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From:

Sent: Tue 10/28/2008

To:

Cc:

Subject: RE: Requested Legal Opinion/Statute of Limitations

See reg 53.4958-1(e) Date of occurrence - where a single contractual arrangement provides for periodic payments over course of the DP's tax year, consider the excess benefit transaction with respect to the aggregate annual payments to occur on the last day of the tax year. I think this would apply even if they are not sure about an actual written contract, etc.

Re: the substance of the T/P's argument in this case, see reg 53.4958-4(a)(1) - in determining the reasonableness of comp paid in one year, services performed in prior years may be taken into account.