

Final Regulations Issued Under Code Section 162(m)

April 8, 2015

The IRS recently issued final regulations regarding the deduction limitation for certain employee compensation in excess of \$1 million under the Internal Revenue Code. Proposed regulations were issued on June 24, 2011. The final regulations generally adopt the proposed regulations with some modifications. Code Section 162(m) generally imposes a deduction limit of \$1 million on compensation paid by a publicly held corporation during any tax year to a "covered employee," which generally includes the CEO and the three highest paid officers other than the CEO and CFO. However, the deduction limitation does not apply to qualified "performance-based compensation," including stock options and stock appreciation rights ("**SARs**"). The final regulations clarify that for stock options and SARs to qualify for the exception, the requirement to specify the per-employee limitation in the plan is satisfied if the plan specifies an aggregate maximum number of shares with respect to which stock options, SARs, and other types of equity awards may be granted to any individual employee during a specified period, without separately specifying a limit for stock options and SARs. The proposed regulations also clarify the application of the transition rule for non-publicly held corporations that become publicly held, which suspends the deduction limitations for awards granted pursuant to plans that existed prior to the corporation going public. The final regulations adopt the proposed regulations that identified compensation payable under a restricted stock unit ("**RSU**") as being ineligible for the transition relief. The clarification with respect to stock options and SARs is effective for any grants on or after June 24, 2011, and the clarification with respect to RSUs is effective for grants on or after April 1, 2015. A copy of the final regulations is available [here](#).