REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

December 27, 2012

REVENUE MEMORANDUM CIRCULAR NO. 88-2012

SUBJECT : Tax Treatment of Stock Option Plans

TO : All Internal Revenue Officials, Employees and Others Concerned

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For the information and guidance of all concerned, this Circular is being issued to clarify the tax implications of income or gain derived by an employee from the exercise of stock option plans.

In BIR Ruling No. 119-2012 dated February 22, 2012, it was ruled that any income or gain derived by the employees from their exercise of stock options is considered as **additional compensation** subject to income tax, and consequently, to withholding taxes on compensation. In the said ruling, stock options were granted by domestic corporations as part of their compensation plan. Under the plan, the employees were given the right to buy a specified number of shares of a foreign corporation, up to a specified time/period from the grant date, at a fixed price regardless of the stock's future market price. It was designed to reward employees and the criteria for the reward was dependent on performance, outstanding business achievements, and exemplary organization, technical or business accomplishments/demonstrated expertise yielding significant effects on business/society. At the same time, all full-time and most part-time employees were given one-time number of shares upon employment.

The foregoing notwithstanding, any income or gain derived from stock option plans granted to managerial and supervisory employees which qualify as **fringe benefits** is subject to fringe benefit tax imposed under Section 33 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The **additional compensation** or the **taxable fringe benefit**, as the case may be, is the difference of the book value (BV)/ fair market value (FMV) of the shares, whichever is higher, at the time of exercise of the stock option and the price fixed on the grant date. The option has value only if, at the time of the exercise, the stock is worth more than the price fixed on the grant date. The additional compensation or taxable fringe benefit arises whether the shares of stocks involved are that of a domestic or foreign corporation.

If the shares to be issued at the exercise of the stock options come from the unissued shares of stock of the issuing corporation, the original issuance of said shares is subject to documentary stamp tax (DST) pursuant to Section 174 of the NIRC, as amended.

In the event that employees subsequently sell, barter, exchange or otherwise dispose of shares of stock obtained from their exercise of the stock options, the tax treatment is as follows:

A) If the shares involved are shares of stock in a domestic corporation not traded in the Stock Exchange, the gain, if any, is subject to capital gains tax imposed under Sections 24 and 25 of the NIRC, as amended. The gain from sale or transfer of the shares of stock is the difference between the selling price/book value (BV)/fair market value (FMV) of the shares, whichever is higher, at the date of sale and the price at the time of exercise of the option.

Further, the sale of transfer of the said shares is subject to the DST imposed under Section 175 of the NIRC, as amended, as implemented by Revenue Regulations No. 13-2004, upon execution of the deed transferring ownership or rights thereto, or upon delivery, assignment or indorsement of such shares in favor of another.

(B) If the shares involved are shares of stock listed and traded through the Local Stock Exchange, the transaction is subject to stock transaction tax imposed under Section 127(A) of the NIRC, as amended.

(C) If the shares involved are shares of stock in a foreign corporation, the gain, if any, is subject to ordinary income tax.

All other issuances including rulings inconsistent herewith are hereby revoked or modified accordingly.

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

This Circular takes effect immediately.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue