Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

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New Tax Law Provides Potential Deferral Opportunity for Equity Compensation Granted by Privately Held Companies

The recently passed Tax Cuts and Jobs Act has attempted to cure a common problem that employees of privately held companies encounter when certain types of equity compensation convert and become income. Ordinarily, when a Non-Qualified Stock Option (NSO) is exercised or a Restricted Stock Unit (RSU) vests, there is income to be recognized and subsequent tax to be paid by the equity holder. Because privately held companies are not publicly traded, equity in such entities often can be hard to value and liquidate for an employee looking to obtain cash for withholding. Because of this, equity compensation is often an unattractive means to compensate employees of privately held companies due to the lack of liquidity and burden of a valuation.

Newly enacted Section 83(i) allows certain employees to make an election within 30 days of the exercise of an NSO or vesting of an RSU for a deferral of income tax of up to a maximum of 5 years assuming certain criteria is met by both the employer and employee. For this new election to qualify, privately held employers must have a written plan in place that states they intend to grant "qualified stock" in the form of either NSO's or RSU's to at least 80% of their full time US based employees. Employees such as the CEO, CFO, 1% owners or the top four highest compensated employees for any of the past 10 years do not qualify to make an 83(i) election.

For more information, feel free to contact your Anchin Relationship Partner, Chris Noble or Michael Brennan of Anchin's Technology Group.