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KPMG report: Expanded scope of \$1 million section 162(m) deduction limitation on certain executive compensation, proposed regulations

It is important for companies to understand the requirements and limitations of recently released proposed section 162(m) regulations—including the expanded scope of the deduction limitation and narrowed transition relief—as well as how these rules might apply to the companies, their affiliated groups, and their compensation arrangements going forward.

The recently released proposed regulations under section 162(m) reflect changes made by the 2017 U.S. tax law (Pub. L. No. 115-97)—the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA)—amendments that significantly expanded the scope and application of these rules. Section 162(m) limits the annual compensation expense deduction available to publicly traded companies to \$1 million for certain “covered employees.” The proposed regulations were 129 pages in their initial release, and include over 80 examples to illustrate the guidance for when, and how, the amended rules would apply. In particular, the proposed regulations expand on prior guidance to identify certain entities that were not previously considered “public” companies for this purpose, but are now subject to a potential deduction limitation. In addition, the proposed regulations identify structures and arrangements subject to these limitations that prior IRS private letter rulings (PLRs) noted were outside the purview of section 162(m).

Public companies (including those under the expanded definition of the TCJA and proposed regulations) may now want to consider the impact of section 162(m) and if any changes need to be made to their determination of covered employees or to their calculations and tax treatment of compensation in light of the additional guidance. In addition, transition relief may be available to exempt some compensation items from these limitations if certain actions are taken (or avoided). Furthermore, affected companies need to understand the collateral impact of the section 162(m) rules on any compensation arrangements, and amendments thereto, with respect to covered employees or potential covered employees.

Read a [January 2020 report](#) [PDF 272 KB] prepared by KPMG LLP: *What's News in Tax: Widening the Net—Proposed Regulations Expand Scope of \$1 Million Section 162(m) Deduction Limitation on Certain Executive Compensation Paid by Public Companies*

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