

ISOs and ESPPs – New Filing Requirements for Annual Notices

Each January, companies that grant incentive stock options (ISOs) are required to provide notices to current and former employees who exercised ISOs during the preceding calendar year. A similar notice must be given to current and former employees who transferred title to stock acquired under an employee stock purchase plan (ESPP) – for example, into a brokerage account or to a purchaser. The notice deadline for 2010 reportable events is **January 31, 2011**.

Starting this year, companies also must report the same information to the IRS, on newly created Form 3921 (for ISOs) or Form 3922 (for ESPPs). The new filing deadline is **February 28, 2011** for paper filers and **March 31, 2011** for electronic filers. The IRS forms may also be used to provide the required notices to employees, so employers no longer have to create their own notices. The forms require the company to provide the items of information listed below.

For ISO exercises:

1. Name, address, and EIN of the corporation transferring stock.
2. Name, address, and EIN of the corporation whose stock was transferred, if different.
3. Name, address, and identifying number of the person to whom stock was transferred.
4. Date the ISO was granted.
5. Date the ISO was exercised.
6. Exercise price per share.
7. Fair market value per share on exercise date.
8. Number of shares transferred.

For ESPP stock transfers:

1. Name, address, and identifying number of the employee transferring stock.
2. Name, address, and EIN of the corporation whose stock was transferred.
3. Date the option was granted.
4. Date the option was exercised.
5. Fair market value per share on grant date.
6. Fair market value per share on exercise date.
7. Exercise price paid per share.
8. Number of shares transferred.
9. Date legal title was transferred.
10. Exercise price per share, determined as if the option was exercised on the grant date.

A company that is unable to comply with the notice deadline may apply for an extension of up to 30 days by submitting to the IRS by January 31 a written request providing, among other information, the reason for the delay. An extension of the deadline for the related filings may be obtained by submitting a request on IRS Form 8809. Additional information about the notice and filing requirements and procedures for requesting extensions is available on the IRS website.

For additional information, please feel free to contact any member of Ropes & Gray's [Tax](#) or [Employee Benefits](#) practice groups.