TAX TREATMENT OF RESTRICTED STOCK

AUSTRALIA

	EMPLOYEE	EMPLOYER
GRANT DATE	Restricted Stock (RS) and Restricted Stock Unit (RSU): On the assumption that the plan meets certain conditions and contains a Genuine Risk of Forfeiture, tax may be able to be deferred until a time when there is no Genuine Risk of Forfeiture and the scheme no longer restricts disposal of the RS or RSU. If such conditions are met, the taxing point is likely to be the Vesting Date.	Restricted Stock (RS) and Restricted Stock Unit (RSU): There may be payroll tax obligations but the liability and the taxing point varies from state to state.
VESTING DATE	Restricted Stock (RS) and Restricted Stock Unit (RSU): On the assumption that the plan contained a Genuine Risk of Forfeiture and taxation was deferred, tax is payable when there ceases to be a Genuine Risk of Forfeiture, which is most likely to be at vesting and the scheme no longer restricts disposal of the RS or RSU. Tax will be payable on the difference between the market value of the shares less any amount paid (spread).	Restricted Stock (RS) and Restricted Stock Unit (RSU): 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 only 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 RS/RSU 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 RS/RSU taxing point in the relevant tax year.	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

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.

Information contained herein is intended to reflect present law and provides only a general outline of the subjects covered. Material discussed herein is meant for general informational purposes only and should not be relied on as professional advice. As such you should consult your own tax advisor regarding your specific tax matters.

This summary has been prepared on the basis that employees are resident in Australia throughout the period from grant of stock awards 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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	EMPLOYEE	EMPLOYER
SALE OF SHARES	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 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?	Eligible start-up companies can now grant Employee Share Schemes (ESS) interests to their employees that are not subject to income tax on grant, vesting or exercise. Instead Capital Gains Tax (CGT) will apply, generally when the shares are sold, and a CGT discount of 50% may be able to be accessed as well. This means the employee will not be required to pay tax on the ESS interests until a realization event occurs. The start-up concessions have several eligibility conditions. Qualifying options will generally be taxed at the eventual sale of the shares, at which time 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. 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.	
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 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, 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 case by case 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.
- ✓ 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