

IRS ALLOWS FLEXIBILITY IN PAYING EXERCISE PRICE FOR OPTION UNDER EMPLOYEE STOCK PURCHASE PLANS

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A recent IRS private letter ruling addresses whether an employee stock purchase plan (“ESPP”) may permit participants to pay the exercise price of an option issued under the plan through salary reductions or through a loan unless the loan would not be permitted under the Sarbanes-Oxley Act of 2002 (“SOX”). In particular, the employer was concerned that only allowing certain participants to pay the exercise price through a loan would violate the ESPP requirement that all participants granted options must have the same rights and privileges. In this regard, if the ESPP did not meet the same-rights-and-privileges requirement for any single option, then no options awarded under the ESPP would qualify for the favorable tax treatment afforded ESPP options. With very little explanation or analysis, the IRS concluded that a participant’s inability to pay the exercise price through a loan due to the application of SOX would not cause the ESPP to violate the requirement that all participants must have the same rights and privileges under the ESPP. Although only the party receiving a private letter ruling may rely on the ruling, this ruling nonetheless suggests that the IRS would not have objections to an ESPP containing a similar provision. [PLR 201911002]

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