UNIVERSITIES NEED A GOOD DEFENSE WHEN TACKLING THE TAX CUTS AND JOBS ACT

PACIFIC ADVISORS®

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Beginning this year, **many public and private universities may need to recruit a new kind of 'special teams' to devise strategies** to manage the new 21% excise tax that will affect their institution's finances. Typically, those include athletic directors and coaching staff, and for some institutions it may also include professors, deans, medical school faculty, and even the presidents/CEOs of the institution itself. Faced with this new tax, for some in the millions of dollars, many organizations could find themselves scrambling for a plan that doesn't threaten the competitiveness of their programs.

The Tax Cuts and Jobs Act (TCJA) added IRC § 4960 which imposes a **new excise tax, equal to the corporate tax rate, on "covered" employee salaries in excess of $1,000,000**. Once assessed as a "covered" employee making more than $1,000,000 in salary and bonus compensation from an institution, that employee will carry that status moving forward, even if their compensation drops below the cap in future years. While the new law took effect on December 31, 2017, universities will need to take into consideration covered employees for the 2016 tax year as well. Additionally, the 21% excise tax will apply to certain "parachute payments" for any staff that separates from service and meets certain salary thresholds. Even though the tax is restricted to a small population of the university's highest earners, some institutions may owe millions of dollars in additional tax.

According to data compiled by USA TODAY Sports, more than 75 NCAA football coaches made more than $1,000,000[1] for the 2017 season. Without a change in strategy, their non-profit universities would face a **combined total of about $30,000,000 in excise tax in 2018**. The salaries and bonuses for basketball coaches are lower on average, but more than 60 men's coaches[2] and 8 women's coaches[3] may qualify. The potential excise tax hit is significant for many universities.

What Plays are Universities Considering?

There are three obvious options that many institutions may be considering, yet each comes with a likely-to-be-unacceptable consequence:

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[1] *http://sports.usatoday.com/ncaa/salaries/*
[2] *http://sports.usatoday.com/ncaa/salaries/mens-basketball/coach/*
[3] *http://www.sportsinfo.pro/WBBSurvey2017.html*

1) **Cap Compensation**. Some universities may try to reduce compensation below the $1,000,000 mark to avoid paying the tax. While this could help avoid the excise tax, it may also create turnover and make their programs less capable of attracting and retaining top talent.

2) **Pay the Tax**. Some universities could simply choose to pay the excise tax. However, as competitive pay keeps increasing for top positions and with covered employees remaining covered in future years, this may become expensive and unsustainable. Universities will need to find additional funding and manage budget constraints.

3) **Outsource Compensation to Vendors and Sponsors.** Universities may consider sponsorship arrangements and booster programs to determine how these third-parties can provide direct cash and/or compensation to coaches, athletic directors, and other high-earners. While this may help universities stay under the limit, it puts them at a disadvantage when negotiating with these vendors for other discounts. Critically, this approach also exposes them to loss of control as they hand over their payroll strategy to an outside entity. This technique can add unwanted publicity and scrutiny from the watchful eye of the public.

Universities Must Account for Competitiveness, Control, and Privacy

Just as you wouldn't pick a play without considering all options, **universities should first understand how other tax-efficient financial arrangements and solutions can serve their objectives**. Qualified tax and insurance planning specialists can potentially help them alleviate the financial burden of the excise tax while maintaining control, privacy, and competitiveness over their compensation programs - something the above strategies may miss.

For example, **specially-designed non-qualified deferred compensation plans and life insurance with split-dollar loan arrangements** are proven, conservative compensation strategies. When appropriately coordinated, they can create effective, tax-efficient solutions for highly compensated employees. These strategies also allow universities to have more control over their compensation packages, without relying on third-parties who may not always have the university's best interest at heart.

Just as coaches meet with assistants and specialists to devise a gameday plan, universities would be wise to seek counsel from qualified tax and insurance planning specialists before the end of the year. **With a little time to plan**, they can help maintain control and build a scalable, enduring compensation model that gives universities a winning and competitive strategy to remain ahead of the game.