



2018 MARCUM REAL ESTATE SUMMITS

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The Tax Cuts and Jobs Act of 2017 (TCJA) places a limit on the amount of interest expense that businesses can deduct on their tax returns. Companies will only be permitted to deduct interest based on a formula. Real estate companies have the ability to “elect out” of this limitation if they meet certain criteria, as described below.

This and other strategic topics will be the focus of the 2018 Marcum Real Estate Summits, which kick-off in Philadelphia on October 17 and then continue in New York City on October 29 and Boston on January 8, 2019. Presented by Marcum LLP’s Real Estate Practice, the Marcum Real Estate Summits deliver the latest thought leadership on the topline business issues impacting real estate owners, developers, managers, REITs, private equity investors, institutional investors, pension advisors, hotel owner-operators, and other real estate-related entities.

Attendees can expect dynamic panels featuring real estate industry leaders and outstanding keynote speakers such as Scott Rechler of RXR Realty, who returns this year to the New York forum. Speakers in other cities will be announced soon. Attendees, panelists, and speakers will also connect at a networking cocktail reception following the formal programs.

The new business interest expense limitation is just one of the practical topics that will be

covered. Here’s a preview of what real estate companies will learn:

Net Business Interest Expense Deduction

Section 163(j) of the Internal Revenue Code disallows the deduction for net business interest expense of any taxpayer in excess of the sum of the following for the taxable year: business interest income, 30 percent of “adjusted taxable income, and floor plan financing interest.

The section 163(j) limitation should be applied after other interest disallowance, deferral, capitalization, or other limitation provisions. Therefore, original issue discount (OID) deferral rules, any capitalization requirements, and related-party rules, among others, must first be applied prior to calculating the 30 percent limit.

Real estate companies have the option of “electing out” of this new business interest expense limitation. The following rules apply to this election:

1. The election out of the business interest limitation applies only with respect to debt incurred by the entity acquiring/operating real estate. It is uncertain whether debt incurred by an upper-tier entity (such as a real estate fund), then subsequently contributed as capital to a lower-tier operating entity, could be availed of this exception, since the upper-tier partner is

not acquiring or operating real estate.

2. The election out of the business interest limitation by a partnership will result in the partnership having to depreciate the project over the ADS recovery period. For residential buildings placed in service after Dec. 31, 2017, the TCJA reduces the ADS recovery period to 30 years. For existing projects, however, it is not clear whether the applicable recovery period is the 30-year period provided in the TCJA or the 40-year recovery period in effect under prior law.

3. The election is irrevocable. Therefore, you won’t be able to opt back in to the interest limitation in later years when the interest deduction may not be limited under the 30 percent rule. This decision seems simplistic on its face. However, tax practitioners and their clients have many questions on the application of the limitation or interest expense. For example:

- Does this limitation apply at the entity level or a fund (partner) level for all commonly owned entities?
- Should the client capitalize more assets rather than expense as repairs to increase EBITDA, thus limiting the interest expense?

For more details and registration on Marcum’s 2018 Real Estate Summits, please visit www.marcumevents.com.