

Tax Hotline

October 24, 2007

FINALLY... RULES FOR VALUATIONS OF SECURITIES AND SHARES FOR PAYMENT OF FBT ANNOUNCED

Employee stock option plans have in the past been utilized as an incentive tool to retain employees. However, in light of the recent amendment, brought about by Finance Act, 2007 employers are currently liable to pay fringe benefit tax ("FBT") for all such stock options granted by them to their employees. FBT is required to be paid at the time exercise of the stock option on the fair market value of the shares on the date of vesting of the stock option.

Finally after a patient wait by the corporate community, the Central Board of Direct Taxes ("Board") by way of circular dated October 23, 2007 threw light on the valuation norms to be applied while calculating FBT on stock options. The stock option valuation norms will come into effect from April 1, 2008 and shall be applicable to all assessments made from and after assessment year 2008-2009.

The circular states that, in cases where the securities of a company offering such stock options is listed on a recognized stock exchange, the fair market value of the shares or securities shall be the average of the opening price and closing price of that security as on the date of vesting of the stock option.

However, if such security is listed on more than one recognized stock exchange, the fair market value of that security shall be the average of the opening price and closing price of that security as recorded on the stock exchange in which such security records the highest volumes of trade. Further, if no trading in the security takes place on the recognized stock exchange on the date of vesting of the stock option, the fair market value shall be the closing price of the security as on the date closest to the date of vesting. If such security is listed on more than one recognized stock exchange, the closing price shall be same as above, but as on the recognized stock exchange which records the highest volumes of trade in the date closest to the vesting of the stock option.

In case of unlisted security, the fair market value of the security as on the date of vesting of the stock option shall be the value as may determined by a Securities and Exchange Board of India ("SEBI") registered Category I Merchant Banker on the specified date. "Specified date" has been defined as *"the date of vesting of the stock option" or "any date earlier than the date of the vesting of the stock option, not being a date which is more than 180 days earlier than the date of the vesting"*. This definition of the term specified date leads to a confusion as to whether companies have an option to choose any fair market value earlier than 180 days of the date of vesting of the stock option.

Further in light of the above mentioned circular, companies having monthly vesting schedules will face a herculean task of getting valuations.

The corporate community had been waiting in anticipation for these valuation rules to be announced and the delay in the release of these rules have added to their suspense. The rules however seem to be quite simple and have made India Inc. wonder why these could not have been released earlier. Having said that, there are still some unanswered questions regarding FBT on stock options, especially with respect to applicability of FBT to foreign companies, availability of tax credit, problems in estimation of FBT when stock options are exercised at the end of the financial year etc. It is hoped that the Board will come out with clarifications on some of these issues.

To know more on FBT on stock options please refer to our [Tax Hotline dated June 15, 2007](#)

- Vivek Mimani & Parul Jain

Source: NOTIFICATION NO. 264/2007, DATED 23-10-2007

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

FAQs on Setting Up of Offices in India

December 13, 2024

FAQs on Downstream Investment

December 13, 2024

Gaming Law 2024

December 12, 2024

Research Articles

The Revolution Realized: Bitcoin's Triumph

December 05, 2024

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

[Click here to view Hotline archives.](#)

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI8 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

Scope of judicial interference and inquiry in an application for appointment of arbitrator under the (Indian) Arbitration and Conciliation Act, 1996

September 22, 2024