



# TaxNewsFlash

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## Regulations on business interest expense deduction limitations under section 163(j); effective date and reliance clarifications and changes

The U.S. Treasury Department and IRS last week released for publication in the Federal Register final regulations (T.D. 9905) and a notice of proposed rulemaking (REG-107911-18) (2020 proposed regulations) under section 163(j) concerning the limitation on deductions for certain business interest expenses.

These versions of the regulations under section 163(j) reflect changes made to the versions released by the IRS in late July 2020. The changes generally relate to the effective date and reliance provisions (that is, the tax years to which taxpayers can apply the regulations).

- Read the [final regulations](#) [PDF 898 KB] (160 pages as published in the Federal Register on September 14, 2020).
- Read the [proposed regulations](#) [PDF 774 KB] (77 pages as published in the Federal Register on September 14, 2020).

The final and proposed regulations are scheduled to be published in the Federal Register on September 14, 2020.

### Background

These final and 2020 proposed regulations reflect changes made by the 2017 tax law (Pub. L. No. 115-97)—the law that is often referred to as the “Tax Cuts and Jobs Act” (TCJA)—and amendments made by the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Pub. L. No. 116-136).

The IRS on July 28, 2020, posted versions of these final and 2020 proposed regulations on the IRS website, with a statement that the versions published in the Federal Register would be the official versions.

## **Effective date provisions**

### **Final regulations**

The final regulations generally apply to tax years beginning on or after November 13, 2020.

However, a taxpayer may apply the final regulations in their entirety to one or more tax years beginning after December 31, 2017, and before November 13, 2020 (2018-2020 tax years) so long as the taxpayer and related parties (determined under sections 267(b) and 707(b)(1)) consistently apply the final regulations to such tax year(s).

Accordingly, a taxpayer has discretion to apply the final regulations to any or all tax years beginning before November 13, 2020.

### **2018 proposed regulations**

Alternatively, the final regulations allow a taxpayer to apply the 2018 proposed regulations (REG-106089-18) in their entirety to one or more tax years beginning after December 31, 2017, and before November 13, 2020, so long as the taxpayer and related parties consistently apply them to such tax year(s).

If the 2018 proposed regulations are applied to a particular tax year, there is no requirement that they be applied to a subsequent tax year.

The effective date provision applicable to the 2018 proposed regulations is generally consistent with the effective date language contained in the 2018 proposed regulations as originally published.

### **2020 proposed regulations**

The 2020 proposed regulations may also be applied prior to their finalization. Taxpayers generally may apply all or certain portions of the 2020 proposed regulations to a tax year beginning after December 31, 2017, provided that the taxpayer and related parties consistently apply the 2020 proposed regulations as well as the final regulations to such tax year and to each subsequent tax year. If the taxpayer applies the 2020 proposed regulations to a tax year, there is no requirement that they be applied to earlier years.

Some portions of the 2020 proposed regulations contain less restrictive consistency requirements. For example, a taxpayer may apply the 2020 proposed regulations—Prop. Reg. section 1.163(j)-6 (relating to partnerships and S corporations)—to a tax year beginning after December 31, 2017, provided that the taxpayer and related parties also consistently apply section 1.163(j)-6 of the final regulations to such tax year and all subsequent tax years (with no requirement to apply the final regulations in their entirety or any other provisions of the 2020 proposed regulations).

A taxpayer also may apply the 2020 proposed regulations—Prop. Reg. section 1.163-14 and/or section 1.163-15 (relating to debt financed distributions and distributions of deposited debt proceeds)—to a tax year beginning after December 31, 2017, provided that the taxpayer and related parties consistently apply them to such tax year and each subsequent tax year (with no requirement to apply the final regulations or any other portion of the 2020 proposed regulations).

## **KPMG observation**

Some of the effective date provisions in the 2020 proposed regulations have additional complexities, and taxpayers need to carefully review the specific provision(s) to be applied for proper compliance. For example, additional special reliance rules apply to certain provisions of the 2020 proposed

regulations—Prop. Reg. sections 1.163-7 (relating to foreign corporations and United States shareholders) and 1.163-8 (relating to foreign persons with effectively connected income).

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