

Publications

Design Flexibility and Potential Pitfalls in IRS Final Rules for Employee Stock Purchase Plans

ATTORNEYS & PROFESSIONALS

Jeffrey W. Kroh

jkroh@groom.com

202-861-5428

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Late in 2009, the Internal Revenue Service finalized the rules governing Employee Stock Purchase Plans (ESPPs) under § 423 of the Internal Revenue Code (I.R.C.) and the related reporting rules under I.R.C. § 6039. These final rules essentially adopt, with limited revisions, the comprehensive update to existing ESPP regulations and reporting rules published as proposed regulations in July 2008. As many companies prepare for increased IRS audit activity in the executive compensation and employment tax areas, it may also be a good time to review and update ESPPs to ensure compliance with, and take advantage of, the design flexibility provided in the final rules.

These final rules under I.R.C. § 423 generally apply to options granted under an ESPP after 2009, and the new reporting rules apply to shares transferred after 2009. This article highlights significant clarifications in the final rules that should be of interest to employers that already maintain, or may be considering establishing, an ESPP. Please see the attached article for further details.

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