Washington Update
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IRS, Treasury Release Initial Guidance on Section 162(m)

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Earlier today, the IRS and the Treasury Department released Notice 2018-68, which provides initial guidance on the application of Section 162(m).

Section 162(m) disallows a deduction by publicly held corporations for remuneration paid to covered employees in excess of $1,000,000. The *Tax Cuts and Jobs Act* (P.L. 115-97) amended Section 162(m) and provided transition rules applicable to certain outstanding arrangements, commonly known as the “grandfather rule.”

This notice provides guidance on the amended rules for identifying employees and the operation of the grandfather rule, including when a contract will be considered materially modified so that it is no longer grandfathered.

The IRS and Treasury Department have requested that written comments be submitted by Nov. 9, 2018 on the application of:

- The definition of “publicly held corporation” to foreign private issuers.
- The definition of “covered employee” to an employee who met the definitional requirements of a predecessor of the publicly held corporation.
- Section 162(m) to corporations immediately after they become publicly held through an initial public offering or similar transaction.
- The SEC executive compensation disclosure rules for determining the three most highly compensated executive officers for a taxable year that does not end on the same date as the last completed fiscal year.

The IRS and Treasury Department have noted that further guidance on the application of Section 162(m) will be released in the form of proposed regulations, which will incorporate the guidance provided in this notice.

A copy of the notice is attached.