

# Executive Benefits: Impact of Tax Reform

## Did you just get hit with the excise tax?

The Tax Cuts and Jobs Act includes Section 4960 which imposes a 21% excise tax (current corporate tax rate) on tax-exempt employers for providing compensation in excess of \$1 million, as well as for paying “parachute payments.”

### 1. Excise tax on compensation in excess of \$1 million (per person, not cumulative)

- Applies to the top five highest-compensated employees, and may include more if an employee was previously in the top five
- Compensation is generally compensation as defined for income tax withholding purposes
- This is primarily box 1 compensation reported on the W-2

### 2. Excise tax on parachute payments

- Applies to all payments that are contingent on separation from service, whether or not there has been a change of control
- Applies with respect to any employee who is highly-compensated under the IRS qualified plan definition (i.e., \$130,000 in 2020)
- To be subject to the tax, total severance payments must equal or exceed three times the employee’s five-year average W-2 taxable income

### How to Minimize or Eliminate the Excise Tax

An existing 457(f) plan can be restructured or changed to a split dollar plan to minimize or eliminate the excise tax. The split dollar option is particularly attractive because the payments do not count as compensation in the excise tax calculation. Further, split dollar plans offer the organization cost and risk mitigation, as well as receive special treatment on the organization’s 990 form.

### Next Steps

Contact us to determine if you are currently, or potentially in the future, subject to the excise tax. We’ll evaluate your current executive benefit plans and severance agreements, then offer recommendations to help lessen potential taxes and other risks to both the organization and the executive.

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