

Reviewing Compensation Arrangements for Employees Subject to U.S. Income Tax Before Year-End Could Avoid Costly Tax Penalties

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We have written about this in the past [\[here\]](#), but the message bears repeating each year. It is easy to overlook that employment agreements, change-in-control agreements, and severance agreements with U.S. taxpayers frequently contain provisions that subject them to U.S. Internal Revenue Code Section 409A ("Section 409A"), and failure to comply can result in onerous tax penalties. However, to the extent that rights under such agreements are not yet vested, it may be possible to correct them before year-end without penalty. Even if rights under an agreement are vested, in some cases correction is available with payment of reduced penalties under IRS correction programs. It is important to remember that U.S. residents, and U.S. citizens regardless of country of residence, are taxed on worldwide income. This means that compensatory arrangements for employees and directors who are U.S. citizens working outside the U.S. will be subject to U.S. federal income tax. If compensation arrangements have not been reviewed for Section 409A compliance, we recommend doing so now, especially with respect to arrangements that will or may become vested during 2019. For a more detailed explanation, see our Dorsey publication from October 6, 2015 [here](#).

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