Real Estate Roundtable

Where:	3120MT
When:	Fri Oct 27 14:30:00 2017 (America/New_York)
Until:	Fri Oct 27 15:00:00 2017 (America/New_York)
Organiser:	"Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">
Required Attendees:	"Kautter, David" <david.kautter@treasury.gov> "Trier, Dana" <dana.trier@treasury.gov> "West, Thomas" <thomas.west@treasury.gov>

Attachments:
pass-through rate white paper 09.25.2017.pdf (605.77 kB)

Topic of discussion: proposal for a reduced tax rate on pass-through business income.

<<...>>

Cleared Attendees:

RER President & CEO Jeff DeBoer

RER Sr. Vice President & Counsel, Ryan McCormick

RER Tax Policy Advisory Committee Member Don Susswein

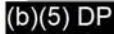
Vice Chairman of The Roundtable's Tax Policy Advisory Committee , Jeff Clark

Accepted: HOLD: Real Estate Roundtable

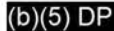
Where:	3120MT
When:	Fri Oct 27 16:00:00 2017 (America/New_York)
Until:	Fri Oct 27 16:30:00 2017 (America/New_York)
Organiser:	
Required Attendee:	
Optional Attendee:	

RE: Carried Interest

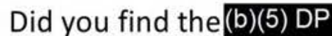
From: "Mackie, James III" <james.mackie@treasury.gov>
To: "Kautter, David" <david.kautter@treasury.gov>, "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Fri, 20 Oct 2017 14:53:23 -0400

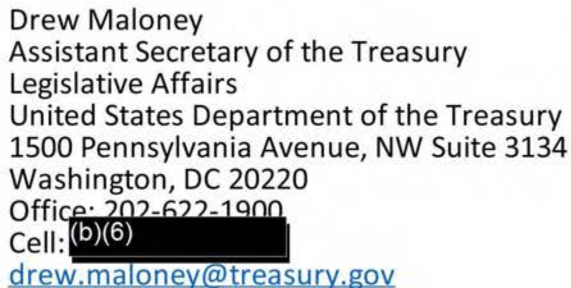

(b)(5) DP

From: Kautter, David
Sent: Friday, October 20, 2017 2:41 PM
To: Maloney, Drew <Drew.Maloney@treasury.gov>
Cc: Mackie, James III <James.Mackie@treasury.gov>
Subject: RE: Carried Interest


(b)(5) DP

From: Maloney, Drew
Sent: Friday, October 20, 2017 2:30 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject:

Did you find the  (b)(5) DP


Drew Maloney
Assistant Secretary of the Treasury
Legislative Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134
Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

RE: Carried interest (b)(5) DP

From: "Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">

To: "West, Thomas" <thomas.west@treasury.gov>

Cc: (b)(6) @treasury.gov>, (b)(6) @treasury.gov>, "Vallabhaneni, Krishna" <krishna.vallabhaneni@treasury.gov>

Date: Tue, 24 Oct 2017 16:50:55 -0400

Thank you

From: West, Thomas
Sent: Tuesday, October 24, 2017 10:39 AM
To: Kautter, David <David.Kautter@treasury.gov>
Cc: (b)(6) @treasury.gov>; (b)(6) @treasury.gov>; Vallabhaneni, Krishna <Krishna.Vallabhaneni@treasury.gov>
Subject: Carried interest proposals

Dave, per our discussion of last week the team has put together summaries of the most mainstream (b)(5) DP
(b)(5) DP

Tom

Tom West
Tax Legislative Counsel
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Direct: (b)(6)
E-mail: thomas.west@treasury.gov

Accepted: Real Estate Roundtable

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Optional Attendee:	

Re:

From: "Trier, Dana" <dana.trier@treasury.gov>
To: "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Thu, 02 Nov 2017 08:43:35 -0400

Nothing that I have seen so far. (b)(5) DP
(b)(5) DP

From: Maloney, Drew <Drew.Maloney@treasury.gov>
Date: November 2, 2017 at 8:25:05 AM EDT
To: Trier, Dana <Dana.Trier@treasury.gov>
Subject: (No subject)

Do you know what committee did on carried interest?

Drew Maloney
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United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134
Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

Re: RE:

From: "Specht, Brittan" <brittan.specht@mail.house.gov>
To: "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Sun, 05 Nov 2017 19:51:01 -0500

(b)(5) DP

Brittan G. Specht, CFA
Majority Leader Kevin McCarthy

On Nov 5, 2017, at 7:50 PM, "Drew.Maloney@treasury.gov" <Drew.Maloney@treasury.gov> wrote:

(b)(5) DP
(b)(5) DP

Drew Maloney
Assistant Secretary of the Treasury
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United States Department of the Treasury
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Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

From: Specht, Brittan < Brittan.Specht@mail.house.gov>
Date: November 5, 2017 at 7:20:09 PM EST
To: Maloney, Drew < Drew.Maloney@treasury.gov>
Subject: RE:

Not everything...we'll need a wrap-up amendment at the end, and probably a healthy set of Rules changes as well.

As far as the amendment tomorrow, I think the biggest changes will be (b)(5) DP
(b)(5) DP

Outside of that, mostly small items: (b)(5) DP
(b)(5) DP

Anything there send up major red flags for you? What else are you hearing?

From: Drew.Maloney@treasury.gov [Drew.Maloney@treasury.gov]
Sent: Sunday, November 05, 2017 6:26 PM
To: Specht, Brittan
Subject:

What will mgr amendment address?

Drew Maloney
Assistant Secretary of the Treasury
Legislative Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134

Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

Fwd: PT

From: "Bailey, Bradley" <bradley.bailey@treasury.gov>

To: "Vallabhaneni, Krishna" <krishna.vallabhaneni@treasury.gov>, "Muzinich, Justin" <justin.muzinich@treasury.gov>, "Trier, Dana" <dana.trier@treasury.gov>, "Kautter, David" <david.kautter@treasury.gov>, "West, Thomas" <thomas.west@treasury.gov>, "Bramwell, Austin" <austin.bramwell@treasury.gov>

Date: Tue, 07 Nov 2017 17:36:16 -0500

FYI below on what s corps sent to W&Ms today

From: Melissa Bonicelli (b)(6)
Date: November 7, 2017 at 4:27:20 PM EST
To: Bailey, Bradley <Bradley.Bailey@treasury.gov>
Subject: PT

To your other question this morning....

From: Brian Reardon
Sent: Tuesday, November 07, 2017 1:38 PM
To: 'Glover, Victoria' <Victoria.Glover@mail.house.gov>; Limardo, Rick <Rick.Limardo@mail.house.gov>; 'Reiser, Martin' <Martin.Reiser@mail.house.gov>; 'Callas, George' <George.Callas@mail.house.gov>
Cc: 'Melissa Bonicelli' (b)(6) >; Christine Walizer (b)(6) >
Subject: Suggested Amendments for HR 1

Hi all – I know you're busy, but after a couple days of looking at the bill, here are three suggestions for improving H.R. 1 – one significant change that would expand the application of the 25 percent rate to S corporations with a mix of active and inactive owners, and two more technical fixes that 1) ensure the SALT provision does not apply to pass through profits (it looks like it might right now) and 2) language to ensure the 25 percent rate applies to EBSTs with inactive beneficiaries.

Happy to discuss these in more detail. The benchmarking provision is obviously the priority here, while the other two provisions appear to be consistent with the Committee's intent and are more in the housecleaning category.

Hi all – thanks for all the feedback on the various issues. After wading through them, these are the three we decided to press with the Committee. I know there are other issues but wanted to put the emphasis on our BIG ask – the benchmarking, as well as two very large challenges that are more in the nature of a technical fix.

List of Pass Through Issues Large and Small:

Adding benchmarking to pass through rate guardrails in H.R. 1.

Proposal would be to expand the provision allowing inactive shareholders to automatically get the 25 percent rate to S corporations with a mix of both active and inactive shareholders. (This exception would not apply to shareholders in the same immediate family.)

There are a number of reasons why this is appropriate. First, the single class of stock rule has two implications for this business – profits allocated to the inactive owners will be proportional to profits allocated to active owners, thus assuring a clear distinction between what are profits and wages for the active shareholders.

Second, the requirement for pro-rata distributions will force the S corporation to make quarterly distributions to both active and inactive shareholders at the higher rates, even though the inactive shareholder rate is significantly lower. These pro-rate distributions will drain resources from the S corporation just as if all of the shareholders were subject to the 70/30 guardrail. It would be a windfall for the inactive shareholders, who would get a distribution that is greater than their S corporation tax liability, but the resources would not be available to the company.

Finally, the combination of the single class of stock rule and the competing interests of the shareholders would ensure that wages paid to the active owners are market based and appropriate. No active owner is going to reduce his wage by a $1 in order to increase the profit pool if he knows he'll have to share that $1 with the other shareholders. Meanwhile, the inactive shareholders will make certain that the wages paid to the active owners are market based and not inflated.

Expanding the 25 percent rate to S corporations with a mix of active and inactive owners (and similarly situated partnerships with pro-rata distribution requirements) would address this very specific challenge faced by many S corporations while ensuring that the 25 percent rate applies to profits only.

Fix: This language would be added on at the end of section 4(e).

§4(e)(5) S Corporation Parity. – The capital percentage with respect to the net business income from an activity carried on by an S corporation that is taken into account by shareholders of such S corporation for whom such activity is an active business activity shall not be less than the percentage of such net business income that is taken into account and treated as qualified business income by shareholders of such S corporation for whom such activity is a passive business activity. The foregoing provision shall not apply unless the shareholders of such S corporation for whom such activity is a passive activity own at least 20% of the outstanding stock of such S corporation. For purposes of this paragraph (5) only, all stock owned by the spouse and non-adult children of a shareholder for whom such activity is an active business activity shall be treated as stock owned by a shareholder for whom such activity is an active business activity.

Technical Fix: State & Local Tax Deduction

Background – Pass-thru businesses are currently taxed at the shareholder level and therefore, currently take the state and local tax (SALT) deductions for those taxes paid by the business – on the individual shareholder tax forms. C corporations also have access to the state and local income tax deduction on their corporate forms.

Despite the description that the state and local tax deduction will still be available for taxes paid on trade or business income, our reading of the bill is that due to the 70/30 or rate of return ratio splits between the Labor and Capital portions of S corporation income would make the deduction unavailable to S corporations. C corporations' state and local tax deduction would not be repealed.

- §1303 of HR 1 (page 103 of the Chairman's mark) adds new Code §164(b)(5) [The section currently used to provide for the deduction for sales taxes. The bill replaces it in its entirety.]
    - The new section starts off by saying that it applies "in the case of a taxpayer other than a corporation". That is the same language that is used in §245A to keep S Corporations from using the new deduction for dividends from foreign subsidiaries, so it appears these limitations all apply to S Corporations and their shareholders.

- Paragraphs (A) through (D) then list out the new restrictions on deductions for various taxes.

  (A) States that foreign real property taxes are not deductible at all, unless connected with a trade or business.

  (B) This references §164(a)(1), which relates strictly to real property taxes. It states that these taxes, to the extent they are not related to a trade or business, are limited to a maximum of $10,000 per year (married filing jointly). So, an S Corporation and its shareholders still get all their domestic real property taxes, and then the individual shareholder also gets up to $10,000 of the real estate taxes on their personally held real property.

  (C) This references §164(a)(2), which relates to personal property taxes. It states that these are deductible only to the extent that they relate to a trade or business. So, an S Corporation and its shareholders can deduct the personal property taxes that they pay, but the individual can no longer deduct the personal property tax on his car, boat, etc.

  (D) This references §164(a)(3), which relates to state and local and to foreign (to the extent they aren't used as a credit) income taxes. It disallows all these deductions except for the foreign taxes being deducted in lieu of a credit. There is no reference to a trade or business exception. So, in my view, because the state and local taxes paid by an S Corporation shareholder are paid at the shareholder level, they are not deductible. I could also read this to disallow the state and local income taxes paid by the S Corporation itself to those states which do not recognize an S Corporation election, such as Tennessee or Louisiana. This is a different result than what C Corporations get.

- We do not see anything that provides any difference between the taxes allocable to the Capital Portion versus the Labor Portion of the S Corporation's income.
- Further, for S-Corp and partnerships that file for state income purposes on a composite basis or administer non-resident withholding, presumably the entity level tax payments made on behalf of shareholders/partners are subject to the new SALT deduction limitation on the shareholder/partner personal returns.
- **Proposed Language for Needed Clarity that the state and local income tax deduction is available to the business income of pass-through businesses.**
  - **Page 103 HR 1 Amendment in the Nature of a Substitute (11.3.17)**
    - **Line 25 after "State and local taxes" insert "(other than taxes paid or accrued in carrying on a trade or business or an activity described in section 212.)**

Technical Correction re/ ESBTs

The ESBT rules ensure that U.S. taxes are paid on the S corporation's income. When a trust shareholder elects to be treated as an ESBT, it is taxed on its share of the S corporation's income at the highest applicable U.S. tax rate, before any earnings are distributed to the beneficiaries.

HR 1 has two sections in the bill that could be read as contradictory regarding whether or not ESBTs would be automatically taxed at the highest rates regardless of whether the trust is active or passive in the business.

- Conforming amendments in Section 1005(b)(4) & (5) (amends Code Section 641) – potentially excludes ESBTs from preferred rate vs. Section 1004(a) – new Code Section 4(h) – effectuates the 25% for ESBTs

§641(c)(2)(A) has historically said that the tax imposed on ESBT's is the highest rate of tax imposed by §1(e), as modified by §1(h). §1(e) was the set of tax brackets specifically for trusts, and §1(h) is the section that sets the maximum rates for capital gain taxes. The trust table in §1(e) showed a top bracket of 39.6%, which then applied to ESBT's. §1(h) set a maximum rate for capital gains of 20%, and that capped the rate on capital gains for ESBT's because of the reference in §642(c)(2)(A).

In the new bill, §1(e) has been removed (actually, it's now the section that applies the phase-out of

the 12% rate), so the reference to that section in §642 no longer makes sense. Instead, all of the tax brackets are now laid out in §1(a). §641(c)(2)(A) has appropriately been changed to refer to §1(a) rather than to §1(e), and it continues to make reference to §1(h), so the capital gain top rate still clearly applies. But §642(c)(2)(A) does not specifically refer to the rate in §4, so Ed's reading would be correct if you stop there.

Code §4(h) states that "any reference in this title to section 1 shall be treated as including a reference to this section unless the context of such reference clearly indicates otherwise." If you read this, as we do, to mean that §641(c)(2)(A) includes a reference to §4 when it refers to §1, then trusts get the same rates as individuals on the business income. The question remains how the IRS will apply that phrase about whether the context clearly implies otherwise.

Proposed Language– Page 65 of HR 1 Amendment in the Nature of a Substitute (11.3.17)

- **Line 12, after "1(h)" and before the comma – Insert "and section 4"**
  - **§641(c)(2)(A) should read "Except to the extent provided in section 1(h) and section 4, the rate of tax shall be treated as being the highest rate of tax set forth in section 1(a)."**

--

Melissa Bonicelli | *Principal*

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Senate pass-through proposal -- Real Estate Roundtable comments

From: Ryan McCormick (b)(6)
To: "Kautter, David" <david.kautter@treasury.gov>, "Trier, Dana" <dana.trier@treasury.gov>, "West, Thomas" <thomas.west@treasury.gov>, "Muzinich, Justin" <justin.muzinich@treasury.gov>
Cc: "Susswein, Don" (b)(6)
Date: Mon, 13 Nov 2017 18:23:15 -0500

Assistant Secretary Kautter et al,

The attached memo provides comments on the proposed pass-through deduction in the Senate Finance Committee tax bill. As you know from our prior white paper, RER has given considerable thought to the question of how best to structure tax relief for pass-through businesses while avoiding potential abuses, such as those related to disguised compensation. We have significant concerns with the Senate approach. In addition to the attached comments, we have several ideas for how to marry the House and Senate proposals. Separately, we will follow up with our proposal for a House-Senate pass-through tax relief compromise. We would welcome an opportunity to discuss these issues and recommendations further.

Thank you,

Ryan

****
Ryan P. McCormick
Senior Vice President & Counsel
The Real Estate Roundtable
801 Pennsylvania Ave., NW | Suite 750
Washington, DC 20004
(b)(6)
https://hyperlink.services.treasury.gov/agency.do?origin=www.rer.org
(b)(6)

Re:

From: "Bailey, Bradley" <bradley.bailey@treasury.gov>
To: "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Wed, 15 Nov 2017 11:39:05 -0500

Doesn't appear to be anything in senate bill

From: Maloney, Drew <Drew.Maloney@treasury.gov>
Date: November 15, 2017 at 11:24:07 AM EST
To: Bailey, Bradley <Bradley.Bailey@treasury.gov>
Subject: (No subject)

What is update on carried interest?

Drew Maloney
Assistant Secretary of the Treasury
Legislative Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134
Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

FW: MFA tax clarification for Senate floor

From: "Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">

To: "Trier, Dana" <dana.trier@treasury.gov>, "Harter, Chip" <lafayettechip.harter@treasury.gov>, "West, Thomas" <thomas.west@treasury.gov>, "Neis, Robert" <robert.neis@treasury.gov>

Date: Mon, 27 Nov 2017 17:33:54 -0500

Please review and disseminate as you deem appropriate

From: Francis Grab [mailto:(b)(6)
Sent: Monday, November 27, 2017 4:58 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject: MFA tax clarification for Senate floor

Hi Dave,

Hope you are well and had a great Thanksgiving!

As the Senate begins its consideration of the "Tax Cuts and Jobs Act", our client Managed Funds Association (MFA) has identified a number of problematic provisions that are included in the measure that they are hoping can get improved as the process moves forward. Without these important and largely clarifying changes, these provisions will have significant, adverse impacts on many of MFA members, who are already adversely impacted by virtue of being excluded from the types of pass-through businesses that are eligible to receive preferential tax treatment on their business income.

We are submitting proposed amendments, mostly clarifying in nature but very important, to address these concerns. We believe these proposed changes are consistent with the policy determinations and existing structure of the Senate bill being contemplated.

Those amendments are:

- Enterprise Value (Senate bill, included in Chairman Hatch's Amendment #25): A clarifying amendment to clearly exclude enterprise value from the change in tax treatment in the carried interest language.

- Interest Deductibility (Senate bill Section III.C.1.): A clarifying amendment to make sure the investment income exclusion already in the bill works for partnerships and applies equally to all partners.

- Transition Rule for Partners in a Business (New Section): An amendment to provide transitional relief to give active partners in business partnerships a one-time opportunity to decide their status as active or passive partners going forward based on the impact of tax reform.

- Preserve intellectual property treatment (House bill, Sec. 3311): Preserve capital treatment for intellectual property created in the normal course of business by not amending the Senate bill to include language similar to Section 3311 of the House bill.

We greatly appreciate your consideration of these issues as you prepare for Senate floor consideration and as the process moves forward to a possible House-Senate conference.

Best regards,

Francis

Francis Grab | Principal | National Tax

Washington Council Ernst & Young
Office: +1 202 293 7474 | (b)(6)

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FW: MFA tax clarification for Senate floor

From: "Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">
To: (b)(6)
Date: Mon, 27 Nov 2017 17:36:15 -0500

(b)(6)

I am not sure if these documents get FOIA'd or not. It seems to me that they have disseminated these on the Hill but I can't tell that from the email below. Would you please follow up on whether we need to go through FOIA with these?

Thanks

Dave

From: Francis Grab [mailto:(b)(6)
Sent: Monday, November 27, 2017 4:58 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject: MFA tax clarification for Senate floor

Hi Dave,

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We greatly appreciate your consideration of these issues as you prepare for Senate floor consideration and as the process moves forward to a possible House-Senate conference.

Best regards,

Francis

Francis Grab | Principal | National Tax

Washington Council Ernst & Young
Office: +1 202 293 7474 | (b)(6)

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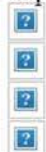

RE: MFA tax clarification for Senate floor

From: Francis Grab (b)(6)
To: "Kautter, David" <david.kautter@treasury.gov>
Date: Tue, 28 Nov 2017 09:21:13 -0500

Thanks Dave, appreciate it! Let me know if you have any questions or need any follow-up information.

Best, Francis

Francis Grab | Principal | National Tax

Washington Council Ernst & Young
Office: +1 202 293 7474 | (b)(6)

From: David.Kautter@treasury.gov [mailto:David.Kautter@treasury.gov]
Sent: Monday, November 27, 2017 5:37 PM
To: Francis Grab (b)(6)
Subject: RE: MFA tax clarification for Senate floor

Francis

Thanks. We will take a look at these documents.

Dave

From: Francis Grab [mailto:(b)(6)
Sent: Monday, November 27, 2017 4:58 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject: MFA tax clarification for Senate floor

Hi Dave,

Hope you are well and had a great Thanksgiving!

As the Senate begins its consideration of the "Tax Cuts and Jobs Act", our client Managed Funds Association (MFA) has identified a number of problematic provisions that are included in the measure that they are hoping can get improved as the process moves forward. Without these important and largely clarifying changes, these provisions will have significant, adverse impacts on many of MFA members, who are already adversely impacted by virtue of being excluded from the types of pass-through businesses that are eligible to receive preferential tax treatment on their business income.

We are submitting proposed amendments, mostly clarifying in nature but very important, to address these concerns. We believe these proposed changes are consistent with the policy determinations and existing structure of the Senate bill being contemplated.

Those amendments are:

- Enterprise Value (Senate bill, included in Chairman Hatch's Amendment #25): A clarifying amendment to clearly exclude enterprise value from the change in tax treatment in the carried interest language.

- Interest Deductibility (Senate bill Section III.C.1.): A clarifying amendment to make sure the

investment income exclusion already in the bill works for partnerships and applies equally to all partners.

- Transition Rule for Partners in a Business (New Section): An amendment to provide transitional relief to give active partners in business partnerships a one-time opportunity to decide their status as active or passive partners going forward based on the impact of tax reform.

- Preserve intellectual property treatment (House bill, Sec. 3311): Preserve capital treatment for intellectual property created in the normal course of business by not amending the Senate bill to include language similar to Section 3311 of the House bill.

We greatly appreciate your consideration of these issues as you prepare for Senate floor consideration and as the process moves forward to a possible House-Senate conference.

Best regards,

Francis

Francis Grab | Principal | National Tax

Washington Council Ernst & Young
Office: +1 202 293 7474 | (b)(6)

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RE: RE:

From: "Isakowitz, Mark (Portman)" <mark_isakowitz@portman.senate.gov>
To: "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Fri, 01 Dec 2017 18:45:26 -0500

Collins no longer offering her amendment.
(b)(5) DP so she isn't offering it any more.

Mark Isakowitz
Chief of Staff
Senator Rob Portman (OH)
448 Russell Senate Office Building
202.224.3353

From: Drew.Maloney@treasury.gov [mailto:Drew.Maloney@treasury.gov]
Sent: Friday, December 1, 2017 6:40 PM
To: Isakowitz, Mark (Portman) <Mark_Isakowitz@portman.senate.gov>
Subject: RE:

Thanks, what happened with carried interest

Drew Maloney
Assistant Secretary of the Treasury
Legislative Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134
Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

From: Isakowitz, Mark (Portman) <Mark_Isakowitz@portman.senate.gov>
Date: December 1, 2017 at 6:39:10 PM EST
To: Maloney, Drew <Drew.Maloney@treasury.gov>
Subject: RE:

Sorry I didn't respond I was on the floor
Not clear yet how long dems want to go

Mark Isakowitz
Chief of Staff
Senator Rob Portman (OH)
448 Russell Senate Office Building
202.224.3353

From: Drew.Maloney@treasury.gov [mailto:Drew.Maloney@treasury.gov]
Sent: Friday, December 1, 2017 4:42 PM

To: Isakowitz, Mark (Portman) <Mark_Isakowitz@portman.senate.gov>
Subject:

Any sense on timing of final vote?

Drew Maloney
Assistant Secretary of the Treasury
Legislative Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134
Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
drew.maloney@treasury.gov

RE: interest limit - real estate exception

From: "York, Brett" <brett.york@treasury.gov>
To: (b)(6) @treasury.gov>, (b)(6) @treasury.gov>, "Trier, Dana" <dana.trier@treasury.gov>
Cc: "West, Thomas" <thomas.west@treasury.gov>, "Kautter, David" <david.kautter@treasury.gov>, (b)(6) treasury.gov>, (b)(6) @treasury.gov>
Date: Wed, 06 Dec 2017 10:22:32 -0500

Of those times, I'm free between 4 and 5 today and after 6:15. I'm free after 3 tomorrow as well.

From: (b)(6)
Sent: Wednesday, December 06, 2017 9:50 AM
To: (b)(6) ; Trier, Dana; York, Brett
Cc: West, Thomas; Kautter, David; Zent, Brenda; Yen, Jason
Subject: RE: interest limit - real estate exception

Dana,

Out of times (b)(6) mentioned below, I'm free after 2:30 today and after 3 tomorrow.

Regards,
(b)(6)

From: (b)(6)
Sent: Wednesday, December 06, 2017 9:32 AM
To: Trier, Dana <Dana.Trier@treasury.gov>; (b)(6) @treasury.gov>; (b)(6) (b)(6) @treasury.gov>
Cc: West, Thomas <Thomas.West@treasury.gov>; Kautter, David <David.Kautter@treasury.gov>; (b)(6) @treasury.gov>; (b)(6) @treasury.gov>
Subject: RE: interest limit - real estate exception

I am free after 2:30 today and any time before 1 tomorrow or after 3.

(b)(6)
Attorney Advisor
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
(b)(6)
(b)(6) @treasury.gov

From: Trier, Dana
Sent: Wednesday, December 06, 2017 9:17 AM
To: (b)(6) @treasury.gov>; (b)(6) @treasury.gov>; York, Brett <Brett.York@treasury.gov>
Cc: West, Thomas <Thomas.West@treasury.gov>; Kautter, David <David.Kautter@treasury.gov>; (b)(6) @treasury.gov>; (b)(6) @treasury.gov>
Subject: FW: interest limit - real estate exception

Partnership/Interest Disallowance Folks,

I do think it be would be helpful to have a meeting to start thinking about (b)(5) DP (b)(5) DP

(b)(5) DP I am busy this morning, but let me know whether you are free this afternoon or tomorrow. (b)(5) DP

Dana

From: Ryan McCormick [mailto (b)(6)
Sent: Tuesday, December 05, 2017 9:16 AM
To: Trier, Dana <Dana.Trier@treasury.gov>; Kautter, David <David.Kautter@treasury.gov>; West, Thomas <Thomas.West@treasury.gov>
Subject: RE: interest limit - real estate exception

Thanks for your consideration, Dana. There is a lot of interest in this issue.

Ryan

****
Ryan P. McCormick
Senior Vice President & Counsel
The Real Estate Roundtable
801 Pennsylvania Ave., NW | Suite 750
Washington, DC 20004
(202) 639-8400
https://hyperlink.services.treasury.gov/agency.do?origin=www.rer.org
(b)(6)

From: Dana.Trier@treasury.gov [mailto:Dana.Trier@treasury.gov]
Sent: Monday, December 04, 2017 4:47 PM
To: Ryan McCormick <(b)(6); David.Kautter@treasury.gov; Thomas.West@treasury.gov
Subject: RE: interest limit - real estate exception

Ryan,
Thanks for the note. We have had a few similar queries, and will think about during the week.

Dana

From: Ryan McCormick [mailto:(b)(6)
Sent: Monday, December 04, 2017 12:31 PM
To: Kautter, David <David.Kautter@treasury.gov>; Trier, Dana <Dana.Trier@treasury.gov>; West, Thomas <Thomas.West@treasury.gov>
Subject: interest limit - real estate exception

Dear Assistant Secretary Kautter, Deputy Assistant Secretary Trier, and Mr. West:

There is some uncertainty regarding whether debt incurred at the partner level qualifies for the real estate exception to the business interest disallowance rule in the House and Senate tax bills, when it is the partnership that is engaged in the real property trade or business.

Clarification in the final legislative history, prior to enactment, would provide very helpful certainty to taxpayers contemplating potential real estate investments. Lack of clarity about whether partner-level borrowing qualifies for the exception could raise doubts about many common real estate investment transactions. Below are a couple examples:

- Developer Corp and U.S. tax-exempt investor agree to a 50-50 joint venture for the purpose of developing an office building. Developer has to borrow to fund its 50% share of the proceeds.

- Real estate fund projects a 10% return for investors. Individual passive investor has the

ability to borrow at a rate of 5%, and hence this investor will borrow to fund its equity contribution to the Fund.

Attributing the real property trade or business to debt incurred at the partner level would be consistent with current law rules related to passive activities and investment interest (specifically, the exclusion from the term "investment interest" under section 163(d)(3)(B)(ii) with respect to interest taken into account under section 469 in computing income or loss from a passive activity of a taxpayer). Interest on debt incurred to acquire an interest in a partnership that conducts a passive activity is treated as a passive activity deduction under section 469. *See* Treas. Reg. §1.469-2T(d)(3) and 1.163-8T(b)(4); *see also* Jt. Comm. on Tax'n, *General Explanation of the Tax Reform Act of 1986*, at 265 n. 57 (May 4, 1987). In order for that interest expense to be treated as a passive activity deduction and not investment interest limited under section 163(d), the partner necessarily is treated as engaged in the trade or business of the partnership for purposes of this interest limitation rule.

In light of this support for attributing the activities of the partnership to debt incurred at the partner level, we have asked the tax-writing committee to add the following clarification to the legislative history. Recognizing that the Treasury Department has a critical voice in the final legislative negotiations, we wanted you to be aware of our efforts.

We have asked that the underlined language be added to the current report language:

> The limitation does not apply to a real property trade or business as defined in section 469(c)(7)(C). Any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business is not treated as a trade or business for purposes of the limitation. As a result, for example, interest paid or incurred in a real property trade or business is not business interest subject to limitation and is generally deductible in the computation of taxable income. <u>For purposes of this exception, a partner in a partnership will be treated as engaged in a real property trade or business conducted by the partnership (including indirectly through tiers of partnerships). Therefore, interest will not be business interest subject to limitation to the extent that such interest accrues with respect to any debt incurred by a direct or indirect partner to fund its (i) investment in a real property trade or businesses conducted by a partnership or (ii) acquisition of an interest in a partnership (or upper tier partnership), to the extent attributable to a real property trades or businesses conducted by such partnership</u>.

Please let me know your thoughts on this. Our industry would greatly appreciate your help in getting this clarification of intent included in the legislative history.

Sincerely,

Ryan McCormick

****
Ryan P. McCormick
Senior Vice President & Counsel
The Real Estate Roundtable
801 Pennsylvania Ave., NW | Suite 750
Washington, DC 20004
(202) 639-8400
https://hyperlink.services.treasury.gov/agency.do?origin=www.rer.org
(b)(6)

Re: Circular problem in proposed legislation

From: "Trier, Dana" <dana.trier@treasury.gov>
To: "Kautter, David" <david.kautter@treasury.gov>
Date: Mon, 11 Dec 2017 08:12:08 -0500

Thanks. Will look at it.

From: Kautter, David <David.Kautter@treasury.gov>
Date: December 11, 2017 at 7:43:17 AM EST
To: Trier, Dana <Dana.Trier@treasury.gov>
Subject: FW: Circular problem in proposed legislation

Dana

You may have already focused on this. This is from a former professor who has written a book on the taxation of S corporations and still consults in the area.

If you want to contact him, please feel free to do so directly or I can provide an electronic introduction.

Thanks

Dave

From: Robert W. Jamison, CPA [mailto:bob.tsllc@gmail.com]
Sent: Monday, December 11, 2017 7:35 AM
To: Kautter, David <David.Kautter@treasury.gov>
Subject: Circular problem in proposed legislation

Mr. David Kautter
Assistant Secretary Treasury (Tax Policy) at United States Treasury Department

Dear Dave,

As I indicated in my message, I have found a glitch in Proposed Section 199A, the deduction for "Qualified Business Income". In general, the deduction is the lesser of the combined qualified business income or 23% of the taxable income (less net capital gain). [Proposed I.R.C. § 199A(a)] For this purpose, "taxable income" does not include the qualified business income deduction. [Proposed I.R.C. § 199A(e)(1)]

By using the term "taxable income," rather than adjusted gross income, the provision requires the allowance of all other deductions, both above and below adjusted gross income.
The allowable deductions include state and local (and perhaps foreign) income taxes imposed on business income. [Proposed I.R.C. § 164(b)(6)(A)] Any state whose definition of taxable income conforms in whole or in part to the Federal rules, might be allowing the §199A deduction in determining taxable income and the resultant tax liability. Thus, we have a circular problem where the §164(b)(6)(A) deduction is dependent upon the §199A deduction but the §199A deduction depends in part on the §164(b)(6)(A) deduction.

There are several feasible solutions to this problem, and I would be happy to discuss these with you or anyone you might suggest. I assure you that I will render this advice without bias as to whether the new deduction is "a good thing" or "a bad thing". I just want to make it work for small businesses and tax professionals.

Please let me know if I can be of further assistance in analyzing proposed legislation, regulations or other areas within your domain.

Sincerely,

Robert W. Jamison

Robert W. Jamison, CPA

Retract my last.

From: "Robert W. Jamison, CPA" <bob.tsllc@gmail.com>
To: "Kautter, David" <david.kautter@treasury.gov>
Date: Sat, 16 Dec 2017 10:19:51 -0500

Dave,

The explanation included with the Conference report shows that I was mistaken. The taxes that will continue to be deductible include only those that are deductible above AGI as being allowable deductions for the individual. I had apparently misread the intent, if not the wording, of the House and Senate provisions. According to the explanation as I now see it, there is no circularity between the Section 199A deduction for business income and the Section 164 deduction for taxes.

Sincerely,

Robert W. Jamison

Robert W. Jamison, CPA

Meeting on (b)(5) DP

Where:	Secretary's Small Conference Room
When:	Tue Jan 02 12:15:00 2018 (America/New_York)
Until:	Tue Jan 02 12:30:00 2018 (America/New_York)
Organiser:	STM77 <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=82d7d9324b514ae6b79635e6ca0c2c79-stm77">
Required Attendees:	"Miller, Eli" <eli.miller@treasury.gov> "Muzinich, Justin" <justin.muzinich@treasury.gov> "Kautter, David" <david.kautter@treasury.gov> "McIntosh, Brent" <brent.mcintosh@treasury.gov> "McLaughlin, Tricia" <patricia.mclaughlin@treasury.gov> "Wooten, Linda" <linda.wooten@treasury.gov> "Wilson, Kim" <kim.wilson@treasury.gov> "Dixon, Danielle" <danielle.dixon@treasury.gov>

Manifest:

Eli Miller

David Kautter

Justin Muzinich

Brent McIntosh

Accepted: Meeting on (b)(5) DP

Where:	Secretary's Small Conference Room
When:	Tue Jan 02 12:15:00 2018 (America/New_York)
Until:	Tue Jan 02 12:30:00 2018 (America/New_York)
Organiser:	
Required Attendee:	
Optional Attendee:	

Re: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

From: "Trier, Dana" <dana.trier@treasury.gov>
To: "Kautter, David" <david.kautter@treasury.gov>
Date: Thu, 04 Jan 2018 08:37:48 -0500

Thanks. ESP. For some reason I was thinking about Susswein this morning.

From: Kautter, David <David.Kautter@treasury.gov>
Date: January 4, 2018 at 7:56:45 AM EST
To: Trier, Dana <Dana.Trier@treasury.gov>, West, Thomas <Thomas.West@treasury.gov>
Subject: FW: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

FYI

From: Susswein, Don [mailto:(b)(6)
Sent: Wednesday, January 03, 2018 11:45 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

The Hon. David J. Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Possible Early Guidance on TCJA Pass-Through Provisions

Dear Mr. Kautter:

Warmest congratulations to you and your colleagues on the successful enactment of the Tax Cuts and Jobs Act. This historic tax measure contains numerous important reforms and initiatives that should be a source of pride for the Congress and the Administration, as well as the many hardworking government officials and tax professionals who worked so diligently on the measure over the last several months.

As you know, one of the most innovative and economically important provisions of the new law is the new deduction for qualified business income of pass-through entities and sole proprietorships. As this provision comes to be more widely understood – particularly by the small business community and the middle market – middle class taxpayers and aspiring entrepreneurs across the country will appreciate even more the benefits of the new law for economic opportunity and economic growth.

I am writing – solely in my individual capacity as a tax practitioner – to bring to your attention three aspects of this new provision where early guidance from the IRS or the Treasury Department could be of considerable importance to the Administration's objective of ensuring a smooth and rapid transition for hundreds of thousands of small and middle-market businesses and their owners, as well as assisting the IRS itself with the sound and prudent administration of the tax laws.

Clarifying independent contractor and trade or business status for service businesses.

The most important issues for many taxpayers who may be engaged in a personal service business – such as delivering packages to use a simple example – is whether the individual is providing services with sufficient regularity to be engaged in a trade or business, and whether the individual is engaged in that business as an independent contractor rather than an employee.

Given the importance of that issue, the IRS might wish to consider providing early guidance in the nature of a "safe-harbor" regarding an individual's status. For example, workers engaged for over 500 hours per year providing personal services, where no more than 30 percent of the revenues are attributable to any one client or customer, might be presumed to be independent contractors and presumed to be engaged in a trade or business for purposes of these rules. Of course, the strict rules that apply to certain listed personal service businesses of higher income taxpayers would continue to serve as an important "guardrail." Conversely, the IRS might consider announcing, for example, that workers who receive more than 75 percent of their revenues from a single client or customer, particularly a former employer, are less likely to qualify as independent contractors.

Clarifying the scope of the "reasonable compensation" requirement.

The IRS might also consider early guidance clarifying that sole proprietors and partners are not required to provide or designate any amount of their net business income as "reasonable compensation" for services that may be provided to the enterprise in exchange for all or a portion of its net income. Technically, the "reasonable compensation" rule applies only to services provided to an S corporation by its shareholders, and not to the services of a sole proprietor to his or her own business, or the services of a partner to his or her own partnership in exchange for a share of the partnership's net income. That is also how the "reasonable compensation" requirement of the Senate bill is described in the Conference Report. If a partnership paid a guaranteed payment to a partner for services that payment would similarly be excluded, but there is nothing in the report suggesting that partnerships would be required to break-out a portion of partnership net income as a deemed guaranteed payment. Some firms may conclude as a result that they should be structured or restructured accordingly, and pertinent IRS guidance should ideally be made available to the public sooner rather than later.

Clarifying the "principal asset" test

Finally, the IRS or Treasury might consider providing early guidance on the manner in which it intends to apply the limitations applicable to businesses whose "principal asset" is the skill or reputation of its employees or owners. In that regard, several points could be considered.

First, it appears that the skill or reputation of a company's employees should not be considered to be an asset of the employer having any positive value except to the extent it is – or becomes – an amortizable tax asset of the employer of the type often referred to as workforce in place, or any similar amortizable intangible related to employees or employment contracts. That would be the case, for example, with a long term employment contract of an athlete or performer that was purchased by the employer in the secondary market, or similar assets to which basis was allocable in connection with a taxable acquisition of a trade or business. Otherwise, it is difficult to see how the skills or reputation of employees – who must be paid wages for their services and who generally may terminate their employment at will – could be considered to be an "asset" of their employer – or even if such an asset were deemed to exist how it could reasonably be assigned any positive value. Where the wages payable and the value of the services are presumably the same, there would not appear to be any positive value to speak of.

In contrast, the skill or reputation of a company's owners can readily be viewed as a valuable economic asset of the firm – one can readily see a lender or investor considering the owner's skills or reputation as a measurable asset of the firm – and determining whether such an asset is the "principal asset" of the firm can serve a critical role in ensuring that personal services income of an owner is not inappropriately converted into qualified business income, an important objective of the new law.

Beyond those two clarifications, it may also be helpful to provide the public with guidance on how best to determine whether the skills or reputation of the owners, and/or the firm's amortizable assets for workforce in place or the like, constitute the "principal asset" of the firm. One approach would be to focus on the relative proportion of the firm's annual gross revenues that can fairly be attributed to such assets. As a safe harbor, if 50 percent or less of the firm's annual gross revenues are properly attributable to such assets then the "principal asset" test would not appear to be triggered. Such a test could be applied at the entity level, or might appropriately be applied at the owner level. To illustrate how such a computation might be made, please consider the following examples.

Assume that a firm for a given year has gross revenues of $1.6 million, amortization deductions for workforce in place of $100,000, wages paid to employees for services of $1 million, and net income inuring to the owners of $500,000. The asset of workforce in place would presumably be responsible for $100,000/$1.6 millionths of the firm's gross revenues, the asset of the owner's skill and reputation would presumably be responsible for no more than $500,000/$1.6 millionths of the gross revenues (and less if there were other income-producing assets owned by the firm such as buildings, equipment, general goodwill, patents, etc.), and the remaining $1 million/$1.6 millionths of the firm's gross revenues would be attributable to the services obtained from the firm's employees in exchange for current wages paid. Given these facts, the portion of the firm's total gross revenues attributable to its workforce in place and the skills and reputation of its owners would be $600,000/$1.6 millionths of the total or 37.5 percent. In such a case, the skills and reputation of the owners and employees could be said to be an asset or assets of the firm that are responsible for only 37.5 percent of the firm's gross revenues. That would suggest that they are not – either separately or combined – the "principal asset" of the firm – in the sense of being responsible for more than 50 percent of the firm's gross revenues.

In contrast, if the facts were the same except that wages were only $500,000 not $1 million and the owner's net profits were $1 million not $500,000, the portion of the firm's gross revenues attributable to workforce in place and the owners' skills and reputation would be $1.1 million (assuming no firm assets responsible for the owner's net income other than the owners' skills and reputation) which would represent $1.1 million/$1.6 millionths of the firm's gross revenues and would therefore represent 68.75 percent of the firm's gross revenues. In that case such assets could be viewed as the "principal asset" of the firm because they were responsible for more than 50 percent of its gross revenues. Of course, additional facts or factors may also be taken into account appropriately, such as the presence of other assets – such as land, equipment, machinery, goodwill owned by the owners – to which some of the owners' profits can be allocated in lieu of treating the entire amount of net income of the owners as attributable to the owners' skill or reputation.

This approach to applying the principal asset test, apart from making the provisions readily administrable in a manner consistent with the literal language of the statute, also may help to ensure that the "principal asset" test – and its reference to "employees" – does not conflict with the manifest Congressional intention to encourage the creation of jobs and the payment of wages. The principal asset test of section 199A does not appear to have been designed to

encourage firms to replace workers with machines (moving from the wage requirement to the asset requirement in order to minimize reliance on employee skills that, in the absence of guidance of this nature, might somehow be viewed as violating the principal asset test), or to replace employees as much as possible with non-owner independent contractors (whose skills are not covered by the principal asset test) for the same reason.

These illustrations are intended to provide clarification – or a "safe-harbor" – in relatively simple cases. Clarification of one or more relatively simple cases – even if it is only on an interim or temporary basis until permanent and final regulations can be issued on a prospective basis – could be very important to ensuring that the country – and the IRS – undergo a smooth transition to these important new rules.

Conclusion

In conclusion, I hope this information is helpful. If there is any further information that might be of assistance to you, your Department, or the IRS in implementing this or any other aspects of the new law, I would be very happy to try to obtain and provide it.

Very truly yours,

Don

Don Susswein

Principal, Washington National Tax
RSM US LLP
(b)(6)

Donald B. Susswein
Principal, Washington National Tax
National Leader, Partnership Consulting Group

RSM US LLP
1250 H Street NW, Suite 650, Washington, DC, 20005

D:(b)(6) **M:**(b)(6) **E:** (b)(6) | W : www.rsmus.com

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RE: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

From: "Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">

To: "Trier, Dana" <dana.trier@treasury.gov>

Date: Thu, 04 Jan 2018 08:45:22 -0500

Sounds good, thanks

From: Trier, Dana
Sent: Thursday, January 04, 2018 8:42 AM
To: Kautter, David <David.Kautter@treasury.gov>; West, Thomas <Thomas.West@treasury.gov>
Subject: Re: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

By the way, (b)(5) DP Don is raising many of the same issues that (b)(5) DP

Dana

From: Kautter, David <David.Kautter@treasury.gov>
Date: January 4, 2018 at 7:56:45 AM EST
To: Trier, Dana <Dana.Trier@treasury.gov>, West, Thomas <Thomas.West@treasury.gov>
Subject: FW: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

FYI

From: Susswein, Don [mailto:(b)(6)
Sent: Wednesday, January 03, 2018 11:45 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject: Congratulations, and suggestions for possible early IRS guidance on pass-through provisions

The Hon. David J. Kautter

Assistant Secretary (Tax Policy)

Department of the Treasury

1500 Pennsylvania Avenue NW

Washington, DC 20220

Re: Possible Early Guidance on TCJA Pass-Through Provisions

Dear Mr. Kautter:

Warmest congratulations to you and your colleagues on the successful enactment of the Tax Cuts and Jobs Act. This historic tax measure contains numerous important reforms and initiatives that should be a source of pride for the Congress and the Administration, as well as the many hardworking government officials and tax professionals who worked so diligently on the measure over the last several months.

As you know, one of the most innovative and economically important provisions of the new law is the new deduction for qualified business income of pass-through entities and sole proprietorships. As this provision comes to be more widely understood – particularly by the small business community and the middle market – middle class taxpayers and aspiring entrepreneurs across the country will appreciate even more the benefits of the new law for economic opportunity and economic growth.

I am writing – solely in my individual capacity as a tax practitioner – to bring to your attention three aspects of this new provision where early guidance from the IRS or the Treasury Department could be of considerable importance to the Administration's objective of ensuring a smooth and rapid transition for hundreds of thousands of small and middle-market businesses and their owners, as well as assisting the IRS itself with the sound and prudent administration of the tax laws.

<u>Clarifying independent contractor and trade or business status for service businesses.</u>

The most important issues for many taxpayers who may be engaged in a personal service business – such as delivering packages to use a simple example – is whether the individual is providing services with sufficient regularity to be engaged in a trade or business, and whether the individual is engaged in that business as an independent contractor rather than an employee.

Given the importance of that issue, the IRS might wish to consider providing early guidance in the nature of a "safe-harbor" regarding an individual's status. For example, workers engaged for over 500 hours per year providing personal services, where no more than 30 percent of the revenues are attributable to any one client or customer, might be presumed to be independent contractors and presumed to be engaged in a trade or business for purposes of these rules. Of course, the strict rules that apply to certain listed personal service businesses of higher income taxpayers would continue to serve as an important "guardrail." Conversely, the IRS might consider announcing, for example, that workers who receive more than 75 percent of their revenues from a single client or customer, particularly a former employer, are less likely to qualify as independent contractors.

Clarifying the scope of the "reasonable compensation" requirement.

The IRS might also consider early guidance clarifying that sole proprietors and partners are not required to provide or designate any amount of their net business income as "reasonable compensation" for services that may be provided to the enterprise in exchange for all or a portion of its net income. Technically, the "reasonable compensation" rule applies only to services provided to an S corporation by its shareholders, and not to the services of a sole proprietor to his or her own business, or the services of a partner to his or her own partnership in exchange for a share of the partnership's net income. That is also how the "reasonable compensation" requirement of the Senate bill is described in the Conference Report. If a partnership paid a guaranteed payment to a partner for services that payment would similarly be excluded, but there is nothing in the report suggesting that partnerships would be required to break-out a portion of partnership net income as a deemed guaranteed payment. Some firms may conclude as a result that they should be structured or restructured accordingly, and pertinent IRS guidance should ideally be made available to the public sooner rather than later.

Clarifying the "principal asset" test

Finally, the IRS or Treasury might consider providing early guidance on the manner in which it intends to apply the limitations applicable to businesses whose "principal asset" is the skill or reputation of its employees or owners. In that regard, several points could be considered.

First, it appears that the skill or reputation of a company's employees should not be considered to be an asset of the employer having any positive value except to the extent it is – or becomes – an amortizable tax asset of the employer of the type often referred to as workforce in place, or any similar amortizable intangible related to employees or employment contracts. That would be the case, for example, with a long term employment contract of an athlete or performer that was purchased by the employer in the secondary market, or similar assets to which basis was allocable in connection with a taxable acquisition of a trade or business. Otherwise, it is difficult to see how the skills or reputation of employees – who must be paid wages for their services and who generally may terminate their employment at will – could be considered to be an "asset" of their employer – or even if such an asset were deemed to exist how it could reasonably be assigned any positive value. Where the wages payable and the value of the services are presumably the same, there would not appear to be any positive value to speak of.

In contrast, the skill or reputation of a company's owners can readily be viewed as a valuable economic asset of the firm – one can readily see a lender or investor considering the owner's skills or reputation as a measurable asset of the firm – and determining whether such an asset is the "principal asset" of the firm can serve a critical role in ensuring that personal

services income of an owner is not inappropriately converted into qualified business income, an important objective of the new law.

Beyond those two clarifications, it may also be helpful to provide the public with guidance on how best to determine whether the skills or reputation of the owners, and/or the firm's amortizable assets for workforce in place or the like, constitute the "principal asset" of the firm. One approach would be to focus on the relative proportion of the firm's annual gross revenues that can fairly be attributed to such assets. As a safe harbor, if 50 percent or less of the firm's annual gross revenues are properly attributable to such assets then the "principal asset" test would not appear to be triggered. Such a test could be applied at the entity level, or might appropriately be applied at the owner level. To illustrate how such a computation might be made, please consider the following examples.

Assume that a firm for a given year has gross revenues of $1.6 million, amortization deductions for workforce in place of $100,000, wages paid to employees for services of $1 million, and net income inuring to the owners of $500,000. The asset of workforce in place would presumably be responsible for $100,000/$1.6 millionths of the firm's gross revenues, the asset of the owner's skill and reputation would presumably be responsible for no more than $500,000/$1.6 millionths of the gross revenues (and less if there were other income-producing assets owned by the firm such as buildings, equipment, general goodwill, patents, etc.), and the remaining $1 million/$1.6 millionths of the firm's gross revenues would be attributable to the services obtained from the firm's employees in exchange for current wages paid. Given these facts, the portion of the firm's total gross revenues attributable to its workforce in place and the skills and reputation of its owners would be $600,000/$1.6 millionths of the total or 37.5 percent. In such a case, the skills and reputation of the owners and employees could be said to be an asset or assets of the firm that are responsible for only 37.5 percent of the firm's gross revenues. That would suggest that they are not – either separately or combined – the "principal asset" of the firm – in the sense of being responsible for more than 50 percent of the firm's gross revenues.

In contrast, if the facts were the same except that wages were only $500,000 not $1 million and the owner's net profits were $1 million not $500,000, the portion of the firm's gross revenues attributable to workforce in place and the owners' skills and reputation would be $1.1 million (assuming no firm assets responsible for the owner's net income other than the owners' skills and reputation) which would represent $1.1 million/$1.6 millionths of the firm's gross revenues and would therefore represent 68.75 percent of the firm's gross revenues. In that case such assets could be viewed as the "principal asset" of the firm because they were responsible for more than 50 percent of its gross revenues. Of course, additional facts or factors may also be taken into account appropriately, such as the presence of other assets – such as land, equipment, machinery, goodwill owned by the owners – to which some of the owners' profits can be allocated in lieu of treating the entire amount of net income of the owners as attributable to the owners' skill or reputation.

This approach to applying the principal asset test, apart from making the provisions readily administrable in a manner consistent with the literal language of the statute, also may help to ensure that the "principal asset" test – and its reference to "employees" – does not conflict with the manifest Congressional intention to encourage the creation of jobs and the payment of wages. The principal asset test of section 199A does not appear to have been designed to encourage firms to replace workers with machines (moving from the wage requirement to the asset requirement in order to minimize reliance on employee skills that, in the absence of guidance of this nature, might somehow be viewed as violating the principal asset test), or to replace employees as much as possible with non-owner independent contractors (whose skills are not covered by the principal asset test) for the same reason.

These illustrations are intended to provide clarification – or a "safe-harbor" – in relatively simple cases. Clarification of one or more relatively simple cases – even if it is only on an interim or temporary basis until permanent and final regulations can be issued on a prospective basis – could be very important to ensuring that the country – and the IRS – undergo a smooth transition to these important new rules.

Conclusion

In conclusion, I hope this information is helpful. If there is any further information that might be of assistance to you, your Department, or the IRS in implementing this or any other aspects of the new law, I would be very happy to try to obtain and provide it.

Very truly yours,

Don

Don Susswein

Principal, Washington National Tax

RSM US LLP

(b)(6)

Donald B. Susswein
Principal, Washington National Tax
National Leader, Partnership Consulting Group

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FW: New Data on the Cost Impact of Section 1031 LKE

From: "Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">

To: "Call, Christopher" <christopher.call@treasury.gov>, "West, Thomas" <thomas.west@treasury.gov>

Date: Mon, 16 Oct 2017 13:26:06 -0400

FYI

From: David E. Franasiak [mailto:(b)(6) .com]
Sent: Monday, October 16, 2017 12:24 PM
To: Kautter, David <David.Kautter@treasury.gov>
Cc: (b)(6) <(b)(6) .com>
Subject: New Data on the Cost Impact of Section 1031 LKE

Hello David,

Attached is a new economic study that is important and worth careful review.

Professors David Ling (Univ. of Fla.) and Milena Petrova (Syracuse U.) have updated their like-kind exchange research and submitted the first half for publication (National Tax Journal). The revised paper, attached, now includes a third author, Professor David Barker from the University of Iowa. Their work remains powerful evidence of the importance of like-kind exchanges to real estate markets and property values.

Repeal would have a negative impact on real estate values: "Overall, elimination of tax deferred exchanges for commercial real estate is likely to reduce market values, especially in high tax states, and cause disruptions in many local real estate markets, including reduced levels of construction and financial losses. The revenue gains to the Treasury, however, would be minor ."(at page 24)

The official revenue loss to the government is overstated: "Using this model, we also estimate the effect of eliminating the option to exchange on Treasury tax collections. Unlike estimates that look only at the magnitude of deferred taxes to which a tax rate is applied, we take account of the disadvantages of exchanges to taxpayers, which are advantages to the Treasury. Our estimate of the gain to the Treasury if tax deferred exchanges had been eliminated in 2009, a year with relatively few exchange transactions, is $4 million. For 2005, a year in which many exchange transactions took place, our estimate is $280 million. An important reason that the benefit to taxpayers appears to be higher than the cost to the Treasury is the lower discount rate we apply to Treasury cash flows than to taxpayer cash flows." (at page 24)

Revenue loss to the government is overstated due to a variety of factors: "The (Joint Committee on Taxation) JCT's tax expenditure estimate for like-kind exchanges in 2017 is $90 billion over 2016-2020.35 However, this estimate does not include the present value of future foregone depreciation deductions or the present value of larger capital gains and depreciation recapture taxes the taxpayer incurs as a result of choosing an exchange strategy. Moreover, this estimate does not capture likely taxpayer responses to elimination of exchanges. The JCT's revenue estimate from elimination, which does take into account behavioral responses such as delaying dispositions, is just $9.3 billion over the five-year period, which is about one-tenth of the estimate that ignores a potential lock-in effect. If we apply the same fraction ($9.3 million ÷ $90 billion) to our estimated annual taxpayer benefits, the annual present value of lost tax revenue from real estate exchanges ranges from a low of $10 million in 2009 and 2010 to a high of $760 million in 2005. However, even these estimates are inflated because they assume the Treasury is discounting future tax revenues from an exchange at a 6 percent rate. Discounting at 2.26%, the current yield on nine-year treasury bonds, the static present value of annual lost tax revenue ranges from a low of $4 million in 2009 and 2010 to a high of $280 million in 2005." (at page 23)

If you have any questions or concerns regarding the above or attached information please do not hesitate to contact me.

Thank you,

David E. Franasiak
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RE: New Data on the Cost Impact of Section 1031 LKE

From: "Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">
To: David E. Franasiak <(b)(6) .com>
Cc: (b)(6) <(b)(6) .com>
Date: Mon, 16 Oct 2017 13:26:40 -0400

David

Thanks. I will take a look at this

Dave

From: David E. Franasiak [mailto (b)(6) .com]
Sent: Monday, October 16, 2017 12:24 PM
To: Kautter, David <David.Kautter@treasury.gov>
Cc: (b)(6) <(b)(6) .com>
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To: "Mackie, James III" <james.mackie@treasury.gov>
Date: Mon, 16 Oct 2017 13:29:09 -0400

Jay

You may want to pass this on to the person on your staff who handles section 1031 exchanges as an fyi;

Dave

From: David E. Franasiak [mailto(b)(6) .com]
Sent: Monday, October 16, 2017 12:24 PM
To: Kautter, David <David.Kautter@treasury.gov>
Cc: (b)(6) <(b)(6) .com>
Subject: New Data on the Cost Impact of Section 1031 LKE

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Thank you,

David E. Franasiak
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Real Estate Roundtable

Where:	3120MT
When:	Fri Oct 27 14:30:00 2017 (America/New_York)
Until:	Fri Oct 27 15:00:00 2017 (America/New_York)
Organiser:	"Kautter, David" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=946683dadce24f0fb93291a12cafc0f7-kautter, dave">
Required Attendees:	"Kautter, David" <david.kautter@treasury.gov> "Trier, Dana" <dana.trier@treasury.gov> "West, Thomas" <thomas.west@treasury.gov>

Attachments:
pass-through rate white paper 09.25.2017.pdf (605.77 kB)

Topic of discussion: proposal for a reduced tax rate on pass-through business income.

<<...>>

Cleared Attendees:

RER President & CEO Jeff DeBoer

RER Sr. Vice President & Counsel, Ryan McCormick

RER Tax Policy Advisory Committee Member Don Susswein

Vice Chairman of The Roundtable's Tax Policy Advisory Committee , Jeff Clark

Accepted: HOLD: Real Estate Roundtable

Where:	3120MT
When:	Fri Oct 27 16:00:00 2017 (America/New_York)
Until:	Fri Oct 27 16:30:00 2017 (America/New_York)
Organiser:	
Required Attendee:	
Optional Attendee:	

RE: Carried Interest

From: "Mackie, James III" <james.mackie@treasury.gov>
To: "Kautter, David" <david.kautter@treasury.gov>, "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Fri, 20 Oct 2017 14:53:23 -0400

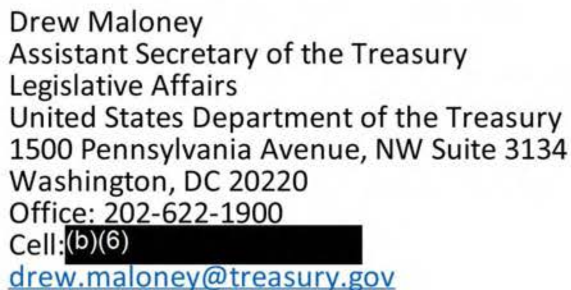
(b)(5) DP

From: Kautter, David
Sent: Friday, October 20, 2017 2:41 PM
To: Maloney, Drew <Drew.Maloney@treasury.gov>
Cc: Mackie, James III <James.Mackie@treasury.gov>
Subject: RE: Carried Interest

(b)(5) DP

From: Maloney, Drew
Sent: Friday, October 20, 2017 2:30 PM
To: Kautter, David <David.Kautter@treasury.gov>
Subject:

Did you find (b)(5) DP


Drew Maloney
Assistant Secretary of the Treasury
Legislative Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW Suite 3134
Washington, DC 20220
Office: 202-622-1900
Cell: (b)(6)
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FW: Tax reform update (marginal rates, SALT, mortgage interest, corporate interest)

From: John Duncan (b)(6) .com>
To: "Okamoto, Geoffrey" <geoffrey.okamoto@treasury.gov>, "Kellogg, Matthew" <matthew.kellogg@treasury.gov>, "Muzinich, Justin" <justin.muzinich@treasury.gov>
Date: Mon, 23 Oct 2017 06:07:51 -0400

Friends – Below are some comments on tax reform from Thursday.

Feedback welcomed but not required. Please don't forward.

John

From: John Duncan <(b)(6) .com>
Date: Thursday, October 19, 2017 at 3:43 PM
Subject: Tax reform update (marginal rates, SALT, mortgage interest, corporate interest)

Hi – As you probably know at this stage, passage of the Congressional budget is the first step towards enacting tax reform since it triggers the expedited "reconciliation" process that allows legislation to pass with 50+ Senate votes (rather than 60+), and thus on a Republican-only basis. Senate Republicans will pass their budget resolution this evening and the House and Senate will merge their differing budgets next week. There was never in my view significant uncertainty associated with passing a budget in the Senate, and the more notable point of risk in this process is the merging of the House and Senate budgets. The House budget is revenue neutral and includes $200b in spending reductions, whereas the Senate budget allows for $1.5t in revenue loss, with no spending reductions. There are various signals from the House (including from conservatives) that they'll agree to the Senate approach, but this will not be fully resolved until next week. In any case, the level of risk in the process of passing a budget is modest because there is a broadly shared desire on the part of Republicans to initiate the reconciliation process, and a fight on the budget isn't particularly meaningful in the first place because it is non-binding outside of how the reconciliation process is designed (i.e. allowance for revenue loss). As the budget process has unfolded, Republicans are simultaneously conducting behind-the-scenes negotiations over various provisions to their planned tax reform bill. The most positive development for tax reform in quite some time is that Republicans appear to be making progress towards a compromise on some difficult policy trade-offs (e.g. limits on the state and local (SALT) deduction, deductibility of corporate interest expense, possibly even limits on the mortgage interest deduction (MID)). Even if a House committee compromise on these issues does not hold through the later stages of the legislative process, a near-term compromise indicates that the process is advancing. These developments are all assumed in my pre-existing view that the probability of enactment for tax reform in 2017-18 is 65%, likely not concluding until Q2 of next year. The most negative indicator for tax reform in the short-term would be if the House fails to hold a vote in the Ways and Means committee by Thanksgiving, which would indicate that they are having significantly more difficulty advancing a bill than anticipated. And as I've previously noted, the other major negative indicator would be if the President engages in real negotiations with Democratic leaders/Democrats broadly since that would consume significant time and political capital by taking the bill in an entirely different policy direction than it is currently headed, when Democratic leaders don't have a strong political incentive to compromise on this issue in the first place. This is in contrast to the President trying to get some more moderate Democrats facing competitive re-election campaigns to support the bill, which would not be disruptive, since it would not require a significant change in direction on the bill. The other major risk for the overall bill is if the White House and conservatives refuse to compromise on setting the corporate rate above 20%, which is likely going to be necessary in order to make realistic trade-offs on the offsets required to meet the $1.5t revenue loss limit that will be established in the budget resolution. The following is a summary of the state of play for various provisions within the tax reform bill.

* ***Individual rate reduction (90% probability, assuming tax reform is enacted).*** Individual rate reductions are at the center of the tax reform effort, though the probability of a rate reduction at the top income level is increasingly unlikely, as is any reduction in rates on investment income (i.e. getting rid of ACA taxes on investment income, other cap gains/dividend rate reductions). Not only have Republicans been passive about these issues - not even including a strong call for these changes in the recently released tax framework from the "Big Six" negotiators, but in fact, some conservative commentators have even begun to argue against a rate reduction at the top income level. The President's focus on the "middle class" nature of the tax reform bill has further reduced the likelihood of rate reductions at the top income level and the rate on investment income, as has the significant revenue loss constraints that the budget will impose.

* ***Corporate rate reduction (90% probability, assuming tax reform is enacted).*** The White House has said a rate reduction to 20% is their "final offer", but the President's willingness to shift key policy positions suggests that they may ultimately be open to compromise on this point. However, the tension level around the corporate rate reduction will rise significantly if conservatives in Congress draw a bright line around it. They have signaled that cutting taxes (vs. achieving revenue neutrality) is their central priority, so it's possible they end up taking a strong position on the corporate rate ending up no higher than 20%. My view is that it will not be political feasible to agree on the revenue offsets to achieve a rate this low while also meeting the bill's revenue requirements, and that the most important goal for Republicans is to get to a rate that is at the OECD average of ~24%.

* ***Pass-through rate reduction (90% probability, assuming tax reform is enacted).*** Establishment of a new rate for pass-throughs is a central feature of tax reform because it provides a benefit to small businesses. The two major issues surrounding this provision have been where to set the rate and how to prevent gaming, the latter of which has been particularly difficult to resolve. A variety of approaches to qualifying for the pass-through rate have been contemplated, including assigning a defined share of business income to the wage vs. pass-through income rate (e.g. 70/30), requiring that only income that is re-invested in the business be eligible for the pass-through rate, or just including a general anti-abuse requirement in the bill and letting the IRS establish more specific regulations to resolve the issue. The latter approach is the most likely in my view. As far as the rate on pass-throughs, the goal appears to be to maintain at least the margin relative to the corporate rate that exists today for high income taxpayers (i.e. 4+%).

* ***Limit on state and local (SALT) deduction (55% probability, assuming tax reform enacted, up from prior 40%)*** . The administration and some Congressional Republicans have been strongly in favor of limiting the SALT deduction because they feel doing so would address what they feel is an inappropriate incentive for growth in state/local governments and housing prices, while also helping meet the bill's revenue requirements. The SALT provision has been among the most central areas of focus on tax reform in the last few weeks, mostly because it impacts a large number of House Republicans from states with significant exposure to the provision. In addition, the National Association of Realtors (NAR), a powerful grass-roots trade association, has pushed back on efforts to eliminate/limit the SALT deduction. There are enough House Republicans concerned about this provision (52 of which represent districts with above average use of the deduction) that they could jeopardize passage of the bill if their concerns are not addressed. Both Republican leaders and key figures with concerns about the SALT provision (e.g. Reps. Reed (R-NY), King (R-NY), MacArthur (R-NJ)) have signaled that they are making progress towards a compromise – likely to limit the SALT benefit at a particular income level, potentially turning it into a more easily targeted tax credit, and potentially exempting property taxes from new limits.

* ***Limit on mortgage interest deduction (MID) (55% probability, assuming tax reform enacted, up from prior 40%)*** . The Trump administration has for some time been floating the idea of imposing limits on the MID (e.g. cutting the size of a qualifying mortgage to $500k). There have been other ideas discussed among Congressional Republicans, such as converting the MID to a credit that could be more easily targeted on an income basis. These sorts of changes to the MID would be consistent with the commitment in the Big Six tax framework to preserve it. Changes such as these have been contemplated in prior tax reform efforts in recent years, but it is notable that as the current tax reform effort reaches a culminating point, consideration of limiting/changing the MID has increased. As with the SALT deduction, some in the administration and among Congressional Republicans are

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arguing that the MID inappropriately skews incentives (to benefit wealthy taxpayers in the case of the MID), so limiting it would not only address that issue, but also help address the bill's revenue requirements. The most notable factor that contributes to an increase in the probability of change for the MID is the split that has emerged in the housing industry, with groups such as the Mortgage Bankers Association and National Association of Homebuilders expressing openness to change, while the National Association of Realtors continuing to push back on changes.

**** Limit on deductibility of corporate interest expense (70% probability, assuming tax reform enacted).*** Chatter/reports indicate that the administration and Congressional Republicans remain strongly focused on imposing a limit on corporate interest deductibility (rather than fully eliminating it), while engaging in discussion with each other and stakeholders on an appropriate way to limit this provision. White House National Economic Director Gary Cohn recently indicated that the administration wants to exempt pass-throughs from any change in the deductibility of interest expense, which would be consistent with House Ways and Means Chairman Brady's comment that he wants to exempt small businesses from changes to this provision (i.e. many small businesses are pass-throughs). As I've previously noted, Brady has over time also mentioned utilities and real-estate as getting some form of exemption from changes to interest expense deductibility.

John

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Please note an important disclaimer at this link.

Carried interest (b)(5) DP

From: "West, Thomas" <thomas.west@treasury.gov>
To: "Kautter, David" <david.kautter@treasury.gov>
Cc: (b)(6) @treasury.gov>, (b)(6) (b)(6) @treasury.gov>, "Vallabhaneni, Krishna" <krishna.vallabhaneni@treasury.gov>
Date: Tue, 24 Oct 2017 10:39:28 -0400
Attachments: Carried Interest (b)(5) DP

Dave, per our discussion of last week the team has put together summaries of the most mainstream (b)(5) DP interest proposals. As described herein, these can be scoped to varying degrees so that specific industries (b)(5) DP

Tom

Tom West
Tax Legislative Counsel
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1500 Pennsylvania Avenue, NW
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Direct: (b)(6)
E-mail: thomas.west@treasury.gov

Thank you from NAFO and AFF

From: Jane Alonso <(b)(6) .org>
To: "Kautter, David" <david.kautter@treasury.gov>
Cc: "Daedalus, Tristan" <(b)(6) .org>
Date: Tue, 24 Oct 2017 20:13:16 -0400

David - Thank you for meeting with the members of the National Alliance of Forest Owners (NAFO) and the American Forest Foundation (AFF) on October 17, 2017. We're encouraged that the tax reform process is moving forward and we really appreciate hearing your thoughts as Congress begins to draft legislation. As we stated in our meeting, we support comprehensive tax reform that will promote growth and investment in the U.S. economy and want to see the U.S. and our industry become more competitive globally. A healthy economy, particularly in rural areas, is good for forest owners.

As you know from the meeting, there are many ways to own a business in the timber industry. Regardless of structure, there are four provisions in the tax code that are vital to the timber economy. These provisions simply recognize the fundamental character of the unique, capital-intensive, long-term nature of timber.

Capital Gains

- Due to these unique characteristics, the tax code has long recognized the need to treat proceeds from timber harvests and the sale of standing trees as capital gains. Capital gains treatment promotes forest retention by reducing pressure to convert timberland to other uses that generate ordinary income more quickly.

Deductions for Forest Maintenance and Reforestation

- Another critical part of the code allows forest owners to deduct timber growing costs annually, enabling them to afford forest health treatments. For family forest owners who sometimes harvest once in a generation, these deductions are often essential in ensuring they are able to manage their lands responsibly, providing healthy forests that are able to purify water and air as well as provide wildlife habitat and recreational areas.

- The code also provides deductions for reforestation showing a recognition that forestland is a long-term investment, and that the up-front cost of plantings won't be offset for a generation, this deduction encourages landowners to keep their lands in forests.

REIT Rules

- The principle of treating timber as real property reflects the significant long-term capital investment made by forest owners to produce marketable trees that take 20 to 80 years to mature. Thus, timber is like all the other real estate assets that qualify as REIT property.

If you have any questions as the tax reform process progresses, please feel to reach out to us. Jane Alonso can be reached at (b)(6) 1 or (b)(6) .org and Tristan Daedalus can be reached at (b)(6) or (b)(6) .org.

Sincerely,

Jane and Tristan

____
Jane Alonso
Vice President for Government Relations
National Alliance of Forest Owners (NAFO)
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Accepted: Real Estate Roundtable

Where:	3120MT
When:	Fri Oct 27 14:30:00 2017 (America/New_York)
Until:	Fri Oct 27 15:00:00 2017 (America/New_York)
Organiser:	
Required Attendee:	
Optional Attendee:	

Re:

From: "Trier, Dana" <dana.trier@treasury.gov>
To: "Maloney, Drew" <drew.maloney@treasury.gov>
Date: Thu, 02 Nov 2017 08:43:35 -0400

Nothing that I have seen so far. (b)(5) DP
(b)(5) DP

From: Maloney, Drew <Drew.Maloney@treasury.gov>
Date: November 2, 2017 at 8:25:05 AM EDT
To: Trier, Dana <Dana.Trier@treasury.gov>
Subject: (No subject)

Do you know what committee did on carried interest?

Drew Maloney
Assistant Secretary of the Treasury
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drew.maloney@treasury.gov

FIRPTA meeting

From: Ryan McCormick <(b)(6) .org>
To: "Kautter, David" <david.kautter@treasury.gov>
Cc: "Trier, Dana" <dana.trier@treasury.gov>, "West, Thomas" <thomas.west@treasury.gov>
Date: Thu, 02 Nov 2017 09:33:24 -0400

Dear Assistant Secretary Kautter,

Thank you again for meeting with Roundtable CEO Jeff DeBoer and me last Friday regarding tax reform. Also, thank you for agreeing to meet with a number of stakeholders today regarding FIRPTA, and specifically IRS Notice 2007-55. I had expected the join the delegation, led by Westfield CEO Peter Lowy, as this is a major issue for the U.S. commercial real estate industry. We were closely involved in the recent effort to raise awareness of the issue at the Ways and Means Committee. As you know, that effort culminated in the letter to Secretary Mnuchin requesting repeal of section two of the Notice.

Unfortunately, because of the rescheduling of the tax reform public release, I am unable to join today's meeting. The Roundtable will follow up with a more formal industry submission, but I did want to convey, in advance of today's meeting, The Real Estate Roundtable's strong support for repeal of the Notice. The Notice imposes an unnecessary burden on foreign investors, and U.S. taxpayers seeking to raise capital from foreign investors. It does not appear to generate any federal revenue. Rather, it either raises transaction costs or deters potential investors altogether. Repeal of the Notice would provide a real and meaningful boost to inbound investment in U.S. real estate, leading to new construction and property improvements that creates jobs and increase economic productivity.

In the recent past, we have met with and discussed the Notice with Secretary Mnuchin, Treasury Tax Legislation Counsel Tom West, and Treasury Counselor Justin Muzinich. We hope you will give serious consideration to its repeal. Please let me know if there is additional information we can provide or questions we can answer that would be helpful.

Sincerely,

Ryan McCormick

****
Ryan P. McCormick
Senior Vice President & Counsel
The Real Estate Roundtable
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Washington, DC 20004
(b)(6)
https://hyperlink.services.treasury.gov/agency.do?origin=www.rer.org
(b)(6)

RE:

From: "Maloney, Drew" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=0aa00d7c98de43f9aec8f68a919f6fe3-maloney, drew">
To: "Specht, Brittan" <brittan.specht@mail.house.gov>
Date: Sun, 05 Nov 2017 19:49:57 -0500

(b)(5) DP
(b)(5) DP

Drew Maloney
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drew.maloney@treasury.gov

From: Specht, Brittan <Brittan.Specht@mail.house.gov>
Date: November 5, 2017 at 7:20:09 PM EST
To: Maloney, Drew <Drew.Maloney@treasury.gov>
Subject: RE:

Not everything...we'll need a wrap-up amendment at the end, and probably a healthy set of Rules changes as well.

As far as the amendment tomorrow, I think the biggest changes will be (b)(5) DP
(b)(5) DP

Outside of that, mostly small items: (b)(5) DP
(b)(5) DP

Anything there send up major red flags for you? What else are you hearing?

From: Drew.Maloney@treasury.gov [Drew.Maloney@treasury.gov]
Sent: Sunday, November 05, 2017 6:26 PM
To: Specht, Brittan
Subject:

What will mgr amendment address?

Drew Maloney
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FW: RE:

From: "Maloney, Drew" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=0aa00d7c98de43f9aec8f68a919f6fe3-maloney, drew">
To: "Bailey, Bradley" <bradley.bailey@treasury.gov>
Date: Sun, 05 Nov 2017 20:00:29 -0500

From: Specht, Brittan [mailto:Brittan.Specht@mail.house.gov]
Sent: Sunday, November 05, 2017 7:20 PM
To: Maloney, Drew <Drew.Maloney@treasury.gov>
Subject: RE:

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(b)(5) DP

(b)(5) DP

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From: Drew.Maloney@treasury.gov [Drew.Maloney@treasury.gov]
Sent: Sunday, November 05, 2017 6:26 PM
To: Specht, Brittan
Subject:

What will mgr amendment address?

Drew Maloney
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Re: The Hill: Mnuchin pledges to fight carried interest loophole in tax reform plan

From: "Maloney, Drew" <"/o=ustreasury/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=0aa00d7c98de43f9aec8f68a919f6fe3-maloney, drew">

To: Kevin Madden <(b)(6) .com>

Date: Tue, 07 Nov 2017 09:34:44 -0500

The three year deal eliminates the loophole

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From: Kevin Madden <(b)(6) .com>
Date: November 7, 2017 at 8:14:21 AM EST
To: Maloney, Drew <Drew.Maloney@treasury.gov>
Subject: Fwd: The Hill: Mnuchin pledges to fight carried interest loophole in tax reform plan

Kevin A. Madden
[HPS] - Hamilton Place Strategies
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https://hyperlink.services.treasury.gov/agency.do?origin=www.hamiltonplacestrategies.com

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---------- Forwarded message ----------
From: **Comms Alert** <(b)(6) >
Date: Tue, Nov 7, 2017 at 6:21 AM
Subject: The Hill: Mnuchin pledges to fight carried interest loophole in tax reform plan
To: Comms Alert (b)(6) , Matt <(b)(6) .org>, "Stewart, Don (McConnell)" <Don_Stewart@mcconnell.senate.gov>, "Cheung, Steven EOP/WHO" (b)(6) , Ryan Mahoney - Communications/Research <(b)(6) .com>, "Buck, Brendan" <Brendan.Buck@mail.house.gov>, "Beilein, Andrew" <(b)(6) .org>, "(b)(6) .org" (b)(6) org>, "Ferrier, Antonia (McConnell)" <Antonia_Ferrier@mcconnell.senate.gov>, "Strong, AshLee" <AshLee.Strong@mail.house.gov>, (b)(6) .org" (b)(6) .org>, Blair Ellis - Communications/Research <(b)(6) com>, "(b)(6) l.org" <(b)(6) .org>, (b)(6) .org" (b)(6) "Stewart, Betsy" <(b)(6) .org>, Caeleigh Jennings - Communications/Research <(b)(6) com>, Cassie Smedile - Communications/Research <(b)(6) com>, "(b)(6) .org" <(b)(6) .org>, "Hauptmann, David (McConnell)" <David_Hauptmann@mcconnell.senate.gov>, "Popp, David (McConnell)" <David_Popp@mcconnell.senate.gov>, "Andres, Doug" <Doug.Andres@mail.house.gov>, "Schillinger, Emily" <Emily.Schillinger@mail.house.gov>, "Boulanger, Jessica" <(b)(6) .org>, Jesse Hunt <(b)(6) .org>, "Lawless, Julia (Finance)" <Julia_Lawless@finance.senate.gov>, "Niederee, Katie (Finance)" <Katie_Niederee@finance.senate.gov>(b)(6) .org"(b)(6) .org>, Lindsay Jancek - Communications/Research <(b)(6) com>, "Kenney, Matt (McConnell)" <Matt_Kenney@mcconnell.senate.gov>, (b)(6) .com" <(b)(6) .com>, Michael Ahrens - Communications/Research <(b)(6) com>, "Ricci, Michael" <Michael.Ricci@mail.house.gov>, Mike Reed - Communications/Research <(b)(6) .com>,

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Mnuchin pledges to fight carried interest loophole in tax reform plan

The Hill

Olivia Beavers

November 6, 2017 – 11:09 AM

https://hyperlink.services.treasury.gov/agency.do?origin=http://thehill.com/policy/finance/359064-mnuchin-pledges-to-fight-to-close-carried-interest-loophole-in-tax-reform-plan

Treasury Secretary Steven Mnuchin on Monday said the Trump administration plans to pressure Congress to close a tax code loophole that allows managers of some types of private investment funds to pay a lower rate than most individuals.

Fox News host Tucker Carlson pointed out during an interview that the current GOP tax reform plan includes the carried interest loophole, which critics say overwhelmingly benefits the wealthy, and asked the secretary if he plans to push lawmakers to do away with it in markups.

Mnuchin responded, "We are."

"I'm sure that's one of the issues will be debated as it gets through the House and as it gets to the Senate and we'll be working with both parties on," he said on "Tucker Carlson Tonight."

The rule tends to apply to the managers of certain types of private investment funds like hedge funds, private equity and venture capital firms, real estate companies, and others who receive an investment rate that is nearly half that other individuals pay.

Retail and home building groups have expressed opposition against the possibility of closing the loophole, which could mean eliminating mortgage interest.

Mnuchin said their plan took the mortgage concerns into account in the House version of the bill.

"Well, we've preserved in the House version a $500,000 mortgage that you can deduct the interest. That's an awfully big home in mostly every single part of this country. So, I think we were very sensitive to that and we've preserved it and as you said, we're cutting out lots of loopholes throughout the whole tax plan," he said.

"So there will be people who don't like bits and pieces but people understand, this is a pass fail exercise. It's critical to the economy and we're going to get it done," the secretary continued.

On Monday, GOP lawmakers started the contentious markup process of the tax legislation as their Democratic colleagues slammed the proposal for providing tax cuts for wealthy individuals and corporations while cutting tax breaks for the middle-class.

Democrats took aim at Mnuchin for violating his own rule that he won't pass a measure that would provide a net tax benefit for the rich.

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