

**Robinson+Cole**

## Employee Benefits and Compensation

EMPLOYEE  
HANDBOOK

December 2017

# Tax Cut Impacts on Executive Compensation and Employee Benefits Applicable to Tax-Exempt Organizations

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After much back and forth, the House and Senate both voted to pass the [Tax Cuts and Jobs Act](#) (Act), and the President is expected to sign the legislation shortly. The changes made by the Act are arguably the biggest leap towards comprehensive tax reform of the Code since 1986. Below are highlights of certain provisions as they relate to executive compensation and employee benefit plans maintained by tax-exempt organizations. While not all plans and plan sponsors will be impacted by these [changes](#), we encourage you to review these with your tax advisor and counsel to determine whether you need to take action.

### EXECUTIVE COMPENSATION

- [Excise Tax on Excessive Compensation for Executives of Tax-Exempt Organizations](#). Generally, a 21 percent excise tax on tax-exempt organizations, not their executive officers, will be applied in the event the tax-exempt organization pays compensation in excess of \$1 million to any person who is, or was in a prior taxable year beginning after December 31, 2016, one of the five highest-paid employees of the organization. Remuneration is treated as paid when there is no substantial risk of forfeiture, based on the definition under Code Section 457(f)(3)(B).

Additionally, if a tax-exempt organization pays severance to a covered employee that equals or exceeds three times their average annual wages, the tax-exempt organization, not the covered employee, will be subject to the excise tax on the amounts exceeding the value of the severance benefit over one times such average wage amount (similar to the calculation of a golden parachute excise tax that applies to corporations with a change-in-control event). Finally, remuneration paid to non-highly-compensated employees is exempt from the definition of parachute payment, and remuneration paid to medical professionals (doctor, nurse, or veterinarian) directly related to their medical services is not taken into account.

### FRINGE BENEFITS

- [Unrelated Business Taxable Income](#). Unrelated Business Income Tax (UBIT) now includes any expenses paid or incurred by the organization for qualified transportation fringe benefits and parking facilities used in connection with qualified parking benefits, provided that amounts are not otherwise deductible under Section 274 of the Code.

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For more information or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the lawyers listed below:

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