

Startup Company Carve-Out Plans: Mechanics, Tax Obstacles, and Optimization

Practical Law will present a **webinar** highlighting common constraints on carve-out plans in the U.S. tax regime, including Section 409A (regulating deferred compensation arrangements) and Section 280G (regulating golden parachute payments). We will also discuss new proposed regulations and recent Delaware case law on these topics.

The event, featuring presenters from Fenwick & West LLP, will be Wednesday, Nov. 2, beginning at 1 p.m. EDT.

A carve-out plan is a type of instrument to incentivize current executives, employees and other service providers by committing to make a payout at a change in control. This arrangement allows the executives working hard to get a struggling company to a liquidity event to share in the value they create for the shareholders. Carve-out plans are typically tense negotiations of competing interests to encourage retention for senior management and maximize value for shareholders. To further complicate matters, carve-out plans are subject to a unique and complicated set of tax rules.

Register for the webinar.

The discussion will include:

- * Should compensatory arrangements be reduced for other payouts?
- * Should the carve-out awards settle in stock or cash?
- * Must employees be employed at the time of the change in control to receive a payout? Should the carve-out forfeit under certain conditions?
- * What should happen to the forfeited amounts?

* How can the plan be amended?

A short Q&A will follow.

Presenters:

Marshall Mort, Associate, Fenwick & West LLP

Marshall Mort focuses his practice on compensation and employee benefits matters. Marshall particularly enjoys developing creative solutions that support attractive compensation plans. Working with both private and public companies, Marshall excels in navigating complex tax, securities, and accounting issues within the equity and executive compensation environment. This includes maximizing tax efficiency, and advice that further supports HR policies to promote retention and mitigate risk. Marshall writes and speaks on equity compensation and benefits issues, and has served as an adjunct lecturer at Santa Clara University-Leavey School of Business.

Taylor Cashwell, Associate, Fenwick & West LLP

Taylor Cashwell focuses his practice on a broad variety of corporate matters to support clients in the high technology and life sciences industries. While attending law school, Taylor was a concurrent member of the Hastings Law Journal and Hastings Women's Law Journal. He served on the executive board of OutLaw and externed as Law Clerk for the National Center for Lesbian Rights, where he later served as Fenwick & West Public Interest Fellow.

Amy Adams, Senior Legal Editor, Practical Law Employment Benefits & Executive Compensation (Moderator)