Proskauer

Deadlines Approaching for Employer Return Requirements for ISOs and ESPPs – Reporting Requirements for 2014

January 22, 2014

Section 6039 of the Internal Revenue Code of 1986, as amended (the "Code"), requires corporations to furnish information statements to their employees (including former employees) and to the Internal Revenue Service ("IRS") with respect to (i) the exercise of an incentive stock option ("ISO") described in Code Section 422(b) and (ii) the transfer of shares granted under certain employee stock purchase plans meeting the requirements of Code Section 423(b) ("ESPPs"), in each case occurring during calendar year 2013.

Reporting Requirements

Reporting to Employees

Employers are required to provide information statements to employees on Form 3921 (for ISOs) and Form 3922 (for ESPPs) by **January 31** of the following year in which each transfer of stock occurs pursuant to an exercise of an ISO or through an ESPP, as applicable.

Reporting to IRS

Forms 3921 and 3922 are required to be filed with the IRS no later than **February 28** (paper) or **March 31** (electronic) of the following year in which a transfer of stock occurs pursuant to an exercise of an ISO or through an ESPP, as applicable. Paper Forms 3921 and/or 3922 must be submitted with a corresponding Form 1096.

The forms are not required for an employee who is a nonresident alien. Further, reporting is not required for ESPPs that do not provide for a discounted purchase price.

Forms and Instructions

The IRS has made the following relevant sample forms available as follows:

Form 3921 is available at http://www.irs.gov/pub/irs-pdf/f3921.pdf.

Form 3922 is available at http://www.irs.gov/pub/irs-pdf/f3922.pdf.

Instructions to both Forms are available at http://www.irs.gov/pub/irs-pdf/i3921.pdf.

Form 1096 is available at http://www.irs.gov/pub/irs-pdf/f1096.pdf.

Penalties for Failure To Timely File

A corporation (including private and public corporations) may be subject to penalties if it fails to furnish the applicable form in a timely manner, fails to include all the required information, or includes incorrect information in the form. The corporation has an obligation to file the applicable form with the IRS and distribute the applicable form to the relevant employee and will be liable for penalties with respect to each failure to file or provide the form. For a failure relating to the filing with the IRS, the penalty is up to $100 for each form the corporation fails to furnish or furnish correctly, up to a maximum for each calendar year of $1,500,000 ($500,000 for small businesses). For a failure relating to employee information requirements, the penalties are the same. Where the failure to furnish accurate statements or returns was due to an intentional disregard of the requirement, higher penalties may be imposed.

Other Reporting Obligations

These reporting rules are in addition to the rules requiring a corporation to report on and withhold any taxable income recognized by an employee on the exercise of an option.

For more information on how to satisfy the reporting requirements under the final regulations, please contact a member of our ERISA Practice Center.

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Special thanks to Bali Kumar, Law Clerk, for his assistance in preparing this alert.

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