

Quick Reference Guide to New deferred compensation tax rules

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Plans subject to the new rules

- Any legally binding right created in one year that is payable in a later year (including written and verbal agreements, and arrangements that cover only one person), for example:
 - Deferred compensation provisions in various types of agreements, including offer letters and employment, non-compete and consulting agreements
 - Inter-company agreements with a personal service corporation
 - Bonus plans
 - 401(k) mirror plans
 - Supplemental executive retirement plans
 - 457(f) plans
 - Severance agreements (some exceptions for 2005 only)
 - Phantom stock
 - Stock appreciation rights
 - Discounted stock options

Plans not subject to the new rules

- A plan that pays benefits within 2½ months after the end of the tax year in which the compensation vests, and does not provide for the deferral of compensation beyond this period
- Qualified retirement plans
- 457(b) plans

- Bona fide vacation leave, sick leave, compensatory time, disability pay or death benefit plans
- Incentive stock options
- Non-discounted stock options and stock appreciation rights with no deferral features
- Employee stock purchase plans

Initial Deferral Election

The election to defer compensation must be made by the last day of the tax year preceding the year in which services are performed with the following exceptions:

- In an employee's first year of plan eligibility, the election may be made as late as 30 days after the date the employee becomes eligible.
- For performance-based compensation, the election may be made as late as six months before the end of the performance period, but only if the performance period is at least 12 months in length.
- There are several additional exceptions in the final regulations.

Distributions

Distributions may not occur earlier than:

- Separation from service
- Disability

Contact information

Eddie Adkins, Jr.
Partner
Washington, DC
T 202.521.1565
E Eddie.Adkins@gt.com
www.GrantThornton.com/tax

- Death
- A specified date or schedule of dates
- Change in ownership or effective control of employer, or in ownership of a substantial portion of employer's assets (applies only if employer is a corporation)
- Unforeseeable emergency
- Several additional circumstances set forth in the final regulations

Changes in distribution form or timing

- The timing of a distribution can be delayed, but cannot be accelerated.
- An election to change the form or timing of a distribution cannot take effect until at least 12 months after the election is made.
- If a specified date of distribution was previously selected, any new election must be made at least 12 months before the first scheduled distribution date.
- For elections to change a payment date, the new payment date must be at least five years from when the payment would have been made under a previous election. This rule does not apply to distributions made on account of disability, death or an unforeseeable emergency.

Funding

- Offshore trusts or other arrangements are not permitted.
- Funding that is triggered by a change in the employer's financial health is not permitted.

Important notes

- These rules are current as of May 2007, but are subject to change based on further IRS guidance.

- The terms "employer" and "employee" are used above, but the new rules apply to other types of service recipients and service providers (e.g., independent contractors).

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