



FENWICK & WEST LLP

## INDIA UPDATE

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### Stock Options for Employees of India Subsidiaries of U.S. Companies

In early May the Reserve Bank of India (“**RBI**”) eliminated the requirement of granting options at a “concessional” price to employees in India subsidiaries of U.S. companies. The elimination of this requirement will provide employees in India subsidiaries of U.S. companies with more certainty on favorable tax treatment on stock option grants received from those companies.

Employees of India subsidiaries of U.S. companies are familiar with stock option compensation and view it favorably. Generally, stock options are granted to employees of the Indian subsidiary from the equity incentive plan of the U.S. company. The U.S. company sometimes has an India plan supplement for option grants in India. If the plan complies with certain RBI guidelines and the plan is registered in India with the Chief Commissioner of income-tax, the options will have the same tax treatment as federal tax treatment of incentive stock options in the United States. Taxation is deferred until sale of the stock rather than being taxed upon exercise of the options.

Last year, India’s currency exchange controls were relaxed for payments for stock option exercises. Employees were allowed to remit for the exercise of an option under a plan, so long as the exercise price is at a “concessional” price. There was no guidance on determining a concessional price. Eliminating the concessional price requirement simplifies company compliance and provides greater certainty for employees to receive favorable tax treatment.

If you have any questions on this or other matters involving India, please contact Montu Bashambu ([mbashambu@fenwick.com](mailto:mbashambu@fenwick.com)), Tahir Naim ([tnaim@fenwick.com](mailto:tnaim@fenwick.com)), Rajiv Patel ([rpatel@fenwick.com](mailto:rpatel@fenwick.com)) or Fred Greguras ([fgreguras@fenwick.com](mailto:fgreguras@fenwick.com)) of Fenwick & West LLP (telephone: 650.988.8500).

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