NAVIGATING ESOP REPORTING RULES FOR INDIAN SUBSIDIARIES OF FOREIGN MNCs

POWER POINT

VISHWAS PANJIAR

Respond to this column at
feedback@livemint.com

If a foreign company offers stock options to employees of an Indian company, the domestic firm must report any future transactions involving these shares to the Reserve Bank of India (RBI), despite not being directly involved.

The connection is that those receiving these employee stock ownership plans (Esops) and restricted stock units (RSUs) are residents working for the Indian company.

The reporting structure is outlined in "Form OPI," which now requires semi-annual submissions instead of annual ones. While the increased reporting frequency isn't inherently problematic, the Indian company often faces challenges in sourcing or verifying the necessary information.

These additional disclosures include details of investments held abroad, disinvestments, repatriations and remittances made by employees under the foreign company's stock option schemes.

While the increase in frequency of reporting is not a hassle per se, the information being sought can sometimes become impossible to source or verify.

Operational challenges

The lack of practical guidance and clarifications from the RBI leads to numerous issues with reporting sensitive employee information. This added burden requires the Indian company to collect data from employees or ex-employees, making it nearly impossible to verify its accuracy.

Under Form OPI, the Indian company must report all details of exercises, repurchases, repatriations and remittance amounts for transactions by employees, including ex-employees, concerning the stock options offered to them by the foreign company, within a 60-day timeframe.

Previously, details of share sales were required only for repurchases by the foreign company, which was ostensibly accessible data for the reporting Indian company. Now, details of all sales, including third-party sales and repatriation amounts, are required, information that may not even be available to the foreign company. The only person with reliable information would be the employee or ex-employee making such a sale.

To calculate tax upon exercise of the options, the Indian company is expected to have the mechanism to have the data with respect to the exercise of the options. However, till now there

was no requirement for the Indian company to procure or maintain the data on all the stocks (of the foreign company acquired under Esops sold by employees or ex-employees.

It is quite impractical to expect the Indian company to procure and maintain such data from the employees as this is personal information. There could be hundreds of employees who would have exercised their Esops in the past (and as long back as over a decade), and some of them may not even be in employment or associated with the group.

Clarifications on terms like "remittance amount" and "repatriation amount" in Form OPI, as well as guidance on information sources, would be immensely helpful.

The Indian company may not be capable of certifying the accuracy of this information since it is not privy to the transactions.

A mechanism could be established for employees to report directly to the RBI

Given that both exercise and sale are taxable events for employees, a mechanism could be established for employees to report directly to the RBI. This can perhaps be dovetailed in the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.

Though the rules intend to foster transparency regarding Esop transactions, there is still a dire need for clarification to address various queries and make reporting practical. Such clarification would be empathetic towards the concerns of the Indian entity in complying with these requirements, where such Indian entity is not even involved in the acquisition or sale of the options/shares by its employees.

Vishwas Panjiar is a partner at Nangia Andersen Llp.

Parul Sharma, manager, and Pragati Keshari, associate, at Nangia Andersen, contributed to this column.