

HOUSE BILL TARGETS OFFSHORE DEFERRED COMPENSATION

On May 14, Representative Charles Rangel (D-NY) introduced legislation into the House of Representatives to extend tax credits and deductions that expired last year or would expire at the end of this year, as well as to provide certain tax relief for individuals and families. The Energy and Tax Extenders Act of 2008 (H.R. 6049) (the “*Act*”), passed by the Ways and Means Committee by a vote of 25-12, proposes to offset the costs of these tax relief provisions with the addition of a new section to the Internal Revenue Code that would eliminate the ability to defer the taxation of certain compensation paid by offshore entities.

The Act would eliminate the ability of service providers of certain offshore entities, such as offshore fund managers, to defer the taxation of compensation and fees payable by the offshore entity for services rendered after December 31, 2008, to the extent such deferred compensation and fees are no longer subject to a substantial risk of forfeiture (e.g., a vesting requirement or obligation of future service). To the extent amounts are not determinable at such time as they are required to be included in income, such amounts, when they become determinable, will also be subject to interest at the underpayment rate plus 1%, plus an additional 20% penalty.

The Act also provides that deferred compensation with respect to services performed in years prior to 2009 would need to be included in income no later than 2017. The Treasury Department would be required to provide a transition period during which deferred compensation arrangements and certain back-to-back arrangements, in either case attributable to services performed prior to 2009, may be amended to conform the date of distribution to the date the amounts are required to be included in income.

The House will likely debate and vote on the Act in the coming weeks. We will update you with any new developments regarding the Act.

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If you have any questions concerning the foregoing or would like additional information, please contact David E. Rubinsky (212-728-8635, drubinsky@willkie.com), Jason R. Ertel (212-728-8120, jertel@willkie.com), or the attorney with whom you regularly work.

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