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# Tax Cuts and Jobs Act Guidance

August 14, 2018

## Highlights

- ✔ Proposed transition tax regulations apply beginning with the last tax year of a foreign corporation that begins before January 1, 2018.
- ✔ Proposed qualified business income deduction regulations may be relied upon immediately, but some portions are effective for all taxpayers immediately.
- ✔ Proposed bonus depreciation rules may be applied by taxpayers for property placed in service after September 27, 2017.
- ✔ Other guidance issued affects changes of accounting method, corporate tax rates for fiscal year taxpayers, and the business interest expense deduction.

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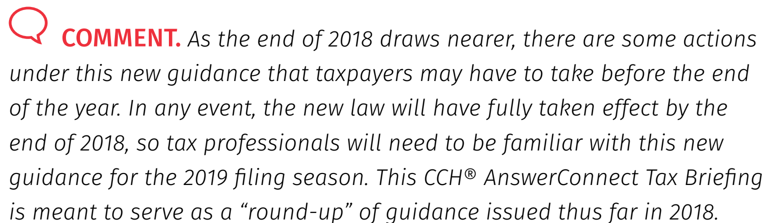
SPECIAL REPORT

# IRS Issues Major Guidance on Tax Reform Provisions, More to Come

The Tax Cuts and Jobs Act of 2017 was the largest piece of tax legislation in the Unites States in over 30 years. Throughout the legislative process, the stated goal of tax reform was to simplify the Internal Revenue Code and lessen the burden on taxpayers' filing responsibilities. Although many provisions (such as reduced rates, the elimination of alternative minimum taxes for corporations and the elimination of many deductions and exemptions) were relatively straightforward, the Tax Cuts and Jobs Act also introduced several new taxes and deductions, as well as a number of very significant changes, all of which would require new guidance from the IRS on the implementation of the new law.

While a fair amount of guidance has been issued since the end of 2017, the release of guidance has now begun to ramp up, nearly eight months after the Tax Cuts and Jobs Act of 2017 became law. The first two weeks of August 2018, saw the release of three major pieces of guidance relating to the new transition tax under Code Sec. 965, the new qualified business income deduction under Code Sec. 199A, and new 100-percent bonus depreciation rules.



**COMMENT.** *As the end of 2018 draws nearer, there are some actions under this new guidance that taxpayers may have to take before the end of the year. In any event, the new law will have fully taken effect by the end of 2018, so tax professionals will need to be familiar with this new guidance for the 2019 filing season. This CCH® AnswerConnect Tax Briefing is meant to serve as a "round-up" of guidance issued thus far in 2018.*

## TRANSITION TAX

Highly anticipated proposed regulations have been issued on the Code Sec. 965 transition tax (***NPRM REG-104226-18***). The tax is imposed on the Code Sec. 965 inclusion amount of a U.S. shareholder of a foreign corporation with deferred foreign income. The proposed regulations provide specific rules for computing the transition tax and address open questions regarding the application of the tax. The proposed regulations largely reflect previously issued guidance, with some additions and modifications.

The proposed regulations apply beginning with last tax year of a foreign corporation that begins before January 1, 2018, and with respect to a U.S. person,

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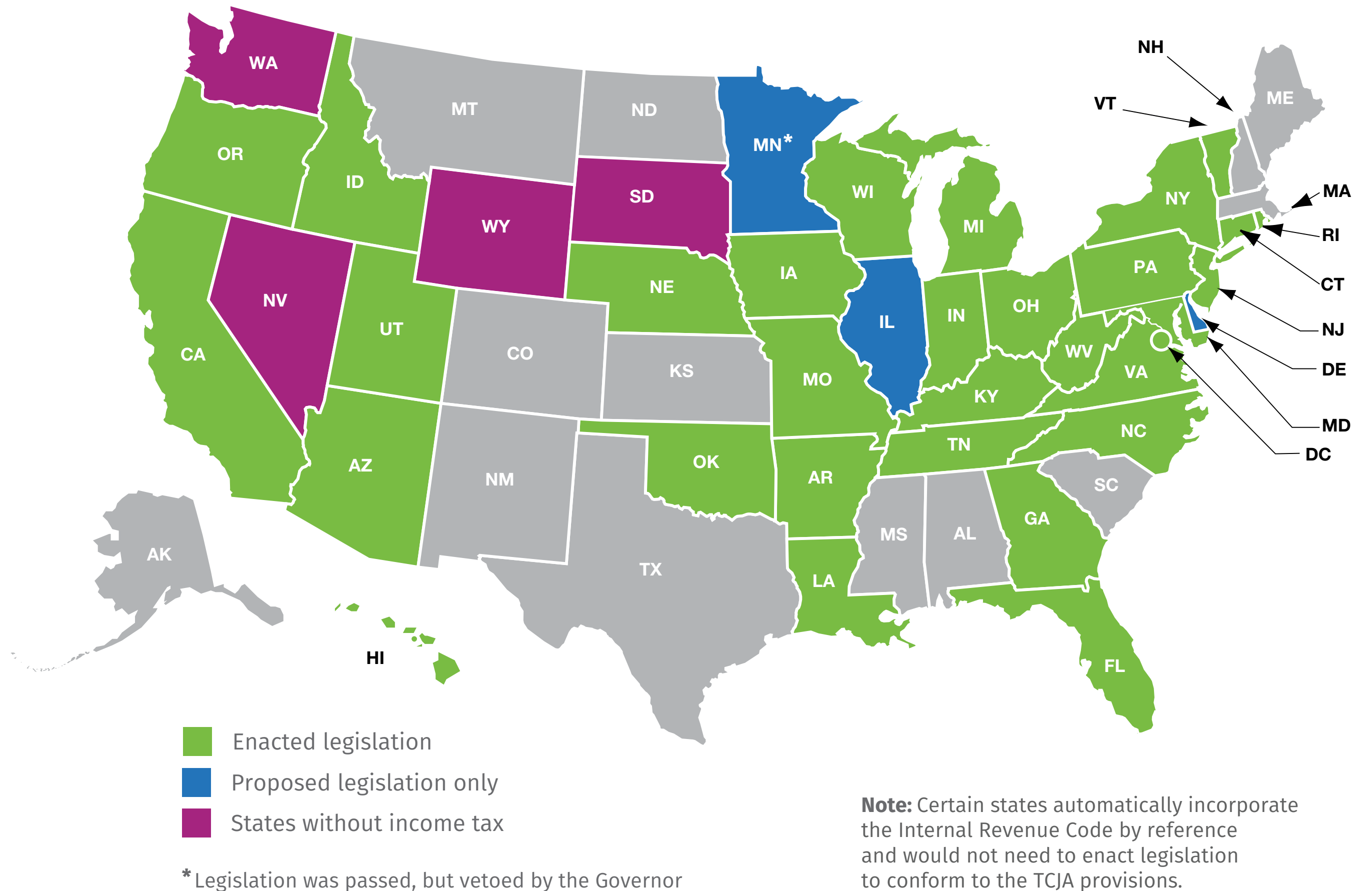
## State Legislation in Response to TCJA

*as of August 14, 2018*




beginning with the tax year in which or with which the tax year of the foreign corporation ends.

### Transition Tax Basics

Generally, a foreign corporation's earnings are not taxed to its U.S. shareholders until the earnings are repatriated as a dividend. If the foreign corporation earns certain types of income or invests in U.S. property, the U.S. shareholder may be taxed currently under the provisions of Subpart F.

To combat the incentive for U.S. shareholders to keep their earnings and profits overseas, the Tax Cuts and Jobs Act of 2017 added the transition tax. The transition tax is a one-time mandatory tax on the untaxed post-1986 earnings and profits (E&P) of foreign subsidiaries of U.S. shareholders. Earnings held in the form of cash and cash equivalents are taxed at a 15.5 percent rate, and remaining earnings are taxed at an 8 percent rate. The transition tax may be paid in installments over eight years.

Specifically, the transition tax is imposed on U.S. shareholders who own 10 percent or more, by vote, of a deferred foreign income corporation (DFIC). A DFIC is any specified foreign corporation (SFC) that has a positive amount of accumulated post-1986 deferred foreign income on one of two E&P measurement dates, November 2, 2017, or December 31, 2017. An SFC is either a:

- controlled foreign corporation (CFC), or
- any foreign corporation in which a domestic corporation is a U.S. shareholder.

For the last tax year of the DFIC beginning before January 1, 2018 (the inclusion year), the U.S. shareholder includes as subpart F income its pro rata share of accumulated post-1986 foreign income of the DFIC on the November 2, 2017, or December 31, 2017, whichever is greater.

Beginning in December 2017, the IRS released several pieces of guidance that taxpayers could rely on when computing the transition tax (***Notice 2018-7, Notice 2018-13, Notice 2018-26***). FAQs about filing 2017 returns and making tax payments and elections were also provided (***Questions***

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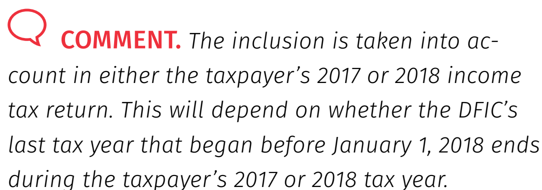
*and Answers about Reporting Related to Section 965 on 2017 Tax Returns*, last updated June 4, 2018). IRS Publication 5292, How to Calculate Section 965 Amounts and Elections Available to Taxpayers, includes a workbook for calculating the transition tax.

## What Do the Proposed Regulations Cover?

The proposed regulations provide a comprehensive set of rules for computing the transition tax and may require a recomputation of the transition tax and possibly the filing of amended returns. Many taxpayers have received extensions for filing their tax returns. For example, a corporate taxpayer with a return due on April 18, 2018, will have until October 15, 2018, to file the return and take into account the proposed regulations.



**COMMENT.** *The inclusion is taken into account in either the taxpayer's 2017 or 2018 income tax return. This will depend on whether the DFIC's last tax year that began before January 1, 2018 ends during the taxpayer's 2017 or 2018 tax year.*

***General rules.*** Many of the general rules in the proposed regulations are consistent with previous guidance. For example, the proposed regulations address the application of the constructive ownership rules that provide for downward attribution of stock from a partner to a partnership. Because the rules make it difficult to determine if a foreign corporation is an SFC, stock owned directly, or indirectly, by or for a partner is not considered owned by the partnership, if the partner owns less than five percent of the partnership's capital and profits interests.

Some additional rules in the proposed regulations that are consistent with the previous guidance include:

- rules that require that the status of an SFC as a DFIC be determined before its status as an E&P deficit corporation;
- treatment of a controlled domestic partnership as a foreign partnership if certain conditions are met;
- rules for determining cash measurement dates and pro rata share;
- rules that address the treatment of derivative financial instruments for purposes of measuring the cash position of an SFC;
- definitions of accounts payable and accounts receivable and demand loans treated as short-term, for determining the cash position of an SFC;
- foreign currency rules, including that the accumulated post-1986 deferred foreign income of an SFC as of each of the E&P measurement dates must be compared in the functional currency of the DFIC and use of the spot rate for translating amounts taken into account;
- rules on the Code Sec. 962 election made by an individual to be taxed as a corporation;
- rules for domestic pass-through entities and owners; and
- rules that take all deficits, including hovering deficits, into account for purposes of determining post-1986 E&P of a SFC.

*"The first two weeks of August 2018, saw the release of three major pieces of guidance relating to the new transition tax under Code Sec. 965, the new qualified business income deduction under Code Sec. 199A, and new 100 percent bonus depreciation rules."*

***Adjustments to E&P and Basis.*** Consistent with previous guidance, five ordering rules apply for determining and making adjustments to E&P, in the last tax year of an SFC that begins before January 1, 2018. The rules explain the interaction between the Code Sec. 959 previously taxed income (PTI) rules and Code Sec. 965. Many examples illustrate how the ordering rules work.

Under the ordering rules:

(1) subpart F inclusions are determined without regard to Code Sec. 965;
(2) distributions between SFCs before January 1, 2018 are determined;
(3) Code Sec. 965(a) inclusions are determined;
(4) distributions from SFCs are determined, other than those in (2); and
(5) inclusions for Code Sec. 956 investments in U.S. real property are determined.

After each step, the Code Sec. 959(c) classification of E&P is adjusted. After a Code Sec. 965 inclusion is determined in Step (3), the effect on E&P is determined.

For example, if a U.S. shareholder has a Code Sec. 965(a) inclusion, the DFIC will have PTI in the same amount (Code Sec. 965(a) previously taxed E&P). If the Code Sec. 965(a) earnings amount is reduced under the reduction rules of Code Sec. 965(b), the DFIC will have previously taxed E&P in the amount of the decrease (Code Sec. 965(b) previously taxed E&P).

A U.S. shareholder's basis in the stock of a DFIC (or applicable property) is increased for the inclusion

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amount. No adjustments to stock or property are made for amounts taken into account under the reduction rules. Taxpayers may, however, elect to make relevant basis adjustments in certain cases.

Under a gain-reduction rule, a U.S. shareholder that receives distributions from a DFIC during an inclusion year that are attributable to PTI, will be able to reduce the gain recognized with respect to the stock under Code Sec. 961(b)(2) by the inclusion amount. Gain is recognized if the reduction in the stock's basis upon the distribution of PTI exceeds basis. The gain reduction rule is consistent with prior guidance, but allows for taxpayers who make basis adjustments to account for them under the reduction rules.

***Code Sec. 965(c) Deductions.*** Assets may be disregarded in determining a taxpayer's aggregate foreign cash position. This includes certain obligations between related SFCs or where it is demonstrated that there has been double-counting (e.g., assets that would be taken into account by more than one SFC). The demonstration is made by attaching a statement to a timely filed return.

The Code Sec. 965(c) deduction is not treated as an itemized deduction and deductions of expatriated entities are recaptured, regardless of whether the entity is a U.S. shareholder.

***Foreign Tax Credit.*** Payment of the transition tax will result in foreign tax credits for the taxpayer, as a result of the subpart F inclusion. Code Sec. 965(g) disallows both the foreign tax credit and deduction for the applicable percentage of the foreign income taxes paid or accrued with respect to amounts allowed as a Code Sec 965(c) deduction. New guidance provides for the allowance of the foreign tax credit or deduction, the computation of the deemed paid credit, and the allocation and apportionment of expenses.

"Taxes paid or accrued" or "treated as paid or accrued" include foreign income taxes paid or accrued directly or deemed paid under Code Sec. 960, foreign income taxes allocated to an entity, and a distributive share of taxes paid by a partnership.

The disallowance rule for the direct foreign tax credit and deduction is extended to cover foreign income taxes attributable to the distribution of Code Sec. 965(a) and (b) previously taxed E&P, as well as withholding taxes on those distributions. The disallowance rules are similarly applied to taxes treated as paid or accrued.

The deemed paid credit rules of Code Secs. 902 and 960 are applied in the same manner for Code Sec. 965 inclusions. Thus, the credit is determined by multiplying the foreign corporation's post-1986 foreign income taxes by the ratio of the dividend or inclusion over post-1986 undistributed earnings.

Increases in a U.S. shareholder's share of E&P of an E&P deficit corporation due to the allocation of the deficit to the DFIC will not increase post-1986 undistributed earnings until the first day of the foreign corporation's first tax year following the E&P deficit foreign corporation's last tax year that begins before January 1, 2018.

The general rules for allocating and apportioning expenses apply in determining the foreign tax credits allowed for the Code Sec. 965(a) inclusion. The allowance of the Code Sec. 965(c) deduction does not result in a portion of the inclusion being treated as an exempt asset. Nor do Code Sec. 965(a) and (b) previously taxed E&P give rise to exempt treatment.

***Anti-Avoidance Rules.*** Anti-avoidance rules, consistent with previous guidance, are applied to disregard post-November 2, 2017, transactions undertaken with the principal purpose of reducing the Code Sec. 965(a) inclusion amount or aggregate foreign cash position, or increasing the deemed paid tax credit (referred to as a change in the section 965 element). Changes in an SFC's method of accounting for 2017 or 2018 and entity classifications on or after November 2, 2017, will also be disregarded if there is a change in the 965 element, regardless of the principal purpose for the change.

In computing post-1986 E&P, certain transactions occurring between related SFCs between the November 2, 2017 and December 31, 2017 E&P measurement dates will be disregarded. A transaction is disregarded if the payment or accrual would reduce post-1986 E&P of the SFC paying the amounts.

***Elections.*** The proposed regulations provide mechanics for making the transition tax elections, including:

- the election to pay the transition tax in eight installments;
- the election by an S corporation shareholder to defer payment of the transition tax until a triggering event;
- the election by a REIT to take the inclusion amount and deduction into account over eight years; and
- the election not to apply the NOL deduction.

**COMMENT.** *Elections must be made on a timely filed return, taking into account extensions.*

Many taxpayers elected or will elect to pay the transition tax in eight installments. Certain acceleration events, such as an addition to tax for failure to pay a timely installment, will cause the unpaid portion of the installments to become due. Importantly, the proposed regulations clarify that deficiencies or additional tax liability will be prorated among the installments (versus an acceleration of the unpaid amount), absent negligence, intentional disregard or fraud.

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The number of acceleration events are expanded to cover any exchange or disposition of substantially all of a taxpayer's assets, an event that results in a person no longer being a U.S. person, new members joining consolidated groups and consolidated groups ceasing to exist.

Details are provided on the "eligible section 965(h) transferee" exception for certain acceleration events, such as liquidations, sales, or other dispositions of substantially all of a taxpayer's assets. A transfer agreement must provide that the transferee will assume liability for unpaid installments of the transferor.

Taxpayers may also elect an alternative method for calculating post-1986 E&P when it is impractical to determine the amount on the November 2, 2017, measurement date because it does not fall on the last day of the month. The rules are consistent with previous guidance.

***Affiliated Group.*** All members of a consolidated group that are U.S. shareholders of an SFC are treated as a single U.S. shareholder for purposes of the reduction rules and for purposes of the elections. The rules do not apply for purposes of determining a member's Code Sec. 965(a) inclusion or Code Sec. 965(c) deduction.

### Outcomes

The transition tax provisions will result in historically large amounts of subpart F inclusions and foreign tax credits for many taxpayers. The rules are complex and the correct computation of the tax will depend upon a careful examination of the proposed regulations and other guidance. The timing of the issuance of the proposed regulations is especially welcome for those taxpayers who are filing amended returns or returns by the October 15, 2018 extended due date.

## QUALIFIED BUSINESS INCOME DEDUCTION

The IRS also released long-awaited guidance on new Code Sec 199A, commonly known as the "pass-through deduction" or the "qualified business income deduction." Taxpayers can rely on these proposed regulations and a proposed revenue procedure until they are issued as final (*NPRM REG-107892-18; Notice 2018-64*).

Code Sec. 199A allows business owners to deduct up to 20 percent of their qualified business income (QBI) from sole proprietorships, partnerships, trusts and S corporations. The deduction is one of the most high-profile pieces of the Tax Cuts and Jobs Act of 2017.

**COMMENT.** *The proposed regulations apply to:*

- individuals, which includes individuals, trusts, estates, and other persons who are eligible for the deduction; and
- relevant pass-through entities (RPEs), which are passthrough entities that directly operate a qualified trade or business or pass through the items of QBI from lower-tier RPEs to an individual.

### Trade or Business

The proposed regulations incorporate the Code Sec. 162 rules for determining what constitutes a trade or business. However, a rental activity that does not meet the Code Sec. 162 requirements also qualifies as a business if it rents or licenses tangible or intangible property to a commonly controlled business. Businesses are commonly controlled if the same person or persons own at least 50 percent of each business.

A taxpayer may have more than one trade or business, but a single trade or business generally cannot be conducted through more than one entity. Taxpayers cannot use the passive activity rules to group multiple activities into a single business. However, an individual may aggregate businesses if:

- each one is itself a trade or business;
- the same person or group owns a majority interest in each;
- all items attributable to them are reported on returns using the same tax year;
- none is a specified service trade or business; and
- they are actually part of a larger, integrated trade or business.

**COMMENT.** *RPEs cannot aggregate businesses.*

### Specified Service Trade or Business

Income from a specified service trade or business (SSTB) generally cannot be qualified business income, though this exclusion is phased in for lower-income taxpayers.

A new ***de minimis*** exception allows a service business to escape the SSTB designation if less than 10% of its gross receipts is attributable to services (or less than 5% if the business has more than $25 million in gross receipts).

The regulations largely adopt existing rules for what activities constitute a service. However, a business receives

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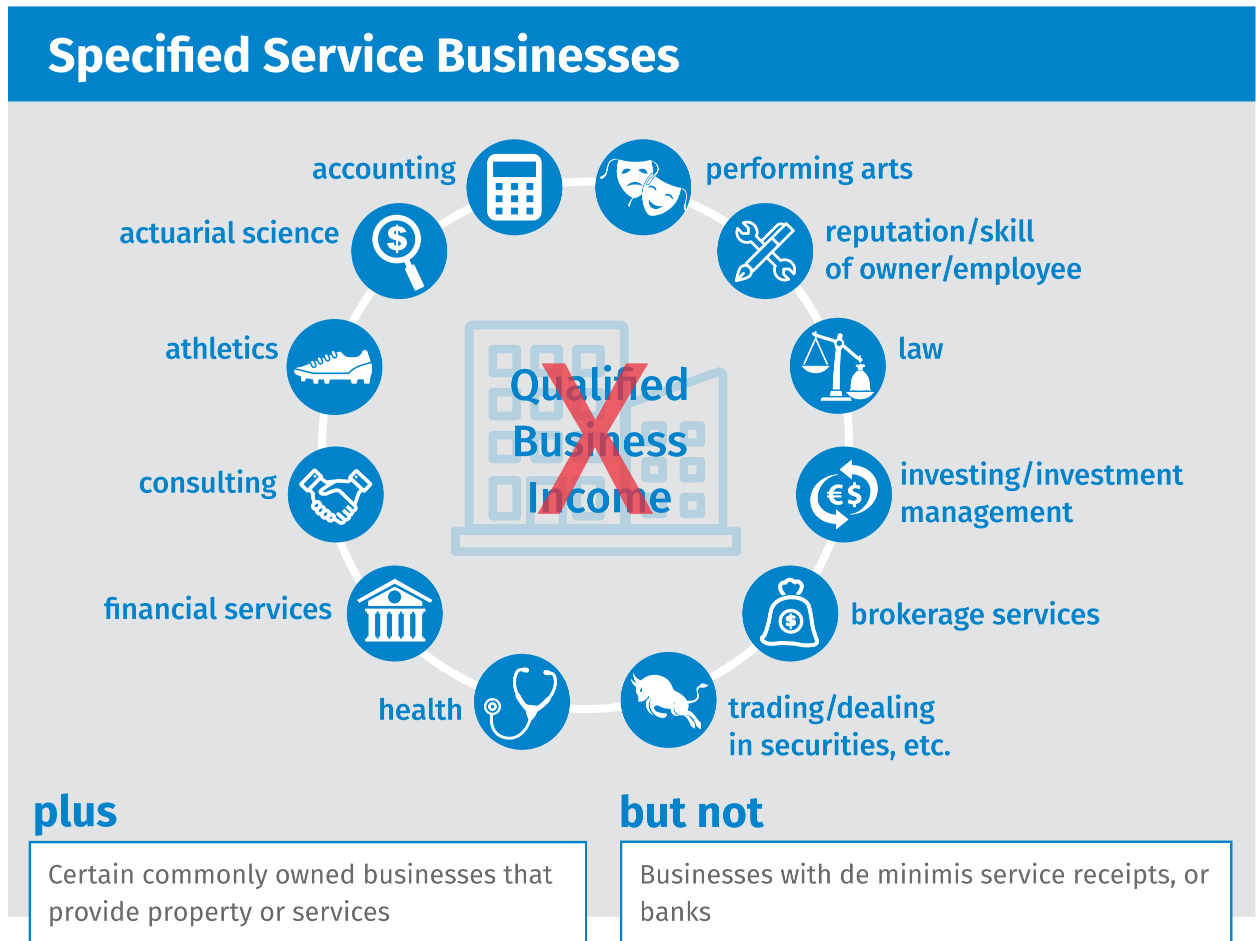


income because of an employee/owner's reputation or skill only when the business is engaged in:

- endorsing products or services;
- licensing the use of an individual's image, name, trademark, etc.; or
- receiving appearance fees.

The regulations also define "financial services" to exclude banking, and provide detailed rules for the trade or business of being an employee.

In addition, the regulations try to limit attempts to spin-off parts of a service business into independent qualified businesses. Thus, a business that provides 80 percent or more of its property or services to a related service business is part of that service business. Similarly, the portion of property or services that a business provides to a related service business is treated as a service business. Businesses are related if they have at least 50-percent common ownership.

## Wages/Capital Limit

A higher-income taxpayer's qualified business income may be reduced by the wages/capital limit. This limit is based on the taxpayer's share of the business's:

- W-2 wages that are allocable to QBI; and
- unadjusted basis in qualified property immediately after acquisition (UBIA).

The proposed regulations and Notice 2018-64 provide detailed rules for determining W-2 wages. These rules generally follow the rules that applied to the Code Sec. 199 domestic production activities deduction.

**COMMENT.** *However, the Code Sec. 199 rules applied to the taxpayer's aggregate wages, while the QBI rules apply separately to each business. If wages are allocable to multiple businesses, they are allocated to each business in accordance with wage expense.*

In defining UBIA, the proposed regulations largely adopt existing capitalization rules for determining basis. However, "immediately after acquisition" is the date the business places the property in service. Thus, UBIA is generally the cost of the property as of the date the business places it in service.

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In addition, the proposed UBIA regulations:

- clarify that additional first-year depreciation does not affect the recovery period;
- provide anti-abuse rules for end-of-year acquisitions;
- generally adopt existing MACRs rules for improvements, additions, and nonrecognition transactions;
- exclude most partnership basis adjustments; and
- allocate basis when a pass-through entity owns the property.

### Other Rules

Finally, the proposed regulations address several other issues, including:

- definitions;
- basic computations;
- loss carryovers;
- Puerto Rico businesses;
- coordination with other Code Sections;
- penalties;
- previously suspended losses and net operating losses;
- other exclusions from qualified business income;
- allocations of items among multiple businesses; and
- application to trusts and estates.

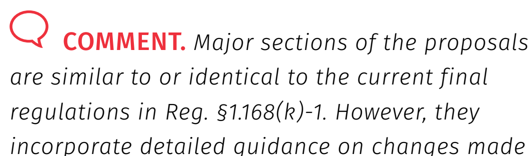
### Effective Dates

Taxpayers may generally rely on the proposed regulations and Notice 2018-64 until they are issued as final. However:

- several proposed anti-abuse rules are proposed to apply to tax years ending after December 22, 2017;
- anti-abuse rules that apply specifically to the use of trusts are proposed to apply to tax years ending after August 16, 2018; and
- if a qualified business's tax year begins before January 1, 2018, and ends after December 31, 2017, an individual's items are treated as having been incurred in the individual's tax year during which business's tax year ends.

## 100-PERCENT BONUS DEPRECIATION

The IRS also issued comprehensive proposed regulations on the 100-percent bonus depreciation allowance for qualified property acquired and placed in service after September 27, 2017 and before 2023. The guidance may be relied upon until publication of final regulations (*NPRM REG-104397-18*).



**COMMENT.** *Major sections of the proposals are similar to or identical to the current final regulations in Reg. §1.168(k)-1. However, they incorporate detailed guidance on changes made by the Tax Cuts and Jobs Act of 2017. The most important change, other than the rate increase from 50 percent to 100 percent, allows bonus depreciation on used property acquired after September 27, 2017.*

### Election to Use 50-percent Rate

Taxpayers may elect the 50-percent bonus rate for the tax year that includes September 27, 2017. The regulations clarify that the election is made for all classes of qualifying property placed in service during the tax year. The regular election out of bonus depreciation is made separately for each property class.

### Used Property

Property does not qualify for bonus depreciation if the taxpayer previously used the property. The property must also be acquired by "purchase" within the meaning of Code Sec. 179(d).

The purchase requirement means that:

(1) The property may not be acquired from a related person or by one component member of a controlled group from another component member of the same controlled group;

(2) The basis of the property in the hands of a person acquiring the property may not be determined in whole or in part by reference to the adjusted basis of the property in the hands of the person transferring the property; and

(3) The property was not received in a transfer at death with a fair market value basis or other basis determined under Code Sec. 1014(a).

In addition, the portion of the basis of acquired property that is determined by reference to the basis of other property held at any time by the person acquiring the property does not qualify as used property eligible for bonus depreciation. Most commonly this restriction affects like-kind exchanges and involuntary conversions.

***Previously used property.*** A taxpayer previously used property only if the taxpayer ***or a predecessor*** had a depreciable interest in the property. For example, a taxpayer that previously used property as a lessee may purchase the property and qualify for bonus depreciation. If a taxpayer has a depreciable interest in a portion of a property and later acquires an additional interest, the additional interest is not tainted and may qualify for bonus depreciation. If a taxpayer sells a portion of an interest in property and then later reacquires another portion of the same property, bonus depreciation only applies to the extent the newly

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acquired interest is greater than the original interest. The regulations do not define the term predecessor.

***Controlled groups.*** If a consolidated group had a depreciable interest in a property at any time prior to a member's acquisition of the property, the property does not qualify for the bonus. The consolidated group had a depreciable interest if any current or former member of the group had a depreciable interest while a member of the group. A group cannot circumvent these rules by engaging in a series of related transfers.

***Partnerships.*** Basis adjustments on property transferred to or from partnerships typically do not meet the original use requirement. The proposals revisit the issue now that used property can qualify for bonus depreciation.

The only basis adjustment which qualifies for the bonus as used property is the amount of the step-up in inside basis of partnership assets that the purchaser of a partnership interest receives under Code Sec. 743(b) pursuant to a partnership's Code Sec. 754 election. The basis step-up is generally equal to the difference between the cost of the partnership interest and the partnership's inside basis in the property allocable to the acquired interest. The purchaser claims the bonus deduction or may make an election out. All other requirements regarding used property must be met. For example, the transferee of the partnership interest may not be related to the transferor, may not have previously owned the transferred partnership interest or property attributable to that interest, or received the partnership interest as a transfer at death where a fair market value basis under Code Sec. 1014 is taken.

Bonus depreciation does not apply to the following transactions:

- Remedial allocations under Code Sec. 704(c)
- Contributions of property to a partnership for a partnership interest under Code Sec. 723
- Any increase in the basis of partnership property under Code Sec. 734(b) as the result of gain recognized by a partner when the value of property distributed to the partner is in excess of the partner's outside basis
- Partner's basis in distributions of partnership property under Code Sec. 732

***Related transactions rule.*** In any series of related transactions, property is considered transferred directly from the original transferor to the ultimate transferee. For example, a parent may not circumvent the related party rule by first selling the property to an unrelated person who in turn sells it to the parent's son or daughter.

## Binding Contract Rule

Property acquired before September 28, 2017 pursuant to a written binding contract entered into before that date does not qualify for the 100-percent bonus rate. The acquisition date is the date that the contract was entered into.

The proposed regulations retain the prior rules defining a binding contract but also provide that a letter of intent for an acquisition is not a binding contract.

Property constructed (including manufactured or produced) for a taxpayer by another person under a written binding contract entered into prior to construction is acquired pursuant to a written binding contract. Consequently, if such a contract is entered into before September 28, 2017, the property does not qualify for the 100-percent rate.

A pre-September 28, 2017, binding contract to acquire components of a larger property does not prevent the larger property from qualifying for the 100-percent rate whether the larger property is constructed by or for the taxpayer.

### Self-constructed property

Self-constructed property is acquired after September 27, 2017 if a taxpayer begins constructing the property after September 27, 2017. Property constructed for a taxpayer pursuant to a written binding contract entered into prior to the beginning of construction is not self-constructed property.

If the construction of self-constructed property begins before September 28, 2017, the self-constructed property and any components of that property, whether or not self-constructed, do not qualify for the 100-percent rate. However, if the manufacture of self-constructed components begins before September 28, 2017, the self-constructed property may qualify for the 100-percent rate if its manufacture begins after September 27, 2018.

Construction begins when physical work of a significant nature begins or, under an elective safe harbor 10 percent or more of the cost of the property is paid or incurred. These are the same standards that apply under the current final regulations.

## Long Production Property

Although bonus depreciation generally expires after 2026, long production property (LPP) placed in service in 2027 may qualify for bonus depreciation. The LPP must be acquired after September 27, 2017 and before January 1, 2027 or acquired pursuant to a binding written contract entered into after September 27, 2017 and before January 1, 2027.

The basis of LPP attributable to 2027 progress expenditures does not qualify for the bonus.

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In the case of self-constructed LPP the significant physical work and 10-percent safe harbor apply to determine the acquisition date.

If a binding contract for the acquisition of a component of self-constructed property is entered into after September 27, 2017 and before January 1, 2027 or self-construction of the component begins during that period, the component qualifies for bonus depreciation even if construction of the LPP begins after 2026.

## OTHER GUIDANCE

Since the Tax Cuts and Jobs Act of 2017 became law, the IRS has issued other of guidance on a myriad of provisions. Some of this guidance provides:

- A corporation with a fiscal year that includes January 1, 2018, pays federal income tax using a blended tax rate and not the flat 21-percent tax rate under the new law that generally applies to tax years beginning after December 31, 2017 (***Notice 2018-38***).
- The IRS will provide automatic consent to a small business taxpayer's application to change to the cash method of accounting, or to adopt other changes of accounting method. The new law allows small business taxpayers with average annual gross receipts of $25 million or less in the prior three-year period to use the cash method of accounting, and use certain accounting rules for inventories, cost capitalization and long-term contracts that were previously available only to taxpayers with lower average gross receipts (***Rev. Proc. 2018-40***).
- Initial guidance for computing the business interest expense deduction under the post-2017 rules, under which the deduction is generally limited to any interest income, plus 30 percent of the taxpayer's adjusted taxable income. Under regulations to be issued, C corporations with disqualified interest under the earnings stripping rules in effect prior to 2018 may carry over the interest to post-2017 tax years, but subject to the limitations under the new rules. Additional guidance will be provided for allocation of business interest from affiliated groups and consolidated returns (***Notice 2018-28***).

In other cases, the IRS has announced plans to issue guidance on several of the new provisions, in some instances providing some initial guidance upon which taxpayers can rely until proposed or final regulations are issued. These announcements include:

- Plans to issue regulations clarifying the new three-year holding period for certain carried interests. The new regulations will provide that partnership interests held by S corporations are subject to the extended three-year holding period for applicable partnership interests (***Notice 2018-18***).
- Suspension of withholding obligations for international taxpayers for dispositions of certain publicly traded partnership interests pending further guidance. The IRS intends to issue regulations or other guidance on how to withhold, deposit and report the tax withheld upon the disposition of a publicly traded partnership interest when any portion of the gain would be treated as effectively connected with the conduct of a U.S. trade or business. This suspension is in response to the provision of the Act under which a transferee must withhold 10 percent of the amount realized upon the disposition of a partnership interest when any portion of the gain would be treated as effectively connected with the conduct of a U.S. trade or business (***Notice 2018-8***).
- How to qualify for exemptions from withholding, or reductions in the amount of withholding, on transfers of non-publicly traded partnership interests, with interim guidance that taxpayers may rely on until regulations are issued (***Notice 2018-29***).
- For families with members with disabilities, plans to issue proposed regulations clarifying the changes to the limits on contributions to ABLE accounts (***Notice 2018-62***).

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