

For Friends & Clients of Management Compensation Resources...

I hope that the holiday season was enjoyable and that 2005 is already shaping up to be a great year for you – personally and professionally. You may recall from our last update that we were expecting guidance on how to apply the new tax law on deferred compensation from the Treasury Department by December 22. They beat the deadline by a day and yet, in classic government fashion, managed to not really get much done.

Deferred Compensation Guidance

The new deferred compensation law, contained in the newly created Internal Revenue Code §409A, mandated that Treasury issue guidance to taxpayers on how to apply §409A by December 22, 2004. The new law applies to any amounts deferred after 12/31/04 and to any plan that is materially modified after October 3, 2004.

This initial guidance was not very useful except in two key areas: change in control (CIC) provisions, and specific definitions of what is (and isn't) classified as deferred compensation. There are three distinct meanings of CIC under the guidance. Based on our review, most client plans should be able to make their current CIC provisions fit the new rules without losing the intent of their original plan design. The bulk of the guidance was a discussion of what types of compensation and benefits fall into the category of deferred compensation under IRC §409A.

Importantly, the best information we got from Treasury is that there will be more guidance coming (possibly in the form of proposed regulations) during the first half of 2005. In light of this, Treasury is providing the entire calendar year of 2005 for companies to get their plan documents amended and plans into full compliance with the final rules and regulations, whenever they eventually come out (awfully nice of them, don't you think!?)

Follow-Up

We have already been in contact with all of our clients to discuss the correct strategy for working through the plan amendment process for 2005. We will be coordinating the actual plan amendment process with clients and legal counsel once the Treasury guidance is more complete. Treasury is still recommending that no amendments be made to plans adopted prior to 12/31/04. However, plans adopted 1/1/05 or later can be drafted under a good faith interpretation of the current law and guidance with the knowledge that amendments may be required after final regulations are issued. ***Please let us know if you have any questions regarding this legislation or your plans.***