

## TAX COMPLIANCE & PLANNING TRENDS

### Important Change in IRS Section 409A Compliance Deadline for Nonqualified Deferred Compensation Plans

*On Sept. 10, 2007, the Treasury Department and the IRS announced, in IRS Notice 2007-78, that companies will have until Dec. 31, 2008, to bring documents into compliance with the final nonqualified deferred compensation regulations under Section 409A of the Internal Revenue Code. Previously, the deadline was Dec. 31, 2007.*

Sec. 409A applies to a broad variety of deferred compensation arrangements and sets forth requirements that affected plans must satisfy. Any company with a nonqualified deferred compensation plan — a deferred compensation plan that is generally designed to favor only certain individuals or groups of individuals — should be certain that the plan is in compliance with the law. The penalties for noncompliance can be severe: Plan participants will be taxed on plan benefits at the time of vesting, and a 20% penalty tax and potential interest charges also will apply.

**It's important to note that the notice extends only the time for bringing plan *documents* into conformity with Sec. 409A. It does not extend the effective date of the final regulations, which remains Jan. 1, 2008.**

This means that, although plan sponsors now have until Dec. 31, 2008, to conform their plan documents to Sec. 409A, they must operate and administer their plans in compliance with the final Sec. 409A regulations by Jan. 1, 2008. (They must also have operated their plans in “good faith” compliance with Sec. 409A retroactive to 2005, when the requirements first went into effect.)

Plan sponsors should identify all plans or arrangements that may be subject to Sec. 409A and have them reviewed to ensure that they're operationally and administratively Sec. 409A compliant. If they have plans that aren't compliant, they should bring the plans — and plan documents — into conformity with Sec. 409A as soon as possible but no later than the applicable deadlines.

The Treasury Department and the IRS expect to issue further guidance regarding a limited voluntary compliance program that will help companies correct specific unintentional operational violations of Sec. 409A. But no date has been set for issuing that guidance.