

The following chart sets forth some of the provisions affecting compensation and benefits in the House’s version of the Tax Cuts and Jobs Act, as approved by the House on November 16, 2017. This chart highlights only some of the key issues and is not intended to address all aspects of the proposed legislation. If you have any questions, please contact your Andersen Tax advisor.

As of November 16, 2017

COMPENSATION AND BENEFITS		
Provision	Description of Proposed Change	Comments
<b>Nonqualified Stock Options</b>	Under the bill certain employees of corporations whose stock is not readily tradeable on an established securities market could elect to defer the recognition of income on stock options and restricted stock units for a period of up to five years from the date the employee vests in the stock or the stock is transferable.	
<b>Excess Employee Compensation</b>	<p>The rules governing the deductibility of compensation paid to covered employees of a publicly-held corporation would be modified as follows:</p> <ol style="list-style-type: none"> <li>1) The performance-based exception would be eliminated, meaning that all compensation paid during the taxable year in excess of \$1 million would not be deductible.</li> <li>2) The definition of covered employee would include (i) the principal executive officer (PEO) and the principal financial officer (PFO) of the corporation at any time during the taxable year, (ii) the next three highest paid officers (other than the PEO or PFO), and (iii) any person who was a covered employee of the corporation for any taxable year beginning after December 31, 2016, and (iv) any beneficiary of a covered employee receiving benefits as a result of the death of the covered employee.</li> <li>3) Finally, the definition of a publicly-held corporation would be modified to mean any corporation which is an issuer (as defined in Sec. 3 of the Securities Exchange Act of 1934 (SEA)) of securities which are required to be registered under Sec. 12 of the SEA, or that is required to file reports under Sec. 15(d) of the SEA.</li> <li>4) Once an employee is treated as a covered employee, any further compensation paid to that person is treated as a payment to a covered employee.</li> <li>5) Remuneration paid to a covered employee would also include any amounts paid to a person other than the covered employee, including payment after the death of the covered employee.</li> </ol>	<p>These changes mean that the compensation deduction for all covered employees for any year in which they are a covered employee and any future year would be limited to \$1 million.</p> <p>This would apply to any stock options exercised after December 31, 2017, the vesting of restricted stock or restricted stock units vesting after December 31, 2017, as well as the payment of any deferred compensation after December 31, 2017.</p> <p>If enacted, this provision would have a significant effect on the structure of CEO and top executive pay and may result in a significant tax increase for publicly traded companies with significant payments for CEO and top executive compensation.</p>

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<b>Excise Tax on Excess Compensation Paid by Tax-Exempt Organization</b>	<p>The bill adds a new section that would impose a 20% tax on certain tax-exempt organizations (generally organizations exempt from tax under Sec. 501(a), an exempt farmers’ cooperative, a Federal, State or local government entity with excludable income, or a political organization) for the sum of the compensation paid to a covered employee in excess of \$1 million in a tax year and any excess parachute payment paid to such covered employee.</p> <p>A covered employee would be one of the five highest compensated employees of the organization. An individual who becomes a covered employee for any taxable year after December 31, 2016 would continue to be a covered employee in subsequent years.</p> <p>Compensation includes all compensation paid by the tax-exempt organization and any compensation paid by a related organization.</p> <p>An excess parachute payment would occur when the sum of any payment of compensation which is contingent on the covered employee’s separation of service and such compensation equals or exceeds three times the average of the covered employee’s taxable compensation for the five-calendar year period ending before the year of separation from service.</p>	<p>This would be a new provision as currently there are no limits to tax-exempt employee compensation, other than it must be reasonable for services performed. This provision is designed to bring tax-exempt organizations into alignment with for-profit corporations relating to provisions preventing the deduction of compensation over \$1 million for certain employees as well as the deductibility of certain severance-pay arrangements.</p> <p>It may impact compensation paid to university executives and coaching staff.</p>
<b>Employer-Provided Housing</b>	<p>The exclusion from income of the value of housing provided by an employer for its convenience to an employee would be limited to \$50,000 per year (\$25,000 for a married individual filing separately). The maximum limit, however, would be phased out for highly compensated employees (\$120,000 for 2018). Also, the entire amount of employer-provided housing would be treated as compensation for a 5% owner of the employer.</p>	<p>The employer would be required determine the fair value of this benefit and treat the excess as wages subject to all appropriate withholdings of income taxes and payroll taxes.</p>
<b>Achievement Awards</b>	<p>All employee achievement awards would be treated as taxable compensation to the employee subject to all appropriate income tax and payroll tax withholdings.</p>	<p>Employers who provide gifts to employees based on length of service or safety would now have to include the value of such gifts in the employees’ taxable compensation.</p>
<b>Dependent Care Assistance Programs</b>	<p>The bill would repeal the tax-free benefit for employees of employer-provided dependent care assistance payments for tax years beginning after December 31, 2022. Under current law, the amount excludible by the employee is \$5,000.</p>	<p>This change would mean employees who have paid for dependent care assistance on a pre-tax basis under a Sec. 125 cafeteria plan would no longer be entitled to this benefit.</p>

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<b>Qualified Moving Expense Reimbursements</b>	All moving expense reimbursements, except for members of the Armed Forces on active duty who move pursuant to a military order, would be treated as compensation to an employee subject to the withholding of income taxes, social security taxes and Medicare taxes.	Instead of requesting substantiation of various expenses incurred in moving, an employer would just agree to provide a lump-sum amount to the employee which would be taxable to the employee.
<b>Employer-Provided Adoption Assistance Program</b>	The \$10,000 tax-free benefit for qualified adoption expense paid by an employer to an employee would be eliminated. Any amounts paid to an employee for qualified adoption expenses would be treated as compensation and subject to the withholding of income taxes, social security taxes, and Medicare taxes.	This is a benefit enjoyed by employees making less than \$150,000 under present law.
<b>Hardship Distributions From 401(k) Plans</b>	The bill would expand the sources of funds that may be distributed from a 401(k) plan related to a hardship withdrawal. In general, the sources of funds would now include employer-related contributions and related earnings.	<p>Under current law, only employee pre-tax contributions may be distributed with respect to a hardship withdrawal.</p> <p>Employers would be required to amend their plans to provide for the expanded hardship withdrawal definition.</p>
<b>Rollover of Qualified Loan Offset Amounts</b>	For participants in a qualified retirement plan who receive a distribution from the plan that includes the amount of an unpaid loan balance, such participants would have until the due date (including extensions) for filing their income tax return to contribute the loan amount to a qualified employer plan.	Under current law, the rollover has to be completed within 60 days of receipt of the distribution.
<b>Education Assistance Programs</b>	The bill would repeal employer-sponsored educational assistance programs under which an employer may provide or reimburse an employee for up to \$5,250 of educational expenses incurred by an employee under a nondiscriminatory plan.	Under the proposal, the only educational assistance provided by an employer that could be excluded from the gross income of an employee would be the amount that qualifies as job-related training.

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