

Informal FBT “Survey”

On August 24th and 25th of 2009, Stock & Option Solutions performed an abbreviated and very informal survey of a number of companies across the country to ask what they are doing about India FBT/Income tax now that the law has been passed but the bill has yet to be signed. Below is a summary of the results.

Started Withholding Income Tax Already	No Changes Until Finalized	Suspended Withholding Until Finalized
5	4	1
50%	40%	10%

Withholding Income Tax Already:**Company 1 (San Diego, CA):**

We did not pass FBT along to our employees they've had a really hard time w/ this. We started w/holding income tax at a rate of 30.9% July 14th but haven't yet paid it over to the government. For our July 31st ESPP purchase we'll be deducting the taxes on their upcoming September paychecks (wanted to wait for the Budget to be finalized).

We just received word that the Budget was signed by the President on August 19th so technically we should start collecting for exercises dated April 1-July 13 and remit the taxes we've collected thus far. However, our in-country folks are resisting and want us to wait until the definition of FMV has been provided in the form of guidance/notice. Because this could potentially be months away I don't want to wait so I can't answer you on that one, but would be curious to see what others are doing, especially since we've been told by our consultants we could have to pay penalties if we wait but (of course) our in-country folks are saying that's not true.

Company 2 (Silicon Valley, CA):

We are obtaining employee's individual tax rates to do the net share withholding, which of course is different from the FBT rate.

Company 3 (Silicon Valley, CA):

While all the details and processes have not been completed, the directive is to begin withholding ASAP at the maximum rate. Decisions on timing of remittance, prior transactions and true-ups are not final. We are operating under the assumption that no changes are expected to the current language and that qualified plans are no longer valid.

Company 4 (Silicon Valley, CA):

We began withholding last month. We are communicating to the employees that if the final law does not require the company to withhold and remit the tax that we will refund it to them.

Company 5 (CT):

We only have minimal activity there - just one release since April 1st. The local folks are going to withhold from the next payroll the estimated taxes (30%?) from that release.

Waiting to Hear...**Company 6 (Silicon Valley, CA):**

I have a meeting tomorrow with India to discuss, but we our plan is not to do anything until its finalized.

Company 7 (Southern CA):

We are continuing to collect and pay the FBT liability (currently paid by the employee). Once we have the final confirmation that the FBT has been completely abolished we will change our tax notices but essentially, the employee will still have a tax liability.

Company 8 (Silicon Valley, CA):

We have decided to wait until we hear for sure what the final decision is. We haven't sent them any FBT money or reporting.

Company 9:

We checked with many Cos like Coca-Cola, Pepsi, Suzuki, Cargill, and GE...as also various consulting firms viz. PwC, KPMG, E&Y and DHS. The broad view was - wait for the Act and then the notification to clarify. Rationally employees should be entitled to take credit for the FBT paid. In the interim, advice US office not to withhold units to cover for FBT since FBT is gone. Should you advise India payroll to include this as perquisite in the salary? If shares have been 'exercised', you could take two views - one subject it to TDS and later adjust the excess/shortfall (this may not make employees happy), or don't do TDS now but reserve the right to do TDS once the Bill is passed/Notification is issued. As Employer, one is allowed to make an estimate while determining taxable income.

XXX sent out a mail in the last week of July 09 to COMPANY NAME India giving heads up about the implications of proposed income-tax changes on individuals' salary (including ESOP). Therein he mentioned that Income Tax changes that are applicable from April 1, 2009 are in a 'proposed stage' awaiting requisite approvals from the relevant authorities...we will update you on the differential tax (and its calculations) that needs to be refunded or adjusted against your future salary/tax liability as we get more clarity from the government.

To inform, the Finance Bill 2009 has been approved on last Thursday (8/20) and has now become an Act. We, now await the Notification that we expect in a week/ten days' time to clarify the anomaly.

Suspended Withholding:**Company 10 (San Francisco, CA):**

Anonymous at NASPP Meeting (Reported by Attendee)

About Stock & Option Solutions

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