

IRS Releases Final Regulations Under Section 162(m): Some Relief for Newly Public Companies

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On March 31, 2015, the Internal Revenue Service published [final regulations](#) under Section 162(m) of the Internal Revenue Code. The final regulations clarify two requirements for exceptions from the Section 162(m) tax deductibility limit:

- the need for per-employee limits on equity awards in order to qualify stock options and stock appreciation rights (SARs) for the “qualified performance-based compensation” exception; and
- the treatment of restricted stock units (RSUs) or phantom stock arrangements under the transition period exception for certain compensation “paid” by newly public companies.

Importantly, consistent with the proposed regulations, the final regulations clarify that RSUs or phantom stock arrangements granted by newly public companies would not qualify for the transition period exception unless they are settled or paid before the end of the transition period. That said, the final regulations provide some relief by making this clarification only apply to equity awards granted on or after April 1, 2015.

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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