Executive compensation after tax reform

Who is affected?	Topic	Prior law	New law	Potential implications	Questions
Executives in publicly traded companies and companies with registered debt offerings	**Limitation on deduction of executive compensation exceeding $1 million, IRC Sec. 162(m), as amended**	• Deduction for compensation to covered executives of public companies limited to $1M • Exceptions applied for performance-based compensation and commissions • "Covered employee" status tested each year and did not carry over into later years	• Expands definition of "publicly held corporations" to include certain companies that have registered debt offerings. • Expands definition of covered executives to include CEO, CFO and next 3 highest compensated officers, and any who were covered in any year after 2016. • Expands covered types of compensation to include those payable after the employee's retirement or departure. • Expands compensation definition to include performance-based compensation and commissions. • Expands provision to cover taxable amounts received by executive's beneficiaries, including after death. • Includes a grandfather provision for certain plans in effect November 2, 2017, that are not materially modified.	• Reduces the appeal for the business of stock-based compensation and incentives that are based on corporate performance. • Subjects death benefits taxable to a current or former covered employee to the deduction limitation. • Increases need for benefits with minimal impact to current compensation, to minimize the number of executives meeting the definition of "covered executives" where possible. • Eliminates the benefit of larger payouts after the retirement of a covered employee, but makes deferral attractive when future amounts payable can be spread out below the $1 million limit.	• Will the meaning of "performance-based compensation and incentives" be revised by regulations to cover a broader range of benefits? • What constitutes a "material modification" of a contract in effect November 2, 2017, and what methods will be acceptable for employers to determine the amounts that are grandfathered?

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Executives in nonprofit or tax-exempt organizations	**Executive compensation in tax-exempt organizations, new IRC Sec. 4960**	No specific compensation limitations; potentially subject to private inurement rules under IRC Sec. 4598 if compensation is excessive.	• New annual 21% excise tax applies to any applicable nonprofit or tax-exempt organization on compensation exceeding $1M on any covered employee. • Covered employees include the organization's 5 highest paid employees and any covered employees in any year after 2016. • Compensation will be considered paid for purposes of the tax when there is no longer a substantial risk of forfeiture (as defined under Section 457(f)) • An exception is provided for compensation for medical or veterinary services by a licensed medical professional, as well as for designated Roth contributions to certain retirement plans. • Compensation paid to the same employee by certain related organizations is also subject to the tax.	• Benefits with minimal impact to current compensation will be more attractive. • Benefits that defer income and/or spread pay out at a level below $1 million will be attractive. • Plans designed to create a rolling risk of forfeiture, or noncompete provisions that constitute a substantial risk of forfeiture may be attractive to spread taxation after retirement over several years.	• If state colleges and universities are tax-exempt under a doctrine of implied statutory immunity rather than under IRC Sec. 115(1), will they be subject to Section 4960? Will technical corrections address this? • How will regulation interpret "related organizations" for purposes of the excise tax?

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C corporations	**Tax rate IRC Sec. 11(b)**	C corporations were subject to graduated rates as follows: $0 - $50K: 15% $50K - $75K: 25% $75K - $10M: 34% Over $10M: 35%	• All C corporations (including personal service corporations) are subject to a flat income tax rate of 21%, for tax years beginning after December 31, 2017. • Change is permanent.	• Availability of new funds. • Premiums paid by the C corporation are less costly than those same premiums paid by the individual.	Guidance may be necessary for corporations on a fiscal year.
	Alternative minimum tax (AMT)	Larger C corporations (generally defined as having average annual gross receipts of $7,500,00 over three-year period) were subject to an alternative minimum tax, to the extent that their tentative minimum tax exceeded their regular tax.	• The corporate alternative minimum tax is repealed. • Change is permanent.	Life insurance more attractive; no longer impacts AMT	Guidance on the treatment of existing AMT credit carryforwards might be helpful.
Passthrough entities	**Tax deduction new IRC Sec. 199A**	Income passed through to owners of S corporations, partnerships, sole proprietorships and most LLCs was taxed at the individual's top marginal rate.	• An income tax deduction of up to 20% of "qualified business income" is available to many owners of pass-through businesses. • Subject to adjusted gross income limits. • Availability of deduction varies by business type; may increase with increased wages. • Change expires after 2025.	• Potential availability of new funds. • Potential benefit from increased wage amounts, whether in the form of bonuses, qualified plan contributions, or salary increases.	Regulations or other guidance may clarify details of new Section 199A.

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