

Publications

View From Groom: Long-Awaited Proposed Rules Provide Greater Clarity for Executive Compensation Plans of Exempt Organizations

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The IRS recently issued long-awaited proposed regulations under section 457 of the Internal Revenue Code (“Code”) that provide rules for determining when amounts deferred by employees of tax-exempt organizations, including governments, are includible in income, the amounts that are includible in income, and the types of plans or arrangements that are not subject to these rules. As anticipated, these rules mirror many of the rules under Code section 409A with respect to severance and substantial risk of forfeiture. In addition, the proposed regulations update the 2003 final regulations under Code section 457 for other statutory changes in the law affecting plans subject to Code section 457.

In the attached article, we provide a background summary of Code section 457 and briefly outline the key provisions of the proposed rules regarding: (i) what plans are exempt from Code section 457, (ii) when amounts subject to Code section 457(f) are includible in income, and (iii) how to determine the present value of the amounts includible. Taxpayers may rely on these proposed rules immediately, and once adopted, the final rules, subject to a few limited exceptions, are intended to apply to all deferred compensation arrangements that have not been previously included in income (i.e., there is no grandfathering for prior arrangements). Comments are due on these proposed regulations by September 20, 2016, and a public hearing is scheduled for October 18, 2016.

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