

Global Rewards Update: India– Recent tribunal decisions relating to stock options

November 2013

Background

This update provides a summary of two cases regarding the tax treatment of stock options.

The first case considered whether income arising on the exercise of stock options should be taxed under employment income for a non-employee consultant.

The second case considered the deductibility of a recharge for the costs of a stock option plan.

Independent consultants to be regarded as employees

A recent case considered the position of an independent consultant receiving stock options in a US company. The tribunal in this specific case has ruled that the consultant will be treated the same as an employee.

This means that the income arising on exercise of stock options will be taxed as employment income in line with the treatment of permanent employees. Income tax withholding is required.

Capital gains tax will also be due on future sale of the shares.

Deductibility of a recharge for the costs of a stock option plan

The employees of the Indian subsidiary were granted stock options under a plan operated by the Danish Holding company.

The difference between the purchase price paid by employees and average market price of the shares was recharged by the Danish holding company to the Indian employer. The issue in question was whether the recharged cost was deductible as revenue expense for the Indian company.

The Bangalore Tribunal ruled that the expenditure in question was wholly and exclusively for the purposes of the business of the Indian employer company and should be allowed as deduction as a revenue expenditure.

Action

The definition of 'employee' was in this case widened to include consultants in relation to the tax treatment of stock options. Consideration should be given to whether this would be applicable to other consultants engaged by companies who receive stock options.

This Bangalore Tribunal decision supports the previous understanding on the deductibility of recharged expenses. It strengthens the position for deduction of stock option expenses recharged by the parent company to its Indian subsidiary.

Companies should consider whether they are recharging equity plan costs to Indian subsidiaries and whether they are claiming a deduction.

People to contact

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