



IPB Submits Comments to IRS on 162(m) Disallowance (February 2020)

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IPB attorneys Kevin O'Brien and Spencer Walters submitted two sets of comments to the IRS in response to proposed regulations under Section 162(m) intended to implement changes made in the Tax Cuts and Jobs Act (TCJA). The comments made the following recommendations:

"Covered Employee" Definition & Deferred Compensation

We recommend that the term "covered employee" be defined in accordance with the statutory text as an "employee" - i.e., an individual who is an employee at some point during the tax year for which the deduction would be available but for the potential application of Section 162(m). Accordingly, payments pursuant to deferred compensation plans in years subsequent to a covered employee's termination of employment should not be subject to the disallowance under Section 162(m).

Consulting Pay

We recommend that the final regulations specify that applicable employee remuneration includes only pay attributable to an employment (and not an independent contractor) relationship. This conclusion is supported by the existing statutory and regulatory language, unchanged by the TCJA. It is also supported by past IRS guidance and the common understanding of practitioners.

Read the full comment letters [here](#) and [here](#).