

Voyage to the End of the Year: How to Comply with Year-end Regulations

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Materials Slides

http://www.sos-team.com/pdfs/year_end_regulations.pdf

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Agenda

- Review General Year End Tasks
 - Examples of common myths
 - Audits and Reconciliations
 - Tax Communications and Reporting
 - Reporting US SEC and International Requirements
 - Plan Activities
- Review Sample Timeline

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Discuss Vacation Plans!

- Review with each what you may need from them at year end. Waiting till the last minute can mean missing a deadline.
- Critical to identify who will approve SOX compliance steps during this period.
- Don't forget your international folks!

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Audit EVERYTHING

- Personnel Data
 - Terminations
 - Leaves of Absence
 - Transfers / Mobility
 - Department/Billing Codes
- Transactions
 - Shares issued
 - Cash received
 - Taxes collected and remitted
- Grants
 - Tie to approvals
 - Expiring options
 - FV for grants calculated properly
- FMV entered in database correctly – no after market corrections
- Run any automated “data check” type functions software provides to check for irregularities.

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Automate Reconciliations

- Types
 - Period to period, quarter-to-quarter, year-to-year
 - Stock Plans to HR
 - Stock Plans to Payroll
- Methods
 - Spreadsheet functions (vlookup, sum if)
 - Access database
- Best Practices:
 - SAVE soft / e-copy of EACH report at period close
 - SAVE back up copy of database at period close
 - Add notes to first tab of spreadsheet with overview of reconciliation and instructions.

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Audit demographic data

- Although this should be done at least quarterly, a final validation is important to ensure you have captured all terminations, LOAs and for 6039 reporting
- Bad SSN, name or address can cause the IRS to reject your filings

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Ye Olde Wives Tales of Tax...

- Terminated employees receive 1099s not W-2s.
- Dividends on Restricted Stock should be reported only by the transfer agent on 1099-DIV.
- Assuming payroll matches the stock plan database.
- There is no tax reporting for transactions by Outside Directors.
- Once the ESPP holding period is met, there is no further tax reporting required.

ALL FALSE!

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Disqualified Disposition Surveys

- Required to track ISO disqualified and ESPP dispositions (Notice 2002-47, 2002-2 C.B. 97)
 - If not with a captive broker, prepare to mail paper surveys
 - Include language about the employee's responsibility to inform you of any sale
 - Discount from purchase (15% or 5%, etc.) is W-2 included income even for *Qualified* ESPP Dispositions
- Mail at end of October or Early November
- May need to revisit this again over the final weeks of December if any additional surveys are returned
- Enter into the equity system and retain survey copy for records

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6039 reporting and IRS filing

- ISO/ESPP –3921, 3922
 - Filing Deadline
 - Forms required to be delivered to employees January 31st – same as W-2
 - IRS electronic filing required by end of March
 - If vendor is used, secure a contract and determine deadlines and requirements
 - If preparing internally, understand how and test process

Payroll Audit

- While this audit should be ongoing quarterly, it is good to provide details to payroll one final time prior to year end so they can validate all data has been entered for W-2 reporting.
 - Exercises
 - Award vesting/releases
 - dispositions
- Provide details daily through year end to ensure data is as current as possible

Payroll Cutoff Dates W-2 Reporting

- Review with payroll the potential income and tax withholding details that may need to be entered to W-2s
 - for stock option exercises
 - award vesting and releases
 - dispositions
- Identify any potential vesting at end of year that will require reporting
- Make sure all parties are involved, including international payroll departments
- Plan for W-2c reporting
- Former employee reporting

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1099-MISC Reporting

- Identify any non-employee and Board of Director compensation from exercises, vesting/releases
- Identify who does 1099s, what they need, and deadlines

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Updated tax rate and limits

- Work with payroll and outside advisors on updates for new year.
- Best practice to confirm with payroll what the rates and limits should be used.
- Confirm any changes for international purposes.
- Update systems immediately after the 12/31 activity is entered (prior to entering and activity for new year).
 - Reset all YTD and Supplemental Wages to zero.

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Non-trading Date FMV

- Transactions scheduled for December 31st can sometimes cause issues with the price to be used or purchase date in the event the 31st is a holiday
- Review plan language and know what happens if the purchase date falls on a holiday, communicate to employees.
- Be consistent!

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Non-US Filing Requirements

- If you issue equity outside the US, payroll and HR offices may have different reporting requirements and will need reports, plan documents and actual data.
- Understanding this ahead of time eliminates last minute errors or delays due to holiday schedules.

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Annual Reporting and SEC Filings

- Set up meetings with key players to review what items you have available and how they will be provided, setting expectations up front.
- Provide samples of equity system reports
- Work with Legal to prepare D&O Questionnaires
- Check for any Form 5 filing requirements
- Verify EDGAR password expirations and change if necessary

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Reconcile with Transfer Agent

- Even if performed by another department, equity administration should be involved in annual audit.
- Reconcile shares outstanding AND equity plan reserves.
 - Tie out cap table with plan summaries
- This should be done at year end to ensure the proper number of shares are registered and that no new registrations are needed.
- Check plans for any evergreen adjustments needed.
 - New share allocation
 - S-8 filing
 - Update equity systems

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Common Communications Myths

- You should only send the minimum required information for tax purposes.
- Employees should go to their HR business partner with all questions.
- The vendors can't help with this.
- We don't have to plan ahead, we'll just use last years cover memo.

ALL FALSE!

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Participant Communications

- 6039 Reports
- Year end tax statements
- Transaction notices
- Confirm broker reporting (1099-B)
- General information on reporting equity transactions in tax forms

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Electronic Participant Statements and Communications

- Purposes
 - Required for Section 6039 (423-ESPP & ISOs)
 - Tax Documents
 - Participant Statements
 - Disposition Surveys
- Benefits
 - Saves time: No stuffing envelopes, paper jams
 - Saves money: No temps, postage, paper, envelopes
 - Reduces risk: Can't put wrong statement in wrong envelope
- Methods
 - Mail Merge
 - MS Access
 - Provider Website

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Annual Review Programs

- Good to time check if your share reserves will support your program for the next year or two.
- Annual compliance review – especially, non-US compliance items.
- Discussions with compensation about planned changes to compensation programs.

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Revisit what went right and what went wrong and document for next year!

Document everything!

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Sample Year End Timeline

| Date | Action | Responsible Persons |
|--------|--|---------------------|
| Dec 1 | Run report of options expiring in next year and distribute reminder memos if necessary | |
| Dec 6 | Distribute ESPP Disqualifying Disposition Surveys (Due Date = December 21 st) | |
| Dec 15 | Window Period Closes: Block all insider accounts if necessary | |
| Dec 15 | Coordinate Year End Close with Payroll & Verify Drop Dead Date for W-2 info to Finance | |
| Dec 21 | ESPP Disqualifying Disposition Surveys DUE: Input disposition data | |
| Dec 31 | Year End Close Begins: Reconcile Plan Summaries for current year with prior year | |
| Dec 31 | Run Data Check to identify any errors and correct and/or document if necessary | |
| Dec 31 | BACK UP stock plan database | |
| Jan 1 | Verify w/ HR that all year end Employee and Consultant new hires & terminations are input into stock plan database | |
| Jan 1 | Revisit Leaves of Absence with HR and update if necessary | |
| Jan 1 | Verify & Change Tax Rates & Limits and Zero out YTD taxes paid | |
| Jan 1 | Add Evergreen Shares to ESPP & Equity Incentive Plan | |
| Jan 1 | Verify all plan reserves & capitalization table (shares O/S) & reconcile with Transfer Agent numbers | |
| Jan 1 | BACK UP stock plan database | |
| Jan 2 | Distribute 4 th Quarter Option Summary Reports | |
| Jan 2 | Provide Finance with ESPP Qualifying and Disqualifying Disposition reports and NQ report with income amounts for W-2s, 1099s and tax credit amount (Provide addresses for BOD members and consultants) | |
| Jan 5 | Distribute 6039 Statements of Taxable Income w/ Explanatory Memo | |

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| Date | Action | Responsible Persons |
|---------------|--|---------------------|
| Jan 10-15 | Prepare & File S-8 for Evergreen Shares. Send copy to Transfer Agent & Instruct re Share Reserves | |
| Jan 12-16 | Hold Option education meetings | |
| Jan 15- Feb 1 | Prepare & Distribute D&O questionnaires for Proxy & Forms 5 | |
| Jan 31 | Due Date for W-2s and 6039 Statements of Taxable Income to participants | |
| Feb 1 | Verify EDGAR password expirations and change if necessary | |
| Feb 4 | Develop 2005 Education Presentation Timeline | |
| Feb 11 | Due Date for Return of completed D&O Questionnaires | |
| Feb 11-18 | Prepare 1 st Draft of Proxy Statement Equity Related Sections | |
| Feb 10-18 | Hold ESPP Education Meetings | |
| Feb 15 | Forms 5 Due, if necessary | |
| Feb 15 | Provide Legal w/ Info re Disclosure Statement due March 1st | |
| Feb 28 | ESPP Purchase and New Enrollment/Change Forms Due | |
| March 1 | Distribute ESPP Confirmations of Purchase and ESPP Summary Reports to all purchasers | |
| Mar 1-15 | Update all plan Prospectus documents | |
| Mar 8-19 | Hold Option Plan meetings and plot calendar for meeting times throughout 2005 | |
| Apr | Send Annual Report on 10K and Proxy Statement to all Equity Plan participants and Post on Internal Website | |
| Apr | Annual Meeting of Stockholders | |

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