gains arising from his subsequent exercise of such options can qualify for the 50% tax exemption provided under the Entrepreneurial ESOP Scheme. Employee Dick can enjoy the 50% tax exemption under the Entrepreneurial ESOP Scheme on up to \$10 million of ESOP gains over a period of 10 years, commencing from the year he first enjoys the tax exemption under the Entrepreneurial ESOP Scheme. On the other hand, the 2<sup>nd</sup> tranche of stock options granted to Employee Dick under the company's ESOP Plan cannot meet all the conditions of the Entrepreneurial ESOP Scheme (because the aggregate market value of the gross assets of the company exceeds \$100 million at the time it grants the 2<sup>nd</sup> tranche of stock options) but can meet all the conditions of the CSOP Scheme. In such a case, any gains arising from his subsequent exercise of the stock options can qualify for the 25% tax exemption (subject to the first \$2,000 of ESOP gains being fully tax exempt) provided under the CSOP Scheme. Employee Dick can enjoy the 25% tax exemption (subject to the first \$2,000 of ESOP gains being fully tax exempt) under the CSOP Scheme on up to \$1 million of ESOP gains over a period of 10 years, commencing from the year he first enjoys the tax exemption under the CSOP Scheme. The respective caps on ESOP gains that qualify for tax exemption under the two Schemes shall apply separately.

<sup>12</sup> For example, Employee Harry works full time for Company D and part time for Company E. Both companies grant stock options to Employee Harry. Stock options granted to Employee Harry by

employers. The respective caps on ESOP gains that qualify for income tax exemption under the two schemes shall apply separately.

32. The example in Annex 3 illustrates the application of income tax exemption under the Entrepreneurial ESOP Scheme<sup>1</sup> and CSOP Scheme<sup>1</sup> for an employee who concurrently derives ESOP gains arising from the exercise of different tranches of stock options granted by the same employer that qualify for the tax exemption under the respective Schemes.

### **COMPANIES WITH MORE THAN ONE EMPLOYEE STOCK OPTION PLAN**

33. A qualifying company may operate more than one ESOP Plan for different groups of employees of the company. For each ESOP Plan to qualify as a CSOP Plan, the ESOP Plan must on its own satisfy the conditions for a CSOP Plan, as set out in paragraph 9. Accordingly, for each of the ESOP Plans of the company to qualify as a CSOP Plan, each Plan must:

- (a) meet the vesting period requirement prescribed by the SGX for companies listed on the SGX; and
- (b) offer stock options to at least 50% **(this is lowered to 25% with effect from 16 February 2008)** of the employees of the company, as determined in accordance to the formula set out in paragraph 14 on a yearly basis.

### **STOCK OPTIONS GRANTED BY A COMPANY UNDER THE COMPANY'S ESOP PLAN THAT CAN CONCURRENTLY MEET ALL THE QUALIFYING CONDITIONS UNDER BOTH THE ENTREPRENUERIAL ESOP SCHEME<sup>1</sup> AND CSOP SCHEME<sup>1</sup>**

34. Where a company grants stock options to its employees under its ESOP Plan that can concurrently meet all the qualifying conditions under both the Entrepreneurial ESOP Scheme<sup>1</sup> and the CSOP Scheme<sup>1</sup>, the company can only avail itself to either one of the two Schemes in respect of the stock options granted under that ESOP Plan. Once the company has availed itself to a particular Scheme, say the Entrepreneurial ESOP Scheme<sup>1</sup>, in respect of any stock options granted under that ESOP Plan, the effects of the Entrepreneurial ESOP Scheme<sup>1</sup> shall apply to all tranches of stock options subsequently granted under that ESOP Plan, if the qualifying conditions of the Entrepreneurial ESOP

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Company D under Company D's ESOP Plan meets all conditions of the Entrepreneurial ESOP Scheme while stock options granted to him by Company E under Company E's ESOP Plan meets all conditions of CSOP Scheme (but not all conditions of the Entrepreneurial ESOP Scheme). In such a case, any gains arising from his subsequent exercise of the stock options granted by Company D and E can qualify for the tax exemption provided under the respective Schemes, subject to the caps imposed under the two Schemes. The respective caps on ESOP gains that qualify for tax exemption under the two Schemes shall apply separately.

Scheme<sup>1</sup> continue to be met. The company will not be allowed to come within the CSOP Scheme<sup>1</sup> in respect of any subsequent tranches of stock options granted under the same ESOP Plan unless it can no longer meet the qualifying conditions under the Entrepreneurial ESOP Scheme<sup>1</sup> (e.g. the aggregate market value of its gross assets has exceeded \$100 million) and only provided it is able to meet all the conditions of the CSOP Scheme<sup>1</sup>.

35 Where the company mentioned in paragraph 34 were to first avail itself to the CSOP Scheme<sup>1</sup> in respect of any stock options granted under its ESOP Plan, the effects of the CSOP Scheme<sup>1</sup> shall apply to all tranches of stock options subsequently granted under that ESOP Plan, as long as the qualifying conditions of the CSOP Scheme<sup>1</sup> continue to be met. However, in such a case, stock options granted thereafter under that ESOP Plan would no longer be allowed to come within the Entrepreneurial ESOP Scheme<sup>1</sup> even if the qualifying conditions under Entrepreneurial ESOP Scheme<sup>1</sup> can be met. Accordingly, ESOP gains arising from any stock options subsequently granted that cannot meet the qualifying conditions of the CSOP Scheme<sup>1</sup> shall be taxed in full.

36. In addition, under no circumstances can a particular tranche of stock options granted by a company to its employees under its ESOP Plan concurrently qualify for tax exemption under both the Entrepreneurial ESOP Scheme<sup>1</sup> and CSOP Scheme<sup>1</sup>. To illustrate, Company P grants a tranche of stock options to all its employees, including part-time employees, which can meet all qualifying conditions of both the Entrepreneurial ESOP Scheme<sup>1</sup> (other than the “qualifying employee” condition for part-timers) and the CSOP Scheme<sup>1</sup> at the same time. Company P decided to avail itself to the Entrepreneurial ESOP Scheme<sup>1</sup> in respect of the stock options granted under its ESOP Plan. In such a case, qualifying employees can enjoy the 50% tax exemption on up to \$10 million of ESOP gains over a period of 10 years arising from their exercise of such options. Non-qualifying employees (e.g. part-timers whose committed working time with the company is less than 30 hours per week at the time of grant of options and whose working time does not amount to at least 75% of his total working time per week) would be liable to tax on the full amount of ESOP gains arising from their exercise of such options. They would not be entitled to the tax exemption provided under the CSOP Scheme<sup>1</sup>.

37 The examples in Annex 4 further illustrate the application of the above requirements to be complied in cases where a company grants stock options under its ESOP Plan that can concurrently meet the qualifying conditions of both the Entrepreneurial ESOP Scheme<sup>1</sup> and CSOP Scheme<sup>1</sup>.

#### **DEFERMENT OF PAYMENT OF TAX ON GAINS FROM STOCK OPTIONS UNDER QUALIFIED ESOP SCHEME<sup>1</sup>**

38. As is the case for the Entrepreneurial ESOP Scheme<sup>1</sup>, an employee who enjoys the 25% income tax exemption on ESOP gains under the CSOP Scheme<sup>1</sup> (subject to first \$2,000 of ESOP gains being fully tax exempt) is not precluded from applying to defer the payment of his tax on the remaining taxable portion of

ESOP gains under the Qualified ESOP Scheme<sup>1</sup>. He may apply for deferral of tax payable on the ESOP gains for up to 5 years under the Qualified ESOP Scheme<sup>1</sup>, subject to the terms and conditions under that Scheme being met.

## **ADMINISTRATIVE REQUIREMENTS**

### **Companies**

39. Companies are currently required to give to each of their employees an annual return of remuneration<sup>13</sup> prepared in a prescribed format. However, if companies have made arrangement to transmit salary data electronically to the Comptroller for automatic inclusion into their employees' assessments, they are allowed to provide their employees with details of remuneration in any format other than the prescribed format. The annual return of remuneration or any other format of providing details of remuneration, as the case may be, or the salary data transmitted to the Comptroller electronically should contain the employee's full remuneration, including any stock option gains, for the year concerned.

40. With regard to the information to be provided on stock option gains, a company is required, with the implementation of the Entrepreneurial ESOP Scheme<sup>1</sup> and the CSOP Scheme<sup>1</sup>, to provide details of all stock option gains, segregating the gains, where applicable, into:

- a. those qualifying for the 50% income tax exemption under the Entrepreneurial ESOP Scheme<sup>1</sup>;
- b. those qualifying for the 25% income tax exemption (subject to the first \$2,000 of ESOP gains being fully tax exempt) under the CSOP Scheme<sup>1</sup>;
- c. those that do not qualify for tax exemption under the two schemes (including any amount of discount enjoyed by an employee on the stock options).

41. Where a company grants one or more tranches of stock options to a qualifying employee (see paragraphs 24 to 26) in any year where the gain from his subsequent exercise of the options can qualify for the income tax exemption under the CSOP Scheme<sup>1</sup>, the company is required to give a written confirmation within 4 weeks from 31 December of the year, to the qualifying employee confirming that the qualifying terms and conditions of the Scheme have been met in respect of such tranches of stock options granted. Annex 5 provides a specimen of the written confirmation, which sets out the minimum information to be incorporated. If it were subsequently found that any of the qualifying terms and conditions under the CSOP Scheme<sup>1</sup> has not been met, the tax exemption accorded under the CSOP scheme<sup>1</sup> will not be granted, or if previously granted,

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<sup>13</sup> The annual return of remuneration is to be given to employees no later than the date stated in the gazette notice to employers. This is usually on 1<sup>st</sup> March of the year following the year to which the employees' remuneration relates.

be withdrawn on the ESOP gains derived by the employee from the exercise of one or more tranches of stock options. The Comptroller may also impose appropriate penalties on the company for non-compliance of any term or condition under the CSOP Scheme<sup>1</sup>, or for giving any incorrect information unless this is due solely to incorrect declaration made by its employee with respect to the level of beneficial share ownership in the company at the time of the grant of options (see paragraph 26).

42. In addition, a company is required to keep sufficient documentation, including any declaration given by its qualifying employee, to show, when required by the Comptroller, that the qualifying terms and conditions under the CSOP Scheme<sup>1</sup> have been met in respect of stock options granted to any qualifying employee.

### **Qualifying employee**

43. As mentioned in paragraph 26, where it is not clear to the company that the employee does not have effective control of the company, he is required to make a declaration to the company on his beneficial ownership, directly or indirectly, of voting shares in the company.

44. In the absence of declaration, where required, to the company, the employee will not be considered as a qualifying employee under the CSOP Scheme<sup>1</sup>. Where it were subsequently found that he has made any incorrect declaration to the company, the 25% income tax exemption (subject to the first \$2,000 of ESOP gains being fully tax exempt) will not be granted or, if previously granted, be withdrawn on the relevant ESOP gains. In such cases, the Comptroller may also impose appropriate penalties on the employee.

45. In addition, a qualifying employee should keep the written confirmation mentioned in paragraph 41, and upon request, produce it to the Comptroller for verification.

### **ENQUIRIES**

46. Taxpayers who have any queries concerning the CSOP Scheme<sup>1</sup> may call our Taxpayer Services Division at 1800-356 8300 for clarification.

Inland Revenue Authority of Singapore

## EXAMPLE TO ILLUSTRATE THE APPLICATION OF THE 50% REQUIREMENT<sup>4</sup> FOR DETERMINING WHETHER OR NOT AN ESOP PLAN QUALIFIES AS A CSOP PLAN

### Example 1

Prince Company Pte Ltd, incorporated in Singapore, is a subsidiary of US-listed King Inc. King Inc operates an ESOP Plan that offers option to acquire shares in the company to its own employees as well as employees of companies within the King's Corporate Group (referred to as "King's Group ESOP Plan") if certain criteria are met. Under the King's Group ESOP Plan, Prince Company Pte Ltd may also offer its employees the options to acquire shares in King Inc if they meet certain criteria. The King's Group ESOP Plan imposes a vesting period requirement similar to that imposed by the SGX rules.

### Year 2003

During the year 2003, Prince Company Pte Ltd offers the option to acquire shares under the "King's Group ESOP Plan" to some of its employees in 3 different tranches, based on their respective contributions to the company and other considerations, as follows:

Offered on	Tranche A 2.2.03	Tranche B 19.6.03	Tranche C 19.12.03	Total As at 31.12.03
<u>Categories of employees</u>	<u>Number of employees offered options</u>			
Full time employees with 1 year or more service and non-executive directors	50	46	1,000*	1,096
Full time employees with less than 1-year service	-	-	-	-
Part-time employees with 1 year or more service	2	-	3	5
Part-time employees with less than 1-year service	-	-	-	-
	<u>52</u>	<u>46</u>	<u>1,003</u>	<u>1,101</u>

\* Includes Mr Tom and Mr Jerry who were offered stock options under 2 separate tranches within the same calendar year.

### Example 1 (cont'd)

As at 31 Dec 2003, the King's Corporate Group has 300,000 employees worldwide. The subsidiary in Singapore, Prince Company Pte Ltd has 2,000 employees comprising:

Prince Company Pte Ltd	<u>Number of employees as at 31 Dec 2003</u>
Full time employees with 1 year or more service and non-executive directors	1,515
Full time employees with less than 1-year service	156
Part time employees with 1 year or more service	200
Part time employees with less than 1-year service	<u>129</u>
Total	<u>2,000</u>

Applying the formula, as set out in paragraphs 14 to 19 of the main circular, to Prince Company Pte Ltd (see computation below), all 3 tranches (i.e. Tranches A, B and C) of stock options offered by Prince Company Pte Ltd to its employees under the "King's Group ESOP Plan" in the year 2003 can qualify to be stock options granted under a CSOP Plan because the Group ESOP Plan meets the SGX's vesting period requirement and the options were offered to at least 50%<sup>3</sup> of Prince Company Pte Ltd's employees.

Total No. of qualifying company's  
employees offered options under the ESOP Plan during the year  
Total No. of qualifying company's employees as at 31 Dec 2003

$$= [52 + 46 + (1,003 - 2^{14})] / (1,515 + 200 + 129)^{15} \times 100\% = \underline{59.6\%}$$

<sup>14</sup> As Mr Tom and Mr Jerry were offered stock options under 2 separate tranches within the same calendar year, they should only be accounted for once in determining whether or not the 50% requirement<sup>4</sup> is met.

<sup>15</sup> Full Time employees with less than 1 year's service with the company are excluded from the denominator as the company did not offer any stock options to such employees in the year 2003.

## Example 1 (cont'd)

### Year 2004

During the year 2004, Prince Company Pte Ltd again offers the option to acquire shares under the "King's Group ESOP Plan" to some of its employees in 2 separate tranches. Some of these employees had previously been granted options under the same Plan in the year 2003 but no employees were offered options under both tranches for the year 2004.

Offered on	Tranche D 1.4.04	Tranche E 13.12.04	Total As at 31.12.04
<u>Categories of employees</u>	<u>Number of employees offered options</u>		
Full time employees with 1 year or more service and non-executive directors	55	146	201
Full time employees with less than 1-year service	-	3	3
Part-time employees with 1 year of more service	-	3	3
Part-time employees with less than 1-year service	-	1	1
	<hr/> 55	<hr/> 153	<hr/> 208

As at 31 Dec 2004, the King's Corporate Group has 350,000 employees worldwide. The subsidiary in Singapore, Prince Company Pte Ltd has 2,200 employees comprising:

Prince Company Pte Ltd	<u>Number of employees as at 31 Dec 2004</u>
Full time employees with more than 1-year service and non-executive directors	1,580
Full time employees with less than 1-year service	250
Part time employees with more than 1-year service	220
Part time employees with less than 1-year service	<u>150</u>
Total	<u>2,200</u>

Applying the formula as set out in paragraphs 14 to 19 of the main circular, to Prince Company Pte Ltd (see computation below), the 2 tranches (i.e. Tranches D and E) of stock options offered under the “King’s Group ESOP Plan” in the year 2004 cannot qualify to be stock options granted under a CSOP Plan because the options were not offered to at least 50%<sup>3</sup> of Prince Company Pte Ltd’s employees.

Total No. of qualifying company’s  
employees offered options under the ESOP Plan during the year  
 Total No. of qualifying company’s employees as at 31 Dec 2004

$$= (55 + 153) / (1,580 + 250 + 220 + 150)^{16} = \underline{9.5\%}$$

**EXAMPLE ON HOW THE 50% REQUIREMENT APPLICABLE TO A TRANCHE OF STOCK OPTIONS GRANTED PRIOR TO 16 FEBRUARY 2008 IS COMPUTED WITH THE CHANGE IN THE PARTICIPATION RATE TO 25% AS AT 31 DEC 2008**

**Example 2**

As at 31 Dec 2008, Prince Company Pte Ltd has 1,500 employees comprising:

Prince Company Pte Ltd	<u>Number of employees as at 31 Dec 2008</u>
Full time employees with more than 1-year service and non-executive directors	1,000
Full time employees with less than 1-year service	250
Part time employees with more than 1-year service	150
Part time employees with less than 1-year service	<u>100</u>
Total	<u>1,500</u>

During the year, the company granted its employees the following tranches of ESOPs. No employees were offered options under both tranches for the year 2008:-

<sup>16</sup> Part-time employees, including those with less than 1 year’s service with the company, are included in the denominator, as the company had offered stock options to such employees in the year 2004.

## Example 2 (cont'd)

Offered on	Tranche Y 1.2.08	Tranche Z 1.7.08	Total As at 31.12.08
<u>Categories of employees</u>	<u>Number of employees offered options</u>		
Full time employees with 1 year or more service and non-executive directors	150	200	350
Full time employees with less than 1-year service	-	45	45
Part-time employees with 1 year of more service	-	6	6
Part-time employees with less than 1-year service	-	4	4
	<hr/> 150	<hr/> 255	<hr/> 405

Similar to example 1 above, we would apply the formula as set out in paragraphs 14 to 19 of the main circular to Prince Company Pte Ltd as follows:

Total No. of qualifying company's employees offered options under the ESOP Plan that satisfies the minimum vesting period requirement during the year  
Total No. of qualifying company's employees as at 31 Dec 2008

$$= (150 + 255) / (1,000 + 250 + 150 + 100) = \underline{27\%}$$

Following from the above, Tranche Y cannot qualify to be stock options granted under a ERIS (All Corporations) Plan because the options were not offered to at least 50% of Prince Company Pte Ltd's employees during the year 2008. Tranche Z, however, can qualify to be stock options granted under a ERIS (All Corporations) Plan as the Group ESOP Plan meets the SGX's vesting period requirement and the options were offered to at least 25% of the company's employees for the year 2008.

## ANNEX 2

### EXAMPLE TO ILLUSTRATE THE APPLICATION OF INCOME TAX EXEMPTION UNDER THE COMPANY STOCK OPTION (CSOP) SCHEME

Mr Z derives the following income or gains in the years 2002 to 2011, which are assessable to income tax in the Years of Assessments 2003 to 2012:

	YA 2003 (\$'000)	YA 2004 (\$'000)	YA 2005 (\$'000)	YA 2006 (\$'000)	YA 2007 (\$'000)
Salaries	100	100	100	100	100
Qualifying ESOP gains (under the CSOP Scheme <sup>1</sup> )**	100	0	300	750	0
Other ESOP gains++	50	20	100	0	150
Singapore dividends	20	50	30	10	0
<b>Total Income</b>	<b>270</b>	<b>170</b>	<b>530</b>	<b>860</b>	<b>250</b>
Cumulative Qualifying ESOP gains under the CSOP Scheme <sup>1</sup> ** from YA 2003 (first YA)	100	100	400	#1,150	#1,150

	YA 2008 (\$'000)	YA 2009 (\$'000)	YA 2010 (\$'000)	YA 2011 (\$'000)	YA 2012 (\$'000)
Salaries	100	100	100	100	100
Qualifying ESOP gains (under the CSOP Scheme <sup>1</sup> )**	0	0	250	0	0
Other ESOP gains++	0	100	0	0	150
Singapore dividends	50	20	30	90	100
<b>Total Income</b>	<b>150</b>	<b>220</b>	<b>380</b>	<b>190</b>	<b>350</b>
Cumulative Qualifying ESOP gains under the CSOP Scheme <sup>1</sup> ** from YA 2003 (first YA)	#1,150	#1,150	#1,400	#1,400	#1,400

\*\*This assumes that all conditions under the CSOP Scheme<sup>1</sup> are satisfied.

++These ESOP gains do not qualify for CSOP Scheme<sup>1</sup> or the Entrepreneurial ESOP Scheme<sup>1</sup>.

#Under the CSOP Scheme<sup>1</sup>, Mr Z can enjoy 25% tax exemption on qualifying ESOP gains (subject to the first \$2,000 being fully tax exempt) of up to \$1 million<sup>1</sup> over 10 years. Once the \$1 million cap is reached, the excess of ESOP gains over \$1 million will be taxed in full.

The computation of the amount of **total taxable income** for Mr Z, and of the amount of ESOP gains that is exempt from income tax under the CSOP Scheme<sup>1</sup> for the relevant YAs is provided in the next page.

**Computation of the amount of Mr Z's total taxable income and the amount of ESOP gains that is exempt from income tax under the CSOP Scheme<sup>1</sup> for each of the Years of Assessment 2003 to 2012**

	YA 2003 (\$'000)	YA 2004 (\$'000)	YA 2005 (\$'000)	YA 2006 (\$'000)	YA 2007 (\$'000)
Salaries	100	100	100	100	100
Balance of qualifying ESOP gains (after exemption under the CSOP Scheme <sup>1</sup> ) <sup>17</sup>	73.5	0	223.5	598.5	0
Other ESOP gains++	50	20	100	0	150
Singapore dividends	20	50	30	10	0
<b>Total Taxable Income</b>	<b>243.5</b>	<b>170</b>	<b>453.5</b>	<b>708.5</b>	<b>250</b>

<b>Amount of qualifying ESOP gains that is exempt from income tax under the CSOP Scheme<sup>1</sup></b>	26.5 [2+(100-2)X25%]	0	76.5 [2+(300-2)X25%]	151.5 <sup>18</sup> [2+(600 - 2) X 25%]	0
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Cumulative Qualifying ESOP gains under the CSOP Scheme <sup>1**</sup> from YA 2003 (first YA)	100	100	400	#1,150	#1,150
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	YA 2008 (\$'000)	YA 2009 (\$'000)	YA 2010 (\$'000)	YA 2011 (\$'000)	YA 2012 (\$'000)
Salaries	100	100	100	100	100
Balance of qualifying ESOP gains (after exemption under the CSOP Scheme <sup>1</sup> ) <sup>17</sup>	0	0	250	0	0
Other ESOP gains++	0	100	0	0	150
Singapore dividends	50	20	30	90	100
<b>Total Taxable Income</b>	<b>150</b>	<b>220</b>	<b>380</b>	<b>190</b>	<b>350</b>

Amount of qualifying ESOP gains that is exempt from income tax under the CSOP Scheme <sup>1</sup>	0	0	0 <sup>19</sup>	0	0
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Cumulative Qualifying ESOP gains under the CSOP Scheme <sup>1**</sup> from YA 2003 (first YA)	#1,150	#1,150	#1,400	#1,400	#1,400
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<sup>17</sup> Computed as follows: amount of qualifying ESOP gains less the amount determined to be exempt from tax under the CSOP Scheme.

<sup>18</sup> Under the CSOP Scheme, Mr Z cannot enjoy the 25% tax exemption (subject to first \$2,000 being fully tax exempt) on any ESOP gains in excess of \$1 million. In YA 2005 (the 3rd YA), the cumulative qualifying ESOP gains under the Scheme amounts to \$400,000. Given the cap of \$1 million, although Mr Z derives qualifying ESOP gains of \$750,000 in YA 2006 (the 4<sup>th</sup> YA), the amount of qualifying ESOP gains that can qualify for the tax exemption will be limited to \$600,000 (i.e. \$1 million less \$400,000). The excess of \$150,000 will therefore not enjoy the tax exemption under the CSOP Scheme and be taxed in full.

<sup>19</sup> No further tax exemption to be accorded to Mr Z in respect of gains arising from the exercise of such options as the cumulative gains arising therefrom have already exceeded \$1 million.

### ANNEX 3

## EXAMPLE TO ILLUSTRATE THE APPLICATION OF INCOME TAX EXEMPTION FOR EMPLOYEES WHO CONCURRENTLY DERIVE ESOP GAINS UNDER BOTH THE ENTREPRENEURIAL ESOP SCHEME<sup>1</sup> AND CSOP SCHEME<sup>1</sup>

Mr C, employed by NOP Company Ltd, is granted the following stock options to acquire shares in NOP Company Ltd in the years 2000 and 2001 respectively. The details of stock options granted are summarized in the table below.

	<b>First tranche</b>	<b>Second tranche</b>
<b>Date of Grant</b>	June 2000	June 2001
<b>Whether ESOP Gains Qualify For Tax Exemption ?</b>	Yes, under the Entrepreneurial ESOP Scheme <sup>1</sup> (because all qualifying conditions for the Scheme were met at the time of grant of option)	Yes, under the CSOP Scheme <sup>1</sup> (company cannot meet the qualifying company requirement under the Entrepreneurial ESOP Scheme <sup>1</sup> but can meet all the requirements under the CSOP Scheme <sup>1</sup> )
<b>Exercise Price of Option</b>	\$15	\$25
<b>Market value of underlying shares at time of grant of option</b>	\$20	\$25
<b>Year of Exercise of Option</b>	2002 (July 2002)	2002 (July 2002)
<b>Market value of the underlying shares at the time of exercise</b>	\$30	\$30
<b>Number of shares acquired in year 2002 pursuant to exercise of option</b>	10,000 shares	5,000 shares
<b>ESOP Gains in 2002</b>	\$150,000 [10,000 X (\$30-\$15)]	\$25,000 [5,000 X (\$30-\$25)]
<b>ESOP Gains in 2002 attributable to discount<sup>20</sup> to market value of shares at the time of grant</b>	\$50,000 [10,000 X (\$20-\$15)]	Not applicable

Mr C can concurrently enjoy the income tax exemption on ESOP gains under the Entrepreneurial ESOP Scheme and the CSOP Scheme<sup>1</sup> for the respective tranches of stock options. In computing the amount of ESOP gains to be exempt from tax under the two Schemes, the respective caps on ESOP gains that qualify for income tax exemption under the two schemes shall apply separately.

The computation of the amount of **taxable ESOP gains** for Mr C for the Year of Assessment 2003 is provided in the next page.

<sup>20</sup> Any discount (i.e. the difference between the market value of the underlying shares as at the time of grant and the exercise price) does not qualify for the income tax exemption under both the CSOP Scheme and Entrepreneurial ESOP Scheme and would therefore be taxed in full (i.e. the discount should be excluded from ESOP gains for purposes of the computation of the amount of ESOP gains that can qualify for income tax exemption).

**Computation of the amount of taxable ESOP gains for Mr C for the Year of Assessment 2003**

	Qualifying gains under Entrepreneurial ESOP Scheme <sup>1</sup>	Qualifying gains under CSOP Scheme <sup>1</sup>	Total
Amount of ESOP gains derived in 2002 (YA2003) [1]	\$150,000 (computed as shown in table above)	\$25,000 (computed as shown in table above)	\$175,000
Less amount of ESOP gains to be exempt from tax under respective Schemes [2]	\$50,000 [(Qualifying gains less discount) X 50%] (\$150,000 - \$50,000) X 50%	\$7,750 [\$2,000 + (\$25,000 - \$2000) X 25%]	\$57,750
Taxable ESOP gains [1] – [2]	\$100,000	\$17,250	\$117,250
Cumulative ESOP gains that have enjoyed tax exemption under respective Schemes as at end of YA 2003 (first YA)	\$100,000	\$25,000	
Further ESOP gains that can qualify for tax exemption under respective Schemes over the next 9 years	\$9,900,000	\$975,000	

**EXAMPLES TO ILLUSTRATE THE APPLICATION OF THE REQUIREMENTS TO BE COMPLIED WITH IN CASES WHERE A COMPANY GRANTS STOCK OPTIONS UNDER ITS ESOP PLAN THAT CAN CONCURRENTLY MEET THE QUALIFYING CONDITIONS OF BOTH THE ENTREPRENEURIAL ESOP SCHEME<sup>1</sup> AND CSOP SCHEME<sup>1</sup>**

**Example 1**

Jack Company Ltd has implemented an ESOP Plan for its employees on 1 July 2001.

The company has decided to grant the following tranches of stock options to its employees under the ESOP Plan:

- Tranche A on 1 August 2001
- Tranche B on 31 December 2001
- Tranche C on 31 December 2002
- Tranche D on 1 July 2003

The first three tranches (Tranche A to C) of stock options granted by Jack Company Ltd to its employees under its ESOP Plan can concurrently meet the qualifying conditions of both the Entrepreneurial ESOP Scheme<sup>1</sup> and CSOP Scheme<sup>1</sup>.

Tranche D stock options granted by the company to its employees under its ESOP Plan however cannot meet the qualifying company condition under the Entrepreneurial ESOP Scheme<sup>1</sup> (because the aggregate market value of its gross assets has exceeded \$100 million on the date of the grant of Tranche D stock options) but can meet the qualifying conditions of the CSOP Scheme<sup>1</sup>.

Jack Company Ltd has decided to avail itself to the Entrepreneurial ESOP Scheme<sup>1</sup> in respect of Tranche A stock options granted to its employees on 1 August 2001 under its ESOP Plan. Such being the case, the effects of the Entrepreneurial ESOP Scheme<sup>1</sup> shall apply to all tranches of stock options subsequently granted under the ESOP Plan, if the qualifying conditions of the Entrepreneurial ESOP Scheme<sup>1</sup> continue to be met. Accordingly, in Jack Company Ltd's case, the Entrepreneurial ESOP Scheme<sup>1</sup> would apply to Tranche B and Tranche C stock options granted to its employees under its ESOP Plan. Jack Company Ltd would not be allowed to avail itself to the CSOP Scheme<sup>1</sup> in respect of Tranche B and Tranche C stock options granted to its employees under its ESOP Plan. The company is however allowed to avail itself to the CSOP Scheme<sup>1</sup> in respect of Tranche D stock options granted to its employees under its ESOP Plan as it cannot meet the qualifying company condition of the Entrepreneurial ESOP Scheme<sup>1</sup> but is able to meet all the conditions of the CSOP Scheme<sup>1</sup> in respect of such tranche of stock options.

## Example 2

Jill Company Ltd has implemented an ESOP Plan for its employees on 1 July 2001.

The company has decided to grant the following tranches of stock options to its employees under the ESOP Plan:

- Tranche E on 1 August 2001
- Tranche F on 31 December 2001
- Tranche G on 31 December 2002
- Tranche H on 1 July 2003
- Tranche I on 31 December 2004

The first three tranches (Tranche E to G) of stock options granted by Jill Company Ltd to its employees under its ESOP Plan can concurrently meet the qualifying conditions of both the Entrepreneurial ESOP Scheme<sup>1</sup> and CSOP Scheme<sup>1</sup>.

Tranche H stock options granted by the company to its employees under its ESOP Plan however cannot meet the qualifying company condition under the Entrepreneurial ESOP Scheme<sup>1</sup> (because the aggregate market value of its gross assets has exceeded \$100 million on the date of the grant of Tranche H stock options) but can meet the qualifying conditions of the CSOP Scheme<sup>1</sup>.

Tranche I stock options granted by the company to its employees under the ESOP Plan cannot meet the 50% requirement<sup>4</sup> to qualify the ESOP Plan as a CSOP Plan under the CSOP Scheme<sup>1</sup>, but can meet the qualifying conditions of the Entrepreneurial ESOP Scheme<sup>1</sup> (because the aggregate market value of its gross assets has fallen below \$100 million on the date of the grant of Tranche I stock options).

For some reasons, Jill Company Ltd has decided to avail itself to the CSOP Scheme<sup>1</sup> in respect of Tranche E stock options granted to its employees on 1 August 2001 under its ESOP Plan, even though such stock options can come within the Entrepreneurial ESOP Scheme<sup>1</sup>. Such being the case, the effects of the CSOP Scheme<sup>1</sup> shall apply to all tranches of stock options subsequently granted under the ESOP Plan, if the qualifying conditions of the CSOP Scheme<sup>1</sup> continue to be met. Further, in such a case, Jill Company Ltd will not be allowed to come within the Entrepreneurial ESOP Scheme<sup>1</sup> in respect of any tranche of stock options granted to its employees under its ESOP Plan subsequent to Tranche E stock options, even if the qualifying conditions under the Entrepreneurial ESOP Scheme<sup>1</sup> are met. Accordingly, ESOP gains arising from any stock options granted by Jill Company Ltd subsequent to Tranche E stock options that cannot meet the qualifying conditions of the CSOP Scheme<sup>1</sup> shall be taxed in full.

Based on the above, in Jill Company Ltd's case, the CSOP Scheme<sup>1</sup> would apply to all tranches of stock options granted by the company subsequent to Tranche E stock options to its employees under its ESOP Plan i.e. Tranche F, Tranche G

and Tranche H stock options. Jill Company Ltd will also not be allowed to avail itself to the Entrepreneurial ESOP Scheme<sup>1</sup> in respect of any tranche of stock options granted to its employees under its ESOP subsequent to Tranche E stock options. As the qualifying conditions of the CSOP Scheme<sup>1</sup> cannot be met for Tranche I stock options granted by the company to its employees under its ESOP Plan, gains derived by its employees arising from the exercise of Tranche I stock options shall be liable to tax in full.

**CONFIRMATION BY COMPANY THAT STOCK OPTIONS GRANTED QUALIFY FOR EXEMPTION UNDER COMPANY STOCK OPTION SCHEME<sup>1</sup>**

**Specimen**

<Employee's name & identification number>

<Employee's address>

<Date: day/month/year>

Dear < Employee's name>

**QUALIFYING CRITERIA UNDER THE COMPANY STOCK OPTION (CSOP) SCHEME<sup>1</sup>**

Pursuant to the Stock Option Scheme operated by <name of company>, you have been granted on <date(s) of grant> options to acquire <number> ordinary shares in <name of company> during the <year concerned>.

This is to confirm that on the date(s) of the grant of the above mentioned option(s), the company has met the criteria to be a qualifying company under the CSOP Scheme<sup>1</sup>. In addition, the Stock Option Scheme operated by the company has also met the terms and conditions for a "Company Stock Option Scheme<sup>1</sup>", as set out in IRAS' circular on "Company Stock Option Scheme" dated 31 March 2001. Given that you have/ have confirmed to have\*\* met the criteria as a qualifying employee, as defined in the same IRAS' circular, on the date(s) of the grant of option, you will be able to enjoy tax exemption on stock option gains arising from the exercise of the options for each year as follows:

- full tax exemption on the first \$2,000 of stock option gains
- tax exemption of 25% on the remaining amount of stock option gains

However, you will qualify for the above tax exemption provided that you have not already enjoyed the above tax exemption on stock option gains exceeding \$1 million over a period of 10 years, commencing from the year the tax exemption under the CSOP scheme<sup>1</sup> is first enjoyed by you.

You should retain this letter and upon request by the Comptroller of Income Tax, produce it to him for verification.

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Name, designation and signature  
of Authorized Personnel of company

*\*\* Delete whichever is not applicable*

**[For new tranches of ESOPs or shares under ESOW plan granted on or after  
16 Feb 2008]**

<Employee's name & identification number>

<Employee's address>

<Date: day/month/year>

Dear < Employee's name>

**QUALIFYING CRITERIA UNDER THE EQUITY REMUNERATION INCENTIVE  
SCHEME - (ALL CORPORATIONS) [ERIS (ALL CORPORATIONS)]**

Pursuant to the Employee Stock Option (ESOP)/ Employee Share Ownership (ESOW)\* plan operated by <name of the company>, you have been granted on <date of grant> options/share awards\* to acquire <number> ordinary shares in the company at any time during <effective period of option/award\*> at the price of <exercise price/grant price\*> per share.

This is to confirm that on the date of the grant of the above mentioned options/shares\*, the company has met the criteria to be a qualifying company and the company's ESOP/ESOW\* plan has met the conditions for an "ERIS (All Corporations) plan", as set out in IRAS' circular on "Company Stock Option Scheme (renamed as ERIS (All Corporations) with effect from 16<sup>th</sup> February 2008" dated 31 March 2001 (updated 5 August 2008). Given that you have / have confirmed to have\*\* met the criteria as a qualifying employee, as defined in the same IRAS' circular, on the date of the grant of options/shares\*, you will be able to enjoy tax exemption on gains derived by you from the exercise of the options or grant of the share awards\* as follows:

- full tax exemption on the first \$2,000 of ESOP/ESOW gains
- tax exemption of 25% on the remaining amount of ESOP/ESOW gains

However, you will qualify for the above tax exemption provided that you have not already enjoyed the above tax exemption on ESOP/ESOW gains exceeding \$1 million over a period of 10 years, commencing from the year the tax exemption under the ERIS (All Corporation) is first enjoyed by you.

You should retain this letter and upon request by the Comptroller of Income Tax, produce it to him for verification.

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Name, designation and signature  
of Authorized Personnel of company

\*\* *Delete whichever is not applicable*