

Tax Reform Proposal - Uncertainty for Year-End Compensation Planning: What You Can Do to Prepare

November 8, 2017 | Client Update | 2-minute read

The proposed [tax reform bill](#), known as the Tax Cuts and Jobs Act, in its current form would significantly upend [compensation practices](#), not only for senior executives, but also for broad-based employees and board members, making tried and tested compensation tools – including most forms of employee stock options and deferred compensation programs – tax-inefficient for U.S. taxpayers. Specifically, the impact of the bill on companies that are based or have employees in the United States includes the following:

- Eliminates the ability of individuals to defer taxation of compensation, including under supplemental executive retirement plans, elective deferral programs and multi-year severance payouts;
- Significantly limits the ability to grant stock options and stock appreciation rights as they have conventionally been granted; and
- Eliminates the performance-based and commission exceptions from the Section 162(m) limitation on the tax deductibility of executive compensation and expands the scope of covered employees.

House Republicans first released the text of the bill on November 2, 2017. Since then, the House Ways and Means Committee has already approved an [amendment to the bill](#) that was introduced by Chairman Kevin Brady (which provides [limited relief](#) for stock options and RSUs granted by private companies whose stock is illiquid). We anticipate that the bill will continue to evolve as it works its way through the legislative process.

That said, in recognition that this is the season of the year when many companies review their remuneration practices for the upcoming year and that any changes can require a meaningful lead time, this memorandum highlights the bill's compensation-related provisions and identifies a few ways in which companies can best prepare for possible changes to the tax treatment of compensation.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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