



Practical Guide to Code Section 409A

Michael Falk

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A Practical Guide to Section 409A is new book published by CCH and written by attorney Michael Falk, a partner at Winston & Strawn LLP and frequent lecturer on Section 409A. The book helps you avoid violating Section 409A (and infuriating individual executives) by explaining the purposes and concerns of Section 409A and discussing how to design around Section 409A where possible and how to comply with Section 409A where necessary. Section 409A of the Internal Revenue Code is currently one the most complicated and far-reaching laws in the area of employee benefits and executive compensation. Enacted effective January 1, 2005, Section 409A was originally intended to regulate the tax treatment of ""nonqualified deferred compensation arrangements"" and prohibit several perceived abuses that were highlighted in the wake of Enron. But after several hundred pages of technical guidance from the government, Section 409A now reaches far beyond traditional nonqualified deferred compensation and implicates many common designs in employment agreements, severance agreements, and equity compensation arrangements. All service providers are potentially subject to Section 409A -- whether services are provided to public or private companies, partnerships, etc. -- and failure to comply with Section 409A results in the individual who defers compensation (i.e., the employee, director, etc.) incurring significant tax consequences, including immediate income taxes and significant penalties. The book will discuss, among other things: -- The landscape before Section 409A and some of the practices perceived by the government as abusive -- The scope of ""nonqualified deferred compensation"" as defined by Section 409A and its exceptions -- The technical rules of Section 409A related to when an election to defer compensation must be made and what the election must include -- What can be done with the deferred compensation during the period of deferral -- Upon what events may (or must) deferred compensation be distributed -- When and how to comply with the six-month wait requirement that applies to certain executives of public companies -- How Section 409A applies to traditional nonqualified deferred compensation -- Separation Pay -- Equity compensation -- Other benefits and perquisites -- Tax-exempt, partnership and foreign entities -- Mergers and acquisitions -- Pre-existing arrangements that are ""grandfathered"" for purposes of Section 409A -- How to calculate the taxes under Section 409A or, if possible, correct a violation

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