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Instructions for Form 8990

Limitation on Business Interest Expense Under Section 163(j)

Volume 1 of 2



Department of the Treasury
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Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8990 and its instructions, such as legislation enacted after they were published, go to

[IRS.gov/Form8990](https://www.irs.gov/Form8990).

What's New

Change in adjusted taxable income (ATI) computation. For tax years beginning after 2021, the computation for ATI is computed with the deductions for depreciation, amortization, and depletion. Do not add back the deductions for depreciation, amortization, or depletion attributable to a trade or business.

New worksheet. A new worksheet has been added to the instructions. Worksheet C is used to determine eligibility for the safe-harbor election under Regulations section 1.163(j)-7(h). See Worksheet C—Stand-Alone

Applicable CFC/CFC Group Safe Harbor Election, later.

General Instructions

Purpose of Form

Use Form 8990 to figure the amount of business interest expense you can deduct and the amount to carry forward to the next year. For more information, see Regulations sections 1.163(j)-1 through 1.163(j)-11.

Computation of section 163(j) limitation.

If section 163(j) applies to you, the business interest expense deduction allowed for the tax year is limited to the sum of:

1. Business interest income,
2. Applicable percentage of the adjusted taxable income (ATI), and
3. Floor plan financing interest expense.
- 4.

Carryforward of disallowed business interest. The amount of any business interest expense that is not allowed as a deduction under section 163(j) for the tax year is carried forward to the following year as a disallowed business interest expense carryforward. However, see Special Rules for partnership treatment of disallowed business interest expense, later.

Who Must File

A taxpayer (including, for example, an individual, corporation, partnership, S corporation) with business interest expense; a disallowed business interest expense carryforward; or current year or prior year excess business interest expense must generally file Form 8990, unless an exclusion from filing applies.

A pass-through entity allocating excess taxable income or excess business interest income to its owners must file Form 8990,

regardless of whether it has any interest expense.

A regulated investment company that pays section 163(j) interest dividends (see Regulations sections 1.163(j)-1(b)(22)(iii)(F) and 1.163(j)-1(b)(35)) must file Form 8990.

A taxpayer that is a U.S. shareholder of an applicable controlled foreign corporation (CFC) that has business interest expense, disallowed business interest expense carryforward, or is part of a CFC group must generally apply section 163(j) to the applicable CFC and attach a Form 8990 with each Form 5471. See Regulations section 1.163(j)-7(b).

For a CFC group, an additional Form 8990 must be filed for the CFC group to report the combined limitations of all CFC group members. See Specified Group Parent, later.

If a safe-harbor election is made for a CFC group, Form 8990 does not need to be filed for each CFC group member, but Form 8990 must be filed for the CFC group.

Exclusions from filing. A taxpayer is not required to file Form 8990 if the taxpayer is a small business taxpayer and does not have excess business interest expense from a partnership. A taxpayer is also not required to file Form 8990 if it only has interest expense from one or more of these excepted trades or businesses:

- The trade or business of providing services as an employee,
- An electing real property trade or business,
- An electing farming business, or
- Certain regulated utility businesses.

If a pass-through entity is not required to file Form 8990 because it is a small business taxpayer, but a partner or shareholder is required to file Form 8990, the pass-through entity is required, upon request by the partner or shareholder, to provide certain information so that the partner or shareholder can complete their return. See Ownership of pass-through entities not subject to the section 163(j) limitation, later.

Coordination With Other Limitations

Categorization and allocation of interest expense. Current year interest expense must be categorized under Temporary Regulations section 1.163-8T (for example, as investment interest, personal interest, or business interest) before computing the section 163(j) limitation on the deduction for business interest expense. Also, see Proposed Regulations section 1.163-14 ((85 FR 56846)

(2020 Proposed Regulations) for rules on allocating interest expense associated with debt proceeds for pass-through entities. Only business interest expense is subject to the section 163(j) limitation.

For purposes of the section 163(j) limitation only, business interest expense refers to interest expense properly allocable to trades or businesses that are not excepted trades or businesses. See *Taxpayers with both excepted and non-excepted trades or businesses*, later, for allocating interest expense between excepted and non-excepted trades or businesses before computing the section 163(j) limitation.

Interest expense limitations. An expense that has been disallowed, deferred, or capitalized in the current tax year, or which has not yet been accrued, is not taken into account for section 163(j) purposes. Section 163(j) applies after any basis limitation and before the operation of the at-risk, passive

activity loss, or excess business loss limitations. See Regulations section 1.163(j)-3 for additional information on interactions of section 163(j) with other code provisions relating to interest expense.

If a taxpayer's deduction for business interest expense is limited under section 163(j) and such taxpayer has more than one business activity for purposes of either the at-risk (section 465) or passive activity loss (section 469) limitation provisions, then the section 163(j) limitation will apply to the overall business interest expense from all the business activities of the taxpayer. The proportion of each activity's business interest expense that is disallowed is the same proportion

as the disallowed business interest expense over the total business interest expense. See Regulations section 1.163(j)-3(c) example 4 and Temporary Regulations section 1.163-8T.

Partner basis limitations. Deductible business interest expense and excess business interest expense are subject to section 704(d) loss limitation rules. See Regulations section 1.163(j)-6(h)(1) and (2).

Definitions

The definitions below are only for the purposes of applying section 163(j).

Small business taxpayer. A small business taxpayer is not subject to the section 163(j) limitation and is generally not required to file Form 8990.

A small business taxpayer is a taxpayer that is not a tax shelter (as defined in section 448(d)(3)) and meets the gross receipts test, described below. A tax shelter is defined as:

- Any enterprise other than a C corporation offering ownership via registered securities,

- Any syndicate within the meaning of section 1256(e)(3)(B) (see Regulations section 1.163(j)-2(d)(3)), or
- Any entity described in section 6662(d)(2)(C)(ii).

A pass-through entity that is a small business taxpayer does not allocate excess taxable income, excess business interest income, or excess business interest to its owners.

Gross receipts test. A taxpayer meets the gross receipts test if the taxpayer has average annual gross receipts of \$27 million or less for the 3 prior tax years.

A taxpayer's average annual gross receipts for the 3 prior tax years is determined by:

1. Adding the gross receipts for the 3 prior tax years, and
2. Dividing the total by 3.

In the case of any taxpayer, which is not a corporation or a partnership, and except as provided below, the gross receipts test is applied in the same manner as if such taxpayer were a corporation or a partnership.

Gross receipts for any tax year must be reduced by returns and allowances made during the year. For individuals and for section 163(j) only, gross receipts do not include inherently personal amounts such as disability benefits, social security benefits, and wages received as an employee and reported on Form W-2.

For section 163(j), a taxpayer with an ownership interest in a partnership or S corporation must include a share of the partnership's or S corporation's gross receipts, in proportion to the partner's distributive share of items of gross income or S corporation's shareholder's pro rata share of gross receipts, unless the partner and partnership, or S corporation shareholder and

S corporation, are treated as a single person. In that case, see Gross receipts aggregation for members of a controlled group, businesses under common control, or members of an affiliated group, later.

The gross receipts of an organization subject to tax under section 511 only include gross receipts taken into account in determining its unrelated business taxable income.

Note. Gross receipts must meet the definition under section 448(c) and Temporary Regulations section 1.448-1T(f)(2)(iv).

Any reference to your business gross receipts also includes a reference to the gross receipts of any predecessor of your business. If your business was not in existence for the entire 3-year period, base your average annual gross receipts on the period your business existed. Also, if your business had a tax year of less than 12 months, your gross receipts must be annualized by multiplying the gross receipts for the short period by 12 and dividing the

result by the number of months in the short period.

The prior period gross receipts must be annualized for any short period before dividing by 3.

For assistance in preparing the average annual gross receipts, see the *Average Annual Gross Receipts Worksheet Per Section 448(c)*, later.

Gross receipts aggregation for members of a controlled group, businesses under common control, or members of an affiliated group. For section 163(j), gross receipts may include the receipts of more than one taxpayer. For this purpose, all members of a controlled group of corporations (as defined in section 52(a)), and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single person; and all members of an affiliated service group (as defined in sections 414(m) and (o)) shall be

treated as a single person. If you and a partnership or S corporation in which you hold an interest are treated as a single person for purposes of the gross receipts test, aggregate the partnership's or S corporation's gross receipts with your gross receipts. Do not duplicate amounts by also including a share of partnership or S corporation gross receipts as your own gross receipts.

For more information, see *Average Annual Gross Receipts Worksheet Per Section 448(c)*, later.

Also see [FAQs Regarding the Aggregation Rules](#) at IRS.gov.

Tax shelter election. A taxpayer that is a tax shelter as defined in section 448(d)(3) is not permitted to use the small business exemptions contained in section 163(j)(3). Under section 448(d)(3), a taxpayer that is a "syndicate" is considered to be a tax shelter. To determine whether a taxpayer is a syndicate, the section 448 regulations permit

a taxpayer to make an annual election to use its allocations of income, gain, loss, or deduction made in the immediately preceding tax year, instead of using its current year allocations. The election is made on a timely filed original return (including extensions) for the tax year for which it is made. It is only valid for that tax year and once made cannot be revoked. See Regulations section 1.448-2(b)(2)(iii)(B)(2) for guidance on the time and manner of making the annual election.

Excepted trade or business. A trade or business does not include:

- Performing services as an employee,
- An electing real property trade or business,
- An electing farming business, or
- Certain regulated utility businesses.

How to make an election and the effect of being an excepted trade or business are discussed under Special Rules, later.

Electing real property trade or business.

A real property trade or business engaged in activities described in section 469(c)(7) may elect to not be subject to the section 163(j) limitation. See Elections under Special Rules, later, for the effect of making an election.

Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

Electing farming business. Farming businesses (as defined in section 263A(e) (4)) and specified agricultural and horticultural cooperatives (as defined in section 199A(g)(4)) may elect to not be subject to the section 163(j) limitation. See Elections under Special Rules, later, for the effect of making an election. A farming business

includes livestock, dairy, poultry, fish, fruit, nut, and truck farms. It also includes plantations, ranches, ranges, and orchards. A fish farm is an area where fish and other marine animals are grown or raised and artificially fed, protected, etc., but it does not include an area where they are merely caught or harvested. A plant nursery is a farm for purposes of deducting soil and water conservation expenses.

A specified agricultural or horticultural cooperative is a cooperative to which Part I of subchapter T of the Internal Revenue Code applies that manufactures, produces, grows, or extracts any agricultural or horticultural product, or has marketed agricultural or horticultural products.

Certain regulated utility businesses.

Certain regulated utility trades or businesses are not subject to the section 163(j) limitation. No election is required for certain regulated utility businesses, meaning these

trades or businesses are automatically excepted from the limitation.

Automatically excepted regulated utilities are trades or businesses that furnish or sell:

- Electrical energy, water, or sewage disposal services;
- Gas or steam through a local distribution system; or
- Transportation of gas or steam by pipeline.

To be an automatically excepted regulated utility trade or business, the rates for furnishing or sale of the above listed items must be established or approved by a state or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any state or political subdivision thereof, on a rate of return and cost of service basis, or by the governing or rate-making body of an electric cooperative.

If the trade or business does not qualify as an automatically excepted regulated utility trade or business because its rates are not established or approved on a cost of service and rate of return basis, the taxpayer may be able to elect that the trade or business be an excepted trade or business. See Regulations section 1.163(j)-1(b)(15)(iii)(A) regarding electing utility trades or businesses. Also, see *Elections* under *Special Rules*, later, for the effect of making an election.

Interest. In general, interest is any amount that is paid, received, or accrued as compensation for the use or forbearance of money or that is treated as interest under the Internal Revenue Code or the regulations thereunder.

Regulations section 1.163(j)-1(b)(22) provides additional guidance on what constitutes interest for purposes of section 163(j), including anti-avoidance rules and a list of other amounts treated as interest, such

as certain amounts of bond premium, factoring income, and section 163(j) interest dividends from regulated investment companies.

Business interest income. Business interest income means the amount of interest income includible in the taxpayer's gross income for the tax year, which is properly allocable to a trade or business.

Business interest income does not include investment income.

See C corporation business interest expense and income, later.

Interest income that is allocable to an excepted trade or business is not treated as business interest income.

Business interest expense. Business interest expense means any interest paid or accrued that is properly allocable to a trade or business. Business interest expense, generally, does not include investment

interest or other personal interest. See Temporary Regulations section 1.163-9T for a definition of personal interest. However, see C corporation business interest expense and income, later.

Interest expense that is allocable to an excepted trade or business is not treated as business interest expense.

Excess business interest expense. If a partnership has a limitation on business interest expense, the disallowed business interest expense is not carried over by the partnership, but is allocated to the partners. This interest is referred to as excess business interest expense.

Tentative taxable income Tentative taxable income is generally the same as taxable income under section 63. However, tentative taxable income is computed as if the section 163(j) limitation does not exist; therefore, do not include disallowed business interest expense carryforwards from a prior year or

excess business interest expense from a prior year.

See Regulations section 1.163(j)-1(b)(43) for more information.

Adjusted taxable income (ATI). ATI means tentative taxable income of the taxpayer computed without regard to:

- Any item of income, gain, deduction, or loss, which is not properly allocable to a trade or business (within the meaning of section 162);
- Any business interest income or business interest expense;
- The amount of any net operating loss deduction under section 172;
- The amount of any qualified business income allowed under section 199A (for purposes of determining ATI the section 199A deduction is determined without regard to section 163(j). See

Regulations section 1.163(j)-1(b)(43));

- For tax years beginning before 2022, any deduction for depreciation, amortization, or depletion attributable to a trade or business; and
- Adjustments described in published guidance.

To determine ATI, tentative taxable income is computed after applying other sections limiting the deductibility of interest, such as sections 263A and 267, as well as basis, at-risk and passive activity loss limitations.



Any additions or subtractions from taxable income in arriving at ATI are limited to the amount by which the item affects taxable income.

Applicable percentage. The applicable percentage is the percentage applied to ATI for purposes of computing the business interest expense limitation calculation. The

applicable percentage is 30% (30% ATI limitation).

Floor plan financing interest expense.

Floor plan financing interest expense is not subject to the section 163(j) limitation. Floor plan financing interest expense is interest on debt used to finance the acquisition of motor vehicles held for sale or lease where the debt is secured by the acquired inventory.

Excess taxable income. In general, excess taxable income is the amount of a partnership's or S corporation's ATI that is in excess of the amount of ATI required to support the partnership's or S corporation's business interest expense deduction. This amount is computed by a partnership or an S corporation and is allocated to the partner or shareholder. This amount is used by the partner or shareholder in determining their current year ATI.

Excess business interest income. Excess business interest income is the amount by which current year business interest income exceeds current year business interest expense (excluding floor plan financing). This amount is computed by a partnership or an S corporation and is allocated to the partner or shareholder. This amount is used by the partner or shareholder in determining their current year business interest income.

Special Rules

Elections. A taxpayer engaged in a real property trade or business, a farming business, or a non-automatically excepted regulated utility trade or business may elect not to limit business interest expense under section 163(j) for such trade or business. This is an irrevocable election.

If the real property trade or business or farming business election is in effect, you are required to use the alternative depreciation

system (ADS) for certain property. See Pub. 946, How To Depreciate Property. Also, you are not entitled to the special depreciation allowance for that property. For a taxpayer with more than one qualifying business, the election is made with respect to each trade or business.

Electing real property trade or business.

An electing real property trade or business must use the ADS for any nonresidential real property, residential rental property, and qualified improvement property used in its trade or business.

Revenue Procedure 2021-9. Revenue Procedure 2021-9 provides a safe harbor that allows a taxpayer engaged in a trade or business that manages or operates a residential living facility that provides certain supplemental assistive, nursing, and other routine medical services to treat such trade or business as a real property trade or business. See Revenue Procedure 2021-9 for additional

information and requirements to qualify for the safe harbor.

Electing farming business. An electing farming business must use the ADS for any farming property the taxpayer owns with a recovery period of 10 years or more.

Regulated utility trade or business. Automatically excepted utility trades or businesses and electing utility trades or businesses cannot claim the additional first-year depreciation deduction under section 168(k) for any property that is primarily used in the excepted regulated utility trade or business.

Safe harbor for real estate investment trusts (REITs). Under certain circumstances, a REIT (and a partnership controlled by one or more REITs) is eligible to make an election to be a real property trade or business. See Regulations section 1.163(j)-9(h).

How to make the election. To make an election for a real property, farming, or non-automatically excepted regulated utility trade or business, attach an election statement to a timely filed original tax return (including extensions). Once the election is made, it is irrevocable.

The statement must be titled “Section 1.163(j)-9 Election” (for real property or farming businesses) or “Section 1.163(j)-1(b)(15)(iii) Election” (for an electing utility trade or business), and must contain the following information for each electing trade or business:

- The taxpayer’s name;
- The taxpayer’s address;
- The taxpayer’s social security number (SSN) or employer identification number (EIN);
- A description of the taxpayer’s electing trade or business, sufficient to

demonstrate qualification for an election, including the principal business activity code; and

- A statement that the taxpayer is making an election pursuant to section 163(j)(7) (B) (as an electing real property trade or business) or (C) (as an electing farming business), or Regulations section 1.163(j)-1(b)(15)(iii) (as an electing utility trade or business), as applicable.

Consolidated group's trade or business.

Only the name and taxpayer identification number (TIN) of the agent for the group, as defined in Regulations section 1.1502-77, must be provided on the election statement.

Partnership's trade or business. An election for a partnership must be made on the partnership's return with respect to any trade or business that the partnership conducts. An election by a partnership does

not apply to a trade or business conducted by a partner outside the partnership.

Taxpayers with both excepted and non-excepted trades or businesses. Taxpayers must allocate and apportion their interest expense, interest income, and other tax items between excepted and non-excepted trades or businesses, applying the rules under Regulations section 1.163(j)-10. An asset basis approach is generally used to allocate interest expense and interest income.

Regulations section 1.163(j)-10(c) requires a taxpayer to attach a statement to its timely filed tax return, providing information related to the asset basis and allocation determination, as provided, in Regulations section 1.163(j)-10(c)(6)(iii).

Partnerships. If a partnership is subject to the section 163(j) limitation, the section 163(j) limitation is applied at the partnership level. If a partnership has deductible business interest expense, such deductible business

interest expense is not subject to any further limitation under section 163(j) at the partner level. For all other purposes of the Code, however, deductible business interest expense retains its character as business interest expense at the partner level.

If the partnership has a limitation on business interest expense, the disallowed business interest expense (excess business interest expense) is not carried over by the partnership, but is allocated to the partners.

After completing Form 8990, the partnership must determine how the deductible business interest expense, excess business interest expense, excess taxable income, and excess business interest income are allocated among the partners. Worksheet A—Determination of Each Partner's Deductible Business Interest Expense and Section 163(j) Excess Items and Worksheet B—Determination of Each Partner's Relevant Section 163(j) Items are to be used to determine the amount of each

item allocable to each partner. See Regulations section 1.163(j)-6(f)(2) for additional information on the allocation.

Self-charged interest. See Regulations section 1.163(j)-6(n) for the treatment of business interest income and business interest expense with respect to lending transactions between a partnership and a partner.

Partner. A partner's excess business interest expense is treated as paid or accrued by the partner in subsequent years to the extent the partner is allocated current year excess taxable income or excess business interest income from the same partnership.

If a partner not subject to the section 163(j) limitation has excess business interest expense from a prior year and is allocated excess taxable income or excess business interest income in the current year, the partner would file Form 8990 and the amount of excess business interest expense treated

as paid or accrued in the current year would not be subject to further limitation under section 163(j). See Schedule A, Summary of Partner's Section 163(j) Excess Items, later.

A partner subject to the section 163(j) limitation will include the amount of excess business interest expense treated as paid or accrued in figuring its current year business interest expense limitation.

If both a partnership and a partner are subject to the section 163(j) limitation, the partner's current year business interest expense limitation computation will include the following amounts from each of its partnerships:

- Current year excess taxable income,
- Excess business interest expense treated as paid or accrued, and
- Current year excess business interest income.

These amounts will not include items from an excepted trade or business.

If a partner is subject to the section 163(j) limitation and the partnership is not, see *Ownership of pass-through entities not subject to the section 163(j) limitation*, later.

In the event a partner sells a partnership interest and the partnership in which the interest is being sold owns only non-excepted trade or business assets, the gain or loss on the sale of the partnership interest is included in the partner's ATI. If the partnership interest consists of both excepted and non-excepted assets, the partner may use the method set forth in Regulations section 1.163(j)-10(c) to determine the amount properly allocable to a non-excepted trade or business and, therefore, properly includible in the partner's ATI.

Excess business interest expense from a prior tax year that was suspended under section 704(d) (“negative section 163(j) expense”). See Regulations section 1.163(j)-6(h) for basis adjustment calculations and ordering rules for losses under section 704(d).

Excess business interest expense in tiered partnerships. See 2020 Proposed Regulations section 1.163(j)-6(j) for treatment of excess business interest expense in tiered partnerships.

S corporation. The section 163(j) limitation is applied at the S corporation level. Disallowed business interest expense is carried over by the S corporation and is treated as business interest expense paid or accrued in the following year.

For a shareholder subject to the section 163(j) limitation, the shareholder’s current year section 163(j) limitation computation will

include the following amounts from each of its S corporations:

- Current year excess taxable income, and
- Current year excess business interest income.

These amounts will not include items from an excepted trade or business.

Ownership of pass-through entities not subject to the section 163(j) limitation. If you are subject to the section 163(j) limitation and are an owner of a pass-through entity that is not subject to the section 163(j) limitation, your share of the pass-through business interest expense is not subject to the section 163(j) limitation, and your share of non-excepted trade or business items of income, gain, loss, and deduction (including business interest expense and business interest income) of such pass-through entity, if net positive, is included on line 13. You

must request the pass-through entity to separately state, in sufficient detail, the items necessary to include on line 13.

In the event a partnership allocates excess business interest expense to one or more of its partners, and in a later tax year the partnership is an exempt entity, the excess business interest expense from the prior year is treated as business interest expense paid or accrued by the partner in the later year. See Regulations section 1.163(j)-6(m)(3).

C corporation business interest expense and income. Solely for section 163(j), all interest paid or accrued (or treated as paid or accrued) by a C corporation is business interest expense, and all interest includible in gross income by a C corporation is business interest income, except to the extent such interest expense or interest income is allocable to an excepted trade or business.

Any investment interest expense, investment interest income, or investment expenses that a partnership pays, receives, or accrues and allocates to a C corporation partner as a separately stated item is treated by the C corporation as properly allocable to a trade or business of that partner. Similarly, for purposes of section 163(j), any other tax items of a partnership that are neither properly allocable to a trade or business of the partnership nor described in section 163(d) and that are allocated to a C corporation partner as separately stated items, are treated as properly allocable to a trade or business of that partner. See Regulations section 1.163(j)-4(b)(3)(i).

Current year business interest expense is deducted before disallowed business interest expense carryforwards, which are then deducted in the order of the year in which they were incurred, starting with the earliest year, subject to certain limitations.

Consolidated group. A consolidated group has a single section 163(j) limitation. A consolidated group files one Form 8990. For members entering or leaving the group, see Regulations section 1.163(j)-5 for applicable limitations.

Intercompany obligations. All intercompany obligations, as defined in Regulations section 1.1502-13(g)(2)(ii), are disregarded for purposes of determining a member's business interest expense and business interest income and in figuring the consolidated group's ATI.

Tax-exempt corporations with unrelated business income (UBI). The rule for C corporation interest expense and income applies to a corporation that is subject to the unrelated business income tax under section 511 only with respect to that corporation's items of income, gain, deduction, or loss that are taken into account in computing the

corporation's unrelated business taxable income, as defined in section 512.

Regulated investment companies (RICs) and real estate investment trusts

(REITs). For special rules for determining ATI for RICs and REITs, see Regulations section 1.163(j)-4(b)(4). For a safe harbor for REITs (and partnerships controlled by one or more REITs) making an election to be an electing real property trade or business, see Regulations section 1.163(j)-9(h).

Trading partnerships. A trading partnership is a partnership engaged in a trade or business activity of trading personal property (including marketable securities) for the account of owners of interests in the activity, as described in Temporary Regulations section 1.469-1T(e)(6). A trading partnership is required to bifurcate its interest expense from a trading activity between partners that materially participate in the trading activity and partners that do not materially

participate. Only the portion of the interest expense that is allocable to the materially participating partners is subject to limitation under section 163(j) at the partnership level. In addition, the trading partnership is required to bifurcate all of its other items of income, gain, loss, and deduction from its trading activity allocable to the partners that do not materially participate. Such items are not taken into account at the partnership level as items from a trade or business for section 163(j), but instead are treated as items from an investment activity of the partnership.

Foreign persons with effectively connected income (ECI). A nonresident alien individual or foreign corporation that is not a relevant foreign corporation and that has ECI is also subject to the section 163(j) limitation. As foreign persons are only taxed on their ECI, ATI, business interest expense, business interest income, and floor plan

financing interest expense are modified to limit such amounts to income which is ECI and expenses properly allocable to ECI. A relevant foreign corporation means any foreign corporation whose classification is relevant under Regulations section 301.7701-3(d)(1) for a tax year, other than solely pursuant to sections 881 or 882.

Before applying section 163(j), a foreign corporation that has ECI must first determine its business interest expense allocable to ECI under Regulations section 1.882-5. Business interest expense allocable to ECI is reported on Schedule I (Form 1120-F). Disallowed business interest expense carryforward, as determined under section 163(j), that was allocable to ECI in a prior year but deductible in the current tax year and any current year ECI business interest expense that becomes disallowed business interest expense carryforward, after applying section 163(j),

are also included on Schedule I (Form 1120-F).

Relevant foreign corporations. Section 163(j) generally applies to determine the deductibility of a relevant foreign corporation's business interest expense for purposes of computing its taxable income (determined under Regulations section 1.952-2 or the rules of section 882) in the same manner as it applies to determine the deductibility of a domestic C corporation's business interest expense for purposes of computing its taxable income. An applicable CFC means a foreign corporation described in section 957, but only if the foreign corporation has at least one U.S. shareholder that owns (within the meaning of section 958(a)) stock of the foreign corporation.

CFC group election. In order to make a CFC group election under Regulations section 1.163(j)-7(e), each designated

U.S. person (as defined in Regulations section 1.163(j)-7(k)(12)) must attach the election statement described in Regulations section 1.163(j)-7(e)(5)(iv) to the CFC group's Form 8990 in the year the CFC group election is made. The statement must include the name and taxpayer identification number of all designated U.S. persons, a statement that the CFC group election is being made, the specified period (as defined in Regulations section 1.163(j)-7(k)(29)) for which the CFC group election is being made, the name of each CFC group member, and its specified tax year with respect to the specified period. If a CFC group election was previously revoked, the statement must include a certification that the specified period for which the election is made did not begin before 60 months following the last day of the specified period for which the election was revoked. See Regulations section 1.163(j)-7(e)(5)(ii).

If a CFC group election is in effect, a single section 163(j) limitation is computed for a specified period of a CFC group. A CFC group sums each of its CFC group member's separate-company applicable amounts for a specified period. Items of a CFC group member are translated into a single currency (which may be the U.S. dollar or the functional currency of a plurality of the CFC group members) for the CFC group and back to the functional currency of the CFC group member using the average exchange rate for the CFC group member's specified tax year (as defined in Regulations section 1.163(j)-7(k)(30)), using any reasonable method, consistently applied. Only non-ECI amounts are included in the CFC group calculation. A separate section 163(j) calculation and Form 8990 must be filed for the ECI of a CFC group member, if any. The CFC group member's ECI attributes are treated, for this purpose, as attributes of a separate applicable CFC.

Form 8990 for each CFC group member.

When a CFC group election is in effect, the U.S. shareholders of each CFC group member must file Form 8990 with Form 5471 for each CFC group member on a separate entity basis (unless a safe-harbor election is in effect for the CFC group). On each CFC group member's Form 8990, report the individual CFC group member's amounts on line 1 through line 25. Do not complete line 26 through line 29 and report the CFC group member's current-year business interest expense deduction and disallowed business interest expense (as determined under Regulations section 1.163(j)-7(c) (3)) on lines 30 and 31.

Additional Form 8990 for CFC group. In addition to the Form 8990 that is filed for each CFC group member, a separate Form 8990 must be filed for the CFC group in order to report the combined limitation of the CFC group. The CFC group's Form 8990 must be

filed by the specified group parent, if the specified group parent is a qualified U.S. person. If the specified group parent is a CFC, the U.S. shareholders that file Form 5471 for the specified group parent must file the

CFC group's Form 8990 with Form 5471 of the specified group parent. In addition, if a U.S. shareholder that files Form 5471 for a CFC group member is not the specified group parent and does not file Form 5471 for the specified group parent, the CFC group's Form 8990 should be attached to such U.S. shareholder's tax return.

On the CFC group's Form 8990, line 1 through line 25 should be completed by adding together the individual amounts reported by each CFC group member on a separate entity basis. However, for purposes of determining ATI of a CFC group, the limitation that ATI cannot be less than zero applies with respect to the ATI of the CFC group but not the ATI of any CFC group member. Line 26 through line

31 of Form 8990 should be completed by reference to the total amounts reported on line 1 through line 25. Each designated U.S. person should attach a statement identifying the specified group parent, the specified period, and the name and specified tax year of each CFC group member.

On the CFC group's Form 8990, enter "Specified Group Parent" as the name of the foreign entity on line A. Enter zeros for the foreign entity's EIN number. Do not complete Schedule A or Schedule B of the CFC group's Form 8990.

Compliance with these instructions satisfies the statement requirement under Regulations section 1.163(j)-7(e)(5)(iv) and the annual information reporting requirement under Regulations section 1.163(j)-7(e)(6).

Revocation of CFC group election. In order to revoke a CFC group election, each designated U.S. person must attach the statement described in Regulations section

1.163(j)-7(e)(5)(iv) to the Form 8990 that is filed by or on behalf of the specified group parent. The statement must include the name and taxpayer identification number of all designated U.S. persons, a statement that the CFC group election is being revoked, the name of the specified group parent, the specified period for which the election is revoked, and the name and specified tax year of each specified group member. The statement must also include a certification that the specified period for which the election is revoked did not begin before 60 months following the last day of the specified period for which the election was made. See Regulations section 1.163(j)-7(e)(5)(ii).

Specified group parent. A specified group parent means a qualified U.S. person or an applicable CFC. A qualified U.S. person means a United States person described in section 7701(a)(30) (A) or (C). Members of a consolidated group that file (or that are

required to file) a consolidated U.S. federal income tax return are treated as a single qualified U.S. person, and individuals described in section 7701(a)(30)(A) whose filing status is married filing jointly are treated as a single qualified U.S. person.

Designated U.S. person. With respect to a specified group, a designated U.S. person means either the specified group parent (if the specified group parent is a qualified U.S. person) or each controlling domestic shareholder (see Regulations section 1.964-1(c)(5)(i)) of the specified group parent (if the specified group parent is an applicable CFC). With respect to a stand-alone applicable CFC, each controlling domestic shareholder of the stand-alone applicable CFC is a designated U.S. person.

Safe-harbor election. If a safe-harbor election is in effect with respect to a tax year of a stand-alone applicable CFC or a specified tax year of a CFC group member, then, for

such year, no portion of the applicable CFC's business interest expense is disallowed under the section 163(j) limitation. See instructions to Worksheet C, and complete Worksheet C before completing Part I.

If the safe-harbor election is made for a stand-alone applicable CFC, the U.S. shareholders that file Form 8990 for the stand-alone applicable CFC must attach Worksheet C to their tax return together with the Form 8990 of the stand-alone applicable CFC and complete Part I of the stand-alone applicable CFC's Form 8990 in accordance with the instructions to Worksheet C. Check the "Yes" box on line D of the stand-alone applicable CFC's Form 8990.

If the safe-harbor election is made for a CFC group, the U.S. shareholders that file the CFC group's Form 8990 must attach Worksheet C to their tax return together with the CFC group's Form 8990 and complete Part I of the CFC group's Form 8990 in accordance with

the instructions to Worksheet C. Check the "Yes" box on line D of the CFC group's Form 8990.

A safe-harbor election is valid only if made by each designated U.S. person. The requirement to file the election statement described in Regulations section 1.163(j)-7(h)(5)(ii) is satisfied by attaching Worksheet C in compliance with these instructions.

The safe-harbor election is available if a CFC group's (or stand-alone applicable CFC's) business interest expense is equal to or less than either (a) its business interest income or (b) 30% of the lesser of (i) its qualified tentative taxable income (QTTI) or (ii) its eligible amount. See

Regulations section 1.163(j)-7(h)(3). A CFC group is not eligible for the safe-harbor election if any CFC group member has a pre-group disallowed business interest expense carryforward. See Regulations section 1.163(j)-7(k)(19) for the specified period.

See Regulations section 1.163(j)-7(h)(2). See the instructions for Worksheet C for additional information.

The safe-harbor does not apply to excess business interest expense, as described in Regulations section 1.163(j)-6(f)(2), until the tax year in which it is treated as paid or accrued by an applicable CFC under Regulations section 1.163(j)-6(g)(2)(i). Excess business interest expense is not taken into account for purposes of this election until a tax year in which it is treated as paid or accrued by an applicable CFC under Regulations section 1.163(j)-6(g)(2)(i). See Regulations section 1.163(j)-7(h) for full election rules.

Limitation on pre-group disallowed business interest expense carryforward.

The amount of the pre-group disallowed business interest expense carryforwards that may be included in any CFC group member's business interest expense deduction for any