VIRTUAL COFFEE TALK

Executive Compensation and Qualified Plans Hot Topics

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Alvarez & Marsal Taxand
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Agenda

1 Section 162(m) Updates & Potential Changes

2 Mergers & Acquisitions – Section 280G

3 ESG in Executive Compensation & Qualified Retirement Plans

4 Employee Plans Compliance Resolution System (EPCRS)

5 IRS and DOL Audit Focuses

IRC 162(m) Deduction Disallowance

- ARPA Expansion
  - Effective for tax years after 12/31/2026
  - 5 additional employees – highest paid other than top-5 officers
  - 5 additional employees not subject to "once-always" rule

- Potential legislation
  - Accelerate ARPA expansion to as early as 2022
  - Technical corrections targeting potential workarounds including post-termination pay
  - Possible expansion to private companies

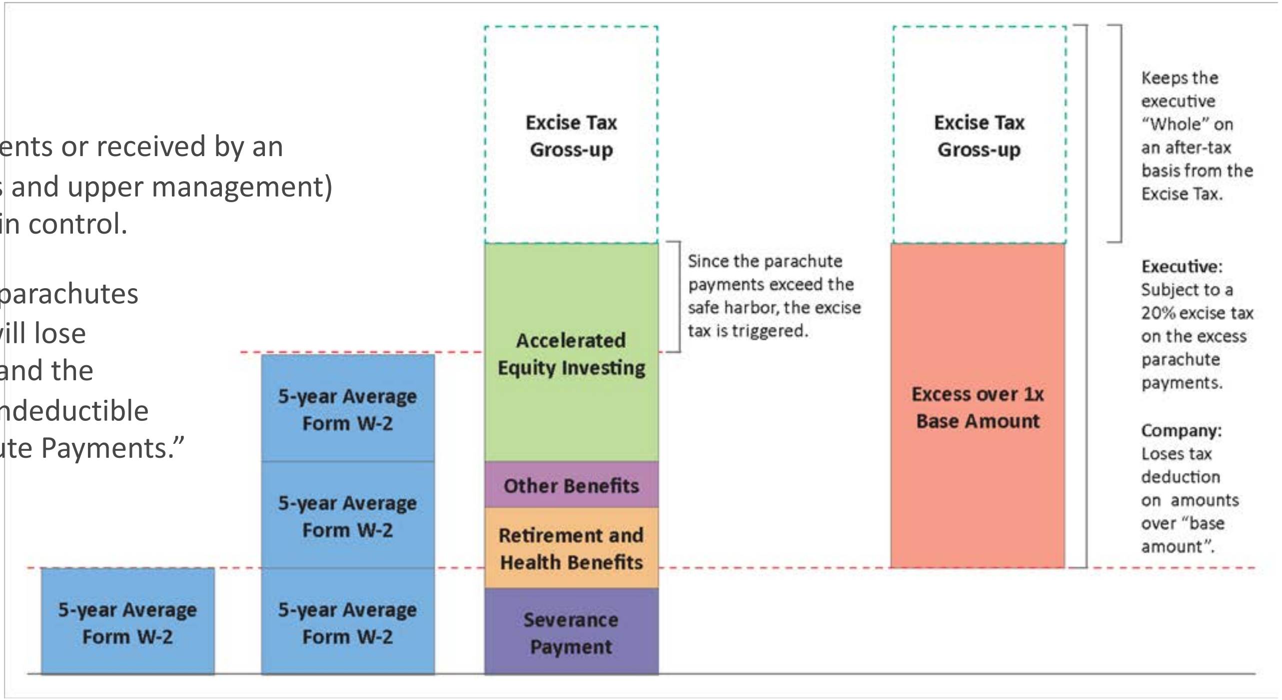
POLLING QUESTION

My company has been involved in a merger and/or acquisition (either as the target or the acquirer) within the past 12 months:

- ☐ Yes
- ☐ No
- ☐ Not applicable

Golden Parachute Rules (Section 280G)

- Golden parachutes are payments or received by an employee (usually executives and upper management) in connection with a change in control.
- As illustrated here, if golden parachutes are “too big,” the company will lose the corporate tax deduction and the employee will owe a 20% nondeductible excise tax on “Excess Parachute Payments.”

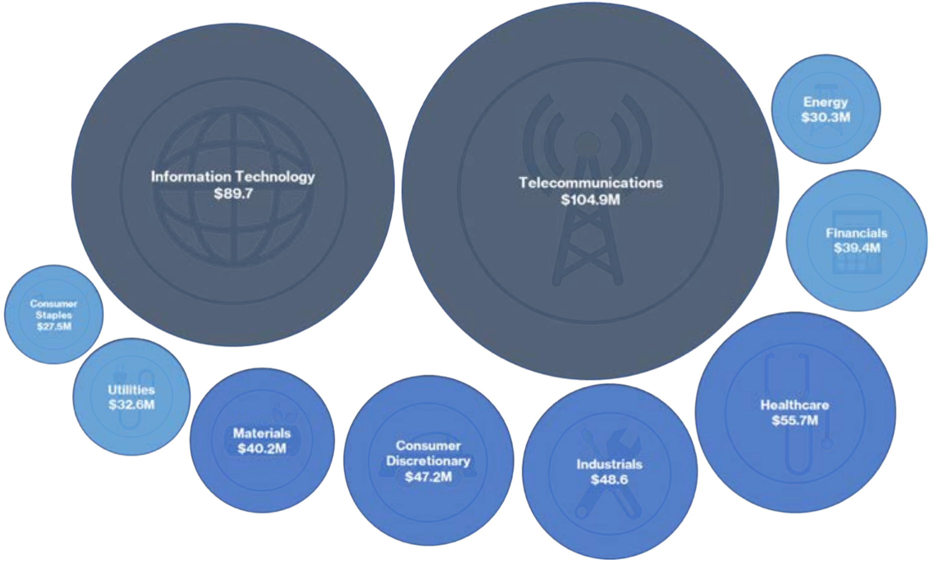


Value of CIC Benefits

Source: *Alvarez & Marsal's and Equilar's 2021/2022 Executive Change in Control Report*

41% Increase

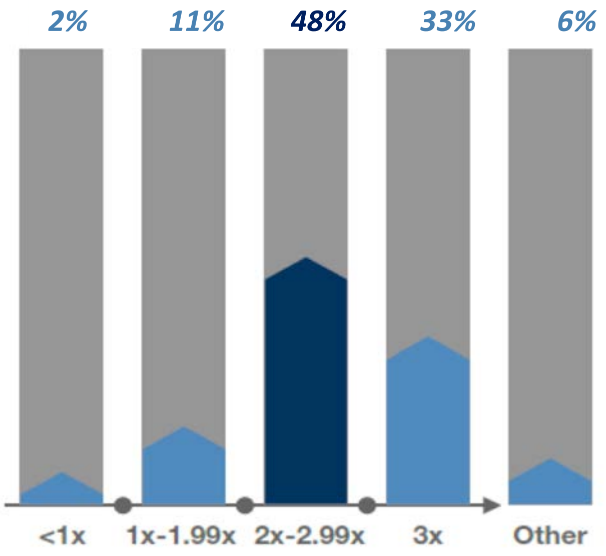
24% Increase



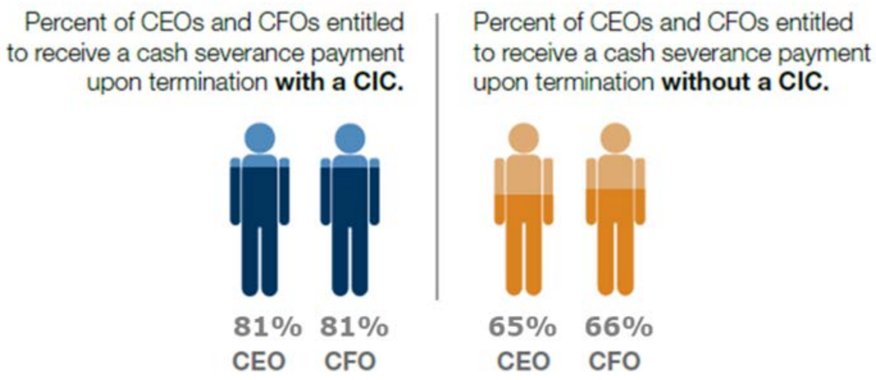
0.05%

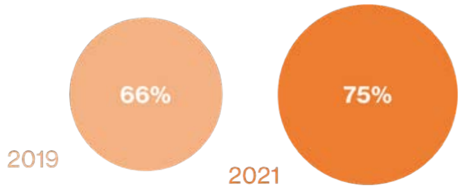
Average total value of CIC benefits for CEOs and CFOs as a percentage of market capitalization

Severance & Long-Term Incentives



CIC Severance Multiples for CEOs
The most common cash CIC severance multiple for CEOs is between 2x and 2.99x compensation.





Approximately **75%** of the 2021 total CIC amounts for CEOs and CFOs is comprised of accelerated vesting of equity awards. This is a substantial increase from 66% in 2019.

Planning Considerations

- Negotiate an excise tax gross-up
- Common Considerations:
  - Base amount planning
    - Exercise stock options
    - Accelerate bonus payments
    - Accelerate stock awards
  - Reasonable Compensation

Watch out for Section 409A in certain situations!

Pre-CIC

- Pro-Rata Annual Bonuses
- Performance-based stock awards
- Performance-based long-term cash awards

Post-CIC

- Non-Competition Agreements
- Consulting Agreements
- Retention Bonuses

POLLING QUESTION

Due to ESG factors, my company has recently made changes to our:

- ☐ Executive compensation programs
- ☐ Qualified plans
- ☐ Both executive compensation programs and qualified plans
- ☐ Neither
- ☐ Not applicable

ESG in Compensation Considerations

- Metrics in Incentive Plans
- Pay Equity

ESG in Qualified Retirement Plans

- The Biden Administration released a proposed rule on October 13th
- The proposed rule seeks to bolster the resilience of workers' retirement savings and pensions by making it clear that ESG factors can be material financial factors to consider
- Departure from prior administration guidance
- 60-day comment period
- Next steps

Employee Plans Compliance Resolution System (EPCRS)

Revenue Procedure 2021-30 was released in July and updates EPCRS. The most substantive changes to EPCRS were in the following areas:

- Expand guidance for correcting errors in which excess amounts were paid to participants;
- Eliminate anonymous Voluntary Correction Program;
- Extend Self-Correction Program period and expand availability; and
- Extend sunset for certain correction methodologies applying to missed deferrals.

IRS and DOL Audit Focuses

- Locating lost participants and ensuring that they receive the benefits to which they are entitled
- Ensuring Required Minimum Distributions are being paid timely
- Ensuring participant loans comply with the requirements of IRC section 72(p)
- Ensuring proper application of a plan's definition of compensation

POLLING QUESTION

I would like to schedule a call with A&M to discuss:

- ☐ Executive compensation
- ☐ Qualified plans
- ☐ Executive compensation and qualified plans
- ☐ Not applicable, I am a practitioner
- ☐ I am not interested at this time

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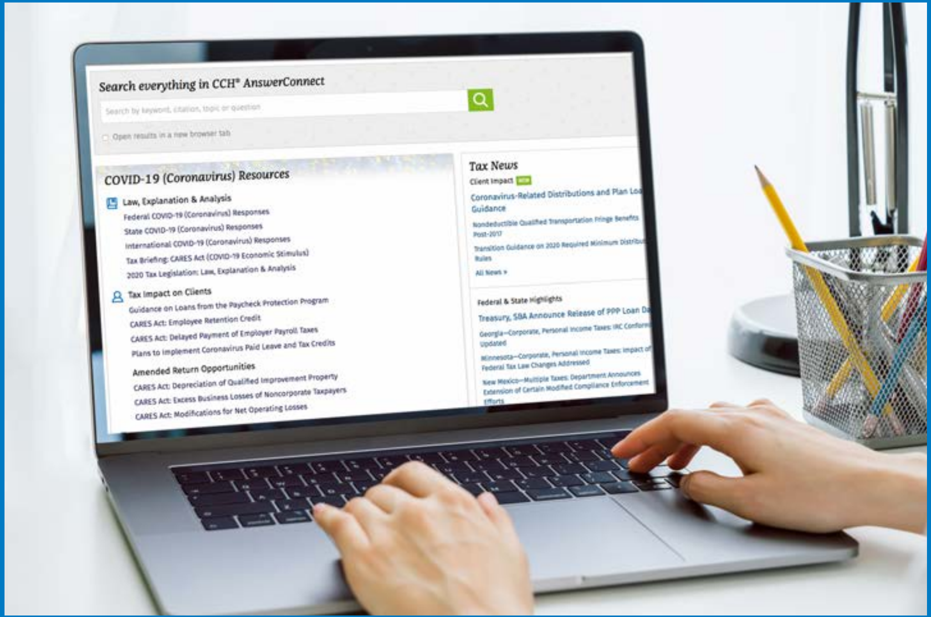

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Thank you for attending

Virtual Coffee Talk — Executive Compensation and Qualified Plans Hot Topics

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Patrick Blanchard

Patrick Blanchard is a Managing Director with Alvarez & Marsal Taxand in Denver, Colorado. He assists clients with a variety of issues related to qualified retirement plans.

Mr. Blanchard's experience includes performing nondiscrimination testing with a particular emphasis on complex controlled groups and unique testing conditions (e.g., subsequent to M&A activity); representing plan sponsors in Internal Revenue Service (IRS) and Department of Labor (DOL) examinations; assisting plan sponsors to identify and correct operational failures under the IRS and DOL correction programs; and assisting employers throughout the process of adopting or making significant changes to retirement programs.

Additionally, Mr. Blanchard assists clients with their non-qualified deferred compensation plans and other compensation programs to ensure compliance with all applicable statutes and guidance.

Prior to joining A&M, Mr. Blanchard was a Managing Director with Compensation & Benefit Solutions, a leading provider of compensation and benefit services based in Denver.

Mr. Blanchard earned a bachelor's degree in general business from Southwestern University, a law degree from the Case Western Reserve University School of Law, and an LLM in Taxation from the University of Denver. While attending the University of Denver, he represented low-income taxpayers before the IRS as a part of the Low Income Taxpayer Clinic. Mr. Blanchard is currently an adjunct professor of Qualified Pension & Profit Sharing Plans in the University of Denver's Graduate Tax Program and frequently speaks on qualified retirement plan compliance and administration.

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Note: Alvarez & Marsal employs CPAs but is not a licensed CPA firm.

Allison Hoeinghaus

Allison Hoeinghaus is a Managing Director with Alvarez & Marsal Taxand in the Dallas office. She brings more than 15 years of experience in compensation and benefits matters for both public and private companies.

Allison helps companies tackle how to effectively and efficiently pay and incentivize their employees. She works with companies to design and benchmark annual bonus and long-term incentive compensation programs, all while considering the applicable tax, accounting, and other regulatory ramifications.

Allison focuses on mergers and acquisitions, including golden parachute rules and due diligence of compensation arrangements. She also works on executive compensation matters, such as stock options, restricted stock, the one million dollar deduction limitation, global compensation strategies, qualified and non-qualified retirement plans, and payroll compliance. Allison helps her clients stay up to speed on emerging compensation trends as well, such as employment-related pandemic relief, gender/racial pay equity, and the impact of environment, social, and governance (ESG) efforts on compensation programs.

Allison received a bachelor's degree in accounting and a master's degree in professional accounting from the McCombs School of Business at The University of Texas at Austin. Allison is a Certified Public Accountant (CPA) and a Certified Executive Compensation Professional (CECP) through the WorldatWork organization.

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Kevin M. Jacobs

Kevin M. Jacobs is a Managing Director with Alvarez & Marsal Taxand in Washington D.C. and the National Tax Office Practice Leader. He brings more than 15 years of experience in tax matters in both the public and the private sectors.

Prior to joining A&M, Mr. Jacobs was a Senior Technician Reviewer (TCJA) with the IRS Office of Associate Chief Counsel (Corporate) for more than six years, where he advised on tax issues such as corporate re-organizations and corporation-shareholder issues, earning and profits, recovery and allocation of stock basis, liquidations, redemptions, bankruptcies, spin-offs and consolidated returns.

Mr. Jacobs was the principal Associate Chief Counsel (Corporate) attorney on several regulatory projects including the proposed section 382(h) regulations on built-in gains and losses, the global intangible low-taxed income regulations, and debt-equity regulations. He provided substantial contributions to numerous other guidance projects, such as the limitation on interest deductions regulations, and assisted in overseeing the Corporate Division's response to TCJA, including the coordination with Treasury's Offices of Tax Legislative Counsel and International Tax Counsel. Previously, Mr. Jacobs spent more than nine years at law and certified public accounting firms (Ropes & Gray LLP, Latham & Watkins LLP, Dewey Ballantine LLP and Arthur Andersen LLP).

Mr. Jacobs earned a bachelor's degree in accounting, a master's degree in accounting (with a concentration in taxation), a J.D. (magna cum laude) from the University of Florida and an LL.M. in taxation from New York University. He is admitted to practice before multiple courts, including the Supreme Court of the United States, the U.S. Tax Court and the U.S. Court of Federal Claims. He is admitted to the District of Columbia and Florida Bars and is a licensed Certified Public Accountant (CPA) in Florida and Colorado. Mr. Jacobs is a member of several organizations including the American Bar Association and the New York State Bar Association. He is also a frequent speaker on numerous corporate transaction tax matters.

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