

## Legal Alert: IRS Provides Limited Additional Relief Under IRC § 409A

September 11, 2007

On September 10, 2007, Treasury and the IRS released [Notice 2007-78](#) (the "Notice"), providing additional time -- until December 31, 2008 -- to adopt amendments that document compliance with the requirements of Internal Revenue Code section 409A for nonqualified deferred compensation plans. Plans must still be operated in compliance with the final regulations as of January 1, 2008. In addition, the Notice requires that plans be amended by December 31, 2007 to provide for the timely written designation of a time and form of payment for amounts deferred as of the end of this year, which in many cases will limit the benefit of the extension of the general deadline for amendments.

The Notice also provides additional guidance concerning changes to "good reason" termination provisions in employment agreements. In addition, it provides relief, until further guidance is issued, permitting the renegotiation of certain provisions in an employment agreement upon the termination of a prior agreement and revising the cash out rules that were included in the final regulations under Code section 409A.

Finally, the Notice announces that the IRS and Treasury anticipate establishing a limited voluntary correction program for operational errors under Code section 409A in the near future and says that the transition period regarding rules for certain funded arrangements under Code section 409A(b) will not be extended.

The provisions of the Notice are detailed, and this is only a brief summary. We will continue to review the Notice and will send out a Legal Alert including additional analysis as soon as possible.

