



UNCOMMONLY INDEPENDENT

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Potential Impact of Biden's Tax Proposal on the Highly Compensated

With the outcome of the runoff election in Georgia, Democrats now have a narrow lead in the Senate, which may give President-elect Joe Biden's tax plan a better chance at passing.

Before the election, Biden released a proposed tax plan that would enact a number of policies to raise taxes on individuals with income above \$400,000, including raising individual income, capital gains, and payroll taxes.

Under Biden's proposed tax plan, the top individual income tax rate for taxable incomes above \$400,000 would revert from 37 percent under current law to the pre-Tax Cuts and Jobs Act level of 39.6 percent.

The proposal would also tax long-term capital gains and qualified dividends at the ordinary income tax rate of 39.6 percent on income above \$1 million and eliminates step-up in basis for capital gains taxation.

Even though a split Senate gives Biden's proposals more of a chance, it certainly doesn't guarantee his initiatives will move forward in-full. Passing a comprehensive tax overhaul will most likely still be a complicated affair.

Potential solution should some or all these tax changes move forward...

One potential solution could be the utilization of a nonqualified deferred compensation ("NQDC") plan. These plans were developed to offer highly compensated employees with a pre-tax savings opportunity commensurate to their income. NQDC plans are exempt from most provisions of ERISA (the Employee Retirement Income Security Act of 1974) because they are only available to a select group of management and highly compensated employees and are not "qualified" employee benefit plans.

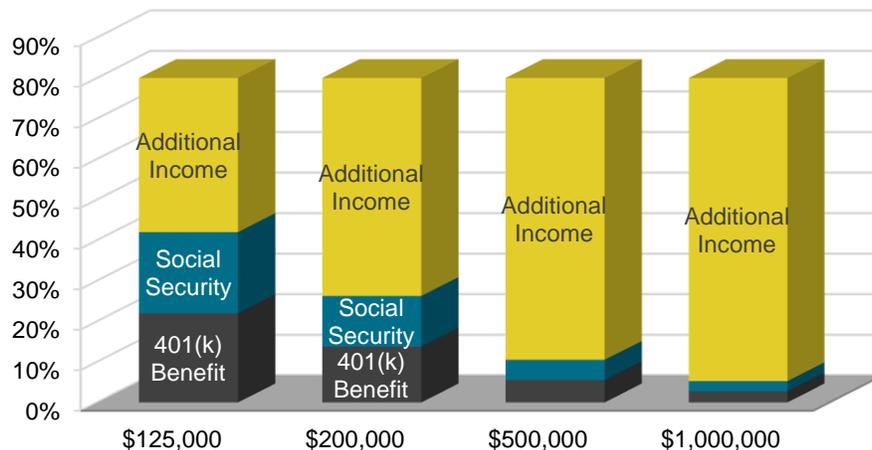
Advantages to Plan Sponsor	Advantages for Executive
<ul style="list-style-type: none">• Plan sponsor defines and controls eligibility to participate• Not subject to ERISA compliance testing, form 5500 or audit requirements• Most plans are designed to attract, retain and reward key employees• Align corporate and executive interests by connecting performance and accountability to compensation• Can be designed to be cost neutral to the company over the life of the plan	<ul style="list-style-type: none">• No deferral limit – up to 100% of compensation can be deferred• Deferrals are made on a pre-tax basis which could lower current taxable income• Contributions grow tax deferred• Investment Flexibility• Access to funds as early as one year from year of deferral without IRS early withdrawal penalty• No minimum distributions required at age 70 ½

Why NQDC Plans Make Sense for the Highly Compensated

Qualified retirement plan regulations restrict contributions and distributions:

- 401(k) contribution cap for 2021 is \$19,500 (\$26,000 for those age 50 and over)
- Pre age 59 ½ distribution penalties

A 401(k) plan and social security will likely provide only a small fraction of the income replacement needs for highly compensated professionals. If the target for retirement income is 80% of final compensation, the need for supplemental savings increases dramatically with income. NQDC plans are tax-deferred ways to fill the “Additional Income” gap.



Considerations

While there are numerous advantages for both the employee and employer, careful consideration should be given to the financial implications of NQDC plans. Specifically;

- Rollovers to IRAs are not permitted for Participants
- Subject to Section 409A regulations
- Limited ERISA Protection
- The company does not receive a current tax deduction on income deferred; the deduction is delayed until the deferred income is distributed

A successfully designed deferred compensation plan is based upon clearly defined corporate goals and can play an important role in your organization's ability to recruit, motivate, and retain top talent. These plans offer companies a flexible, less restrictive way to provide highly compensated employees with an opportunity to tax efficiently save and the ability to adjust to a potentially changing tax environment.

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