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# Australia

## Stock Option Plans

### Employment

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#### Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan, the benefits being granted and the exercise of any discretion.

#### Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan, and confirms that termination of employment will result in the loss of unvested rights.

Additional "Australia-specific" communications may need to be provided to employees depending on which securities exemption is relied upon (see below).

Electronic execution of award agreements is acceptable provided certain conditions are fulfilled. These conditions are not onerous and include a requirement that employees have unequivocally agreed to the terms of the Plan and that the Issuer retains evidence of this.

### Regulatory

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#### Securities Compliance

Certain prospectus requirements arise when securities are offered to employees in Australia, except where the offer falls within: (i) a specific exemption under the Corporations Act; (ii) a Class Order exemption issued by the Australian Securities & Investments Commission ("**ASIC**"); or (iii) an individual exemption granted by ASIC. Filing and disclosure obligations still may apply even if an exemption is relied upon, although these are not generally onerous.

#### Foreign Exchange

There are no foreign exchange restrictions applicable to the Plan.

#### Data Protection

Employee consent for the processing and transfer of personal data is a recommended method of compliance with existing data privacy requirements. Generally, an employer must register data processing activities and databases with the local data protection authorities.

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# Tax

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## **Employee Tax Treatment**

Assuming there is a real risk of forfeiture, and a compliant tax matrix is included in the Plan documents, an employee is generally subject to income tax at the “deferred taxing point.” The deferred taxing point is broadly the earlier of: (i) when the Options are exercised; (ii) when there is no longer a restriction on disposal of the underlying Stock (provided the restriction existed at grant of the Options); (iii) cessation of employment; and (iv) the fifteenth anniversary of grant. In all other cases, an employee is generally subject to income tax payable on the market value of the Option at the time of grant. If tax is paid on grant, but the Options subsequently lapse, the tax is generally recoverable.

Capital gains tax is payable on any gain upon the net proceeds of sale of the Stock, save where the Stock is sold within 30 days of the deferred taxing point, in which case, no capital gains tax arises. A 50 percent discount on capital gains (after allowing for capital losses) is available if the Stock has been held for 12 months or more before sale.

## **Social Security Contributions**

A Medicare levy is payable by the employee, and, in the case of high-income earners who do not have private health insurance, an additional Medicare Levy surcharge is also payable. The Subsidiary has an obligation to pay payroll tax, which is a state tax payable where the Subsidiary’s wages cost meets a certain threshold (which varies by state).

## **Tax-Favored Program**

There is no tax-favored program applicable to Options.

## **Withholding and Reporting**

The Subsidiary has no obligation to withhold tax, unless an employee has failed to supply a tax file number. The Subsidiary is subject to annual reporting requirements in respect of any tax that arose in the previous tax year.

## **Employer Tax Treatment**

A deduction should generally be available if the Subsidiary reimburses the Issuer for costs of the Plan under a reimbursement agreement.

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# Australia

## Restricted Stock and RSUs

### Employment

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#### Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan, the benefits being granted and the exercise of any discretion.

#### Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan, and confirms that termination of employment will result in the loss of unvested rights.

Additional "Australia-specific" communications may need to be provided to employees depending on which securities exemption is relied upon (see below).

Electronic execution of award agreements is acceptable provided certain conditions are fulfilled. These conditions are not onerous and include a requirement that employees have unequivocally agreed to the terms of the Plan and that the Issuer retains evidence of this.

### Regulatory

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#### Securities Compliance

Certain prospectus requirements arise when securities are offered to employees in Australia, except where the offer falls within: (i) a specific exemption under the Corporations Act; (ii) a Class Order exemption issued by the Australian Securities & Investments Commission ("**ASIC**"); or (iii) an individual exemption granted by ASIC. Filing and disclosure obligations may still apply even if an exemption is relied upon, although these are not generally onerous.

#### Foreign Exchange

There are no foreign exchange restrictions applicable to the Plan.

#### Data Protection

Employee consent for the processing and transfer of personal data is a recommended method of compliance with existing data privacy requirements. Generally, an employer must register data processing activities and databases with the local data protection authorities.

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# Tax

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## **Employee Tax Treatment**

For Restricted Stock, assuming there is a real risk of forfeiture in relation to the Restricted Stock, an employee is generally subject to income tax at the “deferred taxing point.”

For RSUs, assuming there is a compliant tax matrix is included in the Plan documents for RSUs, or the RSUs are provided under an effective salary sacrifice arrangement, an employee is generally subject to income tax at the deferred taxing point.

The deferred taxing point in the case of both Restricted Stock and RSUs is broadly the earliest of: (i) there no longer being a real risk of forfeiture; (ii) there no longer being a restriction on disposal of the Stock (provided the restriction existed at grant); (iii) cessation of employment; and (iv) the fifteenth anniversary of grant.

Otherwise, for Restricted Stock, an employee is generally subject to income tax on the market value of the Restricted Stock, and for RSUs, an employee is generally subject to income tax at time of grant.

Capital gains tax is payable on any gain upon the net proceeds of sale of the Stock, save where Stock is sold within 30 days of the deferred taxing point, in which case, no capital gains tax arises. A 50 percent discount on capital gains (after allowing for capital losses) is available if the Stock has been held for 12 months or more before sale.

## **Social Security Contributions**

A Medicare levy is payable by the employee, and, in the case of high-income earners who do not have private health insurance, an additional Medicare Levy surcharge is also payable. The Subsidiary has an obligation to pay payroll tax, which is a state tax payable where the Subsidiary’s wages cost meets a certain threshold (which varies by state).

## **Tax-Favored Program**

There is no tax-favored program applicable to Restricted Stock or RSUs.

## **Withholding and Reporting**

The Subsidiary has no obligation to withhold tax, unless an employee has failed to supply a tax file number. The Subsidiary is subject to annual reporting requirements in respect of any tax that arose in the previous tax year.

## **Employer Tax Treatment**

A deduction should generally be available if the Subsidiary reimburses the Issuer for costs of the Plan under a reimbursement agreement.

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# Australia

## Employee Stock Purchase Plans

### Employment

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#### Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan and the exercise of any discretion.

#### Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan, and confirms that termination of employment will result in the loss of unvested rights.

Additional "Australia-specific" communications may need to be provided to employees depending on which securities exemption is relied upon (see below).

Electronic execution of award agreements is acceptable provided certain conditions are fulfilled. These conditions are not onerous and include a requirement that employees have unequivocally agreed to the terms of the Plan and that the Issuer retains evidence of this.

### Regulatory

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#### Securities Compliance

Certain prospectus requirements arise when securities are offered to employees in Australia, except where the offer falls within: (i) a specific exemption under the Corporations Act; (ii) a Class Order exemption issued by the Australian Securities & Investments Commission ("**ASIC**"); or (iii) an individual exemption granted by ASIC. Filing and disclosure obligations may still apply even if an exemption is relied upon, although these are not generally onerous.

#### Foreign Exchange

There are no foreign exchange restrictions applicable to the Plan.

#### Data Protection

Employee consent for the processing and transfer of personal data is a recommended method of compliance with existing data privacy requirements. Generally, an employer must register data processing activities and databases with the local data protection authorities.

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# Tax

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## **Employee Tax Treatment**

An employee is generally subject to income tax on the excess of the market value of the Stock at the time of acquisition over the purchase price, unless there is a real risk of forfeiture or an effective salary sacrifice arrangement, in which case, tax is payable at the “deferred taxing point.” The deferred taxing point is broadly the earlier of: (i) there no longer being a real risk of forfeiture (for example, when Stock is actually acquired, although this will not apply to effective salary sacrifice arrangements); (ii) there no longer being a restriction on disposal of the Stock; (iii) cessation of employment; and (iv) the fifteenth anniversary of grant of the purchase rights.

Capital gains tax is payable on any gain upon the net proceeds of sale of the Stock, save where the Stock is sold within 30 days of the deferred taxing point, in which case, no capital gains tax arises. A 50 percent discount on capital gains (after allowing for capital losses) is available if the Stock has been held for 12 months or more before sale.

## **Social Security Contributions**

A Medicare levy is payable by the employee, and, in the case of high-income earners who do not have private health insurance, an additional Medicare Levy surcharge is also payable. The Subsidiary has an obligation to pay payroll tax, which is a state tax payable where the Subsidiary’s wages cost meets a certain threshold and which varies by state.

## **Tax-Favored Program**

There is no tax-favored program applicable to employee stock purchase plans.

## **Withholding and Reporting**

The Subsidiary has no obligation to withhold tax, unless an employee has failed to supply a tax file number. The Subsidiary is subject to annual reporting requirements in respect of any tax that arose in the previous tax year.

## **Employer Tax Treatment**

A deduction should generally be available if the Subsidiary reimburses the Issuer for costs of the Plan under a reimbursement agreement.