MorrisonCohen LLP

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Client Alert

Tax Cuts and Jobs Act – Compensation and Employee Benefits Overview

December 28, 2017 – President Trump signed the Tax Cuts and Jobs Act (the "Act") into law on December 22, 2017. The Act includes several compensation- and employee benefits-related provisions. Most of these provisions become effective for tax years starting after December 31, 2017, and a number of these provisions sunset after several years. Over the coming weeks, Morrison Cohen will publish a series of Client Alerts with details of the Act. Below are high-level summaries of key provisions relating to compensation and employee benefits matters:

Compensation-Related:

- *Carried Interest*: Extended holding period to three years – up from one year – in order to receive favorable capital gains tax rates on partnership interests received in exchange for services.
- *Deferral Election for Qualified Equity Grants*: Created a new election for employees receiving qualifying stock options and restricted stock units to be able to defer the gain on exercise or settlement for up to five years. The company's deduction is also similarly delayed. A company must grant qualifying options or restricted stock units to at least 80% of its U.S. employees, and the company's senior executives and certain owners are not eligible to make the election.
- *Deductibility of Compensation Paid to Public Company Executives:* Eliminated the performance-based compensation and commission exemptions from IRC section 162(m), so that stock options and other common compensation structures used in public companies will no longer be excluded from calculating the $1 million dollar deduction limit. The new rule also expands coverage to match the SEC's disclosure rules – now including a company's CFO – and provides that, once covered by IRC section 162(m), an individual is always covered.
- *Excise Tax on Compensation Paid to Tax-Exempt Executives*: Imposed a new 21% excise tax on the compensation paid to a tax-exempt organization's top five executives who receive more than $1 million, including severance pay. Like the new IRC Section 162(m) rules, once a "top five" individual, always one.

- *Excise Tax on Expatriated Corporations*: Increased the excise tax to 20% from 15% on stock-based compensation recognized by senior executives and certain owners where a company undertakes an expatriation transaction (i.e., one where a company re-domiciles outside of the U.S.).

Employee Benefits-Related:

- *Repeal of Affordable Care Act Individual Mandate*: Reduced to zero, beginning in 2019, the Obamacare individual mandate, which imposes a tax penalty on individuals who fail to maintain minimum essential health care coverage.

- *Extended Rollover Period for Plan Loan Offset Amounts*: Extended the deadline for rolling over an unpaid loan balance from a qualified plan into another qualified plan or IRA until the due date of the participant's tax return (with extensions) – generally up from 60 days after an individual terminates employment. If the rollover does not occur by the deadline, the unpaid loan balance is treated as a taxable distribution.

- *Repeal of Recharacterizing Certain Roth IRA Contributions*: Eliminated an individual's ability to recharacterize conversion contributions to a Roth IRA as traditional IRA contributions in order to unwind the original Roth IRA conversion. The rules allowing recharacterization with respect to other traditional IRA and Roth IRA contributions are unchanged.

- *Expanded Use of Section 529 Plans*: Expands qualifying distributions from Section 529 plans – up to $10,000 per year – to permit payments for elementary and secondary public, private or religious school education expenses. Previously, qualifying distributions were permitted only for college or graduate-level tuition and expenses.

- *Family and Medical Leave Act Credit*: Allows, for 2018 and 2019, businesses to take a tax credit between 12.5% to 25% of wages paid to qualifying employees while on certain family and medical leave, as long as all full-time employees are allowed at least two weeks of annual paid family and medical leave and the rate of wage payments is at least 50% of wages normally paid.

If you have any questions about the recent changes under the Act, please contact us. If you wish you may directly contact our Compensation, Benefits & Employment attorneys who are carefully monitoring these changes:

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