

**Executive Summary of  
IPB Comment Letter Regarding § 162(m)**

- **TCJA:** Section 162(m)'s \$1 million limit on deducting executive pay now applies to:
  - *More companies* – companies with publicly-traded debt; publicly-traded companies even if proxy statement disclosure not required
  - *More pay* – no more exceptions for performance pay or commissions
  - *More people* – CFOs now covered; employees of purchased companies now covered
  - *More years* – “covered employee” status continues for future years
- **Our Argument:** We challenge the last part of this expansion – that covered employee status continues for all future years. The crux of our argument stems from the observation that the statutory language of § 162(m) consistently uses the term “employee” and does not include “former employees.”
- **Why Does It Matter?** Under our argument, covered employee status would stop at the end of the year in which an executive terminates employment. Common components of pay could thus be deductible without having to push payment out further:
  - Traditional deferred compensation plans, excess plans, SERPs
  - Severance pay including change in control severance
  - Equity pay and stock option exercises following termination
- **Who Is Affected?** Publicly-traded companies, particularly those who traditionally pay deferred compensation or seek to preserve the availability of deduction for executive pay that is aligned with the long-term interests of shareholders.
- **Why Haven't I Heard This Argument Before?** We are not the only practitioners who have noticed this issue. But the “Once a Covered Employee, Always a Covered Employee” shorthand has been widely broadcast. This shorthand is based almost entirely on a snippet in the Conference Report rather than the logic of the statutory text itself.
- **Grandfather Rule:** Our comment is not specific to the grandfather rule. However, there has been a lot of confusion about how the grandfather rule applies to non-qualified plans and severance pay in particular. Our argument would avoid some of these difficulties.
- **Consultant/Contractor Officers:** A similar argument likely could be made with respect to other non-employee officers, such as consultants or contractors.

**Contact us.** If you have reactions or comments or would like more information, we would be happy to hear from you. Please contact the authors:

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