7 rules for selling company shares to raise needed cash

By the myStockOptions.com editorial team

Whether the causes are world events, job events, or life events, you may find yourself in a position where you suddenly need to come up with cash to meet urgent living expenses, such as paying rent or a mortgage, or other financial demands, such as a medical bill or a car payment. The proceeds from selling shares of your company's stock, whether acquired via equity compensation or the open market, can be a source of these needed funds.

However, when making stock sales you must always proceed with caution. Before you sell your company shares, review this checklist of topics to understand on tax, company, brokerage firm, and SEC rules.

Please note this article was originally written for employees based in the U.S., although the concept and most rules apply to employees worldwide. Check the tax code and rules for your country.

1. Understand how capital gains and capital losses work.

When you sell shares, you generate a capital gain or a capital loss. The calculation is the amount of the sale proceeds over or under your cost basis, i.e. what the shares cost to acquire plus any income you recognized for the equity compensation. For stock held over one year after a stock option exercise, vesting of restricted stock units (RSUs), or a purchase in an employee stock purchase plan (ESPP), the gain or loss is long-term, meaning a lower tax rate applies. Shares held for less than one year are taxed at short-term capital gains rates, similar to that of your salary income.

If you have a choice of company shares to sell, you may want to first sell stock that generates a capital loss which you can harvest against capital gains. What that means is that you can net the capital losses against any current capital gains, with unused losses deducted against $3,000 of your ordinary income. The remainder of the loss is carried forward to future tax years. When you do not have shares to sell at a loss, your next choice is stock that has the smallest long-term capital gain.

2. Clearly identify the lot of shares you want to sell.

When you hold company shares that you've received at various times, such as yearly RSU vesting or twice-yearly ESPP purchases, you want to identify at the time of sale which share lot is being sold. The default rule is "first in, first out" (FIFO), but you can choose. Any shares you received at a recent market high are the ones you may want to sell for a loss. Make sure you get clarification on how to indicate specific lots to sell through your brokerage firm's website.

3. Watch out for wash sales.

In the U.S., a "wash sale" is deemed to occur if you sell company shares for a loss and buy more company shares within 30 calendar days before or after the loss transaction (i.e. a 61-day window). Your country may have a similar rule.

The U.S.tax code will at least temporarily deny the ability to claim a loss on the sale for the number of shares replaced. The purpose of the rule, which applies to all securities, is to prevent taking unfair advantage of tax-loss harvesting to reduce taxes. Under this rule, the loss and holding period are carried over to the replacement shares. According to most experts, any restricted stock or RSU vesting 30 days before or after the loss sale would be considered a wash sale and trigger the related rules. Similar treatment applies to an option exercise, ESPP purchase, or dividend reinvestment plan on company stock. Those are all considered purchases.

4. Job loss? Carefully review your company's post-termination stock option exercise rules.

You may intend to exercise stock options and immediately sell the shares to generate needed cash. However, if you lose your job, vesting usually stops on all types of stock compensation. In that case, you must quickly exercise any outstanding vested stock options, typically within 90 days or less of your employment termination. If you do not exercise vested in-the-money stock options in time, you will forfeit their value. Be sure to check your own plan's rules for exercise deadlines.

5. Know your company's rules for ESPP contributions.

In an employee stock purchase plan, you can usually withdraw any accumulated funds that are waiting for the next purchase date. You need to check your company's ESPP rules for how you do this. While an ESPP with a lookback and a 15% purchase discount can be an attractive investment in down markets, withdrawn ESPP funds can be another source of emergency funds. Furthermore, you may be able to reduce or stop future ESPP contributions from your salary.

Keep in mind the IRS limits ESPP purchases in Section 423 plans to $25,000 in value per calendar year based off the undiscounted price at the start of the offering. If your company stock price has dropped, depending on how much you have contributed to your ESPP, it is more likely that you will hit this limit. You may then receive a refund of your accumulated contributions in excess of this amount.

6. Be mindful of holding periods for ESPPs and ISOs.

With stock from a purchase in a tax-qualified ESPP or an exercise of incentive stock options (ISOs), holding the shares for more than one year from enrollment/grant or two years from purchase/exercise gives you special tax treatment on the sale. Remember that the tax treatment is affected by selling those shares early. That's called a disqualifying disposition, with different ramifications for ESPPs and ISOs. This is another reason to carefully choose and specify the lot of shares you want to sell, as explained in #2 above.

7. Beware of insider trading.

Understand that sometimes stock trades can actually get you into trouble. If you buy or sell shares of your company's stock while you know material nonpublic information (MNPI), you are committing insider trading, which is illegal. Material nonpublic information refers to company secrets that, when made public, would move the company's stock price up or down. This prohibition against trading on confidential inside information applies even if you are no longer employed by the company.

The type of information that could be considered MNPI is not always clear. However, common sense is a good guide. MNPI is any confidential company information that, once publicly known, could affect your company's stock price in a positive or negative way. Examples include undisclosed financial results, a merger or acquisition that has not been announced, or a new product that has not been publicized. This prohibition also applies to confidential information you learn in your job about a corporate client, supplier, or other organization that you work with.

> **Alert:** Agencies are watching closely for insider trading related to the COVID-19 pandemic and expect to pursue enforcement activities.

In addition to the securities laws about insider trading, your company may also have its own stock-trading pre-clearance rules, along with mandated blackout periods and window periods for stock trading. Be sure to check your own plan's rules.

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