

IRAS CIRCULAR

EQUITY REMUNERATION INCENTIVE SCHEME (START-UPS)



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EQUITY REMUNERATION INCENTIVE SCHEME (START-UPS)

INTRODUCTION

1. Gains derived by an individual from employee stock option (hereinafter referred to as “ESOP”) plans and employee share ownership (hereinafter referred to as “ESOW¹”) plans granted in respect of Singapore employment are assessable to income tax. These gains are taxed as income of the individual for the year in which the options are exercised, the shares are granted or vested, or the moratorium on the disposal of the shares is lifted, as the case may be.
2. Over the years, a number of tax measures have been implemented to enhance the tax treatment of gains derived from ESOP or ESOW plans. These measures include the Qualified Employee Equity-Based Remuneration (QEEBR) Scheme², Entrepreneurial Employee Equity-based Remuneration (EEEEBR) Scheme³ and Company Employee Equity-based Remuneration (CEEBR) Scheme⁴.
3. To improve the attractiveness of equity-based compensation tools for new start-up companies the Minister for Finance announced in his Budget Statement 2008⁵ a new Equity Remuneration Incentive Scheme (Start-Ups) (ERIS (Start-Ups)). Under the ERIS (Start-Ups), an employee of a qualifying company can enjoy a tax exemption of 75% of up to \$10 million of gains from ESOP or ESOW plans over a 10-year period, provided certain criteria are met.
4. This circular provides details of the ERIS (Start-Ups).

¹ Generally, ESOW plans allow employees of a company to own or purchase shares in the company or that of its parent company. They include share awards and other similar forms of employee share purchase plans, but exclude phantom shares and share appreciation rights (SARs) which merely use share prices as a basis for computing the amount of benefits to be paid to the employees.

² QEEBR Scheme was introduced to alleviate cash flow problems faced by employees who do not sell their shares after acquiring them, or exercising their stock options. The Scheme allows employees to defer payment of tax on gains from ESOP or ESOW plans for up to 5 years, subject to an interest charge at prime rate. For details, please refer to IRAS’ press statement issued on 25 October 1999 on the “Qualified Employee Stock Option Plan Scheme”.

³ EEEBR Scheme, given as an incentive to encourage technopreneurship, allows an employee of a company to enjoy a tax exemption of 50% of up to \$10 million of gains from ESOP or ESOW plans arising over a period of 10 years, provided certain conditions are met. For details, please refer to IRAS’ Circular dated 22 May 2000 on “Entrepreneurial Employee Stock Option Scheme” (now renamed as ERIS (SMEs)), IRAS’ Circular dated 27 December 2002 on “Changes to Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans (Revised Edition)”, and section 13J of the Income Tax Act (ITA).

⁴ Under the CEEBR Scheme, for each year, an employee of a company can enjoy tax exemptions on gains from ESOP or ESOW plans of up to \$1 million arising over a period of 10 years if certain criteria are met. The employee will enjoy a full tax exemption on the first \$2,000 worth of gains from the ESOP or ESOW plan and a tax exemption of 25% on the remaining amount of gains from the said ESOP or ESOW plan. This Scheme is to encourage more established companies which do not qualify for the exemption under the EEEBR Scheme to grant ESOP or ESOW plans to employees at all levels. For details, please refer to IRAS’ Circular dated 31 March 2001 on “Company Stock Option Scheme” (now renamed as ERIS (All Corporations)), IRAS’ Circular dated 27 December 2002 on “Changes to Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans (Revised Edition)”, and section 13L of the ITA.

⁵ Following the Budget announcement, the existing EEEBR and CEEBR Schemes will now be re-named under one umbrella scheme called the Equity Remuneration Incentive Scheme (hereinafter referred to as “ERIS”). The ERIS will henceforth be made up of three tiers. The first two tiers comprise the existing EEEBR Scheme (now known as the ERIS (SMEs)) and the CEEBR Scheme (now known as the ERIS (All- Corporations)), while the third tier, is the ERIS (Start-Ups).

ERIS (START-UPS)

Effective Date

5. The ERIS (Start-Ups) is available to tranches of stock options or shares granted under an ERIS (Start-Ups) Plan during the period from 16 February 2008 to 15 February 2013 (both dates inclusive). A qualifying company has to grant the options or shares within the first 3 years of its incorporation, to a qualifying employee to acquire ordinary shares of the qualifying company.

6. ESOP plans granting stock options to an employee to acquire redeemable shares, convertible shares or shares of a preferential nature or ESOW plans awarding such shares to the employee are excluded from the ERIS (Start-Ups). Similarly, stock options or share awards granted under a Group ESOP or ESOW Plan operated by the parent company of the qualifying company are also excluded from the ERIS (Start-Ups). The ERIS (Start-Ups) will be subject to review after 5 years.

QUALIFYING CRITERIA

ERIS (Start-Ups) Plan

7. An ESOP plan will qualify as an ERIS (Start-Ups) Plan if it meets the vesting period requirement as prescribed by the Singapore Exchange (SGX) for companies listed on the SGX, regardless of whether the company is listed on the SGX or not.

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

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

9. ESOP plans of companies not listed on the SGX must also satisfy the above vesting period requirement in order to qualify to be an ERIS (Start-Ups) Plan. In the case of 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 is to be used instead.

10. If SGX changes the above vesting period rules, companies would have to ensure that their ESOP plans comply with the amended rules from the date the change in rules takes effect in order for the ESOP plans to continue to qualify to be ERIS (Start-Ups) Plans.

11. The market value mentioned in paragraph 8 above 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 exceeds the average market price prevailing during the price fixing period, a one-year vesting period would apply for the purposes of the ERIS (Start-Ups) 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 ERIS (Start-Ups) Plan.

12. An ESOW plan must meet the minimum holding period⁶ before it can qualify as ERIS (Start-Ups) Plan. The minimum holding period is as follows:

- (a) where the price payable by an employee to acquire a share is equivalent to or exceeds the market value of the shares at the time of the grant of the share under the ESOW plan, a moratorium of at least $\frac{1}{2}$ a year must be imposed i.e. the share so acquired cannot be disposed of by that employee within $\frac{1}{2}$ year from the date of grant.
- (b) where the price payable by an employee to acquire a share is at a discount to the market value of the share at the time of the grant of the share under the ESOW plan, a moratorium of at least 1 year must be imposed i.e. the share so acquired cannot be disposed of by that employee within 1 year from the date of grant.

13. Companies do not have to apply for approval from Comptroller of Income Tax (referred hereafter as “the Comptroller”) to have their ESOP or ESOW plans considered as ERIS (Start-Ups) Plans. However, companies that wish to operate ERIS (Start-Ups) Plans have to keep sufficient documentation to show, when required by the Comptroller, that their ESOP or ESOW plans satisfy the required vesting period or minimum holding period as the case may be. In addition, they are required to comply with the administrative requirements as set out in paragraphs 32 to 36 of this circular.

Qualifying company

14. A qualifying company is any company that grants options under ESOP plans or shares under ESOW plans operated by the company⁷, to its employees within the first 3 years of its incorporation. The company must meet the following requirements at the time of grant of options or shares:

- (a) it is a company incorporated in Singapore;
- (b) it must carry on business activities in Singapore;

⁶ Please refer to paragraph 21 of IRAS’ Circular dated 27 December 2002) on “Changes to Tax Treatment of Employee Stock Options and Other Forms of Employee Share Ownership Plans (Revised Edition)”.

⁷ Under ERIS (Start-Ups), a parent company which grants stock options under a group ESOP plan or shares under a group ESOW plan to an employee of another company within its corporate group does not qualify as a qualifying company in relation to the employee.

- (c) it has a total share capital which is beneficially held directly by no more than 20 shareholders –
 - i. all of whom are individuals; or
 - ii. at least one of whom is an individual holding at least 10% of the total number of issued ordinary shares of the qualifying company; and
- (d) the aggregate market value of its gross assets at the time of grant of the options or shares (or if this is not available, the aggregate market value of its gross assets as reflected in its audited accounts at the end of the accounting period immediately before the grant of the options or shares), does not exceed \$100m. Where the market value of any asset is not available, its book value as reflected in the audited accounts may be used instead.

15. “Gross assets”, in relation to a company, means the total assets of the company including any tangible assets, intangible assets (e.g. goodwill, patents) or capitalized expenses (e.g. plant and machinery) as reflected in the company’s accounts, net of any provisions made such as the provision for depreciation of fixed assets, amortization of intangible assets and capitalized expense, provision for doubtful debts and diminution in value of assets. The example in Annex 1 illustrates how the aggregate market value of gross assets of a company is determined.

16 The audited accounts used to determine whether or not a company has met the aggregate gross asset value requirement must not be subject to a qualified opinion by the company’s external auditor.

17. In the absence of audited accounts or where the relevant audited accounts have been subject to a qualified external auditor’s opinion, a company may still be a qualifying company if it can provide a certificate from its external auditor confirming that the aggregate market value of gross assets of the company as at the date of grant of stock options or end of the relevant accounting period, as the case may be, to be not more than \$100 million.

Qualifying Employees

18. A qualifying employee has the same meaning as that under the ERIS (SMEs) (previously known as EEEBR). That is, he is an employee who has been granted stock options under an ESOP plan, or shares under an ESOW plan by a qualifying company and also meets the following requirements at the time of the grant of options or shares:

- (a) he is exercising employment for the qualifying company;
- (b) his committed working time per week with the qualifying company must be at least 30 hours; and
- (c) he does not have effective control of the qualifying company.

19. Where an employee’s committed working time with a qualifying company is less than 30 hours per week at the time of the grant of options or shares, he can nevertheless qualify as a qualifying employee if at the time, his committed working

time per week with that company amounts to at least 75% of his total working time per week. In such a case, the employee is required to make a declaration to the qualifying company on his total working time per week at the time of the grant of options or shares to enable the company to determine whether the 75% test has been met. In the absence of such a declaration to the company, the employee cannot be considered as a qualifying employee under the ERIS (Start-Ups). The examples in Annex 2 illustrate how this rule will be applied.

20. For the purposes of ERIS (Start-Ups):

- (a) a non-executive director of a company is not regarded as an employee of the company;
- (b) “committed working time”, in relation to an employee, means the total time the employee is officially required to spend on the business of his employer (excluding overtime and lunch time). Basically, this includes any time he would have been officially required to spend on the business of his employer 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;
- (c) “total working time” means the total committed working time as an employee for all employers plus, where applicable, the total time spent on remunerative work as a self-employed person;
- (d) in subparagraph (c), if an employee is also a self-employed person, the “total time spent on remunerative work as a self-employed person” shall be deemed to be 10 hours per week.

21. An employee is considered as having effective control of a company if he beneficially owns, directly or indirectly, voting shares that give him the right to exercise, or control the exercise of not less than 25% of voting power in the company. For most qualifying companies, 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 voting shares in the company. In such cases, if the employee does not give the requisite declaration to the company, he cannot be considered as a qualifying employee under the ERIS (Start-Ups).

COMPUTATION OF TAXABLE GAINS FROM ESOP OR ESOW PLAN UNDER THE ERIS (START-UPS)

22. Like ERIS (SMEs) and ERIS (All Corporations) the ERIS (Start-Ups) does not change the current basis of determining when gains from ESOP or ESOW plan accrue to an employee and the amount, as provided in section 10(6) of the ITA.

23. Gains from an ESOP or ESOW plan accrue to an employee at the time the options are exercised, the shares are granted or vested, or when the moratorium on the disposal of shares is lifted, as the case may be. The amount of taxable 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 (in the case of options) or the price paid/payable (in the case of share awards) to acquire the shares. Under the ERIS (Start-Ups), 75% of the gains of up to \$10 million from options or shares granted within the first 3 years of incorporation of the qualifying company accruing to an employee will, subject to paragraph 25, be exempt from tax, over a period of 10 years commencing from the year the employee first enjoys the partial tax exemption on his gains from ESOP or ESOW plan.

24. To illustrate, if an employee exercises his stock options (granted by the qualifying company during its 1st year of incorporation, say on 1 March 2008) in 2009 and makes a gain of \$1 million, 75% or \$750,000 of the gain will be exempt from tax. Over the next 9 years (i.e. years 2010 to 2018), he can enjoy 75% tax exemption on further ESOP gains of up to \$9m. The example in Annex 3 illustrates the application of the 75% tax exemption.

25. Where discounted stock options or share awards (i.e. where the exercise price is lower than the market value or net asset value of the underlying shares at the time of grant) are granted by a qualifying company to a qualifying employee under an ERIS (Start-Ups) Plan, the 75% tax exemption will only be applicable to the ESOP gains less the amount of the discount enjoyed. Correspondingly, the discounts are excluded from the \$10 million exempt income threshold as mentioned in paragraph 23 above.

26. For tranches of options or shares under ESOP or ESOW plans granted by the qualifying company after its first 3 years of incorporation, the employee may enjoy the tax exemption accorded under the ERIS (SMEs) on his ESOP or ESOW gains arising from the exercise of options or vesting of shares of up to another \$10 million over another 10 years, provided the terms and conditions for ERIS (SMEs) are met.

OPTIONS OR SHARES THAT CONCURRENTLY MEET CONDITIONS UNDER THE ERIS (START-UPS), ERIS (SMES) AND ERIS (ALL CORPORATIONS)

27. Where a company grants options or share awards to its employees under its ESOP or ESOW Plan that can concurrently meet all the qualifying conditions under the ERIS (Start-Ups), ERIS (SMEs) or ERIS (All Corporations), the company can only at any one time avail itself to one of the schemes in respect of the stock options or share awards granted under that ESOP or ESOW Plan. Once the company has availed itself to a particular scheme, say the ERIS (Start-Ups), the effects of the ERIS (Start-Ups) shall apply to all tranches of stock options or share awards subsequently granted under that ESOP or ESOW Plan, if the qualifying conditions of that particular scheme continue to be met.

28. The company will not be allowed to come within the ERIS (SMEs) or ERIS (All Corporations) in respect of any subsequent tranches of stock options or share awards granted under the same ESOP or ESOW Plan unless it can no longer meet the qualifying conditions under the ERIS (Start-Ups). For example, when a qualifying company grants options or share awards after the first 3 years' of its incorporation, it no longer qualifies under ERIS (Start-Ups). The company may then avail itself of either ERIS (SMEs) or ERIS (All Corporations), depending on which set of conditions it is able to fulfil.

29. In addition, under no circumstances can a particular tranche of stock options or share awards granted by a company to its employees under its ESOP or ESOW Plan concurrently qualify for a tax exemption under the ERIS (Start-Ups), ERIS (SMEs) and ERIS (All Corporations).

30. The examples at Annex 4 illustrate the application of the above requirements to be complied with, in cases where a company grants stock options under its ESOP Plan that can concurrently meet the qualifying conditions under the ERIS (Start-Ups), ERIS (SMEs) and ERIS (All Corporations).

DEFERMENT OF PAYMENT OF TAX ON GAINS FROM ESOP OR ESOW PLAN UNDER THE QEEBR SCHEME

31. An employee who enjoys the tax exemption on 75% of the gains from an ESOP or ESOW plan under the ERIS (Start-Ups) can apply to defer the payment of his tax on the remaining 25% of gains under the QEEBR Scheme. He may apply for deferral of tax payable on the gains for up to 5 years under the QEEBR Scheme, subject to the terms and conditions under the QEEBR Scheme being met.

ADMINISTRATIVE REQUIREMENTS

Qualifying Company

32. Companies are currently required to give each of their employees an annual return of remuneration⁸ prepared in a prescribed format. However, if companies have made arrangements 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 gains from stock options or share awards, for the year concerned.

33. With regard to the information to be provided on gains from options or share awards, a qualifying company is required to provide details of all gains from stock option gains or share awards, segregated into those qualifying for the 75% tax exemption under the ERIS (Start-Ups) and those that do not (including the amount of discount enjoyed by an employee on the stock options or share awards).

⁸ 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 1st March of the year following the year to which the employees' remuneration relates.

34. Whenever a qualifying company grants a tranche of stock options or share awards to a qualifying employee where the gain from the subsequent exercise of the options can qualify for a 75% tax exemption under the ERIS (Start-Ups), the company is required to give a written confirmation to the employee confirming that the qualifying criteria of the ERIS (Start-Ups) have been met in respect of that tranche of options or shares granted (Annex 5 provides a specimen of the written confirmation, which sets out the minimum information to be incorporated).

35. This requirement applies to every tranche of options or share awards granted by the qualifying company under its ERIS (Start-Ups) Plan to each of its qualifying employees. If it were subsequently found that any of the qualifying criteria under the ERIS (Start-Ups) has not been met, the 75% tax exemption will not be granted, or if previously granted, be withdrawn on the gains derived by the employee from the grant of or the exercise of that tranche of share awards or stock options. The Comptroller may also impose appropriate penalties on the company for giving any incorrect information unless this is due solely to an incorrect declaration made by its employee with respect to his total working time per week or the level of his beneficial share ownership in the company at the time of the grant of options (see paragraphs 19 to 21).

36. In addition, a qualifying 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 criteria under the ERIS (Start-Ups) have been met at the time the options were granted to the qualifying employee.

Qualifying Employee

37. As mentioned in paragraph 19, where an employee, who is granted stock options or share awards by a qualifying company that operates an ERIS (Start-Ups) Plan, works for the company for less than 30 hours per week at the time of the grant of stock options or shares, he is required to make a declaration to the company on his total working time per week at the time to enable the company to determine whether he meets the 75% test to qualify him under the ERIS (Start-Ups).

38. Further, as mentioned in paragraph 21, where it is not clear to the qualifying 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.

39. In the absence of a declaration, where required, to the qualifying company, the employee will not be considered as a qualifying employee under the ERIS (Start-Ups). If an employee is subsequently found to have made any incorrect declaration to the qualifying company, the 75% tax exemption will not be granted or, if previously granted, will be withdrawn on the relevant ESOP gains. In such cases, the Comptroller may also impose appropriate penalties on the employee.

40. In addition, a qualifying employee should keep the written confirmation mentioned in paragraph 34 and upon request, produce it to the Comptroller for verification.

ENQUIRIES

41. Taxpayers who have any queries concerning ERIS (Start-Ups) may call the Individual Income Tax Division (IITD) Helpline at 1800-3568300.

Inland Revenue Authority of Singapore

ANNEX 1

EXAMPLE TO ILLUSTRATE HOW THE AGGREGATE MARKET VALUE OF GROSS ASSETS OF A COMPANY IS DETERMINED FOR PURPOSES OF THE ERIS (START-UPS)

XYZ Company Pte Ltd, a manufacturing company incorporated in Singapore on 1 August 2006 operates an ESOP Plan. Its accounting year ends on 31 December. The company grants stock options to employees under the Plan on 1 July 2008 and 1 July 2009.

In this case, the aggregate market value of the company's gross assets at the time of the grant of options is not available. Therefore, to determine whether or not the company has met the aggregate gross asset value requirement to qualify under ERIS (Start-Ups) at the time the stock options are granted to its employees, reference should be made to total assets as shown in the company's balance sheet as at:

- a. 31 December 2007 in respect of options granted on 1 July 2008; and
- b. 31 December 2008 in respect of options granted on 1 July 2009.

The balance sheets of the company as at 31 December 2007 and 31 December 2008 are as follows:

XYZ Company Pte Ltd
Balance Sheet as at 31.12.2007 (in \$000s)

<u>Assets</u>		Aggregate Value of assets	book gross	Aggregate value of assets	market gross
Goodwill	9,000				
Less amortization	<u>500</u>	8,500 [1]		8,500	
Other Capitalized Expenses	1,500				
Less amortization	<u>500</u>	1,000 [2]		1,000	
Fixed Assets					
Land (Revalued on 31.12.06)		10,000 [3]		15,000	
Market value:\$15,000(2007), [4]					
Buildings (Cost)	10,000				
Less accumulated depreciation	<u>5,000</u>	5,000 [5]		5,000	
Plant & Machinery (Cost)	12,000				
Less accumulated depreciation	<u>6,000</u>	<u>6,000</u> [6]		6,000	
Total Fixed Assets		<u>21,000</u>			
Current Assets					
Stock in trade		10,000 [7]		10,000	
Short term share investments		5,000 [8]		10,000	
Market value:\$10,000 (2007) [9]					
Accounts Receivables	20,000				
Less provision for doubtful debts	<u>5,000</u>	15,000 [10]		15,000	
Cash & Bank Balances		<u>10,000</u> [11]		10,000	
Total Current Assets		<u>40,000</u>			
Total Assets (book value)		70,500			
		=====			
Aggregate market value of gross assets (determined based on the sum of [1]+[2]+[4]+[5]+[6]+[7]+[9]+[10]+[11]).				80,500	
				=====	
Financed by:					
Shareholders' funds		40,000			
Loans & Current Liabilities		<u>30,500</u>			
		70,500			
		=====			

XYZ Company Pte Ltd
Balance Sheet as at 31.12.2008 (in \$000s)

<u>Assets</u>		Aggregate value of assets	book gross	Aggregate value of assets	market gross
Goodwill	9,000				
Less amortization	<u>1,000</u>	8,000 [1]		8,000	
Other Capitalized Expenses	1,500				
Less amortization	<u>1,000</u>	500 [2]		500	
Fixed Assets					
Land (Revalued on 31.12.06)		10,000 [3]		20,000	
Market value: \$20,000(2008) [4]					
Buildings (Cost)	10,000				
Less accumulated depreciation	<u>5,500</u>	4,500 [5]		4,500	
Plant & Machinery (cost)	15,000				
Less accumulated depreciation	<u>7,000</u>	<u>8,000 [6]</u>		8,000	
Total Fixed Assets		<u>22,500</u>			
Current Assets					
Stock in trade		15,000 [7]		15,000	
Short term share investments		6,000 [8]		12,500	
(Market value: \$12,500 (2008)) [9]					
Accounts Receivables	30,000				
Less provision for doubtful debts	<u>1,000</u>	29,000 [10]		29,000	
Cash & Bank Balances		<u>12,000 [11]</u>		12,000	
Total Current Assets		<u>62,000</u>			
Total Assets (book value)		93,000			
		=====			
Aggregate market value of gross assets (determined based on the sum of [1]+[2]+[4]+[5]+[6]+[7]+[9]+[10]+[11]).				109,500	
				=====	
Financed by:					
Shareholders' funds		53,000			
Loans & Current Liabilities		<u>40,000</u>			
		93,000			
		=====			

Based on the above example, the company can be considered as a qualifying company for the stock options it grants to employees on 1 July 2008. The company has met all the criteria of a qualifying company under ERIS (Start-Ups). The aggregate market value (book value of any asset is to be used if its market value is not available) of the company's gross assets as reflected in its audited accounts at the end of the accounting period immediately before the grant of the options (i.e. as at 31 December 2007) is \$80.5 million. Hence, it meets the criterion that the aggregate market value of gross assets of the company is not more than \$100 million.

However, the company is not a qualifying company for the stock options it grants to employees on 1 July 2009. This is because the company has not met all the criteria of a qualifying company under ERIS (Start-Ups). The aggregate market value (book value of any asset is to be used if its market value is not available) of the company's gross assets as reflected in its audited accounts at the end of the accounting period immediately before the grant of the options (i.e. as at 31 December 2008) is \$109.5 million. Hence, it has not met the criterion that the aggregate market value of gross assets of the company is not more than \$100 million.

ANNEX 2

EXAMPLES TO ILLUSTRATE THE APPLICATION OF THE RULE OF 75% OF TOTAL WORKING TIME OF AN EMPLOYEE AT THE TIME OF GRANT OF SHARES OR STOCK OPTIONS UNDER AN ESOW OR ESOP PLAN

Example 1

Mr G is granted shares by FGH Company Pte Ltd on 1 July 2008. At the time, he is working for two companies, RTY Company Pte Ltd and FGH Company Pte Ltd. Mr G is not a self-employed person. Under the arrangement with his employers, Mr G is officially required to work for them as follows:

<u>Company</u>	<u>Official working hours (excluding overtime and lunch time)</u>
RTY Company Pte Ltd	8.30 am to 12.30 pm from Monday to Friday (5 days)
FGH Company Pte Ltd	2.00 pm to 6.30 pm from Monday to Saturday (6 days)

(Mr G may be required to work overtime for both companies on and off).

Mr G's committed working time per week with each company is as follows:

<u>Company</u>	<u>Committed working time per week</u>
RTY Company Pte Ltd	20 hours (4 hours X 5 days)
FGH Company Pte Ltd	<u>27 hours</u> (4.5 hours X 6 days)
Total	<u>47 hours</u>

In this example, Mr G's committed working time with each of his two employers, RTY Company Pte Ltd and FGH Company Pte Ltd, is less than 30 hours per week. His total working time per week is 47 hours. At the time FGH Company Pte Ltd grants him the shares, his committed working time per week with FGH Company Pte Ltd amounts to only about 57% (i.e. 27/47) of his total working time per week. He has not met the 75% total working time test under ERIS (Start-Ups) at the time of the grant of shares by FGH Company Pte Ltd and hence cannot be considered as a qualifying employee in respect of the shares granted to him by the company.

Example 2

Mr Y is granted stock options by BNM Company Pte Ltd on 1 July 2008. At the time, he is working for two companies, BNM Company Pte Ltd and MNL Company Pte Ltd. Mr Y is not a self-employed person. Under the arrangement with his employers, Mr Y is officially required to work for them as follows:

<u>Company</u>	<u>Official working hours (excluding overtime and lunchtime)</u>
MNL Company Pte Ltd	8.00 am to 1.00 pm on Saturday only (1 day)
BNM Company Pte Ltd	8.00 am to 1.00 pm from Monday to Friday (5 days)

(Mr Y may be required to work overtime for both companies on and off).

Mr Y's committed working time per week with each company is as follows:

<u>Company</u>	<u>Committed working time per week</u>
MNL Company Pte Ltd	5 hours (5 hours X 1 day)
BNM Company Pte Ltd	<u>25 hours</u> (5 hours X 5 days)
Total	<u>30 hours</u>

In this example, Mr Y's committed working time with each of his two employers, MNL Company Pte Ltd and BNM Company Pte Ltd, is less than 30 hours per week. His total working time per week is 30 hours. At the time BNM Company Pte Ltd grants him the stock options, his committed working time per week with BNM Company Pte Ltd amounts to about 83% (i.e. 25/30) of his total working time per week. He has therefore met the 75% total working time test under ERIS (Start-Ups) at the time of the grant of options by BNM Company Pte Ltd and hence can qualify as a qualifying employee in respect of the stock options granted to him by the company.

ANNEX 3

EXAMPLE TO ILLUSTRATE THE APPLICATION OF THE 75% INCOME TAX EXEMPTION UNDER THE ERIS (START -UPS)

Mr F derives the following gains in the years 2009 to 2018, which are assessable to income tax in the Years of Assessment 2010 to 2019:

	YA2010	YA2011	YA2012	YA2013	YA2014
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Salaries	100	100	100	100	100
Qualifying ESOP gains (under the ERIS (Start-Ups))**	1,000	2,500	0	1,500	0
Other ESOP gains	500	200	1,000	0	1,500
Rental income	20	50	30	10	30
Total Income	1,620	2,850	1,130	1,610	1,630

Cumulative qualifying ESOP gains under the ERIS (Start-Ups) ** from YA 2010 (first YA)

	1000	3,500	3,500	5,000	5,000
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	YA2015	YA2016	YA2017	YA2018	YA2019
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Salaries	100	100	100	100	100
Qualifying ESOP gains (under the ERIS (Start - Ups))**	2,000	0	2,000	1,500	1,000
Other ESOP gains	0	1,000	0	0	1,500
Rental income	100	150	130	90	250
Total Income	2,200	1,250	2,230	1,690	2,850

Cumulative qualifying ESOP gains under the ERIS (Start-Ups) ** from YA 2010 (first YA)

	7,000	7,000	9,000	10,500#	11,500#
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**This assumes that all the conditions under the ERIS (Start-Ups) are satisfied.

Under the ERIS (Start- Ups), Mr F can enjoy 75% tax exemption on qualifying ESOP gains up to \$10 million over 10 years. Once the \$10 million cap is reached, the excess of ESOP gains over \$10 million will be taxed in full.

The computation of the amount of total taxable income and ESOP gains that is exempt from income tax under the ERIS (Start-Ups) is provided in the next page.

Computation of the amount of Mr F's total taxable income and the amount of ESOP gains that is exempt from income tax under the ERIS (Start-Ups) for each of the Years of Assessment 2010 to 2019

	YA2010	YA2011	YA2012	YA2013	YA2014
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Salaries	100	100	100	100	100
Balance of qualifying ESOP gains (after exemption) under the ERIS (Start-Ups) ⁹	250	625	0	375	0
Other ESOP gains	500	200	1,000	0	1,500
Rental income	20	50	30	10	30
Total taxable income	870	975	1,130	485	1,630

Qualifying ESOP gains exempt from income tax under the ERIS (Start-Ups) :

Amount for the YA	750	1,875	0	1,125	0
Cumulative amount of qualifying ESOP gains that enjoy the 75% tax exemption starting from YA 2010 (first YA)	1,000	3,500	3,500	5,000	5,000

	YA2015	YA2016	YA2017	YA2018	YA2019
	(\$'000)	(\$'000)	(\$'000)	(\$'000)	(\$'000)
Salaries	100	100	100	100	100
Balance of qualifying ESOP gains (after exemption) under the ERIS (Start-Ups)	500	0	500	750	1,000
Other ESOP gains	0	1,000	0	0	1,500
Rental income	100	150	130	90	250
Total taxable income	700	1,250	730	940	2,850

Qualifying ESOP gains exempt from income tax under the ERIS (Start-Ups):

Amount for the YA	1,500	0	1,500	750¹⁰	0¹¹
Cumulative amount of qualifying ESOP gains that enjoy the 75% tax exemption starting from YA 2010 (first YA)	7,000	7,000	9,000	10,000	10,000

⁹ Computed as follows: amount of qualifying ESOP gains less the amount determined to be exempt from tax under the ERIS (Start-Ups).

¹⁰ Under the ERIS (Start-Ups), Mr F cannot enjoy the 75% tax exemption on any ESOP gains in excess of \$10 million. In YA 2017 (the 8th year), the cumulative qualifying ESOP gains under the ERIS (Start-Ups), amounts to \$9 million. Given the cap of \$10 million, although Mr F derives qualifying ESOP gains of \$1.5 million in YA 2018 (the 9th year), the amount of qualifying ESOP gains that can qualify for the 75% tax exemption will be limited to \$1 million (i.e. \$10 million less \$9 million). The excess of \$0.5 million will therefore not enjoy the 75% tax exemption and be taxed in full.

¹¹ No further tax exemption to be accorded to the taxpayer in respect of gains arising from the exercise of ERIS (Start-Ups) Plans as the cumulative gains arising from the ERIS (Start-Ups) Plans have already exceeded \$10 million.

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 THE ERIS (START-UPS), ERIS (SMEs) AND ERIS (ALL CORPORATIONS)

Example 1

Jack Company Ltd is incorporated on 1 June 2008 and implements an ESOP Plan for its employees on 1 July 2008.

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

- Tranche A on 1 August 2008
- Tranche B on 31 December 2008
- Tranche C on 31 December 2009
- Tranche D on 1 July 2012

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 ERIS (SMEs) and ERIS (Start-Ups).

Tranche D stock options granted by the company to its employees under its ESOP Plan however cannot meet the qualifying company condition under the ERIS (Start-Ups) (because the date of the grant of Tranche D stock options occurs after the first 3 years of Jack Company Ltd's incorporation) but can meet the qualifying conditions of the ERIS (SMEs).

Jack Company Ltd has decided to avail itself to the ERIS (Start-Ups) in respect of Tranche A stock options granted to its employees on 1 August 2008 under its ESOP Plan. Such being the case, the effects of the ERIS (Start-Ups) shall apply to all tranches of stock options subsequently granted under the ESOP Plan, if the qualifying conditions of the ERIS (Start-Ups) continue to be met.

Accordingly, in Jack Company Ltd's case, the ERIS (Start-Ups) 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 ERIS (SMEs) 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 ERIS (SMEs) 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 ERIS (Start-Ups) but is able to meet all the conditions of the ERIS (SMEs) in respect of such tranche of stock options.

Example 2

Jill Company Ltd is incorporated in June 2008 and has implemented an ESOP Plan for its employees on 1 July 2008.

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

- Tranche E on 1 August 2008
- Tranche F on 31 December 2008
- Tranche G on 31 December 2009
- Tranche H on 1 January 2010
- Tranche I on 31 December 2012

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 ERIS (Start-Ups) and ERIS (SMEs).

Tranche H stock options granted by the company to its employees under its ESOP Plan however cannot meet the qualifying company condition under the ERIS (Start-Ups) (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 ERIS (All Corporations).

Tranche I stock options granted by the company to its employees under the ESOP Plan cannot meet the 25% requirement to qualify the ESOP Plan under the ERIS (All Corporations). In addition, Tranche I also fails to meet the qualifying conditions of the ERIS (Start-Ups) as it has been granted after the first 3 years of Jill Company Ltd's incorporation. However, Tranche I can now meet the qualifying conditions of the ERIS (SMEs) 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 reason, Jill Company Ltd has decided to avail itself to the ERIS (All Corporations) in respect of Tranche E stock options granted to its employees on 1 August 2008 under its ESOP Plan, even though such stock options can come within the ERIS (Start-Ups). Such being the case, the effects of the ERIS (All Corporations) shall apply to all tranches of stock options subsequently granted under the ESOP Plan, if the qualifying conditions of the ERIS (All Corporations) continue to be met.

Further, in such a case, Jill Company Ltd will not be allowed to come within the ERIS (SMEs) 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 ERIS (SMEs) 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 ERIS (All Corporations) shall be taxed in full.

Based on the above, in Jill Company Ltd's case, the ERIS (All Corporations) 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 ERIS (SMEs) 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 ERIS (All Corporations) cannot be met for Tranche I stock options granted by the company to its employees under its ESOP Plan, the gains derived by its

employees arising from the exercise of Tranche I stock options shall be liable to tax in full.

<Employee's name & identification number>
<Employee's address>

<Date: day/month/year>

Dear <Employee's name>

QUALIFYING CRITERIA UNDER THE EQUITY REMUNERATION INCENTIVE SCHEME- (START-Ups)[ERIS (START-UPS)]

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 (Start-Ups) Plan", as set out in IRAS' circular on " Equity Remuneration Incentive Scheme (ERIS (Start-Ups))" dated 1 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 the 75% income tax exemption on gains derived by you from the exercise of the options or grant of the share awards*. However, this is provided you have not already enjoyed the 75% income tax exemption on ESOP/ESOW gains exceeding \$10 million over a period of 10 years commencing from the year the partial tax exemption was first enjoyed by you.

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

Name, designation and signature
of Authorized Personnel of company

* Delete whichever is not applicable