

START THE NEW YEAR ON THE RIGHT FOOT BY GETTING YOUR ISO AND ESPP RETURNS AND STATEMENTS FILED ON TIME

Date: 26 January 2023

U.S. Corporate Alert

By: Rachel E. Morowitz, Jessica D. Liu

REPORTING REQUIREMENTS

Section 6039 of the Internal Revenue Code requires corporations to file information returns with the Internal Revenue Service (IRS) and provide information statements to current and former employees for exercises of incentive stock options (ISOs) and purchases of shares under an employee stock purchase plan (ESPP) during a calendar year. Deadlines for these annual reporting requirements are quickly approaching:

31 January 2023

- For corporations to furnish annual information statements to employees.

28 February 2023 (if filing by paper) or 31 March 2023 (if filing electronically)

- For corporations to file information returns with the IRS.

Corporations may request an automatic 30-day extension deadline to file Copy A of the applicable form with the IRS by filing Form 8809, Application for Automatic Extension of Time to File Information Returns. Form 8809 may also be filed electronically.

INFORMATION STATEMENTS AND IRS INFORMATION RETURNS

Applicable Forms

For any ISO exercises and ESPP share purchases during the 2022 calendar year, corporations must provide information returns to the IRS and information statements to employees. To satisfy the return requirements, corporations must complete and file Form 3921 (for ISO exercises) and Form 3922 (for ESPP purchases), as applicable. Separate returns must be filed for each exercise or purchase, regardless of whether multiple transactions apply to a single employee during the calendar year.

Instructions for Forms 3921 and 3922 are also available [here](#).

Filing Information Returns to the IRS

Information returns can either be filed by paper or electronically. Corporations required to file 250 or more information returns must file electronically through the IRS's Filing Information Returns Electronically system. Only the official printed version of Forms 3921 and 3922 can be used if filing by paper. Downloaded copies of information returns cannot be used for paper filings with the IRS, and a penalty may be imposed for doing so.

Official information returns can be ordered online from the [IRS's Online Ordering for Information Returns and Employer Returns](#) webpage.

Furnishing Information Statements to Current and Former Employees

A corporation that is required to file Form 3921 or Form 3922 must also provide an information statement to each current or former employee named in the return. Copy B can be provided as the information statement.

PENALTIES FOR NONCOMPLIANCE

The Internal Revenue Code imposes a penalty of up to US\$290 for each statement not furnished (or furnished with incomplete and incorrect information) and for each return not filed with the IRS (or filed with the IRS with incomplete or incorrect information). The aggregate penalty cap per year for a business is US\$3,532,500, but for certain small businesses the cap per year is US\$1,177,500. If a corporation intentionally fails to provide a statement or file a return with the IRS, the penalties could be greater. The penalties apply separately to the information statement and the IRS return, and if a corporation fails to provide both, the penalties and cap are doubled.

KEY CONTACTS



RACHEL E. MOROWITZ
ASSOCIATE

SEATTLE
+1.206.370.5707
RACHEL.MOROWITZ@KLGATES.COM



JESSICA D. LIU
ASSOCIATE

PITTSBURGH
+1.412.355.6556
JESSICA.LIU@KLGATES.COM



ALI U. NARDALI
PARTNER

SAN FRANCISCO
+1.415.882.8048
ALI.NARDALI@KLGATES.COM



AMANDA J. ALBERT
PARTNER

NEW YORK
+1.212.536.3970
AMANDA.ALBERT@KLGATES.COM



RIKKI A. SAPOLICH-KROL
PARTNER

SAN FRANCISCO
+1.415.882.8027
RIKKI.SAPOLICH@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.