

## IRS Extends Section 409A Compliance Deadlines

Just-issued IRS guidance (Notice 2006-79) extends by one year – to December 31, 2007 – important compliance deadlines and transition rules under Section 409A, the Internal Revenue Code's "nonqualified deferred compensation" rules. The IRS still hopes to produce final regulations this year, but the regulations will not take effect until January 1, 2008.

Thanks to Notice 2006-79:

- **Plan amendments.** Employers and others now have until December 31, 2007 to make necessary amendments to plan documents (or to create plan documents for informal plans). Note: the extension only applies if the plans are administered in the meantime in reasonable, good faith compliance with the statute and other applicable guidance.
- **Changes in payment terms.** The deadline for resetting payment terms without regard to Section 409A's restrictive rules has likewise been pushed to December 31, 2007. However, the Notice retains the current prohibition on changes made in 2006 to move a payment into or out of 2006, and extends the rule so that no change can be made in 2007 to move a payment into or out of 2007. Thus, parties hoping to reset payment terms for amounts that could become payable in 2007 – for example, in connection with termination of employment – may still need to act this year.
- **Correction of non-exempt stock options and SARs.** The Notice generally extends to December 31, 2007 the period during which non-exempt stock options and SARs (for example, stock options granted with a discounted strike price) may be amended to comply either with the exemption requirements or with Section 409A. However, this extension *does not apply* where the recipient was a Section 16 reporting person at the time of the grant and the public corporation reports or reasonably expects to report a financial expense with respect to the in-the-money grant. In those cases, the correction deadline remains December 31, 2006.
- **Payments linked to qualified plans.** The Notice extends through calendar 2007 the period during which non-qualified plan payment terms may be linked to a qualified plan (for example, paying a supplemental pension at the same time and in the same form as the underlying qualified benefit). The Notice also broadens this relief to include linkage to 403(b) and eligible 457(b) plans as well as certain broad-based foreign plans.

### Contact Information

Questions on Section 409A or on the extended transition relief described in this summary should be directed to a member of the Tax & Benefits Department.