

Section 409A Relief for Tax Payments from Section 457A Plans

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On December 8, 2017, the Internal Revenue Service (the IRS) released [Notice 2017-75](#) (the "Notice"), which provides limited relief from certain penalties under section 409A of the Internal Revenue Code (the "Code") for tax payment distributions from a Code section 457A nonqualified deferred compensation arrangement (a "457A Plan"). A Code section 457A Plan is a nonqualified deferred compensation plan of a U.S. taxpayer maintained by a "nonqualified entity" (i.e., a foreign company in a "tax haven" jurisdiction).

When Code section 457A was adopted, nonqualified deferred compensation plans that deferred compensation solely related to services provided before January 1, 2009, were grandfathered from the general provisions of Code section 457A. However, taxpayers covered by a grandfathered plan were still required to include in their gross income the value of the deferred compensation no later than the end of the tax year that commences before 2018 or, if later, the year in which the deferred compensation is no longer subject to a substantial risk of forfeiture. Specifically, the Notice provides that a taxpayer may make a distribution from a grandfathered plan to pay for federal, state, local or foreign taxes due as a result of including the value of the grandfathered plan in gross income, and that distribution will not be treated as an impermissible acceleration under Code section 409A and Treasury Regulation section 1.409A-3(j)(1), or a material modification under Treasury Regulation section 1.409A-6(a)(4). The Notice's relief is limited to the amount of federal, state, local, and foreign income tax withholding that would have been remitted by an employer if there had been a payment of wages equal to the income includible by the service provider.

Thanks to the Notice, taxpayers facing large tax liabilities as a result of including the entire balance of their 457A Plan into gross income for the 2017 tax year will, at least, be able to distribute sufficient funds to pay their tax liabilities without incurring additional penalties for violating Code section 409A rules on accelerated payments.



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