

Taxes Office - Treasury & Resources Summary of Responses

TAXATION OF SHARE OPTIONS AND SHARE AWARDS

17 April 2010

SUMMARY OF CONSULTATION

The Taxes Office published a Green Paper for consultation on the taxation of share options and share awards between 4th November 2009 and 1st February 2010.

The taxation of share options/awards affects a number of individuals working in the Finance sector, additionally the Comptroller spends considerable time and resources reviewing share option and share award schemes as well as handling appeals and corresponding with numerous individuals regarding their tax assessments.

The Minister for Treasury and Resources was therefore mindful to make an amendment to the Income Tax (Jersey) Law regarding the tax treatment of share options and share awards granted to employees and office holders of a company.

The Green Paper aimed to help focus discussion on what is a complex and confusing subject made even more difficult by the lack of local legislation

OVERVIEW OF CONSULTATION RESPONSES

A total of 11 responses to the consultation were received.

Key themes which emerged are highlighted below.

SUMMARY OF RESPONSES

- The tax point should be moved to the date the individual is free to dispose of all his shareholding and a right to the assets has become indefeasible.
- If there are restrictions then the tax point should be staggered to reflect the terms of the award.
- Share awards/options should be taxable based on the proportion of time that the individual has been resident in Jersey.
- The individual should be allowed to opt for the tax point to be at grant or exercise.

- The issuing company could elect not to seek a tax deduction for the cost of the scheme and it would follow that there would be no tax on the plan participants.
- Keep the schemes within the BIK regime but legislate for this.
- Legislate that share awards need to be declared by the granting party and the recipient.
- Consideration needs to be given to mobile employees and employees who leave the Island.
- Include in Legislation how the Comptroller proposes to attain valuation of shares in unquoted companies.
- The Comptroller should consider grandfathering old schemes. Only new schemes to be subject to the changes in Legislation.
- Policy decision needs to be made re: ITIS deductions.
- Adopt a principles based approach this would ensure that as new products are designed there would be no need to amend the Legislation.

An argument was put forward that tax at exercise should not be a default position as this may cause additional tax to be due than would have been due at the point of grant (due to the likely increase in the value of the shares.)

Another respondent felt the current practice was sufficient and that an appropriate practice note on the Taxes Office website which could be followed by all in a transparent and consistent manner was all that was required.

The above are a summary of the central points which arose in the consultation period, the Comptroller has reviewed and considered all the proposals put forward and will very shortly be issuing a White Paper on behalf of the Treasury and Resources Minister outlining the preferred way forward.

The issue of the White Paper is the key next step in the process, helping to inform the proposed Legislative changes which will be debated as part of the 2011 Budget.

Comments and views will be sought on how the proposed changes to the Income Tax (Jersey) Law may affect share option and share award schemes and the beneficiaries and participants of those schemes.