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## Nareit and ICI Request Confirmation That Section 199A Deduction Can Be Passed Through to Mutual Fund Shareholders

In separate letters to the IRS, both Nareit (<https://www.reit.com/sites/default/files/Nareit-Comments-Proposed-Section-199A-Regulations.pdf>) and the Investment Company Institute (<https://www.ici.org/pdf/31416a.pdf>) (ICI) requested that the IRS confirm that the 20 percent deduction for qualified REIT dividends under Section 199A is available for both direct holders of REIT stock and indirect holders of REIT stock that hold their interests through mutual funds. The letters note that approximately 40 percent of REIT interests are held in mutual funds and argue that it is in line with the policy objectives of the law to permit these indirect shareholders to receive the deduction. (All section references are to the Internal Revenue Code of 1986, as amended.)

## 100 Percent Depreciation Deduction Election Due by Oct. 15, 2018

The IRS has issued a reminder (<https://www.irs.gov/newsroom/for-many-business-taxpayers-time-is-running-out-to-elect-out-of-new-100-percent-depreciation-deduction-for-2017>) that qualified taxpayers who did not claim the new 100 percent depreciation deduction on their timely filed 2017 return may still do so by filing the election with their amended return by Oct. 15, 2018. The Tax Cuts and Jobs Act (TCJA) enacted the 100 percent depreciation deduction, which allowed the deduction to be applied retroactively to qualifying property (e.g., machinery, equipment, computers, appliances, etc.) acquired and placed into service after Sept. 27, 2017.

## Due Date for Section 965 Basis Election Extended

The IRS announced in a Notice (<https://www.irs.gov/pub/irs-drop/n-18-78.pdf>) that the due date for basis adjustment elections with respect to certain foreign corporations described in proposed regulations under Section 965 (see our prior coverage here (<https://www.stradley.com/insights/publications/2018/08/tax-insights-august-8-2018>)) is extended to 90 days after the publication of the final regulations. The IRS realized that requiring taxpayers to commit to a binding election prior to the finalization of the regulations was “too onerous for taxpayers.” Elections made prior to the new due date will be subject to the “transition rule” that is in the current proposed regulations, and such elections will be revocable.

## House Approves Third Bill of Tax Reform

The United States House of Representatives passed, by a vote of 220-191, the Protecting Family and Small Business Tax Cuts Act of 2018 (H.R. 6760), which would make certain provisions of the TCJA permanent, including the following: individual tax rate cuts, the cap on state and local tax deductions, and the pass-through deduction under Section 199A. The House previously passed two other bills that are part of “Tax Reform 2.0.” (See our prior coverage here (<https://www.stradley.com/insights/publications/2018/09/tax-insights-september-19-2018>) and here (<https://www.stradley.com/insights/publications/2018/10/tax-insights-october-3-2018>)).

## SIFMA Requests Guidance on Services Excluded From Section 199A Pass-through Deduction

The Securities Industry and Financial Markets Association (SIFMA) requested guidance ([https://www.stradley.com/~media/Files/Publications/2018/10/SIFMA\\_Comments\\_Proposed\\_Section\\_199A\\_Regulations.pdf](https://www.stradley.com/~media/Files/Publications/2018/10/SIFMA_Comments_Proposed_Section_199A_Regulations.pdf)) from the IRS on the proposed regulations

under Section 199A. SIFMA requested that the IRS limit the definition of “investing and investment management” (which is a “specified services trade or business” under Section 199A and as such is not eligible for the pass-through deduction) to “investment management and investment advisory business” attributable to the performance of personal services, so as to exclude diversified asset managers, which SIFMA alleges are distinct from the services Section 199A aims to exclude. In the alternative, SIFMA requests that a safe harbor be created for the diversified asset managers.

### U.S. Chamber of Commerce Requests Guidance on Section 199A Regulations

The United States Chamber of Commerce provided comments ([https://www.uschamber.com/sites/default/files/chamber\\_comments\\_passthroughdeductionstable\\_irs\\_final.pdf](https://www.uschamber.com/sites/default/files/chamber_comments_passthroughdeductionstable_irs_final.pdf)) to the IRS on the proposed regulations under Section 199A. The Chamber requests guidance (and provided some solutions) on a variety of issues, including the definition of “tiered entities” and other defined terms, status of passive investors, and aggregation of qualified interests.

### AICPA Requests Guidance on Section 199A Regulations

The American Institute of Certified Public Accountants (AICPA) provided comments (<https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20181001-aicpa-reg-107892-18-199a-qbi-deduction-comment-letter.pdf>) to the IRS on the proposed regulations under Section 199A. The AICPA requests guidance on, among other items, the qualification of rental real estate as a trade or business and clarification on qualified business income and the aggregation rules.

### Massachusetts DOR Issues Guidance on Treatment of Repatriated Income

The Massachusetts Department of Revenue has issued a Technical Information Release (<https://www.mass.gov/technical-information-release/tir-18-11-treatment-of-deemed-repatriated-income-under-general-laws>) (TIR) that provides that deemed repatriated income under Section 965, as amended by the TCJA, is treated as dividend income for purposes of Massachusetts corporate excise tax purposes. The deemed repatriated income is included in net income for business corporations and is eligible for the 95 percent deduction for dividends received. The TIR indicates that the deduction for pre-2018 accumulated deferred foreign income under Section 965(c) is not allowed for Massachusetts purposes.

The New Jersey governor signed legislation ([https://www.nj.com/politics/index.ssf/2018/10/murphy\\_signs\\_law\\_requiring\\_online\\_sellers\\_marketpl.html](https://www.nj.com/politics/index.ssf/2018/10/murphy_signs_law_requiring_online_sellers_marketpl.html)) that will require online remote sellers to collect and remit New Jersey sales taxes once they have hit certain income and sales thresholds. The legislation is in response to the Supreme Court’s ruling in *Wayfair v. South Dakota* and generally mimics the South Dakota law that was at issue in that case. (See our prior coverage here (<https://www.stradley.com/insights/publications/2018/06/tax-insights-june-27-2018>)). However, the New Jersey law requires certain “marketplace facilitators” (e.g., eBay and Amazon) to collect and remit sales tax regardless of the thresholds set for other remote sellers.

### New Jersey Enacts Remote Seller Legislation

The New Jersey governor signed legislation ([https://www.nj.com/politics/index.ssf/2018/10/murphy\\_signs\\_law\\_requiring\\_online\\_sellers\\_marketpl.html](https://www.nj.com/politics/index.ssf/2018/10/murphy_signs_law_requiring_online_sellers_marketpl.html)) that will require online remote sellers to collect and remit New Jersey sales taxes once they have hit certain income and sales thresholds. The legislation is in response to the Supreme Court’s ruling in *Wayfair v. South Dakota* and generally mimics the South Dakota law that was at issue in that case. (See our prior coverage here (<https://www.stradley.com/insights/publications/2018/06/tax-insights-june-27-2018>)). However, the New Jersey law requires certain “marketplace facilitators” (e.g., eBay and Amazon) to collect and remit sales tax regardless of the thresholds set for other remote sellers.



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