India

Employment

Labor Concerns

It is possible, albeit not common, that benefits under a restricted stock or RSU plan would be viewed as part of the employee's salary and taken into account when determining damages paid 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 at the sole discretion of the company.

Communications

The translation of Plan documents is recommended, but not legally required unless the plan is a tax-favored ESOP scheme – in which case, if the plan document is in any language other than English, an English translation must be provided. Government filings must be in English.

Regulatory

Securities Compliance

A plan document will 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 proposing to offer a plan will have to comply with 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 grant of restricted stock or RSU awards, foreign exchange requirements generally do not apply and such stock or awards may be acquired by resident individuals without any prior approval of the Reserve Bank of India.

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 of the Reserve Bank of India.

The resident individuals who are either employees or directors 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 holding, either directly or indirectly (through a special purpose vehicle, trust or a step down subsidiary), are permitted to acquire foreign securities under an award scheme without any monetary limit. They are also permitted to freely sell the shares provided the proceeds thereof are repatriated to India immediately and in any case not later than 90 days from the date of such sale. However, the Indian company will need to file an annual return to the RBI 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.

Foreign companies are permitted to repurchase Stock issued to residents in India under any ESOP Scheme in the form of restricted stock or RSU plans provided (i) the Stock is issued in accordance with the rules and regulations framed under 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 by the Indian company to the RBI 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.

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 contract, the right to transfer information contained in the database to related companies or to a third-party plan administrator.

India (Cont.)

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 rights are taxable as a perquisite on either (i) the date of acquisition (in relation to restricted stock), or (ii) the date of vesting (in the case of RSUs), calculated by reference to the difference between the Fair Market Value ("**FMV"**) of the shares on the date of acquisition/vesting (whichever is applicable) 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 Option scheme(s), there would be capital gains tax implications. Any subsequent sale of shares by employees would trigger capital gains tax liability in the hands of the employee. For the purpose of computing capital gains, FMV on either (i) the date of acquisition (in relation to restricted stock), or (ii) the date of vesting (in relation to RSUs, 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 the plan are not subject to social insurance.
Tax-Favored Program	If the employee holds the underlying Stock for 12 months or more 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). Pusuant to the Vide Finance Act (2012) the responsibility for withholding taxes has been extended to non residents retrospectively from 1 April 1962, if the income of recipient non resident is chargeable to tax in India

