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Regulations, IRS guidance: Business interest expense deduction limitations under section 163(j) (text of regulations and guidance)

The IRS today released a version of final regulations under section 163(j) reflecting a provision of the 2017 tax law (Pub. L. No. 115-97, the law that is often referred to as the “Tax Cuts and Jobs Act”) that limits the deduction for business interest expense, and that reflects statutory amendments made by the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Pub. L. No. 116-136).

Read the [final regulations](#) [PDF 2.22 MB] (575 pages)

The regulations (T.D. 9905) include this statement:

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The version of the Treasury Decision released today may vary slightly from the published document if minor editorial changes are made during the OFR review process. The document published in the Federal Register will be the official document.

In addition to the final regulations, the IRS also release the following related guidance:

- [Proposed regulations](#) [PDF 1 MB] (REG-107911-18) (285 pages) that provide additional guidance on various business interest expense deduction limitation issues not addressed in the final regulations, including more complex issues related to the amendments made by the CARES Act. Subject to certain restrictions, taxpayers may rely on some of the rules in these proposed regulations until final regulations implementing the proposed regulations are published in the Federal Register. Written or electronic comments and requests for a public hearing on these proposed regulations must be received within 60 days of date of filing for public inspection with the Federal Register.

- [Notice 2020-59](#) [PDF 126 KB] that contains a proposed revenue procedure that provides a safe harbor allowing taxpayers engaged in a trade or business that manages or operates qualified residential living facilities to treat such trade or business as a real property trade or business solely for purposes of qualifying as an electing real property trade or business. Written or electronic comments on the proposed revenue procedure must be received no later than Monday, September 28, 2020.
- [FAQs regarding the aggregation rules under section 448\(c\)\(2\) that apply to the section 163\(j\) small business exemption](#) that provide a general overview of the aggregation rules that apply for purposes of the gross receipts test, and that apply to determine whether a taxpayer is a small business that is exempt from the business interest expense deduction limitation.

As explained in a related IRS release—[IR-2020-171](#)—for tax years beginning after December 31, 2017, business interest expense deductions are generally limited to the sum of:

- The taxpayer's business interest income
- 30% (or 50%, as applicable) of the taxpayer's adjusted taxable income; and
- The taxpayer's floor plan financing interest expense.

The business interest expense deduction limitation does not apply to certain small businesses whose gross receipts are \$26 million or less, electing real property trades or businesses, electing farming businesses, and certain regulated public utilities. The \$26 million gross receipts threshold applies for the 2020 tax year and will be adjusted annually for inflation.

A real property trade or business or a farming business may elect to be excepted from the business interest expense limitation. However, taxpayers cannot claim the additional first-year depreciation deduction for certain types of property held by the electing trade or business.

Taxpayers are to use Form 8990, *Limitation on Business Interest Expense Under Section 163(j)*, to calculate and report their deduction and the amount of disallowed business interest expense to carry forward to the next tax year.

The purpose of this report is to provide text of the regulations and related IRS guidance. KPMG will provide more detailed discussions in future reports.

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