

Don't forget Form 3921 for ISO and ESPP purchases!

Don't forget Form 3921 for ISO and ESPP purchases!

Insight — 1/3/2013

Don't forget that employers must report incentive stock option ("ISO") and employee stock purchase plan ("ESPP") purchases for 2012 by January 31, 2013. This was a new requirement for 2010 purchases, and may have caught some employers by surprise since the IRS had delayed implementation for many years previously. Hopefully by now employers have worked the forms into their January payroll reporting routines.

The forms are:

- Form 3921, Exercise of an Incentive Stock Option Under Section 422(b), at <http://www.irs.gov/pub/irs-pdf/f3921.pdf> and
- Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c), at <http://www.irs.gov/pub/irs-pdf/f3922.pdf>.

The forms must be filed with the IRS and provided to the affected employee by January 31st.

The new requirements do not apply to a stock option that is not an ISO (within the technical meaning of Code Section 422) or to any transfers of stock under a stock purchase plan that is not intended to qualify under Code Section 423. In addition, the reporting requirements generally do not apply to nonresident aliens who perform services outside the United States and for whom the company is not required to issue a Form W-2.

For assistance with these reporting requirements, or if you have questions about any other stock option or employee benefit matters, please contact a member of our Benefits Law Group.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should

seek the advice of your legal counsel.