GIVING EMPLOYEES SHARES AND OPTIONS IN START UP COMPANIES

Ordinarily share and options given to employees are subject to tax.

Under this concession 'start-up' companies can give shares or options to employees and the employee is only taxed when the shares are eventually sold for a profit.

Ordinarily shares and options given to employees are subject to tax at that time, unless the employee share scheme (ESS) rules apply, in which case they can be taxed at a later time or when the shares are sold.

Smaller companies that qualify for the ESS rules may also qualify for this 'start-up' concession.

<u>What is the 'start-up' concession?</u>

- *Where shares are given* – the employee is only taxed when the shares are sold for a price higher than the market value when it was originally given to them.
- *Where options/rights are given* – the employee is only taxed on the capital gain when the shares are sold for a price higher than what they paid for them.

<u>What companies can this concession apply to?</u>

This concession can only apply to a company that:

- isn't listed on the ASX (or any other stock exchange);
- has been incorporated less than 10 years ago and is Australian tax resident; and
- aggregated turnover doesn't exceed $50m.

<u>What shares and options can qualify?</u>

This concession can apply to both 'ordinary shares' and 'options/rights to acquire ordinary shares' in the company that are given to the employee, where:

- *Where shares are given* – the price paid for the share must be at least 85% of its current market value, i.e. if the MV of the share is $100, the employee must pay at least $85 for the share; or
- *Where options are given* - the exercise price must be at least the current market value of the share, i.e. if the share's current MV is $100, the option's exercise price must be at least $100.

In addition, the rules of the ESS must require the following:

- *Minimum holding period* – the share or option can't be disposed of for three years after it is granted to the employee, unless the employee ceases employment earlier; and
- *Broad availability* – at least 75% of Australian resident permanent employees with at least three years' services are, or at some earlier time, entitled to acquire shares or options in the company.

<u>Examples</u>:

1. Joe acquires 100 shares with a market value of $100 and sells the shares four years later for $250. Joe will make a $150 capital gain, i.e. $250 (selling price), less $100 (market value when the shares were acquired).
2. John acquires 100 options for no consideration with a $100 exercise price. John exercises the options four years later when the market value is $250, and sells the shares on the same day. John will make a $150 capital gain, i.e. $250 (selling price) less $100 (paid to exercise the option).

If you would like more information, then feel free to contact either Gino Terriaca, Tony Cassettai or Silvia Caratti of Maxim Private Advisory on (08) 9489 2555.

POTENTIAL MAXIMISED

Level 1, 10 Ord Street, West Perth, WA 6005
PO Box 237 West Perth, WA 6872

www.maximadvisory.com.au
08 9489 2555

info@maximadvisory.com.au