

Recent RBI Circular on Reporting of Foreign Investment in India in A Single Master Form - Impact on ESOP Reporting

1. Background

- 1.1 Compliance and reporting aspects in connection with grant of employee stock options (“ESOPs”) by an Indian company to its employees, or employees of its subsidiary or holding company being resident outside India (“Non-resident Employees”) and exercise of such ESOPs by the Nonresident Employees, have been prescribed in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (“FEMA Regulations”).
- 1.2 The FEMA Regulations among others prescribe:
 - The norms governing grant of ESOPs to Non-resident Employees; and
 - The form of reporting (referred to as “Form-ESOP” in the FEMA Regulations) at the time of grant and exercise of ESOPs that is allotment of underlying shares.

2. Recent development

- 2.1 Recently, the Reserve of Bank of India (“RBI”) has issued a directive under A.P (DIR Series) Circular No.30, dated June 07, 2018, with the objective of integrating the extant reporting structures of various types of foreign investments in India including investment through ESOPs. For this, RBI has introduced a Single Master Form (“SMF”) which would enable reporting of total foreign investment in an Indian company which shall be filed online.
- 2.2 Prior to the implementation of the SMF, the RBI would provide an interface to the Indian companies, to feed the input data on total foreign investment in a specified format called Entity Master Form (“EMF”). This interface will be available on RBI’s website from June 28, 2018 to July 12, 2018. The Indian companies not complying with this pre-requisite will not be able to receive foreign investment and will be treated as non-compliant with Foreign Exchange Management Act, 1999 (“FEMA”) and regulations made thereunder.
- 2.3 The SMF as appears today is provisional and its final format shall be notified by RBI in its Master Direction-Reporting issued under FEMA, in due course.

3. Meaning from ESOP perspective

- 3.1 The recent directive dated June 07, 2018 seeks to bring only a new format of reporting and does not interfere with the norms that govern grant of ESOPs to Non-resident Employees and other compliances like maintaining of sectoral cap, etc.. Thus, the extant provisions on norms for grant of ESOPs shall be as per prevailing FEMA Regulations. Even, provisions governing deadline of reporting shall be same unless otherwise prescribed in the finally notified SMF. Only the prevailing format of reporting shall change from existing Form-ESOP to that provided in SMF.
- 3.2 The new format for reporting of ESOPs given in SMF do not seem as comprehensive as that appears in the existing Form-ESOP. It might be deliberate so as to make it simple yet effective. A reading of the particulars of the new format in SMF suggests that it would be filed on issue/ grant of ESOPs; whereas, on exercise of ESOPs (that is issue of underlying shares), report shall be made in Form FC – GPR which is also updated in SMF.

4. Course of action – immediate and on-going

- 4.1 As any failure to feed the input data on total foreign investment in the prescribed EMF by July 12, 2018 shall lead to inability to receive foreign investment and shall also be treated as noncompliance with FEMA, the immediate course of action for an Indian company who has already issued shares upon exercise of ESOPs should be to duly comply with the aforesaid mandate.
- 4.2 As far as on-going course of action is concerned, an Indian company should report within 30 days of grant and exercise of ESOPs in the respective new forms of ESOP and FC-GPR in the finally notified SMF.