TAX TREATMENT OF STOCK OPTIONS

AUSTRALIA

	EMPLOYEE	EMPLOYER
GRANT DATE	On the assumption that the taxing point is deferred to vest or exercise, there is no tax event at grant. Otherwise, the discount (spread) is taxable in the year of grant.	There may be payroll tax obligations but the liability and the taxing point varies from state to state.
VESTING DATE	On the assumption that the plan contains a Real Risk of Forfeiture the taxing point is deferred to when there ceases to be a Real Risk of Forfeiture and the scheme no longer restricts disposal of the shares, generally at vest. This is likely to be on the vesting date for stock options granted prior to 1 July 2015. At that time, tax will be payable on the difference between the market value of the shares at vest less any consideration paid by the employee (spread).	There may be payroll tax obligations but the liability and the taxing point varies from state to state.
EXERCISE DATE	This is the likely taxing point for options granted from 1 July 2015 where the plan stipulates this. At that time, tax will be payable on the difference between the market value of the shares at exercise less any consideration paid by the employee (spread).	There may be payroll tax obligations but the liability and the taxing point varies from state to state.
WITHHOLDING & PAYMENT OF TAX	The employee will pay tax upon assessment of their annual income tax return.	The employer is required to withhold income tax where the employee does not provide a Tax File Number or Australian Business Number.
SOCIAL SECURITY	There are no social taxes in Australia. However the employee may need to pay the Medicare levy when the stock option is taxed via the tax return, as well as a potential surcharge.	There are no employer social taxes payable. The spread is not liable to superannuation contributions (compulsory pension).
REPORTING	The employee tax return must include any taxable amount as a result of the option no longer having a Real Risk of Forfeiture or, in the case of an option acquired on or after 1 July, when exercised.	The taxable discount must be reported to the employee and the Australian Tax Office (ATO). Payroll tax reporting requirements and reporting due dates vary from state to state.

For further information and to register for future updates contact:

globalequity@bdo.com

This summary has been prepared on the basis that employees are resident in Australia throughout the period from grant of stock options until the shares are sold and that the employee is employed by a local employer in Australia, 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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AUSTRALIA

	EMPLOYEE	EMPLOYER
SALE OF SHARES	If the employee had been taxed at a point earlier than exercise, the capital gain on the sale of shares acquired under the plan is equal to the difference between the sales proceeds and the market value used to determine the spread at the income taxing point. If the employee holds the shares for more than 12 months after acquiring them, only 50% of the capital gain is taxable. If the sale is made within 30 days of exercise or vest, there is no gain on sale, as the sale proceeds are taken to be the market value for determining the spread.	No tax consequences.
IS A CORPORATION TAX DEDUCTION AVAILABLE?	A corporate tax deduction is only available where the Australian employing company incurs a genuine loss or outgoing in connection with remunerating its employees. Recharge arrangements should be properly documented.	
"QUALIFYING" PLANS AVAILABLE?	From 1 July 2015 Employee Share Scheme (ESS) interests granted at a discount that are rights/options no longer need to satisfy the "real risk of forfeiture" test to qualify for tax deferral and are now generally taxed on exercise if certain requirements are met. In addition, if the shares acquired on exercise of the rights are subject to a genuine disposal restriction (or a real risk of forfeiture), then the taxing point will continue to be deferred until the first day on which the shares are not subject to the disposal restriction (or real risk). However, the deferred taxing point will occur earlier if the employee ceases employment, if the rights are transferrable, or if a period of 15 years from grant passes. Qualifying options will generally be taxed at the eventual sale of the shares, at which time Capital Gains Tax (CGT) will generally apply. In addition, the combined holding period of the option and share is taken into account when considering whether the share meets the 12 month holding requirement to access the 50% discount. The cost base of the shares for CGT purposes will include the market value of the shares when the shares were acquired by the employee. This means that a discount (of up to 15%) on purchase of the shares will be received 'tax free' by the employee. $1,000 of shares or options can be granted tax free each year subject to the employee meeting an income test and the plan meeting other eligibility criteria.	
INTERNATIONALLY MOBILE EMPLOYEES	The above summary has been prepared on the basis that employees are resident in Australia throughout the period from the grant of the stock option until the shares are sold. The rules for internationally mobile employees are complex and there are specific rules applicable to non-resident individuals. Generally, Australia 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 Australia. Australia broadly sources equity income based on the period between grant and vesting. It is highly recommended that advice is sought on an individual by individual basis.	
OTHER POINTS FOR CONSIDERATION	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

- ✓ Determine whether the plan meets the conditions necessary to contain a Genuine Risk of Forfeiture.
- ✓ Determine which taxation regime would apply to the ESS.
- ✓ Report the taxable income to the employee by 14 July and to the Australia Tax Office (ATO) by 14 August.
- ✓ 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 Australia. We recommend that Companies review their systems to ensure that Internationally Mobile Employees moving in or out of Australia whilst holding equity can be identified to ensure correct compliance and identify any potential trailing liabilities.

AUGUST 2016