

Also the RBI has prescribed that the domestic custodians are the entity required to ensure compliance with the RBI guidelines and to file reports with the RBI from time to time. The domestic custodian is also required to perform the following functions:

- provide a certificate to the RBI and the SEBI stating that the sectoral caps for foreign investment in the relevant company have not been breached;
- monitor the total number of ADRs/GDRs that have been converted into underlying shares by non-resident investors;
- liaise with the issuer company to ensure that the foreign investment restrictions, if any, are not being breached; and
- file a monthly report about the ADRs/GDRs transactions under the two-way fungibility arrangement with the RBI and the SEBI.

Two-way Fungibility of Depository Receipts

We offer foreign investors a limited facility for conversion of Ordinary Shares into American Depositary Receipts within the limits permissible for two-way Fungibility, as announced by the Reserve Bank of India vide its operative guidelines for the limited two way fungibility under the “Issue of Foreign Currency Convertible Bond and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, dated February 13, 2002”.

E. Taxation.

This section describes the material U.S. federal income tax consequences to “U.S. holders” (as defined below) and the Indian stamp duty and income and service tax consequences to “non-residents” (as defined below) of owning shares or ADSs. It applies to you only if you hold your shares or ADSs as capital assets for tax purposes. This section does not apply to you if you are a member of a special class of holders subject to special rules, including:

- a dealer in securities,
- a trader in securities that elects to use a mark-to-market method of accounting for securities holdings,
- a tax-exempt organization,
- a life insurance company,
- a person liable for alternative minimum tax,
- a person that actually or constructively owns 10% or more of our voting stock,
- a person that holds shares or ADSs as part of a straddle or a hedging or conversion transaction,
- a person that purchases or sells shares or ADSs as part of a wash sale for tax purposes or
- a U.S. holder (as defined below) whose functional currency is not the US dollar.

With regard to United States tax, the following discussion addresses only the material U.S. federal income tax consequences for persons that are “U.S. holders”. You are a U.S. holder if you are a beneficial owner of shares or ADSs and you are, for U.S. federal income tax purposes:

- a citizen or resident of the United States,
- a domestic corporation,
- an estate whose income is subject to U.S. federal income tax regardless of its source, or
- a trust if a United States court can exercise primary supervision over the trust’s administration and one or more United States persons are authorized to control all substantial decisions of the trust.

With regard to Indian tax, the following discussion addresses only the tax consequences for persons that are “non-residents” of India, as defined in the Indian Income Tax Act of 1961, the “Income Tax Act”, and is based on the provisions of Section 115AC and other applicable provisions of the Income Tax Act and the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 promulgated by the Government of India (together, the “Section 115AC Regime”).

If a partnership holds shares or ADSs, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. If you hold shares or ADSs as a partner in a partnership, you should consult your tax advisor with regard to the U.S. federal income tax treatment of an investment in our Shares or ADSs.

This discussion addresses only U.S. federal income taxation and Indian stamp duty and income and service taxation. In addition, this section is based in part upon the representations of the depository and the assumption that each obligation in the deposit agreement (as amended) and any related agreement will be performed in accordance with its terms.

The DTC, proposes to replace the existing Income Tax Act, 1961, and other direct tax laws, with a view to simplify and rationalize the tax provisions into one unified code. The Indian Government has placed before the parliament the proposed DTC. The various proposals included in DTC are subject to review by Indian parliament and, as such, the impact, if any, is not quantifiable at this stage.

This summary is not intended to constitute a complete analysis of the individual tax consequences to nonresident holders for the acquisition, ownership and sale of ADSs and equity shares.

Taxation of Dividends

Indian Taxation

Dividends paid to non-residents of India will not be subject to Indian tax. However, the Company has to pay a “dividend distribution tax”, as applicable, currently at the rate of 15% (plus a surcharge at 10% and an education cess at the rate of 3% on the sum of the dividend distribution tax and surcharge) on the total amount distributed as a dividend. The effective rate of dividend distribution tax is 16.995%.

Distributions to non-residents of India of additional ADSs or shares or rights to subscribe for such shares made with respect to ADSs or shares are not subject to Indian tax.

U.S. Federal Income Taxation

Under the U.S. federal income tax laws, and subject to the Passive Foreign Investment Company, or PFIC, rules described below, if you are a U.S. holder, the gross amount of any dividend we pay out of our current or accumulated earnings and profits (as determined for U.S. federal income tax purposes) is subject to U.S. federal income taxation. If you are a non-corporate U.S. holder, dividends that constitute qualified dividend income will be taxable to you at the preferential rates applicable to long-term capital gains provided that you hold the shares or ADSs for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and meet other holding period requirements. Dividends we pay with respect to our Shares or ADSs generally will be qualified dividend income.

The dividend is taxable to you when you, in the case of shares, or the Depository, in the case of ADSs, receive the dividend, actually or constructively. The dividend will not be eligible for the dividends-received deduction generally allowed to United States corporations in respect of dividends received from other United States corporations. The amount of the dividend distribution that you must include in your income as a U.S. holder will be the US dollar value of the Indian rupee payments made, determined at the spot Indian rupee/US dollar rate on the date the dividend distribution is includible in your income, regardless of whether the payment is in fact converted into US dollars. Generally, any gain or loss resulting from currency exchange fluctuations during the period from the date you include the dividend payment in income to the date you convert the payment into US dollars will be treated as ordinary income or loss and will not be eligible for the special tax rate applicable to qualified dividend income. The gain or loss generally will be income or loss from sources within the United States for foreign tax credit limitation purposes. Distributions in excess of current and accumulated earnings and profits, as determined for U.S. federal income tax purposes, will be treated as a non-taxable return of capital to the extent of your basis in the shares or ADSs and thereafter as capital gain. However, we do not expect to calculate earnings and profits in accordance with United States federal income tax principles. Accordingly, you should expect to generally treat distributions we make as dividends for U.S. federal income tax purposes.

Dividends will generally be income from sources outside the United States and will, depending on your circumstances, be either “passive” or “general” income for purposes of computing the foreign tax credit limitation allowable to you.

Distributions of additional shares to you with respect to shares or ADSs that are made as part of a pro rata distribution to all of our shareholders generally will not be subject to U.S. federal income tax.

Taxation of Capital Gains and Losses

Indian Taxation

Capital Gains: Under Section 115AC and other applicable provisions of the Income Tax Act, any gain realized on the sale outside India of the ADSs from one non-resident of India to another non-resident of India is not subject to Indian capital gains tax. However, it is unclear whether a capital gain derived from the sale of rights by a non-resident of India to another non-resident of India outside of India may be subject to Indian capital gains tax.

Capital gains arising to the non-resident investor on the transfer of equity shares (including shares received in exchange of the ADSs) whether in India or outside India to a non-resident investor or Indian resident, will be liable for income tax under the provisions of the Income Tax Act.

Equity shares (including shares issuable on the exchange of the ADSs) held by a non-resident investor for a period of more than 12 months are treated as long-term capital assets and the capital gains arising on the sale thereof are treated as long-term capital gains. If the equity shares are held for a period of 12 months or less, it are treated as short-term capital assets and the capital gains arising on the sale thereof are treated as short-term capital gains. A non-resident holder's holding period (for purposes of determining the applicable Indian capital gains tax rate) in respect of shares received in exchange for ADSs commences on the date of the advice of withdrawal of such shares by the relevant depository to its custodian.

For the purpose of computing capital gains tax on the sale of the equity shares, the cost of acquisition of equity shares received in exchange for ADSs will be determined on the basis of the prevailing price of the shares on the Indian Stock Exchanges as on the date on which the relevant depository gives notice to its custodian for the delivery of such equity shares upon redemption of the ADSs, while the cost of acquisition of shares directly converted from the ADSs will be determined on the basis of the price prevailing on the Indian Stock Exchanges on the date of conversion into equity shares.

Gain realized on the sale of listed equity shares held for more than 12 months will not be subject to Indian capital gains tax if the Securities Transaction Tax, or STT has been paid on the transaction. The STT will be levied on and collected by a domestic stock exchange on which equity shares are sold at the rate of 0.025% to 0.1% depending upon the nature of the transaction.

Any gain realized on the sale of listed equity shares held for more than 12 months on which no STT has been paid will be subject to Indian capital gains tax at the rate of 10% plus applicable surcharge on income tax and education cess at the applicable rates.

Capital gains realized in respect of equity shares held (calculated in the manner set forth in the prior paragraph) for 12 months or less (short-term gain) on which STT is paid in the manner and rates set out above, is subject to tax at the rate of 15% plus applicable surcharge on income tax and an education cess at the applicable rate. In the event that no STT is paid, short-term gain is subject to tax at variable rates with the maximum rate of 40% plus applicable rate of surcharge on income tax and education cess at the applicable rate. The actual rate of tax on short-term gains depends on a number of factors, including the legal status of the non-resident holder and the type of income chargeable in India.

Tax on capital gains is to be deducted at source by the person paying for the shares in accordance with the relevant provisions of the Income Tax Act.

Capital Losses: The Section 115AC Regime does not deal with capital losses arising on a transfer of shares. In general terms, losses arising from a transfer of a capital asset in India can only be set off against capital gains and not against any other income. A short-term capital loss can be set off against a capital gain, whether short-term or long-term. However, long-term capital loss can only be set off against long-term capital gain and not against short-term capital gain. To the extent that the losses are not absorbed in the year of transfer, they may be carried forward for a period of eight assessment years immediately succeeding the assessment year for which the loss was first determined and may be set off against the capital gains assessable for such subsequent assessment years. In order to set off capital losses in this manner, the non-resident investor would be required to file appropriate and timely tax returns in India. The long-term capital loss arising on a sale of equity shares in respect of which STT is paid may not be available for set-off against any capital gains.

U.S. Federal Income Taxation

Generally, subject to the PFIC rules discussed below, if you are a U.S. holder and you sell or otherwise dispose of your shares or ADSs, you will recognize capital gain or loss for U.S. federal income tax purposes equal to the difference between the US dollar value of the amount that you realize and your tax basis, determined in US dollars, in your shares or ADSs. Capital gain of a non-corporate U.S. holder, is generally taxed at preferential rates where the holder has a holding period greater than one year. The gain or loss will generally be income or loss from sources within the United States for foreign tax credit limitation purposes.

Passive Foreign Investment Companies: We believe that the Shares and ADSs should not be treated as stock of a PFIC for U.S. federal income tax purposes, but this conclusion is a factual determination that is made annually and thus may be subject to change.