

ESC 14 Taxation of Share Option Benefits

The Taxes Ordinance 1997 (as amended) charges to tax any benefits provided by employers to their employees. Benefits may be in cash or otherwise. Some benefits which are not in cash have prescribed values but where they do not then the Open Market Value of the non cash benefit is charged.

A growing practice in companies, particularly those with overseas parent companies, is to reward employees with share options. Save As You Earn schemes (SAYE) allow all eligible employees to save money with the company for a certain period, and at the end of the period to purchase shares in the company at a stated price using the savings and interest accrued. Typically the shares have grown in value from their option price and so the employee receives a benefit, being the difference in the price paid for the shares and their market value. This benefit is a taxable benefit and is taxed when the shares are transferred.

The Falkland Islands Tax Office has not taxed the benefit from SAYE plans which have received Approval from HM Revenue & Customs or Inland Revenue (HMRC) in the UK and this Extra Statutory Concession formalises the current position.

Thus for SAYE schemes which have received HMRC Approval in the UK the FI Tax Office will not seek to charge a benefit where no charge would have been made in the UK.

Where a local employee in a SAYE scheme would have been charged to tax under the UK Approval rules (because they did not qualify for exemption under the Approval rules) Payment on Account of Tax (POAT) should still be deducted in the Falkland Islands.

The tax office will also attempt to give FI Approval for a SAYE scheme which has all the characteristics of a scheme which would receive approval under HMRC rules, but which has not been operated in the UK. The rules for Approval of SAYE schemes in the UK are at Schedule 3 of Income Tax (Earnings and Pensions) Act 2003.

The position for any other share option scheme remains that the benefit is charged to tax when the option is exercised, usually by share transfer to the employee.

For the avoidance of doubt, where the employee in a SAYE plan opts to receive his savings and interest instead of shares or share sale proceeds, no benefit is chargeable.