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limit on deductible compensation and the excise tax on excess parachute payments ...

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The American Institute of CPAs (AICPA) has submitted comments on rules described in Notice 2019-09 – Interim Guidance on Excise Tax Imposed under Section 4960, Excess Remuneration, issued by the Department of Treasury (Treasury) and the Internal Revenue Service (IRS). The new section 4960 was added by the Tax Cuts and Jobs Act (TCJA).

Section 4960 imposes a 21 percent excise tax on the sum of:

footing with taxable organizations that are subject to the section 162(m) $1 million limit on deductible compensation and the excise tax on excess parachute payments under section 280G.

The excise tax is imposed on ATEOs and related entities for remuneration in excess of certain amounts received by a covered employee. In general, a covered employee is an employee or former employee who is one of the five highest compensated employees. Once an individual is a covered employee for any taxable year beginning after December 31, 2016, that person remains a covered employee for all future taxable years. This new tax is effective for all taxable years beginning after December 31, 2017.

The guidance in the Notice provides rules regarding the entity liable for the excise tax under section 4960, how the excise tax is calculated, and how taxpayers should report and pay the tax. Until further guidance is issued, taxpayers may comply with the statute by using a good faith, reasonable interpretation of section 4960. The Notice provides such an interpretation.

The AICPA recommends that Treasury and the IRS provide guidance on the following issues related to the new section 4960:

I. Allocation of Remuneration

II. Allocation of Excise Tax

III. Definition of the term "Employee"

IV. Equity Compensation

V. Duplication of the Excise Tax and a Disallowed Deduction under Section 162(m)

VI. Definition of the term “Predecessor” for Purposes of Defining Covered

XI. Death Benefits