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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

Corporations Should Consider Accelerating Compensation Deductions in 2017

On Wednesday, December 13, 2017, House and Senate Republicans announced that they had reached agreement on the terms of a joint tax bill. The announcement states that the joint tax bill would reduce the maximum corporate tax rate to 21% beginning with 2018. The announcement also states that the maximum individual rate would be reduced to 37% starting in 2018 as well.

If the joint tax bill is enacted, tax deductions taken in 2017 would be more valuable to corporations than those taken in 2018, because the deduction in 2017 would offset income taxable at a maximum rate of 35% instead of the reduced maximum rate of 21% that would go into effect in 2018. In order to maximize the value of compensation deductions, corporations that use a calendar year for tax purposes should consider accelerating compensation deductions into 2017, if possible.

For accrual-basis corporations that use a calendar year for tax purposes, the corporation would need to establish a minimum liability for bonuses and other compensation that would otherwise be paid before March 15, 2018. Actual payment could still be made in 2018, and employees would be eligible to receive the reduced individual tax rate on such payment.

For cash-basis corporations that use a calendar year for tax purposes, the corporation would need to accelerate the vesting and make the payment in 2017. However, employees would not be eligible to receive any reduced individual rate on the payment. These corporations would need to make sure the acceleration of payment into 2017 would not violate Section 409A, if applicable.

Public corporations will need to address Section 162(m) requirements for qualified performance-based compensation in order to maintain the current exclusion from the deduction limit. (The Section 162(m) performance-based compensation exception is expected to be eliminated by the tax bill, but it is unclear if there will be the transition period for existing compensation that was included in the Senate tax bill.)

While the enactment of the joint tax bill remains subject to approval by both the House and the Senate, passage is looking more likely, so corporations should start evaluating the compensation that may be eligible for an accelerated deduction in 2017, as well as what is needed to effect that accelerated deduction, so action may be taken quickly before year-end to accelerate deductions if the joint tax bill is enacted.

If you have any questions on compensation deduction planning for 2017, please reach out to your HSE attorney. For more information, visit www.hselaw.com.

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