



Feedback for Notice 2018-28 (Interest Deductibility)

NOTICE 2018-28, SECTION NUMBER	SECTION TITLE or ISSUE TOPIC	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Section 4	C Corporation Business Interest Expense And Income	Provide that income from property contributed by a corporation to a partnership whose interests are owned by that corporation and related corporations continues to be characterized as trade or business income in the hands of the partnership.	The statutory language is unclear with respect to the classification of property contributed by corporations to a partnership as trade or business income or as investment income. The legislative history makes clear that Congress intended that all income of a corporation qualifies as trade or business income. However, it is less clear whether income from those assets may become investment income in the hands of a partnership following its contribution by the corporation. The Chamber does not believe that Congress intended to provide corporations with the flexibility to treat income that would otherwise be trade or business income as investment income by transferring the assets producing that income to a partnership that is owned entirely or primarily by related corporations.
Section 5	Application of §163(j) ¹ to Consolidated Groups	Provide an election for businesses operating in the United States with more than one U.S. taxpayer (e.g., multiple consolidated groups, deconsolidated	Not all U.S. businesses are structured to either be a single taxpayer or a consolidated group. For a variety of

¹ Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.



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		<p>entities) to apply §163(j) on an expanded affiliated group basis using the decades-old rules under the proposed regulations.</p>	<p>reasons, companies may have a large group of companies in the U.S. that are not consolidated in one taxpayer.</p> <p>Prior to tax reform, IRS rules allowed U.S. businesses to apply §163(j) on an expanded affiliated group basis. Notice 2018-28 does not outright dismiss the application of the rule on an expanded affiliated group basis in regulations stating instead that a super-affiliated rule is not “anticipated.”</p> <p>Applying §163(j) on a single consolidated basis will divorce the tax calculation from economic realities of determining debt capacity, which is based on the entire U.S. operations/assets and not to the particular taxpayer incurring the debt. Where the U.S. business of a company is reflected in a single consolidated group, there is no difference in the tax calculation and the scope of assets considered in determining debt capacity.</p>
	Application of §163(j) to intercompany debt	Disregard debt between a partnership and partners where the partnership is wholly-owned by members of the same consolidated group.	Section 5 and legislative intent states that intercompany obligations should be disregarded for purposes of determining the §163(j) limitation. We want to make sure that this remains the case.



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			<p>The concern is that language in Section 7 (relating to partnerships) is vague. Specifically, it states that "...[§]163(j) may also be applied at the partner level in certain circumstances." The Chamber's concern is out of a lack of understanding of what those circumstances are. Regardless of what the answer to the question is, debt between a partnership and partners where the partnership is wholly-owned by members of the same consolidated group, should be disregarded when determining the limitation.</p>
<p>Section 7</p>	<p>Business Interest Income and Floor Plan Financing of Partnerships, Partners, S Corporations, And S Corporation Shareholders</p>	<p>Provide that where all the beneficial owners of a non-corporate entity (such as a partnership) are C corporations, all interest paid, accrued, or includible in gross income by such non-corporate entity is business interest and business interest income.</p> <p>Alternately, provide that a C corporation's portion should always be business interest by stating that interest expense and income allocated to a corporate partner of a partnership is business interest and business income, in order to be consistent with the characterization where a</p>	



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		corporation pays, accrues, or includes such amounts directly.	