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Tax Bill Compensation Changes - A Cause for Concern

The tax bill issued yesterday contains a number of provisions that, if implemented, will result in dramatic changes to the taxation of certain compensation arrangements. Of particular concern:

- The performance-based compensation exception to the section 162(m) $1 million compensation deduction limitation would be eliminated, and the CFO would be added to the group of executives that are subject to the 162(m) limitation.
- Employer stock options would be treated as deferred compensation and taxable at vesting.
- Section 409A would be repealed and replaced by Section 409B, which generally would provide for taxation of deferred compensation at vesting, generally effective for deferred compensation related to services performed after 2017. Deferrals of bonus compensation may not be permissible.
- Vested deferred compensation related to pre-2018 services would be taxed not later than 2025. Regulations may permit the acceleration of payments for existing deferred compensation to match the date this compensation is taxable.

Hopefully this will be revised as the legislation progresses, but it seems likely that there will be some significant change if this legislation is finalized.