2017 TAX ACT SUMMARY

RULE CHANGES	SUMMARY OF CHANGE	COMPANIES IMPACTED	EFFECTIVE DATE	L&A OBSERVATIONS	RECOMMENDED ACTION
162m: Public Company $1m Compensation Cap	The 2017 Tax Act repeals the exception to the Internal Revenue Code Section 162(m) $1 million deduction limitation for commission and performance-based compensation paid to a covered employee of a publicly traded corporation.	Public companies and any public who files a public report under Section 15(d) with the SEC.	Jan. 1, 2018 unless there is a written contract entered into prior to Nov. 2, 2017, that satisfies the formulaic performance based exception currently in place.	This is a major change and subsequent lost tax deduction for most public companies who provide qualified performance based compensation over $1mm to the named executive officers. However, the significant drop in corporate tax rate to 21% will more than offset these lost deductions. This new rule may also create a new trend of higher base salaries. A result of higher base salaries may likely be higher total compensation as bonus and long-term incentive awards are often a function of base salary levels. Finally, the expanded coverage to Section 15(d) SEC filers, will pick up many private equity portfolio companies.	Companies should review the following to remove legacy language preserving the 162 deduction: short term incentive plan documents, long-term incentive plan documents, D&O policies, severance agreements, employment agreements and board and committee charters. Companies could consider more flexible performance criteria.
	162m currently applies to compensation payable to covered employees defined to include the chief executive officer (CEO) and the three other highest-compensated officers, but excluding the chief financial officer (CFO). The 2017 Tax Act revises the definition of covered employee to include the CFO.			This new rule casts a wider net of who will be considered a covered employee. Addtitionally, this new rule means that deferred compensation still would be subject to the $1 million deduction limitation even if paid in a year after the officer is the CEO, CFO or one of the top-paid officers.	Companies should continually review the list of potential covered employees to ensure an employee doesn't inadvertently become a covered employee.
	The 2017 Tax Act also provides that once an officer becomes a covered employee, he or she remains a covered employee forever. The 2017 Tax Act also treats beneficiaries of covered employees as covered employees for this purpose.				
83 (i): Private Company Equity Deferral	The 2017 Tax Act allows employees of private companies to delay taxation for up to five years compensation paid under the following conditions: 80% or more of all US employees must receive awards; they must be employees of "eligible corporations - a company with no readily tradable stock"; and the awards must be in the form of "qualified stock - received in connection with stock options or restricted stock".	Private Companies who provide equity incentives to at least 80% of the employee population.	Jan. 1, 2018	This provision is intended to increase equity participation throughout the organization and provide employees an ability to defer taxes. However, very few private companies provide award actual equity, and even less provide to 80% of the employee population. While this provision has good intentions, the ability to defer taxation will probably not be enough for companies to overcome the cost and complication of awarding actual equity to over 80% of employees.	Review the Company's long-term incentive plan to see if modifications can be made to allow for the new deferral rule.
Compensation Caps for Tax Exempt Organizations	Tax exempt organizations will face a new excise tax of 21% for: 1) Compensation in excess of $1 million paid to the employer's "covered employees" or five highest paid employees for the current year or for any year prior from 2017 forward, and 2) any excess parachute payment provided to a covered employee that is more than 3x the employees base amount (similar to the 280G golden parachute payment rules).	Tax Exempt Organizations	Jan. 1, 2018	This will significantly impact the many tax exempt organizations who are trying to compete for talent with large private and public organizations. These tax exempt organizations will likely not change the amount they are paying their top executives or coaches or university presidents, but will instead effectively pay more due to the 21% excise tax.	Tax Exempt Organizations should conduct independent reviews of their executive compensation programs to ensure they are market competitive, are considered reasonable compensation to withstand intermediate sanction concerns, and identify any potential strategies to lower the potential excise tax liability.
409A	No Deferred Compensation Rules were changed.	None	None		Companies should continue to consider non qualified deferred compensation as a part of the long-term wealth accumulation strategy of key employees.
Individual AMT	The AMT tax remained, but the threshold was increased.	Public and private companies	None	Leaving in the AMT tax will dampen the use of stock options for executives who are hit with this additional tax.	When awarding stock options, companies should consider the additional tax burden AMT could impose.