



3rd Annual CEP Symposium 

## Certified Equity Professional Institute

### Taxation of Equity Compensation in China, India, Malaysia, and Singapore

Marlene Zobayan – Deloitte Tax LLP  
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### Agenda

- A journey through equity compensation taxation regimes of: China, India, Malaysia, and Singapore
- Plans considered: stock options, ESPP, restricted stocks, and restricted stock units
- Points considered
  - Employee and employer taxation
  - Tax favored plans
- A few words on mobile employees
- Questions

*Caveat: This presentation assumes a generic stock plan. Please seek specific advice for the tax implications applicable to your plan.*

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### China

- Employee Taxation
  - Taxation at:
    - Exercise (options): Taxable amount is the difference between the closing price of the stock at the date of exercise and the exercise price paid by the employee;
    - Purchase (ESPP): Taxable amount is the closing price of the stock on the date of purchase less purchase price;
    - Vest (restricted stocks): Taxable amount is the closing price of the shares on vest date;
    - Vest (restricted stock units): Taxable amount is the closing price of the shares on vest date
  - Social security is not payable on share benefits (for non-Chinese Nationals)
  - Capital gain on sale of shares at a flat rate of 20%; for non-Chinese Nationals who are not tax residents of China, no capital gains tax would apply

\*ESPP should not be extended to China due to foreign exchange regulations or allow cashless purchase only

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**China**

- **Employer Tax Compliance**
  - Employer withholding and reporting
    - Initial and ongoing reporting
      - Employer should register all stock plans offered with the local tax bureau(s)
  - No employer social tax\*
  - Employer tax deduction is available if recharge agreement is in place but would depend on facts and circumstances since close scrutiny would be imposed by the Chinese government for the recharge
    - Note foreign exchange issues

\*Employer will have social security obligation in China if the share benefits are received by employees who are Chinese Nationals

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**India**

- **Employee Taxation**
  - Taxation at:
    - Exercise (options): Taxable amount is the difference between the fair market value of the stock at the date of exercise and the exercise price paid by the employee;
    - Purchase (ESPP): Taxable amount is the fair market value of the stock on the date of purchase less purchase price;
    - Vest (restricted stock): Taxable amount is the fair market value of the shares on vest date;
    - Vest (restricted stock units): Taxable amount is the fair market value of the shares on vest date
  - Social security is not payable on share benefits
  - Capital gain on sale of shares is taxed at 30% (plus applicable surcharges) for short term gains and 20% (plus applicable surcharges) for long term gains (more than 12 month)

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**India**

- **Employer Tax Compliance**
  - Employer withholding and reporting
  - No employer social tax
  - Employer tax deduction is available at exercise for any discount offered at the time of grant, if recharge agreement is in place. Full value of shares for restricted stocks and restricted stock units are deductible as well

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**India**

- Tax Favored Plans
  - Plans in accordance with Central Government guidelines
    - Benefits
      - Taxation is deferred until sale of the shares
      - No employer withholding and reporting
    - Some conditions
      - Plan must be a written document
      - Plan must contain prescribed details
      - Conditions of the plan should not be amended after it comes into effect
      - Copy of the plan must be filed with the authorities within 6 month from the effective date of the plan
    - Some points for consideration
      - Advisable to have an India sub plan which meets all the guidelines

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**Malaysia**

- Employee Taxation
  - Taxation at:
    - Exercise (for options granted after 1/1/2006): Taxable amount is the difference between the average of highest and lowest stock price at the date of vest or exercise (whichever is lower) and the exercise price paid by the employee;
    - Purchase (ESPP): Taxable amount is the average of highest and lowest stock price on date of purchase less purchase price;
    - Vest (restricted stocks): Taxable amount is the average of highest and lowest stock price of the shares on vest date;
    - Vest (restricted stock units): Taxable amount is the average of highest and lowest stock price of the shares on vest date
  - Social security is not payable on share benefits
  - No capital gain on sale of shares unless the participant is involved in a share trading business

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**Malaysia**

- Employer Taxation
  - Employer withholding and reporting
    - Income tax withholding only
    - To report the taxable benefits in the Return of Remuneration from Employment (Form EA) at the end of the year
  - No employer social tax
  - Employer tax deduction is available if recharge agreement is in place

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**Singapore**

- **Employee Taxation**
  - Taxation at:
    - Exercise (options): Taxable amount is the difference between the fair market value of the stock at the date of exercise and the exercise price paid by the employee;
    - Purchase (ESPP): Taxable amount is the fair market value of the stock on date of purchase less purchase price;
    - Vest (restricted stocks): Taxable amount is the fair market value of the shares on vest date;
    - Vest (restricted stock units): Taxable amount is the fair market value of the shares on vest date
  - Social security is not payable on share benefits
  - No capital gain on sale of shares unless the shares were acquired as part of a share trading activity

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**Singapore**

- **Employer Tax Compliance**
  - Employer withholding and reporting
    - No withholding requirement unless the employee is a foreigner or a Singapore Permanent Resident (SPR) leaving Singapore permanently on cessation of employment in Singapore
    - Reporting requirement at year end
  - No employer social tax
  - Employer tax deduction is available
    - Must use reacquired shares and track basis in these shares
    - Stock options/restricted shares must be granted in respect of the employee's Singapore employment

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**Singapore**

- **Tax Favored Plans**
  - Qualified employee equity-based remuneration plan (QEEBR)
    - Benefits
      - Allows deferral of taxation for stock options and restricted stocks for up to five years, subject to interest charge
    - Some conditions
      - Vesting period
      - Qualifying company
      - Qualifying employee
    - Some points for consideration
      - No application required
      - Need to maintain sufficient documentation to demonstrate the plan satisfied the vesting conditions
      - Required to certify the plan is a QEEBR on employee's application form for deferral of tax payment

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### Singapore

- Tax Favored Plans (ctd)
  - Company equity-based remuneration plan (CEEER)
    - Benefits
      - Allows gains from stock option and restricted stocks to be tax exempt up to S\$1 million over 10 years commencing the 1<sup>st</sup> year of tax exemption enjoyed by the employee. The exemption is as follows:
        - 100% of the first S\$2,000 gains annually; and
        - 25% of the remaining annual gains
    - Some conditions
      - Vesting period
      - Qualifying company
      - Qualifying employee
      - 50% remuneration
    - Some points for consideration
      - Company must provide confirmation letter to employee confirming that qualifying terms and conditions of CEEER have been met

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### Mobile Employees

- Issues arise with cross border mobile employees, including
  - Tracking
  - Mismatch in timing of taxation
  - Mismatch in withholding rules and taxation rules
  - Inconsistent allocation of income
    - OECD recommends allocation based on workdays between grant and vesting
    - Allocation should be done on a tranche-by-tranche basis
  - Double tax treaties can override domestic law but they are often unclear

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### Mobile Employees

	Inbound (grant elsewhere exercise in country)	Outbound (grant in country exercise elsewhere)
China (vary by LTB)	Based on Chinese working days between grant and vest/exercise	Based on Chinese working days between grant and vest/exercise
India <small>(Legislation is not clear based on DT default)</small>	Based on Indian working days between grant and exercise	Based on Indian working days between grant and exercise
Malaysia	Full gain	None
Singapore	None for exercise/vesting on or after 1 <sup>st</sup> January 2002	Full gain based on deemed disposition for stock options/restricted shares granted on or after 1 <sup>st</sup> January 2003 for foreigner or SPR employees upon cessation of employment

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**Questions**

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