

## IRS and Treasury Issue Proposed Regulations Under Code Section 162(m)

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The IRS and Treasury recently issued proposed regulations under Internal Revenue Code Section 162(m) to reflect changes enacted by the Tax Cuts and Jobs Act ("TCJA") to the tax deductibility of compensation paid by publicly held corporations to certain executive officers. Code Section 162(m) disallows the deduction by any publicly held corporation for compensation paid in any taxable year to a covered employee that exceeds \$1 million. The proposed regulations implement the changes from the TCJA by (i) updating the definitions of covered employee, publicly held corporation, and applicable employee compensation; (ii) implementing the elimination of the performance-based compensation exception; and (iii) clarifying the application of the "grandfather" rule for outstanding compensatory arrangements that were in effect on November 2, 2017 and not modified on or after that date. The proposed regulations also provide guidance on (a) the elimination of the transition period following a corporation's IPO, (b) the impact of mergers and acquisitions, corporate reorganizations, and corporate divisions under the amended Code Section 162(m), and (c) the modification of deferred compensation arrangements to comply with the amended Code Section 162(m) without violating Code Section 409A. The proposed regulations generally follow the guidance previously issued by the IRS in Notice 2018-68 and confirm the IRS's approach of broadly interpreting the deduction disallowance provisions of the TCJA. Taxpayers may rely on the proposed regulations for tax years before the final regulations become effective.

The proposed regulations are available [here](#).