New IRS Rules Restrict Corporate Abuses on Deferred Compensation

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Companies that offer deferred compensation plans and arrangements have gotten a temporary breather in complying with a Dec. 31 deadline that required them to comply in writing with the Internal Revenue code's final Section 409A regulations. On Sept. 10, the IRS and the Department of Treasury published Notice 2007-78, which provides limited transition relief, extending to Dec. 31, 2008, the deadline for full document compliance. The notice, however, does not extend the Jan. 1, 2008, effective date for full operational compliance with the final regulations under Section 409A. The notice left in place the requirement for companies to submit by Dec. 31, 2007 a written plan that indicates a Section 409A-compliant time and form of deferred compensation payment. Companies that offer nonqualified deferred compensation but fail to satisfy Section 409A requirements are subject to penalties.

The new regulations considerably restrict an executive's ability to change the timing or structure of his or her deferred compensation payments. Payment trigger events - defined in Section 409A and in the Treasury Department guidance - have been contained to employment termination, death, disability, a time previously specified or an employer's "change in control." The regulations also prohibit elective acceleration of payments, except under certain limited circumstances.

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Related People

Brian J. Finucane
Senior Counsel
816.842.8770
Email