

# GMS Flash Alert

## Global Compensation Edition

2018-005 | January 11, 2018



# United States - H.R. 1, Originally Tax Cuts and Jobs Act, Becomes Law

On December 22, 2017, H.R. 1 (2017 Act), which was originally named the Tax Cuts and Jobs Act, became law. The 2017 Act represents the most comprehensive tax reform to the U.S. tax code in over 30 years and took effect on January 1, 2018. (For prior comparison of the conference report to the House- and Senate-passed bills, see GMS [Flash Alert 2017-187](#) (December 19, 2017).

## WHY THIS MATTERS

The 2017 Act has an immediate impact on deductions, exclusions, and credits while generally reducing tax rates. It also includes revisions to Internal Revenue Code section 162(m), a new election to defer compensation on certain stock options, fringe benefit-related deduction limitations, as well as benefit-related credits. As enacted, changes need to be taken into account in future tax planning as well as in addressing deferred tax assets.

## Comparison Chart

|   | Prior Law   | 2017 Act (H.R. 1/P.L. 115-97)   |
|---|---|---|
| <b>Section 162(m) \$1 Million Deduction Limit on Public Companies</b> | Limits compensation deductions to \$1,000,000 for NEOs (other than the CFO) of public companies as of the last day of the tax year, with an exception for qualified performance-based compensation. | <ul style="list-style-type: none"><li>• Expands scope to include CFOs in addition to CEOs and the next three highest compensated named executives.</li><li>• Extends application to both current and former covered employees.</li><li>• Public companies within the purview of section 162(m) also</li></ul> |

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|  |               | <ul style="list-style-type: none"> <li>includes foreign companies traded through ADRs.</li> <li>• Repeals the often relied upon performance-based compensation exemption.</li> <li>• Transition rule provides for “grandfathering” such that expanded provisions do not apply to written, binding contracts in effect on Nov. 2, 2017 (and not materially modified on or thereafter).</li> </ul>   |
| <b>Excise Tax on Tax-Exempt Compensation</b>                   | No provision. | <ul style="list-style-type: none"> <li>• An annual 21% excise tax on the total taxable compensation provided by a tax-exempt organization to any of its 5 highest compensated employees, to the extent that the total exceeds \$1 million. <ul style="list-style-type: none"> <li>◦ Includes any employee who was one of the 5 highest paid employees in any previous year after 2016.</li> <li>◦ Employer would be liable to pay the tax.</li> </ul> </li> <li>• All related organizations would be aggregated for the purpose of determining whether the \$1 million threshold is exceeded.</li> <li>• The 2% excise tax separately would apply to any “excess parachute payment” with rules similar to section 280G.</li> </ul> |
| <b>Stock Option and Restricted Stock Unit Deferrals of Tax</b> | No provision. | <p>Section 83 continues to apply to compensatory stock options.</p> <p>In addition, section 83(i) provides that a “qualified employee” who receives “qualified stock” upon the exercise of an option (or settlement of a restricted stock unit) could elect to defer including the income that he or she would otherwise have been required to include for the year in which he or she receives the stock (or, if later, the first year for which the stock ceases to be</p>   |

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|  |  | <p>"substantially nonvested") until the earliest of</p> <ul style="list-style-type: none"> <li>(i) the date on which the stock first becomes transferable,</li> <li>(ii) the date on which he or she first becomes an "excluded employee,"</li> <li>(iii) the date on which any stock of the issuing corporation first becomes readily tradable on an established securities market,</li> <li>(iv) the date five years after the date on which the stock first ceased to be "substantially nonvested," or</li> <li>(v) the date as of which he or she revokes the deferral election.</li> </ul> <p>Election is available on qualified stock on statutory options, but such options will no longer be treated as statutory options.</p> <p>Income tax withholding is required at highest individual rate. However, election would not change timing of FICA/FUTA withholding.</p> <p>Form W-2 would have new reporting requirements related to deferral election.</p> |
| <b>Fringe Benefits with Limited Deductions</b> |  |  |
| Employee Achievement Awards                    | <p>Employer may deduct a limited amount of the costs associated with providing an employee achievement award that is tangible personal property.</p> | <p>Provides that "tangible personal property" does not include cash, cash equivalents, gift cards, gift coupons or certain gift certificates, or vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items.</p>   |

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| Entertainment, amusement, and recreation activities as well as related facilities  | Entertainment, amusement, and recreation activities as well as related facility expenses are 50% deductible if directly related to conduct of a trade or business. | No deduction allowed for amount paid or incurred after Dec. 31, 2017; 50% deduction rule repealed.   |
| Membership dues for any club organized for business, pleasure, recreation or other social purposes   | 50% deductible if directly related to conduct of a trade or business.  | No deduction allowed for amount paid or incurred after Dec. 31, 2017; 50% deduction rule repealed.   |
| Meals provided for the convenience of the employer or through an employer-operated eating facility that qualified as a de minimis fringe benefit | Certain de minimis fringe benefits are excluded from employee income and generally deductible by the employer.   | From Jan. 1, 2018 through Dec. 31, 2025, deduction limited to 50% for meals provided for the convenience of the employer or through an employer-operated eating facility that qualifies as a de minimis fringe benefit under 132(e); not deductible after Dec. 31, 2025. |
| Qualified Transportation Fringe Benefits (including qualified parking)   | Deductible.  | No deduction allowed, except when related to safety of the employee.   |
| <b>Fringe Benefits That are Taxable</b>  |  |  |
| Bicycle Commuting Reimbursements   | Excludable from income.  | Temporarily repeals exclusion beginning 2018 through Dec. 31, 2025.  |
| Employee Achievement Awards  | Excludable if satisfy certain conditions.  | Repeals exclusion from gross income when there are gift cards, vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and/or other similar items awarded.  |
| Moving Expenses  | Excludable and/or deductible.  | Repeals exclusion and generally suspends the individual deduction for 2018 through 2025.   |
| <b>Alternative Minimum Tax (AMT) Boost to Incentive Stock Options</b>  | AMT at lower thresholds.   | Retains individual AMT but increases the exemption amounts and phase-out thresholds.   |

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| <b>Retirement Savings</b> | <p>Special rules permitted Roth IRA contributions to be recharacterized.</p> <p>Plan loan offset permitted 60-day rollover period.</p> | <p>Repeals special rule allowing Roth IRA contributions to be recharacterized as traditional IRA contributions.</p> <p>Extension of plan loan offset rollover periods.</p> |
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## KPMG NOTE

As enacted, provisions in H.R. 1 represent the most comprehensive reform to the U.S. tax code in over 30 years and will have a dramatic impact on common compensation arrangements.

The changes to compensation arrangements and deductions should cause a reevaluation of an organization's existing and planned compensation arrangements. Employers should be reviewing their deferred compensation and other benefit arrangements in light of the changes.

Affected employers, in consultation with their tax advisers, should be considering how the new law affects existing arrangements and formulating a holistic approach to benchmarking, compensation and benefits design, to remain competitive in the marketplace.

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## FOOTNOTE:

1 For the text and status of H.R. 1, [click here](#).

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