TAX TREATMENT OF RESTRICTED STOCK

INDIA

	EMPLOYEE	EMPLOYER
GRANT DATE	Restricted Stock (RS): Generally, restricted stock awards are allotted or transferred on the date of grant and taxed as a perquisite (salary income) upon grant. This amount must be determined in accordance with the fair market value of the shares as determined by a specified Indian Merchant Banker.	Restricted Stock (RS): The employer is required to operate tax withholding.
VESTING DATE	Restricted Stock Unit (RSU): Generally, restricted stock units are allotted or transferred on the date of vesting and taxed as a perquisite (salary income) upon vesting. This amount must be determined in accordance with the fair market value of the shares as determined by a specified Indian Merchant Banker.	Restricted Stock Unit (RSU): The employer is required to operate tax withholding.
WITHHOLDING & PAYMENT OF TAX	RS/RSUs are taxed as perquisite. The employer is required to withhold tax on perquisite value of RS/RSUs on transfer of the shares.	The employer is required to withhold tax on perquisite value of RS/RSUs on transfer of underlying shares along with other ordinary income.
SOCIAL SECURITY	No tax consequences.	No tax consequences.
REPORTING	The employee must file an annual individual income tax return. The return must include details of any income relating to the shares (perquisite/capital gain on sale).	The employer is obligated to perform filings quarterly, and issue an annual certificate of withholdings and income details.

For further information and to register for future updates contact:

globalequity@bdo.com

Defined terms used in this summary:

Restricted Stock - Issued shares transferred to employees on the date of grant which are typically subject to restrictions on sale or forfeiture for example if performance targets are not met.

Restricted Stock Units – Awards where employees receive a right to acquire shares. Shares are only issued following vesting and attainment of performance targets, if applicable.

This summary has been prepared on the basis that employees are resident in India throughout the period from grant of stock awards until the shares are sold and that the employee is employed by a local employer in India, which is a subsidiary of an overseas parent. The potential tax consequences may vary greatly depending on your company's equity plan's design, administration, as well as many other factors.

Should you have a need for a trusted advisor in this area, please contact BDO's Global Equity team.

This information is current as of August 2016.

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TAX TREATMENT OF RESTRICTED STOCK

INDIA

	EMPLOYEE	EMPLOYER
SALE OF SHARES	Taxes are payable upon sale of the shares at the applicable rate. The rate of tax will depend on the period shares are held. The gain on sale is equal to the sale proceeds less fair market value considered for perquisite at the time of vesting.	No tax consequences.
IS A CORPORATION TAX DEDUCTION AVAILABLE?	A deduction may be available if the Indian subsidiary reimburses the parent issuer for the costs of the award but exchange control approval is required.	
"QUALIFYING" PLANS AVAILABLE?	Not applicable.	
INTERNATIONALLY MOBILE EMPLOYEES	The above summary has been prepared on the basis that employees are resident in India throughout the period from the grant of the stock award until the shares are sold. The rules for internationally mobile employees are complex and there are specific rules applicable to non-resident individuals. Generally, India will have the right to tax the income if there is a link between the shares which the employee has received and the work of the employee performed in India. India broadly sources equity income based on the period between grant and vesting. It is highly recommended that advice is sought on an individual case by case basis.	
OTHER POINTS FOR CONSIDERATION	There are no express provisions pertaining to RS/RSUs to persons resident outside India. One may take a view that they are in the nature of stock options and hence would be subject to same implications as in the case of stock options granted to a person resident outside India. This summary is provided by BDO for informational purposes only to provide an outline of the general tax and social security position based on current tax law. There are also a number of legal and regulatory issues to consider on the implementation of any employee equity plan including, but not limited to, employee entitlement claims, exchange controls, securities restrictions, prospectus requirements and data protection regulations. We recommend that legal advice is obtained prior to the implementation of any employee equity plan.	

KEY ACTION POINTS

- ✓ Fair market value of the shares must be determined by a specified Indian Merchant Banker.
- ✓ Consider preparing the plan in accordance with SEBI Act (for Indian listed companies) and/or Companies Act.
- ✓ A listed company will have to comply with Securities and Exchange Board of India (Share Based Employee Benefits) Regulations. For unlisted companies, the RS/RSUs would be governed by the plan made in accordance with Articles of Company, ICAI guidance note, and Companies Act. There are also issues surrounding the forfeiture of shares and transferability of shares.
- ✓ Employers are responsible for the withholding of tax on the employee equity awards. Companies should review their systems to ensure that they are sufficiently robust to be able to capture, process and report stock award income through the payroll.
- ✓ There are specific rules applicable for Internationally Mobile Employees holding equity in India. We recommend that Companies review their systems to ensure that Internationally Mobile Employees moving in or out of India whilst holding equity can be identified to ensure correct compliance and identify any potential trailing liabilities.

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