

Non-Qualified Deferred and Executive Compensation

- **Correcting Operational Failures for Non-Qualified Plan Subject to Section 409A:** The IRS has adopted a limited corrections program for operational failures with regard to non-qualified deferred compensation arrangements subject to 409A. Some corrections will no longer be available after December 31, 2009. We recommend that all employers review any arrangements subject to 409A for operational compliance prior to December 31, 2009.
- **Performance-Based Compensation Section 162(m) Compliance for Public Companies:** Public companies with performance-based compensation arrangements should consider whether IRS Revenue Ruling 2008-13 necessitates amendments to executive agreements in order to avoid the \$1 million deduction limit of Internal Revenue Code Section 162(m) limit for performance periods beginning in 2010. In general, IRS Revenue Ruling 2008-13 held that performance-based compensation that is paid upon termination of a covered employee's employment, regardless of whether the performance goals are achieved, will not be exempt from the Section 162(m) limit. Revenue Ruling 2008-13 does not apply to performance periods that began on or before January 1, 2009, or to compensation that is paid pursuant to the terms of an employment contract that was in effect on February 21, 2008 (without regard to future renewals or extensions including built-in evergreen renewals or extensions).