



Regulatory Update

Payroll Tax Deposit Timeline for Equity Compensation Shortened



The Securities and Exchange Commission (SEC) has issued a [rule change](#) accelerating the settlement of securities transactions. The SEC refers to this rule change as the “T+1” rule. The new rule generally reduces the amount of time in which an employer must calculate, withhold, and deposit employment taxes on wages paid in the form of nonqualified stock options (NSO) or restricted stock units (RSU). The rule change goes into effect on May 28, 2024.

The Details:

Internal Revenue Service (IRS) regulations consider a stock-based compensation to be paid to an employee when the stock transaction is “settled.” Settlement refers to the official transfer of securities to the buyer’s account and the cash to the seller’s (i.e., employee’s) account. The date of settlement is the date when the cash from the NSO or RSU transaction is considered constructively received by the employee and triggers the IRS federal employment tax deposit rules.

The IRS rules generally require that employers must deposit payroll taxes on a monthly or semi-weekly basis depending on the amount of taxes reported during a specified “look-back” period. Notwithstanding the general monthly and semi-weekly rules, employers that accumulate \$100,000 or more in employment taxes must deposit those taxes with the IRS by the close of the next banking day. Employment taxes associated with equity compensation settlements are combined with such taxes associated with other payroll tax liabilities (i.e., regularly scheduled payrolls) to determine whether the \$100,000 threshold is met for next-day deposit purposes.

Current T+2

Since 2017, the SEC established that the time between the transaction or “trade” date and settlement date for NSO and RSU transactions was two business dates (T+2). Under T+2, if shares were sold (traded) on Wednesday, the transaction would settle on Friday. Where the employer is subject to the \$100,000 next-day deposit rule, the taxes due on the NSO and/or RSU transaction would be due on the following Monday.

Change to T+1

Under the SEC rule change implementing T+1, effective May 28, 2024, the SEC-allowed time between the transaction and settlement date for stock transactions will be shortened to one business day. Under T+1, if shares were sold on Wednesday, the transaction would settle on Thursday. Where the employer is subject to the \$100,000 next-day deposit rule, the taxes due on the transaction would be due on Friday, as opposed to the following Monday as in the case of the current T+2 standard.

Penalties for Late Deposit

The IRS imposes penalties on employers who fail to deposit employment taxes on time based on the number of calendar days the deposit is late as follows:

- Two percent penalty for deposits one to five days late.
- Five percent penalty for deposits six to 15 days late.
- 10 percent penalty for deposits 16 or more days late.

In addition, if the employer is notified by the IRS of the deficiency and the deposit is not paid within 10 days following the notice date, the penalty amount increases to 15 percent.

Next Steps:

Employers that offer equity compensation to employees such as nonqualified stock options (NSO) and restricted stock units (RSU) should familiarize themselves with the [SEC rule change](#) (T+1) and adjust their payroll processes to accommodate the shortened settlement date rules and the impact on the remittance of federal employment taxes.

For additional information, see:

SEC Final Rule: ["Shortening the Securities Transaction Settlement Cycle"](#)

IRS Publication 15 [\(Circular E\), Employer's Tax Guide](#)

IRS [Employment tax due dates](#)

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