

Global Rewards Update: India

July 2009

INDIA'S BUDGET TO POTENTIALLY ABOLISH FRINGE BENEFIT TAX (FBT) ON EQUITY AWARDS

The India Budget was presented in the Parliament on July 6, 2009 which covers India's April 1, 2009 through March 31, 2010 tax year. The Budget seeks to amend various provisions of the Income Tax Act. One of the key changes proposed is the abolition of the Fringe Benefit tax (FBT).

With the proposed abolition of the FBT, the following key provisions have been introduced:

Timing of Taxation of Equity Awards/Employer Withholding Requirements

Employees would be subject to Indian income tax on the value of equity awards (income will be taxable as a 'perquisite'). Employer income tax withholding would be required.

- For stock options, the taxable value would be determined in accordance with a 'prescribed method' on the date on which an option is exercised, reduced by the amount actually paid by, or recovered from the employee.
- Similarly, employee stock purchase plans (ESPPs) and restricted stock units (RSUs) would be subject to tax at the time of purchase or vest, respectively.
- The precise valuation methodology is yet to be determined. It is not clear whether Merchant Banker involvement which was previously required under the FBT regime will remain applicable.

Subsequent Sale of Shares

A consequential amendment that is proposed in the Budget concerns any capital gain arising from the transfer/sale of shares. It is proposed that the acquisition cost of such shares will be the taxable value for stock options, ESPPs and RSUs as noted above. However, the valuation methodology is yet to be determined.

In the instance where capital gains arise from the transfer of shares which had previously been

subject to FBT, the 'basis' for the computation of the capital gain will continue to be the amount taken into account for the computation of FBT.

Uncertainty in Respect of the Reintroduction of Qualified Plan Status

Prior to the Indian fiscal year 2007-2008, employees were subject to tax in respect of benefits arising from stock options at the time of exercise. The point of taxation could be deferred to the sale of the shares if an employer operated a qualified plan per the Indian Government Guidelines. The changes proposed in the Budget do not distinguish between qualified and non qualified plans. It is unclear at this time whether the previous favorable plan treatment will be made available again.

Effective Date of Proposed Budget

The effective date of the proposed budget amendment is retroactive to April 1, 2009 (i.e. with effect from the start of the Indian fiscal year 2009-2010.) Consideration will need to be given to equity transactions that have occurred since April 1, 2009. The budget does not address how to treat stock option exercises, RSU vests or ESPP purchases which have occurred since April 1, 2009.

It is likely that employers who have paid the first installment of FBT tax (the first installment payment was due on June 15, 2009) would be eligible for a refund of the tax if the FBT provisions are abolished. However, the budget does not address the mechanism for obtaining a refund.

We anticipate more guidance on the outstanding issues soon.

ACTION

Companies should:

- Ensure FBT due in respect of FY2008-09 is paid and closing returns are filed.
- Consider introducing withholding tax mechanisms at this time.
- Consider communicating the proposed change to employees. Special care should be used if a company has passed a portion of the FBT to employees.

People to Contact

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: **globalequity@deloitte.com** and a global rewards consultant will contact you.

1633 Broadway
New York, NY 10019 – 6754
United States

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