STRUCTURING CHANGE IN CONTROL ARRANGEMENTS WITHIN THE CURRENT EXECUTIVE COMPENSATION ENVIRONMENT

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PART I: THE ESSENTIALS OF THE GOLDEN PARACHUTE EXCISE TAX DEBATE

The failure of many highly regarded financial institutions, and the corresponding bonus and/or severance payments (including "golden parachute payments") made to their departing executives, has put a spotlight on executive pay practices. Although much of this publicity has been concentrated on those executives receiving severance payments for termination **outside** of a change in control ("CIC"), golden parachutes have generally been associated with a CIC rather than general termination. In addressing excessive pay concerns relating to a CIC, shareholder activist groups have focused their energy around the "gross-up" payment for excise taxes pursuant to Internal Revenue Code ("IRC") Section 280G, commonly referred to as the "280G gross-up". The shareholder advisory group RiskMetrics Group ("RMG") (formerly known as Institutional Shareholder Services or "ISS") stated in their 2009 Policy Updates (issued in November, 2008) that they would consider issuing a withhold/against vote recommendation for compensation committee members of an S&P 500 company that enters into a new or substantially amended agreement which provides for a 280G gross-up.

Although the chance of a company being acquired in any given year is relatively small, it is nevertheless in the best interests of a company that senior management seriously considers the merits of any merger opportunities that may arise. However, since senior management is often terminated as a result of a CIC, they might not be motivated to pursue merger opportunities absent adequate compensation protection. This is especially true for key executives who upon termination have a relatively small chance of obtaining a comparable position with another public company. One study involving turnover and rehire rates of "top management" (defined as CEO, Chairman, or President) revealed that within a two-year period after a top manager was terminated, only 27% were able to find a

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substantially similar position at another public company.[1]

IRC Sections 280G and 4999 further complicate these inherent conflicts by providing for an excise tax on a portion of the benefits paid to executives in connection with a CIC.[2] The trigger for this excise tax ("280G excise tax") occurs when the present value (PV) of benefits (also referred to as CIC payments) are equal to or exceed **three times** the executives' "base amount"[3], which is the executives' average taxable company compensation for the five taxable years preceding the year of the CIC.[4] When this happens, the executive(s) incurs a 20% excise tax on the portion of the total parachute payments that exceed **one times** the base amount. In addition, the portion of the total parachute payment that is subject to the excise tax becomes a non deductible payment for corporate income tax purposes.[5] Thus, when the PV of all CIC payments total less than three times the base amount, no excise tax or loss of corporate tax deduction occurs.[6]

Parachute payments covered by IRC Section 280G are not limited to cash severance. Other benefits include equity awards accelerated by a CIC (e.g. stock options, restricted stock, and performance-based stock or units), enhancements to retirement plans (e.g., additional pension or 401k credits and accelerated vesting), pro-rated bonuses made in the year of the CIC, health and welfare benefits, and income and excise tax gross-ups (including the 280G gross-up).

In order to "protect" executives from the 280G excise tax, many companies have included 280G gross-up provisions in the respective employment contracts and/or severance/CIC arrangements. In general, this provision provides that if an executive incurs excise taxes triggered by IRC Section 280G, a gross-up payment would be made such that the executive is made whole for any 280G excise tax that is due on the pre gross-up parachute payments. Depending on an executive's combined marginal income tax rate, the cost of this provision increases the cost of the excise tax by a factor of 2.5 to 3.0 times.

For example, if an executive's combined state and federal income tax rate is 45%, after adding the 20% excise tax, the marginal tax rate on all excess parachute payments (including the gross-up) is 65%.[7] Thus, for every dollar of 280G gross-up, 35 cents goes towards making the executive whole for the initial excise tax, with the remainder going towards paying additional federal, state, local, and excise taxes. To illustrate this in another way, the 280G gross-up costs an additional $1.86 for every $1.00 of excise tax reimbursement, or 2.86 times the original excise tax. [See Figure 1]

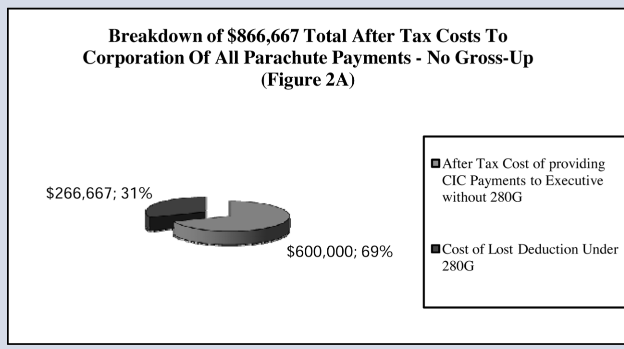
Figure 1 - Cost of Gross-Up

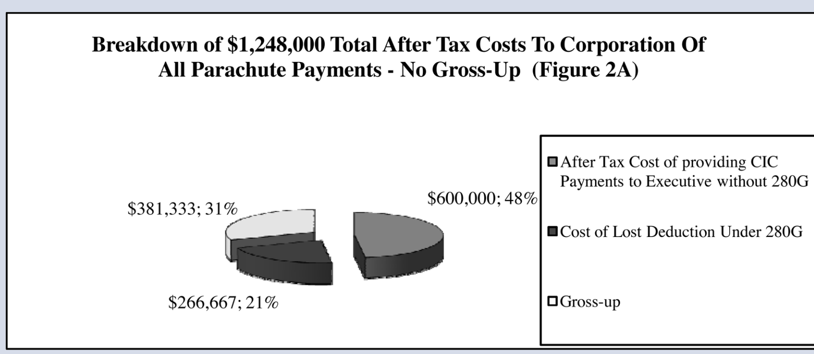
Excise Tax Before Gross-Up	$	1.00	A
Marginal Income Tax Rate		65%	B
Total Gross Up Cost	**$**	**2.86**	**C=A/(100%-B)**
Total Additional Cost of Gross-Up	**$**	**1.86**	**D=C-A**

Prior to calendar year 2007, many shareholders and shareholder activist groups were not aware of how high the cost of a 280G gross-up could be. However, the Securities and Exchange Commission ("SEC") changed this by requiring companies to disclose the potential gross-up amounts that would be payable to its Named Executive Officers ("NEOs") in the event of a hypothetical CIC.[8] This enhanced disclosure has provided shareholders and shareholder activist groups with the necessary information to effectively challenge compensation committees on the necessity of the 280G gross-up.

As discussed above, all parachute payments, which include the 280G gross-up payment, that are subject to the 20% excise tax are not deductible for purposes of corporate income taxes. Furthermore, because the Compensation Discussion & Analysis section of the proxy statement does not require disclosure of the costs surrounding

Figure 2A*	Formula (Under)	Under 280G	Formula (Over)	Impact of 280G Costs - Relative Base Amount is High Over 280G Threshold No Gross-up	Over 280G Threshold With Gross-Up
280G "Base Amount"			A	$ 333,333	$ 333,333
280G "Threshold"			B=(A*3)	999,999	999,999
Total CIC/Parachute Payments	A	$ 1,000,000	C	1,000,000	1,000,000
Over/Under Threshold			C>B	Over	Over
Excess Parachute Payment			D=C-A	$ 666,667	$ 666,667
Deductible Portion of CIC/Parachute Payment			E=A	$ 333,333	$ 333,333
Excise Tax (Payment made by Employee)		N/A	F=D* 20%	$ 133,333	$ 133,333
Gross-up - Computed by using a factor of 2.86 (See Figure 1)		N/A	G=F*2.86	N/A	$ 381,334
Total Parachute Payments Made by Company		N/A	H=C+G	$ 1,000,000	$ 1,381,334
Economic Value of Corporate Tax Deduction (Assume Combined Corporate Income Tax Rate equals 40%)	B	$ (400,000)	I=E*(-40%)	$ (133,333)	$ (133,333)
Total After Tax Cost to Corporation of all CIC/Parachute Payments	C=A-B	$ 600,000	J=H+I	$ 866,667	$ 1,248,000
Gross-Up Ratio to Excise Tax			K=((G/(1-40%))/F		**4.77**
Ratio of After Tax Cost of Lost Deduction and Gross-up as Compared to After Tax Cost without 280G			L=J/(C*(1-40%))	**144%**	**208%**



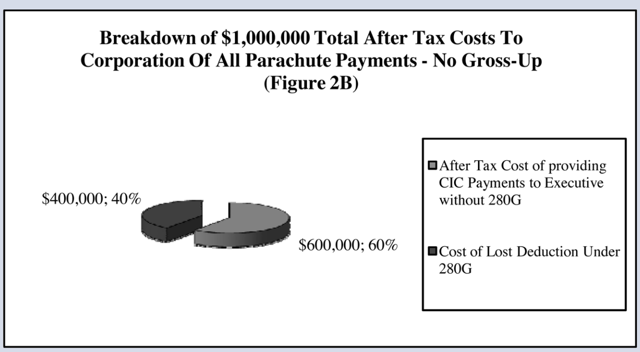


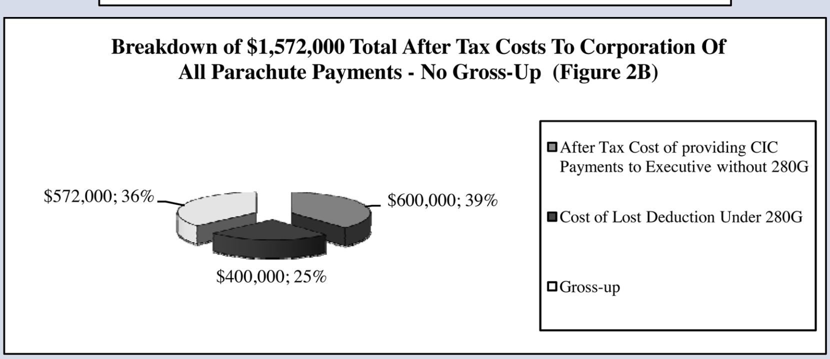
the lost deduction, the significance of the lost deduction often goes unnoticed by analysts and shareholders. For example, assuming that a company's marginal corporate income tax rate is 40%, the pretax equivalent of the economic cost of the gross-up is not 2.86 times as indicated above, but actually 4.77 times the amount of the pre-gross-up excise tax (2.86/(1-40%) = 4.77) [See Figures 2A & 2B]. Thus, even when an executive is not entitled to receive a 280G excise tax gross-up, a company still has significant 280G exposure because of the potential lost corporate deduction. In this situation the after tax economic cost of the lost corporate tax deduction ranges from 44%-67% of the after tax cost of the executives' total parachute payments; where a gross-up is provided, this amount increases to a factor of 108%-162%. [See Figure 2-A and 2-B along with related charts].

The risk of an executive losing his/her job upon a CIC, the extremely high marginal tax rate an executive might incur on benefits received in connection with a CIC, and the enormous cost a company and its shareholders incur if a company provides for a 280G gross-up are all legitimate concerns that deserve careful consideration. On the one hand, if the cost of the 280G excise tax is the responsibility of the executives, it can have the effect of dissuading an executive group from entertaining merger discussions or entering into a transaction that is in the best interests of shareholders. On the other hand, if the executives are made whole for the excise tax, the company, and thus its shareholders, incurs a liability with a pre-tax economic cost that is 4.77 times that of the excise tax due from the executive.

Figure2B*	Formula (Under)	Without 280G	Formula (Over)	Impact of 280G Costs - Relative Base Amount is Small Over 280G Threshold No Gross-up	Over 280G Threshold With Gross-Up
280G "Base Amount"			A	$ -	$ -
280G "Threshold"			B=(A*3)	-	-
Total CIC/Parachute Payments	A	$ 1,000,000	C	1,000,000	1,000,000
Over/Under Threshold			C>B	Over	Over
Excess Parachute Payment			D=C-A	$ 1,000,000	$ 1,000,000
Deductible Portion of CIC/Parachute Payment			E=A	$ -	$ -
Excise Tax (Payment made by Employee)		N/A	F=D* 20%	$ 200,000	$ 200,000
Gross-up - Computed by using a factor of 2.86 (See Figure 1)		N/A	G=F*2.86	N/A	$ 572,000
Total Parachute Payments Made by Company		N/A	H=C+G	$ 1,000,000	$ 1,572,000
Economic Value of Corporate Tax Deduction (Assume Combined Corporate Income Tax Rate equals 40%)	B	$ (400,000)	I=E*(-40%)	$ -	$ -
Total After Tax Cost to Corporation of all CIC/Parachute Payments	C=A-B	$ 600,000	J=H+I	$ 1,000,000	$ 1,572,000
Gross-Up Ratio to Excise Tax			K=((G/(1-40%))/F		**4.77**
Ratio of After Tax Cost of Lost Deduction and Gross-up as Compared to After Tax Cost without 280G			L=J/(C*(1-40%))	**167%**	**262%**

*From a practical standpoint, an executive will almost never have a base amount of zero, and while more common, it is never-the-less rare that an executive would have total parachute payments that are $1 over the 280G threshold. The purpose of Figures 2A and 2B is to show the absolute range of economic costs associated with the lost deduction and gross-up. The take away here is that as the base amount becomes less significant as compared to total parachute payments, the after tax golden parachute cost as a percentage of after tax parachute payments increases.





In general, the golden parachute regulations provide for two ways in which to value equity that receives accelerated vesting upon a CIC. If the equity vests solely on the performance of services over time, Treasury Regulations Section 1.280G-1 Q/A 24(c) ("Q/A 24(c)") provides that the parachute value of unvested equity is equal to the present value of the unvested equity PLUS the face value of the unvested equity benefit times 1%, which is then multiplied by the number of full months that the vesting is accelerated.[9] However, if the unvested equity is accelerated and the vesting requirement is based upon performance measures, the 280G regulations require that the **entire** value of unvested equity be included as a parachute payment. To further complicate the issue, if the vesting hurdle is based on attaining a certain stock price, and the stock price hurdle is achieved after the announcement of, and within one year before a CIC, Treasury Regulations 1.280G-1 Q/A 22(b)(2) provide that a substantial increase in the market price of a company's stock is an

PART II: NO GOOD DEED GOES UNPUNISHED – 280G'S HARSH TREATMENT OF EQUITY UNITS THAT VEST BASED ON PERFORMANCE

For many reasons, including efforts to reduce the dilutive effect of stock options and increase the alignment of executive compensation with company performance, companies are beginning to move away from plain vanilla options and replace them with grants of restricted stock and equity units that vest based on performance criteria rather than simply the passage of time. While the market practice of granting performance-based awards is a positive development in aligning "pay for performance", the consequences of any acceleration of these awards, including a prorated acceleration, is taxed unfavorably in the event of a CIC.

event that would be considered contingent upon a CIC. Thus, even if the performance hurdle is reached prior to the CIC, the full amount of the equity could still be subject to the 280G excise tax.

The treatment of performance-vested equity presents a significant tax dilemma because at the time of the CIC there is no way to know with certainty whether unvested performance equity *would have* vested irrespective of a CIC. Under the 280G tax rules, this uncertainty means that an executive is subject to paying an additional 20% tax on the full value of unvested performance-based equity shares/units if the 280G safe harbor limit is exceeded. If an executive is not eligible for a 280G gross-up, the value of his/her unvested performance equity is reduced by approximately 36% on an after tax basis.[10]

PART III: PLANNING AHEAD

General George S. Patton once said that "a pint of sweat saves a gallon of blood." Literally speaking, a company that spends adequate time planning prior to any potential merger discussions is capable of providing substantially similar economic benefits to its executives without incurring golden parachute costs.

There is no one size fits all 280G planning strategy. The intricacy of the Section 280G tax rules, and the complexity of executive compensation pay arrangements, necessitate careful review of both the tax rules and design of executive compensation plans. However, there are two key strategies a company should consider prior to merger discussions which can significantly mitigate golden parachute taxes. The first strategy is a well designed non-competition arrangement; the second strategy is establishing a clear policy for granting performance-based equity which measures interim performance.

Part IIIA: Non-Competition Arrangements – If They Have Teeth, They Have Value[11]

Under the golden parachute rules, if an executive receives compensation for the performance of services rendered after a CIC, and such compensation is determined to be reasonable, the amounts paid in exchange for these services are exempt from the 280G excise tax.[12] The regulations explicitly state that this includes bona fide non-competition arrangements.[13] The regulations provide that "an agreement under which the disqualified individual (an executive who is affected by the 280G rules) must refrain from performing services (e.g., a covenant not to compete) is an agreement for the performance of personal services to the extent that it is demonstrated by clear and convincing evidence that the agreement substantially constrains the individual's ability to perform services and there is a reasonable likelihood that the agreement will be enforced against the individual."[14]

Providing payments in exchange for an executive entering into a non-competition arrangement is a sound compensation practice because the payouts made under the arrangement are commensurate with legitimate business concerns. If a company were to provide "severance" without a restrictive covenant, a terminated executive receives compensation with respect to a period in which he/she has the ability to limit the profitability of the merged entity by soliciting clients or customers of the combined entity.

Special care must be taken when valuing non-competition arrangements. Revenue Ruling 77-403, provides in part:

> Whether a payment for a covenant not to compete made in connection with the purchase of real property is part of the cost of the property or is the cost of a separate asset depends on whether the covenant has any demonstrable value. In determining whether the covenant has any demonstrable value, the facts and circumstances in the particular case must be considered. The relevant factors include: (1) whether in the absence of the covenant the covenantor would desire to compete with the covenantee; (2) the ability of the covenantor to compete effectively with the covenantee in the activity in question; and (3) the feasibility, in view of the activity and market in question, of effective competition by the covenantor within the time and area specified in the covenant.[15]

In addition to the guidance set forth by Revenue Ruling 77-403, the 280G regulations and related case law provides that the compensation paid after a CIC "not be significantly greater than the annual compensation customarily paid by the employer or by comparable employers to persons performing comparable services."[16]

Thus, after considering the factors established under Revenue Ruling 77-403, if the demonstrable value of the non-competition arrangement is in excess of an amount that would exceed an amount of "total compensation"[17] that would be customary or reasonable with respect to the period to which the non-competition arrangement applies, then for 280G purposes the portion of the value ascribed to the covenant is limited to total reasonable compensation paid by the employer or comparable employers. Stated another way, for purposes of IRC Section 280G, the value that may be ascribed to a non-competition agreement is limited to the lesser of the amount of economic loss that could be caused by the executive if he/she were to compete or the level of reasonable compensation for substantially similar services the executive could have earned during the restricted period.

Although not explicitly required by the 280G regulations, when structuring non-competition payments, it is advisable to disburse non-competition payments periodically throughout the restricted period rather than in a lump sum. Doing so provides the new entity with the ability to discontinue payments in the event an executive is found to be in breach of the arrangement, and thus demonstrates more clearly, as required by the regulations,[18] that the arrangement is likely to be enforced.

Part IIIB: Establishing Interim Goals within Performance Equity Plans

The second strategy which should be considered is to establish a pro-rated performance vesting schedule that would be used in the event a company enters into a CIC. Thus, rather than vest all performance-based equity upon the CIC, a company would vest only a pro-rated portion of the equity based upon actual performance as compared against carefully planned and pre-established interim company performance criteria.

Under the 280G regulations, the parachute value associated with unvested benefits may be reduced if, by clear and convincing evidence, the taxpayer can demonstrate that the amounts paid represent reasonable compensation for personal services actually rendered before the CIC.[19] Unlike the exclusion for services rendered after a CIC (i.e. a non-compete arrangement), the reduction for services rendered prior to a CIC does not reduce parachute payments for purposes of determining whether an executive exceeds the 280G threshold test; instead, only the amount of the **excess** parachute payments is reduced. This permits reduction, but not elimination, of the 280G excise tax. This is an important distinction because the excise tax is computed on the amount of parachute payments that exceed **one** times rather than **three** times an executive's base amount. In addition, the computation also requires that the base amount allocable to the parachute payment, which is determined to be fully or partly reasonable compensation for services rendered before the CIC, must be fully or partially reduced, thus offsetting part of the benefit of reducing the total excess parachute payments.[20] Lastly the regulations provide that a payment which qualifies as reasonable compensation under IRC Section 162 is generally considered reasonable compensation for pre-change of control services.[21]

In a related area, the release of Revenue Ruling 2008-13 adds emphasis on the need to incorporate pre-established performance vesting goals for purposes of satisfying IRC Section 162(m). Treasury's interpretation of 162(m), in part, provides that if an employee is terminated and he/she receives vesting under a performance plan regardless of whether performance goals are reached, the plan fails to be qualified performance-based compensation.

> Under § 162(m)(4)(C) and § 1.162-27(e), compensation is not considered applicable employee remuneration, and thus is not subject to the $1,000,000 limit in § 162(m)(1), if it satisfies the requirements for "qualified performance-based compensation." Among these requirements is that the compensation is payable "solely" on account of the attainment of one or more performance goals. Under § 1.162-27(e)(2)(v), compensation is not performance-based if the facts and circumstances indicate that the employee would receive all or part of the compensation regardless of whether the performance goal is attained. Section 1.162-27(e)(2)(v) provides further that compensation does not fail to be qualified performance-based compensation merely because the plan allows the compensation to be payable upon death, disability, or change of ownership or control.[22]

Although this ruling does not explicitly state that a violation of 162(m) would automatically exclude a plan without pre-established interim measures from violating the reasonable compensation standards set forth by the IRS Code Section 280G, the IRS's view with regard to such arrangements should certainly be of concern where the standard of proof for reasonable compensation requires clear and convincing evidence. Lastly, because a performance plan which permits payment without meeting performance criteria is not permissible under 162(m), the creation of interim performance vesting goals is a strategy which is not only useful in better establishing clear and convincing evidence for 280G purposes, but also helps to comply with the IRS's position regarding IRC section 162(m).

Where this strategy can be very helpful for 280G purposes, occurs when an executive has the potential to exceed three times his/her base amount by receiving a significant amount of unvested performance-based equity. This is best illustrated by the following two examples:

Example #1: Assume upon a CIC that Executive A has a base amount of $600,000 and receives a $500,000 severance payment and $2,000,000 worth of unvested performance equity. The $2,000,000 of vesting was based on the executive having worked for two years out of the three-year performance period. The award agreement does not establish a payout schedule for interim pro-rated performance hurdles. In this example, $1,900,000 of the $2,500,000 payment would likely be subject to the 20% 280G excise tax (i.e. excise tax due of $380,000) because the company could not show by clear and convincing evidence that the payout was reasonable compensation for pre-change of control services . [See Figure 3].

Example #2: Assume the same facts in Example 1 except that Executive A **can demonstrate by clear and convincing evidence** that the a) $2,000,000 worth of unvested equity payout is payment commensurate with previously established interim pro-rated performance hurdles, b) the $2,000,000 payout is based on actual performance by the company, and c) the attainment of the performance hurdles was not caused by a CIC (i.e. stock price jump after the announcement of a CIC). In this case, only $380,000 of the $2,500,000 payment would be subject to the 20% 280G excise tax (i.e. excise tax due of $76,000). [See Figure 4].

The above examples demonstrate the advantage of advanced planning. By establishing interim benchmarks for unvested equity, an executive could persuasively argue that equity received upon a CIC that became vested pro-rata based on actual performance results is reasonable compensation for pre-CIC services, and thus could potentially reduce the impact of both the 280G excise tax and lost corporate income tax deduction.

Figure 3 - Reasonable Compensation Without Clear & Convincing Evidence

Total Base Amount		$600,000	A
Threshold Amount		$1,799,999	B=(A*3)-1
Severance Payment		$500,000	C
Unvested Performance Equity		$2,000,000	D
Total Parachute Payment		**$2,500,000**	E=C+D
Total amount over Threshold	$700,001		F=E-A
Less One Times Base Amount		($600,000)	H=(A*-1)
Total Amount Subject to Excise Tax		$1,900,000	I=E+H
Total Excise Tax		$380,000	J=I * 20%
Total Company Cost for Lost Deduction (Assume Marginal Corporate Income Tax is 40%)		$760,000	K=I * 40%

Figure 4 - Reasonable Compensation With Clear & Convincing Evidence

Total Base Amount		$600,000	A
Threshold Amount		$1,799,999	B=(A*3)-1
Severance Payment		$500,000	C
Unvested Performance Equity		$2,000,000	D
Total Parachute Payments		$2,500,000	E=C+D
Total Amount over Threshold	$700,001		F=E-A
Portion of Unvested Performance Equity Considered Reasonable Compensation for Pre-Change of Control Services (100%)		($2,000,000)	G
Total Proration of Base Amount attributed to Unvested Performance Equity		$480,000	H=(D/E)*A
Less One Times Base Amount		($600,000)	I=(A*-1)
Total Amount Subject to Excise Tax		$380,000	J=E+G+H+I
Total Excise Tax		$76,000	K=J*20%
Total Company Cost for Lost Deduction (Assume Marginal Corporate Income Tax is 40%)		$152,000	L=J*40%

PART IV: CONCLUSION

With an enhanced focus on executive compensation, companies can no longer sweep the 280G excise tax away by merely providing a 280G gross-up. Instead, executives and compensation committees need to consider the consequences of their executive termination arrangements. If a company plans ahead and employs a reasonable compensation strategy that addresses executive compensation risk associated with a CIC and the economic costs associated with the golden parachute excise tax, the consequences of the 280G tax rules can be significantly mitigated. Lastly, because of the significant penalties associated with Code Section 280G, and the many variables associated with these computations, companies and executives alike should continually monitor the potential impact of these arrangements.

NOTES

1. Desai, Hemang, Hogan, Chris E. and Wilkins, Michael S., The Reputational Penalty for Aggressive Accounting: Earnings Restatements and Management Turnover (August 2004) Available at SSRN: http://ssrn.com/abstract=471842 or DOI: 10.2139/ssrn.471842.
2. In general, Section 280G determines which CIC payments are parachute payments; Section 4999 provides for a 20% excise tax on the amounts determined by Section 280G.
3. The three times base amount is referred to in the regulations as the "Three-Times-Base-Amount Test.
4. The regulations provide that where an executive is employed for less than 5 years, the average is taken over the period of time in which the executive rendered service prior to the year of the CIC.
5. IRC Section 280G(a).
6. In general practice, if the PV of all CIC payments totals "$1 less than three times the base amount", this amount is sometimes referred to as the "280G Threshold Amount" or "Safe Harbor Amount."
7. For purposes of this article, the term "CIC payment" is used to describe a payment(s) made in connection with a CIC where an executive does not exceed his/her 280G threshold. A parachute payment refers to payments made in connection with a CIC, where the executive exceeds his/her 280G Threshold amount. The term "excess parachute payment" is the portion of parachute payments which exceed the executives' base amount.
8. See Executive Compensation and Related Person Disclosure, Exchange Act Release Nos. 33-8732A; 34-54302A; IC-27444A.
9. The total value of the equity will be the intrinsic value if, upon a CIC, equity is converted into cash. If equity is converted into Newco options, then an approved GAAP valuation model such as Black-Scholes must be used to determine the value of the equity. For more information regarding accepted valuation methods, see Revenue Procedure 2003-68.
10. (55% - 35%) / 55% = 36.3% (55% and 35% represent the net percentage benefit the executive would receive after taxes if an executive were not subject/subject to the 280G excise tax). For purposes of this illustration, additional costs relating to performance based options that upon a CIC roll over into Newco performance options are beyond the scope of this analysis.
11. States have different rules with regard to the enforceability of non-competition arrangements. In order for a non-competition strategy to be successful for 280G purposes the agreement **MUST** be legally enforceable.
12. Treasury Regulations 1.280G-1 Q/A 9.
13. Treasury Regulations 1.280G-1 Q/A 11(a) and 40(b).
14. Treasury Regulations 1.280G-1 Q/A 42(b).
15. See also Schulz v. Commissioner, 294 F.2d 52 (9th Cir. 1961).
16. Treasury Regulations 1.280G-1 Q/A 42(a)(2); See also Square D Company and Subsidiaries v. Commissioner, 121 TC 168 (2003).
17. "Total compensation" includes base salary, short and long-term incentive compensation, and other benefits and perquisites.
18. Treasury Regulations 1.280G-1 Q/A 42(b).
19. Treasury Regulations 1.280G-1 Q/A 39.
20. Ibid.
21. Treasury Regulations 1.280G-1 Q/A 43.
22. Revenue Ruling 2008-13.