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Singapore Finance Ministry Proposes Qualified ESOP Scheme *by BJ Ooi and Olive Tan, KPMG Singapore*

Singapore's Ministry of Finance has recently introduced a qualified employee stock option plan (ESOP) scheme that would apply to companies listed on the Stock Exchange of Singapore (SES) and other stock exchanges, as well as to unlisted companies. Under the proposed ESOP scheme, the employee may elect to defer the payment of tax on taxable gains arising from ESOPs for up to five years, subject to an interest charge.

The scheme – applicable to options granted under a qualified ESOP that are exercised on or after January 1, 1999 – is designed to alleviate cash flow problems faced by employees who choose to hold the shares after exercising the options.

To qualify as an ESOP, the plan must satisfy the vesting period requirements currently imposed by the SES, e.g., 1) where the exercise price of the share is equivalent to its market value, the option may not be exercised within one year from the option grant date, or 2) where the exercise price is below the market value, the option may not be exercised within two years from the grant date.

Employers are not required to apply for approval to qualify an ESOP. Nonetheless, sufficient documentation should be maintained to demonstrate that the ESOP meets the required vesting period.

The information contained in this newsletter was submitted by KPMG Singapore. The information is general in nature and subject to change. Applicability to specific situations should be determined through consultation with your tax advisor.

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Employers are required, however, to certify that the ESOP is a qualified ESOP on the employee's application for tax deferral.

Employees who wish to apply to the Inland Revenue Authority of Singapore (IRAS) for the ESOP deferral of tax would have to complete the application, obtain employer's certification (as mentioned above), and submit the application with their tax return on or before April 15th. The IRAS will only consider the application if the following conditions are met:

- the employee is employed in Singapore at the time the option is exercised;
- the option was granted by a company or an associated company for which the employee is working at the time of exercise; and
- the employee's tax on ESOP gains is not borne by the employer.

Approval would not be given under the following circumstances:

- the employee is bankrupt but not discharged from his or her debt obligations;
- the employee is considered by the IRAS to be a delinquent taxpayer; or
- the tax on the ESOP gain is less than S\$200.

The maximum five-year deferral period would start from January 1st of the year of assessment for which the ESOP gains are assessed. The employee's marginal tax rate at the time of assessment of the ESOP gains would be used to determine the amount of tax to be deferred.

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