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## Reminder: 2017 Bonus Deductions

***Companies may wish to take certain steps before January 1, 2018, with respect to 2017 annual bonuses.***

As has been widely reported, Congress has passed tax reform legislation lowering 2018 corporate tax rates and thus potentially increasing the relative value of 2017 corporate deductions. **Accordingly, it may be advantageous to take steps prior to year-end to move deductions with respect to 2017 annual bonuses into the 2017 tax year (rather than deducting these bonuses in 2018 when paid).** While the timing and availability of deductions with respect to bonus payments (as well as the benefit of accelerating these deductions) will vary by company, some or all of the following steps prior to year-end may be effective in creating 2017 deductions with respect to these bonuses:

- Approval by the Board or Compensation Committee of a fixed or minimum bonus pool that obligates the Company to pay bonuses in such amounts
- Current accounting entries by the finance department that set the obligation
- Notification to employees that the Board/Compensation Committee has approved the bonus amounts

Notably, some uncertainty exists under available guidance as to the exact steps necessary to fix the bonus deduction in 2017, and practices may vary accordingly. In addition, public companies that are subject to the Internal Revenue Code Section 162(m) deduction limit on compensation in excess of US\$1 million should carefully coordinate any steps taken to fix this deduction to ensure that such steps do not inadvertently jeopardize the deductibility of any “performance-based compensation” in excess of US\$1 million. (See additional detail on the foregoing issues in this Latham & Watkins [Client Alert](#).) Because each company’s accountants will ultimately need to approve the applicable approach, companies are encouraged to reach out to their accountants about these alternatives. Latham & Watkins lawyers are available to participate in those discussions as well, if helpful.

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