

Recent Compensation-Related Tax Developments

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This spring, the Office of the Chief Counsel of the Internal Revenue Service (IRS) released three Chief Counsel Advice (CCA) memoranda regarding a variety of compensatory tax issues. Specifically, the memoranda address:

- whether deferred compensation plan non-compliance can be corrected without adverse tax consequences in the year of vesting;
- the permissible exercise price of stock options granted upon the closing of an initial public offering (IPO); and
- the tax effect of a merger on stock acquired upon the exercise of an incentive stock option (ISO).

Notably, the first two CCA memoranda discussed below address issues arising under Section 409A of the Internal Revenue Code (the “Code”), which governs the treatment of nonqualified deferred compensation arrangements, and may be an indication of possible increased IRS audit activity in this area.

CCA memoranda are not binding and may not be used or cited as precedent; however, they are instructive in providing insight into how the IRS interprets and applies the relevant provisions of the Code.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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