



Executive Deferred Compensation Compliance Deadline is Here

The December 31, 2008, deadline for compliance with Internal Revenue Code section 409A is quickly approaching. Companies must make all necessary revisions to any “deferred compensation plan” to comply with section 409A. The penalties for failure to timely comply are significant and include immediate taxation to the employee of deferred amounts, a 20 percent additional tax and an interest penalty.

Section 409A and its severe penalties cover all of the following arrangements:

- Supplemental Executive Retirement Plans
- Severance Arrangements
- Stock Option Plans
- Split-Dollar Life Insurance
- 457(f) Plans
- Commission Arrangements
- Medical or Other Reimbursement Arrangements including Tax Gross-Up
- Nonqualified Defined Contribution and Defined Benefit Plans
- Phantom Stock Plans
- 401(k) “Wrap” Plans
- Excess Benefit Plans
- Bonus and Incentive Plans
- Employment Agreements
- Change in Control Agreements

There are a number of exceptions that can apply to these plans and, for the most part, amendments are minimal but must be completed by the deadline.

Most corporations offer one or more of the above-mentioned arrangements; therefore it is crucial that all such plans comply with section 409A by December 31, 2008. GBQ can assist companies with:

1. Identifying all plans and arrangements that are subject to section 409A or are eligible for an exception.
2. Required amendments to Plan documents.
3. Fixing non-compliant arrangements before December 31, 2008.

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.