

## Important July 1, 2009 Deadline for Section 457A Deferred Compensation

As discussed in our [Client Alert No. 760](#) (October 30, 2008), Section 457A of the US Internal Revenue Code generally provides that nonqualified deferred compensation payable by certain partnerships and foreign corporations will be includable in the service provider's income when the compensation vests, regardless of when it is paid. If the amount of compensation is not determinable at the time of vesting, it will instead be includable in income when the amount becomes determinable and will be subject to an additional 20 percent tax (plus certain interest charges). Service providers that may be subject to Section 457A include not only individuals, but also corporations, partnerships, limited liability companies and other entities, whether cash or accrual basis taxpayers.

Section 457A is generally applicable to deferred compensation that is attributable to services performed after December 31, 2008. For arrangements entered into prior to January 1, 2009 that contemplate services both before and after that date, Section 457 requires that the compensation be allocated between the two service periods, in which case only the amounts attributable to services performed after December 31, 2008 will be subject to Section 457A. Under a special Section 457A transition rule, however, such an arrangement may be amended retroactively to provide that a vesting condition (*i.e.*, a continued service requirement) that would otherwise lapse after on or after January 1, 2009 will be deemed to have been satisfied before January 1, 2009. Such an amendment will generally cause all of the deferred compensation to be attributed to services performed on or before December 31, 2008, and consequently, provided that it is included in income no later than the last taxable year beginning before 2018, the compensation will not be subject to Section 457A. Importantly, the transition rule requires that the amendment be made in writing before July 1, 2009 and be applied consistently to all service providers participating in the particular arrangement or substantially similar arrangements.

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The Latham & Watkins Benefits and Compensation Group is working closely with clients on all Section 457A issues. Please contact any of the attorneys listed below should you wish to discuss the subject matter of this Benefits and Compensation Update or any other Section 457A matters.

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