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Unlocking Tax Planning Efficiency: The New Era of Online Section 83(b) Elections

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Introduction

The IRS has introduced a significant update permitting electronic filing of Form 15620 to make an election pursuant to Section 83(b) of the Internal Revenue Code. This update modernizes the compliance requirements of Section 83(b) and is particularly beneficial to the emerging company and venture capital ecosystem (ECVC), and its participants (*e.g.*, companies, founders, employees, board members, and other service providers) who receive equity subject to vesting. This change is crucial for taxpayers in both optimizing tax planning and facilitating alternatives to ensure timely compliance.

Significance for Startups and Venture Capital Firms

The Section 83(b) election allows taxpayers to be taxed on the fair market value of their equity at the time of grant, rather than at each vesting event. This can lead to tax savings, as taxation at each vesting event may result in higher liabilities due to equity appreciation. Conversely, not filing results in taxation at each vesting event, which can become financially burdensome as the equity's value increases, leading to higher tax liabilities over time, especially given that time-based vesting schedules regularly stretch out over several years.

For a Section 83(b) election to be valid, there is a strict timing deadline that the filing must be made within 30 days of the equity transfer to a recipient. Previously, the filing process relied on physical mail submissions, posing a risk of missing the strict 30-day deadline. The introduction of the new online filing option enhances both efficiency and reliability, making it ideally suited for the fast-paced nature of the ECVC ecosystem.

Benefits of Online Filing

Taxpayers can now streamline the filing process by creating an IRS online account to complete and submit Form 15620 electronically, which eliminates postal delays and ensures timely filing. Additionally, the online form requires confirmation that no Section 83(b) election has been previously mailed for the underlying equity subject to the election.

The online submission process provides confirmation of receipt, reducing the risk of lost or delayed mail and ensuring compliance with the 30-day filing requirement. While this improvement offers substantial benefits over the previous method, taxpayers may still opt for certified mail with return receipt requested to maintain a clear record

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of mailing.

Guidance for Taxpayers

Companies should consider the benefits of proactively educating equity recipients on the benefits, potential risks, and streamlined electronic filing process of Form 15620 for Section 83(b) elections. Companies should continue to track the 30-day deadline and keep records confirming that filings have been made.

Conclusion

Section 83(b) elections offer tax benefits by allowing taxpayers to include unvested equity received in connection with the performance of services in their gross income for tax purposes. While the online filing option for Form 15620 modernizes this process, making it more accessible and efficient while reducing the risk of inadvertently missing the 30-day filing deadline, Section 83(b) elections, and the resulting tax implications, are complex, and taxpayers are encouraged to consult with their own independent tax advisors.

This alert is for informational purposes only and does not constitute legal or tax advice.

Reach out to Troutman Pepper Locke if you have questions about Section 83(b), Form 15620, or want to learn more.

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