



February 26, 2019

The Honorable David Kautter
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CC:PA:LPD:PR (REG-106089-18)
Room 5203
Internal Revenue Service
POB 7604, Ben Franklin Station
Washington, DC 20044

Re: Comments on Section 163(j) Proposed Regulations Regarding the Limitation on
Business Interest Deduction (REG-106089-18)

Dear Sirs:

On behalf of our members, the American Investment Council (the "AIC") is pleased to submit the following comments regarding the proposed regulations released last November addressing the revised section 163(j) interest limitation.

In the Tax Cuts and Jobs Act, P.L. 115-97 (the "TCJA"), Congress significantly amended Section 163(j) to impose a broad-based limitation on a taxpayer's annual deduction for business interest expense equal to the sum of business interest income, 30 percent of the taxpayer's adjusted taxable income (ATI) for the tax year, and floor plan financing interest. The changes made by the TCJA significantly expand the interest expense limitation to no longer limit it to related party debt, lower the threshold for being subject to the limitation, apply the limitation to partnerships, and eliminate the excess limitation carryforward.

We appreciate you and your colleagues' efforts to provide needed clarifications regarding the application of these changes to the interest limitation, particularly with respect to their application to partnerships. We are grateful for the opportunity to submit these comments and would appreciate the chance to discuss them more fully with you at your convenience.

1. Treat controlled partnerships as part of consolidated group without separate application of interest limitation at partnership level

The section 163(j) limit generally applies at the partnership level, as interest deductions are taken into account in determining the income of the partnership. Special rules apply to prevent double counting in determining the taxable income of each partner in the partnership and to allow for

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additional interest deduction by a partner in the case of an excess amount of unused adjusted taxable income limitation of the partnership.

A consolidated group has a single section 163(j) limitation and intercompany obligations are disregarded in determining the group's ATI, business interest income, and business interest expense. For this purpose, the proposed regulations do not allow partnerships owned, in whole or in part, by a consolidated group to be aggregated with the consolidated group.¹

Where members of a consolidated group own in aggregate at least 80 percent of a partnership (a "controlled partnership"), the section 163(j) limitation should apply only at the consolidated group level, and should not be applied separately at the partnership level. Applying the limitation separately to such a controlled partnership does not meaningfully advance the purposes of section 163(j). Moreover, it imposes unnecessary administrative burdens where there is no risk of double counting income. Allowing aggregation is also consistent with the treatment in the proposed regulations of a controlled partnership owned by CFC group members.²

We therefore respectfully request that Treasury and the IRS modify the proposed regulations to allow partnerships owned 80 percent or more in aggregate by members of a consolidated group to be aggregated with the consolidated group for purposes of applying the section 163(j) limitation. Thus, the section 163(j) limitation would not apply separately to the controlled partnership, and transactions between the controlled partnership and members of the consolidated group would be disregarded.

2. Allow depreciation, amortization and depletion amounts capitalized into inventory and included as cost of goods sold to be added back in determining ATI

For purposes of determining the section 163(j) limitation, ATI is defined as taxable income without regard to non-business income, business interest expense or income, any net operating loss deduction, the qualified business income deduction under section 199A, and deductions for depreciation, amortization, or depletion (for tax years beginning before January 1, 2022).³

For certain property produced by the taxpayer or acquired for resale, section 263A requires all direct costs and certain indirect costs to be capitalized into the basis of the property. Depreciation, amortization, and cost recovery allowances on equipment and facilities used to produce inventory are treated under Treasury Regulations as indirect costs required to be capitalized.⁴

In the proposed regulations, depreciation, amortization and depletion expense that is capitalized into inventory and deducted as cost of goods sold is not allowed to be added back in determining

¹ See Preamble to Prop. Treasury Reg. sec. 1.163(j)(1) through 1.163(j)(11), 83 Fed. Reg. 67490, 67499 (December 28, 2018) (hereinafter "Preamble").

² See Prop. Treas. Reg. sec. 1.163(j)-7(f)(6)(B).

³ The pre-2022 definition of ATI under section 163(j) is often referred to as EBITDA, while the post-2021 definition is often referred to as EBIT.

⁴ Treas. Reg. sec. 1.263A-1(e)(1), (3)(ii)(I).

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ATI.⁵ Consequently, capital-intensive businesses that manufacture or produce property and resellers of inventory must determine their section 163(j) limitation without adding back a substantial amount of their depreciation, amortization or depletion. This effectively converts them from an interest limitation based on EBITDA to one based on EBIT, causing them to be treated worse than other businesses. Moreover, it effectively negates a substantial portion of the compromise between the House and Senate versions of section 163(j) agreed to by Congress. One of the primary goals for the TCJA articulated by both Congress and the Administration was to encourage domestic capital investment.⁶ The rule adopted in the proposed regulations neutralizes that goal by effectively eliminating the distinction between EBITDA and EBIT for manufacturers and other capital-intensive firms.

Under section 163(j)(8)(A)(v), a taxpayer's ATI is computed, for tax years beginning before 2022, without regard to "any deduction allowable for depreciation, amortization, or depletion." According to the IRS, "the cost of goods sold is deducted from your gross receipts to figure your gross profit for the year. If you include an expense in the cost of goods sold, you cannot deduct it again as a business expense."⁷ Thus, while cost of goods sold is deducted above-the-line in determining gross profits, it reduces taxable income in the same manner as a below-the-line deduction for depreciation. Moreover, if Congress wanted to limit the addback only to below-the-line depreciation and amortization deductions, it could have easily specified this result by specifically referencing deductions allowed under section 167 or 168. In contrast to the addback for the section 199A deduction,⁸ Congress chose not to do so.

Treating depreciation or amortization capitalized to inventory and deducted as cost of goods sold as a deduction for purposes of the addback is appropriate as exemplified by the similar treatment under Section 1016(a)(2)(A). Under that section, the basis of property must be adjusted for amounts of depreciation and amortization "allowed as deductions in computing taxable income under this subtitle...but not less than the amount allowable." Taxpayers are currently required to reduce their basis under that section for amounts capitalized into inventory. However, if the term "deductions" was interpreted in the same manner as under the proposed regulations, property basis would not be reduced by amounts capitalized to inventory because they are not "allowed as deductions."

We respectfully request that the proposed regulations be modified to provide that any amounts of depreciation, amortization and depletion capitalized to inventory under section 263A and included in cost of goods sold be added back in determining ATI in taxable years beginning before 2022. Capitalized amounts that are included in ending inventory would not be added back to ATI until the taxable year in which they are included in cost of goods sold.

A similar issue that we believe Treasury and the IRS should clarify is the treatment of qualified expenditures that are capitalized at the partner level under section 59(e)(4)(C) or similar items

⁵ Prop. Treas. Reg. sec. 1.163(j)-1(b)(1)(iii)

⁶ See, e.g., The White House, "2017 Tax Reform for Economic Growth and American Jobs," (April 26, 2017).

⁷ Internal Revenue Service, "Deducting Business Expenses," <https://www.irs.gov/businesses/small-businesses-self-employed/deducting-business-expenses> (Emphasis added).

⁸ See IRC section 163(j)(8)(iv).

capitalized under section 291(b). These types of expenditures for items such as intangible drilling and development expenditures reduce partnership ATI and ETI, but will not reduce the taxable income of a partner who makes an election to capitalize under section 59(e) or is required to capitalize under section 291(b). Accordingly, we believe that a partner's distributive share of items capitalized under section 59(e) or section 291(b) should increase the partner's share of ETI and the ATI of the partner.

3. Guaranteed payments for the use of capital generally should not be treated as interest *per se* for purposes of the section 163(j) limitation.

The proposed regulations treat guaranteed payments for the use of capital *per se* as interest for purposes of applying the section 163(j) limitation.⁹ We believe this rule is overbroad, is unnecessary to effectuate the legislative intent for section 163(j), and acts as a barrier to non-abusive, common-place transactions between partners and partnerships. We therefore respectfully request that Treasury and the IRS remove the rule treating guaranteed payments *per se* as interest from the final regulations. General anti-abuse rules in the proposed regulations, the partnership anti-abuse rules, and other IRS guidance should serve as a sufficient defense against situations in which taxpayers use guaranteed payments to avoid section 163(j) interest expense limitations.¹⁰

The application of section 163(j) is limited to "any interest paid or accrued *on indebtedness* properly allocable to a trade or business."¹¹ In many cases, guaranteed payments for the use of capital are not made with respect to indebtedness. The most obvious case is a guaranteed payment for the use of property, such as real property or intellectual property. These arrangements are more in the nature of leases, licenses, or rentals and thus any payments should be treated as lease, license, royalty or rental payments, not as interest on indebtedness subject to limitation under section 163(j).

Even in the case where the guaranteed payment is for the use of cash, these arrangements are often more in the nature of equity, rather than indebtedness. While there may be a fixed obligation to pay, the partner's rights to payments are generally subordinated to all other creditors, little or no review of the ability to repay has occurred, no creditors' rights on default exist, and the parties do not intend to create a debtor-creditor relationship. The section 385 documentation rules, while recently proposed to be withdrawn, properly identified these factors as critical indicia of equity rather than debt.¹²

This difference is reflected in the distinction between payments covered by section 707(a) and section 707(c). Under section 707(a), if a partner engages in a transaction with a partnership other than in his capacity as a partner in the partnership, the transaction is treated as "occurring between the partnership and one who is not a partner." Thus, if a transaction is a bona fide

⁹ Prop. Treas. Reg. sec. 1.163(j)-1(b)(20)(iii)(I).

¹⁰ Notice 2004-31 demonstrates the ability of Treasury and the IRS to address any abuses that result from use of guaranteed payments.

¹¹ IRC section 163(j)(1), (5)(emphasis added).

¹² See Treas. Reg. sec. 1.385-2(c)(2).

indebtedness, the partner will be treated as a lender and the transaction should be treated the same as any other loan to the partnership. Interest payments, in such a case, would clearly be subject to limitation under section 163(j). Because all bona fide debts should already be covered by section 707(a), it is both superfluous and improper to treat guaranteed payments under section 707(c) as indebtedness subject to the section 163(j) limitation.

Moreover, section 707(c) treats payments to a partner for services or the use of capital as made to one who is not a member of the partnership “*only for purposes* of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business income)” [emphasis added]. Thus, while the treatment of guaranteed payments for the use of capital under section 707(c) is similar to the treatment of loans under section 707(a), such treatment applies only for purposes of determining whether an amount can be currently deducted under section 162(a) or is subject to capitalization under section 263. It does not apply for purposes of section 163, including section 163(j). Had Congress intended to apply section 163(j) to guaranteed payments for the use of capital, it easily could have done so by changing the “only for purposes” clause in section 707(c). Also, Congress provided detailed rules for the treatment of partnerships in section 163(j), but failed to make any mention of guaranteed payments.

Additionally, applying section 163(j) to guaranteed payments for capital actually works at cross-purposes with the legislative intent of the interest limitation. Congress thought a limitation was necessary because businesses were “undertaking more leverage than they would in the absence of the tax system.”¹³ Guaranteed payments for the use of capital arise from contributions of equity capital by partners to their partnerships.¹⁴ It would be anomalous to apply the limitation to a situation where an owner of the business venture is providing greater equity capital (albeit on a preferred basis) to the business. Fortunately, nothing in the statute or legislative history indicates any intent by Congress to apply the section 163(j) interest limitation to guaranteed payments for the use of capital.

Applying section 163(j) to guaranteed payments for capital could impede these common transactions that actually improve the solvency of partnership businesses. It is often necessary for partnerships to give a preferred return that is not tied to the net income of a partnership (i.e., guaranteed payment) to a particular partner to encourage a contribution of additional equity capital. If the partnership will be subject to the interest limitation in such cases, taxpayers may not engage in such transactions, take complex steps to avoid the rules, or opt to structure such arrangements as bona fide loans (with full rights as creditors) rather than contributions of capital, thereby frustrating the legislative purpose.

Finally, application of the interest limitation to guaranteed payments for capital would add administrative burdens for taxpayers. Currently, partners and partnerships are not required to distinguish whether section 707(c) payments are attributable to services or the use of capital. Requiring partnerships and partners to make this distinction for purposes of calculating the

¹³ See, e.g., H.R. Rpt. 115-409, 115th Cong., 1st Sess., at 159 (2017).

¹⁴ If the transfer were a loan, it should be covered by section 707(a).

section 163(j) limitation will lead to additional administrative costs and possible uncertainty in making these determinations that outweigh the potential benefits.

For the foregoing reasons, we respectfully request that Treasury and the IRS not apply the section 163(j) interest limitation to guaranteed payments for capital subject to any anti-abuse rules under section 163(j) and in other applicable guidance.

4. Limit application of section 163(j) to controlled foreign corporations (CFCs) that have effectively connected income (ECI)

The proposed regulations apply the section 163(j) limitation to determine the deductibility of a CFC's business interest expense for purposes of computing ECI, tested income for GILTI purposes, and subpart F income. We believe the proposed regulations should be modified to limit the application of section 163(j) to CFCs only for purposes of determining ECI (if any) and not for purposes of determining tested income or subpart F income. Applying section 163(j) to the latter two would add significant complexity and recordkeeping burdens and would not meaningfully increase federal tax revenues.

For example, with respect to tested income, application of the section 163(j) limitation would increase tested income for some CFCs, but in many cases no additional GILTI tax would be owed in the year of limitation because of excess foreign tax credits in the GILTI basket. The credits used would likely otherwise have been permanently lost. Meanwhile, the taxpayer would be allowed to carry forward any interest expense disallowed by section 163(j) indefinitely, reducing tested income and tax on GILTI in future years.

Also, applying section 163(j) to determinations of GILTI and subpart F adds yet another layer of complexity to rules and computations for CFCs, including look-through rules, rules to avoid double-counting, and rules to allocate and apportion items of gross income (including interest income) and expense among tested income, subpart F income and residual categories of income. These complex rules impose significant administrative and compliance burdens on taxpayers (for seemingly little benefit), and make business planning far more difficult.

Accordingly, we respectfully request that Treasury and the IRS reconsider the decision in the proposed regulations to apply the Section 163(j) limitation to determinations of GILTI and subpart F income. We believe the application of section 163(j) to CFCs should be limited to situations where the CFC has ECI. In addition, a US shareholder's inclusions (and related section 78 gross-ups) for subpart F and GILTI (net of the section 250 deduction) should be included in the US shareholder's ATI (as there would no longer be any potential double counting of CFC ATI).

5. Multiple limitations on interest should not apply

We believe Treasury and the IRS should reconsider the position in the proposed regulations regarding how non-materially participating partners treat business interest expense taken into account from a partnership. The proposed regulations provide that business interest that is not

limited under the section 163(j) limitation at the partnership level may still be subject to additional section 163(d) investment interest limitations at the partner level if partners do not materially participate in the business of the partnership.¹⁵ We do not believe that Congress intended for two different interest limitations to apply to the same interest expense.

Under section 163(j)(4)(A)(i), the section 163(j) limitation is applied at the partnership level and any deduction allowed for business interest expense of a partnership is taken into account as part of the partnership's non-separately-stated income.¹⁶ Because the interest is included in non-separately stated income of a partnership as determined under section 702(a)(8), the deduction loses its character as interest in the hands of the partner to whom it is allocated.¹⁷ Put another way, "the business interest deduction allowed after any limit will be combined with other non-separate deductions and income and delivered to the partners in bulk as ordinary income or loss."¹⁸

In the preamble, Treasury and the IRS acknowledge this treatment for purposes of applying the section 163(j) limitation again at the partner level. The preamble states, "to the extent a partnership's business interest expense is less than or equal to the partnership's section 163(j) limitation, such business interest expense loses its character as business interest expense at the partner's level for purposes of the partner's section 163(j) calculation (that is, the business interest expense is not subject to further limitations under section 163(j))."¹⁹

We believe the same treatment should apply for purposes of the section 163(d) investment interest limit. As the item is no longer interest in the hands of the partner, it should not be subject to a second-level interest limitation under section 163(d). Accordingly, we respectfully request that Treasury and the IRS confirm that interest not limited under section 163(j) at the pass-through entity level should not be subject to separate limitation under section 163(d) at the pass-through entity owner level.

6. Characterization of partnership interest expense

We agree with the underlying notion in the preamble that a partnership should not have to "look beyond its own tax attributes to that of its partners when making a determination as to whether a section 163(j) calculation is necessary."²⁰

¹⁵ See preamble at 67510 ("To the extent business interest expense of a passthrough entity is not limited under section 163(j), such business interest expense may still be limited by section 163(d) at the passthrough entity owner level in these situations").

¹⁶ According to the conference report, this amount is the "Ordinary business income or loss" reflected on Form 1065. These are items covered by section 702(a)(8).

¹⁷ See McKee, Nelson & Whitmire, *Federal Taxation of Partnerships & Partners*, 9.01[3][a].

¹⁸ Cummings, *The Interest Deduction Limitation*, Tax Notes (May 21, 2018), p. 1111.

¹⁹ Preamble at 67503.

²⁰ Id. at 67510.

Moreover, if a partnership holds both trade or business assets and investment assets,²¹ Treasury and the IRS should provide a standard quantifiable method (to avoid complexity and minimize uncertainty) for allocating interest between business interest subject to limitation under section 163(j) at the partnership level and other interest not subject to limitation at the partnership level. We believe adoption of rules similar to the allocation rules under Prop. Treas. Reg. sec. 1.163(j)-10(c)(1) would be appropriate for this purpose.

Prop. Treas. Reg. sec. 1.163(j)-10(c)(1) would allocate interest expense and interest income between excepted and non-excepted trades or businesses based upon the relative amounts of the taxpayer's adjusted basis in the assets used in its excepted and non-excepted trades or businesses. According to the preamble, Treasury and the IRS chose this approach because "money is fungible and the view that interest expense is attributable to all activities and property, regardless of any specific purpose for incurring an obligation on which interest is paid."²²

Before adopting this approach, Treasury and the IRS considered whether a tracing approach, requiring taxpayers to trace disbursements of debt proceeds to specific expenditures, would make sense. However, a tracing approach was rejected for several reasons, including: it would impose a significant administrative burden and cost upon taxpayers; it would be distortive and subject to significant manipulation; and it would be impractical to impose a tracing regime retroactively.

We believe the rationales for adopting an objective allocation method, and rejecting a tracing requirement, apply similarly to the need to determine the character of interest expense and interest income at the partnership level. We therefore respectfully request that Treasury and the IRS provide a method similar to Prop. Treas. Reg. sec. 1.163(j)-10(c)(1) based on relative asset bases (or similar determinable standard) for allocating interest between business interest subject to limitation under section 163(j) at the partnership level and other interest not subject to limitation at the partnership level.

Additionally, to further ease administration and provide certainty, we would suggest that Treasury and the IRS consider a de minimis safe harbor standard similar to the one adopted in Prop. Treas. Reg. sec. 1.163(j)-10(c)(1)(ii). If at least 90 percent of the partnership's aggregate adjusted basis in its assets are allocable to either trades or businesses or non-trade or business assets, then all of the partnership's interest expense and interest income for the taxable year would be treated as allocable to trades or businesses or non-trade or business assets, respectively.

7. Allow netting for self-charged lending transactions

According to the preamble, Treasury and the IRS intend to issue rules recharacterizing business interest expense and income attributable to "self-charged lending transactions" between a pass-through entity and an owner of the entity to prevent such amounts from affecting the section 163(j) calculations for both the lender and the borrower in such situations.²³ The proposed

²¹ The determination of whether the assets held by the partnership are used in a trade or business or held for investment should also be determined at the partnership level.

²² Id. at 67501.

²³ Id. at 67503.

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regulations reserve on the issue, but suggest that adopting rules similar to Treas. Reg. sec. 1.469-7 (addressing self-charged lending transactions for purposes of the passive activity loss rules) could be a possible approach.

We greatly appreciate Treasury and the IRS asking for comments on these issues as these lending transactions between a pass-through entity and its owner(s) are a common source of financing. As suggested by the preamble, we believe that adopting rules similar to the approach in section 1.469-7 -- effectively allowing netting of the lender's interest income and the borrower's interest expense -- is appropriate.

Failure to adopt this type of rule would result in the pass-through entity owner having phantom income as a result of applying the section 163(j) limitation. For example, if a partner with an 80% partnership interest lends the partnership \$100 at 5% and the partnership has no ATI in the first year of the loan, the partner will have \$5 of interest income (and no corresponding interest expense because of the section 163(j) limit). Yet, in actuality, the partner has only \$1 dollar of economic income (\$5 of interest income less \$4 (80% x \$5) of the partner's share of partnership interest expense).

Congress recognized a similar problem when it adopted the passive activity loss rules. The conference report to the Tax Reform Act of 1986 states "Under certain circumstances, the interest may essentially be 'self-charged,' and thus lack economic significance... In form, the transaction could be viewed as giving rise to offsetting payments of interest income and passthrough interest expense, although in economic substance, the taxpayer has paid the interest to himself."²⁴ In light of this problem, Treasury and the IRS adopted Treas. Reg. sec. 1.469-7, which recharacterizes a partner's self-charged interest income as passive activity income, effectively allowing it to be netted against passive interest expense allocated to the partner from the partnership.

We believe a similar approach should be adopted to limit the impact of the section 163(j) limitation on self-charged interest between a pass-through entity and its owner. We believe that a netting approach should be allowed in the case of self-charged lending transactions based on the lesser of the lending partner's interest income and such partner's share of the self-charged interest expense of the partnership. This will avoid the phantom income problem described above. Also, we believe that this approach should apply at both the partnership and partner level, such that the partner should not be allowed to treat the business interest income received from the partnership on a gross basis which could be used to offset interest expense of the partner.

8. Allow pass-through of carryforwards in certain tiered partnerships

The preamble reserves guidance on the treatment of excess business interest expense in tiered partnerships. Specifically, Treasury and the IRS ask whether carryforwards should be allocated through upper-tier partnerships and when and how basis adjustments should apply.

²⁴ H.R. Rept. 99-841, 99th Cong., 2d Sess., at II-146 (1986).

We believe that, consistent with the statute, both excess business interest expense and excess business interest income should be allowed to be passed through to upper-tier controlled partnerships in the current year. Basis adjustments would similarly flow all the way up the chain as required by section 163(j)(4)(B)(iii). This would avoid creating disparities in inside and outside basis that could create anomalies, as well as planning opportunities.

Adopting this rule would avoid penalizing investors in such common investment fund structures that for legitimate business reasons have interest income and interest expense in lower-tier partnerships. Failure to adopt this rule could create distortions for investment fund groups. Anti-abuse rules should be sufficient to address any potential concerns about opportunities for avoidance by permitting this treatment.

9. Allocation rules should be simplified

The Proposed Regulations include a very complex 11-step process regarding the allocation of a partnership's deductible business interest expense, disallowed interest expense under Section 163(j), and excess section 163(j) limitation to partners. The apparent intent of this complex process is to match allocation of these items to the partners that receive allocations of business interest income or adjusted taxable income that supported the determination of these items.

We believe that forcing allocations of these items at the partner level is inconsistent with the decision of Congress to compute the section 163(j) limit at the partnership level. We believe that deductible business interest and disallowed interest expense should be allocated to the partners in proportion to how the partnership allocates interest expense. Similarly, excess business interest income should be allocated to partners in proportion to how they allocate interest income and excess taxable income should be allocated to the partners in proportion to how they share in net taxable income of the partnership. This approach is entirely consistent with the intent of Congress as evidenced by the technical corrections bill introduced by then Ways and Means Committee Chairman Brady, which spells out this exact approach.²⁵

10. Ability to elect application of the regulations retroactively should be expanded

The regulations generally are proposed to be effective for taxable years ending after the date they are published as final in the Federal Register. Taxpayers may apply the regulations retroactively to a taxable year beginning after December 31, 2017, provided the taxpayer and all related parties do the same and consistently apply the rules. For this purpose, a related party is defined within the meaning of sections 267(b) and 707(b)(1).

We believe use of a related party test is too strict and will unnecessarily prevent taxpayers from relying on the regulations retroactively. In the managed funds context, a fund manager may control numerous portfolio companies, investment funds and other entities. In this context, it may be difficult for the fund manager to control, or know of, all decisions being made with respect to lower-tier entities with respect to section 163(j). This could lead to unintended foot

²⁵ See Tax Technical and Clerical Corrections Act (Discussion Draft), sec. 4(o).

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faults and attendant uncertainty as to whether the regulations can reliably be applied. Also, in certain cases, fund managers may have different fiduciary responsibilities to different minority investors in their commonly controlled funds. This, by itself, could preclude a fund manager from applying the regulations retroactively.

To provide certainty, increase administrability, and reduce conflicts, we believe that Treasury and the IRS generally should encourage taxpayers to rely on the regulations retroactively. Moreover, requiring taxpayers to apply all of the rules in the regulations consistently to themselves has sufficient puts and calls to prevent abuse and cherry-picking. Accordingly, we respectfully request that Treasury and the IRS modify the election in the effective date to allow taxpayers to apply the regulations retroactively.

Once again, we greatly appreciate the opportunity to provide our comments. Thank you in advance for your consideration of them and our suggested changes to the proposed regulations under section 163(j). Please contact us if you have any questions or comments. We would be glad to meet with you to discuss these issues further.

Sincerely yours,



Chief Operating Officer & General Counsel
American Investment Council