IT 2522 - Income tax : employee share acquisition schemes : variable discounts

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TAXATION RULING NO. IT 2522

INCOME TAX : EMPLOYEE SHARE ACQUISITION SCHEMES : VARIABLE DISCOUNTS

F.O.I. EMBARGO: May be released

REF N.O. REF: 87/11101-6 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011071	EMPLOYEE SHARE ACQUISITION SCHEMES	26AAC

PREAMBLE This Ruling considers the application of subsection 26AAC(5) of the Income Tax Assessment Act to partly paid shares issued to an employee where the balance of the issue price may vary depending on future events.

2. Subsection 26AAC(5) includes in the assessable income of an employee who acquires a share under an employee share acquisition scheme an amount equal to the value of the share at the time it is acquired less the amount paid or payable as consideration for the share.

3. In a particular proposal put to this Office, shares issued to an employee would initially only be partly paid to the extent of one cent per share payable on allotment. The employee would be unable to sell or transfer the shares until the balance of the issue price is paid. (As the employee would be able to fully pay up the shares at any time this was not considered to be a restriction on the sale of the shares for the purposes of subsection 26AAC(15)). The issue price is to be determined primarily according to the length of time that the employee holds the partly paid shares before paying them up fully. The issue price is to be the market price of the shares on allotment less a discount, calculated on a sliding scale, depending upon the number of years that the partly paid shares are held. A maximum discount of thirty per cent would apply if the shares are held for five years or more. If the market value of the shares at the time they are to be fully paid up is less than the issue price calculated as above, the market value on that later date is to be substituted as the issue price.

4. In the circumstances outlined in the previous paragraph the question raised for decision was - what amount is to be regarded as "paid or payable" as consideration for the shares for the purposes of subsection 26AAC(5)?.

RULING 5. Clearly, at the time the employee acquires the partly paid share the amount ultimately to be paid payable as the balance of the issue price will not be known - it will depend upon a number of future events.

6. Taking an extreme view, it could be argued that the calculation of the assessable amount under subsection 26AAC(5) should not take account of any amount which has not been definitely quantified at the time the employer acquires the shares. In respect of each share acquired, the operation of subsection 26AAC(5) would result in the employee being assessed on an amount equal to the market value at the time of allotment less only the amount paid, viz., one cent.

7. Alternatively, one could say that, having regard to the way the discount is calculated, it is reasonably likely that the employee will at some time in the future be required to pay at least 70% of the market value of the shares at the date of allotment, regardless of how long the shares are held. It is difficult to predict with any confidence that any further amount would be paid.

8. In the particular case it was decided that the amount "paid or payable" for the purposes of subsection 26AAC(5) was the market price of the relevant shares on the day of allotment less the maximum possible discount (i.e., thirty per cent). This approach should be followed in similar cases unless it can be clearly demonstrated that a lesser discount is appropriate - for example, where the employee by reason of age must retire and dispose of the shares before the five year period expires.

9. Where an employee is assessed on the basis that the maximum discount will apply and the shares are ultimately not acquired at the maximum discounted price the assessment may be amended, subject to subsection 170(4) which requires that the application for amendment must be received within three years from the date upon which the tax was due and payable under the original assessment.

COMMISSIONER OF TAXATION
16 March 1989

NOTE IT 2522 is withdrawn with effect from 23 August 1990 to the extent that it is inconsistent with IT 2609.