

EQUITY COMPENSATION MASTERCLASS—SESSION 3

Tax Reporting/Terminations Events

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Hosted by The Financial Experts Network

TAX REPORTING FORMS

W-2—compensation income

1099-B—brokerage proceeds—not required to include compensation component in basis

Form 8949—reconcile amounts reported on 1099-B with tax return

Form 3921—transfer of stock pursuant to ISO exercise

Form 3922—transfer of stock pursuant to ESPP purchase

Forms 6251 and 8801—Calculating AMT and claiming AMT Credit

TAX REPORTING FORMS CONT'D

- NQSOs and RSUs--W-2, 1099-B, Form 8949—include W-2 income for cost basis on sale
- ISOs—Form 6251 and 8801, Form 3921, 1099-B
- ESPPs—Form 3922, W-2, 1099-B

TRACKING COST BASIS

Applicable checkbox on Form 8949 OMB No. 1545-0715

Form 1099-B

Proceeds From Broker and Barter Exchange Transactions

1a Description of property (Example: 100 sh. XYZ Co.)

1b Date acquired

1c Date sold or disposed

1d Proceeds \$

1e Cost or other basis \$

1f Accrued market discount \$

1g Wash sale loss disallowed \$

2 Short-term gain or loss
Long-term gain or loss

3 If checked, proceeds from:
Collectibles

**Copy B
For Recipient**

Form 8949

Sales and Other Dispositions of Capital Assets

OMB No. 1545-0074

Attachment No. 12A

Go to www.irs.gov/Form8949 for instructions and the latest information.

Use Form 8949 to list your transactions for lines 1b, 2, 3, 6b, 8, and 11 of Schedule D.

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

Part 1 Short-Term. Transactions involving capital assets you held 1 year or less are generally short-term (see instructions). For long-term transactions, see page 2.

Note: You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 1a; you aren't required to report these transactions on Form 8949 (see instructions).

You must check Box A, B, or C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

A Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see Note above)

B Short-term transactions reported on Form(s) 1099-B showing basis wasn't reported to the IRS

C Short-term transactions not reported to you on Form 1099-B

1	2	3	4	5	6	Adjustment, if any, to gain or loss. If you enter an amount in column (g) enter a code in column (h). See the separate instructions.		7
						(g)	(h)	
Description of property (Example: 100 sh. XYZ Co.)	Date acquired (Mo., day, yr.)	Date sold or disposed of (Mo., day, yr.)	Proceeds (sales price) (see instructions)	Cost or other basis (see the Note above and see column (g) or the separate instructions)	Capital gain or loss (see instructions)	Code from instructions	Amount of adjustment	Taxable amount (if you combine the result with column (g))

1040 U.S. Individual Income Tax Return

OMB No. 1545-0047

OMB Use Only. Do not write or stamp in this space.

Filing Status Married filing jointly Married filing separately (MFS) Head of household (HOH) Qualifying widow(er) (QW)

1 Your first name and middle initial Last name Your social security number

2 If joint return, spouse's first name and middle initial Last name Spouse's social security number

3 Home address (number and street). If you have a P.O. box, see instructions. Apt. no. City, town, or post office. If you have a foreign address, also complete spaces below. State ZIP code

4 Foreign country name Foreign province/state/country Foreign postal code

5 Presidential Election Campaign. Check here if you, or your spouse if filing jointly, want \$3 to go to the fund. Checking a box below will not change your tax or refund. Yes No

6 At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency? Yes No

7 Standard Deduction. Someone can claim: You as a dependent Your spouse as a dependent Spouse (file on a separate return or you were a dual-status alien)

8 Age/Blindness. Year: Were born before January 2, 1957 Are blind Spouse Was born before January 2, 1957 Is blind

9 Dependents. (See instructions.)

(a) First name	Last name	(b) Social security number	(c) Relationship to you	(d) If qualifies for (see instructions):	(e) Child tax credit	(f) Credit for other dependents
				<input type="checkbox"/> Yes <input type="checkbox"/> No		

10 Attach Schedule B if required

1	2	3	4	5	6	7	8	9
Wages, salaries, tips, etc. Attach Form(s) W-2	Tax-exempt interest	Qualified dividends	IRA distributions	Pensions and annuities	Social security benefits	Capital gain or loss. Attach Schedule D if required. If not required, check here	Other income from Schedule 1, line 10	Add lines 1, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your total income

SCHEDULE D (Form 1040)

Capital Gains and Losses

OMB No. 1545-0074

Attachment Sequence No. 12

Go to www.irs.gov/ScheduleD for instructions and the latest information.

Use Form 8949 to list your transactions for lines 1b, 2, 3, 6b, 8, and 10.

Name(s) shown on return Your social security number

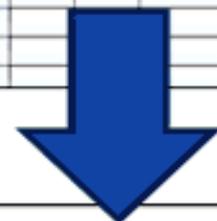
Did you dispose of any investment(s) in a qualified opportunity fund during the tax year? Yes No

If "Yes," attach Form 8949 and see its instructions for additional requirements for reporting your gain or loss.

Part 1 Short-Term Capital Gains and Losses—Generally Assets Held One Year or Less (see instructions)

How to figure the amounts to enter on the lines below. See instructions for more details. It's easier to complete if you round off cents to whole dollars.

	(a) Proceeds (sales price)	(b) Cost (or other basis)	(c) Adjustments to gain or loss from Form(s) 8949, Part 1, line 2, column (g)	(d) Gain or (loss) (Subtract column (b) and (c) from column (a) and combine the result with column (g))
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked				
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				



COMPENSATION PART OF COST BASIS

Type of Grant	Compensation part of cost basis
NQSO	Spread at exercise
ISO	0 for qual disp/for disq disp depends on price at sale relative to price at exercise
SAR	Spread at exercise
RSA no 83(b)	Stock value at vesting
RSA with 83(b)	Stock value at grant
RSU	Stock value at vesting or share delivery unless proper deferral election
PSU	Stock value at vesting or share delivery unless proper deferral election
Tax-qualified ESPP	Spread at purchase for disq disp/for qual disp depends on price at sale relative to price at purchase
Non-qualified ESPP	Spread at purchase

TERMINATION EVENTS

Life Events

1. Death
2. Disability
3. Divorce

Job Events

1. Voluntary/involuntary termination
2. Termination for Cause
3. Retirement

Change of Control

LIFE EVENTS—DISABILITY

Impact of disability on equity awards—depends on terms of plan and definition of disability—temporary vs permanent

Disability effect on vesting and post-termination exercise period

Permanent disability usu results in vesting stopping—PTEP usu one year but could be longer or shorter

For ISOs—disability definition similar to Soc Sec std and PTEP for disability no longer than 12 months

For RSUs—depends on terms of plan—unvested could accelerate or forfeit

JOB EVENTS--TERMINATION

Treatment of awards on termination under plan, award agreement or employment agreement—may be negotiable as part of job offer

Post-termination exercise period important for vested option awards--3 month PTEP is typical—unvested awards usu forfeited

RSUs usu forfeit unvested awards upon termination

Performance shares may allow for pro rata payout

LIFE EVENTS--DEATH

Impact of death on equity awards—depends on terms of plan

Typically 12 month period after death to exercise vested options by beneficiary/estate, some plans may allow full option term—no statutory limit for ISOs

Unvested options typically forfeited although some plans may accelerate vesting at death

For RSUs—depends on terms of plan—more common for vesting to accelerate at death

For ESPP—usu participation ends at death and payroll deductions returned to estate

ISO RULES AT DEATH

Stock acquired thru ISO exercise can be transferred to estate without triggering disq
disp—basis steps up at death and sales proceeds tax as cap gains regardless of
holding period

No statutory time limit for exercising ISOs after death

ISOs pass to estate or beneficiary if one named—be aware of when option expires

ISO holding period is applicable for post-death exercise and AMT may be triggered

AMT credits generated before death expire at death

NQSO RULES AT DEATH

If plan permits transferable options, NQSOs may be exercised after death by estate or beneficiary

Exercise in same year as death results in wages with respect to decedent—reported on final W-2 and no inc tax withholding but FICA withholding

Exercise in years after death results in income reported on 1099-MISC for estate or beneficiary and no FICA

RSU RULES AT DEATH

RSUs may accelerate vesting at death

If vesting occurs in year of death—inc reported on final W-2 but withholding only for FICA

If vesting occurs in years after death—inc reported on 1099-MISC and no withholding of inc or FICA taxes

ESPP RULES AT DEATH

Treatment depends on whether employee or estate purchased shares

If employee purchased before death and died before disposition—ord inc for employee in year of death = lesser of offering date discount or difference between purchase price and market value at date of death

Estate receives stepped up basis = market value on date of death

If estate both purchases and sells shares after death—always treated as qual disp—estate or beneficiary has ord inc = lesser of offering date discount or proceeds of sale minus purchase price

LIFE EVENTS--DIVORCE

Transfers incident to divorce—treatment can vary depending on negotiations between parties, plan provisions and state laws

Division of vested and unvested awards including those earned after divorce—split between employee and nonemployee former spouse (NEFS)

Settlement may require transfer of nontransferable options—employee spouse would exercise on behalf of NEFS and subsequent transfer

Unexercised ISOs transferred incident to divorce treated as NQSOs but transfer of stock acquired on exercise of ISO not disq disp

DIVORCE— RULES FOR NQSOS AND RSUS

Transfer of NQSO to NEFS not considered payment of income to NEFS

Upon exercise by NEFS—NEFS subject to inc tax and FICA withholding on spread to same extent as if retained by employee

FICA reported on employee's W-2 but income reported on 1099-MISC for NEFS with inc tax withheld

Transfer of RSUs pursuant to divorce not taxable—NEFS taxed at vesting although not clear on FICA responsibility

SPLITTING EQUITY AWARDS IN DIVORCE

Treatment can vary by state and type of award and depend on terms of settlement

Determine if awards are property to be distributed in division of assets, what is appropriate method for valuing awards and distributing between parties

RSUs—grant considered marital property if received during marriage and vested during marriage—grant before marriage and vesting after divorce may be separate property

Stock options—vested options granted during marriage typically marital property but not clear if granted before marriage but vest during marriage

Unvested options vesting at future date—no consistent treatment by courts—may divide options by comparing length of marriage to vesting schedule

JOB EVENTS— TERMINATION OF EMPLOYMENT

Treatment of awards on termination—check plan doc, award agreement and employment agreement

RSUs and performance shares—upon job termination almost always forfeit unvested awards—performance awards may be prorated

Stock options—unvested awards forfeited at termination and vested awards have post-termination exercise period (PTEP)—may be negotiable

PTEP typically 90 days—can vary depending on reason for termination—voluntary, involuntary, “good reason”, “cause”

Limited PTEP window issue with priv co options due to lack of liquidity

ISO status lost if PTEP extends beyond 90 days

ESPPs typically return funds withheld from salary for termination during offering period instead of allowing pro rata purchase

POST- TERMINATION TAXES

Post-termination transactions follow same withholding and reporting requirements as to current employees

Taxes withheld on exercise of NQSOs and reported on W-2—ISOs not subject to withholding

For options and RSUs that continue to vest post termination, withholding and W-2 reporting only applies to income attributable to service as employee—remainder reported on 1099-NEC

JOB EVENTS--RETIREMENT

With proper planning can avoid options from becoming due at retirement by implementing regular program of exercising options as approach retirement

Retirement is type of job termination and may be treated same as regular termination with forfeiture of unvested awards and limited PTEP for vested options—see plan provisions and be aware of non-compete and other restrictive covenants as well as clawback provisions

Potential treatment at retirement—forfeit unvested awards, allow unvested awards to continue to vest, accelerate unvested awards in whole or in part

Plan may define vesting for retirement based on years of service and/or age—attaining age 55 with 10 years of service—”retirement eligible”

TAX CONSIDERATIONS AND RETIREMENT

Usu in lower tax bracket after retirement—consider timing of exercise

For ISOs—PTEP limited to 3 months—if retire in last 3 months of year can straddle two tax years for more flexibility on managing potential AMT

If hold ISOs beyond 3 month PTEP become NQSOs—no AMT but ord inc on exercise and now subject to FICA

For NQSOs—if extended PTEP can spread out exercise to manage income—consider stock swap exercise to cover exercise cost instead of selling existing shares and triggering additional taxes

For RSUs if continue to vest post-retirement—no control over timing

RSUs subject to FICA when become retirement eligible but income taxes when shares actually delivered

IMPACT OF MOBILITY AT RETIREMENT

Impact on equity awards when move states in retirement depends on policy of state worked in

States use tax income from options exercised by person employed in state at time of granting and vesting even if no longer state resident

For RSUs—former state impose tax based on length of state residence during vesting period

Taxation may depend on whether mobility is permanent relocation, short or long-term assignment or business travel

Special issues if mobility is international—dealing with US and foreign country taxation rules and availability of tax treaties, credits and deductions

CHANGE OF CONTROL

Treatment of awards depends on terms of plan, acquisition terms and valuation of stock

Concern is with unvested awards as vested awards cannot be terminated—awards may be replaced with acquiring company awards with vesting schedule carrying over

Plan doc may provide guidance or Board may have discretion regarding acceleration of all or part of vesting

Acceleration events—typically sale of majority of assets/stock or change in majority of Board

May need second trigger for acceleration of equity awards—termination/demotion for “good reason” or without ‘cause”

Acceleration of ISOs could result in violation of \$100,000 limit

CHANGE OF CONTROL— TAXATION OF AWARDS

Taxation depends on what receiving in exchange for awards—cash, acquirer stock, cash and stock, acquirer awards

Exchange of options for acquirer options not taxable—exchange of ISOs may result in modification that disqualifies ISO status

Stock for stock usu tax-free reorg with carryover basis

Cash for stock held due to prior exercise—same as sale of any stock

Cash for options—cash paid W-2 inc and withholding even on cashout of ISOs

Cash and stock—cash portion taxable and stock portion likely tax-free reorg

CHANGE OF CONTROL— GOLDEN PARACHUTES

Acceleration of vesting may raise issues under golden parachute rules for highly compensated executives during change of control under IRS Section 280G

Applies to certain disqualified individuals if payment contingent on change of control and in excess of 3X avg salary of prior 5 years (base amount)

Payments include severance, bonuses, stock options and continued benefits

If exceed 3X base amount, any amount above base amount subject to 20% excise tax and corporation loses deduction

PRIVATE COMPANY EQUITY AWARD FEATURES

Lack of liquidity—no liquid market for private cos—doesn't impact tax liability

Valuation issues with private cos—409A valuation

Typically stock options vs RSUs—more likely to see ISOs

Potential early exercise feature coupled with 83(b) election

If have RSUs will be “double trigger”

Restrictions on transfer of stock—co right of repurchase, right of first refusal, lockups

Exercise method typically limited to cash—potential for third party financing, company loan

Possibility of QSBS treatment if meet criteria

EQUITY DURING PRIVATE COMPANY LIFECYCLE

Provision	Pre-IPO	Around IPO	Post-IPO	Mature Company
Vehicle Use	Stock options	Mix of stock options and RSUs	Heavier emphasis on RSUs and some PSUs for execs	Mostly RSUs and PSUs
Denomination	# shares/% of company	Mixed	Dollar value	Dollar value
Grant Timing	Large grant on hire	Transition to formal annual grant	Formal annual grant	Formal annual grant
Participation	High level	Dependent on company culture	Materially reduced	Limited
Differentiation	Limited	Moderate	Significant	Significant

409A VALUATION

409A regulates nonqual deferred comp and applies to discounted stock options

Important to have options granted at current stock value to avoid 409A penalties

Private company needs third party appraisal valuation

Can use valuation for up to 12 months unless material development such as funding round or product milestone occurs

Check with company before exercise to confirm current valuation accurate and when new one expected

LIQUIDITY CONCERNS

Lack of liquidity does not impact tax liability—usu need cash to cover ex price and taxes

Restrictions on transfer—co has rt of first refusal, repurchase rts and lock-up post-IPO

Trend of companies staying private longer

Private cos may offer internal liquidity—buyback, add'l financing round, 3rd party purchase, secondary trading platform

Tender offer—current/former ee participation, limits on amt sold.

Cash from sale can be used to exercise/hold ISOs

Tender offers above 409A valuation—if with third party and arms-length—all gain likely treated as cap gains, if with company/related party/significant investor—premium likely compensatory and ord inc



Questions?



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THANK YOU