



# American Benefits Council

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## Benefits Briefing Webinar: Executive Compensation Issues April 9, 2014

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# Overview

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1. Tax: 162(m) – 280G – 409A
2. Securities
3. Litigation
4. International
  - **Where we are**
  - **Where we are going**

# Tax: 162(m) – 280G – 409A

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## Where we are now

- 162(m) – heightened attention
- 280G – performance-based challenges
- 409A - SROFs and Section 83 (later frame)

## What's Ahead

- 162(m) – Litigation
- 280G and 409A - IRS Audits, and Principal Risks
- Camp tax reform draft

# Camp Tax Reform Draft

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- Essentially no deferral of compensation after 2014
- NQDC subject to taxation when no SROF
- SROF exists only based on future substantial services condition
- Deferred compensation includes compensation based on appreciation in value of equity units or stock options
- Affects voluntary deferrals, excess retirement benefits, cash and equity incentive awards, severance

# Camp Tax Reform Draft

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- Taxation of existing deferred amounts by 2022
  - Applies to pre-2015 amounts
  - Complicated transition rules would be needed
- Expansion of 162(m) \$1million deduction limit
  - Eliminates commissions and performance-based compensation exceptions
  - Expands covered individuals to include CFO, former covered employees, and beneficiaries
  - No grandfathering provision
- 25% tax on compensation over \$1 million at tax-exempts

# Camp Tax Reform Draft

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- Tax reform unlikely to move in 2014
- But individual proposals likely to be used as revenue raisers
- Sen. Murray bill on EITC and low income worker tax cuts uses 162(m) expansion proposal
- NQDC proposal very likely to surface again as well

# Final Regulation on SROF Under Section 83

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- Section 83 governs tax consequences of transfer of property in connection with services
- Final regulation clarifies historical IRS interpretations of existence of SROF
  - SROF only through substantial service condition or condition related to purpose of transfer
  - Possibility of forfeiture must be substantial
  - Generally does not include transfer restrictions
  - Clarification on involuntary separation from service

# Securities Laws

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## **New Developments**

- Independence Determinations
- Nasdaq and NYSE Certifications
- 2014 Proxy Season: Shareholder Engagement and Messaging

## **What's Ahead**

- Pay Ratio
- Clawback and Performance Rule Proposals



# U.S. Litigation

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## New Developments

- Shareholder Derivative Litigation
- *Heimeshoff* and Plan Amendments
  - Two kinds: Plan designates a period within which to file claims (1) with administrator, and/or (2) with a court.

## What's Ahead

- More Careful Drafting
- Director Compensation

# Litigation

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- Gill v. Bausch & Lomb Supplemental Ret. Plan
  - Court highly critical of company's claims process
  - Court found inherent structural conflicts of interest and failure to establish fair, reasonable claims process
  - Highlights need for ERISA – compliant claims procedures from outset and proper documentation of duties

# International

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## **New Developments**

- FATCA re Stock Awards
- UK - Binding SOP and Clawbacks

## **What's Ahead**

- Litigation Trends (Nationalism)

# Questions

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