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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the day of , 2001.

NOTIFICATION
INCOME TAX

S.O. (E) - In exercise of powers conferred by proviso to sub-clause (iii) of clause (2) of section 17 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies that the aforesaid proviso shall apply to the shares, debentures or warrants allotted under any Employees' Stock Option Plan or Scheme framed in accordance with the following guidelines: -

(1) An Employees' Stock Option Plan or Scheme shall include:-

- (i) "Employee Stock Purchase Plan or Employee Stock Option Scheme" whereby the employee allows the employer to withhold a certain portion of his monthly salary, the accumulated amount of which is utilized to acquire shares at a discounted value or otherwise at a future date.
- (ii) "Employee Stock Ownership Plan" whereby an employee of the company is given option to acquire shares of the company at a pre-determined price after a certain period, directly or indirectly through a trust.
- (iii) "Employee Stock Purchase Scheme" under which the company offers shares to an employee, as part of a public issue or otherwise at a predetermined price.
- (iv) "Employees Stock Option Scheme" under which a company grants option to its employees to buy a specified number of shares at a specified price during a specified period.
- (v) "Stock Appreciation Rights or Plans" under which the employees are awarded stock equivalents at a certain pre-determined value, and after a certain minimum stipulated period, the employees are allowed to encash such rights.

(2) Any such Plan or Scheme shall be incorporated in a written document specifying, the following, namely:-

- i) The total number of shares that may be issued under such plan or scheme.
- ii) The class of employees who would be entitled to participate in such plan or scheme.
- iii) The pricing formula on the basis of which shares would be allotted to the employees, including the price at which such shares are offered at the time of grant or exercise of option.
- iv) The number of shares or stock equivalent which would be issued to any employee or classes of employees and the basis of such award, if any.

- v) The period by and the manner in which the approval of shareholders would be obtained.
- vi) The lock in period of such shares from the date of option or exercise of option or purchase of shares under such scheme or plan, as the case may be.
- vii) If the shares are unlisted, the basis of valuation of shares with reference to the company's account for the last three financial years and a brief explanation as to how the basis was arrived at.
- viii) The conditions relating to restriction on non-transferability of such shares.

Provided that the conditions contained in the written document shall not be changed after the date the scheme or plan comes into effect

(3) An Indian company issuing shares under such Employees' Stock Option Plan or Scheme shall comply, wherever applicable, with the regulations prescribed by the Securities and Exchange Board of India or any other regulatory authority, as the case may be, with regard to such plan or scheme and not contravene any other law, for the time being in force, that is material for giving effect to such plan or scheme.

(4) These guidelines shall apply to the shares or stock equivalents issued by

- i) a company as defined in sub-section (17) of section 2 of the Income-tax Act, 1961 which
 - (a) is listed in a recognised stock exchange in India or a stock exchange outside India
 - (b) is an unlisted domestic company or
- ii) the subsidiary or the holding company of a company referred to in (i) above, to employees of such company

and where such company referred to in (i) or (ii) above, carries on business in India.

(5) An employee who is a promoter or belongs to the promoter group or a director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in such Plan or Scheme.

(6) Every company issuing shares directly or through its parent under an Employees Stock Option Plan or Scheme to its employees shall furnish a copy of the document describing particulars as specified in clause (2) above with the Chief Commissioner of Income-tax having jurisdiction over it within a period of 6 months from the date of issue of these guidelines or within 6 months of the effective date of the scheme or plan, whichever is later. If the Plan or Scheme is incorporated in any language other than English, an English translation of the same should also be enclosed.

(7) These guidelines shall be deemed to have come into force with effect from the 1st day of April, 2000.

Explanation - For the purposes of these guidelines:-

- (i) 'employee' means

- (a) a permanent employee of the company.
 - (b) 'director' of a company, whether whole time or not.
- (ii) 'exercise' means an application by the employee to the company for issue of shares against the option vested in him in pursuance of such plan or scheme, as the case may be.
- (iii) 'grant' means the issue of options under such plan or scheme of the company.
- (iv) 'option' means a right but not an obligation granted to an employee to apply for shares at a pre-determined price.
- (v) "promoter" means;
- (a) the person or persons who are in over-all control of the company
 - (b) the person or persons who are instrumental in the formation of the company or programme pursuant to which the shares were offered to the public;
 - (c) the persons or persons named in the offer document as promoter(s). Provided that a director or officer of the company, if he is acting as such only in his professional capacity will not be deemed to be a promoter.

[Explanation: Where a promoter of a company is a body corporate, the promoter of that body corporate shall also be deemed to be a promoter of the company.]

- (vi) "promoter group" means
- (a) an immediate relative of the promoter (i.e. spouse of that person, or any parent, brother, sister or child of the person or of the spouse);
 - (b) persons whose shareholding is aggregated for the purpose of disclosing in the offer document "shareholding of the promoter group".
- (vii) "relative" means immediate relative namely spouse, parent, brother, sister or child of the person or the spouse.
- (viii) "recognised stock exchange" means stock exchange in India recognised by the Securities and Exchange Board of India or stock exchange outside India recognised by similar regulatory authorities of countries out side India.
- (ix) "share" means equity shares and securities convertible into equity shares and shall include American Depository Receipts (ADRs), Global Depository Receipts(GDRs) or other depository receipts representing underlying equity shares or securities convertible into equity shares.

(Supriyo De)
Under Secretary to the Government of India

