Nonqualified Deferred Compensation Plans Today - Our Updated Survey

Nonqualified deferred compensation survived tax reform proposals that effectively would have eliminated it as an executive compensation opportunity. However, the Tax Cuts and Jobs Act does have several provisions that could impact the structure of nonqualified plans in place among corporate America, as well as those at tax-exempt organizations. We’ll highlight some of these below, including why companies may need to review their tax withholding practices on distributions from any nonqualified plans.

Over ten years ago, IRC §409A forced all companies to alter the design of their NQDC plans. Most companies still periodically review plan terms and participation levels to assess their perceived value as an executive benefit. We have been monitoring the design of nonqualified deferred compensation plans (NQDC) plans for the past 25 years. In the defined contribution world, there are two primary types of NQDC plans – an excess benefit plan and a “top-hat” elective deferral plan. While they can have similar features, there are structural design differences including eligibility, compensation eligible for deferral, and the number of investment choices.

Excess benefit plans technically can only replace benefits that cannot be provided under a qualified plan due to the IRC §415 limit - $55,000 for 2018. However, most excess or supplemental savings plans make up for 401(k) contribution limitations due to the IRC §401(a)(17) annual compensation limit and the IRC §402(g) elective deferral limit. In contrast, top-hat NQDC plans must limit eligibility to a select group of key management or highly compensated employees. This is a much smaller eligible group. An exemption from most ERISA rules allows for greater flexibility in plan design, including the compensation eligible for deferral.

With the primary window for the deferral of compensation earned in 2018 having closed last month per §409A rules, we thought this would be an appropriate time to update our informal survey of the design of the NQDC plans in place at 350 companies where Ayco provides financial counseling or financial education services. While around 8% of this group either have frozen, terminated or never offered a NQDC plan, the overwhelming majority do now offer either an excess benefit plan, a top-hat plan or a combination plan that incorporates both features.

Here is an indication of the plans currently in place among our survey group:

**NQDC Plans**

<table>
<thead>
<tr>
<th>Plan Type</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Excess Benefit Only</td>
<td>9%</td>
</tr>
<tr>
<td>Single Combination Top-Hat/Excess Plan</td>
<td>32%</td>
</tr>
<tr>
<td>Separate Top-Hat &amp; Excess Benefit Plans</td>
<td>51%</td>
</tr>
<tr>
<td>Frozen or No Plan</td>
<td>8%</td>
</tr>
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Participation Eligibility

Whereas excess benefit plans may be available to all employees, companies typically limit eligibility for NQDC plans to higher paid executives. Eligibility for a top-hat plan can be based on job position, invitation by the CEO or having pay above a stated amount, such as the IRC compensation limit. In our recent informal survey, just over 40% of companies defined eligibility by compensation level, 55% did so by position or grade, and at the remaining 5%, eligibility was discretionary or by invitation.

Under Dept. of Labor (DOL) regulations, a plan where eligibility is limited to a select group of key management or highly compensated employees constitutes a "top-hat" plan, exempt from many ERISA rules and eligible for a one-time registration filing with the DOL. Neither the DOL nor the IRS officially has defined what constitutes a top-hat group. In Advisory Opinion 90-14A, the DOL implied that a top-hat plan must cover only those individuals who, by virtue of position or compensation, have the ability to affect or substantially influence the design and operation of the plan. A number of courts have concluded that where participation is limited to no more than 5% of the company's workforce, the top-hat rules will be satisfied.

A recent Federal Court of Appeals decision (Sikora vs. UPMC) upheld a lower court decision with regard to whether the NQDC plan at issue constituted a top-hat plan. The court rejected the plaintiff’s argument that an executive’s bargaining power (or lack thereof) was a critical element in any determination. In this case, the court found the plan did qualify as a top-hat plan, and as a result, ERISA’s vesting rules did not apply. Thus, the former VP forfeited his rights to supplemental plan benefits due to his failure to sign a non-compete agreement.

Compensation Eligible for Deferral in Top-Hat Plans

Originally designed to allow only senior executives a chance to defer annual bonus awards, NQDC plans have evolved into flexible, multi-use executive compensation plans. We have seen an expansion in the elements of pay eligible for deferral. (Excess benefit plans generally will use the same definition of eligible compensation as the company’s 401(k) plan, without the constraint of the §401(a)(17) limit). In large part, this can be due to changes in the mix of compensation paid to corporate executives, including long-term incentive (LTI) and performance awards. Around 5% of our survey group allows for the deferral of other elements of compensation, including severance, nonqualified pension payouts, sign-on bonuses, or certain cash allowances (which is why the total % in the chart is slightly above 100%).

Included in the LTI award category are performance awards (performance units or shares), and/or restricted stock units. Generally, any deferral of RSUs or performance share awards will remain denominated as deferred stock units and may be required to be paid out in stock to retain favorable accounting treatment.

The following indicates how our survey group defines pay eligible for deferral in top-hat plans:

Maximum Deferral Amounts - A large majority of plans in our survey group (70%) permit any amount of annual bonus to be deferred, up to 100%. This is also the typical maximum deferral amount where LTI awards may be deferred – often in multiples of 25%. But, where salary is permitted to be deferred, the maximum usually is less than 100%. The most common salary deferral maximum is 50%, while 7% of our survey group permits less than 50% to be deferred and 13% of the companies do not permit salary to be deferred at all into their elective NQDC plan. Deferral of compensation into a NQDC plan reduces what counts as eligible pay for 401(k) and qualified pension plan purposes.

We also see a difference between excess benefit plans and top-hat NQDC plans with regard to company contributions. A match or company contribution is much less common in NQDC plans with only about 50% of the plans we reviewed having a company contribution or match.

Timing Of Deferral Election

Under IRC §409A rules, an election to defer compensation generally must be made prior to the year in which the compensation will be earned. IRS regulations permit a distinct deferral period for newly eligible plan participants - within 30 days of becoming eligible for the plan. In addition, deferral of restricted stock units (RSUs) may be permitted within 30 days of the date of grant. For qualified performance-based pay, including annual bonus and long-term performance awards, a company could (but need not)
allow a deferral election to be made six months before the end of the performance period. This means that companies could allow a deferral election for their bonus and LTIP awards to be made in May or June (for calendar year plans) or at a different time for fiscal year plans. But this could mean that an employer might have two distinct deferral election periods - one for performance-based pay and another for salary.

Our analysis of those companies for which we have information regarding 2017 or 2018 deferral elections indicates that only about 15% have a deferral election window in June for performance-based pay (including 5% that will have a second deferral window in November/December for salary deferrals). A large majority of our survey group have a single deferral election period in November/December for all compensation to be earned in the subsequent year; and just over 6% have a deferral window at a different time (mostly related to fiscal year plans). We see most companies preferring to have a single deferral election period rather than separate periods for different elements of pay. Not only does this make it easier administratively, but it can also be easier for plan participants to plan a deferral strategy, including integrating any deferral of salary and/or bonus to a 401(k) plan.

**Investment Choices**
The rate of return or crediting rate is often one of the primary factors influencing an executive’s participation in a deferred compensation plan. While excess benefit plans typically will have the same or similar phantom investment choices as the company’s 401(k) plan, most top-hat NQDC plans have fewer investment alternatives. In our recent survey, over 50% of the top-hat or combination plans offer the same or similar funds as are available in the company 401(k) plan, and typically, the same mutual fund company is recordkeeper for both plans.

In our initial informal survey conducted 25 years ago, just over one-half of NQDC plans provided a single rate of return, while only 22% offered five or more investment choices. Just as the number of choices available in 401(k) plans has increased since then, so too have the available choices in NQDC plans.

**Recordkeepers** – Among our survey group, here are the most common recordkeepers for active top-hat plans:

- Fidelity
- Newport
- Mellen TPG
- Vanguard
- Aon Hewitt
- Merrill Lynch
- Principal
- T. Rowe Price

Here are the number of investment alternatives in our most recent survey of top-hat plans:

<table>
<thead>
<tr>
<th># of Investment Alternatives</th>
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<tbody>
<tr>
<td>+ One or Two (17%)</td>
</tr>
<tr>
<td>Three to Five (6%)</td>
</tr>
<tr>
<td>Six to Ten (17%)</td>
</tr>
<tr>
<td>Eleven to Twenty (45%)</td>
</tr>
<tr>
<td>More than 20 (15%)</td>
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</table>

Many more plans now include target-date funds as an available option - just under 20% of our survey group. Those plans with a single one crediting rate almost always have a fixed income rate, most commonly based on a Moody's rate, U.S. Treasury rate, Prime rate, or specified rate.

Company stock units are an investment choice at around 25% of our survey group – although sometimes just for RSU/PSU deferrals. We are also now seeing more companies limit or restrict company stock exposure in the NQDC plan (similar to what we are seeing in 401(k) plans) and 12 companies offer company stock in their 401(k) plan, but not in their NQDC plan.

**Form & Timing of Distribution**
Almost all plans allow a participant to select the form and timing of distribution. A large majority of plans we reviewed have class-year elections; that is, a distinct payout election is made each deferral cycle. Nearly all plans permit a participant to elect to receive payment in a lump sum or periodic installments. But, we counted eight plans that allow for only a lump sum payout, with the participant selecting the year of payout. At 75% of plans, the payment election made applies in the event of a qualified retirement, but with payment automatically made in a lump sum if the participant terminates prior to retirement. At the remaining 25% of plans, a participant’s payment election applies regardless of when termination occurs.

One important difference between grandfathered pre-2005 plans not subject to §409A and the current plans at public companies is the concept of the 6-month delay for distributions to "specified employees" triggered by a separation from service. This affects both installment and
lump sum distributions. No 6-month delay is required, however, for specified date distributions or for distributions on account of death, disability, qualifying hardship, or upon a change in control (CIC). Around 10% of the plans provide for a lump sum cashout upon a CIC.

Last year, the Dept. of Labor (DOL) revised the ERISA claims procedures that relate to proving a qualified disability. This could include disability claims under certain NQ plans. The DOL has just announced that these new rules will apply as of April 2018. Employers should review these.

**Specified Date Distributions** - Most of the plans in our survey group allow distributions to commence as of a year and sometimes, month, specified by the participant, which may be during the term of employment. In some cases, a minimum period of deferral is required; a typical minimum deferral period is 3 or 5 years. Just over three-quarters of the plans we reviewed permit such fixed date or "in-service" distributions. This allows a participant to meet anticipated cash flow needs, such as a child's education expense.

**Installment Payments** - Under most plans, installments are made annually. However, nearly 20% of our survey group allows participants to receive installments on a monthly, quarterly or annual basis, as elected. Most plans allow for installment payments only if the account balance exceeds a specified amount, such as $25,000 or $50,000. Otherwise, payment is made in a lump sum.

The following are the maximum number of annual installments that may be elected under the plans we surveyed:

### Maximum Number of Annual Installments

<table>
<thead>
<tr>
<th></th>
<th>5%</th>
<th>10%</th>
<th>15%</th>
<th>20%</th>
<th>&gt; 20 or Life Expectancy</th>
<th>Lump Sum Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>3%</td>
<td>40%</td>
<td>43%</td>
<td>9%</td>
<td>3%</td>
<td>2%</td>
<td></td>
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</table>

**Change In Distribution Election** - Prior to enactment of §409A, so-called second-look, or re-deferral elections were fairly common in NQDC plans. While §409A does allow for a change in a previous distribution election, an acceleration in payment (with a few limited exceptions) is prohibited; any change must be made at least 12 months prior to payment, and there must be a 5-year delay in when payments can commence. These rules and particularly, the 5-year delay have led many companies to eliminate the right to change an original distribution election. Among our group, nearly 60% of the plans permit a participant to change a distribution election. We counted ten plans that allow only one such change.

**Divorce** – A NQDC plan can provide for division and payment to a former spouse pursuant to a state domestic relations order (which is not exactly the same as a QDRO). This is also allowed under §409A Treasury Regulations. However, plans do not have to permit such a division – and most plans have an anti-alienation clause which prevents any division or early distribution. We estimate that only around 10% of plans have a specific provision dealing with a divorce of a plan participant.

**Funding and Security**

While a nonqualified plan cannot be formally funded, many plans are informally funded. We estimate that one-third of the plans in our survey group have at least partial funding using life insurance, which helps avoid tax consequences to the employer on income realized on investments. We also have seen a few companies use total return swaps as a hedging strategy for the unfunded liability, avoiding the cost of life insurance. Plan sponsors that offer a range of mutual fund returns typically informally invest in the actual funds that are the basis for the plan’s crediting rate. On the other hand, a company offering a single fixed income crediting rate will be unlikely to fund the plan at all.

**Rabbi Trust** - Approximately 50% of the survey group report having a Rabbi trust associated with their NQDC plan. This is intended to help ensure that in the event of a change-in-control, the trust will be fully funded to be able to pay all promised benefits. But, as is often misunderstood by plan participants, a Rabbi trust provides absolutely no protection for the more serious risk associated with these plans – corporate bankruptcy.

Because these plans represent compensation already earned by a participant, forfeiture and clawback provisions are much less common in NQDC plans than in SERPs or
other plans that are primarily employer funded. We counted less than 40% of plans with forfeiture clauses, typically associated with going to work for a competitor.

**Tax Withholding & Reporting**

Distributions to employees and former employees are subject to the supplemental wage withholding rules – which are in a state of flux and some uncertainty due to recent tax law changes. When the aggregate amount of supplemental wages (which excludes salary) exceeds $1M, the required federal withholding rate is equal to the highest individual rate for that year. That will adjust downward to 37% for 2018. For supplemental wages below the $1M threshold, the flat rate withholding had been 25% for 2017. The IRS has now confirmed in Notice 1036 that this flat rate will drop down to 22% for 2018, with no other percentage allowed.

Employees may also have to complete new W-4 forms since personal exemptions are now gone. In the interim, a Congressional Conference agreement provides that existing tax withholding rules may continue to be used through 2018, despite the adjustment in tax rates. Companies will need to review this matter with payroll, tax withholding and reporting administrators.

Adding another layer of complexity are the revised FASB rules on equity compensation withholding, which could create an accounting issue for companies that elect to withhold in excess of the maximum statutory rate. Distributions from a NQDC plan are considered to be “supplemental wages” and reported in box 1 of Form W-2 and in box 11 if Social Security taxes were withheld in a prior year.

There is no required withholding for any §409A penalty tax that may be incurred.

**Social Security Taxation** – Vested compensation that is voluntarily deferred is subject to FICA taxation including the 0.9% Additional Medicare tax, at the time of deferral. However, FICA withholding can be delayed until later in the year of deferral under a rule of administrative convenience per Treas. Reg. 31.3121(v)(2)-1(e)(5). Company credits or contributions are subject to FICA when vested or no longer subject to a substantial risk of forfeiture. Earnings on deferred amounts are not subject to FICA – unless, the earnings rate is an "above-market" fixed rate (which the IRS has never defined). This must also be disclosed in the annual proxy statement of a public company if any of the named executives are eligible for this above-market rate.

Most all companies collect the payroll taxes due from non-deferred wages, rather than reduce the deferred amount by the employee’s share of the taxes. However, §409A regulations do allow a distribution from a NQDC plan to pay FICA taxes due without penalty.

**Tax Cuts & Jobs Act (TC&JA)**

A reduction in federal income tax rates based on recent tax reform could appear to make NQDC slightly less attractive. However, the significant benefit of tax deferred compounding (the 8th Wonder of the World according to Albert Einstein) will continue to make deferral valuable.

**Changes to IRC §162(m)** – One provision of the TC&JA that could impact distribution elections made by “covered employees” relates to changes made in IRC §162(m) which limits the deduction a public company may take upon paying compensation annually in excess of $1M to such employees. The new law expands who is considered a covered employee to include the company’s principal financial officer, who had been excluded under the law prior to 2018. In addition, once an individual is categorized as a covered employee at any time after 2016, this restriction on the corporate deduction will continue to apply to all compensation in excess of $1M paid to such individuals, including post-employment and post-death payments.

Significantly, the exclusion of performance-based compensation from being part of this calculation has been eliminated. Thus, annual bonus payments, performance-based long-term awards and NQ stock options will now be subject to the §162(m) limit. However, it appears that accrued benefits as of Nov. 2, 2017 under a written, binding contract that is not modified in any material respect will be grandfathered. Companies will need to review whether any such contracts exist and also whether they contain plan language that requires the deferral of non-deductible compensation.

A lower corporate tax rate may mean that the loss of this deduction may not be as much of an issue as previously, including to shareholder advocate groups. However, this also means that compensation paid after employment termination, including under NQDC plans, could now be eligible for a corporate deduction (except for covered employees whose total payments exceeds $1M).

**Qualified Equity Grants** – This provision applies to private companies rather than public companies. It will allow U.S. based employees who are granted stock options or restricted stock units with an opportunity to elect to defer
income taxation for up to five years from the exercise or vesting date. Certain key executives are excluded from this opportunity, including anyone who is a 1% owner, current or former CEOs or CFOs and their family members, and certain highly compensated officers.

- **Why Deferral Plans Are Valuable**
  From a company's perspective, some advantages of offering an elective top-hat nonqualified deferral plan can include:

  - Part of a competitive executive pay package;
  - Company can be selective as to who is eligible for the plan, no discrimination testing;
  - Plan is unencumbered by tax law limits; participation is voluntary;
  - Company can be flexible in plan design; company contributions can be part of plan design or even be discretionary. Plan can allow for hardship distributions;
  - Minimal regulatory compliance; top-hat plans are exempt from most ERISA rules;
  - Cash flow savings; effectively, company is borrowing from its executives;
  - Can serve as a golden handcuff and a recruiting tool;
  - Allows higher paid to supplement retirement savings and receive market rate returns;
  - Defined contribution vehicle to replace demise of defined benefit SERP;
  - Company has choice of informal funding alternatives, but need not fund;
  - Company stock unit investment creates opportunity to meet stock ownership requirements.
  - Because most plans allow choice as to the form and timing of distribution, plans can be used to meet various personal planning needs.

From a participant’s perspective, more can be accumulated net after-tax in a NQDC plan due to tax deferred compounding than if the same investment were made outside of the plan (despite appreciation being taxed as ordinary income rather than capital gains).

**State Tax Avoidance** - A NQDC plan also may be a means of legitimately avoiding non-resident state income taxes at distribution if the source tax exclusion rules are met. For an excess benefit plan that qualifies as a “mirror plan”, any form of payout qualifies for this potentially valuable planning tool. For a top-hat plan, this generally will require a participant to elect to receive payments over life expectancy or a period of at least ten years. This can be a significant benefit for executives working in over 20 states that tax nonresidents on amounts earned in the state.

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**Can Beneficiary of Group Term Life Insurance Be Changed by a Divorce Decree?**

A recent federal Court of Appeals decision addresses whether a provision in a separation agreement can revoke a beneficiary designation in place under an employer-provided group life insurance plan (*Sun Life Assurance Company of Canada vs. Jackson*). Here are the interesting facts in this lawsuit.

Bruce Jackson was employed by Samaritan Health Partners. He elected both basic and optional life insurance under his employer’s plan, with total coverage of $239,000 and named his uncle, Richard Jackson, as beneficiary under both policies. Bruce was married to Bridget Jackson and they had one child, Sierra Jackson. In 2006, Bruce and Bridget divorced. In their separation agreement the parties agreed to name Sierra as the primary beneficiary of any and all employer-provided life insurance until the later of her reaching age 18 or graduating from high school. However, Bruce never changed the beneficiary designation in favor of Sierra under the group term insurance policies.

In 2013 when Sierra was still in high school, Bruce died. Both Uncle Richard and Sierra made competing claims for the life insurance benefits. After reviewing both claims, Sun Life, the insurer, decided to pay all of the proceeds to Richard, the named beneficiary. Lawsuits began shortly thereafter with Sun Life seeking a declaratory judgement that it had properly paid the death benefits to Richard. In 2016, a federal district court in Ohio issued a decision in Sierra’s favor and ordered Sun Life to pay $239,000 plus interest to Sierra. Sun Life appealed that decision.

A key question which the court had to decide was whether the provision in the separation agreement constitutes a qualified domestic relations order (QDRO) and, if so, whether it could change the beneficiary of an employer-sponsored group life insurance plan. A QDRO may be based on a state court decision or order relating to child support, alimony or marital rights that recognizes an alternate payee’s right to benefits. However, it must meet certain requirements which a QDRO administrator must verify.

Employer welfare benefit plans, including group life insurance plans, are subject to ERISA, which generally preempts state laws that relate to or impact any employment benefit plan. ERISA was enacted in 1974, but it wasn’t until 1984 that Congress amended the law to
provide greater protection for spouses and dependents following a divorce. A question for the federal court to decide was whether there was a QDRO in this fact pattern where there were multiple written agreements between the divorcing parties relating to their daughter, Sierra.

The appellate court reviewed the language in the parties’ separation agreement, shared parenting plan agreement, as well as the state divorce decree and concluded that together they clearly specified the information required to be considered a QDRO. This is despite the fact that the documents were never apparently submitted to Jackson’s employer before he died.

Sun Life had argued that the optional life insurance was not “employer-provided” coverage because the employee paid all of the plan premiums. However, the court rejected that and found that both the basic coverage paid for by the employer as well as any optional insurance both constituted employer-provided coverage. Sun Life also argued that it was the decedent who failed to change the name of the beneficiary and that any litigation should be between the uncle and daughter. However, the court found that the proper beneficiary for the insurance proceeds was Sierra and that the death benefit plus accrued interest should be paid to her. It would be up to Sun Life to reconcile with the payments it had previously made to Richard.

Are Retirement Plan Changes on the Horizon?

Recent tax reform made two relatively minor changes that will impact qualified retirement plans and IRAs. One change will allow individuals who have an outstanding 401(k) plan loan upon termination of employment an extended period to avoid taxes, including possible 10% penalty taxes, on a loan offset. A loan offset can occur when the outstanding plan loan is not repaid within a plan designated period following termination. It is treated as a taxable distribution — although, taxation could be avoided if the individual is able to rollover cash equal to the unpaid loan amount into an IRA or other eligible plan.

Instead of having only 60-days from the loan offset date to rollover any unpaid balance, the new law will allow an individual up until the due date of their tax return (including extension) for the year of termination to make the rollover. The law also eliminates the ability to recharacterize a Roth IRA conversion. That is, once an individual has converted a traditional IRA to a Roth, the transaction may not be unwound or reversed.

Even while the tax reform was being constructed and reconstructed, members of Congress were working separately on bills directed toward improving retirement plan accumulations. The Retirement Plan Simplification and Enhancement Act (RPSEA), introduced into the House Ways & Means Committee, has bipartisan support. Here is a brief summary of some of the proposals in this bill:

- **Auto Enrollment/Increase** — A safe harbor design would be added to encourage adoption of auto enrollment. The current 10% cap on auto increase rates would be eliminated and a graduated employer match on deferrals up to 10% would be added.

- **Eligibility** - Employees who worked at least 500 hours each year for three consecutive years would be allowed to participate in an employer qualified plan, but would be excluded from nondiscrimination testing.

- **Required Minimum Distributions (RMDs)** - An individual would not be required to take RMDs until the aggregate balance in employer plans and IRAs exceeds $250,000. In addition, the initial RMD age for IRAs and certain other plans would increase in steps from the current age 70½ to age 73 beginning in ten years.

- **Qualified Longevity Annuity Contracts** – These would no longer be limited to 25% of retirement assets and the current $125,000 limit would be increased to $200,000. (A separate bill would provide a safe harbor for guaranteed lifetime income products within 401(k) plans to encourage their inclusion).

- **Rollovers** - A non-spouse beneficiary would be permitted to directly rollover assets inherited to their employer’s plan that accepts such rollovers. These assets would continue to be distributed under the beneficiary payout rules. Non-spouse beneficiaries of IRAs or employer plans would be eligible to make a 60-day rollover rather than only direct rollovers as provided under current law.

- **Disclosure** – Simplified reporting and disclosure to employees would be adopted.

- **IRA Contributions** - Individuals with earned income after age 70½ would be allowed to make traditional IRA IRA contributions. This is not permitted currently.

It remains to be seen whether this bill will be enacted this year, especially since this is an election year.
Did You Know...

- New mortality tables will be in place for defined benefit pension plans in 2018 per IRC Notice 2017-60 and for 2019 per Notice 2018-02. They are expected to increase plan liabilities for lump sum distributions by 3-5%. However, plan sponsors may continue to use the old RP-2000 tables in certain circumstances for pension funding purposes. The Pension Protection Act requires updates to mortality tables every ten years and the RP-2000 tables have been the standard since 2008.

- The standard mileage rate associated with business use of an automobile or other vehicle increases by 1¢ for 2018 – from 53.5¢ to 54.5¢ per mile. It remains at 14¢ per mile for use in providing gratuitous services to a qualified charity and will be 18¢ per mile for medical care. Commuting is not considered business use. The Tax Cuts & Jobs Act provides that an employer cannot deduct any expense incurred for providing transportation, or making a payment or reimbursement, to an employee for commuting expenses, except as necessary to ensure the employee’s safety.

- U.S. taxpayers with grandfathered assets in offshore deferred compensation plans must recognize income in 2017, or the year of vesting, if later. In Notice 2017-75, the IRS confirmed that distributions from a §457A plan to pay such income taxes will not be subject to the 20% excise tax under §409A.

About This Newsletter

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