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IRS Establishes Voluntary Correction Program Under Code Section 409A

Earlier this month the Internal Revenue Service established a correction program which, under certain conditions, allows employers to bring employment agreements and other nonqualified deferred compensation arrangements into compliance with Internal Revenue Code Section 409A. Importantly, the program includes a transition period by which eligible plan document failures may be corrected by December 31, 2010 without penalty.

As discussed in earlier alerts, Code Section 409A imposes specific requirements on benefits earned or vested under deferred compensation arrangements in order to preserve the delayed taxation of those benefits. If the requirements are not satisfied, the deferred compensation **will become taxable to the employee and subject to interest, penalties, and an additional 20% tax**, when the compensation is no longer subject to a substantial risk of forfeiture. The requirements of Code Section 409A apply to many types of arrangements that often are not thought of as deferred compensation. Examples of such arrangements include employment agreements, severance plans, SERPs, nonqualified deferral arrangements, stock option plans, long-term incentive plans, change in control agreements, directors' fee arrangements, consulting agreements, bonus programs, split-dollar life insurance arrangements, employment offer letters, and any other formal or informal plans, agreements, or arrangements that provide for the deferral of compensation.

In the event you have employment agreements or other arrangements that have not been reviewed for 409A compliance, there is still an opportunity to do so. Please contact [Clay Walts](#), [Chris Crevasse](#), [Drew Spry](#), or any one of the attorneys in our [Employee Benefits and Executive Compensation Practice Group](#) for assistance with the review and correction process.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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