

现金会计制公司的内置收益
Built in Gains
Cash Basis Taxpayer

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- Regis Campfield's Notre Dame Tax and Estate Planning Institute (2007) & (2009);
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Mark Merric has had three, four, and five part series published in Estate Planning Magazine, Journal of Practical Estate Planning, and Leimberg LISI. He is also a co-author of the following three treatises:

- The Asset Protection Planning Guide: A State-of-the-Art Approach to Integrated Estate Planning, Commerce Clearing House (CCH) treatise, first edition;
- Asset Protection Strategies, American Bar Association (two chapters); and
- Asset Protection Strategies Volume II, American Bar Association published Apr. 2005 (MM responsible for 1/5 of the text).

内置收益税

Built in Gains Tax

- 用于避免普通股份制公司选择成为小型股份制公司来避免出售资产或清算时的双重所得税
Prevents S elections to avoid C corp. double tax on sale or liquidation issues
- 对规定时间内出售资产的收益征收35%所得税
Designed to impose a 35% tax on any asset “sold” within the recognition period
 - 一般10年
Generally 10 year period
 - 2009年和2010年 规定期为7年
For 2009 & 2010 – 7 year period
 - 2012年-2014年 规定期为5年
For 2012 – 2014 – 5 year period

A. Built in Gains Tax

The built in gains tax was created to stop closely held C corporations from electing S corporation status shortly before the sale or liquidation of a C corporation and avoiding the double tax on sale. Built in gain is the fair market value of the corporation’s assets over its adjusted basis on the date that the S election is made. This gain is allocated to the various assets, and if an asset is sold within the recognition period, then a tax of 35% is reported on Form 1120S. The recognition period is many times referred to as the C corporation taint.

The recognition period has been traditionally a 10 year period. However, recently various tax acts have reduced the period to 7 years or 5 years with extender bills. Please note there is some confusion regarding how the reduced time periods in the extender bills work. For example, to qualify in 2014 or a previous year, the S corporation assets need to be sold in 2014 and the S election needed to have been made at least five years earlier.

A. 净内置收益所得税

净内置收益所得税的征收是为了阻止非上市股份制公司在出售或清算公司前选择成为小型股份制公司来避免双重所得税。净内置收益等于公司选择成为小型股份制公司当天的资产市场价值减去调整后成本。收益被分配到各个资产，然后当资产在规定的期限内被出售时，公司在税表 1120S 上按照 35% 缴纳所得税。该规定的期限常常被称为是普通股份制公司的污浊期。

一般该期限为 10 年，但近年来有各种类型的税法法案将该期限减少为 7 年或 5 年，并且这些法案在被延续。不过关于这些延续的法案的实际操作有不少困惑。例如要满足 2014 年或更早的期限，小型股份制公司必须在 2014 年将资产出售并且税法选择至少是在 5 年之前做的。

出售公司资产
Sale of Business Assets

- 服务型企业-现金会计制下，应收账款被视为在收到时被出售
Service business - cash basis receivable is deemed "sold" when it is collected

应收账款
Accounts
Receivable
\$450,000



应付账款
Accounts
Payable
\$ 50,000

B. Sale of Business Assets

Unfortunately, as applied to a cash basis taxpayers, the regulations for built in gain appear to have been drafted with a greater net than the purpose of the tax. The purpose of the built in gains tax was so that C corporations could not convert to S corporation and avoid the double tax shortly before the sale of all of its assets to a third person. For example, one would expect that the sale of tangible assets as well as goodwill would be subject to the built in gain tax. However, why would receivables and inventory be included in such a computation?

With an accrual basis taxpayer, there is generally not an issue as to receivables and inventory, because there is generally no gain inherent in these assets. However, as applied to a cash basis taxpayer, there is an unexpected pitfall in making an S election. Cash basis receivables are treated as being sold after making the election.

B. 出售公司资产

但对于采用现金会计制的公司，净内置收益的法规适用的范围似乎比税务局原本希望达到的更大。净内置收益的目的是避免公司选择成为小型股份制公司从而消除了公司出售时的双重所得税。一个公司可能预计出售所有资产，包括商誉，时会产生净内置收益所得税，但是否要在计算中也包括应收账款和公司存货呢？

对于采用权责发生制会计制度的公司来说，一般不会对应收账款和公司存货上产生问题，因为这些资产不会存在内置收益，但对于现金会计制的公司来说，就会在选择成为小型股份制公司时产生以外的陷阱。在选择之后，公司的应收账款都在税法上被视为出售给了第三方。

重要的概念 **Key Concepts**

■ 三个主要的概念

Three major concepts

■ 未实现的净内置收益

Net unrealized built in gain

■ 已实现的净内置收益

Net recognized built in gain

■ 应税收入

Taxable Income

C. Key Concepts

The built in gain tax is computed on the lower or the above three items during any calendar year. Net unrealized built in gain sets a maximum amount that is subject to the built in gain tax. As different assets may be sold in different years, recognized built in gain computes the amount of the unrealized built in gain tax that is recognized in a current year, subject to the ceiling limitation of the unrealized built in gain amount. Taxable income will serve as another limit as the amount of built in gain recognized in a year cannot exceed the S corporation's taxable income.

C. 最重要的概念

净内置收益所得税是取当年三项收入中的最小者来计算。“未实现的净内置收益”为净内置收益所得税计税基础设置了上限。由于不同的资产可能在不同的年份被出售，已实现的净内置收益等于公司当年出售资产时实现的收益，但不超过总的未实现的净内置收益。公司的应税收入是另一个上限，公司在当年确认的净内置收益不能超过公司当年总的应税收入。

专业服务型公司的资产负债表
PC Accrual Financial

资产 Assets:	负债 Liabilities:
应收账款 Rec. \$ 450,000	应付账款 A/P \$ 50,000
计税成本 Adj Basis 0	
设备 Equip 200,000	股东权益 Equity: 500,000
累积折旧 Less Depr. (100,000)	-----

调整后的成本 Adj Basis 100,000	负债及股东权益总计 Liabilities & Equity \$ 550,000

资产总计 Assets \$ 550,000	

D. Example of a Professional Corporation

The above financial statement is presented on an accrual basis for illustration purposes. However, for tax purposes the doctor is a cash basis taxpayer for tax purposes meaning that receivables are not recognized until received and payables are not deducted until paid.

Assume doctor has receivables of \$450,000. Since the doctor is a cash basis taxpayer, the adjusted basis in these receivables at the time the S election is made is zero. Also, assume that the fair market value of the equipment is worth its adjusted basis of \$100,000 (i.e. purchase price of \$200,000 – accumulated depreciation of \$100,000). Further, assume that the professional corporation owes \$50,000 in accounts payable.

D. 专业服务型公司举例

上面的资产负债表采用了权责发生会计制。但如果一个医生在税法上采用现金会计制，那么他的应收账款和应付账款都在实际收到现金和支付现金的时候才能在税法上确认。

其他假设条件为：公司的应收账款为 45 万美元，由于采用的是现金会计制，这些应收账款在其选择成为小型股份制公司时的计税基础为 0。公司的设备的市场价值等于其计成本 10 万美元（即购买价格 20 万美元减去累计折旧 10 万美元），公司的应付账款等于 5 万美元。

未实现的净内置收益
Net Unrealized BIG

以市场价值出售 Deemed FMV sale	\$ 550,000
减去负债-应付账款 Less liability if a deduction - AP	(50,000)
减去资产的调整成本 Less adjusted basis of assets	(100,000) -----
未实现的净内置收益 Net unrealized BIG	\$ 400,000 =====

1. Net Unrealized Built in Gain – Treas. Reg. § 1.1374-3

a) In general. --An S corporation's net unrealized built-in gain is the total of the following --

- (1) The amount that would be the amount realized if, at the beginning of the first day of the recognition period, the corporation had remained a C corporation and had sold all its assets at fair market value to an unrelated party that assumed all its liabilities; decreased by
- (2) Any liability of the corporation that would be included in the amount realized on the sale referred to in paragraph (a)(1) of this section, but only if the corporation would be allowed a deduction on payment of the liability; decreased by
- (3) The aggregate adjusted bases of the corporation's assets at the time of the sale referred to in paragraph (a)(1) of this section; increased or decreased by . . .

From the above Treas. Reg. and previous accrual basis balance sheet, the deemed sale of all of the corporations assets results in \$550,000. From this amount accounts payable are deducted pursuant to subparagraph (2) above. Finally, the C corporation's adjusted basis in its assets immediately before the S election is also subtracted from the deemed sale amount to reach the net unrealized BIG amount of \$400,000.

1. 未实现的净内置收益-财政法规第 1.1374-3 条

a) 总则-小型股份制公司的未实现的净内置收益应等于下述几项之和:

(1) 如果公司在规定期限内的第一天就将资产以市场价值出售给第三方, 并且维持普通股份制公司的谁发状态时应实现的净收益, 减去

(2) 公司在按照第 (1) 款的销售, 应计入收入的负债, 但前提是公司在税法上被允许抵扣该负债费用, 再减去

(3) 公司在按照第 (1) 款出售资产的当日, 资产的调整后成本的总值; 再加上或减去...

根据上述财政法规及资产负债表上的条件, 该公司出售所有资产的出售价格为 55 万美元。减去公司的应付账款额, 再减去公司资产的调整后成本, 最后得到公司在选择成为小型股份制公司时的未实现的净内置收益等于 40 万美元。

已实现的净内置收益 **Net Recognized BIG**

- 现金会计制纳税人
Cash Basis Taxpayer
 - 在实际收到应收账款时才确认收入
Does not report receivables as income until received
 - 在实际支付了应付账款时才能抵扣
Does not deduct accounts payable and wages payable until paid
 - 但选择成为小型股份制公司之后，必须在第二年确认应收账款收入并付清应付账款
However, receivables will be recognized and payables paid in the year following the S election

2. Net Recognized Built in Gain

A cash basis taxpayer does not report receivables as income until received. Since the receivables were not recognized (i.e. reported as income) for income tax purposes, the adjusted basis in the receivables at the time of the S election is zero. Further, a cash basis taxpayer does not deduct accounts payable until paid. However, receivables when collected in the year following the S election will be recognized for purposes of determining net recognized BIG.

Treas. Reg. § 1.1374-4(b)(1) provides the following *example 1. Accounts receivable*. X is a C corporation using the cash method that elects to become an S corporation effective January 1, 1996. On January 1, 1996, X has \$50,000 of accounts receivable for services rendered before that date. On that date, the accounts receivable have a fair market value of \$40,000 and an adjusted basis of \$0. In 1996, X collects \$50,000 on the accounts receivable and includes that amount in gross income. Under paragraph (b)(1) of this section, the \$50,000 included in gross income in 1996 is recognized built-in gain because it would have been included in gross income before the beginning of the recognition period if X had been an accrual method taxpayer. However, if X instead disposes of the accounts receivable for \$45,000 on July 1, 1996, in a transaction treated as a sale or exchange for federal income tax purposes, X would have recognized built-in gain of \$40,000 on the disposition.

2. 已实现的净内置收益

现金会计制的公司在实际收到应收账款的支付时才确认收入缴纳所得税。在选择成为小型股份制公司时，如果公司还没有在税法上确认应收账款的收入，那么这些应收账款的计税成本就为 0。现金会计制的公司也只有在实际支付了应付账款时才能在税法上抵扣。如果公司在选择成为小型股份制公司的后一年收到了应收账款，那么需要在税法上确认相应的已实现的内置收益。

财政法规第 1.1374-4(b)(1) 条提供了下面这个例子来具体解释确认应收账款的内置收益的问题：X 是一个普通股份制公司，采用现金会计制并在 1996 年 1 月 1 日选择成为税法小型股份制公司。公司在前一天的应收账款为 5 万美元，选择当日的市场价值等于 4 万美元，计税基础为 0。1996 年当年，公司收到了客户对所有应收账款的支付 5 万美元，并在税法上确认收入。根据本条例，这 5 万美元都属于已实现的净内置收益，因为如果公司在之前采用的是权责发生会计制，那么这笔收入早已应该被确认。然而，如果条件换成公司在 1996 年 7 月 1 日将这些应收账款出售，价格为 4.5 万美元，那么公司需要在出售的时候确认的内置收益为 4 万美元。

使用损益表方法

Uses Income Statement Approach

- 收入项目-抵扣项目
Income items – Deduction items
- 收入项目-税法法典第1.1374-4(b)(1)条
Income Items § 1.1374-4(b)(1) –
 - 假设公司保持普通股份制类型，在规定的确认期内的所有项目
Any item in recognition period if corp had continued to be a C corporation
 - 适用于权责发生制纳税人（无论纳税人是否实际上采用的是现金会计制）
By an accrual basis taxpayer (regardless if taxpayer was actually a cash basis taxpayer)

a. *Income Statement Approach*

Net recognized BIG is a different concept than net unrealized built in gain. Net recognized BIG is the difference between recognized income items and recognized loss items.

i. *Income Items – Treas. Reg. § 1.1374-4(b)(1)*

Recognition items include any item in the recognition period that would have been reported as income had the corporation continued to be classified as a c corporation by a deemed accrual basis taxpayer. In other words, even though the service corporation was actually a cash basis taxpayer, the receivables when paid during the recognition period after the S election would be classified as a recognized income item.

a. *损益表方法*

“已实现的净内置收益”和“未实现的净内置收益”不同，已实现的净内置收益等于已实现的收益项目之和减去已实现的亏损项目之和。

i. *财政法规第 1.1374-4(b)(1) 条例下的收入项目*

已实现的项目包括了在规定期间内，公司维持税法上的普通股份制公司状态并且按照权责发生制会计制应该确认的收入项目。换言之，即使一个服务型公司采用的是现金会计制，在选择成为税法小型股份制公司以后，在规定期间内被支付的应付账款都属于已实现的项目。

已实现的费用抵扣项目 **Recognized Deduction Items**

- 抵扣项目
Deduction Items
 - 如果合理地抵扣费用，会实现内置亏损
Built in loss if the item would have been properly allowed as a deduction against gross income
 - 只适用于权责发生制纳税人
By an accrual basis taxpayer
(regardless if taxpayer was cash basis)

ii. Recognized Deduction Items Treas. Reg. §1.1374-4(b)(2)

Recognized deduction items are items that would have been “properly allowed as a deduction against gross income” by an accrual basis taxpayer. However, even if the taxpayer was cash basis, once again the Treas. Reg. assumes that the deduction is proper. In this respect, accounts payable by a cash basis taxpayer represent a proper recognized deduction item.

ii. 财政法规第 1.1374-4(b)(2) 条例中已实现的费用扣除项目

“已实现的费用扣除项目”指的是按照权责发生制会计制，公司可以合理地用来抵扣收入的项目。但如果公司采用的是现金会计制，那么财政法规假定抵扣是合理的。因此现金会计制公司的应付账款属于合理的已实现的费用扣除项目。

选择成为小型股份制公司之后确认收益
Year After S Election
Deemed Recognition

应收账款	\$ 500,000
Receivables	
应付账款	(50,000)
Payables	-----
已实现的内置收益	\$ 450,000
Recognized BIG	

b. The Year After the S Election

One year after the cash basis service C corporation elected to be classified as an S corporation, the receivables of \$500,000 are collected and the payables are paid. Under the recognized net BIG computation, it is deemed that \$500,000 has been recognized as income less a deduction of \$50,000 for the payables. Therefore, the recognized BIG is \$450,000.

b. 选择成为税法小型股份制公司的后一年

现金会计制的公司在选择成为税法小型股份制公司之后的一年，收到了 50 万美元的应付账款，并支付了公司的应付账款。按照已实现的净内置收益计算条例，公司在税法上应确认 50 万美元减去 5 万美元的净收益，得到已实现的净内置收益为 45 万美元。

税表1120S-附表D 内置收益所得税
1120 S – Schedule D
Tax Paid on smallest of 3

- 以实现的内置收益
Recognized built in gain
- 当年的应税收入
Taxable income for the year
- 未实现的内置收益
Unrealized Built in Gain
 - 税表1120S 附表B 第6行
1120S Schedule B, Line 6

6 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ▶ \$ **400,000**

c. Tax Paid on the Smallest of 3 Items

Schedule D of Form 1120S provides that the built in gains tax is paid on the smallest number of the following three item:

- (a) Recognized built in gain;
- (b) Taxable income for the year; or the
- (c) Unrealized built in gain.

The unrealized built in gain is first reported on Form 1120S Schedule B, Line 6. As noted from the example, the unrealized BIG is \$400,000.

c. 所得税按照以下三项中最小者计算

小型股份制公司的年度税表 1120S 附表 D 上显示了净内置收益所得税的计算过程为取以下三项中最小者计算：

- (a) 已实现的净内置收益；
- (b) 当年的应税收入；
- (c) 未实现的内置收益。

未实现的净内置收益首先填报在税表 1120 附表 B 的第 6 行，上述例子中公司的未实现的净内置收益等于 40 万美元。

税表1120S-附表D 内置收益所得税
1120 S – Schedule D
Tax Paid on smallest of 3

SCHEDULE D (Form 1120S) Department of the Treasury Internal Revenue Service	Capital Gains and Losses and Built-In Gains ▶ Attach to Form 1120S. ▶ See separate instructions.	OMB No. 1545-0130 2008
Part III Built-In Gains Tax (See instructions before completing this part.)		
14 Excess of recognized built-in gains over recognized built-in losses (attach computation schedule).	14	\$ 450,000
15 Taxable income (attach computation schedule).	15	\$ 500,000
16 Net recognized built-in gain. Enter the smallest of line 14, line 15, or line 6 of Schedule B	16	\$ 400,000
17 Section 1374(b)(2) deduction	17	
18 Subtract line 17 from line 16. If zero or less, enter -0- here and on line 21	18	\$ 400,000
19 Enter 35% of line 18 Highest Corporate Tax Rate	19	\$ 140,000
20 Section 1374(b)(3) business credit and minimum tax credit carryforwards from C corporation years	20	
21 Tax. Subtract line 20 from line 19 (if zero or less, enter -0-). Enter here and on Form 1120S, page 1, line 22b	21	\$ 140,000

Schedule D above is presented for illustration purposes. As noted in the previous slides, the recognized built in gain due to the collection of the receivables and the payment of the payables is \$450,000. For purposes of his example, it is assumed that the taxable income is \$500,000 due to the distribution/salary strategy employed by the accountant. Finally, as noted on the previous slide, the unrealized built in gain is \$400,000. Therefore, the lowest of the three is \$400,000 and the additional built in gain tax paid by the service corporation due to the S election is \$140,000.

上图中的附表向我们解释了，公司在收到应收账款和支付了应付账款时实现的净内置收益等于 45 万美元。假设公司当年的应税收入等于 50 万美元，又已知公司的未实现的净内置收益等于 40 万美元，这样前页所述的三者中的最小者等于 40 万美元，乘以净内置收益税率后得到公司当年应缴纳的净内置收益所得税为 14 万美元。

累积负债

Accruing a Liability

- 可以用应计负债减少未实现的净内置收益吗?
Can an accrued liability reduce net unrealized built in gain?
- 可以用应计负债减少已实现的内置收益吗?
Can an accrued liability reduce net recognized built in gain?
- 可以在选择成为小型股份制公司之前制造负债来消除净内置收益吗?
Is it possible to zero out either or both of these by creating a liability before the S election?

E. Accruing a Liability

Unrealized BIG and recognized BIG both deduct liabilities that are payable by an accrual basis taxpayer, even if the taxpayer is actually a cash basis taxpayer. Would the accrual of either a bonus or a deferred compensation plan payable to the owner solve either or both the unrealized BIG and recognized BIG issues?

E. 应计负债

公司的未实现的净内置收益和已实现的净内置收益都可以抵扣权责发生会计制的公司的应付账款，即使公司实际采用的是现金会计制。但公司可以抵扣应付奖金或推迟支付的佣金计划来减少公司的净内置收益吗？

减少未实现的净内置收益

Unrealized BIG Is Reduced by:

(2) 任何公司按照本条例第(a)(1)款的规定应计入销售收益的债务项目，但前提是公司在支付了以下负债时可以抵扣该费用

Any liability of the corporation that would be included in the amount realized on the sale referred to in paragraph (a)(1) of this section, but only if the corporation would be allowed a deduction on payment of the liability;

应付奖金或推迟的佣金计划符合要求

Accrued bonus or Deferred Comp Would Qualify

没有规定何时支付

No reference to when amount is paid.

1. Net Unrealized BIG

Treas. Reg. § 1.1374-3(a)(2) provides a deduction in computing net unrealized built in gain for any liability that would be deductible when paid. The regulation contains no reference to when the liability needed to be paid. Therefore, many planners take the position that either an accrued bonus that is actually paid within 2 and ½ months of year end as well as a deferred compensation plan that may be paid over several years would reduce net unrealized BIG provided they were accrued prior to the S election.

1. 未实现的净内置收益

财政法规第 1.1374-3(a)(2) 条规定了公司在计算未实现的净内置收益时可以扣除已支付的债务项目。法规中并没有提供债务必须被支付的时间，因此有不少规划者认为公司只要在第二年的前 2 个半月内将应付奖金付清即可，推迟支付的佣金计划也可以在接下来的几年中被慢慢付清并减少未实现的净内置收益，只要它们是在公司选择成为税法小型股份制公司以前发生的。

未实现的净内置收益
Net Unrealized BIG

市场销售价值 Deemed FMV sale	\$ 550,000
减去负债-应付账款 Less liability if a deduction - AP	(50,000)
推迟支付的佣金计划 Deferred comp plan	(450,000)
减去资产的调整成本 Less adjusted basis of assets	(100,000)

未实现的净内置收益 Net unrealized BIG	\$ 0
	=====

The above computation illustrates the aforementioned position of many planners that net unrealized BIG is reduced to zero if a deferred compensation plan is implemented.

上面的计算显示了很多规划者认为可以用推迟支付的佣金计划来减少公司的未实现的净内置收益。

已实现的亏损

What About Recognized Losses?

- (2) 抵扣项目-可在规定期间内抵扣的项目应为公司在该规定期间以前按照权责发生会计制可以被合理地用来抵扣收入的已实现内置亏损

Deduction items. --Except as otherwise provided in this section, any item of deduction properly taken into account during the recognition period is recognized built-in loss if the item would have been properly allowed as a deduction against gross income before the beginning of the recognition period to an accrual method taxpayer . . .

2. What About Recognized Deductions?

Whether an accrued bonus or a deferred compensation plan will be classified as a recognized deduction for purposes of the net recognized BIG computation is more complex than the net unrealized BIG computation. Treas. Reg. § 1.1374-4(b)(2) provide that the item must have been properly allowed as a deduction against gross income.

2. 那么已实现的费用扣除项目呢?

在计算已实现的净内置收益时，应付奖金或推迟支付的佣金计划是否属于已实现的费用扣除项目是一个很复杂的问题。财政法规第 1.1374-4(b)(2) 条规定了扣除项目必须属于可以抵扣收入的性质。

应付奖金 **Accrued Bonus**

- 应付奖金可能会被税法法典第267条例禁止抵扣
An accrued bonus not be “properly allowable” as a deduction under the disallowance rules of IRC § 267
- 对于小型股份制公司，关联方是指任何的股东
Related person for S corp purposes is any ownership. IRC § 267(e)
- 但税法法规对在第二年前2.5个月内付清的情况提供了例外条例
However, Reg. 1.1374-4(c) provides an exception if paid in 2 ½ months

a. Accrued Bonus

At first blush, one might conclude that an accrued bonus before the S election is not properly payable, because of the related party disallowance rules of IRC § 267. First, under IRC § 267(e), all S corporations, regardless of how little ownership interest he or she has, are related parties. Therefore, IRC § 267(a)(2) would disallow the deduction. However, Treas. Reg. § 1.374-4(c) provides an exception if the amount is paid in 2 and ½ months of year end. Therefore, any accrued bonus before the S election that is paid within 2 and ½ months of the S election should reduce the net recognized built in gain.

a. 应付奖金

初看之下，人们可能会认为应付奖金不属于公司可以合理抵扣的项目，因为税法法典第 267 条规定了关联方不得抵扣。按照税法法典第 267 (e) 条的规定，所有的小型股份制公司的所有人都是关联方，无论所占的权益多小。这样税法法典第 267 (a) (2) 条就阻止了公司对应付奖金的抵扣。但财政法规第 1.374-4(c) 条提供了一个例外条例：当公司在第二年前 2.5 个月内将应付奖金都付清时，公司可以用这些已付奖金来减少已实现的净内置收益。

推迟支付的佣金计划 **Deferred Comp. Plan**

- 不满足2.5个月付清的例外条例
Does not meet the 2 ½ month rule
- 税法法典第1.1374-4(c)(2)条的相关规定不能提供给关联方任何帮助
1.1374-4(c)(2) – regarding deferred compensation plans does not help for a related party
- 因此，推迟支付的佣金计划不属于已实现的净亏损
Therefore, a deferred comp. plan is not a recognized loss

b. Deferred Compensation Plan

A deferred compensation plan does not meet the 2 and ½ month rule, and may well be paid years in the future. The reference in Treas. Reg. § 1.1374-4(c)(2) is not helpful, because it only applies to non-related parties under IRC § 267. All S corporations, regardless of how little ownership he or she has, are classified as related parties under IRC § 267(e). Therefore, a deferred compensation plan does not reduced net recognized BIG.

b. 推迟支付的佣金计划

推迟支付的佣金计划满足 2.5 个月的例外条例，而是会在之后的几年内被支付。财政法规第 1.1374-4(c)(2) 条并没有提供任何帮助，因为它只适用于第 267(e) 条例下的非关联方。而所有的小型股份制公司的所有人都是该条例下的关联方，无论其所占权益有多小。因此，被推迟的佣金计划不能够被用来减少已实现的净内置收益。

冒险的税务立场 **Aggressive Position?**

- 应付所得税按以下三者中的最小者计算
Tax paid is on the smallest of the 3
 - 当年的应税收入
Taxable income for the year
 - 已实现的净内置收益
Recognized built in gain
 - 未实现的内置收益
Unrealized Built in Gain
- 限制于合理的薪酬
Limited to Reasonable Compensation

3. Aggressive Position?

Many planners take the position that a deferred compensation plan may be accrued against the unrealized built in gain as previously discussed. If this is the case, then no built in gains tax will be reported because it is computed on the lower of the three items listed above. Other planners eliminate the built in gains tax by zeroing out the S corporation earnings by increasing the owner's W-2. Both of these techniques are subject to such compensation being reasonable.

3. 冒险的税法立场?

很多规划者认为可以用推迟支付的佣金计划来减少公司的未实现的内置收益，如果该立场属实，那么公司将不会产生任何的内置收益所得税，因为该所得税是取以上三项中的最小者来计算。其他的规划者则会采用增加股东的工资的方式来减少公司的收益。但这两种方法都要求股东薪酬在合理的范围之内。