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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

October 31, 2014

REVENUE MEMORANDUM CIRCULAR NO. 79-2014

SUBJECT : Clarifying the Tax Treatment of Stock Option Plans and Other Option Plans

TO : All Revenue Officials, Employees and Others Concerned

A. BACKGROUND

A stock option is an option granted by a person, natural or juridical, to a person or entity entitling said person or entity to purchase shares of stocks of a corporation, which may or may not be the shares of stock of the grantor itself, at a specific price to be exercised at a specific date or period (hereinafter referred to as "Equity-settlement Option") It may also occur even if no actual shares of stocks are transferred in a situation wherein a person or entity is given the right to obtain the difference between the actual fair market value of a shares and the fixed nominal value of the shares of stock set in the grant of the option, at a specific date or period, although no actual shares of stocks are transferred (hereinafter referred to as "Cash-settlement Option"). The grant, sale, transfer, or exercise of the option may result to taxable events.

Stock option are "shares of stocks" as defined by Section 22 (L) of the National Internal Revenue Code of 1997, as amended, and are taxable as such.

B. TAX TREATMENT

1. Grant of Option

In the event the Option was granted due to an employee-employer relationship, and where the grantor is the employer and the grantee is the employee, and no payment was received for the grant of the said option, on the year an option was granted, the grantor cannot claim deductions for the grant of the stock option. However, if the option was granted for a price, the full price of the option shall be considered capital gains, and shall be taxed as such.

Upon the issuance of the Option, the same is subject to a documentary stamp tax amounting to Seventy-five centavos (P0.75) on each Two Hundred pesos (P200), or fractional part thereof, of the par value of the stock subject of the option, or in the case

of stock without par value the amount equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of the stock subject of the option, as provided for in Section 175 of the National Internal Revenue Code of 1997, as amended.

2. Sale or Transfer of Option

The sale, barter, or exchange of stock options is treated as a sale, barter, or exchange of shares of stock not listed on the stock exchange. Thus, any grant of an option for consideration, or transfer of the option is subject to capital gains tax imposed under Section 24 (C) of the NIRC. If the option was granted without any consideration, the cost base of the option for purposes of computing capital gains shall be zero.

If the option is transferred by the grantee/subsequent owner without any consideration, the same shall be treated as a donation of shares of stock subject to donor's tax. The basis shall be the fair market value of the option at the time of the donation.

3. Exercise of Option

a. **Equity-settlement Option**. In equity-settled options, the grantee/ subsequent owner pays the exercise price to the grantor and the latter is obligated to deliver the stocks to the owner of the option.

In the event the option was granted by an employer involving the employer's own shares of stock or shares it owns, upon the exercise of the option by a *rank-and-file employee*, an additional compensation equivalent to the difference of the book value/fair market value of the shares, whichever is higher, at the time of the exercise of the stock option and the price fixed on the grant date, shall be recognized and subjected to income tax and consequently to withholding tax on compensation. However, if the employee which exercises the option occupies a *supervisory or managerial position*, the difference of the book value/fair market value of the shares, whichever is higher, at the time of the exercise of the stock option and the price fixed on the grant date, shall be treated as fringe benefit subject to fringe benefit tax imposed under Section 33 of the National Internal Revenue Code of 1997, as amended (NIRC).

In the event the option was granted to a supplier of goods or services, the difference between the book value/fair market value of the shares, whichever is higher, at the time of the exercise of the stock option and the price fixed on the grant date, shall be recognized as additional consideration for the services rendered or goods supplied by the said supplier, and shall be subject to the relevant withholding tax at source and other taxes applicable.

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In the event the option was granted to a person, natural or juridical, who is not an employee, or a supplier of goods or services to the grantor, the difference between the book value/fair market value of the shares, whichever is higher, at the time of the exercise of the stock option and the price fixed on the grant date, shall be considered a donation, and shall be subject to donor's tax among others.

b. Cash-settlement Option.

The above rules on Equity-settlement Option also applies in cases of Cash-settlement Options. Cash-settled options do not require the actual delivery of stocks. Instead, the market value, at the exercise date, of the stock is compared to the exercise price, and the difference (if in a favorable direction) is paid by the grantor to the holder of the option.

C. REPORTORIAL REQUIREMENTS

1. Grant of Option

Within 30 days from the grant of the option, the issuing corporation shall submit to the Revenue District Office where it is registered a statement under oath indicating the following:

i. Terms and Conditions of the stock option
ii. Names, TINs, positions of the grantees
iii. Book value, fair market value, par value of the shares subject of the option at the grant date
iv. Exercise price, exercise date and/or period
v. Taxes paid on the grant, if any
vi. Amount paid for the grant, if any.

2. Exercise of Option

During the exercise period, the issuing corporation shall file a report on or before the 10th day of the month following the month of exercise stating therein the following:

i. Exercise Date
ii. Names, TINs, positions of those who exercised the option
iii. Book value, fair market value, par value of the shares subject of the option at the exercise date/s
iv. Mode of settlement (i.e. cash, equity)
v. Taxes withheld on the exercise, if any.
vi. Fringe benefits tax paid, if any.

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D. GENERAL APPLICABILITY

The tax treatment and reportorial requirements in this Circular are rules of general applicability and also apply to options other than stock.

All concerned revenue officials and employees are hereby enjoined to give this Circular as wide a publicity as possible.

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue
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