

Case No. D37/10

Salaries tax – when share awards accrued – black-out period for sale of the shares – sections 8(1)(a), 9(1)(a), 11B, 11D and 68(4) of the Inland Revenue Ordinance ('IRO') – Departmental Interpretation and Practice Notes ('DIPN') 38.

Panel: Colin Cohen (chairman), Andrew Bullett and David Hon To Yu.

Date of hearing: 3 December 2010.

Date of decision: 14 January 2011.

The taxpayer was granted various stock units under his employer's Equity Incentive Compensation Plan. There was a black-out period of 10 days immediately after the shares were vested in him during which time he was not allowed to sell the shares. The taxpayer contended that the shares should be valued on the date when they were 'free of any conditions' and claimed that the value of the share awards assessed was excessive.

Held:

1. In ascertaining the value of the shares to be assessed, the actual amount realised upon disposal is an irrelevant consideration and as a matter of law, the shares are acquired when they are allotted to the relevant shareholders. The value of the shares at the date of allotment or vesting is assessable income for the purpose of salaries tax. Any restrictions imposed upon the shares or any subsequent event is a totally irrelevant consideration. It is clear that DIPN 38 provides various guidelines to determining when perquisite in the form of a share award accrued to an employee, and the various conditions that are attached. Hence, if there is a black-out period or a non-disposal condition imposed upon the Taxpayer, then this is an irrelevant consideration. The Taxpayer became the legal owner of the shares when the shares were allotted to him. The sale restriction imposed upon the owner of the shares cannot alter the character of the shares so that they are no longer something which can of their nature be turned into a pecuniary account.
2. The fact that there was a price fluctuation during the 10-day period in the Board's view again is irrelevant. Whether there were difficulties in the market is neither here nor there. Even if there were to be any discounts offered due to a black-out period, in this case, having regard to the short period of time and having regard to the circumstances of the case, no

discount is warranted and therefore, the Board has no difficulties in concluding that the assessment is indeed correct and not excessive.

Appeal dismissed.

Cases referred to:

David Hardy Glynn v Commissioner of Inland Revenue 3 HKTC 245
Weight (H. M. Inspector of Taxes) v Salmon 19 TC 174
Ede (H. M. Inspector of Taxes) v Wilson 26 TC 381
BR27/69, IRBRD, vol 1, 8
D128/99, IRBRD, vol 15, 16
D120/02, IRBRD, vol 18, 125
D65/06, (2006-07) IRBRD, vol 21, 1174
D10/08, (2008-09) IRBRD, vol 23, 133
Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue (2008) 11
HKCFAR 433
D10/08, (2008-09) IRBRD, vol 23, 133

Taxpayer in person.

Yip Chi Chuen and Ong Wai Man for the Commissioner of Inland Revenue.

Decision:

Introduction

1. This is an appeal by the Taxpayer in respect of a Determination dated 17 June 2010 by the Acting Deputy Commissioner of Inland Revenue ('the Determination').
2. The Taxpayer was relocated from City B to Hong Kong to take up an employment with Company A. Company A is a company within the group of Company A Group.
3. On 8 September 2008, various stock units were granted to the Taxpayer under the Company A Group 1995 Equity Incentive Compensation Plan. Those stock units were converted into Company A Group common stock.

The issues

4. The issues which the Board need to consider and decide are as follows:
 - (a) When did the share awards in question accrue to the Taxpayer? Was it 8 September 2008 or 18 September 2008?

- (b) If the share awards accrued to the Taxpayer on 8 September 2008, whether the amount as determined is excessive or incorrect?
- (c) If the share awards accrued to the Taxpayer on 18 September 2008, what value should be attached to them?

Notice of appeal

5. The Taxpayer appealed against the Determination in the following terms:

‘I hereby wish to object to the determination of the date when Share Awards should be assessed. That is, the date when the Share Awards were vested, with full title, and free of any conditions. I shall argue that this date was not 8 September, 2008 but instead 18 September, 2008.’

6. He then provided a further letter dated 1 November 2010 where he further argued that the relevant date should be ‘the date when the Share Awards were vested with full economic benefit and free of any conditions’ and the Taxpayer’s position was that the value of the share awards should be assessed at the opening price on 18 September 2008 as opposed to 8 September 2008.

The facts

7. There was no dispute as to the facts of this case. The Taxpayer agreed that the facts set out in the Determination accurately set out the facts.

8. We now set these out and find them as facts:

- ‘(1) [The Taxpayer] has objected to the salaries tax assessment for the year of assessment 2008/09 raised on him. The Taxpayer claims that the value of the share awards assessed is excessive.
- (2) On 1 August 2007, the Taxpayer was relocated from [City B] to Hong Kong to take up an employment with [Company A]. [Company A] is a company within the group of [Company A Group].
- (3) On 8 September 2008, the following stock units granted to the Taxpayer under the [Company A Group] 1995 Equity Incentive Compensation Plan were converted into [Company A Group] common stock:

<u>Plan Year</u>	<u>Award Date</u>	<u>Work Country on Award Date</u>	<u>No. of Shares</u>	<u>Market Price Per Share on 8-9-2008 (USD)</u>	<u>Gain Derived (USD)</u>
			(a)	(b)	(c) = (a) x (b)

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2004	30-11-200 4	USA	6,179	43.075	266,160.42
2005	13-12-200 5	USA	<u>7,477</u>	43.075	<u>322,071.78</u>
Total:			<u>13,656</u>		<u>588,232.20</u> @7.7619 <u>HKD4,565,799</u>

(4) [Company A] filed an Employer's Return of Remuneration and Pensions in respect of the Taxpayer for the year of assessment 2008/09 showing, inter alia, the following particulars:

- (a) Period of employment : 1-4-2008 – 31-3-2009
- (b) Capacity in which employed : Executive Director
- (c) Income :
- | | |
|------------------|---------------------------------|
| Salary | \$1,200,000 |
| Bonus | 2,969,662 |
| Allowances | 1,242,666 |
| Units conversion | <u>4,565,799</u> (“the Awards”) |
| Total | <u>\$9,978,127</u> |

(5) (a) In his Tax Return – Individuals for the year of assessment 2008/09, the Taxpayer declared the same employment income as per Fact (4)(c) above.

(b) In relation to the Awards, the Taxpayer claimed that:

(i) The Awards were earned while working outside Hong Kong in the years 2004 and 2005. He was awarded 6,179 shares on 30 November 2004 and 7,477 shares on 13 December 2005. On 8 September 2008, all the 13,656 shares vested in him at a share price of USD43.075 per share. His employer automatically withheld 4,473 shares to pay the US federal and state taxes. He also paid additional FICA taxes (US social security taxes), city and county taxes on the above amount. The balance of the vested shares, net of the taxes paid, of 9,183 shares were deposited into his US based brokerage account. The value at the conversion price was USD395,555 (that is, HKD3,065,572).

(ii) Despite the fact that the remaining shares became vested on 8 September 2008, employees were subject to a blackout period at that time since the company was about to release its financial results for the third quarter. Three days later, Lehman Brothers Holdings Inc. (“Lehman Brothers”) went

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bankrupt and the financial world imploded. Accordingly, the employees were not allowed to sell the shares until 17 September 2008 and by then, the share price was USD21.75 per share. He eventually ended up selling all the shares on 28 November 2008 at USD14.8836 per share.

(iii) Thus, after US taxes and stock market losses, he only got proceeds of USD136,676 (that is, HKD1,059,239) from the entire units conversion. The Awards should be excluded from the assessment so as to avoid double tax being levied.

(6) In support of the claim, the Taxpayer further made the following contentions:

(a) When the shares were vested in him, the company was about to release the financial results for the third quarter, which automatically imposed a two-week blackout period on all staff. He was not allowed to sell any shares until 18 September 2008. The opening price on 18 September 2008 was USD19.96 per share. Thus, the true actual gross conversion was USD297,018 and the net conversion was USD199,730.

(b) The window period for [Company A Group] employees to trade in its shares ended on the last business day of each fiscal quarter. [Company A Group], at the time, operated with fiscal quarters ending in February, May, August and November. Thus, his last day to sell [Company A Group] shares prior to the announcement of the financial results for the third quarter was 29 August 2008 and the window period opened again on 18 September 2008.

(c) Not only had he already paid the US taxes on the Awards but he had also “overpaid based on the discrepancy of the date when the vesting was assumed to have occur.”

(7) The Taxpayer provided, among other things, copies of the following documents:

(a) “Stock Unit Conversion Confirmation” showing the following particulars:

Plan Year	No. of Shares	Taxable Income (USD) [Fact (3)]	No. of Shares Withheld for US Taxes	Actual US Taxes Paid (USD)	No. of Shares Remained
2004	6,179	266,160.42	1,999	86,106.93	4,180
2005	7,477	322,071.78	2,474	106,567.55	5,003
Total:	<u>13,656</u>	<u>588,232.20</u>	<u>4,473</u>	<u>192,674.48</u>	<u>9,183</u>

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- (b) An email from [Company A] to the Taxpayer showing the text of the online announcement made by the company to its employees on 19 September 2008. The announcement stated that:
- (i) All employee transactions in [Company A Group] securities must occur during designated window periods. The window period began each quarter on the day after the first full business day following the firm's earnings release. For employees other than the Access Persons, the window period ended on the last day of the fiscal quarter.
 - (ii) The window period for employee transactions in [Company A Group] securities began on 18 September 2008.
- (c) An email from [Company A Group] to the Taxpayer showing that the opening price of [Company A Group] common stock on 18 September 2008 was USD19.96.
- (8) The Assessor raised on the Taxpayer the following salaries tax assessment for the year of assessment 2008/09:

Income other than the Awards (\$9,978,127 - \$4,565,799)	
[Fact (4)(c)]	\$5,412,328
The Awards (Note)	<u>1,618,183</u>
Assessable Income	<u>\$7,030,511</u>
Tax Payable thereon at standard rate	<u>\$1,046,576</u>

Note:

Award Date [Fact (3)]	Conversion Date [Fact (3)]	No. of Days in the Period ¹ (a)	No. of Days in HK ² (b)	Gain Derived (USD) [Fact (3)] (c)	Assessable Gain (USD) (d) = (c) x (b)/(a)
30-11-2004	8-9-2008	1,379	405	266,160.42	78,168.94
13-12-2005	8-9-2008	1,001	405	<u>322,071.78</u>	<u>130,308.76</u>
				<u>588,232.20</u>	<u>208,477.70</u>
				@7.7619	<u>HKD1,618,183</u>

1. No. of days in the period from the date of award to 8-9-2008
2. No. of days in Hong Kong during the period from 1-8-2007 [Fact (2)] to 8-9-2008

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(9) The Taxpayer objected against the above assessment on the following grounds:

- (a) As an employee of [Company A Group] in [City B], he was awarded unvested equity shares for work conducted and performed in the USA during the years 2004 and 2005. In September 2008, the shares were made available to him, net of US taxes. Thus, US taxes were paid in full via share deduction. If he had to pay taxes in Hong Kong on the Awards, he would be double taxed. The Awards were not sourced in Hong Kong and he therefore objected that they should be taxed in Hong Kong.
- (b) While the Awards became vested on 8 September 2008 at a conversion price of USD43.075 per share, employees of [Company A Group] were not allowed to sell any [Company A Group] shares as the date coincided with the window restrictions due to the third quarter earnings release by [Company A Group]. Thus, no employees were allowed to transact in their vested shares until the new window period opened up on 18 September 2008. This was the first day he could transact in the Awards and thus when they were fully vested. On 18 September 2008, the opening price that he could hypothetically sell the Awards in the market was USD19.96. This was the true conversion price.
- (c) The Awards assessed did not accurately reflect the true cost basis. He calculated his assessable gain as follows:

Plan Year	[Fact (7)(a)]		No. of		No. of Shares to be Taxed	Opening Price on 18-9-2008	Assessable Gain
	No. of Shares Net of US Taxes	No. of Months in the Period ¹	No. of Months in HK ²	% of Time in HK			
	(a)	(b)	(c)	(d) = (c)/(b)	(e) = (a) x (d)	(f)	(g) = (e) x (f)
2004	4,180	45	13	29%	1,212	USD19.96	USD24,191
2005	<u>5,003</u>	33	13	39%	1,951	USD19.96	<u>USD38,941</u>
Total:	<u>9,183</u>						<u>USD63,132</u>
						@7.8	<u>HKD492,430</u>

1. No. of months from the date of award to 8-9-2008 [Fact (3)]
2. No. of months from 1-8-2007 [Fact (2)] to 8-9-2008 [Fact (3)]

(10) The Taxpayer also put forth the following assertions:

- (a) The Inland Revenue Department's belief that one had to remain employed with a company to get shares vested was not correct.

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When employees were made redundant, the shares became immediately vested although the actual payout of equity shares would follow the original schedule.

- (b) In the Departmental Interpretation and Practice Notes No. 38, it was stated that when using the back-end approach, it had to be established “when the shares are actually vested in the employee free of any conditions.” His objection was that while the shares became vested on 8 September 2008, they were not free of conditions due to [Company A Group’s] window restrictions. They became free of any conditions on 18 September 2008.
 - (c) The window period for employee transactions opened on 18 September 2008. This was the first day the employees were allowed to transact in [Company A Group] shares in the open market and thus the first day the Awards were free of any conditions imposed by [Company A Group]. On 18 September 2008, the opening price that he could sell the Awards in the market was USD19.96 and this was the cost basis that he believed should be used.
 - (d) The window restrictions imposed on employees of American financial companies stemmed from the SEC Act of 1934, rule 10b5-1 which explicitly imposed these restrictions on financial firms and thus their employees.
- (11) In correspondence with the Assessor, [Company A], either itself or through [Audit Firm D], provided the following information:
- (a) All [Company A Group] active employees were bound by [Company A Group] Global Employee Trading Policy as part of the firm’s Code of Conduct for working at [Company A Group]. This trading policy was in compliance with US laws and regulation governing insider trading.
 - (b) [Company A Group] Global Employee Trading Policy prohibited all active employees from trading in [Company A Group] securities, except during specified window periods which typically began on the first full business day following [Company A Group] quarterly earnings announcement and ended on the last business day of each fiscal quarter. Window period was defined as the period during which employees were allowed under the employee trading policy to sell [Company A Group] stock.
 - (c) On 16 September 2008, [Company A Group] made its earnings announcement for the quarter ended 31 August 2008.

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Consequently, the window period for [Company A Group] employees to trade stocks did not begin until 18 September 2008. Prior to this date, trading in [Company A Group] securities by all global employees was restricted from the end of the last business day in August 2008.

(12) [Company A] also provided, among other things, copies of the following documents:

(a) “2004 Discretionary Retention Awards – Award Certificate” issued by [Company A Group] showing, inter alia, the following terms:

(i) Each of the employee’s stock units corresponded to one share of [Company A Group] common stock. A stock unit constituted an unsecured promise of [Company A Group] to pay him one share of [Company A Group] common stock on the conversion date for the stock unit.

(ii) 50% of the stock units would vest on 2 January 2007. The remaining 50% of the stock units would vest on 2 January 2008. Each portion of the stock units would vest only if the employee continued to provide services to the firm by remaining in continuous employment through the applicable scheduled vesting date and providing value added services to the firm during this timeframe.

(iii) Each of the vested stock units would convert to one share of [Company A Group] common stock on the fifth business day of the fourth fiscal quarter of 2009 or as soon thereafter as administratively practicable. The shares delivered upon conversion of stock units would not be subject to any transfer restrictions, other than those that might arise under the securities laws or the firm’s employee trading policy, or to cancellation under the circumstances set forth in Fact (12)(a)(iv) below.

(iv) The stock units, even if vested, were not earned until the scheduled conversion date. They might be cancelled prior to the conversion date in circumstances such as competing with [Company A Group] during employment or within stipulated time period after cessation of employment, termination of employment for cause, disclosing proprietary information to unauthorized persons, etc.

(v) The employee would not have any rights as a stockholder in

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the shares of [Company A Group] common stock corresponding to his stock units prior to conversion of the stock units. Following conversion, the employee would be the beneficial owner of the shares issued to him, and he would be entitled to all rights of ownership, including voting rights and the right to receive cash or stock dividends or other distributions paid on the shares.

- (b) “2005 Discretionary Retention Awards – Award Certificate” issued by [Company A Group] with similar terms and conditions as in Fact (12)(a) above except that 50% of the employee’s stock units would vest on 2 January 2008 while the remaining 50% of the stock units would vest on 2 January 2009 and that the stock units would convert to [Company A Group] common stock on the fifth business day of the fourth fiscal quarter of 2010 or as soon thereafter as administratively practicable.
- (c) A memorandum dated 14 December 2007 issued by [Company A Group] to the equity award recipients informing, inter alia, that the delivery date for the 2004 and 2005 share awards would be accelerated to 8 September 2008.

- (13) The Assessor does not accept the Taxpayer’s claim that the Awards should be valued at the opening price on 18 September 2008. However, she is of the view that the portion of the Awards that is attributable to the Taxpayer’s services in Hong Kong should be calculated with reference to the vesting periods from the date of award to the respective scheduled vesting dates. She considers that the Salaries Tax Assessment for the year of assessment 2008/09 should be revised as follows:

Income other than the Awards (\$9,978,127 - \$4,565,799)	
[Fact (4)(c)]	\$5,412,328
The Awards (Note)	<u>905,457</u>
Assessable Income	<u>\$6,317,785</u>
Tax Payable thereon at standard rate	<u>\$939,667</u>

Note:

[Fact (3)] Award Date	No. of Shares	Vesting Date ¹	No. of Days in the Period ²	No. of Days in HK ³	Market Price on 8-9-2008 (USD)	Gain Derived (USD)	Assessable Gain (USD)
	(a)		(b)	(c)	(d)	(e) = (a) x (d)	(f) = (e) x (c)/(b)

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30-11-2004	3,090	2-1-2007	764	0	43.075	133,101.75	0.00
30-11-2004	3,089	2-1-2008	1,129	155	43.075	133,058.67	18,267.58
13-12-2005	3,739	2-1-2008	751	155	43.075	161,057.43	33,240.88
13-12-2005	3,738	8-9-2008	1,001	405	43.075	<u>161,014.35</u>	<u>65,145.67</u>
						<u>588,232.20</u>	<u>116,654.13</u>
						@7.7619	HKD905,457

1. See Facts (12)(a)(ii), (12)(b) and (12)(c)
2. No. of days in the period from the date of award to the scheduled vesting date
3. No. of days in the period from 1.8.2007 [Fact (2)] to the scheduled vesting date'

9. It was agreed between the parties that since the facts clearly define the issues that need to be dealt with, there was no need for the Taxpayer to give evidence before us.

The relevant statutory provisions

Charge of Salaries Tax

10. Section 8(1)(a) of the Inland Revenue Ordinance ('IRO') provides that:

'Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong from the following sources-

(a) any office or employment of profit'

Definition of income from employment

11. Section 9(1)(a) of the IRO provides that:

'Income from any office or employment includes-

(a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance, whether derived from the employer or others'

Ascertainment and receipt of Assessable Income

12. Section 11B of the IRO provides that:

'The assessable income of a person in any year of assessment shall be the aggregate amount of income accruing to him from all sources in that year of assessment.'

13. On receipt of income, section 11D of the IRO provides as follows:

‘For the purpose of section 11B-

- (a) *income which has accrued to a person during the basis period for a year of assessment but which has not been received by him in such basis period shall not be included in his assessable income for that year of assessment until such time as he shall have received such income*

Provided that for the purposes of this paragraph income which has either been made available to the person to whom it has accrued or has been dealt with on his behalf or according to his directions shall be deemed to have been received by such person;

- (b) *income accrues to a person when he becomes entitled to claim payment thereof*’

The onus of proof

14. Section 68(4) of the IRO provides that:

‘The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.’

The law

15. We have no hesitation in accepting the submissions put forward by Mr Yip Chi-chuen (‘Mr Yip’) that it is well-settled that the benefit which takes the form of money’s worth is a perquisite chargeable to salaries tax. We refer to Lord Templeman’s statement at page 249 in David Hardy Glynn v Commissioner of Inland Revenue 3 HKTC 245 as follows:

‘Although a perquisite must mean the payment of money common sense requires that a perquisite must also include money which can be obtained from property which is capable of being converted into money.’

16. Our attention was drawn to:

- (a) Weight (H.M. Inspector of Taxes) v Salmon 19 TC 174;
- (b) Ede (H.M. Inspector of Taxes) v Wilson 26 TC 381;
- (c) BR27/69, IRBRD, vol 1, 8;
- (d) D128/99, IRBRD, vol 15, 16;
- (e) D120/02, IRBRD, vol 18 125;
- (f) D65/06, (2006-07) IRBRD, vol 21, 1174;
- (g) D10/08, (2008-09) IRBRD, vol 23, 133;
- (h) Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue (2008) 11 HKCFAR 433.

17. It is clear that a share award is indeed a perquisite and the shares allotted to the Taxpayer by reason of his office or employment with Company A were a perquisite within the meaning of section 9(1)(a) of the IRO. The relevant authorities are also clear that in ascertaining the value of the shares to be assessed, the actual amount realized upon disposal is an irrelevant consideration and as a matter of law, the shares are acquired when they are allotted to the relevant shareholders.

18. It is also clear from the authorities that the value of the shares at the date of allotment or vesting is assessable income for the purpose of salaries tax. Any restrictions imposed upon the shares or any subsequent event is a totally irrelevant consideration. Hence, if there is a black-out period or a non-disposal condition imposed upon the Taxpayer, then this is an irrelevant consideration. It is also clear that on the acquisition of shares, a taxpayer became a legal owner.

19. In D10/08, (2008-09) IRBRD, vol 23, 133, the Board held that any events that actually transpired after the date of allotment were totally irrelevant. However, the Board accepted that the Inland Revenue Department ('IRD') had given a discount of 10% because of the 2-year sale restriction imposed upon the sale.

The taxpayer's submissions

20. The Taxpayer's position is that since there was a black-out period of 10 days from 8 September 2008 to 17 September 2008, in his view his shares were not 'free of any conditions' on 8 September 2008. He therefore took the view that the value of the shares should therefore be assessed at the opening share price on 18 September 2008.

Our analysis

21. It is quite clear that there is common ground between the parties that the share awards were capable of being converted into money and therefore were a taxable perquisite. The only issue which the Taxpayer is arguing before the Board was the time when the shares were actually accrued to him. Having looked at matters, therefore, in our analysis, the only issue which we need really to deal with is when the share awards in question accrued to the Taxpayer.

22. We have had the opportunity to look carefully at the Company A Group 1995 Equity Incentive Compensation Plan and in particular, the 2005 Discretionary Retention Awards – Award Certificate. Clause 13(b) states as follows:

- '(b) **Following conversion.** Following conversion of your stock units you will be the beneficial owner of the net shares issued to you, and you will be entitled to all rights of ownership, including voting rights and the right to receive cash or stock dividends or other distributions paid on the shares.'

23. Therefore, in our view, it is clear that the terms of the Plan were unequivocal

and as such, the Taxpayer became the legal owner of the shares when the shares were allotted to him. It is therefore clear that on the allotment date, the bundle of rights and obligations attached to the shares were vested in its shareholders.

24. We accept that these are valid and subsisting rights and therefore the relevant date in our view in the present case is the date when the stock units were converted to Company A Group common stock upon the conversion date, which was 8 September 2008.

25. Again, we accept that any sale restriction imposed upon the owner of the shares cannot alter the character of the shares so that they are no longer something which can of their nature be turned into a pecuniary account. Therefore, when the Taxpayer became the owner of the shares on 8 September 2008, he was taken as having received the perquisite.

26. The Taxpayer's argument that the black-out period which was a very short one resulted in the shares not being 'free of conditions' on 8 September 2008 and meant that 'full economic benefit' had not then been received has not been made out. It is clear that the Departmental Interpretation and Practice Notes No.38 (Revised) ('DIPN 38') provides various guidelines to determining when perquisite in the form of a share award accrued to an employee, and the various conditions that are attached. Here the shares were delivered and it is clearly accepted that the shares were vested in the employee, that is, the Taxpayer, when he was able to take up ownership. It is also clear that once all the shares were delivered on 8 September 2008, the Taxpayer had become the legal owner of the relevant shares.

27. The next issue we need to consider is the value of the relevant share awards on 8 September 2008. Again, as we have previously stated above, any events that actually transpired after 8 September 2008 are irrelevant. The fact that there was a price fluctuation during the 10-day period in our view again is irrelevant. Whether there were difficulties in the market is neither here nor there. We conclude that the valuation attributable to the shares by the IRD at the date of delivery on 8 September 2008 was the correct calculation. Again, we accept the stance of the IRD that the open market value of the shares was to be taken as the closing quotation value of the relevant date. Even if there were to be any discounts offered due to a black-out period, in this case, having regard to the short period of time and having regard to the circumstances of the case, no discount is warranted and therefore, we have no difficulties in concluding that the assessment is indeed correct and not excessive.

Conclusion

28. Therefore, for all the above circumstances, we are of the view that the appeal fails and the assessment is upheld.