

## Client Alert

# IRS Excludes CFO From \$1 Million Tax Deduction Limit on Compensation Paid by Public Companies

The Internal Revenue Service has announced in Notice 2007-49 that the \$1 million limitation on deductible compensation paid by public companies will now apply only to the chief executive officer (at year end) and the top three (not four) next highest compensated executive officers. For this purpose, the chief financial officer (at year end) is now *not* treated as one of the top three regardless of his or her salary level. For executives who are subject to the \$1 million limitation, compensation in excess of this amount must satisfy “performance-based” rules to be deductible.

This change was triggered by a change in the SEC’s executive compensation disclosure rules which now require disclosure of the compensation paid to the CEO, the CFO and the next three most highly compensated executive officers. These new SEC rules replaced the old rules which required disclosure of the compensation paid to the CEO and the next four most highly compensated executive officers.

The IRS decided that it does not have statutory authority to apply the \$1 million limitation to the CFO since the CFO is now includable in the SEC required compensation tables by virtue of his or her position and not because of compensation levels. *It would not be surprising if Congress acted to change this result.*

The new IRS position is generally applicable for fiscal years ended on or after December 15, 2006, which means that it applies to calendar year taxpayers beginning with the year 2006.

\* \* \* \* \*

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