
Recent IRS Ruling under Internal Revenue Code Section 162(m) May Adversely Affect Incentive Awards and Arrangements

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On January 25, 2008, the Internal Revenue Service ("IRS") released a private letter ruling holding that a provision in a performance share or performance unit award allowing payment to be made in the event of termination of the employee's employment by the employer without cause or by the employee for good reason without attaining the performance goal would preclude the award from qualifying for the performance-based compensation exception to the \$1 million cap on deductible compensation under Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"). This holding differs from the position taken by the IRS in private letter rulings issued in 1999 and 2006 and, if it represents a correct interpretation of the applicable tax rules, would adversely affect numerous incentive awards and arrangements.