Employee Benefits: Executive Compensation

This class will focus on the tax aspects associated with nonqualified deferred compensation, including the tax doctrines of constructive receipt and economic benefits, as well as the three different income tax regimes set forth in section 409A, section 457A and section 457(f), and the employment tax regime under section 3121(v). In addition to exploring the various rules and the Federal tax consequences under these Code sections, consideration will be given to the tax policy issues driving the varying treatment and the design, drafting and implementation of many types of executive compensation arrangements, including equity compensation awards, traditional nonqualified deferred compensation plans, SERPS, excess benefit plans, rabbi trusts and top hat plans. This class will also provide an introduction to sections 162(m) and 280G and the registration and reporting requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively, regarding executive compensation arrangements. The class will culminate with an in-class final exam.

Class Schedule:

Class 1 – Introduction (Aug 31)

Course overview
Constructive receipt and economic benefit
- IRC § 404(a)(5)
- Treas. Reg. §§ 1.451-1(a), and -2(a)
- Rev. Rul. 60-31
- Rev. Proc. 71-19
- Rev. Proc. 92-65
- IRS Notice 2005-1

Class 2 – Introduction to Code Section 409A; General Definition of Deferred Compensation (Sept 7)

IRC § 409A

409A Preamble Sections:
- Background
- Explanation of Provisions and Summary of Comments
- I. Structure and Format of Regulations
- II. Definition of Nonqualified Deferred Compensation Plan

409A Final Regulations:
- Treas. Reg. §1.409A-1 Definitions and covered arrangements
- Treas. Reg. § 1.409A-1(a) Nonqualified deferred compensation plan
- Treas. Reg. § 1.409A-1(f) Service provider
- Treas. Reg. § 1.409A-1(g) Service recipient

---

1 The page numbers refer to pages in the Federal Register version of the 409A final regulations. Application of Section 409A to Nonqualified Deferred Compensation Plans; Final Rule, 72 Fed. Reg. 19234 (Apr. 17, 2007).
409A Definition of Deferred Compensation (short-term deferral)

409A Preamble Sections:
III. Definition of Nonqualified Deferred Compensation Plan 19235
V. Definition of Substantial Risk of Forfeiture 19250-51

409A Final Regulations:
Treas. Reg. §§ 1.409A-1(b)(1)-(4) Deferral of compensation 19279-80
Treas. Reg. § 1.409A-1(b)(6) Restricted Property, Section 402(b) trusts,
and Section 403(c) annuities 19287-88
Treas. Reg. § 1.409A-1(d) Substantial risk of forfeiture 19292-93

Class 3 – 409A Definition of Deferred Compensation (severance and equity compensation) (Sept 14)

409A Preamble Sections:
III.D. Stock Options and Stock Appreciation Rights 19238-42
III.J. Separation Pay Plans 19246-48

409A Final Regulations:
Treas. Reg. § 1.409A-1(b)(5) Stock options, stock appreciation rights and other
equity-based compensation 19281-87
Treas. Reg. § 1.409A-1(b)(9) Separation pay plans 19288-90
Treas. Reg. § 1.409A-1(l) Stock right 19299
Treas. Reg. § 1.409A-1(m) Separation pay plan 19288-90
Treas. Reg. § 1.409A-1(n) Involuntary separation from service 19300

Class 4 – 409A Definitions of Permissible Payment Events (Sept 21)

409A Preamble Sections:
IV. Definition of Plan 19249
VII. Time and Form of Payment 19255-66

409A Final Regulations:
Treas. Reg. § 1.409A-1(c) Plan 19291-92
Treas. Reg. § 1.409A-1(h) Separation from service 19295-97
Treas. Reg. § 1.409A-1(i) Specified employee 19297-99
Treas. Reg. §§ 1.409A-3(a)-(g) Permissible payments 19309-11
Treas. Reg. §§ 1.409A-3(i)(1)(i), (ii), (iv), (v), (2)-(5) Definitions and special rules 19312-18

Class 5 – 409A Deferral Elections; Prohibition on Accelerated Payments and Exceptions (Sept 28)

409A Preamble Sections:
VI. Initial Deferral Election Rules 19251-55

409A Final Regulations:
Treas. Reg. §§ 1.409A-2(a)(1)–(8) Deferral elections 19301-03
Treas. Reg. § 1.409A-1(e)  Performance-based compensation  19293

409A Preamble Sections:
VIII. Prohibition of Accelerated Payments  19266-68
IX. Subsequent Changes in the Time and Form of Payment  19269-70

409A Final Regulations:
Treas. Reg. § 1.409A-2(b) Subsequent changes in time and form of payment  19305-07
Treas. Reg. § 1.409A-3(j)  Prohibition on acceleration of payments  19318-22

Class 6 – 409A M&A Issues and Grandfathered Amounts (Oct 5)

409A Preamble Sections:
XI. Statutory Effective Dates (including material modifications)  19271

409A Final Regulations:
Treas. Reg. § 1.409A-6(a)(4) Material modifications  19323-25

Review from prior readings:
III.D. Stock Options and Stock Appreciation Rights  19238-42
VII.B. Plan termination and Liquidation  19267
Treas. Reg. § 1.409A-1(b)(5) Stock options, stock appreciation rights and other equity-based compensation  19281-87
Treas. Reg. § 1.409A-1(l)  Stock right  19299

Class 7 – 409A Corrections; 409A Income Inclusion; and Overview of Code Section 457A (Oct 12)

IRS Notice 2008-113
IRS Notice 2010-6
IRS Notice 2010-80
IRS Notice 2008-115

Proposed Treas. Reg. §§ 1.409A-4(a), (b), (f), and (g)

409A Preamble Section:
XIV. Calculation and Timing of Income Inclusion Amounts, Reporting and Withholding  19274-75

Application of Section 409A to Nonqualified Deferred Compensation Plans,

IRC § 457A
Class 8 – Code Section 457(f) Coverage and Substantial Risk of Forfeiture (Oct 19)

IRC § 457(f)
Treas. Reg. § 1.457-11
IRS Notice 2007-62


Class 9 – Code Section 3121(v)(2) (Oct 26)

IRC § 3121(v)(2)
Treas. Regs. § 31.3121(v)(2)-1; Treatment of amounts deferred under certain nonqualified deferred compensation plans.

Class 10 – Code Section 162(m) (Nov 2)

IRC § 162(m)
Treas. Reg. § 1.162-27 Certain employee remuneration in excess of $1,000,000.
Treas. Reg. §1.162-31 The $500,000 deduction limitation for remuneration provided by certain health insurance providers.

Class 11 – Code Section 280G (Nov 9)

IRC § 280G
Treas. Reg. §1.280G-1 Golden parachute payments.

Class 12 – SEC Disclosure and Registration Rules (Nov 16)

SEC related reading materials to be announced in advance of class

Class 13 – Course Summary and Review for Final Exam (Dec 30)