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Texas Society of Certified Public Accountants

CRYPTOCURRENCY

THE NEW FRONTIER OF TAXATION AND ENFORCEMENT

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READY FOR NEW OPPORTUNITIES IN THE YEAR AHEAD

By TXCPA President and CEO Jodi Ann Ray, CAE

Share Your Thoughts

I'd love to hear your feedback and answer your questions. Drop me a note at jray@tx.cpa or connect with me on LinkedIn at https://www.linkedin.com/in/jodiannlafreniereray/.

The last two years have been full of change and we learned quickly that we would need a new definition for "normal." As you plan for your new normal, turn to TXCPA for the resources and connections you need to stay ahead of the changes yet to come.

Stay informed. TXCPA communicates with members in many ways, always striving to keep you in-the-know about the latest professional updates. Be sure the details in your member profile are accurate so we can understand your areas of interest and you don't miss any critical alerts. TXCPA's social media channels also provide quick, short and timely updates. Be sure to follow the Society on Facebook, LinkedIn, Twitter and Instagram. I hope to see you during one of our Facebook Live Friday broadcasts at 10 a.m. Central Standard Time most Fridays.

Stay ahead. TXCPA's CPE programs are critical for staying ahead of the changes coming throughout the year. We offer four FREE two-hour professional issues update webcasts, quarterly Texas tax update webcasts and our four-hour Ethics program that meets your state requirement. All these programs are included as part of your member investment! Be sure you add the dates for these and other important CPE opportunities and you'll be ready to answer the tough questions for your clients as you move into tax season.

Stay connected. One of the greatest benefits of membership is the connection you have to thousands of CPAs across the state. You can participate in a chat on TXCPA Exchange, join a committee, volunteer with your chapter or get engaged in TXCPA's advocacy efforts. You can get involved at any time of the year, but we are currently seeking volunteers to join committees for the start of our fiscal year June 1.

All members are invited to attend our 2022 Midyear Meeting on January 21-22 in Irving. You'll hear valuable updates on the profession and connect with others in the community. Members will have the opportunity to attend the event in-person or via webcast.

The TXCPA team is here to help you be more engaged and successful in 2022! Please let us know how we can best serve you in the new year ahead.

Happy New Year!

SEC APPROVES NASDAQ'S PROPOSALS FOR BOARD DIVERSITY DISCLOSURE

By Don Carpenter, MSAcc/CPA

Nasdaq's proposals regarding increased disclosures on board diversity have received SEC approval. The new requirements are intended to address the continued lack of female and underrepresented minority board representation when compared to the population in general.

The first proposal will require a Nasdaq-listed company to have (or explain why it does not have) at least two diverse members. One of the members should self-identify as a female and one as an underrepresented minority or LGBTQ+. If the company does not meet the targets, it must provide the diversity requirements to a reader and then explain why it did not satisfy them.

Nasdaq allows broad discretion with regard to meeting the explanation requirement. It offered examples of explanations, such as:

- "The company does not believe Nasdaq's listing rule is appropriate."
- "The company does not believe achieving Nasdaq's diversity objectives are feasible given the company's current circumstance."
- "The company is committed to ensuring that the Board's composition appropriately reflects the current and anticipated needs of the Board and the company."

The disclosure in lieu of compliance is required to be made annually in either the proxy statement (or an information statement if the company does not file a proxy) or on the company's website. If the company elects to satisfy the requirement via the website, it must do so concurrently with the filing of the proxy statement and provide the link through the Nasdaq Listing Center.

If a company has five or fewer board members, it can meet compliance with only one board member who meets the diversity definitions. If it adds a sixth member to comply, it will continue to satisfy the requirement without being required to meet the "two diverse member" requirement of larger boards. But expanding to seven board seats would require a second diverse representative.

Smaller reporting companies (as defined in Rule 12b-2) are allowed to avoid the explanation disclosure with two diverse board members, but both members may be female. It is not required to have one of the two members be either an underrepresented minority or LGBTQ+.

In addition, Nasdaq-listed companies are required to report annually a "Board Diversity Matrix" that provides the total number of directors and:

- The number who identify as female, male, non-binary or do not disclose gender;
- The number who identify by race and ethnicity; and
- The number who identify as LGBTQ+.

The matrix must be provided annually in the same manner as the company's explanation for not meeting the diversity criteria (proxy or website). After the first year, the report must include the current and prior year matrix. The matrix must be provided in a searchable format.

Non-compliant companies will have 45 days to submit a plan to comply after receiving failure notification and those that fail to comply within 180 days will receive a Staff Delisting Determination. Compliant companies that fall out of compliance due to a board vacancy will have one year from the later of the date of vacancy or the filing of the next proxy statement to meet the requirements.

Companies must comply by the later of August 7, 2023, or the date the company files its proxy for the 2023 annual shareholders' meeting. Smaller companies have extended compliance dates. Nasdaq Global Select Market and Nasdaq Global Market companies have until 2025 and Nasdaq Capital Market companies have until 2026.

The diversity matrix requirement becomes effective on the later of August 8, 2022, or the filing of the proxy statement for the 2022 shareholders' meeting, if later.

In conjunction with the diversity disclosure proposal, a second proposal will offer eligible companies a year of access to a board recruiting service to identify and evaluate board-ready diverse candidates. Eligible companies are those that (1) lack at least one director who self-identifies as female and (2) at least one director who self-identifies as an underrepresented minority or LGBTQ+.

Critics have been quick to argue that the requirements run afoul of the equal protection provisions of the 14th amendment to the U.S. Constitution and various civil rights laws. Others have commented that the proposal was "designed to address political and social issues and would redefine the purpose of businesses."

If accepted, these positions argue that Nasdaq has exceeded its authority and that the requirements are therefore unlawful. The proposal will almost certainly be challenged in court consistent with earlier board diversity regulations enacted by the state of California.

Nasdaq's counter to these arguments is that the rules are not diversity quotas or mandates, but only disclosure requirements that are intended to give investors greater insight into a company's approach regarding board diversity. Under the proposal, a company is not compelled to meet the diversity goals, only disclose its rationale for not complying with them.

It will be interesting to monitor these new requirements as the reporting deadlines near. Additional research may be needed to determine the extent to which investors rely on the data when they are making investment allocations.

About the Author: Don Carpenter is clinical professor of accounting at Baylor University. Contact him at Don_Carpenter@baylor.edu.

Balancing Work and Family Responsibilities

Meet Molly Abele, CPA, Partner at Axley & Rode, LLP, Lufkin, Texas

Achieving a balance between family responsibilities and a career can be a struggle for many working parents, especially mothers. In this issue of *Today's CPA* magazine, we highlight Molly Abele, CPA, partner at Axley & Rode, LLP, and discuss how she balances work with family responsibilities.

What do you consider a healthy balance between work and family life?

A healthy balance is the state of equilibrium where I prioritize the demands of a career and the demands of my personal life. It does not necessarily mean that work and family are in equal balance, and what works for one person may not for another. The goal is to achieve the career I want with the ability to pursue the personal interests that I love.

What do you find most challenging as a working parent?

I am, by nature, a control freak. Thus, having the quintessential "mom guilt" for having to decide what I can do and what I can let go of. Learning to prioritize commitments to spend time wisely to achieve my goals is one of the most continually challenging items.

How do you manage family responsibilities?

I manage family responsibilities in a similar manner to work: prioritization. In addition to prioritizing, I have a support system that I trust to help. Your support system could consist of your partner, family members, friends or neighbors. Remember, it is OK to ask for help from others, especially in your busy season.

How do you unplug from work?

I do not have work email notifications set up on my phone, which allows me to leave work and enjoy my family time. I try to remember that accounting "emergencies" are few and far between. Company emergencies would typically warrant a text or phone call that I can respond to immediately. I can check my email at the computer after hours in an emergency or at a designated time that I set aside. I allow myself time away from email.

What steps do you take to help reduce stress?

I try to follow these three rules for reducing stress:

- Build "me time" into my schedule - You can't take care of others or do your job well unless you are healthy, physically and mentally. You could get a pedicure, a massage, wander around Target, read a book, walk your dog, or take a run. Remember to make time for yourself.
- Adjust standards and expectations – The dishes are not always put up and the laundry is not always folded – and learn to accept it!
- Prioritize, prioritize, prioritize – This should be done for both at work and home. Determining what HAS to be done each day is the first step.

What habits help you be more productive?

Making to-do lists and documenting everything is important. Make sure to prioritize your lists, as well. I use the calendar app on my phone for notifications, a wall calendar, sticky notes, and a whiteboard to track projects and things I need to do. I record things in multiple places so that I don't forget to do something important. Minimizing distractions is also essential. Turn off your email for an hour, shut your door, turn on music, choose what works for you.

What do you recommend for preventing burnout at work and home?

Some tips include:

- Look for ways to reduce feeling overwhelmed;
- Talk to a peer about how you are feeling;
- Look for ways to manage your time more efficiently;
- Analyze your to-do list and cut out tasks that have little to no value;
- Don't over-commit;
- Learn to say no or delegate tasks to others;
- Ask for help from your manager; and
- See if you can adjust your workload or schedule to help relieve some of the stress you are feeling.

Flexibility in meeting your work and family obligations can help reduce burnout.

How do you support your team members to achieve a balance?

I let my team know that they can talk to me whenever needed and believe in open communication. I am aware of what family commitments each of my employees has and assist in planning work to assist them in achieving their balance. I also encourage time off to prevent burnout.

From left to right (top): Charlotte M. Jungen, CPA, CFP® • Diana Castro, CPA, CFP® • Chris A. Matlock, CPA, CFA • Wade D. Egmon, CPA, CFP® • Joni Eggleston, CPA
Middle front: Lisa A. Francia, CPA • Steven R. Goodman, CPA, CFP®

Tax Season Resources for Members

Are you ready for this year's tax season? Take advantage of all the TXCPA resources! The online, members-only TXCPA Exchange is a great place to ask questions, get advice, provide feedback and expand your professional network. You can log in and join the Tax Issues community to participate in the conversation and discuss your tax questions.

Updates on current tax topics are also available on the Federal Tax Policy Blog. The blog provides important information and valuable commentary from the TXCPA Federal Tax Policy Committee.

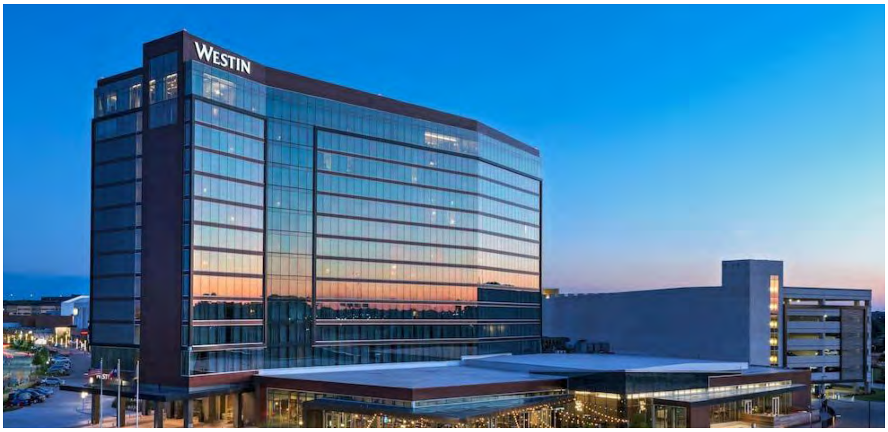
If you need a few CPE hours during tax season, be sure to check out our vast selection of webcast and on-demand programs available to fit your schedule and your budget.

TXCPA is your connection to the education and up-to-date information you need this busy season and throughout the year.

Submit an Article to *Today's CPA* Magazine

The editors of *Today's CPA* are seeking article submissions for the magazine. *Today's CPA* is a peer-reviewed publication with an Editorial Board consisting of highly respected CPA practitioners.

The publication features articles affecting CPAs in all facets of business. To submit an article or learn more, please contact Managing Editor DeLynn Deakins or Technical Editor Brinn Serbanic, CPA, CFP™.



TXCPA's Midyear Board and Members Meeting

All TXCPA members are invited to attend TXCPA's Midyear Board of Directors and Members Meeting on **January 21-22, 2022**, at the Westin Irving Convention Center at Las Colinas, Irving. We're excited to hold our first in-person Board and members meeting since January 2020, and a virtual option will also be available to accommodate those who are not able to attend the meeting in person.

Highlights include:
- Attendees will hear updates on important TXCPA strategic plan initiatives;
- The 2022-23 Leadership Slate will be presented;
- AICPA Chairman Bill Pirolli will present on Friday, January 21; and
- Members will have the opportunity to participate in roundtable discussions with their peers.

In an effort to keep our attendees safe and provide peace of mind, we are requiring proof of a negative COVID-19 test (administered within 72 hours of attendance) or proof of full vaccination to attend the meeting in person.

Get the meeting details
Book your room now
Register now

TXCPA Month of Service Highlights

December was TXCPA's Month of Service! This dedicated month of service allows the accounting profession to make a difference through efforts in their local communities. Once again, the Branding and Community Outreach Committee asked members to add a financial literacy focus to their activities to help Texans build a stronger financial foundation.

Many of our chapters were busy hosting financial literacy workshops, organizing food drives, collecting toys for children in underserved communities, and more! Visit our community service page on the website to see the activities held across the state.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Employers posting jobs in the TXCPA Career Center can use code **NEWYEAR22** for a complimentary 30-day job posting during the month of January. An employer does not need to be a member of TXCPA to take advantage of this offer. Plus, internship postings are always free in the TXCPA Career Center.

Questions about the Career Center can be directed to DeLynn Deakins. Questions about other benefits of TXCPA membership can be sent to our member service team.

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CRYPTOCURRENCY

The New Frontier of Taxation and Enforcement

By Joshua D. Smelter

A lot of discussion has occurred regarding the changes caused by the global pandemic. Many people tend to compare pre-pandemic situations to current situations. One of the many things that has experienced dramatic changes during the course of the pandemic is cryptocurrency. Bitcoin's value, arguably the most popular cryptocurrency, rose dramatically from around $5,000 in March 2020 to a high of around $63,000 a year later.

The use of blockchain technology has increased as well, which has caused a value increase in other cryptocurrencies that facilitate applications like smart contracts (e.g., Ethereum). Popular payment services like PayPal now allow users to buy and pay with cryptocurrency, and there are now thousands of ATMs allowing the buying and selling of cryptocurrency.

None of this is, necessarily, pandemic related. However, it is clear that the mainstream use, viability and legitimacy of cryptocurrency has increased dramatically.

All of these changes in the use and acceptability of cryptocurrency have also sparked an increase in creative uses of the blockchain technology and its related cryptocurrencies. Digital assets called Non-Fungible Tokens (NFTs) representing real-world objects such as art, music, sports memorabilia and videos have seen huge increases in use and value.

You can collect and "breed" your own designer CryptoKitties or purchase a digitally created punk portrait using blockchain technology. Beyond collectibles, these NFTs could be used for other financial transactions that rely on ensuring a chain of ownership (e.g., real estate title reports).

Cryptocurrency is also showing up in more traditional financial products, and there are now retirement plans catering to cryptocurrency investment and cryptocurrency backed loans. Meanwhile, both individuals and businesses are supporting the blockchain through mining operations that earn cryptocurrency in return for the computing and validation services provided.

Anytime there are transactions involving assets having value, there are usually tax consequences. As cryptocurrency innovators and investors continue to make, market and profit from the new technology, regulators are trying to keep up. Many government agencies, most prominently the Internal Revenue Service (IRS), have publicly made cryptocurrency enforcement a top priority.[1]

This article focuses on the enforcement efforts of the IRS, and the reporting, compliance and legal issues currently facing cryptocurrency.

The Current Status of Cryptocurrency Taxation

The first formal guidance issued by the IRS for cryptocurrency occurred in 2014, defining virtual currency as "a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value."[2] The notice further stated that, for federal tax purposes, "virtual currency is treated as property" and that "tax principles applicable to property transactions apply to transactions using virtual currency."[3]

Therefore, when a taxpayer receives, sells or exchanges virtual currency, they have gain or loss and, in the hands of the taxpayer, the virtual currency is a capital asset.[4] A taxpayer who "mines" cryptocurrency must include the fair market value of the virtual currency in gross income as of the date of receipt.[5]

Also, there are information reporting requirements for anyone who, in the course of their trade or business, makes a payment using virtual currency with a value of $600 or more.[6] Several other issues related to items like backup withholding and self-employment income are also covered by the 2014 guidance.[7]

Since the 2014 guidance, the IRS has issued additional guidance through the form of FAQs on its website.[8] Although helpful, FAQs do not have the force of law and can be removed by the IRS without warning. If relying on a specific FAQ, it is good practice to print it in hard copy in case the IRS decides to remove it at a later date.

The next formal guidance from the IRS arrived in 2019 in the form of a Revenue Ruling on the treatment of "hard forks" and "air drops."[9] Hard forks occur when there is a protocol change on the distributed ledger that may create a new cryptocurrency. An air drop is a distribution of cryptocurrency units to addresses on the legacy distributed ledger.

The Revenue Ruling essentially says that a taxpayer has ordinary income if, as a result of a hard fork or air drop, the taxpayer receives units of new cryptocurrency.[10]

Beyond the limited formal guidance and informal FAQs, taxpayers and their advisors have attempted to rely on the regular tax principles related to property under the Internal Revenue Code (IRC). For example, cryptocurrency collectibles are not specifically mentioned in the formal or informal guidance.

Unlike other investments, the IRS does not treat collectible assets very favorably. The tax rate on most net capital gain is no higher than 15% for most individuals. Some or all net capital gain may be taxed at 0% if taxable income is less than $80,000. However, in the case of collectibles and some other types of gain, the maximum rate is 28%.

For taxpayers in higher income tax rate brackets, this may still be a lower tax rate, but not necessarily. Individuals with significant investment income may also be subject to the Net Investment Income Tax (NIIT).

Also, the IRS guidance on "mining" cryptocurrency was written when the process involved a Proof of Work (PoW) model and recent cryptocurrencies have adopted a Proof of Stake (PoS) model as an alternative. Proof of Work involves the solving of complicated math problems in exchange for cryptocurrency rewards. This process requires a lot of computing hardware and power.

Proof of Stake, on the other hand, rewards users who "stake" their cryptocurrency and an algorithm decides on rewards based on the cryptocurrency staked on the system. This process involves much less hardware and power. A recent case, filed in the Federal District Court for the Middle District of Tennessee, is challenging the IRS claims that receipt of cryptocurrency under the PoS model is income when it is received.[11] Instead, the taxpayers claim that it is created property that shouldn't be taxed as income until sold.

As more potential ambiguities arise, the likely result is more courts weighing in on how cryptocurrency assets fit into the Internal Revenue Code's existing provisions and the established precedent on those provisions.

Taxpayers have limited options for seeking advice on proper treatment of truly novel applications of cryptocurrency transactions prior to reporting them on their tax returns. One option is a formal tax opinion discussing the legal nuances, factual details, and applicable authorities and arguments.

However, tax opinions are governed by guidelines set by the IRS, Treasury and the community of tax professionals, and relies heavily on authority for a position. The current lack of clear authority makes the rendering of a tax opinion with any amount of clarity very difficult.

Another option is a Private Letter Ruling (PLR) where a taxpayer requests a specific ruling for their situation from the IRS. However, this process is both expensive and discretionary on the part of the IRS (i.e., they may not issue a ruling just because you requested it).

TXCPA's Spring 2022 Conferences

Mark your calendar now and plan to attend TXCPA's spring conferences in May!

Technology Conference
May 5-6 | Webcast Only

Energy Conference
May 16-17 | Webcast Only
See event details

Texas School Districts Accounting and Auditing Conference
May 19-20 | Sheraton Austin Hotel at the Capitol
In person event details | **Webcast option**

Nonprofit Organizations Conference
May 23-24 | Irving Convention Center
In person event details | **Webcast option**

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View the complete schedule and register now in the Education area of our website at tx.cpa/education/cpe or call the TXCPA staff at 800-428-0272 (972-687-8500 in Dallas) for assistance.

This puts taxpayers in a difficult position when the answers are not clear.

The IRS Focus on Reporting Cryptocurrency Transactions

According to guidance from the IRS, all income, gain or loss involving virtual currency must be reported regardless of the amount or if you received a form W-2 or 1099. Because cryptocurrency is treated as property (like stocks or real estate), taxpayers pay taxes if they realize a gain, but may be able to claim losses when they realize them. As property, taxpayers must know:

- When they bought the cryptocurrency;
- How much they paid; and
- What they received for it.

This can sometimes be difficult if the purchase was outside of an established exchange or inherited without clear documentation. Also, because cryptocurrency is treated as property, every exchange can trigger gain or loss. This makes small every-day purchases cumbersome to report.

However, as services like PayPal allow for broader use of purchases with cryptocurrency, this tracking for tax reporting may become easier. Also, a wide array of software exists for heavily trading cryptocurrency investors to use to report their gains and losses.

For those who have not, or are not, reporting their cryptocurrency, the IRS has clearly made finding them a top priority. In 2016, a federal court authorized the IRS to serve a John Doe Summons on Coinbase Inc. for information on U.S. taxpayers conducting transactions in virtual currency during the years 2013 through 2015.

The result was the release of 13,000 names of Coinbase customers transacting in cryptocurrency. What followed, in August of 2019, were 10,000 letters to taxpayers indicating that the IRS had information on their cryptocurrency transactions and knew that they either were not reported or reported incorrectly.[12]

The IRS used the John Doe Summons power again, in 2021, to serve John Doe Summonses on Circle Internet Financial Inc.[13] and Payward Ventures Inc. (i.e., Kraken)[14] which also deal in cryptocurrency.

Although the federal district court approved a revised version of the original summons for Kraken, it also explicitly indicated that it welcomed Kraken or its customers to file a challenge and it would be heard. This action by the court could be the result of a change in the John Doe Summons law, instituted by the Taxpayer First Act, requiring that a John Doe summons to be "narrowly tailored to information that pertains to the failure (or potential failure)" to comply with the Internal Revenue Code.[15] Regardless, even narrowed summonses will provide data the IRS can use to find taxpayers who do not report their cryptocurrency transactions

The Department of Justice and the IRS also recently started an investigation into one of the world's largest cryptocurrency exchanges, Binance, for potential money laundering and tax offenses.[16] This investigation will create more data for the IRS to track down cryptocurrency investors attempting to hide their holdings.

In addition to affirmative summonses and investigations of cryptocurrency institutions, the IRS is seeking legislation that would require disclosure of certain information by these same institutions without the need of court intervention. On Nov. 15, 2021, the *Infrastructure Investment and Jobs Act* was signed into law by President Joe Biden[17] that added provisions to expand the definition of "broker" and definition of "digital assets" to apply the cost-basis reporting regime for securities to digital assets.

The best way to avoid penalties is to disclose and report as accurately as you can, showing that you did not have a willful intent to avoid paying taxes.

Taxpayers may think that the IRS may penalize them, but they might assume that they need not worry about any criminal implications. Unfortunately, this is not true. The IRS, as part of its crackdown on cryptocurrency, is increasing its criminal investigations.

> ***"...in this world, nothing is certain except death and taxes." — Benjamin Franklin***

Future Tax Controversies for Cryptocurrency

Lack of reporting will likely be the primary focus of IRS enforcement efforts for the near future. The IRS knows that the amount of unreported cryptocurrency is very large and is, most likely, the biggest enforcement issue. However, because cryptocurrency is a new asset, being used in new ways, other issues are bound to arise.

As discussed above, the IRS has stated that virtual currency is property and that the tax principles related to property apply. However, where cryptocurrency doesn't fit neatly into the law established for other property, then disputes will inevitably arise. Recent IRS guidance on like-kind exchanges under Section 1031 of the Internal Revenue Code provides a good example.

Section 1031 has been in the Internal Revenue Code for a very long time. Section 1031 provides that no gain or loss is recognized on the exchange of property held for use in a trade or business, or for investment, if the property is exchanged for property of like-kind for use in a trade or business or for investment.[18] The regulations define "like-kind" as the nature or character of the property and not the grade or quality.[19]

The *Tax Cuts and Jobs Act* (TCJA) limited like-kind exchanges to real property after December 31, 2017. However, before the TCJA, taxpayers could use the like-kind exchange rules to exchanges of personal property, as well.

Although Section 1031 does not apply to trades of stocks and bonds, cryptocurrency isn't exactly like stock and bonds. Also, there is enough similarity between types of cryptocurrency that the applicability of the like-kind exchange rules was at least arguable.

It is unknown how many like-kind exchanges for cryptocurrency were done by taxpayers. However, IRS Chief Counsel saw a need to issue an advice memorandum on whether Section 1031 applied to exchanges of Bitcoin (BTC) for Ether (ETH), BTC for Litecoin (LTC), and ETH for LTC.[20]

The IRS indicated that BTC and ETH "held a special position" within the cryptocurrency market because most markets required an investor to purchase BTC or ETH first before purchasing other cryptocurrencies.[21] Essentially, according to the IRS, BTC and ETH "acted as an on and off-ramp for investments and transactions in other cryptocurrencies."[22] As such, the IRS determined that BTC and ETH "differed in both nature and character" from LTC and Section 1031 did not apply.[23]

Given the IRS lumping BTC and ETH together as holding a "special position," a person might think that at least they would qualify for a like-kind exchange, but not according to the IRS. The IRS acknowledges that BTC and ETH "share similar qualities and uses" and both are "used to make payments," but then decides that they are "fundamentally different."[24] The apparent "fundamental" difference is that ETH is a "platform for operating smart contracts and other applications" and BTC is not.[25]

A taxpayer in 2017 may not have recognized the "fundamental" differences and applied for like-kind exchange treatment only to find out years later that the IRS considered the position unjustified.

As the IRS issues more guidance, likely years later after reviewing reporting positions, more disputes will arise and taxpayers will need to decipher how to amend previous reporting positions.

OPERATION Hidden Treasure

The IRS recently announced a program they called "Operation Hidden Treasure" that is using agents trained in cryptocurrency tracking specifically focused on taxpayers omitting cryptocurrency income. If convicted of tax evasion, taxpayers could face up to five years in prison and a fine as high as $250,000. The IRS has made willful failures easier for them to prove by moving the question about cryptocurrency transactions to the front of the individual tax return (Form 1040) so that it is as conspicuous as possible.

If a taxpayer has significant unreported cryptocurrency holdings, a voluntary disclosure is a good option. Criminal exposure can be limited by following the required steps and, in some cases, a streamlined voluntary disclosure might be warranted and comes with less severe penalties.

The IRS has specifically said that it does not plan to set up a specific disclosure program for cryptocurrency, but the standard voluntary disclosure program is still available. As the IRS and the Department of Justice investigate and obtain more data, it isn't a question of if, but when, they will find unreported cryptocurrency.

Tax Implications and the Proper Treatment of Transactions

Cryptocurrency and blockchain technology will continue to develop and change at a rapid pace and regulators will probably always struggle to keep up with those changes. Although the primary focus of the IRS is currently on a lack of reporting, other issues are making their way through the audit process and the courts.

Taxpayers and their advisors must consider their own facts, current tax law principles and all available guidance at the time to determine the proper treatment of their own transactions. If there is a failure to report or guidance that calls a previous tax position into question, taxpayers and advisors must determine how to amend and adapt their thinking on the tax implications in this new frontier.

About the Author:

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Footnotes

[1] IRS Notice 2014-21.
[2] IRS Notice 2014-21.
[3] IRS Notice 2014-21.
[4] IRS Notice 2014-21.
[5] IRS Notice 2014-21.
[6] See IRS Notice 2014-21.
[7] See https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions.
[8] Rev. Rul. 2019-24.
[9] Rev. Rul. 2019-24.
[10] See *Jarrett v. United States*, Civil Case No. 3:21-cv-00419 (USDC M.D. Tenn.).
[11] See https://www.irs.gov/newsroom/irs-has-begun-sending-letters-to-virtual-currency-owners-advising-them-to-pay-back-taxes-file-amended-returns-part-of-agencys-larger-efforts.

[12] https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used-0.

[13] https://www.justice.gov/opa/pr/court-authorizes-service-john-doe-summons-seeking-identities-us-taxpayers-who-have-used-1.

[14] 26 U.S.C. §7609(f).

[15] https://www.reuters.com/technology/binance-under-investigation-by-justice-department-irs-bloomberg-news-2021-05-13/.

[16] H.R. 3684.
[17] 26 U.S.C. §1031(a)(1).
[18] See Treas. Reg. §1.1031(a)-1(b).
[19 - 24] See CCA 202124008 (June 18, 2021).

A GUIDE

How Your Organization Can Successfully Navigate

'The Great Resignation'

By Josh Jeans

Throughout the pandemic, employers have seen a sharp rise in employees leaving their positions. This event started around January 2021 across industries and is now known as "The Great Resignation," a term coined by the associate professor of management at Texas A&M University, Anthony Klotz.

While there are no concrete reasons why people are leaving their current positions, there are many credible theories. One theory touches on the idea of people exercising more control over their employment future after having very little control over many other aspects of their life during the pandemic. Another theory points to people wanting lower-stress jobs with higher pay along with the ability to work from home.

Whatever the reasons for the mass exodus may be, the fact is that this event is still happening. In August 2021, 4.3 million Americans left their jobs. According to the Bureau of Labor Statistics, these numbers are the highest they've seen since 2000, when the agency began tracking data on employee turnover across industries. The figure also marked the sixth consecutive month of extremely high rates of employees quitting.

The accounting profession has certainly not been left untouched by The Great Resignation. Last year, the profession saw a higher turnover rate compared to the year before. It's also been challenging to pinpoint exactly why people are leaving, as a variety of explanations were provided by former employees. These explanations included wanting to be home more with their children and losing interest in their work. Employees are often snatched up by larger organizations that can offer more in the way of compensation.

It's also essential to point out that not only are employees quitting their jobs in droves, but millions of jobs remain unfilled. This past August was the third month in a row with over 10 million job vacancies in the United States, even though nearly eight million Americans were unemployed. It's clear from these statistics that businesses are not only experiencing high turnover, but they are also most likely experiencing difficulty hiring and retaining new talent.

Therefore, it's imperative that you, as a business leader, learn how to navigate these changes by updating your approach to hiring and retention to ensure that you attract and keep employees who will help you achieve your business goals.

Step #1: Do Your Research and Shift Your Mindset

As discussed above, there's no clear-cut reason why people are leaving their jobs. The reasons vary from industry to industry and business to business. With that in mind, you must individualize your knowledge and understanding of your staff and determine why they want to leave before they make that final decision to move on. One trend that we can see happening across the board is that employees are not voicing their concerns to management. Instead, they're quietly looking for other jobs when dissatisfied, then disappearing.

Two ways you can help curtail this behavior are:

- **Establish touchpoints.** Prioritize getting to know your employees' concerns and issues related to their job early on by ensuring there is someone on staff they feel comfortable with to address issues before they become a significant problem.

- **Hire a specialist.** Look to hiring a new staff member to serve as the touchpoint for staff to voice their concerns. This person ought to be one who can build trust with your staff and help point them to appropriate resources in times of need. They should also be involved with recruitment and outreach, and ensure that current and future employees have a great experience working for you.

Step #2: Revamp Your Hiring Approach and Process

People are leaving their jobs, but application submissions are down across the board. To that end, you must adjust your current hiring practices to attract talent who

will stay in the positions for which you're hiring. To accomplish this, we recommend incorporating the following actions into your approach.

Bolster Your Marketing Strategy

Since there are so many options for those looking for work, it means a number of businesses are looking for top talent alongside you. In this instance, you must market yourselves as a desirable employer by communicating this to potential recruits.

Whether it's showcasing awards on your website that your organization has won related to being a good employer or noting your low turnover rate during interviews, make sure applicants know your organization values its employees and treats them well.

Accurately Gauge Each Applicant's Level of Interest

People are casting a wide net during the job hunt, which means employers like yourself are receiving many applications and few candidates who are enthusiastic about working for you.

For this reason, it's crucial that you accurately gauge each candidate's interest in the position and your organization during the very first interview. Doing so will save you the time and headaches associated with continuing to interview and ultimately hire someone who may not accept the position or leave shortly after they've started.

Some tips on determining an applicant's interest include the following:

- Listening and watching closely to see if they seem passive or relatively nonchalant about the position.
- Determining whether they know anything about your organization.
- Pushing back on some of their answers to see if they remain steadfast in their responses.
- Seeing what kind of questions they ask you (i.e., are these standard, run-of-the-mill queries or more detailed questions specific to your organization?).
- Figuring out how excited they are to do the work rather than focusing on how competent or charismatic they are.

Check Your Bias

While implicit bias is often present among employers when they're conducting the hiring process, it can be easily exacerbated in these pandemic times, given how difficult it is to find the appropriate person for a job and have them accept and show up for the position. However, it would be best if you remain diligent in curtailing your bias while hiring by making sure that you thoroughly vet everyone and make decisions based on the information provided to you rather than snap judgments or assumptions.

Step #3: Invest in Your Current Employees

During this Great Resignation, employee retention deserves as much of your attention as hiring and recruitment efforts. In short, if you can attract talent but cannot hold onto them, you're back to square one.

Investing in your current employees by understanding their needs and making sure those needs are met is the best way to ensure that every member of your team stays with your organization for the long haul. These investments also show that you value your team and their contributions that aid in your business's success.

Manage Schedules Based on People's Needs While Operating Remotely

People's needs and schedules have changed drastically since the start of the pandemic and these things continue to fluctuate. With that in mind, it's essential that your management team allows your staff to take charge of their schedules to ensure that they work at times that function well for them and the organization.

You can help your employees create a work schedule that works well for both them and you by doing the following:

- Refraining from micromanaging people's hours.

- Establishing clear and reasonable expectations for when people should be online (e.g., taking into account when all-staff or client meetings occur).
- Having team members communicate when they'll be online by creating work hours and sticking to them.
- Not scheduling last-minute meetings unless absolutely necessary.

Stick to a 40-hour Workweek to Avoid Burnout

Burnout has become even more of an issue during the pandemic, as other stressors outside of the work environment have increased significantly for most people. It's imperative that you work with your team to combat this.

One way to go about it is to ensure your team can maintain a reasonable schedule to promote a solid work-life balance. Doing so helps team members avoid feeling burned out, which means they're able to show up to work ready to perform at the top of their game.

Keep track of employee timesheets and question employees who are constantly exceeding the 40-hour-per-week limit. If an employee is working more than 40-hour weeks, determine why that's the case and address it.

Refrain from jumping to conclusions and acting based on assumptions (for example, assuming the employee has too much work and handing one or more of their clients to another employee with a seemingly lighter schedule).

Acknowledge that Compensation is Critical and Provide Competitive Benefits Packages

Cultivating a healthy and positive work environment is essential if you want to keep the staff you currently have or will eventually hire, but compensation is a huge factor, as well. While business leaders often think of compensation in regard to attracting top talent, it really is both salary and the benefits provided to employees that keep them at a job.

Competitive benefits can easily be one of the top reasons your team members refrain from looking for another job. For this reason, we suggest offering great benefits that reflect your organization's culture and show that you see your employees as people rather than a means to achieve financial or other business-related goals.

You may consider:

- Recognizing employees on special days, such as their work anniversary, by sending them personalized gifts. These gifts are used to express how much the organization values their contribution.
- Distributing education and technology stipends through PEX cards annually, so that employees can pay for work-related educational opportunities (e.g., conferences, books, etc.) and technology that helps their job performance (e.g., internet, cell phone bill, office supplies, etc.). Adding this individualized benefit communicates that you trust your team to make work-appropriate purchases at their discretion. It also allows the organization to invest in each employee's professional development by giving them the resources to learn more about their field in a tailor-made manner for each employee.

Navigating this Environment

There are many ways to navigate The Great Resignation based on your organization's current employment situation. In short, it comes down to two overarching steps:

- Figuring out how many of your team members are leaving and why; and
- Developing programs that can help you address why your employees are leaving and ensure that you successfully recruit and retain new talent.

Paired with the other steps outlined above, you can easily ensure your organization comes out of the pandemic fully staffed with people who are excited about the work that lies ahead. You've got this!

About the Author:

Josh Jeans is a People Operations Strategist at Summit CPA Group. Before joining Summit CPA, he worked in student programming and leadership development. He had a stint in a sales career and also served in a director position at a finance startup.

About Summit CPA Group:

Summit CPA Group is a fully distributed accounting firm and leading provider of virtual CFO services in North America. In addition to providing VCFO coaching, CPA firm augmentation, Summit CPA Group is building a community of CPA firm owners who want to learn how to provide or enhance their existing VCFO service offerings. The CFO Community includes: free monthly CPE webinars, a Slack network, The Virtual CFO Playbook, a course dedicated to teaching CPA firm owners how to build and scale virtual CFO services, and more.

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TXCPA

By Josef Rashty

CURRICULUM: Accounting and Auditing

LEVEL: Intermediate

DESIGNED FOR: CPAs in industry and public practice; management

OBJECTIVES: To explicate accounting implications of stock compensation awards in the post de-SPAC period, based on ASC 718, *Compensation – Stock Compensation*, and investigate some of the issues that post de-SPAC companies may encounter with their legacy and newly granted stock awards.

KEY TOPICS: Stocks priced significantly below the public offering price (cheap stocks), mezzanine classification, liability vs. equity classification, compensation earnouts, awards conditioned upon an IPO, employee stock purchase plans (ESPPs), warrants, post de-SPAC stock awards, earnings per share (EPS), and dividend-protected stock awards

PREREQUISITES: None

ADVANCED PREPARATION: Read "Accounting for De-SPAC Transactions" in the September/October 2021 issue of *Today's CPA* magazine

Post de-SPAC Stock Compensation Awards

Stock compensation awards come in many different forms – incentive stock options (ISOs), non-qualified stock options (NQSOs), restricted stock units (RSUs), stock appreciation rights (SARs), employee stock purchase plans (ESPPs) and warrants. Companies often grant stock awards to their employees or other related parties in lieu of monetary compensation, and they classify them either as equity or liability, depending on characteristics of awards, and reflect the corresponding amount as capitalized assets or compensation costs.

In the September/October 2021 issue of *Today's CPA*, TXCPA published an article titled "Accounting for De-SPAC Transactions." This article is an addendum to the aforementioned published article and explicates accounting implications of stock compensation awards in the post de-SPAC period, based on ASC 718, *Compensation–Stock Compensation*.

The objective of this article is not to provide a comprehensive background on stock compensation awards accounting, but to investigate some of the issues that post de-SPAC companies may encounter with their legacy and newly granted stock awards. Nevertheless, post de-SPAC companies deal with more or less the same accounting issues as traditional post IPO companies.

Exhibit 1 defines some of the terminologies that this article has used.

Cheap Stocks

Target companies may have issued stocks, or granted stock options or warrants with exercise prices at a price significantly below the public offering price (commonly referred to as cheap stocks). These companies must ensure that they have a sufficient basis to support the valuation of the underlying stock since the Securities and Exchange Commission (SEC) often focuses on cheap stock issues in public offerings.

The target companies should provide an analysis of their cheap stocks based on the AICPA Practice Aid, *Valuation of Privately Held-Company Equity Securities Issued as Compensation* and other relevant accounting literature. This analysis should specify the reasons for the difference between the estimated IPO price range and the fair value of the awards.

There may be acceptable differences between the price of stocks before or after public offerings. For example, the *AICPA Valuation Guide* highlights that the valuation of nonpublic entity securities often include a discount for their lack of marketability. There may be other significant, but justifiable differences; for example, the target company might have experienced a discrete event that has caused an increase in the fair value of the underlying stock subsequent to its grant – for example, a biotechnology company might have received the FDA approval of its new experimental drug prior to going public.

There are reasons that target companies might be inclined to issue cheap stocks – e.g., lack of market information for pricing or even intentionally offering lower valuation to attract employees.

Furthermore, most private companies issue ISOs, which are not deductible for tax purposes, and that gives them less incentive to assign higher values to their stock awards.

Mezzanine Classification

The SEC requires that registrants classify their equity instruments, which have the following characteristics, as "temporary equity" in the mezzanine section of the balance sheet (between equity and liability) (ASC 718-10-S99-1):

- Equity instruments that are redeemable at a fixed or determinable price on a fixed or determinable date,
- Are redeemable at the option of the equity holder,
- Are redeemable upon the occurrence of an event that is solely within the control of the issuer.

Furthermore, if there are stock awards that are not redeemable due to contingency, and it's not probable that they will become redeemable, they should be classified in the mezzanine section of the balance sheet, as well (ASC 480-10-S99-3A). However, if such awards are not vested at the grant date, the intrinsic or fair value should be reclassified to mezzanine section as the awards gradually vest. Once the occurrence of the contingent event becomes probable, companies reclassify their stock awards from the mezzanine to liability or equity.

Liability vs. Equity Classification

Companies remeasure the fair value of their liability classified awards at each reporting date until settlement occurs and they reflect any changes in the fair value of the awards in earnings (ASC 718-10-35-6 and 55-112). The Financial Accounting Standards Board (FASB) substantially aligned, with some differences, the accounting for stock awards granted to employees and nonemployees (including customers) pursuant to ASU 2018-07 and ASU 2019-08.

FASB requires companies to classify their stock compensation awards as liabilities for several reasons:

- ASC 718-10-25-7 requires entities apply classification criteria in ASC 480-10-25-4 for mandatory redeemable financial instruments even though stock compensation awards subject to ASC 718 are not within the scope of ASC 480, *Distinguishing Liabilities from Equity*.
- ASC 718-10-25-13 requires liability classification of the awards that are indexed to something other than a market, performance or service condition.
- ASC 718-10-25-15 requires liability classification of the

Exhibit 1 - Definition of Terminologies

SPAC	is a newly formed public business entity (PBE) that is created with some capital contribution from its initial investors. SPACs raise additional funds as they go through IPOs and finally, they use their financial resources (cash from IPO or equity from initial investors and often both) to acquire a target company.
Target	is usually a private emerging company that acquiesces to a merger with a SPAC.
de-SPAC	is the merger process of a SPAC with a target.

awards that employee has the choice of settlement in cash or shares, or the employer can choose the method of settlement, but does have the intent to do so.

This is not a complete list since a comprehensive discussion of liability classification of stock awards is beyond the scope of this article.

Compensation Earnouts

Compensation earnouts are contingent post de-SPAC expenses. A SPAC promises certain compensation in a form of stock awards or cash to certain key employees of the target company to maintain their services for a certain period of time or ensure achievement of certain goals within a period of time subsequent to de-SPAC transaction.

Companies usually condition the earnouts based on service, performance or market conditions (e.g., absolute or relative stock price hurdle). Accounting for stock compensation award arrangements in the form of compensation-earnouts is within the scope of ASC 718, *Compensation–Stock Compensation*.

Awards Conditioned Upon an IPO

The target company may have granted stock awards to certain employees that their vesting is contingent upon a successful IPO. ASC 718 requires that companies that grant stock awards based on a performance condition, such as a successful IPO, recognize the stock compensation expense when it is probable of being achieved (ASC 718-10-30-28). An IPO is generally not a probable event until it occurs and this would suggest that the target company does not recognize stock awards compensation expenses until an IPO occurs.

The target company may also have a call right to cancel the awards upon termination of employment. If so, the call option may raise an issue that if the employee's right to receive value from the exercise of awards is, in fact, a contingent performance condition. In this scenario, if the target company believes that the termination of awards is imminent due to probable termination of employee, it should classify the awards as liability, since the employee no longer bears the risks and awards associated with the awards (ASC 718-10-25-6 through ASC 10-25-19A).

There is a safe harbor level of 5% for the discount that an employer could offer an employee without the ESPP being considered compensatory.

On the other hand, if the target company does not intend to exercise the call feature, then the target company can classify the awards as equity and recognize the grant date fair value of the awards upon a successful IPO or de-SPAC transaction, based on ASC 718-10-30-28.

Nevertheless, the target company in the post de-SPAC transaction must be cognizant of the fact that exercise of contingent awards upon going public may have a material impact on its earnings per share (EPS).

Employee Stock Purchase Plans

Employee stock purchase plans (ESPPs) are designed to promote employee stock ownership by providing employees with a convenient means to acquire their employers' shares. It is a contractual promise that permits acquisition of shares on a future date under the terms and conditions that the contract establishes at the grant date.

The acquisition of shares typically occurs through payroll deduction whereby employees set aside a certain percentage of their compensation (usually over one year or less) to purchase their employer's stock. The employer then uses the amount withheld to acquire the company's stock from the market at a discounted price at the end of the period and transfer the shares to the employee.

There is a safe harbor level of 5% for the discount that an employer could offer an employee without the ESPP being considered compensatory. If considered compensatory, the fair value of the entire award related to the plan may be included in the calculation of share-based payment compensation cost (ASC 718-50-25-1(a)(2)). The discount typically applies to the lesser of the beginning or ending of the offering period stock price.

After its successful de-SPAC transaction, an acquirer may establish an ESPP and allow employees to enroll in the plan after completion of its public offering. (Privately held companies usually do not have an ESPP plan due to the lack of availability of market price and the marketability of the shares.)

Warrants

The SPAC or target company may have issued warrants that remain outstanding after the de-SPAC transaction. The post de-SPAC transaction company may classify such warrants as equity shares (in the equity or mezzanine sections of balance sheet) or as liabilities. Generally, financial instruments, such as warrants, options or forwards, that involve the issuance of mandatory redeemable instruments are classified as liabilities (ASC 480-10-25-8).

Many companies have typically treated these warrants as equity instruments, but the SEC has started to look closely at the accounting practices connected with these transactions and has noted potentially problematic patterns. The SEC staff has recently stated that such warrants, depending on their terms, should not be treated as equity, but it is rather more appropriate to receive liabilities treatment.

- In the event of a tender or exchange offer made to, and accepted by, holders of more than 50% of the outstanding shares of a single class of common stock, all holders of the warrants are entitled to receive cash for their warrants. (GAAP requires liability classification for such warrants since its settlement is within the company's control.)

Post De-SPAC Stock Awards

There are two types of stock awards from a tax perspective: statutory awards and non-statutory awards. Exhibit 2 summarizes the characteristics of these two types of stock awards.

qualified stock options (NQSOs) to their employees and non-employees. NQSOs are generally taxable to employees after exercise of options and tax deductible for employers under IRS Section 162. Thus, post IPO companies tend to benefit more from the tax treatment of NQSOs, as they are often more established and profitable.

As companies mature and the growth of stock prices flatten, they tend to grant restricted stock units (RSUs) to their employees and non-employees. RSUs are taxable upon vesting, unlike the NQSOs that are taxable upon exercise. Therefore, a PBE may have ISOs, as well as NQSOs and RSUs in their books.

Exhibit 2 - Characteristics of Statutory Awards and Non-statutory Awards

Type of Awards	Employer Deductible	Employee Taxable	Employer Taxable
Statutory Awards	No	No	Yes
Non-statutory Awards	Yes	Yes	No

If these warrants are indeed liabilities, companies may need to update the valuation of such awards for each reporting period and reflect the changes of their fair values in their earnings. Therefore, companies that have reclassified their equity awards as liability may need to restate their financial statements for the prior periods.

The SEC has the following two conditions for companies to classify their warrants as liability:

- The warrant settlement varies depending upon the characteristics of the holder of the warrant. (GAAP requires liability classification since the holder is not an input into the pricing of a fixed-to-fixed option on equity shares).

Statutory Awards. A privately held company (the target company) usually grants incentive stock options (ISOs) to its employees. There are several reasons for it: for example, the target company may not be profitable and may not benefit from the tax advantages of non-statutory awards or may want to provide an incentive for employees to join the company. Employees prefer ISOs for their tax treatment since the awards are generally not subject to tax until they sell the underlying stock and they can further benefit from the capital gain treatment at a lower rate if their ISOs meet certain statutory requirements.

Non-Statutory Awards. Post IPO companies tend to grant non-

Earnings Per Share

EPS is one of the most complicated and important measures that PBEs present in their quarterly and annual reports. ASC Topic 260, *Earnings Per Share*, provides guidance for the calculation and reporting of EPS:

- Basic EPS is calculated by dividing income available to common shareholders by the weighted-average number of common shares outstanding.
- Diluted EPS adjusts basic EPS for the hypothetical issuance of all potentially dilutive securities. The dilutive effects of call options, warrants and stock compensation awards are calculated using the treasury stock method.

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The treasury stock method is a method of recognizing the use of proceeds that could be obtained upon the hypothetical exercise of dilutive securities in computing diluted EPS. It assumes that proceeds would be used to repurchase common stock at the average market price during the period.

The hypothetical shares repurchased under the treasury stock method reduce the number of shares outstanding in the denominator of diluted EPS; companies usually take into account the stock compensation awards that are considered dilutive.

Antidilutive shares are excluded from the number of shares outstanding in calculations of dilutive EPS.

The assumed proceeds for the hypothetical repurchase of shares consist of the following (ASC 260-10-45-29):

- The total amount, if any, employees must pay upon the exercise of stock awards. (This provision is applicable to stock options, but not to restricted stock units.)
- The average amount of stock compensation attributed to future services and not yet recognized (average unrecognized stock compensation).
- The amount of excess tax benefits or deficiencies reflected in additional paid-in capital, if any.

The stock compensation awards impact both the numerator and the denominator of EPS:

- Stock options, if dilutive, impact the denominator of dilutive EPS before exercise and the denominator of basic EPS after that.
- ESPPs impact the denominator of dilutive EPS before purchase and transfer of shares to employees and the denominator of basic EPS after that.
- RSUs impact the denominator of dilutive EPS before vesting and the denominator of basic EPS after that.
- Stock compensation expense and its tax effect impact the numerator of EPS.

Dividend-Protected Stock Awards

The recipients of stock awards may be entitled to the dividends that companies pay on their underlying equity shares, while the stock awards are still outstanding but not vested (ASC 718-10-55-45).

FASB considers these divided-protected stock awards as participating securities under certain conditions. Share-based payments that include dividend-protection features, such as dividend payments or adjustments to the exercise price for dividends declared,

> Stock awards that companies grant to common law employees, independent directors, customers and third-party consultants are subject to provisions of ASC 718.

have certain accounting implications for both expense recognition and EPS calculations.

Dividend-protected stock awards have gained popularity recently due to the emergence of SPACs. These companies often use contingency shareholders or compensation earnout provisions as part of the de-SPAC transaction due to uncertainty in the value of the target companies. In some instances, such equity earnout provisions entitle the holder to nonforfeitable dividends during the vesting or contingency period.

The dividend-protected features of awards impact their fair values and most likely determine their status as participating securities. Participating securities have certain accounting and tax implications; they may require that companies calculate their EPS pursuant to the two-class method.

Financial Planning and Analysis Needed

Stock awards that companies grant to common law employees, independent directors, customers and third-party consultants are subject to provisions of ASC 718. Despite the notable affinity between PBEs and private companies in application of ASC 718 for stock awards, there are nuances that post de-SPAC companies should consider to avoid earnings surprises.

Stock awards conditioned based on IPO and some earn-out arrangements may impact the numerator of EPS significantly. Different stock awards (ISOs, NQSOs and RSUs) impact the denominator of EPS incongruously. Dividend-protected stock awards require companies to calculate their EPS pursuant to two-class method.

All these issues entail that post de-SPAC companies engage in financial planning and analysis prior to drafting their stock awards plans and granting any stock awards.

About the Author: Josef Rashty, CPA, Ph.D. (Candidate) is a member of the Texas Society of CPAs and provides consulting services in Silicon Valley, California. He can be reached at jrashty@josefrashty.com.

Please note that when registration is complete, a confirmation email will be sent and provide a hyperlink to access the quiz.

CPE ARTICLE: POST DE-SPAC STOCK COMPENSATION AWARDS

By Josef Rashty

Today's CPA offers the self-study exam for readers to earn one hour of continuing professional education credit. The questions are based on technical information from the preceding article. If you score 70 or better, you will receive a certificate verifying you have earned one hour of CPE credit – granted as of the date the test arrived in the TXCPA office – in accordance with the rules of the Texas State Board of Public Accountancy (TSBPA). If you score below 70, you will receive a letter with your grade.

1. Stock compensation awards could come in the following forms:
- a. RSUs
- b. ISOs
- c. NQSOs
- d. All of the above

2. A target company is usually a private emerging company that acquiesces to a merger with a SPAC.
- a. True
- b. False

3. The mezzanine section is:
- a. An asset
- b. An equity
- c. A liability
- d. A section between liabilities and equity in balance sheets

4. Companies ___________ the fair value of their liability classified awards at each reporting date.
- a. Ignore
- b. Remeasure
- c. Both a and b
- d. Do not change

5. An IPO is generally not a probable event until it:
- a. Is possible
- b. Is impossible
- c. Occurs
- d. Is remote

6. Identify the correct statement.
- a. ESPPs are designed to promote employee stock ownership
- b. ESPPs are designed to promote employers' stock ownership
- c. ESPPs are designed to promote board of directors' stock ownership
- d. All of the above

7. SEC staff has recently stated that most warrants that remain outstanding after the de-SPAC transactions must be treated as:
- a. Assets
- b. Liabilities
- c. Both a and b
- d. Neither a nor b

8. What type of stock options are generally taxable to employees after exercise?
- a. ISOs
- b. Cheap stocks
- c. Warrants
- d. NQSOs

9. Treasury stock method is:
- a. A treasury department tool
- b. Used in basic EPS calculation
- c. Used in diluted EPS calculation
- d. Both b and c

10. What is the two-class method?
- a. It is used in calculation of stock options fair value
- b. It is used for calculation of goodwill impairment
- c. It is an airline reservation system
- d. It is a method used for calculation of EPS

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$449,000 gross. Heart of Texas CPA firm. 80% tax (78% inv., 13% bus., 9% other), 11% bkkpng, 9% audits/reviews, cash flow around 43%, staff in place, owner available to stay on as employee after sale if needed. TXC1078

$510,000 gross. NW of Dallas CPA firm. Tax 72%, accounting 28%, strong fees, solid cash flow, experienced staff in place, turn-key location in desirable DFW community. TXN1526

$620,000 gross. SW of Ft. Worth CPA firm. Accntng 15%, tax 75%, payroll/compliance/misc. 10%, great location, quality clients, dedicated staff. TXN1534

$320,000 gross. Grapevine tax and acctng firm. Tax 74%, accounting 19%, payroll 6%, quality client base of high-net-worth individuals and businesses, staff in place and seller available to assist with transition, turn-key practice in desirable community. TXN1556

$560,000 gross. NW of DFW CPA firm. 70% tax, 30% accounting, strong cash flow with 70% of revenues from business clients, experienced staff in place and owner available to assist with transition. TXN1557

$307,000 gross. North Texas CPA practice. Tax 65%, accounting 35%, solid fee structure, experienced staff, and the perfect size starter or add-on practice. TXN1558

$1,274,000 gross. North TX CPA audit practice. Specialized in two niche industries with strong staff in place. Growing, profitable practice generates cash flow to owner of about 45% of gross income. TXN1565

$219,000 gross. SMU area Dallas EA tax and consulting practice. Desirable location, quality clients, outstanding reputation. Revenues primarily from tax work with plenty of room for growth and expansion of services. TXN1574

$283,000 gross. SE Texas CPA firm. Tax 60%, bkkpg 40%, turn-key practice with staff in place, friendly clients, owner available to assist through tax season. TXS1232

$250,000 gross. W. Houston CPA firm. Balanced mix of bkkpng and tax with a few annual compilations, prime location, diverse/loyal client base, owner available for transition. TXS1275

$575,000 gross. N. Houston Beltway area CPA practice. 60% tax and 40% accounting. Year-round work with strong staff in place. Turn-key opportunity perfect for individual CPA or a firm looking to add another office. TXS1282

$567,000 gross. NE of Houston CPA firm. Owner looking to semi-retire and will assist buyer as agreed. Great service mix of tax, bookkeeping and payroll/consulting. Turn-key opportunity with experienced staff in place and office available for lease. TXS1283

$620,000 gross. Memorial area CPA firm. Owner looking to semi-retire and will assist buyer as agreed. 65% tax, 34% bookkeeping, 1% other. Year-round revenues, great location and loyal clients continuously bringing in referrals. TXS1284

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