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NEWSLETTER – MAY 2011

To Our Clients, Business Partners, and Friends…

My newsletter writing has started 2011 just like the Minnesota Twins… slow and behind schedule! But things are starting to pick up - the winter that wouldn't end has finally gone (we hope!) - and business is starting to improve. I hope this finds your business also improving.

There is no news to report in terms of new regulations or laws affecting non-qualified (NQ) compensation and benefits for privately-held companies, but rest assured that we are closely monitoring things to make sure that you are in compliance and aware of any new rules.

Why Defer Compensation Now if Tax Rates are Increasing?

Many people have asked this question recently, and here is the short answer: depending on your expected timeframes (the amount of time you will be deferring the money for, and the timing of your payout) and how high you think tax rates will go – current pre-tax deferral of income is still a very good idea in many situations. When might it not be a good idea? If you are deferring for less than five years and plan to take a lump sum payout. Other than that, the numbers might actually surprise you; I encourage you to look into it before assuming that deferring pre-tax doesn't work today, just because tax rates are likely to rise. For the long answer – please allow me to explain our analysis in person or on the phone. I promise it will be scintillating! ☺

To "Separate From Service" or Not… That is the Question

As companies begin to see baby-boomer key employees retiring, the question of how to keep some of their talents and experience "at work" while still allowing them to retire / cut-back has arisen. If these retiring employees are NQ plan participants, it is vitally important to know the guidelines for determining whether an employee is actually retired (in the eyes of the IRS), and thus eligible to receive NQ plan payments. There are two "safe harbors" in the regulations, and then some significant gray area in between.

Safe harbor #1: if an employee is still working 50% or more of the time they were previous to cutting back, then they are NOT considered retired under the IRC 409A regulations and they are NOT entitled to receive payments from a NQ plan. Safe harbor #2: if an employee cuts back to no more than 20% of their former duties / time worked, then they ARE considered retired under 409A and must receive NQ benefit payments. Gray area: between 20% and 50% will depend on several factors, including how your Plan is written. Employers have some latitude within the regulations in this area, but it is important to work with us and your legal counsel to ensure that you don't cross any lines that you don't want to.

Thank you for the chance to be of service. Please let us know if we can provide any additional information related to these, or other, key employee compensation and benefit issues.