

Deadline For Grandfathered Deferrals Payable After 2017

We are writing to remind you of an approaching deadline for accelerating certain previously grandfathered deferrals otherwise payable in taxable years beginning on or after January 1, 2018.

Section 457A of the Internal Revenue Code effectively prohibits the offshore deferral of compensation paid to managers of hedge funds and may affect a range of other deferral plans involving tax-indifferent partners. Deferrals attributable to pre-January 1, 2009 services are exempt from Section 457A under a transition rule but are required by that rule to be included in the service provider's income by the last taxable year beginning before January 1, 2018 (or, if later, by the first taxable year in which the right to payment vests) (the "required inclusion year").

Deferrals subject to accelerated income inclusion under the Section 457A transition rule will give rise to "phantom" income unless accompanied by accelerated payment. However, absent relief, payment acceleration could result in a violation of the separate "nonqualified deferred compensation" rules of Section 409A or might "de-grandfather" older (generally, pre-2005) accruals that are currently not subject to Section 409A.

Under a statutory grant of authority designed to address this problem, the IRS in Notice 2009-8 provided that accelerating payments into the required inclusion year will not violate Section 409A or de-grandfather Section 409A grandfathered plans *if* the acceleration is established in writing and effective on or before December 31, 2011.

If the December 31, 2011 deadline is missed, parties might still be able to accelerate payment but could do so without penalty only by complying with Section 409A – for example, by following Section 409A's potentially restrictive plan-termination rules. For this reason, funds or other parties with deferrals subject to the Section 457A transition rule (i.e., deferrals currently payable after the required inclusion year) will want to act by December 31, 2011.

If you have not established your intention to accelerate in writing you will wish to do so before year end

For more information regarding Section 457A, please contact a member of the Tax & Benefits Department or your regular Ropes & Gray attorney.

Ropes & Gray Alert (October 6, 2008): [Congress Blocks Offshore Hedge Fund Deferrals](#)

Ropes & Gray Alert (January 12, 2009): [IRS Releases Further Guidance Affecting Offshore Hedge Fund And Other Pooled Investment Vehicle Deferrals](#)

CIRCULAR 230 DISCLOSURE

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