

# Memorandum

---

## Tax Reform Eliminates Tax Deduction for Confidential Sexual Harassment Settlements

January 17, 2018

---

On December 22, 2017, President Trump signed into law the Tax Cut and Jobs Act (the “Act”). The Act includes an amendment to the Internal Revenue Code providing that no deduction as a trade or business expense shall be allowed for “any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement,” or “attorney’s fees related to such a settlement or payment.” 26 U.S.C. § 162(q). The purpose of the law is to discourage confidential settlements of sexual harassment or abuse claims. Businesses now must choose between keeping such covered settlements confidential and preserving the right to take a tax deduction for the amount of the settlement and related attorneys’ fees.

Neither the Act nor the Committee Reports accompanying the Act provide guidance regarding the intended scope of IRC Section 162(q). If you have any questions or would like additional information as you consider entering into employment-related settlement or release agreements, please do not hesitate to contact any of the below-referenced members of our Executive Compensation and Employee Benefits or Labor and Employment Practice Groups.

For further information, please contact one of the following members of the Firm.

**EXECUTIVE COMPENSATION AND  
EMPLOYEE BENEFITS**

---

**Andrew Blau**

+1-212-455-2380

[andrew.blau@stblaw.com](mailto:andrew.blau@stblaw.com)

**Tristan Brown**

+1-650-251-5140

[tbrown@stblaw.com](mailto:tbrown@stblaw.com)

**Gregory T. Grogan**

+1-212-455-2477

[ggrogan@stblaw.com](mailto:ggrogan@stblaw.com)

**Laurence M. Moss**

+1-212-455-2280

[larry.moss@stblaw.com](mailto:larry.moss@stblaw.com)

**Brian D. Robbins**

+1-212-455-3090

[brobbins@stblaw.com](mailto:brobbins@stblaw.com)

**David E. Rubinsky**

+1-212-455-2493

[drubinsky@stblaw.com](mailto:drubinsky@stblaw.com)

**Jamin R. Koslowe**

+1-212-455-3514

[jkoslowe@stblaw.com](mailto:jkoslowe@stblaw.com)

**Erin Murphy**

+1-650-251-5025

[erin.murphy@stblaw.com](mailto:erin.murphy@stblaw.com)

**LABOR AND EMPLOYMENT**

---

**Andrew M. Kofsky**

+1-212-455-7437

[andrew.kofsky@stblaw.com](mailto:andrew.kofsky@stblaw.com)

**Daniel J. Venditti**

+1-212-455-7387

[daniel.venditti@stblaw.com](mailto:daniel.venditti@stblaw.com)

---

*The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, [www.simpsonthacher.com](http://www.simpsonthacher.com).*



UNITED STATES

---

New York  
425 Lexington Avenue  
New York, NY 10017  
+1-212-455-2000

Houston  
600 Travis Street, Suite 5400  
Houston, TX 77002  
+1-713-821-5650

Los Angeles  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
+1-310-407-7500

Palo Alto  
2475 Hanover Street  
Palo Alto, CA 94304  
+1-650-251-5000

Washington, D.C.  
900 G Street, NW  
Washington, D.C. 20001  
+1-202-636-5500

EUROPE

---

London  
CityPoint  
One Ropemaker Street  
London EC2Y 9HU  
England  
+44-(0)20-7275-6500

ASIA

---

Beijing  
3901 China World Tower  
1 Jian Guo Men Wai Avenue  
Beijing 100004  
China  
+86-10-5965-2999

Hong Kong  
ICBC Tower  
3 Garden Road, Central  
Hong Kong  
+852-2514-7600

Seoul  
25th Floor, West Tower  
Mirae Asset Center 1  
26 Eulji-ro 5-Gil, Jung-Gu  
Seoul 100-210  
Korea  
+82-2-6030-3800

Tokyo  
Ark Hills Sengokuyama Mori Tower  
9-10, Roppongi 1-Chome  
Minato-Ku, Tokyo 106-0032  
Japan  
+81-3-5562-6200

SOUTH AMERICA

---

São Paulo  
Av. Presidente Juscelino  
Kubitschek, 1455  
São Paulo, SP 04543-011  
Brazil  
+55-11-3546-1000