



ALERT

NOVEMBER 2018



Proposed Regulations Address Deductibility of Business Interest Expense

Important guidance issued on the new 30 percent limitation on deductibility of business interest.

On November 26, 2018, the U.S. Treasury released proposed regulations under section 163(j) of the Internal Revenue Code, which, as amended by last year's tax reform, generally limits deductibility of net business interest expense to 30 percent of adjusted taxable income ("ATI"). Taxpayers generally may apply the proposed regulations to taxable years beginning after 2017.

Notable Aspects of the Proposed Regulations

Broad Definition of "Interest." The new limitation applies to a wide range of payments for the use or forbearance of money, including commitment fees, debt issuance costs, and swap payments and other hedging activities (e.g., foreign currency forward transactions) made in connection with lending transactions.

ATI Calculation. To compute ATI, taxpayers compute their taxable income and then add/subtract specified adjustments, including, for taxable years beginning before 2022, adding back depreciation and amortization. The regulations provide that an amount incurred as depreciation or amortization but capitalized to inventory and included in cost of goods sold may not be added back, presumably even upon disposition of the inventory, a harsh result for inventory-rich taxpayers.

Excepted Businesses. Business interest includes only interest allocable to a trade or business under section 162 of the Internal Revenue Code, excluding certain businesses excepted from section 163(j) (e.g., regulated utilities, electing real property businesses). The regulations provide guidance relating to allocations of interest among excepted and non-excepted businesses and the procedure for certain businesses to elect out of section 163(j).

Foreign Corporations. The regulations apply to determine the deductibility of a controlled foreign corporation's interest expense generally in the same manner as a U.S. corporation with certain complex modifications. Business interest expense reduces the E&P of a foreign corporation even if not currently deductible as a result of section 163(j) (e.g., for purposes of the E&P limitation applicable to Subpart F). This could affect calculations under the new GILTI rules.

Partnerships. The regulations provide guidance on computing the limitation at the partnership level and the carryforward of disallowed interest of a partnership by its partners. Interestingly, while disallowed interest carried forward by a partner may be deducted in a subsequent year only if the partnership allocates excess limitation to the partner in that year, there appears to be no prohibition on using excess limitation from one trade or business of a partnership to permit deductibility of interest arising from another trade or business.

Consolidated Groups. As anticipated, the regulations clarify that consolidated groups calculate a single limitation.



Edward T. Kennedy
New York



Lori Hellkamp
Washington



Richard M. Nugent
New York



Kelly Rubin
Dallas

[All Contacts >>](#)

SUBSCRIBE

SUBSCRIBE TO RSS



Jones Day is a global law firm with more than 2,500 lawyers on five continents. We are One Firm WorldwideSM.

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2018 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113