

Recent Developments for Sections 409A and 457: Proposed Regulations and Chief Counsel Memorandum

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Earlier this summer, the Office of the Chief Counsel of the Internal Revenue Service (IRS) released a Chief Counsel Advice (CCA) memorandum providing insight into how the IRS interprets and applies the provisions of Section 409A of the Internal Revenue Code relating to so-called “back-to-back” arrangements. This comes on the heels of a year of a number of important developments from the IRS pertaining to both Section 409A and Section 457 of the Code. Most notably, on June 21, 2016, the IRS released both the proposed regulations modifying and clarifying existing regulations under Section 409A, and the long-awaited regulations covering Section 457. Further, in addition to the June 2017 CCA memorandum covering back-to-back arrangements, the Office of the Chief Counsel recently issued two other CCA memorandums regarding Section 409A, relating to the substantial risk of forfeiture and the methodologies for pricing a stock option and calculating the amount includible in a taxpayer’s gross income.

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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