Cooley

Section 83(b) Election Deadline Extended to July 15, 2020

April 28, 2020

In response to the COVID-19 pandemic, the IRS recently issued Notice 2020-23 to extend the deadline to July 15, 2020, for any Internal Revenue Code Section 83(b) election that would otherwise have been due on or after April 1, 2020, and before July 15, 2020.

General tax treatment under Section 83 of the Internal Revenue Code

Generally, when an employee, consultant or other service provider receives unvested property (such as restricted stock award or restricted stock received upon early exercising a stock option) in connection with the performance of services, no federal income tax is due on the fair market value of the property received until the property becomes either freely transferable by the service provider or vested, which often occurs several years later when the value of the property has appreciated. If the fair market value of property received in connection with the performance of services appreciates significantly between the date the property is transferred to the service provider and the date the property becomes either freely transferable by the service provider or vested, the increased value results in higher taxable compensation income for the service provider.

How 83(b) elections work

Under an election made pursuant to Section 83(b) of the Internal Revenue Code (an 83(b) election), a service provider may choose to accelerate the taxation of compensation income associated with the receipt of unvested property into the year in which the property is transferred to the service provider. If an 83(b) election is properly made, the service provider pays ordinary income tax on the excess of the property's fair market value, measured on the date the property is transferred, over the amount (if any) the service provider paid for the property. If and when the property later vests or becomes transferable, no additional income tax is due. When the property is sold, the service provider pays capital gains tax on the amount the property has appreciated since the date it was transferred to the service provider. Currently, the top federal ordinary income tax rate is 37%, and the top federal capital gains tax rate is 20% for property held in excess of one year.

Regular and extended deadlines for 83(b) elections

Under ordinary circumstances, to make an 83(b) election, the service provider must file a notice with the IRS no later than 30 days after receiving the transferred property and there are no exemptions, extensions or grace periods available. Failure to timely file an 83(b) election results in the taxpayer paying ordinary income tax rates based on the property's fair market value as of the date the property vests or becomes transferable, less the amount (if any) the taxpayer paid for the property. However, as a result of the COVID-19 pandemic, the IRS has extended the deadline until July 15, 2020, for 83(b) elections that would otherwise be due on or after April 1, 2020, and before July 15, 2020.

83(b) election risks

Despite its benefits, making an 83(b) election is not without risk. If a service provider chooses to accelerate the income tax payment to the date the property is transferred by making an 83(b) election and later forfeits the property, the taxpayer is not entitled to offset his or her ordinary income in the year of forfeiture by the value of the property forfeited. *Taxpayers should consult with their tax advisors when determining whether an 83(b) election is the best decision based on their individual circumstances.*

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Paula Holland **London**	**pholland@cooley.com** **+44 (0) 20 7556 4250**
Blake Martell San Francisco	bmartell@cooley.com +1 415 693 2099
Barbara Mirza Santa Monica	bmirza@cooley.com +1 310 883 6465
Alessandra Murata Palo Alto	amurata@cooley.com + 1 650 843 5696
David Walsh Reston	dwalsh@cooley.com +1 703 456 8021

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.