India

Employment

Labor Concerns

It is possible, albeit not common, that benefits under a stock purchase plan would be viewed as a part of the employee's salary and taken into account when determining damages payable to the employee upon unlawful termination. To mitigate this risk, the employee should acknowledge in writing that the plan and any benefits thereunder are provided solely at the discretion of the company.

In order to avoid any allegations of discrimination and unfair treatment, the offerees of the Plan should be a clearly defined and demarcated set of employees identified on the basis of objective criteria.

Communications

The translation of Plan documents for employees is recommended but is not legally required unless the plan is a tax-compliant employee stock purchase plan under the Income Tax Act, 1961, in which case, if the ESPP document is in any language other than English, an English translation must be provided. Government filings must be in English.

Regulatory

Securities Compliance

The plan document shall not be considered to be a prospectus for securities law purposes provided the offerees are a defined set of individuals, and the offer is incapable of being subscribed to by persons other than the offerees.

Indian listed companies are required to follow the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines (1999).

Foreign Exchange

If no funds are transferred in the vesting of shares under the stock purchase plan, foreign exchange requirements generally do not apply and such stock may be acquired by resident individuals without any prior approval of the Reserve Bank of India.

A person resident in India, being an individual who is an employee or a director of an Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company in which there is any foreign equity holding, either directly or indirectly (through a special purpose vehicle, trust or a step down subsidiary), may purchase equity shares offered by the foreign company. Authorised dealer banks in India are permitted to allow remittances for purchase of shares under a plan provided that the shares under the plan are offered globally on a uniform basis, and an annual return is submitted by the Indian company to the Reserve Bank of India through the authorized dealer bank giving certain details such as the number of employees who acquired foreign securities under an award scheme and the total amount of outward remittance.

Under the Liberalised Remittance Scheme, resident individuals may invest up to USD 200,000 per financial year (April-March). The Liberalised Remittance Scheme seeks to encourage such resident Indians to make investments in financial instruments without any prior approval.

A person resident in India may sell Stock acquired under the Plan if the sale proceeds are repatriated immediately and in any case not later than 90 days from the date of such sale.

Foreign Companies are permitted to repurchase Stock issued to a person resident in India under any ESOP Scheme, provided that (i) the Stock is issued in accordance with the rules/regulations framed under the Foreign Exchange Management Act (1999), (ii) the Stock is being repurchased in terms of the initial offer document and, (iii) an annual return is submitted to the RBI through an authorised dealer (bank) giving details of remittances, beneficiaries, etc.

Data Protection

It is recommended that employers disclose their data processing activities to employees. It is recommended that an employer obtain an employee's prior written consent for the collection, use and transfer of his or her personal data outside of India. It is also recommended that an employer reserves, in the employee contracts the right to transfer information contained in the database to related companies or to a third-party plan administrator.

Tax

Employee Tax Treatment	The Fringe Benefit Tax ("**FBT**") has been abolished. Accordingly, the perquisite regime of taxation in the hands of the employees is applicable. As such, each employee's stock purchase right is taxable as a perquisite on the date of acquisition, and calculated on the difference between the Fair Market Value ("**FMV**") of the shares on the date of acquisition and the acquisition price (computed in accordance with the rules notified in this regard). In terms of the shares allocated in pursuance of the Employee Stock Purchase scheme(s), there would be capital gains tax implications. Any subsequent sale of shares by employees would trigger a capital gains tax liability in the hands of the employee. For the purpose of computing capital gains, FMV on the date of acquisition would form the cost base. The employee may receive more favorable long-term capital gains treatment at the time of sale, depending upon the period of holding of the capital asset.
Employer Tax Treatment	A deduction may be available if the Indian subsidiary reimburses the parent issuer for the cost of the award Further companies may claim expenditure on the difference between market price and issue price of of shares offered as a staff welfare expenditure. However in absence of any specific provision in the Income Tax Act,1961, this claim is subject to judicial interpretation and litigative.
Social Insurance Contributions	Benefits received under a purchase plan are not subject to social insurance contributions.
Tax-Favored Program	If the employee holds the Stock for 12 or more months from the date of allotment or transfer of such security or sweet equity shares, more favorable capital gains tax rates apply. Capital gains are taxable as Long Term Capital Gains or Short Term Capital Gains, depending upon the period of holding of the capital asset.
Withholding and Reporting	The payer (whether resident or non-resident) is under an obligation to withhold taxes at the applicable rates, in accordance with the provisions of the Income Tax Act (1961). Vide Finance Act,2012 the responsibility for withholding taxes has been extended to non residents retrospectively from April 1, 1962, if the income of recipient non resident is chargeable to tax in India.

