



# TaxNewsFlash

## United States

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### **Notice 2017-75: Future regulations to offer relief from section 409A, payments accelerated to pay income taxes**

The IRS today released an advance version of Notice 2017-75 that states that the IRS and Treasury Department intend to issue regulations that will be applicable as of December 8, 2017, in order to provide the relief from application of section 409A when payments of deferred amounts under a deferred compensation plan are accelerated to pay income taxes on the amounts includible in income.

#### **Notice 2017-75**

The IRS in January 2009 issued Notice 2009-08 as interim guidance under section 457A (generally providing that compensation deferred under a nonqualified deferred compensation plan of a nonqualified entity is includible in gross income when there is no substantial risk of forfeiture of the right to such compensation). The IRS issued Notice 2017-75 today to supplement Notice 2009-8. Today's notice provides that a nonqualified deferred compensation plan that is subject to the provisions of section 409A will not fail to meet the requirements under section 409A solely because payments of deferred amounts under the plan are accelerated to pay income taxes on the amounts includible in income.

**Notice 2017-75** [PDF 38 KB] states that future regulations will:

- Permit the acceleration of payments under a nonqualified deferred compensation plan to pay federal, state, local, and foreign income taxes due on pre-2009 section 457A deferrals that are includible in gross income
- Provide that a change in the time and form of payment under a nonqualified deferred compensation plan to pay federal, state, local, and foreign income taxes on pre-2009 section 457A deferrals will not be treated as an impermissible acceleration under section 409A(a)(3) and Reg. section 1.409A-3(j)(1)

- Provide that, to the extent a deferred amount attributable to services performed before January 1, 2009, was earned and vested before December 31, 2004, and is not otherwise subject to the requirements of section 409A (due to the effective date rules under Reg. section 1.409A-6), a change in the time and form of payment of the deferred amount to pay federal, state, local, and foreign income taxes on pre-2009 section 457A deferrals will not be treated as a material modification of such arrangement under Reg. section 1.409A-6(a)(4)
- Provide that relief will apply only to the extent that the amount of any distribution to pay federal, state, local, and foreign income taxes on pre-2009 section 457A deferrals is not more than an amount equal to the 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 under a provision of the 2008 legislation enacting section 409A

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