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October 03, 2024

Does Withholding of Taxes for an RSU Vesting Require Item 703 Disclosure?



Item 703 of Regulation S-K requires, among other things, tabular disclosure of any purchase made by an issuer of shares that are registered under Section 12 of the Exchange Act. In our regular review of 10-K and 10-Q Item 703 repurchase tables, clients often ask, “Do we need to be including shares withheld to cover taxes upon vesting of an RSU award?”

For context, [Question 149.01](#) of the Regulation S-K C&DIs makes it clear that if an employee utilizes a “net” option exercise to cover taxes due upon exercise of a stock option, Item 703 tabular disclosure is **not** required. The idea is that with “net” exercises, Item 703 disclosure is not required because the underlying shares were never issued under the option.

In contrast, with respect to restricted stock, the SEC staff has said that shares withheld to cover taxes due upon vesting of a restricted stock award **do** require Item 703 disclosure because the restricted shares were already outstanding at the time of the vest.

So, what about restricted stock units (RSUs) (or performance-based restricted stock units (PSUs) for that matter)? RSUs (and PSUs), like options, are not outstanding shares. At a high level, these securities represent a contingent right to receive shares in the future. Therefore, shares withheld to cover taxes in connection with an RSU vesting do **not** require Item 703 disclosure.

Here’s a quick reference table for the next time you run into a question about withholding for taxes with respect to Item 703:

Type of Security Item 703 Disclosure Required?

Options	No
Restricted Stock	Yes
RSUs	No

PSUs

No

Authors