

IRAS e-Tax Guide

Tax Treatment of Employee Stock Options And Other Forms of Employee Share Ownership Plans (Second Edition)



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Tax Treatment of Employee Share Options and Other Forms of Employee Share Ownership Plans

1 Aim

- 1.1 This e-Tax Guide provides details on the tax treatment of the gains and profits derived from employee share options (“ESOP”) and other forms of Employee Share Ownership (“ESOW”) plans as well as the relevant administrative requirements. It consolidates the six e-Tax Guides previously issued on ESOP and ESOW¹.
- 1.2 It also covers details of Qualified Employee Equity-based Remuneration Scheme (“QEEBR Scheme”), the “deemed exercise” rules and tracking options applicable to gains from ESOP and ESOW plans.
- 1.3 It would be relevant to individuals who are granted the shares under ESOP or ESOW plans and also companies which grant shares under these plans to any individual by reason of any office or employment held by the person (e.g. a director).

2 At a glance

- 2.1 For shares granted prior to 1 Jan 2003 under any ESOP or ESOW plans, the gain is subject to tax if the individual is physically present in Singapore or exercising employment² in Singapore while he³ exercises the stock option under ESOP or the shares granted under ESOW are vested to him.
- 2.2 For shares granted on or after 1 Jan 2003 under any ESOP or ESOW plans, the gain derived from the plans is taxable if the individual is granted the options or shares while he is exercising employment in Singapore.

¹ This e-Tax guide is a consolidation of 6 previous IRAS e-Tax Guides:

- i. “Gains or profits from share option” published on 30 Jun 1997
- ii. “Valuation of Gains or profits from option to purchase shares in a company listed on the Singapore Exchange” published on 30 May 1998
- iii. “Qualified employee stock option scheme” published on 31 Mar 2000
- iv. “Relief for Double Taxable of Gains from Employee share options” dated 31 Mar 2000
- v. “Changes to tax treatment of employee stock options and other forms of employee Share ownership plans” published on 31 Aug 2002
- vi. “Tax Treatment of Employee Stock Option and other forms of Employee Share Ownership Plans – Alternative to the deemed exercise rule” published on 19 Aug 2004

² If an individual is exercising employment in Singapore, any temporary absences from Singapore would be treated as incidental to his employment in Singapore.

³ In the e-Tax guide, the terms “he” or “his” would not be confined to make reference to the male gender but would also be used to refer to the female gender as the context required.

- 2.3 Where there is a moratorium on shares granted under any ESOP or ESOW plans, the taxable options or shares derived by individual will only constitute gains accruing to him on the date the moratorium is lifted.
- 2.4 Generally, the amount of taxable gains or profits is the difference between the open market price of the shares at the time of exercising/accruing/vesting of the ESOP/ESOW and the amount paid by the individual for such shares.
- 2.5 As a tax deferral scheme, QEEBR was introduced in 1999 to ease the cash flow problems faced by some employees who do not sell their shares after exercising the option (paragraph 8).
- 2.6 Deemed exercise rule applies when a foreigner ceases employment or Singapore Permanent Residents (“SPRs”) leave Singapore permanently. Under the rule, the final gains from unexercised ESOPs, or other relevant ESOPs or ESOWs are deemed to be income derived by the individual one month before the date of cessation of employment or the date the right or benefit is granted, whichever is the later (paragraph 14).
- 2.7 As an alternative to “deemed exercise” rule and subject to certain conditions, employers are allowed to track when the “income realization event” of the foreign employee occurs (paragraph 16).

3 Glossary

3.1 Employee share options (ESOP) plans

The plans give the rights, usually to employees, to purchase shares in the company at a future date. It includes “stocks options”.

3.2 Employee Share Ownership (ESOW) plans

The plans allow an employee of a company to own or purchase shares in the company or in its parent company. They include share awards and other similar forms of employee share purchase plans. It excludes phantom shares and share appreciation rights.

3.3 Exercise of ESOP

To purchase shares of the company. For tax purpose, “exercise” includes the assignment or release of the right to acquire shares to other individuals.

3.4 Moratorium (Selling restriction) period

The period of time within which the individual is not allowed to sell the shares after the ESOPs or shares under ESOW plan are exercised/vested.

3.5 Restricted Shares

Shares that are subject to selling restriction.

3.6 Vesting period

The period of time which the individual is not allowed to exercise the ESOP, or acquire the shares granted under ESOW.

4 Background

- 4.1 Any person who obtained an ESOP by reason of his office or employment is deemed to derive an amount of income at the time he exercised the option. Prior to 1 Jan 2003, where an individual exercised his ESOP while he was physically present or exercising employment in Singapore, the gains or profits derived from exercising the options were subject to tax in Singapore under section 10(1)(g) of the Singapore Income Tax Act (“ITA”).
- 4.2 On the other hand, any gains or profits from ESOP exercised by an individual while he was overseas and not exercising employment in Singapore were not regarded as income derived from Singapore.
- 4.3 For shares under any ESOW plan (“share awards”) with vesting imposed, the individual who was granted the shares before 1 Jan 2003 would generally not be assessed to tax on any gains derived by him if the ownership of the shares were vested only after he has left his employment in Singapore.

5 Change in basis of taxation

- 5.1 With effect from 1 Jan 2003, any ESOP or ESOW gains would be taxed in Singapore to the extent that there is a nexus between that ESOP or share awards and the employment exercised in Singapore i.e. the ESOP or share awards are granted while the individual is exercising employment in Singapore.
- 5.2 Under section 10(6), an individual who is granted ESOP share options or ESOW share awards while he is exercising employment in Singapore, the full amount of ESOP or ESOW gains would be regarded as gains or profits from employment derived by that individual from Singapore under section 10(1)(b) of ITA. This is irrespective of where the ESOP is exercised or where the shares under ESOW are vested.
- 5.3 On the other hand, an individual who is granted ESOP on or after 1 Jan 2003 in respect of employment exercised overseas, any gains derived by him from the exercise of such ESOP is not regarded as income derived from Singapore and will not be subject to tax in Singapore. For shares under ESOW plan, this treatment shall apply regardless of whether the individual is in or outside Singapore as at the date of vesting.
- 5.4 The tax treatment of the gains is summarised as follows:
 - a) ESOP/ESOW plans (with vesting imposed) granted while an individual is exercising employment in Singapore

Granted before 1 Jan 2003	Taxable if the ESOP is exercised or the shares under ESOW are vested while the individual is physically present in Singapore or holding an employment in Singapore.
Granted on or after 1 Jan 2003	Taxable.

b) ESOP/ESOW plans (with vesting imposed) granted while an individual is NOT exercising employment in Singapore⁴

Exercised or vested before 1 Jan 2002	Taxable if the ESOP is exercised or the shares under ESOW plan are vested while the individual is physically present in Singapore or holding an employment in Singapore.
Exercised or vested on or after 1 Jan 2002	Not taxable. The employer in Singapore will not be allowed any tax deduction for any cost borne, whether directly or indirectly, in relation to the vesting of such shares under any ESOW plan.

The examples in Annex A illustrate the tax treatment of gains from ESOP. Annex B provides the illustrations for the tax treatment of gains from shares granted under any ESOW plans (with vesting period).

6 Timing of taxing the ESOP/ESOW gains

6.1 ESOW plans with NO vesting imposed

The gains are taxable in the year when the shares are granted.

6.2 ESOP or ESOW plans with vesting imposed

ESOP/ESOW plans	Granted before 1 Jan 2003 ⁵	Granted on or after 1 Jan 2003 ⁶
Without selling restriction (moratorium)	Taxable in the year when <ul style="list-style-type: none"> the individual exercised the ESOP 	Taxable in the year when <ul style="list-style-type: none"> the individual exercised the ESOP or the shares under ESOW plan are vested

⁴ This does not apply to an employee who was temporarily away. As such absence from Singapore would be treated as incidental to his Singapore employment.

⁵ The individual must be physically present in Singapore or holding an employment in Singapore when he exercised the ESOP or when the shares under the ESOW plan are vested.

⁶ The ESOP or shares under ESOW plans are granted while the individual is exercising employment in Singapore.

	or	on the individual
With selling restriction	<ul style="list-style-type: none"> the shares under ESOW plan are vested on the individual 	Taxable in the year when the selling restriction is lifted

The examples in Annex C illustrate when the gains derived from restricted ESOPs and restricted shares under ESOW Plans are to be taxed.

7 Computation of the gains from ESOP/ESOW plans

7.1 The rules for valuing the gains or profits derived from the exercise of share options are prescribed in section 10(6) ITA. The gains is computed based on the open market price of the shares on the relevant date (see scenario 1 and 2 below), less any amount paid for them.

Scenario 1: Computation of the gains from ESOP/ESOW without selling restriction

	ESOP	ESOW plan (with vesting imposed)	ESOW plan (with no vesting imposed)
Open market price of share on	Date of exercise	Date of vesting	Date of grant
Less	Price paid by the individual for the shares (exercise price)		
Equals to	Taxable gain		

Scenario 2: Computation of the gains from ESOP/ESOW with selling restriction (moratorium)

Open market price of the shares on the date the selling restriction is lifted	-	Exercise price of the shares	=	Taxable gain
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7.2 Where the open market price of the shares is not readily available, the net asset value of the shares will be used to determine the market price of the shares.

7.3 Notwithstanding the above, for shares of company listed on Singapore Exchange (“SGX”), the open market price is determined based on the type of shares acquired.

a) Newly-issued shares

When an individual exercises his options and new shares have been issued to him, the new shares cannot be traded on the SGX until they are listed on the SGX.

Section 10(6)(d)(i) provides that the gains or profits derived from the exercise of such options will be computed based on the last done price on the date they are first listed on SGX, following their acquisition, less the amount paid for the shares.

The above valuation rule applies to share options exercised or share awards vested on or after 23 Jan 1998.

b) Treasury shares⁷

When an individual exercises his options and treasury shares have been issued to him, there is no requirement for the shares to be re-listed.

However, the individual does not have the legal rights of ownership over the treasury shares or a free right of disposal of the treasury shares until the shares are delivered and registered in his name.

Section 10(6)(d)(ii) of the ITA provides that the gain or profit to acquire treasury shares of a Singapore incorporated company listed on the SGX shall be computed based on the last done price of the company’s shares in the open market on the date the shares are credited to his CDP account, less the amount paid for the shares.

The revised change applies to share options exercised or share awards vested on or after 1 Jan 2009.

8 Qualified Employee Equity-based Remuneration (QEEBR) Scheme

8.1 QEEBR Scheme was introduced in 1999. Under this scheme, the payment of tax arising from stock option gains can be deferred for up to 5 years with interest charge.

8.2 The purpose of the QEEBR scheme is:

⁷ Treasury share as defined in Section 2 of ITA:

- (a) In relation to a company incorporated under the Companies Act or any corresponding previous written law, means a treasury share as defined in section 4(1) of that Act; and
- (b) In relation to a company incorporated under the law of a country other than Singapore, means a share issued by the company which is subsequently acquired and held by it.

- a) to ease the cash flow problems faced by employees who do not sell their shares after exercising the option; and
- b) to facilitate the use of stock options as a remuneration tool.

8.3 The scheme applies to:

- a) share options granted under a qualified ESOP Plan which are exercised on or after 1 Jan 1999; and
- b) restricted shares under a qualified ESOW plan which are granted on or after 1 Jan 2002.

9 Qualifying criteria

9.1 Under the tax deferral scheme, the applicant must meet certain criteria.

(A) Qualified ESOP/ESOW plan

9.2 A qualified ESOP/ESOW plan is one which meets the vesting period requirement as prescribed by the SGX for companies listed on the SGX. The same requirement applies to ESOP or ESOW plans in respect of shares of companies not listed on the SGX.

a) The vesting period requirement for ESOP is as follows :

Where exercise price is	Period which the ESOP may not be exercised
= or > the open market price at the time of grant	within 1 year from the grant of the option
< the open market price at the time of grant	within 2 year from the grant of the option

b) ESOW Plan will qualify for the scheme provided that there is a minimum holding period requirement for such shares under the plan that achieves similar effect as the vesting period requirement in ESOPs.

The minimum holding period requirement for restricted shares granted under ESOW Plan is as follows:

Where price payable is	Period which the ESOW may not be disposed of
= or > the open market value at the time of grant	within $\frac{1}{2}$ year from the grant of the share
0 or < the open market value at the time of grant	within 1 year from the grant of the share

- c) For ESOP or ESOW plans of companies listed on the SGX, the open market value is the average market price during the price fixing period immediately before the options are granted. The price fixing period is explicitly defined for each share option scheme in the company circulars to shareholders, which inform them of the proposed motion to approve the share option scheme. The computation of the average market price is decided by the company and is also stated in the company circulars.
- d) If SGX changes the above vesting period rules, companies would have to ensure that their ESOP or shares under ESOW plans comply with the amended rules from the date the change in rules takes effect.
- e) For unlisted companies where the market value of the shares is not readily available, the net asset value of the shares will be used instead.
- f) Companies may have ESOP/ESOW plan with staggered vesting period. ESOP or shares under ESOW that satisfied the vesting period requirement will also qualify for the tax deferral scheme.

Example

Year	Percentage of Option Exercisable					Total
	1	2	3	4	5	
	20%	20%	20%	20%	20%	100%

In this example, 40% of options may be exercised within 2 years and 60% of options may be exercised after 2 years. Assuming the vesting period requirement is 2 years, the 60% of options that satisfy the requirement will qualify for the tax deferral scheme.

- g) Companies need not apply to IRAS for approval to have such plans considered as qualified ESOP or ESOW plan. However, they need to:
 - i. keep sufficient documentation to prove that the ESOP or ESOW plan satisfy the vesting/holding period requirements; and
 - ii. certify on employee's application form for deferral tax that the ESOP or ESOW is a qualified ESOP or ESOW plan.

(B) Qualifying Employee

- 9.3 IRAS will consider employee's application only if he satisfies the following conditions:

For options granted <u>before 1 Jan 2003</u>	For options granted <u>on or 1 Jan 2003</u>
<ul style="list-style-type: none"> • he is exercising an employment in Singapore at the <u>time of exercise</u> of the stock option; • the stock option was granted to him by: <ul style="list-style-type: none"> i. the company which he was working at the time of exercise of the ESOP; or ii. an associated company⁸ of the company which he was working at the time of exercise of the ESOP/ESOW; 	<ul style="list-style-type: none"> • he is exercising an employment in Singapore at the <u>time of grant</u> of the ESOP/ESOW; • the ESOP/ESOW was granted to him by: <ul style="list-style-type: none"> i. the company which he was working at the time of grant of the ESOP/ESOW ; or ii. an associated company of the company which he was working at the time of grant of the ESOP/ESOW plan;
<ul style="list-style-type: none"> • the tax on the ESOP/ESOW gains is not borne by any employer. 	

9.4 Approval will not be given to the employee if:

- he is an undischarged bankrupt;
- he is ascertained to be delinquent taxpayer based on IRAS' record;
- his tax on the stock option gains is less than \$200; or
- he is granted area representative status; or
- he is not allowed to settle his tax by instalments under existing guidelines.

10 Terms and conditions for tax deferment

The terms and conditions for tax deferment are set out below.

10.1 Computation of tax on stock option gains

- a) Employee's tax payable on his income, including the stock option gains, will be computed in the usual manner to arrive at the final tax payable;
- b) Marginal tax rate(s) will be applied on the stock gains to arrive at the amount of tax to be deferred;
- c) If tax rebate is given for that year of assessment, the tax on stock option gains shall be the amount after deducting the corresponding amount of tax rebate;

⁸ A company is considered to be an associated company of another company if both companies belong to the same corporate group of companies (e.g. parent and its subsidiaries)

- d) The amount of tax to be deferred will be limited to the actual tax payable arising from the assessment and it will be adjusted if there is a change to the chargeable income due to subsequent revisions to the assessment (refer to examples 1 to 4 of Annex D).

10.2 Period of deferment

Qualified employee can choose to defer the payment of tax on the gains from ESOP or ESOW plan for any period of time (e.g. 2 or 3 years) up to maximum of 5 years.

The period commences from the first day of the year of assessment for which the ESOP or ESOW gains are assessed. For example, the deferral of tax payment on ESOP or ESOW gains for the year of assessment 2007 can be deferred up to 31 Dec 2011 (i.e. 1 Jan 2007 to 31 Dec 2011).

The same period of deferral should apply to all gains derived from the qualified ESOP/ESOW which are assessable to tax in the same year of assessment.

10.3 Interest charge

Interest rate chargeable for the deferral of tax will be pegged to the average prime interest rate.

The interest will be computed annually on 15th April. Simple interest method will be used to compute the interest charge. The interest charge will only start to accrue after the expiry of the 1-month period allowed for payment of tax assessed.

The examples in Annex D illustrate the computation of interest charged under different scenarios.

10.4 Payments of tax deferred and interest charge

The tax deferred and the interest charged will become due on the expiry of the deferral period.

The employee may settle the deferred tax early in one lump sum or partially. If he makes a partial settlement, it will be treated as payment for the principal amount of the deferred tax. The interest charge will be adjusted accordingly (refer example 5 & 6 in Annex D).

10.5 Termination of deferral of tax

The amount of tax deferred and the interest charged will become due immediately in the following events:

- a) In the case of foreign employee and SPR, when:

- he ceases his employment in Singapore and leaves Singapore; or
 - he is posted overseas; or
 - he leaves Singapore for any period exceeding 3 months, unless he can prove that he is not leaving Singapore permanently.
- b) When the employee becomes bankrupt; and
- c) When the employee passes away (the deferred tax and the appropriate interest charge would be recovered from the estate of the deceased).
- 10.6 Once the deferral of tax is approved, it will not be terminated because of the following events:
- a) the employee sells the shares which tax deferral on the gains has been granted;
 - b) a Singaporean ceases employment with his employer, who had granted the options to him, and tax deferral on the gains has been approved.

11 Application procedure for tax deferral

- 11.1 Any employee, who wishes to defer the tax payment on the gains from qualified ESOP or ESOW Plans, is required to:
- a) complete the Application Form which is downloadable from IRAS' website at <http://www.iras.gov.sg>;
 - b) obtain his employer's certification on the Application Form that the ESOP or shares under ESOW Plans meet the vesting period requirement in paragraph 9.1. If the stock option was granted under a Group ESOP Plan, the certification may be done by the parent company or his employer within the group; and
 - c) submit the Application Form either separately or together with his tax return to the Comptroller not later than 15th April.
- 11.2 Employee who has applied for the tax deferral will be notified in writing of the outcome of his application.

12 Administrative requirement for tax deferral

- 12.1 Companies are required to complete Appendix 8B together with the Form IR8A if their employees derived gains or profits from ESOP/ shares under ESOW Plans. Details of the gains need to be segregated as follows:

For gains that do not qualify for any tax exemption

Section A Employee Equity based Remuneration (EEBR) scheme

For gains that qualify for tax exemption

Section B Equity Remuneration Incentive Scheme (ERIS) SMEs

Section C Equity Remuneration Incentive Scheme (ERIS) All Corporations

Section D Equity Remuneration Incentive Scheme (ERIS) Start-ups

12.2 However, if the companies have made arrangement to transmit salary data electronically to the CIT for auto-inclusion, they would be allowed to provide their employees with details of the remuneration (including ESOP/ESOW gains) in any format other than the Appendix 8B of Form IR8A.

12.3 Companies have to keep sufficient documentation if they wish to operate ESOP or ESOW Plans which qualify for the respective ERIS in Sections B to D above. This may be required by the CIT to show that their plans satisfy the requirements of the respective schemes. Details of the various ERIS can be found in the e-Tax Guide “Equity Remuneration Incentive Scheme (ERIS)”.

12.4 In addition, companies are required to comply with the administrative requirements as set out under the various schemes and such other administrative requirements as the CIT may impose from time to time.

12.5 If the CIT has subsequently found that any of the qualifying criteria under the respective incentive schemes has not been met, the respective tax exemption would not be granted or would be withdrawn if it was granted previously. The CIT may also impose appropriate penalties on the company for non-compliance of any term or condition under the respective EEBR Schemes, or for giving any incorrect information, unless this is solely due to incorrect declaration made by its employees.

13 Tax treatment on stock gains derived by foreign employees upon cessation of employment in Singapore – “Deemed Exercise” rule and “Tracking Option”

13.1 When a foreign employee ceases employment in Singapore, he may have some unexercised ESOPs or unvested ESOW plans. The gains from these unexercised ESOPs or unvested ESOWs are subject to tax on a “deemed exercise” basis.

The following employees are affected:

- a) Foreigners (non-citizens of Singapore);
- b) Singapore Permanent Residents leaving Singapore permanently;
- c) Singapore Permanent Residents posted to work overseas.

13.2 The “deemed exercise” rule applies to any ESOPs or ESOW plans granted on or after 1 Jan 2003 to foreign employees while exercising employment in Singapore.

14 Deemed exercise rule

14.1 Under “deemed exercise” rule, the foreign employee is deemed to have derived a final gain from the following when he ceases employment in Singapore:

- a) unexercised ESOPs;
- b) restricted ESOPs where the moratorium has not been lifted;
- c) shares under ESOW plan with vesting imposed where the beneficial interest from the ownership of the shares has not yet vested; and
- d) restricted shares under ESOW plans where the moratorium has not been lifted.

14.2 The final gains are deemed to be income derived by the individual one month before the date of cessation of employment or the date the right or benefit is granted, whichever is the later. The amount of final gains is computed as follows:

	ESOP (not exercised yet) or restricted ESOP (moratorium not lifted yet)	ESOW (vesting imposed but not vested yet) or restricted share under ESOW (moratorium not lifted yet)
Open market price ⁹ of the shares as at	<u>One month</u> before the foreign employee ceases employment in Singapore; or <u>date of grant</u> , whichever is the later	
Less:	Exercise price	Price paid or payable by employee
Equals to	Final gains (or deemed gains)	

The examples in Annex E illustrate the computation of final gains under “deemed exercise” rule.

⁹ The net asset value of the shares will be used if the open market price of the shares is not readily available.

14.3 In the event where the actual gains (refer to paragraph 7) derived by the foreign employee is lower than the final gains computed as above, CIT may, as an administrative concession, reassess the tax liability based on the actual gains in the year of assessment which the deemed exercise relates.

15 Administrative requirements under the “Deemed Exercise” rule

15.1 Employer is required to furnish details of final gains computed in accordance with paragraph 14.1 above when it seeks tax clearance for such foreign employee.

15.2 The foreign employee who wishes to have a reassessment of his tax liability based on the actual gains must submit documentation (e.g. letter from employer) with following information to CIT:

For shares acquired under ESOP	For shares acquired under ESOW plan
<ul style="list-style-type: none"> the date of exercise of ESOP or the date the moratorium is lifted; the open market price of the shares on the date of exercise of ESOPs or the date the moratorium is lifted; exercise price of the shares. 	<ul style="list-style-type: none"> the date of vesting or the date the moratorium is lifted; the open market price of the shares on the date of vesting or the date the moratorium is lifted; price paid or payable for the shares.

15.3 Application for reassessment must be made within the following time frame:

For Year of assessment 2007 or earlier	For Year of assessment 2008 or later
6 years from the year of assessment following the year in which the “deemed exercise rule” applies	4 years from the year of assessment following the year in which the “deemed exercise rule” applies

16 Tracking Option

16.1 Tracking option¹⁰ is an alternative to the “deemed exercise” rule. Under this scheme, it allows employer to track when the “income realization event” of the foreign employee occurs and report the gains to CIT then.

16.2 The “income realization event” refers to the following:-

¹⁰ This is provided for under sections 10(7A) to (7C) of the ITA.

- a) when the foreign employee exercises options that were unexercised; or
- b) when the shares acquired under any ESOP plan are no longer subject to any restriction; or
- c) when the shares under any ESOW plan that were unvested or restricted at the time he ceases employment in Singapore become vested or are no longer subject to any restriction.

16.3 Upon occurrence of such events, the employer will:

- a) compute and report the actual gains from the income realization event of that employee to the CIT; and
- b) undertake to collect and pay the tax on such actual gains to the CIT.

16.4 The “deemed exercise” rule will not be applied if the employer has been approved to adopt the Tracking Option.

16.5 However, cases where “deemed exercise” rule has been applied and assessment has been already finalised will not be eligible for the Tracking Option.

17 Qualifying Criteria for Tracking Option

17.1 An employer has to satisfy several criteria in order to be considered for the Tracking Option.

(A) Qualifying Employer

17.2 The employer that grants the ESOPs or ESOW plans (“stock plans”) must be:

- a) a Singapore incorporated company; or
- b) a branch of a foreign incorporated company registered in Singapore under the Companies Act and carrying on business activities in Singapore.

17.3 Where the stock plans are granted by a parent company, who is operating a Group stock plan, the employer can still qualify for the tracking option if:

- a) it satisfies the condition in (a); and
- b) it does not separately operate any stock plan on its own at the time of the grant of the ESOPs or shares under ESOW Plans.

(B) Human Resource (HR) and computer system

17.4 The employer must have HR and computer system that are able to track the status of stock plans. It must furnish in writing to CIT specifying the details of:

- a) tracking mechanism with samples of the entire tracking process (e.g. excel spreadsheet or other documents showing the details of the stock plans being tracked);
- b) computer or HR system which effects the tracking. If the management of the stock plans is outsourced to an external entity, it is necessary to enclose:
 - i. a copy of the outsourcing agreement; and
 - ii. documentation to show that the employer has regular audits of the management of the stock plans;
- c) the number of years it has been tracking the stock plans of all its employees (including those who are overseas or posted from one country to another). Only employers with at least 2 years of tracking experience will be eligible for the Tracking Option;
- d) how the system alerts the company's HR or finance department when an employee's ESOPs are exercised or shares under ESOW Plans are vested;
- e) how the system separately tracks those stock plans that are granted while employee is exercising employment in Singapore and those who are exercising employment overseas; and
- f) whether there are any mechanisms in place to ensure compliance with tax payments under the Tracking Option (e.g. compulsory sale of a portion of the ESOPs or shares under any ESOW plan);

(C) Capital Requirement

17.5 In order to satisfy this criterion, the company must meet adequate capital requirements. The following information has to be furnished to CIT:

- a) details of whether the company or its parent company is listed and the name of exchange where it is listed;
- b) details of capitalization at the date of application:

For Singapore-incorporated company:

- information to show that its capitalization is within the top 25% of market capitalization in the Straits Times Industrial Index; and

For a branch of a foreign-incorporated company registered in Singapore:

- information to show that the capitalization of its parent company is within the top 25% (10% prior to 15 Apr 2011) of capitalization in one of the leading and universally recognized (by equity research houses) stock index (see Annex F) in the parent company's country of incorporation.

(D) Excellent taxpaying record for past 3 years

17.6 The company must not have any record of the following for the 3 years immediately before the date of application:

- a) late filing of tax returns; or
- b) late payment of taxes; or
- c) committed any offence under the ITA.

18 Requirements under the Tracking Option

18.1 Once the Tracking Option is approved, the employer will need to track ***all*** the unexercised ESOPs held by the particular foreign employee when he ceases employment in Singapore. The employer will not be allowed to selectively apply the Tracking Option only to certain tranches of shares or to subsequently opt out of the "Tracking Option".

18.2 The employer is also required to provide a Letter of Undertaking (LOU) (see specimen at Annex G). It has to do the following for each of its foreign employee covered under the Tracking Option:

- a) to keep track of the occurrence of the income realization event, regardless of whether the foreign employee remains in the employer's employment;
- b) to compute and report the amount of gains from any income realization event to CIT within 30 days from the occurrence of such event;
- c) to furnish an annual return by 31 January each year to CIT providing details of the status of the unexercised ESOPs as at 31 Dec of the previous year;

- d) to notify CIT at least 30 days in advance of the company's intention to cease carrying on business in Singapore due to corporate restructuring, merger etc;
- e) to notify CIT immediately in the event of the death of the foreign employee; and
- f) to collect and pay the income tax due on the actual gains that arises from the income realization event, upon receipt of the Notice of Assessment.

18.3 If an employer fails to meet the above requirements:

- a) CIT will raise an assessment under the "deemed exercise" rule. The deemed gains will be deemed to accrue in the year it fails to meet the requirement or the year of notification given under (d) & (e) of paragraph 18.2 above;
- b) CIT may also impose a penalty of 200% of the tax assessed on the employer; and
- c) CIT may also disallow the employer to adopt the Tracking Option in future for other foreign employees.

18.4 For all other foreign employees whom the employer did not opt for the Tracking Option, the "deemed exercise" rule will continue to apply.

19 Administrative requirements under the Tracking Option

19.1 An employer who wishes to opt for the Tracking Option is required to:

- a) submit a written application to CIT two months before foreign employee ceases employment in Singapore;
- b) furnish the details required under paragraphs 17.4 and 17.5 ; and
- c) confirm that it has met all the other qualifying criteria under paragraphs 17.2, 17.3 and 17.6.

19.2 Once the application for Tracking Option is approved, employer has to provide the LOU for each foreign employee whom it is going to track. It must attest to the fact that it has made an irrevocable option to track the gains from the unexercised ESOPs and pay over the tax on such gains to CIT. The LOU has to be submitted together with the foreign employee's Form IR 21(Notification of a Non-Citizen Employee's Cessation of Employment or Departure from Singapore).

- 19.3 Even with the Tracking Option being granted, the employer is still required to seek tax clearance of all other income of that employee. The Form IR21 has to be submitted within the stipulated period. Details of the employee's unexercised ESOPs must be furnished in the Appendix 3 of the Form IR21. (See Annex H)
- 19.4 By 31st Jan every year, the employer has to furnish CIT with complete details of the status of the unexercised ESOPs held by the foreign employee as at 31st Dec of the previous year, until the occurrence of the income realization event.
- 19.5 On the occurrence of an income realization event, the employer is required to report the actual gains derived from the ESOPs or shares under ESOW Plans in an additional Form IR21. The form has to be submitted to CIT within 30 days. CIT will raise an assessment on such gains. The Notice of assessment will be sent to the employer for payment to be made within 30 days from the date of Notice of Assessment.

20 Contact information

- 20.1 Taxpayer who has any queries may call on the following telephone numbers for clarification:

For Tracking Option – 6351 3559 or 6351 4472

For other enquiries – 1800-3568300

21 Updates and amendments

	Date of amendment	Amendments made
1	29 Jun 2012	<p>IRAS had issued an e-Tax Guide “Relief for Double Taxable of Gains from Employee share options” dated 31 Mar 2000. Due to the change of basis of taxation with effect from 1 Jan 2003, the Ministerial remission to relieve a resident individual from any double taxation on ESOP gains [in paragraph 5.3 (b)] is no longer relevant. Hence, this e-Tax guide does not cover the relevant details.</p> <p>Paragraph 7.3 (b) has been inserted to include tax change in the manner of computing the gains derived from a right or benefit to acquire treasury shares in any company listed on the SGX.</p>
2	24 Jun 2013	<p>Revised paragraph 13.1 to include the categories of affected employees and paragraph 14.2 to make it clear that when an individual is deemed to derive the final gains under the deemed exercise rule.</p>

Annex A - Illustrations of the Tax Treatment of Gains from ESOP

Example 1

ESOP granted on or after 1 Jan 2003 while an individual is exercising employment in Singapore

Mr Mahan was employed by XYZ Company Ltd, a Singapore incorporated company. He was granted ESOP on 25 Feb 2009. During his employment with XYZ Company Ltd, Mr Mahan performed his employment duties substantially in Singapore. However, he was required to travel out of Singapore occasionally to render services to XYZ Company Ltd's clients in the Asia Pacific region.

Mr Mahan was seconded to work for a related overseas company from 1 Jan 2010 onwards. During his secondment overseas, Mr Mahan exercised his ESOP on 15 Nov 2011 and ESOP gains amount to \$100,000¹¹. His salary from his overseas employment is \$250,000.

Assuming that Mr Mahan is a tax resident of Singapore for YA 2012.

Mr Mahan's Income Tax Computation Year of Assessment 2012

	\$
Salary from overseas employment (remittance not taxable)	NIL
ESOP gains (derived from Singapore)	100,000
Assessable income	<u>100,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u><u>99,000</u></u>
Tax on first \$80,000	3,350
On the next \$19,000 @ 11.5%	<u>2,185</u>
Tax payable	<u><u>5,535</u></u>

¹¹ The gains from the exercise of ESOP is taxable in Singapore as the options are **granted** :
(a) while Mr Mahan is exercising employment in Singapore and
(b) after 1 Jan 2003.

It will be taxed as income of the year in which the ESOP is exercised. Since he exercised the ESOP in year 2011, it is taxed in the year of assessment 2012.

Annex A - Illustrations of the Tax Treatment of Gains from ESOP

Example 2

ESOP granted while the individual is exercising employment outside Singapore and exercised on or after 1 Jan 2002

Mr Bravo is an American citizen. He was employed by EFG-US, a US parent company and was granted ESOP on 15 Jul 2008. Subsequently, he was seconded to head its related subsidiary in Singapore, EFG Singapore from 21 May 2010.

On 15 Jan 2011, Mr Bravo exercised the ESOP that was previously granted during his employment with EFG-US. He derived ESOP gains amounting to \$250,000¹². Mr Bravo's salary (excluding the ESOP gains) for the full year of 2011 amounted to \$500,000.

Mr Bravo is a tax resident of Singapore for YA 2012.

Mr Bravo's Income Tax Computation Year of Assessment 2012

	\$
Salary from Singapore employment	500,000
ESOP gains (derived from Singapore)	NIL
Assessable Income	<u>500,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u><u>499,000</u></u>
Tax on first \$320,000	42,350
On the next \$179,000 @ 20%	<u>35,800</u>
Tax payable	<u><u>78,150</u></u>

¹² The gains from the exercise of ESOP is not taxable in Singapore as the options are:
(a) granted while the individual is exercising employment outside Singapore and
(b) exercised on or after 1 Jan 2002.

Annex B - Illustrations of the Tax Treatment of Gains from Shares Granted under ESOW Plan

Example 1

Shares granted under any ESOW Plan (with vesting imposed but with no moratorium) while an individual is exercising employment in Singapore

Mr Chen is a Singapore citizen. He was employed by TCF Singapore Pte Ltd, a Singapore incorporated company. He was granted share awards under the TCF PLC group share ownership plan on 11Jan 2007. TCF PLC is the UK parent company of TCF Singapore Pte Ltd.

Under the group plan, he was entitled to receive his share according to the following schedule:

	Yr 0	Yr 1	Yr 2	Yr 3
Share award	Grant 100% 11.1.2007	Vest 33 1/3% 11.1.2008	Vest 33 1/3% 11.1.2009	Vest 33 1/3% 11.1.2010

Mr Chen left Singapore on
21.11.2007

Mr Chen was seconded to work in a related subsidiary in China for a 5-year period from 21 Nov 2007. The share awards granted to him under the TCF PLC group share ownership plan, continue to vest to him on the dates shown above.

The gains from share awards¹³ accrued to him are \$70,000, \$75,000 and \$72,000 for the years 2008, 2009 and 2010 respectively.

During his secondment to China, Mr Chen did not derive any other income from Singapore. Assuming that he is a tax resident of Singapore for YA 2009, YA 2010 and YA 2011.

¹³ The gains from the exercise of ESOW is taxable in Singapore as the share awards are **granted** :

- (a) while Mr Chen is exercising employment in Singapore and
- (b) after 1 Jan 2003.

This is irrespective of where the individual is on the date of vesting. It will be taxed as income of the year in which the shares are vested to him.

**Mr Chen's Income Tax Computation
Year of Assessment 2009**

	\$
Gains from share awards	70,000
Assessable income	<u>70,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u>69,000</u>
Tax on first \$40,000	900
On the next \$29,000 @ 8.5%	<u>2,465</u>
	3,365
Less 20% income tax rebate	<u>673</u>
Tax payable	<u>2,692</u>

**Mr Chen's Income Tax Computation
Year of Assessment 2010**

	\$
Gains from share awards	75,000
Assessable income	<u>75,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u>74,000</u>
Tax on first \$40,000	900
On the next \$34,000 @ 8.5%	<u>2,890</u>
Tax payable	<u>3,790</u>

**Mr Chen's Income Tax Computation
Year of Assessment 2011**

	\$
Gains from share awards	72,000
Assessable income	<u>72,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u>71,000</u>
Tax on first \$40,000	900
On the next \$31,000 @ 8.5%	<u>2,635</u>
	3,535
Less 20% income tax rebate	<u>707</u>
Tax payable	<u>2,828</u>

Annex B - Illustrations of the Tax Treatment of Gains from Shares Granted Under ESOW Plan

Example 2

Shares under any ESOW Plan (with vesting imposed but no moratorium) granted while an individual is exercising employment overseas (i.e. prior to his posting to Singapore)

Mr Adams is a British national. He was employed by OPQ-UK Inc. He was granted share awards under the OPQ group share ownership plan on 14 Feb 2007.

Under the OPQ group share ownership plan, he was entitled to receive his share according to the following schedule:

	Yr 0	Yr 1	Yr 2	Yr 3
Share award	Grant 100% 14.2.2007	Vest 25% 14.2.2008 \$250,000	Vest 25% 14.2.2009 \$280,000	Vest 25% 14.2.2010 \$520,000
	Mr Adam arrived in Singapore on 13.12.2007			

Mr Adams was posted to work in OPQ-Singapore Pte Ltd for a 5 year period from 13 Dec 2007. The share awards continued to be vested to him based on the above dates shown above.

In addition to the above gains, Mr Adams also earned salaries of \$300,000, \$350,000 and \$400,000 from Singapore for the years 2008, 2009 and 2010 respectively. He did not derive any other income from Singapore during the said years.

Mr Adams is a tax resident of Singapore for YA 2009, YA 2010 and YA 2011.

Mr Adam's Income Tax Computation Year of Assessment 2009

	\$
Salary from Singapore employment	300,000
Assessable income	<u>300,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u>299,000</u>

Tax on first \$160,000	15,500
On the next \$139,000 @ 17%	<u>23,630</u>
	39,130
Less 20% income tax rebate (capped at \$2,000)	<u>2,000</u>
Tax payable	<u><u>37,130</u></u>

**Mr Adam's Income Tax Computation
Year of Assessment 2010**

	\$
Salary from Singapore employment	<u>350,000</u>
Assessable income	350,000
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u><u>349,000</u></u>
Tax on first \$320,000	42,700
On the next \$29,000 @ 20%	<u>5,800</u>
Tax payable	<u><u>48,500</u></u>

**Mr Adam's Income Tax Computation
Year of Assessment 2011**

	\$
Salary from Singapore employment	<u>400,000</u>
Assessable income	400,000
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u><u>399,000</u></u>
Tax on first \$320,000	42,700
On the next \$79,000 @ 20%	<u>15,800</u>
	58,500
Less 20% income tax rebate (capped at \$2,000)	<u>2,000</u>
Tax payable	<u><u>56,500</u></u>

Annex C - Examples illustrating taxability of gain derived from restricted ESOPs and Restricted Shares under ESOW Plans

Example 1 (Restricted ESOPs)

Mr Lai is a Singapore citizen. He is employed by YY Singapore Ltd. He was granted restricted ESOP on 1 Mar 2007 under the YY ESOP plan. He was given the option to acquire shares of YY Ltd at an exercise price of \$5 (same price as the open market price of the shares on the date of grant).

On 4 May 2008, Mr Lai exercised the ESOP to acquire 5,000 YY Ltd's shares at \$5 each, when the open market price was \$7.50.

Under the YY ESOP plan, Mr Lai was not allowed to sell the shares within 2 years from the date he exercises the ESOP to acquire the shares. On 4 May 2010 (i.e. the date on which the moratorium was lifted), the open market price of YY Ltd's shares was \$7 per share. On 19 Dec 2010, Mr Lai disposed all his 5,000 shares at \$8 per share.

At a glance

Open Market Price per share as at the date of grant (i.e. 1 Mar 2007)	\$5.00
Price paid by Mr Lai for the share (exercise price)	\$5.00
Open Market Price per share as at the date of exercise (i.e. 4 May 2008)	\$7.50
Open Market Price per share as at date the moratorium was lifted (i.e. 4 May 2010)	\$7.00
Open Market Price per share as at the date of disposal (i.e. 19 Dec 2010)	\$8.00
Number of Shares	5,000

Even though Mr Lai has exercised the option on 4 May 2008, the gains derived by Mr Lai from the restricted ESOPs would only be brought to tax as income of the year 2010. This is because the moratorium was lifted on 4 May 2010.

The amount of ESOP gains made by him is computed as follows:

	\$
Open Market Price of YY Ltd's share as at date the moratorium was lifted (i.e. 4 May 2010)	7.00
Less: Exercise price	5.00
ESOP gains per share	2.00
Number of shares acquired	5,000
Total amount of ESOP gains (\$2 x 5,000 shares)	10,000

Assume that Mr Lai is a tax resident of Singapore for YA 2011. Besides ESOP gains, he also earned a salary of \$200,000 from Singapore for the year 2010. Mr Lai has no other income in the year 2010.

**Mr Lai's Income Tax Computation
Year of Assessment 2011**

	\$
Salary	200,000
Gains from share awards (derived from Singapore)	10,000
Assessable Income	<u>210,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u>209,000</u>
Tax on first \$160,000	15,500
On the next \$49,000 @ 17%	8,330
	<u>23,830</u>
Less 20% income tax rebate (capped at \$2,000)	2,000
Tax payable	<u><u>21,830</u></u>

Annex C - Examples illustrating taxability of gain derived from restricted ESOPs and Restricted Shares under ESOW Plans

Example 2 (Restricted Shares granted under any ESOW Plans)

Mr Sri is a Singapore permanent resident. He is employed by YC Singapore Pte Ltd. He was granted 10,000 restricted shares with moratorium i.e. restricted shares awards under the YC share award plan on 1 Jun 2007. The market price on 1 Jun 2007 (i.e. the date of grant) was \$3.50.

All share awards granted under the YC share award plan have 2-year moratorium from date of grant. Therefore Mr Sri is not allowed to dispose of the shares any time before 1 Jun 2009. On 1 Jun 2009 (i.e. the date on which the moratorium was lifted), the open market price of YC Singapore Pte Ltd's shares was \$3.20 per share. Mr Sri sold off all his 10,000 shares at \$4.20 per share on 1 Feb 2010.

At a glance

Open Market Price per share as at the date of grant (i.e. 1 Jun 2007)	\$3.50
Price paid by Mr Sri for the shares	NIL
Open Market Price per share as at date the moratorium was lifted (i.e. 1 Jun 2009)	\$3.20
Open Market Price per share as at the date of disposal (i.e. 1 Feb 2010)	\$4.20
Number of Shares	10,000

Even though the shares were granted to Mr Sri on 1 Jun 2007, the gains derived from the restricted shares granted under ESOW plan would only be brought to tax as income of the year 2009. This is because the moratorium was lifted on 1 Jun 2009.

The amount of gains made by him from restricted share awards is computed as follows:

	\$
Open Market Price of YC Singapore Pte Ltd's share as at date the moratorium was lifted (i.e. 1 Jun 2009)	3.20
Less: Price paid by Mr Sri for the shares	NIL
Share award gains per share	3.20
Number of shares acquired	10,000
Total share award gains (\$3.20 x 10,000 shares)	32,000

Assume that Mr Sri is a tax resident of Singapore for YA 2010 and he only has salary of \$120,000 for the year 2009.

**Mr Sri's Income Tax Computation
Year of Assessment 2010**

	\$
Salary	120,000
Gains from share awards (derived from Singapore)	<u>32,000</u>
Assessable Income	152,000
Less: Earned income relief (assume no other personal reliefs claimed)	1,000
Chargeable income	<u><u>151,000</u></u>
Tax on first \$80,000	4,300
On the next \$71,000 @ 14%	<u>9,940</u>
Tax payable	<u><u>14,240</u></u>

Annex D - Computation of Tax on ESOP Gains and Interest Charged on Deferred Tax

Example 1: Computation of tax applicable to ESOP gains

Tax computation for the Year of Assessment 2007

<u>Income</u>	\$	\$
Salaries		110,000
ESOP gains		<u>100,000</u>
Total income		210,000
Less: Personal reliefs		<u>22,900</u>
Chargeable income		<u>187,100</u>
Tax payable on first \$160,000	15,500.00	
Tax payable on balance \$27,100 @ 17%	<u>4,607.00</u>	20,107.00
Less: Parenthood tax rebate (for second child)		<u>10,000.00</u>
Tax payable		<u>10,107.00</u>

Computation of tax on ESOP gains

Amount of ESOP gains		<u>\$100,000</u>
Tax on ESOP gains applying the marginal tax rates:		
Tax payable on	\$27,100 @ 17%	4,607.00
	<u>\$72,900 @ 14%</u>	<u>10,206.00</u>
Tax payable on	<u>\$100,000</u>	<u>14,813.00</u>

The amount of tax on ESOP gains deferred would be limited to \$10,107.00.

Annex D - Computation of Tax on ESOP Gains and Interest Charged on Deferred Tax

Example 2

Computation of the amount of tax on ESOP gains and interest charge

Original Assessment for the Year of Assessment 2007

<u>Income</u>	\$	\$
Salaries		110,000
ESOP gains		<u>100,000</u>
Total income		210,000
Less: Personal reliefs		<u>22,900</u>
Chargeable income		<u>187,100</u>
Tax payable on first \$160,000		15,500.00
Tax payable on balance \$27,100 @ 17%		<u>4,607.00</u>
Tax payable		<u>20,107.00</u>

Computation of tax on ESOP gains to be deferred

(assuming taxpayer elects for the tax on the full amount of ESOP gains to be deferred)

Amount of ESOP gains		<u>\$100,000</u>
Tax on ESOP gains applying the marginal tax rates:		
Tax payable on	\$27,100 @ 17%	4,607.00
	<u>\$72,900 @ 14%</u>	<u>10,206.00</u>
Tax payable on	<u>\$100,000</u>	<u>14,813.00</u>

The amount of tax on ESOP gains deferred would be limited to \$14,813.00

Computation of interest charge

Date of original assessment: 1 Jul 2007 (payment due on 31 Jul 2007)

Deferral period: Up to 31 Dec 2011

Average prime rate:

15 Apr 2007	5%
15 Apr 2008	5%
15 Apr 2009	5%
15 Apr 2010	5%
15 Apr 2011	5%

Interest charge would be computed as follows:

1 Aug 2007* – 14 Apr 2008	$\$14,813 \times 5\% \times 257/365$	521.50
15 Apr 2008 – 14 Apr 2009	$\$14,813 \times 5\%$	740.65
15 Apr 2009 – 14 Apr 2010	$\$14,813 \times 5\%$	740.65
15 Apr 2010 – 14 Apr 2011	$\$14,813 \times 5\%$	740.65
15 Apr 2011 – 31 Dec 2011	$\$14,813 \times 5\% \times 261/365$	<u>529.62</u>
Total interest charge (payable on 31 Dec 2011)		<u>3,273.07</u> =====

*Interest charge starts to accrue after expiry of the 1-month period allowed for payment of tax

Annex D - Computation of Tax on ESOP Gains and Interest Charged on Deferred Tax

Example 3

Computation of revised amount of tax on ESOP gains and interest charge arising from the making of an additional assessment subsequent to the original assessment in Example 2

Additional Assessment for the Year of Assessment 2007

<u>Income</u>	\$	\$
Salaries		110,000
Director's fee		10,000
ESOP gains		<u>100,000</u>
Total income		220,000
Less: Personal reliefs		<u>22,900</u>
Chargeable income		<u>197,100</u>
Tax payable on first \$160,000		15,500.00
Tax payable on balance \$37,100 @ 17%		<u>6,307.00</u>
Tax payable		21,807.00
Less: Tax previously assessed		<u>20,107.00</u>
Additional tax payable		1,700.00
Less: Additional amount of tax on ESOP gains deferred (see computation below)		<u>300.00</u>
Additional tax payable under normal arrangement		<u>1,400.00</u>

Revised computation of tax on ESOP gains to be deferred

Amount of ESOP gains		<u>\$100,000</u>
Tax on ESOP gains applying the marginal tax rates:		
Tax payable on	\$ 37,100 @ 17%	6,307.00
	<u>\$ 62,900 @ 14%</u>	<u>8,806.00</u>
Tax payable on	<u>\$100,000</u>	15,113.00
Less: tax on ESOP gains originally deferred		<u>14,813.00</u>
Additional tax on ESOP gains to be deferred		<u>300.00</u>

Computation of interest charge

Date of original assessment: 1 Jul 2007 (payment due on 31 Jul 2007)
Date of additional assessment: 1 Oct 2007 (payment due on 31 Oct 2007)

Deferral period: Up to 31 Dec 2011

Average prime rate:

15 Apr 2007	5%
15 Apr 2008	5%
15 Apr 2009	5%
15 Apr 2010	5%
15 Apr 2011	5%

Interest charge would be computed as follows:

1 Aug 2007* – 31 Oct 2007	\$14,813 x 5% x 92/365	186.68
1 Nov 2007* – 14 Apr 2008	\$15,113 x 5% x 165/365	341.60
15 Apr 2008 – 14 Apr 2009	\$15,113 x 5%	755.65
15 Apr 2009 – 14 Apr 2010	\$15,113 x 5%	755.65
15 Apr 2010 – 14 Apr 2011	\$15,113 x 5%	755.65
15 Apr 2011 – 31 Dec 2011	\$15,113 x 5% x 261/365	<u>540.34</u>
Total interest charge (payable on 31 Dec 2011)		3,335.57 =====

* Interest charge for additional amount of tax deferred will start to accrue after expiry of the 1-month period allowed for payment of the additional tax

Annex D - Computation of Tax on ESOP Gains and Interest Charged on Deferred Tax

Example 4

Computation of revised amount of tax on ESOP gains and interest charge arising from the making of an amended assessment subsequent to the original assessment in Example 2

Amended Assessment for the Year of Assessment 2007

<u>Income</u>	\$	\$
Salaries		70,000
ESOP gains		<u>100,000</u>
Total income		170,000
Less: Personal reliefs		<u>22,900</u>
Chargeable income		<u>147,100</u>
Tax payable on first \$80,000		4,300.00
Tax payable on balance \$67,100 @ 14%		<u>9,394.00</u>
Tax payable		13,694.00
Less: Tax previously assessed		<u>20,107.00</u>
Amount of tax to be discharged		<u>(6,413.00)</u>

#Assuming that the taxpayer has paid up the original amount of tax not under deferral, i.e. \$5,294 (\$20,107 - \$14,813), the amount of tax to be refunded to the taxpayer arising from the amendment would be \$5,294 - (\$13,694 - 12,190.50) = \$3,790.50.

Revised computation of tax on ESOP gains to be deferred

Amount of ESOP gains		<u>\$100,000</u>
Tax on ESOP gains applying the marginal tax rates:		
Tax payable on	\$67,100 @ 14%	9,394.00
	<u>\$32,900 @ 8.5%</u>	<u>2,796.50</u>
Tax payable on	<u>\$100,000</u>	<u>12,190.50</u>
Revised amount of tax on ESOP gains to be deferred		<u>\$12,190.50</u>

Computation of interest charge

Date of original assessment: 1 Jul 2007 (payment due on 31 Jul 2007)
Date of amended assessment: 1 Oct 2007 (payment due on 31 Oct 2007)

Deferral period: Up to 31 Dec 2011

Average prime rate:

15 Apr 2007	5%
15 Apr 2008	5 %
15 Apr 2009	5%
15 Apr 2010	5%
15 Apr 2011	5%

Interest charge would be computed as follows:

1 Aug 2007* – 14 Apr 2008	\$12,190.50 x 5% x 257/365	429.17
15 Apr 2008 – 14 Apr 2009	\$12,190.50 x 5%	609.53
15 Apr 2009 – 14 Apr 2010	\$12,190.50 x 5%	609.53
15 Apr 2010 – 14 Apr 2011	\$12,190.50 x 5%	609.53
15 Apr 2011 – 31 Dec 2011	\$12,190.50 x 5% x 261/365	<u>435.85</u>
Total interest charge (payable on 31 Dec 2011)		2,693.61 =====

- * Where the tax deferred on ESOP gains is reduced as a result of an amended assessment, the interest charge will be computed based on the reduced amount of tax deferred over the period of deferral commencing from the date of the first deferral.

Annex D - Computation of Tax on ESOP Gains and Interest Charged on Deferred Tax

Example 5

Computation of interest charged on the amount of tax deferred due for payment

Computation of the interest charge

Taxpayer has applied to defer the tax on ESOP gains of \$10,000 for YA 2007, assessed on 1 Jul 2007, for 5 years. In other words, payment of the tax of \$10,000 will become due on 31 Dec 2011.

Assume the average prime rate on

15 Apr 2007 is	5%
15 Apr 2008 is	5%
15 Apr 2009 is	5%
15 Apr 2010 is	5%
15 Apr 2011 is	5%

The interest charge on the deferment of the payment of tax of \$10,000 to 31 Dec 2011 will be computed as follows:

Interest payable:

1 Aug 2007 to 14 Apr 2008	$\$10,000 \times 5\% \times 257/365$	352.05
15 Apr 2008 to 14 Apr 2009	$\$10,000 \times 5\%$	500.00
15 Apr 2009 to 14 Apr 2010	$\$10,000 \times 5\%$	500.00
15 Apr 2010 to 14 Apr 2011	$\$10,000 \times 5\%$	500.00
15 Apr 2011 to 31 Dec 2011	$\$10,000 \times 5\% \times 261/365$	<u>357.53</u>
Total interest payable		<u>2,209.58</u>

Annex D - Computation of Tax on ESOP Gains and Interest Charged on Deferred Tax

Example 6

Assuming that the taxpayer in Example 5 made partial repayments on the following dates:

14 Apr 2008	\$ 6,000
31 Dec 2008	\$ 2,000
14 Apr 2010	<u>\$2,000</u>
	<u>\$10,000</u>

The interest charge on the deferment of the payment of tax of \$10,000 will be computed and payable on 14 Apr 2010 as follows:

Interest payable:

1 Aug 2007 to 14 Apr 2008	$\$10,000 \times 5\% \times 257/365$	352.05
15 Apr 2008 to 31 Dec 2008	$\$(10,000-6,000) \times 5\% \times 261/365$	143.01
1 Jan 2009 to 14 Apr 2009	$\$(4,000- 2,000) \times 5\% \times 104/365$	28.49
15 Apr 2009 to 14 Apr 2010	$\$2,000 \times 5\%$	<u>100.00</u>
Total interest payable		<u>623.55</u>

Annex E - Application of “Deemed Exercise Rule”

Example 1

Mr Greg is an American. He was employed by TK Singapore Ltd. He exercised employment in Singapore from 1 Nov 2008 to 30 Sep 2010. During his employment in Singapore, he was granted ESOPs on 1 Sep 2009 by his employer.

TK Singapore Ltd sought tax clearance for Mr Greg on 2 Sep 2010. A Form IR21 was submitted to IRAS showing employment income of \$200,000. Mr Greg has unexercised ESOPs of 50,000 shares as at 2 Sep 2010. The exercise price was \$1 per share. The open market price of the share was \$1.50 on 30 Aug 2010 (one month before the date of cessation of employment).

Under the “deemed exercise rule”, the ESOPs granted to Mr Greg are deemed to be exercised on 30 Aug 2010 (one month before the date of cessation of employment) and the ESOP gains are computed as follows:

Open market price of TK shares as at 30 Aug 2010 (A)	\$ 1.50
Less: Exercise Price (B)	\$ 1.00
“Deemed” ESOP gains per share (derived from Singapore) = (A – B)	\$ 0.50
Number of shares	50,000
Total “deemed” ESOP gains (derived from Singapore) = \$0.50 x 50,000	\$25,000

Assuming that Mr Grey has no other income in 2010.

Mr Greg’s Income Tax Computation Year of Assessment 2011

Employment income	\$200,000
“Deemed” ESOP gains	\$25,000
Assessable Income	<u>\$225,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	\$1,000
Chargeable income	<u>\$224,000</u>
Tax on first \$160,000	\$15,500
On the next \$64,000 @ 17%	\$10,880
	<u>\$26,380</u>
Less: Tax rebate	\$2,000
Tax payable	<u>\$24,380</u>

Annex E - Application of “Deemed Exercise Rule”

Example 2

Same information as in example 1 except that Mr Greg was granted ESOPs by TK Singapore Ltd only on 15 Sep 2010 instead of 1 Sep 2009.

Under the “deemed exercise rule” (see paragraph 14), the ESOPs granted to Mr Greg are deemed to be exercised on 15 Sep 2010 (the later of the date of grant of ESOP or one month before the date of cessation of employment). Assuming that the open market price of TK shares as at 15 Sep 2010 was \$1.20, the ESOP gains are computed as follows:

Open market price of TK shares as at 15 Sep 2010 (A)	\$ 1.20
Less: Exercise Price (B)	\$ 1.00
“Deemed” ESOP gains per share = (A – B)	\$ 0.20
Number of shares	50,000
Total “deemed” ESOP gains = \$0.20 x 50,000	\$10,000

Assuming that Mr Greg has no other income in 2010.

Mr Greg’s Income Tax Computation Year of Assessment 2011

Employment income	\$200,000
“Deemed” ESOP gains	\$10,000
Assessable Income	<u>\$210,000</u>
Less: Earned income relief (assume no other personal reliefs claimed)	\$1,000
Chargeable income	<u>\$209,000</u>
Tax on first \$160,000	\$15,500
On the next \$49,000 @ 17%	\$8,330
	<u>\$23,830</u>
Less: Tax rebate	\$2,000
Tax payable	<u>21,830</u>

Annex F - List of Acceptable Indices

Australia – S&P /ASX 200 Index or the All-Ordinaries Index

Belgium – Bel-20

Britain – Financial Times Stock Exchange (FTSE) 100

Canada – Toronto 300 Composite

China – Shanghai Stock Exchange Composite Index

Denmark – Copenhagen Stock Exchange Index (KFX)

France – Paris CAC 40

Finland – Helsinki Stock Exchange Index (HEX 20)

Germany – Frankfurt Xetra DAX

Hong Kong – Hang Seng Index

India – Bombay Sensex

Ireland- Ireland Stock Market Index

Israel – Tel Aviv 25

Italy – Milan MIBtel

Japan – Nikkei 225

Netherlands – Amsterdam AEX

Norway – Oslo Stock Exchange Index

South Africa – Johannesburg All-Share

South Korea – KOSPI 200

Spain – IBEX 35

Sweden – SX All-Share

Switzerland – Zurich Swiss Market

Taiwan – Taiwan Weighted Index

USA – Dow Jones Industrial Average, NASDAQ or Standard & Poors (S&P) 500

Annex G - Specimen

Letter of Undertaking for Employers Who Would Like To Opt for The Tracking Option

To: The Comptroller of Income Tax
55 Newton Road
Revenue House
Singapore 307987

GUARANTEE AND UNDERTAKING TO TRACK GAINS FROM EXERCISE OR VESTING OR LIFTING OF RESTRICTION OF EMPLOYEE STOCK OPTION (ESOP) PLANS AND SHARES UNDER OTHER FORMS OF EMPLOYEE SHARE OWNERSHIP (ESOW) PLANS

IN CONSIDERATION of you acceding to our request not to apply the “deemed exercise” rule under section 10(7) of the Income Tax Act (Cap. 134), in exercise of your discretion under section 10(7B), to employee stock option (ESOP) plans or shares under other forms of employee share ownership (ESOW) plans (as the case may be) granted on __(date)*__ and listed in the annex attached hereto (see Annex H), to (name of employee) of (address of employee) (Taxpayer identification no. _____) upon his departure from Singapore.

NOW WE (name of employer) of (registered address) AGREE WITH YOU as follows:

- 1 We undertake to -
 - a) track the gains from the exercise of the said ESOPs or lifting of restriction on the shares acquired under the said ESOP or the vesting of or lifting of restriction on the said shares under the ESOW plans (as the case may be) whether the said (name of employee) remains in our employment or otherwise;
 - b) make a report annually by 31 January of each year as to whether the said ESOPs or the said shares under the ESOW plans (as the case may be) have been exercise/vested/or are no longer subject to restriction and such gains accrued to the said (name of employee);
 - c) report the amount of any gains to you within thirty (30) days of the exercise of the said ESOPs or lifting of restriction on the shares acquired under the said ESOPs or the vesting of or lifting of restriction on the said shares under the ESOW plans;

* If there is more than 1 date of grant, please make reference to the dates listed in Annex H

- d) give you at least thirty (30) days notice in advance if we were cease to carry on business in Singapore, by reason of any corporate restructuring, merger or otherwise; and
- e) give you immediately notice in the event of the demise of the said (name of employee).
- 2 If we fail to comply with paragraph 1, you may assess the said (name of employee) to tax under the “deemed exercise” rule.
- 3 Where we have given you notice under paragraph 1(d) or (e), you may assess the said (name of employee) tax under the “deemed exercise” rule.
- 4 We undertake to collect and to pay over to you any tax assessed on any gains (whether upon actual exercise of the said ESOPs or lifting of restriction on the shares acquired under the said ESOPs or the vesting or lifting of restriction on the said shares under the ESOW plans or under the “deemed exercise” rule) on the said ESOPs or shares under the ESOW plans.
5. Notwithstanding paragraph 4, we irrevocably and unconditionally guarantee the immediate payment to you upon demand of the tax assessed on any gains (whether upon actual exercise of the said ESOPs or lifting of restriction on the said shares acquired under the said ESOPs, the vesting or lifting of restriction on the said shares under the ESOW plans or under the “deemed exercise” rule) on the said ESOPs or shares under the ESOW plans.
- 6 If we fail to comply with our undertaking in paragraph 1 or fail to make payment to you within 30 days of your demand under paragraph 5, we will pay to you a penalty of two hundred per cent (200%) of any tax that may be payable by us under paragraph 5.

Date this day of 20__.

Seal

Signature

Full Name and Designation

Annex H – Specimen

Details of unexercised or restricted ESOP or unvested or restricted shares under other forms of ESOW Plans as at date of cessation of employment / departure from Singapore and would be tracked by employer

This form is to be completed if the employer has been granted approval for the tracking option. It may take 2 minutes to fill in this form. Please get ready of the details of stock options etc. for the employee.

Tax ref. (FIN/NRIC): _____ **Name of Employee:** _____

Company Registration Number	Name of company which granted the ESOP/shares under ESOW Plan	Indicate type of plan granted 1) ESOP Or 2) ESOW	Date of grant of ESOP/shares under ESOW Plan	Open Market Value per share as at the date of grant of ESOP/shares under ESOW Plan (\$)	Market Value at time of “deemed exercise” of ESOP or deemed price paid for shares under ESOW Plan (\$)	Exercise Price of ESOP/ or Price paid/payable per share under ESOW Plan (\$)	No. of unexercised ESOP or unvested shares under ESOW Plans or ESOP/ESOW Plans with moratorium imposed	Date of expiry of exercise of ESOP or date of vesting of ESOW Plan or date moratorium is lifted, as the case may be
(a)	(b)	9c)	(d0	(e)	(f)	(g)	(h)	(i)
SECTION A: EMPLOYEE EQUITY-BASED REMUNERATION (EEBR) SCHEME								
SECTION B: EQUITY REMUNERATION INCENTIVE SCHEME (ERIS) SMEs								
SECTION C: EQUITY REMUNERATION INCETIVE SCHEME (ERIS) ALL CORPORATIONS								
SECTION D: EQUITY OF REMUNERATION INCENTIVE SCHEME (ERIS) START-UPS								

REMARKS:

'Full Name of Authorised Personnel: _____ Designation: _____ Signature: _____ Date: _____
 Name of Contact Person: _____ Contact No.: _____ Fax No. _____ Email Address: _____