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Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes - businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d) - on compensation and benefit-related issues.

IRS Notice 2010-80 Expands Section 409A Correction Program for Nonqualified Deferred Compensation Plans

In Notice 2010-80, the IRS has modified and expanded its program in Notice 2010-6 which permits correction, under certain circumstances, of documents providing nonqualified deferred compensation that fail to comply with Section 409A of the Internal Revenue Code of 1986, as amended ("Code").

Failure to comply with Section 409A results in taxation of non-qualified deferred compensation at the time of vesting, instead of later at the time of payment, and imposition of an additional 20 percent tax and interest. The IRS has provided special incentives for making corrections under Notice 2010-6 on or before December 31, 2010, including waiving for certain corrections a requirement to pay a portion of the additional tax. (See the November 2010 alert, [Year End Deadline for Penalty-Free Section 409A Corrections](#).)

Notice 2010-80 further expands and modifies the Section 409A correction program in several respects, including the following:

- stock options and stock appreciation rights intended to comply with Section 409A may now in certain circumstances be corrected under Notice 2010-6;
- nonqualified plans with the amount of payment linked to another nonqualified plan or a qualified plan can be corrected under Notice 2010-6 as long as the other plan does not determine the time and form of payments;
- new correction methods and transition rules are provided for failures resulting from an employee's ability to further defer nonqualified deferred compensation payments by delaying signing of a release, non-solicitation and/or non-compete agreement; and
- otherwise required disclosures on federal income tax returns of employees for corrections under Notice 2010-6 are waived for corrections made on or before December 31, 2010. (However, use of the IRS Notice 2010-6 correction procedure must still be disclosed on the employer's federal income tax return for the year of correction.)

Employers who sponsor nonqualified deferred compensation programs, which may not be compliant with Section 409A, should consider contacting one of the lawyers in our [Employee Benefits & Executive Compensation](#) group to determine if corrections may be made under the more liberal rules described in Notice 2010-80.

Please contact any of the attorneys in our [Employee Benefits & Executive Compensation](#) group if you have questions regarding this alert.

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