

What's New in the World of Compensation and Benefits

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Page 1

1

Today's agenda

Executive Compensation

- Proposed section 4960 regulations
- The effectuation of salary reduction pledges by employees

Employment Tax / Fringe Benefits

- The tax perils of online performance of services
- Employee retention credit
- Deferral of employer Social Security tax
- Expansion of section 127 to include student loans
- Section 139 wage exclusion
- Leave sharing and donation

Retirement

- Retirement plan relief
- SECURE Act highlights

Page 2

2

Section 4960 overview

For tax years beginning after December 31, 2017, new Section 4960 of the Internal Revenue Code imposes a **21% excise tax** on (1) **remuneration in excess of \$1m** paid for a tax year or (2) any “**excess parachute payments**” paid to “covered employees” of any applicable tax-exempt organization (ATEO) or related organization.

By the numbers	
Excess remuneration	>\$1m
Parachute payments	<i>Separation pay</i> >3x “base amount”
Excise tax	21%

Page 3

3

Interim guidance

- Notice 2019-09 was issued at the end of 2018 and provides interim guidance in the form of 39 Q&As.
- Proposed regulations were published June 11, 2020
- Comments on the proposed regulations are due August 10, 2020.
- Until further guidance is issued, tax-exempt organizations and related organizations may apply a reasonable, good faith interpretation of the statute.
 - Notice 2019-09 and the proposed regulations outline certain positions that the Treasury and IRS do not consider consistent with a reasonable, good faith interpretation of the statutory language.

Page 4

4

What is an applicable tax-exempt organization?

- An ATEO is an organization that:
 - Is exempt from tax under Sections 501(a), 521(b), 115(1) and 527
- Governmental entities:
 - A governmental unit (including a state university) that does not have an IRS exemption determination letter is not considered an ATEO.
 - A governmental unit with an IRS determination letter is considered an ATEO, but it may choose to relinquish its Section 501(c)(3) status.
 - A governmental entity that is separately organized from a state and that meets Section 115(1) requirements is considered an ATEO.
 - In the preamble to the proposed regulations, the Treasury and IRS request comments on the applicability of Section 4960 to federal instrumentalities exempt under Section 501(c)(1).
- The proposed regulations provide that a foreign organization that receives substantially all of its support from sources outside of the US is not an ATEO.
 - The Treasury and IRS request comment on whether a foreign related organization may be liable for excise tax under Section 4960.

Page 5

5

What organizations are related to an ATEO?

- This is critically important because remuneration paid by a related organization to a covered employee of an ATEO is taken into account for purposes of the excise tax.
- The statute defines “related organization” with respect to an ATEO as any person or governmental entity that:
 - Controls, or is controlled by, the ATEO
 - Is controlled by one or more persons who control the ATEO
 - Is a Section 509(f)(3) supported organization of the ATEO
 - Is a Section 509(a)(3) supporting organization of the ATEO
 - In the case of a Section 501(c)(9) voluntary employees’ beneficiary association (VEBA), establishes, maintains or makes contributions to the VEBA
- The statute does not define control.

Page 6

6

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