

## **IRS Waives ISO and ESPP Reporting Requirements for 2007; Employers Must Provide Information Statements to Employees**

**December 21, 2007**

As discussed in our LawFlash issued December 11, 2007 ([http://www.morganlewis.com/pubs/EB\\_NewIncentiveStockOption\\_LF\\_11dec07.pdf](http://www.morganlewis.com/pubs/EB_NewIncentiveStockOption_LF_11dec07.pdf)), Section 6039 of the Internal Revenue Code of 1986, as amended (the Code), sets forth two reporting requirements for employers sponsoring incentive stock option plans (ISOs) or employee stock purchase plans (ESPPs): (1) a requirement that the employer provide the employee a summary of important details with respect to stock transfers in connection with an ISO or an ESPP (the Employee Information Statement), and (2) a requirement that the employer provide an information return to the Internal Revenue Service (IRS) setting forth the comparable information (the Information Return). Specific information regarding the contents of the Employee Information Statement and the Information Return is set forth in our December 11 LawFlash.

The requirement that employers provide each affected employee with an Employee Information Statement has been in the Code for some time. The Information Return requirement, however, was added in 2006, and the IRS has not yet issued guidance implementing the requirement.

In Notice 2008-8, issued on December 19, 2007, the IRS announced that (1) the Information Return requirement is waived for stock transfers under ISOs and ESPPs occurring during calendar year 2007; (2) it expects to issue regulations implementing the Information Return requirement, and expects those regulations to retain the approach taken in the Employee Information Statement requirements; and (3) it expects that, when issued, the regulations will be retroactively applicable to January 1, 2007. Thus, while no Information Return is due with respect to ISO or ESPP stock transfers occurring during 2007, employers continue to be subject to the requirement to provide affected employees with an Employee Information Statement for transfers that occurred during 2007, and should be prepared to implement similar Information Return requirements for ISO and ESPP transfers commencing with the 2008 calendar year.

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