

**How to tax benefits
related to stock awards
and share options**

**How are these benefits assessed?
How should these benefits be reported?**

Foreword

You have to pay Salaries Tax on benefits associated with stock-based awards arising from your office/employment.

If you are granted a right to acquire shares within a period of time in the future (i.e., a share option), you will be assessed to tax under section 9(1)(d) of the Inland Revenue Ordinance (IRO) on a notional gain, not when the option is granted to you, but when you exercise, assign or release that option.

An award of shares to you not in the form of options may also give rise to a benefit assessable as a **perquisite** under section 9(1)(a). You will be assessed to tax in the year you are awarded the shares.

Both you and your employer must observe reporting requirements in tax returns. Failure to do so may result in heavy penalties.

Any gain/loss realized from the subsequent sale of the shares by you is usually non-taxable/non-deductible.

How to tax benefits related to share awards

If shares are awarded to you free of charge, the market price of the shares will be included in your assessable income. If the market price is \$5, you pay tax on \$5.

If you are allowed to buy shares at 80% of the market price and you pay \$4 for the shares, you pay tax on \$1.

If you are allowed to buy shares at \$5 when the market price is \$5, there is no benefit and therefore there is no tax implication.

How to report share awards

(1) Employee/director

Report benefits derived from share awards in Part 4.1 of your Tax Return – Individuals (B.I.R. 60).

(2) Employer

The benefit from share awards should be reported as the employee's income under

- item 11 (k) on I.R. 56B
- item 13 (h) on I.R. 56F
- item 11 (h) on I.R. 56G

Examples

<u>Scenario</u>	<u>How to report</u>
(a) On 1 August 2007, Mr LI was granted 2,000 shares of Company X, his employer. On that day the market price was \$20 per share. Mr LI left employment on 28 February 2008.	(a) Company X should report in item 13(h) of I.R. 56F “share award of \$40,000” (i.e. 2,000 shares x \$20 per share) in year of assessment 2007/08.
(b) Same as scenario (a), but before leaving employment Mr LI sold all the shares at unit price of \$25 on 16 February 2008.	(b) Company X's obligation remains the same as for scenario (a) – i.e., report on I.R. 56F “share award of \$40,000”. Any gain arising from the subsequent sale of the shares (i.e., \$5 per share) by Mr. LI is not chargeable to tax. Hence, neither the employer nor the employee has to report any gain/loss from the actual sale of shares.
(c) On 2 October 2007, Ms WONG bought from her employer Company X, 1,000 shares of Company Y, at the price of \$2 per share. On that day the market price of Company Y's shares was \$5 per share. Company Y is the parent company of Company X. Ms WONG is on her employer's payroll as at 31 March 2008.	(c) Company X should report in item 11(k) of I.R. 56B for the year of assessment 2007/08 (i.e. for the year ended 31 March 2008) “share award of \$3,000” [i.e. 1,000 shares x \$(5-2)].

The grant of such share or stock awards constitutes taxable perquisites. The timing of derivation of the benefit and of valuation of the benefit for tax purposes will generally be determined by terms governing the awards and circumstances under which the awards are granted. If clarification is required, the employer may write to the Assessor, quoting the Employer's file reference, with copies of the relevant share award scheme, name of a responsible person and a daytime telephone number for contact.

How to tax benefits related to share options

There are many types of share option schemes. In broad terms, the tax benefit of the share option is the difference between the price paid and the market price at the time of exercise. For example, if you exercise a right to buy shares at \$3 when the market price is \$5, you pay tax on \$2.

In the case of assignment or release of the share option, the tax benefit is usually the actual amount of money received by you from such assignment or release, less costs for acquiring the option, if any.

The following four examples will help you understand the basic concept.

Example 1 Exercise of a share option in respect of shares of the employer

Company X is a listed company in Hong Kong. On 25 March 2006, it granted Mr Chan, its marketing manager, a right to acquire 500 shares of Company X at an exercise price of \$100 per share within 3 years from 1 May 2006.

Mr Chan exercised the option on 2 June 2007 and paid \$50,000 to acquire 500 shares of Company X. On the exercise day, the market price of Company X's share was \$140.

For tax purposes

- ◆ Mr Chan has obtained a "share option gain" chargeable to Salaries Tax by the exercise of the share option. His assessable income for the year of assessment 2007/08 is computed as follows :

	\$
Share option gain $\$(140 - 100) \times 500$	20,000
Add: Other assessable income, say	<u>600,000</u>
Total assessable income	<u>620,000</u>

- ◆ Mr Chan’s employer should report this “share option gain” in the Employer’s Return.

Example 2 Exercise of a share option in respect of shares of an overseas company

Company B is an overseas listed company and has a subsidiary company, Company C, in Hong Kong. As the accounting manager of Company C, Mr Lee was granted on 1 September 2006, a right to acquire 10,000 shares of Company B at an exercise price of US \$20 per share within 3 years from 1 October 2006.

Mr Lee exercised his share option to acquire Company B’s shares as follows :

Exercise date	1 December 2006	3 January 2008
No. of shares acquired	5,000	5,000
Exercise price	US\$20	US\$20
Market price at exercise day	US\$30	US\$40
Gain realized	$(\text{US}\$30 - \text{US}\$20) \times 5,000$ = <u>US\$50,000</u>	$(\text{US}\$40 - \text{US}\$20) \times 5,000$ = <u>US\$100,000</u>
Amount of gain that should be reported (in HK\$)	$\text{US}\$50,000 \times 7.8$ = <u>HK\$390,000</u>	$\text{US}\$100,000 \times 7.8$ = <u>HK\$780,000</u>
Year of assessment in which the gain should be reported	2006/07	2007/08

Example 3 Assignment of a share option

If Company X in Example 1 allows Mr Chan to assign his share option to his colleagues, and on 20 January 2008, Mr Chan assigned his option to his colleague, Ms Cheung, for \$10,000.

For tax purposes, the amount of “share option gain” was \$10,000 and should be included as Mr Chan’s assessable income for the year of assessment 2007/08.

Example 4 Release of a share option

If due to restructuring, Company X in Example 1 became a private company. It paid \$35,000 to Mr Chan on 2 July 2007 for the release of the share option granted to him.

For tax purposes, the amount of “share option gain” was \$35,000 and should be included as Mr Chan’s assessable income for the year of assessment 2007/08.

How to report share option gains

(1) Employee/director

- ◆ Report benefits derived from stock-based option/awards in Part 4.1 of your Tax Return – Individuals (B.I.R. 60) for the relevant year of assessment.
- ◆ Report all taxable gains, including the gains connected with a former employment.

(2) Employer

Information to be provided to the Inland Revenue Department is described in the Notes accompanying the Employer’s Return and the relevant items in the I.R.56 series of forms (i.e., I.R. 56B/56E/56F/56G). In summary,

- ◆ report particulars of gains of individual employees/directors in the relevant I.R. 56B/56F/56G for the relevant year in respect of the exercise/assignment/release of the share option. Please see (3) below for reporting the gain on I/R.56s.
- ◆ report share option gains of employees/directors who have left employment (and attach a control list);
- ◆ for the year of granting of share option, provide a list, attached to B.I.R. 56A, showing names and identity card/passport numbers of employees/directors, the number of shares and the name of company concerned;

- ◆ for employees/directors seconded/assigned to work in Hong Kong who were granted share options carrying conditions prior to their arrival in Hong Kong (and working for a period of time in Hong Kong is amongst those conditions), you must complete item 14 of I.R. 56E for each of these employees/directors and submit a list with the following particulars:-
 - number and types of shares covered by the option
 - consideration, if any, paid for the grant or the option
 - consideration required to exercise the option
 - the period within which the option must be exercised;
- ◆ supply employees/directors (including those who have left employment) with a copy of the relevant form I.R.56 to facilitate their reporting.

(3) Reporting “share option gains” on I.R.56B/56F/56G

- ◆ Gain realized whilst in employment

The employer has to report in item 11 (j) of I.R. 56B the “share option gain” realized from the exercise/assignment/release of share options by employees/directors still in employment.

- ◆ About to cease employment

When the employee/director is about to cease employment (without leaving Hong Kong) the employer should report in item 13 (g) of I.R. 56F any “share option gain” realized by him from the exercise/assignment /release of share options.

- ◆ About to cease employment and leave Hong Kong for good

When the employee/director is about to cease employment and leave Hong Kong, the employer should report in item 11 (g) of I.R. 56G any “share option gain” realized by him from the exercise/assignment /release of share options.

If the employee/director has not yet exercised / assigned / released his rights to share options when he leaves Hong Kong, the employer should report such information in item 19 of I.R. 56G.

The information to be furnished include

- the number of shares not yet exercised, and
- the date of grant.

◆ Gain realized by former employees/directors

- (i) after termination of employment, or
- (ii) after termination of employment and there is departure from Hong Kong,

the employer should report the “share option gain” under item 11(j) on I.R. 56B in the year of assessment when the “share option gain” is realized (in a year later than the year of termination of employment) and prepare a list, with the following particulars:-

- name of employee/director
- Hong Kong Identity Card number (or passport number)
- the sheet number of the I.R. 56B concerned.

The employer should also pay attention to the following :-

- (i) The employer should use I.R. 56B, not I.R. 56F/56G.
- (ii) The “share option gain” realized may be the only item of income to be reported for that year.
- (iii) The employer does not have to furnish I.R. 56B for any former employee/director who has ceased to earn income chargeable to Salaries Tax and the “share option gain” realized is equal to or less than his single personal allowance.
- (iv) Although the former employee/director has left employment in a particular year of assessment, the employer may still have to furnish I.R.56B for subsequent years to report the share option gain.

Other matters of concern

- ◆ The employer should set up a system to pool details of the company's share option/award schemes and those of its related companies, including companies located overseas.
- ◆ If the shares awarded to the employee are not that of the employer's, the tax liability will still be computed in the same way.
- ◆ Both the employer and employee are recommended to keep records for taxable stock-based awards, so that these can be produced to the Assessor for inspection, when required.
- ◆ For more information, please read Departmental Interpretation and Practice Notes No. 38 under "Publications and Press Releases" in our Web site at www.ird.gov.hk.
- ◆ If clarification is required, the employer may write to the Assessor, quoting the Employer's file reference, with name of a responsible person and a daytime telephone number for contact.

(The contents of this leaflet are for guidance only)

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