

First Guidance on the Application of Section 83(i) - Tax Deferral for Private Corporation Equity Compensation Awards

December 12, 2018 | Client Update

On December 7, 2018, the Treasury Department and the Internal Revenue Service issued Notice 2018-97, which provides initial guidance on Section 83(i) of the Internal Revenue Code. Section 83(i) allows eligible employees of private corporations to defer federal income taxes on eligible compensatory stock received in connection with the exercise of stock options or in settlement of restricted stock units (RSUs) for up to five years after exercise or settlement.

Specifically, Notice 2018-97 addresses:

- how an employer can satisfy the Section 83(i) eligibility requirement that it must grant stock options or RSUs to not less than 80% of U.S. employees;
- the application of federal income tax withholding rules to the deferred income related to qualified stock; and
- how an employer may affirmatively opt out of Section 83(i), even if the requirements of Section 83(i) are otherwise met.

This client memorandum discusses Notice 2018-97 in further detail and provides key takeaways and implications of this guidance.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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