Awards of RSUs can provide tax deferral opportunity

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Executives and other key employees are often compensated with more than just salary, fringe benefits and bonuses: They may also be awarded stock-based compensation, such as restricted stock or stock options. Another form that's becoming more common is restricted stock *units* ("RSUs"). If RSUs are part of your compensation package, be sure you understand the tax consequences — and a valuable tax deferral opportunity.

RSUs vs. restricted stock

RSUs are contractual rights to receive stock (or its cash value) after the award has vested. Unlike restricted stock, RSUs aren't eligible for the Section 83(b) election under the Internal Revenue Code ("Code") that can allow ordinary income to be converted into capital gains.

But RSUs do offer a limited ability to defer income taxes: Unlike restricted stock, which becomes taxable immediately upon vesting, RSUs aren't taxable until the employee actually receives the stock.

Tax deferral

Rather than having the stock delivered immediately upon vesting, you may be able to arrange with your employer to delay delivery. This will defer income tax and may allow you to reduce or avoid exposure to the additional 0.9% Medicare tax (because the RSUs are treated as FICA income).

However, any income deferral must satisfy the strict requirements of Code Section 409A.

Complex rules

If RSUs — or other types of stock-based awards — are part of your compensation package, please contact us. The rules are complex, and careful tax planning is critical.

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