



Executive Trifecta[®] and Section 409A

Executive Trifecta falls under the purview of IRC Section 409A; however, provided the plan is properly documented and administered as outlined in InsMark's Cloud-Based Documents On A Disk and subject to the approval of each client's legal and tax advisers, there should be no adverse effects due to Sec. 409A.

Executive Trifecta works because, even though it may fail the substantial risk of forfeiture test and be characterized as deferred compensation under IRC Section 409A, it meets the election and distribution requirements of Section 409A, thus allowing for deferral of income.

Under the regulations, it appears that a plan may fail to have a substantial risk of forfeiture under Section 409A but have a substantial risk of forfeiture under IRC Section 83, thus being deferred compensation for income tax purposes but a welfare plan for ERISA purposes.

Unless the IRS provides future guidance to the contrary, Executive Trifecta would be deemed to have a substantial risk of forfeiture for Section 83 and ERISA purposes, and the plan would meet the deferred compensation requirements of Section 409A.

However, if the Department of Labor applies the Section 409A definition of substantial risk of forfeiture to a deferred bonus plan like Executive Trifecta, the plan should not be a funded plan for ERISA purposes as long as the plan participant is given an interest in the policy only after an acceptable triggering event under Section 409A has occurred.

Important Note: The information in this report is for educational purposes only. Legal and tax information regarding Section 409A is for general use only and may not be applicable to specific circumstances. In all cases, the approval of a client's legal and tax advisers must be secured regarding the implementation or modification of any planning technique as well as the applicability and consequences of new cases, rulings, or legislation upon existing or impending plans.

"Executive Trifecta" is a registered trademark of InsMark, Inc.