

IRS Releases Guidance on Applicability of Code Section 162(m) to CFOs of Smaller Reporting Companies

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The IRS recently released a Chief Counsel Memorandum in which the IRS concluded that the CFO of a public company, which is eligible to report under the SEC's executive compensation disclosure rules as a "smaller reporting company," may be subject to Code Section 162(m)'s \$1 million compensation deduction limit. The limit under Code Section 162(m) applies to "covered employees" which are a public company's CEO and certain other highly compensated executives whose compensation is required to be disclosed pursuant to the SEC's executive compensation disclosure rules. For larger public companies, this means the limits of Code Section 162(m) generally will apply to its CEO and its three most highly compensated executives, other than its CEO. The company's compensation deduction for its CFO is not limited by Code Section 162(m) because the CFO's compensation must be disclosed due to his or her position, not due to the compensation level. However, for smaller reporting companies, the IRS reasoned that 162(m) could apply to the CFO if he or she is one of the company's two most highly compensated executives, other than the CEO, because smaller reporting companies are not required to disclose the CFO's compensation merely due to his or her position. The Chief Counsel Memorandum is available [here](#).