



CHANGES IN EXECUTIVE COMPENSATION

EXECUTIVE COMPENSATION

Section 162(m) – Areas of Focus

- How does a company establish a “written binding contract” when negative discretion is permitted?
- Will additional earnings on nonqualified deferred compensation after 2018 be grandfathered?
- How do I protect against loss of grandfathering?
- New ways to save tax deductions by deferring payments to later periods?

Third Party Loan Funding for Employee Stock Purchase Plans (ESPPs)

- ESPPs can be an attractive way to increase employee stock ownership (15% discount with lookback feature)
- Employees leave significant money on the table
- New PLR allows loan financing alternative for ESPPs – participation with no salary reductions
- Challenges: source of loans, holding period, imputed compensation on interest free loans

EXECUTIVE COMPENSATION

New SEC Final Rule on Hedging

- Generally effective for public companies with fiscal years beginning on and after July 1 2019
- Most public companies have policies against hedging - but what is a hedge?
- Hedging can be interpreted to include common investment practices by executives
- Considered clarifying what is, and is not, prohibited under existing hedging policies in light of new rule

21% Excise Tax on Pay over \$1 Million to Covered Employees at Tax-Exempt Organizations

- IRS guidance expansively interprets who is a covered employee – it's not just the top 5 employees
- Important to avoid spikes in compensation, particularly at employment termination
- Adjusting or changing forms of pay to avoid spikes in compensation – return of split dollar insurance?
- Corporate restructuring being considered in extreme cases to reduce number of covered employees