ANDERSEN TAX

TAX REFORM – COMPENSATION & BENEFITS

The following chart sets forth some of the provisions affecting compensation and benefits in the Tax Reform Act of 2017 (the Act). This chart highlights only some of the key issues and is not intended to address all aspects of the legislation. If you have any questions, please contact your Andersen Tax advisor.

COMPENSATION AND BENEFITS		
Provision	**Description of Change**	**Comments**
Carried Interest	With respect to a partnership interest transferred in connection with the performance of services by the taxpayer, the holding period for long-term capital gain treatment for underlying assets is increased from more than one year to more than three years for gains generated after December 31, 2017. The three-year holding period applies notwithstanding whether an election under Sec. 83(b) was made.	Under prior law, taxpayers benefitted from carried interest at long-term capital gain rates. This provision has a negligible impact to carried-interest holders in private equity firms, which tend to hold onto assets for a longer period of time, but may impact such holders in hedge funds or real estate depending on the turnover of the underlying assets and holding period. This provision requires separate holding period tracking for gains allocated to partners who obtain partnership interests in connection with the performance of services.
Excess Employee Compensation	The rules governing the deductibility of compensation paid to covered employees of a publicly-held corporation are modified as follows: 1) The performance-based exception is eliminated, meaning that all compensation paid during the taxable year in excess of $1 million is not deductible. 2) The definition of covered employee includes (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. 3) Finally, the definition of a publicly-held corporation includes all domestic publicly traded corporations and all foreign companies publicly traded through American Depository Receipts (ADRs). The definition may also include certain additional corporations that are not publicly traded, such as large private C or S corporations that are required to file reports under the Securities Exchange Act of 1934. 4) Once an employee is treated as a covered employee, any future compensation paid to that person is treated as a payment to a covered employee. 5) Remuneration paid to a covered employee also includes any amounts paid to a person other than the covered employee, including payment after the death of the covered employee.	These rules apply for taxable years beginning after December 31, 2017. However, these rules do not apply to written binding contracts in existence on November 2, 2017. Compensation paid pursuant to a plan qualifies for the exception provided that the right to participate in the plan is part of a written binding contract with the covered employee in effect on November 2, 2017. The fact that the plan was in existence on November 2, 2017 is not itself sufficient to qualify for the exception. 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 is limited to $1 million. This provision could 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.

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Excess Employee Compensation (Cont.)	The Act provides a transitional rule such that remuneration under a binding written contract in effect as of November 2, 2017, which is not significantly modified after that date, is not subject to the new limitations.	
Excise Tax on Excess Compensation Paid by Tax-Exempt Organization	A 21% tax is imposed on certain tax-exempt organizations (organizations exempt from tax under Sec. 501(a), an exempt farmers' cooperative, a federal, state or local government entity with excludible 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. A covered employee is 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 continues to be a covered employee in subsequent years. Compensation includes all compensation paid by the tax-exempt organization and any compensation paid by a related organization. Compensation does not include amounts paid to licensed professionals for medical or veterinary services. Under the Act, compensation paid to a non-highly compensated employee is not subject to the parachute payment rules. An excess parachute payment occurs 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.	This is a new provision as previously there were no limits to tax-exempt employee compensation, other than it had to 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. The provision may impact compensation paid to university executives and athletic coaching staff.
Qualified Equity Grants	Qualified employees, who receive stock as a result of the exercise of nonqualified stock options or who receive stock pursuant to the vesting of restricted stock units, are allowed to elect to defer the taxation for a period of time not to exceed five years. This applies only to qualified employees if at the time of the grant of the award the corporation's stock is not readily tradable on an established securities market and the corporation has a written plan under which, in the calendar year, not less than 80% of all employees are granted stock options or restricted stock units with the same rights and privileges to receive qualified stock. A qualified employee is any employee who (1) was not a 1% owner of the corporation at any time during the 10 preceding calendar years, (2) was not, at any time, the chief executive officer or chief financial officer, (3) is not a family member of an individual described in (1) or (2) above, or (4) was not one of the four highest compensated officers of the corporation at any time during the 10 preceding calendar years.	This new provision will permit the deferral of taxation upon the exercise of nonqualified stock options or the receipt of stock upon the vesting of restricted stock units for a period of up to five years for a limited group of employees of corporations that are not publicly traded. However, income recognition is accelerated if (1) the stock becomes transferable (meaning the employee can transfer the stock to any other person, including back to the company), (2) the stock becomes readily tradeable on an established securities market, and (3) the employee becomes an excluded employee. The provision applies for options exercised and restricted stock units settled after December 31, 2017. Until guidance is provided, a corporation will be treated as being in compliance with these

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Qualifying Equity Grants (Cont.)		rules if it complies with a reasonable good faith interpretation of the new rules. In order for employees to benefit from this new provision, the company will have to have granted 80% of the employees' equity and once the employee receives the shares of stock, the stock may not be transferred by the employee.
Qualified Moving Expense Reimbursements	All moving expense reimbursements, except for members of the Armed Forces on active duty who move pursuant to a military order, are 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 will agree to provide a lump-sum amount to the employee which will be taxable to the employee.
Recharacterization of IRA Contributions	The Act repeals the special rule that allows traditional IRA contribution that are converted to a Roth IRA to be recharacterized as a contribution to the traditional IRA.	Once a traditional IRA to Roth IRA conversion is made, the taxpayer may not undo the conversion.
Qualified Transportation Fringes	The Act disallows a deduction for any qualified transportation fringe (transit passes and parking) provided by an employer for an employee.	It appears that the value of the transportation fringe benefit continues to be excludible from the employees' income.
Rollover of Plan Loan Offset Amounts	The Act permits an individual to rollover a qualified plan offset amount by the due date (including extension) for filing the federal income tax return for the taxable year in which the plan offset amount occurs (year of distribution).	This provision provides individuals with additional time to rollover the value of a plan loan to an eligible retirement plan.
Entertainment and Meals Provided For Employer's Convenience	Deductions for entertainment, amusement, recreation expenses and membership dues for a club or such a facility are disallowed. Deductions for 50% of food and beverage expenses are retained, but the 50% limitation is expanded to include employer expenses of providing food and beverages to employees. These provisions are effective for amounts paid or incurred after December 31, 2017. In addition, no deduction is permitted for meals provided for the convenience of the employer for amounts paid or incurred after December 31, 2025.	Essentially, operating expenses associated with employer-provided recreational facilities, such as fitness centers are not deductible starting in 2018. Food and beverages provided to employees are subject to the 50% limitation, regardless of whether incurred for employer convenience or as a de minimis fringe starting in 2018. Further, no deduction is provided for expenses associated with eating facilities incurred starting in 2026.