

Your Compensation, Benefits, And Retirement Money

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Salary and Benefit Options

As the owner of a company, you have a tremendous advantage when it comes to compensation. You are not locked into someone else's established system that determines and restricts your salary, bonuses, benefits, and deductions. In fact, you have incredible flexibility to design your own compensation package to deliver more of what you, your family, and your company need and want.

This flexibility extends not only to how you design your initial compensation package but also to how you change and adapt it over the years.

The salary and benefits you choose early in your career when your family is young, your financial resources are limited, and the company is just getting started can be — and probably should be — vastly different from the compensation package you design in later years when the company is established, your children are working in the business, and you are contemplating retirement.

When you first sit down with your advisers to take a comprehensive look at your compensation, you might be surprised by the extent of the tax options and advantages the IRS offers entrepreneurs and owners of smaller and mid-size businesses. In many instances, the tax advantages are sufficient to offset the cost of most, if not all, of the various benefits you include in the package.

This **Resource Report** focuses on those options that can have the biggest impact on your current and future compensation, your tax deductions, how much money you actually take home as after-tax compensation, and the size of your retirement fund. Also discussed are ways to protect your salary in case of disability, an area often overlooked by many business owners and executives.

Keep in mind your four objectives in reviewing this report with your advisers: You want to increase your after-tax income, take all available tax deductions, set aside more retirement money, and protect your salary.

Thomas J. Martin, *Publisher*
The Business Library

Self-Employment/Second Income

There are valuable tax benefits available for self-employment income or second sources of income, usually in the form of deductions and retirement contributions. The benefits apply to a wide range of activities: consulting, teaching, board of directors' work. See which of these benefits you can use.

Extra retirement contributions. You can set up a self-employed Keogh retirement plan and deposit into it, and deduct, up to about 25% of your net outside earnings (but not more than \$49,000 per year). This can be in addition to retirement contributions made by your company at your principal job. These dollar and percentage limits apply to a *defined contribution, money purchase, or profit sharing plan*, where you put aside a predetermined percentage of your net earnings every year. Higher contributions and deductions are possible with a *defined benefit plan*, but this type of plan is more complex and should be discussed with two advisers before being set up; it's usually more appropriate for older business owners who have fewer years to fund a retirement plan.

Deductible expenses. You can deduct any ordinary and necessary expenses in connection with earning the income, including travel, supplies, telephone, secretarial or other help, etc.

Depreciation expense option: For 2008 deductions, you can claim up to \$250,000 a year (IRC Section 179) for equipment purchases. There is a dollar-for-dollar phase-out once the cost of fixed-asset additions exceeds \$800,000 for the year.

Businesses can take a special *Bonus Depreciation* in 2008 equal to 50% of **new** equipment purchases in the year it is placed in service, before January 1, 2009. To qualify, the equipment (property) must have a depreciation life of 20 years or less. In addition, the first-year depreciation limit for autos was increased to \$8,000 for a 2008 deduction.

Health and group insurance. Self-employed individuals can deduct 100% of their insurance premiums in 2008. In addition, the premiums on the first \$50,000 of group life insurance are tax deductible by the business and not taxable income to the owner or employees. Furthermore, the life insurance proceeds are

received tax free by the owner and employees.

□ **Tax shelter.** If you initially lose money in your second business activity, it can act as a tax shelter because those losses can be used to offset your primary job income. But be careful; the IRS can make you prove that you are serious about the activity and went into it with the intention of making a profit. *Tax caution:* If it looks like a hobby or an activity about which you aren't serious, you will be allowed to deduct expenses only to the extent of the revenue earned; consequently, you won't be able to deduct any losses.

□ **Business use of your home.** *Overall rule:* You can claim a home office deduction if the home office is used to conduct essential day-to-day administrative or management activities and you don't have another fixed location where you could perform such duties. How difficult that will be to prove depends on the facts and circumstances. *Some other facts on home office deductions:*

- *Recordkeeping and deductions:* It's very important to keep a *time log* on the time you spend at home and on the road or at another location, and to document the business purpose of that travel and location. Of course, continue to save all home-office-related receipts for which you will be taking a deduction.

- *State laws and your deductions:* Be aware that state laws may have additional rules and requirements for claiming home office deductions and for taxing capital gains when you sell your home. These state laws also may not conform to the federal tax laws. So carefully analyze your state's law before claiming home office deductions and in planning the sale of your home.

- *Tax return filing and computations:* If you qualify to deduct home office expenses, you must list your deductions on IRS Form 8829, *Expenses for Business Use of Your Home*, and attach it to Form 1040 when you file your tax return. Form 8829 is also the place where you compute the percentage of your home allocated to business use, e.g., 1,000 square feet of business use divided by 4,000 total square footage equals 25% allocation. That 25% is then used to calculate the share of depreciation, utilities, insurance, etc. attributed to the home office.

- *Sale of home which includes a home office:* When you sell your home, you

still can use the \$250,000/\$500,000 exemption. However, if your home office is a *separate* dwelling unit, there is a capital gain tax of 15% on that portion of the profit allocable to the home office space. Furthermore, there is *no exclusion* on any gain resulting from depreciation deductions taken on prior tax returns for periods after May 6, 1997. The tax rate on the accumulated depreciation is 25% and it is payable in the year you sell your home. This depreciation recapture tax of 25% also applies to most rental and investment properties.

Options on Benefits

Medical reimbursement plan. For regular or C corporations, consider a medical reimbursement plan. The plan can pay and deduct 100% of your family's medical and dental bills, including the premiums paid for health insurance. In contrast, on your personal tax return, you can deduct only medical expenses that exceed 7.5% of your adjusted gross income. Thus, if your AGI is \$75,000, the first \$5,625 of medical expenses is not deductible.

Alert: Talk to your accountant about a medical reimbursement plan; it must be made available to most company employees and there are limits on the annual amount deductible by the company, particularly for the owners of S corporations, sole proprietorships, and partnerships. A medical reimbursement plan may be appropriate for your company even if you have only a few employees; you will have to analyze the total cost of including all employees.

Education expenses. A company can reimburse employees up to \$5,250 a year for educational expenses, including tuition, books, and registration fees. The limit applies to continuing education, community college, undergraduate, and graduate-level courses. The courses selected by employees do not need to be related to their current jobs. This benefit is fully tax deductible by the company and not taxable income to the employee. The plan must be in writing and non-discrimination rules apply.

Employer-provided child care expenses. Companies can claim a tax credit equal to 25% of the cost paid by an employer for qualified child care expenses and 10% of the cost paid for qualified child care resources and referral expenditures. Qualified expenditures include the cost to acquire or construct a facility, operating

costs of a facility, or the cost of a contract with a qualified child care facility.

What to do: Businesses should consider providing child care for employees' children. The tax credit can result in substantial savings (up to a maximum of \$150,000 annually). Remember, tax credits are worth much more than tax deductions because they reduce your tax bill dollar-for-dollar whereas deductions only reduce your taxable income.

☐ **Cafeteria plan.** Consider an employer-sponsored cafeteria benefit plan which allows you to allocate and set aside pre-tax income to pay for out-of-pocket health costs, child care expenses, and other related items. There are no Social Security nor income taxes payable on the pre-tax income set aside. Cafeteria plans give you and your employees maximum flexibility in selecting benefits and reducing taxable income because they allow you to adjust benefits with changes in your age, health, and family.

☐ **Life insurance.** A company can help provide executives and owners with additional life insurance by sharing in the premium cost. Two approaches: *split-dollar insurance*, in which the company and executives share in premium payments and/or the life insurance proceeds, and *key-executive insurance*, in which the company pays the premiums and collects the insurance proceeds on the death of the key executive.

Salary Reduction Plan

Many business owners use a salary reduction plan to set aside more retirement money for themselves, executives, and employees. If your company doesn't have one, you should consider it. Don't let the name fool you. Participation in such plans doesn't reduce your salary; it simply defers receipt of a portion of it until a later date, usually when you retire. You pay no income taxes on the deferred portion of your salary, nor on the income it earns, until you withdraw the money.

The advantages. Here are more reasons why you should consider a salary reduction plan.

- Through this company benefit, the employees have an additional incentive

to stay with the company.

- Most high-income individuals have lost their right to make tax-deductible contributions to Individual Retirement Accounts (IRAs). A salary reduction plan can be a good substitution. In some ways, it is better than an IRA because the maximum tax-deductible IRA contribution for both 2008 and 2009 is \$5,000 (\$6,000 for those age 50 or older). In contrast, many salary reduction plans allow you to contribute much more, some up to 25% of your salary.

- Often, the company can come up with some sort of match for your contribution to a salary reduction plan. It might be 50 cents of company money for every dollar of the first 6% of your salary which you contribute to the plan (i.e., the company puts in 3%). Or it could use some other formula.

- Although there are restrictions, you can borrow on your vested share in the plan up to \$50,000. In contrast, you can't borrow on any funds in IRA or Keogh accounts.

- Vesting doesn't have to be immediate. The employer's contributions can be vested over time, e.g., 20% a year for five years. Thus, in three years, the employee is 60% vested. *Note:* For contributions made directly by the employee, vesting is immediate, i.e., 100%.

- It's simple to effect. Contributions are automatically deducted from employee paychecks, which lowers taxable income.

The disadvantages. *You can't discriminate;* the plan generally must be made available to all eligible employees. Also be aware of the top-heavy rules, whereby the contributions for company owners are limited by IRS regulations. In addition, the contributions (amounts deferred) by highly compensated employees can be further limited by the amount deferred by other eligible employees. There also are plan contribution limits. For example, if the plan is a 401(k), the maximum annual contribution per individual is limited to \$15,500 for 2008 and \$16,500 in 2009.

- The plan must be a *qualified one*; that is, it must be in writing and comply with IRS regulations. You should allow for some initial time and expense in

establishing the plan and some ongoing time and expense in administering it.

- Although deferred salary is not *currently* taxable income, FICA taxes still have to be paid on the deferred amount.

- As in most retirement plans, if you withdraw money prior to age 59½, you usually must pay income taxes and a 10% penalty on the amount withdrawn. However, you can avoid the penalty for *early* withdrawal if you can show *financial hardship*, although the tax law is still rather fuzzy on what constitutes “hardship”.

- Since there will be a trustee of the plan, usually the company’s owner or a financial institution, the investment options may be more limited with a salary reduction plan. By contrast, under a self-directed IRA or Keogh, a full range of investment options is available.

- Business owners must be particularly careful of *prohibited transactions* between the plan, the company, its owners and officers, and the trustee. Prohibited transactions violate the terms of the Plan Document, e.g., when an owner or employee borrows from the plan in excess of the permitted amount, sells assets to the plan, or fails to comply with the top-heavy rules. The penalty for such transactions is 15% a year of the transaction amount and 100% if the prohibited transaction isn’t corrected.

- The company could be required to make the matching contributions each year even if it loses money. The Plan Document should spell out whether the matching contributions are mandatory or optional by the company.

Other Retirement Plans

If you decide a salary reduction plan is too costly, consider a SIMPLE Plan whereby the employees fund the plan with their own money through pre-tax salary deductions of up to \$10,500 annually in 2008 and \$11,500 in 2009. Employers must match employee contributions dollar-for-dollar, but only up to 3% of the employee's compensation for the year.

A second alternative is a SIMPLE 401(k). Elective contributions by employees are limited to \$10,500 in 2008 and \$11,500 in 2009, but the matching contributions by the employer can be used to move the total annual contribution above the \$10,500 and \$11,500 limits. *Note:* Employees age 50 and older can increase their elective contribution by \$2,500 for both 2008 and 2009.

If cash is not a problem, you may want to set up a Simplified Employee Pension Plan (SEP). The maximum contribution per employee is 25% of pay (up to a maximum contribution of \$46,000 in 2008 and \$49,000 in 2009). It's easy to establish; each employee simply sets up an IRA into which the employer makes the contributions. It's flexible since you can decide on the amount to contribute each year. Other characteristics of a SEP: (a) The company makes all of the contributions; there is no matching by the employees, and (b) there are no vesting schedules; all amounts that you contribute to the SEP-IRA accounts of your employees belong *immediately* to them.

References: Internal Revenue Code Section 401(k) for a Salary Reduction Plan and Section 408 for both a SIMPLE Plan and Simplified Employee Pension Plan.

Deferred Compensation Plan — see next page.

Deferred Compensation Plan

A deferred compensation plan is another tax-advantageous way to accumulate money today for payout after retirement. Such a plan should be considered in addition to pension plans, profit-sharing plans, or any other retirement plan that you may establish, including the company Salary Reduction Plan described earlier.

A deferred compensation plan is not a substitute for other retirement plans; instead, it's a *supplement* to them. And you can discriminate. You can choose who *is* to participate in the plan; it can be just you or you and select executives. There are no IRS discrimination rules.

Here's a Simple Example

Let's assume you are currently age 55 and are paid an annual salary of \$75,000. When you retire in 10 years, you want to receive additional retirement income of \$20,000 a year for 10 years (from age 65 through age 75). *Note:* We used a 7% annual return in our illustrations since it reflects an average return over the last 10 years.

Here's how a defined compensation plan works:

- Your company accumulates for you \$10,167 a year for 10 years (\$101,670 total).
- At a 7% annual return, that money in 10 years grows to \$140,473 (\$101,670 principal and \$38,803 investment growth).
- That \$140,473 is sufficient to pay you a total of \$200,000, or \$20,000 a year, for the 10 subsequent years.

Putting aside the time value of money, the net effect is:

You receive \$200,000 retirement money and your company's net cash outlay is **only \$41,670** — \$101,670 money accumulated for 10 years *less* tax savings of \$60,000 (30% overall tax rate times \$200,000 paid to you).

In setting up a Deferred Compensation Plan, you first determine the annual

amount you wish to receive after retirement and over how many years. You then determine how you are going to fund the plan.

For you and other participants, such a plan defers the payment of taxes on current compensation and bonuses and increases post-retirement income. For the company, it defers payout of cash compensation and/or bonuses and provides an excellent incentive for executives to remain with the company if there is a forfeiture provision, i.e., the executive collects the deferred compensation *only* if he or she stays with the company for a certain period, say, five years.

How to Start a Plan

To establish a deferred compensation plan, prepare a written agreement, have it approved by resolution of your board of directors, adhere to the rules, and set up a bookkeeping reserve to accumulate the amount deferred. A bookkeeping reserve must be recorded as a liability on your company's books.

Use of Escrow: To avoid the constructive receipt issue from the company's point of view, it *cannot* put the money in escrow, or in a trust, or in any other way remove it from general company assets.

General Creditor: If the company goes bankrupt, the payments due you will be treated as a general liability of the company and you will have to stand in line with other creditors to collect the deferred compensation.

Investments: Be conservative when making the investments; remember, this is part of your retirement money. It is *not* the place to put high-risk investments.

Facts to Consider

1. The annual amounts accumulated by your company are *not currently* tax deductible, but they're also not taxable income to you until paid out or made available to you or you don't comply with all of the IRS rules on deferred compensation plans.

2. An indexing formula can be included in the plan to increase future payments to offset the impact of inflation.

A deferred compensation plan is a way to use current company assets to provide future retirement income.

3. The amount of compensation deferred is listed as a liability on the company's books and thus there is a risk that the company will not be able to make the deferred payments in future years.

4. As indicated, there are no IRS prohibitions against using a deferred compensation plan in a discriminatory way; that is, it can be set up only for the top officers of the company or only for the principal owner(s).

5. If you die before receiving all your deferred income, any amounts remaining in the plan can be paid to your spouse or other beneficiary. The agreement also can provide that the payments will be accelerated in the event of disability.

6. To increase the after-tax return on the monies set aside, talk to your advisers about investing in domestic preferred and common stocks where the dividends paid by these companies are received 70% tax-free. If your corporation owns 20% or more of the dividend-paying company, the exclusion increases to 80%. *Note:* The 70% and 80% exclusion are available only to regular (C) corporations, not S corporations, partnerships, or other business forms.

7. If you, as the majority stockholder, will be receiving the deferred compensation, try to abstain from personally voting on the plan, if possible.

8. *Caution on Constructive Receipt:* Make sure that you **do not** have the right to receive, request, demand, or accelerate payment of the deferred compensation. If you do, the IRS may decide that the money set aside for you is *constructively received* by you (i.e., you have the right to take and use the money). If this is the IRS ruling, then the full amount is *immediately* taxable as income to you and possibly subject to interest and penalties. This also may apply if you change the terms of the plan.

9. The plan can be part of a larger plan for transferring company ownership. *Here's how one owner did it:* He entered into a combination annual gift program and buy-sell agreement (funded with life insurance) with his two children, who were active in the business. He agreed to give each child 2% of the company every year while he was alive and they agreed to buy the remaining shares on his death with the life insurance proceeds going to his spouse. The children were responsible for paying the life insurance premiums and also agreed, through a deferred compensation plan, to pay the owner \$50,000 a year for 15 years after retirement. On his death, the owner's wife would continue to receive any unpaid deferred compensation payments.

10. Use advisers who are familiar with setting up a deferred compensation plan. The rules are very specific and failure to meet them could result in significant tax consequences.

Reasons to Start Early

Here are the annual amounts to be deferred each year based on the following assumptions:

- Your company has an after-tax return of 7% on its capital.
- The deferred amount is set aside at the *end* of each year.
- The period of funding is 10 years and the pay-out period is 10 years.

You Want Each Year (for 10 years)	Deferred Amount Required (for 10 years)
\$10,000	\$ 5,084
15,000	7,625
20,000	10,167
25,000	12,709

To illustrate the advantages of starting early, let's assume the funding period is 5 years, rather than 10 years. Here are the amounts to be set aside annually over 5 years.

<u>You Want Each Year (for 10 years)</u>	<u>Deferred Amount Required (for 5 years)</u>
\$10,000	\$12,213
15,000	18,320
20,000	24,427
25,000	30,533

As shown, the period of time you have to fund the required payments significantly affects the amount to be set aside. *Example:* If you have 10 years to set aside money to pay out \$20,000 annually, all you need to invest each year is \$10,167. In contrast, note the \$24,427 you must set aside annually over 5 years to obtain the same \$20,000 payment for 10 years.

Reference: Internal Revenue Code Section 409A for a Deferred Compensation Plan which contains the rules and requirements. Be sure it is reviewed by your advisers before setting up a plan.

Checklist for a Deferred Compensation Plan

- Determine the annual amount you wish to receive after retirement and over how many years.
- Compute the amount that must be accumulated each year to fund the deferred payments to you. Use different annual returns, say, 5% to 8%.
- Review with your tax and insurance advisers the funding of the payments and the tax effect on you and the company, both today and during the years you receive the money.
- Determine how you are going to fund the amounts each year: Company Cash, Salary Reduction, Use of Bonus Money, Life Insurance, or a Combination of Methods.
- Prepare a written agreement between you and the company.
- Use advisers who are familiar with setting up deferred compensation plans.

Be conservative when making the investments; remember, this money is part of your retirement fund.

Protecting Against Disability — see next page.

Protecting Against Disability

Disability insurance to protect your income is important coverage, but it can be very confusing insurance to buy. If you don't already have disability coverage, use the ideas below to choose the best policy. If you currently have coverage, use the ideas to review your current policy with your insurance agent; you may want to make some changes.

Here's the biggest reason to consider disability coverage: Seven out of ten men between the ages of 35 and 65 become disabled and are unable to work for periods of 90 days or more. For women, the statistic is four out of ten.

Costs and terms. The cost for a \$3,000-per-month disability benefit (\$36,000 annually) is relatively low. For 40-year-old executives (Unisex Ratings), the annual premium cost is about \$1,000 for a \$36,000 annual benefit with a 60-day elimination period. For 50- and 60-year-old executives, the cost increases to \$1,400 and \$2,000 a year, respectively.

However, before you buy the insurance, you have important decisions to make on the type of policy, level of coverage, and the elimination period, i.e., the length of time you must wait before receiving the benefits. You have a variety of options to choose from.

Here are ideas to discuss with your insurance agent to be sure you're adequately protected on both new and existing policies.

1. The policy you currently own or buy should be *noncancellable* and *guaranteed* renewable. This is very important; you don't want the insurance cancelled when you need it most.
2. Be sure you have sufficient cash reserves to wait out the elimination period. It can be 60, 90, 180 days, etc.
3. Don't rely *solely* on income from sources such as Social Security and other federal or state programs (e.g., veteran's and worker's compensation). Use these programs as a *supplement* to your basic disability insurance.
4. If you want to *lower* your annual cost on an individual policy, consider the

following:

- Reduce the monthly benefit amount, but only if you have excess cash to ride out a disability.
- Make the elimination period as long as possible (say, six months to one year). This, again, while it reduces costs, also increases the need for personal resources to ride out the waiting period.
- Some insurance companies offer an overall discount (10% to 15%) for salary continuation plans covering at least three people. That's explained below.

5. *Important questions:* Do I want coverage to protect myself for *any* type of work or just my occupation? And for total or partial disability? What is the definition of disability? Generally, you want the following definition in your policy:

Your inability to perform the substantial and material duties of your *current* occupation.

That's the best definition. Others may define it as: *Your inability to work in an occupation which you can perform based on your past education, training, and experience.* That's more limiting than your *current* occupation.

Another option: Many insurance companies provide benefits based on the decline in earnings due to disability. *Example:* Your monthly income drops from \$6,000 to \$2,500 because of disability. A percentage, usually 66%, of the \$3,500 difference is the monthly disability paid to you.

Salary Continuation Plan

A salary continuation plan enables a company to continue the salary of employees unable to work because of an accident or illness and to qualify those payments as a valid, deductible business expense. If no *salary continuation plan* existed before the onset of the disability, the IRS may say that any payments are *gratuitous* (i.e., not legally required) and thus not tax deductible.

The IRS principally uses these criteria in determining the validity of salary continuation plans.

1. The plan must be in writing and approved by the company's board of directors. A corporate resolution authorizing the plan and appropriate minutes also should be prepared.
2. The plan must be in effect *prior* to the onset of any disability; it can't be an after-the-fact plan.

Benefits can differ by classes of employees and can favor higher-salaried employees or cover just the principal owner/employee.

Other considerations. Once a valid plan has been set up, you might want to shift some of the potential cash requirements from the company to an insurance company. The premiums paid by the company are tax deductible.

A plan also can be written to cover different salary continuation levels. For example, employees could receive 50% of their salary from the company for the first three months of disability and then 66% directly from the insurance company starting in the fourth month. If many employees are to be insured, a group disability income policy can save money. Where there are only a few people covered, individual policies can be used.

Disability Policy: If you wish to provide disability coverage through an insurance company, be sure the following clauses are in the policy:

- *Noncancellable:* It's always advisable to have disability coverage *both* noncancellable and guaranteed renewable, which means the coverage cannot be cancelled and the premiums cannot be increased. You don't want the insurance non-renewable or unaffordable when you need it most.
- *Waiver of premium:* When an insured is disabled, the premium should be waived for as long as the disability lasts.
- *Discrimination:* While the policy can cover just you, check with your advisers with respect to discrimination rules because they are constantly changing.
- *Health problems:* For business owners who have medical problems, it is imperative to shop around. Some medical conditions may be "ridered" from certain policies while others may be covered, but at a higher premium.

Disability insurance is important protection. Ask your broker to prepare an

analysis of the costs for effecting a salary continuation plan just for you, for select executives, or for all of your employees.

About *The Business Library*

This **Report** is part of *The Business Library* (TBL), a collection of 90 Reports and Manuals on subjects of critical importance to business owners, executives, their families, and the professionals who advise them. TBL is produced by an editorial and research staff with an *average experience* of **30** years in helping businesses and individuals manage their finances better.

The company was formed in 1974 by Thomas J. Martin. Martin has written more than 900 articles and advisories and presented *hundreds* of workshops and seminars to *thousands* of business owners and executives on many of the subjects covered in *The Business Library*. He is an Investment Banker and an expert witness in Valuation and Succession Court Cases. He has helped *hundreds* of business owners and executives raise capital, refinance debt, prepare for succession, and value and sell their businesses.

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