



What's News in Tax

Analysis that matters from Washington National Tax

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Year-End Updates and Tax Planning for Partnerships

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As the year winds down, it's the perfect time for taxpayers to reflect on 2025 developments and plan ahead. Think of this guide as your go-to resource for timely insights and practical guidance for the year-end compliance season. KPMG professionals summarize significant statutory, regulatory, and administrative developments from the past year, providing a foundation for informed conversations. More importantly, they highlight key issues and tax planning strategies relevant to partnership taxpayers, helping to deliver proactive solutions.

I. Year-End Reviews Are Essential

The time leading up to the end of the year is ideal for reviewing partnership activities and engagements. Such reviews help identify planning opportunities, reassess the scope and complexity of tax and information return filing obligations, and provide context for evaluating the impact of recent legislative and regulatory changes. Revisiting recent activities also helps anticipate how new laws may affect taxpayers going forward. In some cases, action must be taken before the end of the tax year to avoid negative consequences. The insights in this article may help to guide partnerships and partners and ensure timely decision making.

II. Statutory Changes

On July 4, 2025, the President signed the One Big Beautiful Bill Act (OBBBA) into law, enacting significant changes to business tax provisions affecting passthrough entities. A summary of the provisions is discussed below. A detailed discussion is provided in a KPMG report: [Passthroughs Tax Provisions in "One Big Beautiful Bill Act"](#) (June 29, 2025).

Key OBBBA Business Provisions¹

- **Passthrough Business Deduction (Section 199A):** Permanently extends the 20% deduction for qualified business income, providing long-term certainty for noncorporate taxpayers.
- **Interest Expense Deduction (Section 163(j)):** Permanently reinstates the addback to adjusted taxable income (ATI) for depreciation, amortization and depletion (DD&A), increasing allowable interest deductions and increasing the phase-in limits from \$50,000 to \$75,000 (\$100,000 to \$150,000 for joint filers).
- **Bonus Depreciation Rate (Section 168(k)):** Permanently increases the rate to 100%, allowing the immediate expensing of eligible property.
- **Real Property Depreciation Deduction (Section 168(n)):** Adds a 100% first-year deduction for eligible real property used in a production activity.
- **Expensing of R&D Costs (Section 174):** Reinstates and makes permanent the immediate expensing of R&D costs. Also provides certain options with respect to previously capitalized costs.
- **Expenses for the Production of Income (Section 212):** Reinstated the deductibility of section 212 expenses allowing individuals to claim these miscellaneous itemized deductions starting in 2026.
- **Excess Business Loss Limitation (Section 461(l)):** Permanently extends the excess business loss limitation, with losses carried forward as net operating losses under updated inflation adjustment rules. Slightly modified the overall section 461(l) calculation by updating the timing for the inflation adjustment provisions to apply to the annual threshold amount.
- **Disguised Sale of Partnership Interests and Payments for Services (Section 707(a)(2)):** Makes clear that regulations are not necessary to implement the “disguised sale” rules for partnership interests transferred or services performed after the date of the enactment, July 4, 2025.
- **State and Local Tax Deduction (SALT) Cap (Section 164(b)(6)):** Temporarily increases the cap from \$10,000 to \$40,000 (through 2029), with a phasedown thereafter. Importantly, there were no significant changes to the treatment of passthrough entity taxes (PTET Regimes)
- **Qualified Small Business Stock (Section 1202):** Includes a partial exclusion of gain for shares held at least three years (50%) and four years (75%), increases the issuer limitation on eligible gain, and increases the aggregate gross asset threshold.
- **REIT Subsidiary Asset Test (Section 856):** Increased the limitation of the percentage of a REIT's total assets that may be represented by securities of one or more taxable REIT subsidiaries from 20% to 25%.
- **Qualified Opportunity Zones (Section 1400Z):** Renews the QOZ program for 2027 through 2033 and provides certain enhancements to the program for low-income communities designated as QOZs that comprise entirely rural areas.
- **Qualifying Income of Publicly Traded Partnerships (Section 7704):** Expands the definition of qualifying income to include income and gains from the production of certain nuclear and geothermal energy.
- **IRA Energy Tax Credits (Section 25C and 25D):** Repealed or phased out.

¹ Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the “Code”) or the applicable regulations promulgated pursuant to the Code (the “regulations”).

III. Regulatory Guidance

Recent regulatory guidance continues to shape the tax landscape, affecting both compliance requirements and planning opportunities. Understanding these developments is essential for tax professionals and taxpayers as they navigate an increasingly complex regulatory environment.

Partnership Attribution Rules for Parent-Subsidiary Groups Expanded by New Section 52(b) Final Regulations

Treasury and the IRS issued new final regulations under section 52(b), effective for tax years beginning on or after January 1, 2025. Historically, the section 52(b) regulations, which provide rules for determining groups of trades or businesses under common control, included limited attribution rules for determining parent-subsidiary groups. The new regulations expand these attribution rules by incorporating the constructive ownership rules of section 414, including the rule in section 1.414(c)-4(b)(2) of the regulations. The revised rules generally require proportionate attribution from partnerships to partners owning five percent or more of partnership profits or capital. This change has the potential to expand the membership of taxpayers' section 52(b) parent-subsidiary groups to include trades or businesses owned indirectly through non-trade or business entities. Such non-trade or business attribution was previously unclear.

Importantly, numerous Code provisions require a taxpayer to determine its section 52(b) group, including but not limited to:

- The gross receipts test under section 448(c)
- The small business exceptions to section 263A and section 163(j)
- The calculation of "domestic production gross receipts" under section 199A
- The imposition of section 453A interest on installment sale deferred tax liabilities
- The qualification of borrowed amounts considered "at risk" under section 465
- The corporate alternative minimum tax (CAMT) scoping rules for determining "applicable corporation" status under section 59(k)

Careful consideration should be given to the new regulations in making section 52(b) group determinations for tax years beginning on or after January 1, 2025, and taxpayers should re-run their section 52(b) analyses to determine any membership changes under the new rules.

Further information can be found in KPMG report: [Observations on Amendments to Section 52 Regulations](#) (January 8, 2024).

Related Party Basis Shifting Transactions of Interest (TOI)

In January 2025, Treasury and the IRS released final regulations requiring reporting of partnership transactions that have the effect of shifting basis in a manner perceived by the government as abusive. The regulations were extremely broad, requiring both taxpayers and material advisors to report transactions of interest going forward and looking back to the prior six years.

In April 2025, the IRS released Notice 2025-23 announcing that it intends to publish a notice of proposed rulemaking (NPRM) proposing to remove the basis shifting transactions of interest (TOI) regulations. The notice provides immediate relief from penalties for participants in TOI and for material advisors.

Further information can be found in the following:

- [Certain Partnership Related-Party Basis Adjustment Transactions as Transactions of Interest](#), TD 10028 (January 14, 2025)
- [Partnership Related Party Basis Adjustment Transactions of Interest—The Rules](#) (February 26, 2025)
- [Notice 2025-23: Intent to propose removal of partnership basis shifting transactions of interest \(TOI\) regulations and withdrawing Notice 2024-54](#) (April 17, 2025)

FIRPTA Proposed Withdrawal of Look-through Rules

On April 24, 2024, Treasury and the IRS issued final regulations under the Foreign Investment in Real Property Tax Act (FIRPTA) that looked through certain domestic corporations if they have more than fifty percent foreign ownership. Under those regulations, a REIT is required to look through certain taxable domestic corporations to determine whether the corporation is “domestically controlled.”

On October 21, 2025, Treasury published proposed regulations under FIRPTA that would repeal the “look-through” rule in the final regulations. Although the proposed regulations will not become effective until finalized, taxpayers are expressly permitted to rely on them for transactions occurring on or after April 25, 2024, the date the existing look-through rule was finalized. [Proposed regulations: Removal of domestic corporation look-through rule in applying exception for domestically controlled qualified investment entities under section 897\(h\)](#) (October 20, 2025).

Proposed Regulations Modify Information Reporting Requirements for Sales or Exchanges of Certain Partnerships Interests

Treasury and the IRS issued [proposed regulations](#) that would modify information reporting obligations with respect to sales or exchanges of certain interests in partnerships owning inventory or unrealized receivables to which section 751(a) (the “hot asset” rule) applies. The changes are intended to address administrative challenges raised by partnerships and practitioners following recent revisions to Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests*.

The proposed regulations would remove section 1.6050K-1(c)(2) to eliminate the requirement that partnerships furnish the information required in Part IV of the Form 8308 by January 31 of the year following the calendar year in which the section 751(a) exchange occurred. The proposed regulations would also modify section 1.6050K-1(c)(1) by removing the reference to a “completed copy of Form 8308” and replacing it with a reference to “a copy of Form 8308 filled out in accordance with the instructions to the form.” Practically, this means that by the section 6050K due date, partnerships will only be required to furnish Parts I, II, and III of Form 8308 (i.e., names, addresses, taxpayer IDs, and certain transaction details). The instructions to the form will also be modified.

The proposed regulations are generally proposed to apply to tax years beginning on or after the date final rules are published in the *Federal Register*. However, a partnership may rely on the proposed regulations and the description of the anticipated changes to the instructions to Form 8308, with respect to section 751(a) exchanges occurring on or after January 1, 2025, and before the date these regulations are published as final regulations.

Further information can be found in the following KPMG report: [Proposed regulations: Information reporting for sales or exchanges to which section 751\(a\) applies](#) (August 18, 2025).

IV. Reporting changes

As we approach the year-end compliance season, it is important for tax professionals and taxpayers to be aware of recent changes to tax forms. Staying informed about these updates can help ensure accurate filings and streamline the compliance process.

Form 1065 Schedule K-2 and K-3 Update

New Domestic Filing Exception. Partnerships with no foreign activities, no foreign partners, and no foreign assets may qualify for an exception from filing Schedules K-2 and K-3. However, if a partner requests schedule K-3 for international tax information, the partnership must provide it, even if the exception applies.

Form 5471, Information Return of a U.S. Person with Respect to Certain Foreign Corporations

New separate Schedule H-1 is required to report a CFC's adjusted net income or loss for corporate alternative minimum tax (CAMT) purposes.

Form 8979 – Partnership Representative Designation or Resignation

- New one page form released in September of 2025 that must be used going forward.
- Used by partnerships to designate a partnership representative (PR) and to appoint a designated individual (DI) and by the PR and DI to resign. (No other uses.)
- Filing of new designation form automatically revokes prior designation.

V. Planning Considerations

This section will delve into a series of advanced tax planning considerations, addressing nuanced topics such as the creative structuring of partnership profits interests, planning for the corporate alternative minimum tax (CAMT), navigating the complexities of section 163(j), and optimizing outcomes for qualified small business stock (QSBS), among other critical areas. Please contact the appropriate KPMG professionals listed below.

Deduction Limitations and Issuance of Profits Interests

As a result of OBBBA, there are limitations that may be imposed on the ability of a taxpayer to deduct certain costs. For instance, management fees paid by a fund will continue to be potentially nondeductible as a miscellaneous itemized deduction by an individual taxpayer under section 67. Similarly, compensation expense may be nondeductible under section 162(m) by a member of the affiliated group of a public corporate taxpayer. Consideration should be given as to whether alternative business arrangements—such as the grant of a profits interest in exchange for services—would be appropriate. It is important to note that although the use of a profits interest may be more tax efficient, it necessarily carries with it a greater economic risk and potential complexity.

Management Fees

Investment funds formed as partnerships typically pay various types of fees or compensation, such as management fees, guaranteed payments, wages, and other compensation to service providers and employees. Recent changes limiting deductibility of certain expenses and compensation potentially may negatively affect certain investors because of the inability to deduct such fees and expenses.

Section 67(g) of the Tax Cuts and Jobs Act of 2017 (TCJA) suspended the ability of individuals, estates, and trusts to deduct any miscellaneous itemized deductions for any tax year beginning after December 31, 2017, and

before January 1, 2026. Included as a miscellaneous itemized deduction under section 67 are certain section 212 portfolio deductions, including management fee expenses of certain funds. OBBBA made this provision permanent such that section 212 expenses are permanently disallowed for individuals and trusts.

Compensation Expense

Recent tax law changes relating to the deductibility of compensation should be considered by partnerships owned by public corporations, such as Up-Cs and Up-REITs. Section 162(m) generally disallows a public corporation from taking a tax deduction for compensation paid to "covered employees" that exceeds \$1 million per executive in a given year. Currently, any corporation in an affiliated group with the public corporation (disregarding the prohibitions on foreign corporations and S corporations) can be subject to the limitation in proportion to the portion of the overall compensation provided by that corporation to that covered employee for the year. Although partnership deduction allocations to the public corporation or related corporation may be subject to the corporation's deduction limitation, the partnership is not subject to the deduction limitation.

Beginning in 2026, any corporation or partnership within the same section 414(b), (c) or (m) group with the public corporation can be subject to the deduction limitation. Generally, sections 414(b) and (c) involve 80% common ownership standards (after applying attribution rules) including partnerships, and section 414(m) serves as an anti-abuse rule to aggregate entities in certain situations where management services or other service are provided by one entity to the other. This now means that the \$1 million compensation deduction limitation may apply to a partnership to the extent the partnership is compensating a covered employee. Currently the covered employees include the CEO, CFO and highest three compensated SEC officers of the public corporation. Beginning in 2027, an additional five employees are added to the covered employees list based on their compensation, whether or not they are SEC officers of the public corporation. This change means that compensation paid to employees such as traders or athletes who are highly paid or may have large pay spikes such as significant bonuses or commissions, but are not SEC officers, may now be subject to the deduction limitation under section 162(m).

How Profits Interests May Help

Partnerships with partners for whom deductions for fees and compensation would be treated as nondeductible section 212 expenses, and partnerships that would be subject to the section 162(m) limitation on deductibility of compensation, may wish to consider granting profits interests to service providers when planning compensation arrangements. A profits interest in a partnership allows the recipient to share in future profits of the partnership. Under certain IRS safe harbors, if the safe harbors' requirements are met, the grant of a profits interest to a service provider is not taxable to the service provider upon issuance, and there is no deduction to the service recipient to be limited.

Profits interests may be structured in many different ways to achieve a desired economic arrangement for a service provider. However, the interest must be respected as a partnership interest for U.S. federal income tax based on the facts and circumstances, and the ability to share profits must be subject to entrepreneurial risk. The above are just two examples of situations resulting from OBBBA where consideration should be given to the use of profits interest. However, such arrangements require careful consideration and implementation from a business, tax, and legal perspective.

SECA Planning

Under IRS authorities, a partner of a partnership cannot also be an employee of the same partnership. Accordingly, under these authorities, a partner of a partnership cannot receive W-2 wages for services provided to that partnership and instead should receive guaranteed payments for services from the partnership that are subject to self-employment tax. Partnerships may wish to undertake consideration of optimal compensation structuring, taking into account a service provider's desire to maintain W-2s and to manage imposition of self-employment tax. For example, partnerships may wish to consider introducing into the structure a separate

partnership in which service providers may hold a partnership interest while continuing to be employed by, and continuing to receive W-2 wages from, the operating partnership.

The self-employment tax rules under section 1402(a)(13) exclude from net earnings from self-employment “the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments under section 707(c) to that partner for services actually rendered to or for the benefit of the partnership...” (the “Limited Partner Exception”). The Tax Court has rejected the position that state law limited partners in limited partnerships are automatically eligible for the Limited Partner Exception, instead finding that a functional analysis should determine, based on facts and circumstances whether the partners were “generally akin” to passive investors. These cases are currently pending appeals in the Second Circuit and Fifth Circuit Courts of Appeals. Accordingly, further developments are anticipated in the coming months on these appeals, which may affect the analysis of whether the Limited Partner Exception applies to exclude a limited partner’s distributive share from net earnings from self-employment.

Additional SECA information can be found by listening to a replay of this podcast: [The Soroban Case: SECA and the Limited Partner Exception](#) (December 18, 2023).

For further information please contact [Ossie Borosh](#) or another WNT Passthroughs professional.

Section 163(j) and Partnerships—Depreciation, Depletion, and Amortization Addback to Adjusted Taxable Income for Purposes of Section 163(j)

Section 163(j) limits a taxpayer’s annual deduction for business interest expense (BIE) to the sum of the taxpayer’s business interest income (BII), 30% of its adjusted taxable income (ATI), and “floor plan financing interest.” Since 2022, ATI has been defined to include taxable income without regard to (1) items not allocable to a trade or business, (2) BIE or BII, (3) section 172 NOL deductions, and (4) section 199A deductions. OBBA added to this list of disregarded items for ATI calculations, deduction for depreciation, depletion, and amortization (DD&A) starting in 2025. This serves as a permanent reinstatement of the DD&A “addback” to ATI that had previously been permitted prior to 2022.

In this way, ATI now permanently resembles that of an EBITDA measurement, and this increases the limit on the deductibility of business interest expense by allowing for a larger ATI determination and therefore higher BIE limit. This change will be particularly beneficial for capital-intensive businesses with large DD&A amounts and may reduce the negative tax effects of debt-financing capital investments. A larger amount of business interest deductions may also reduce future amounts of disallowed interest carryforward deferred tax assets (which may necessitate redetermining or releasing certain valuation allowances for existing deferred tax assets). Also, businesses weighing the benefits/burdens of making a real property trade or business election, should adjust their section 163(j) modeling to take into account the DD&A addback.

Section 163(j) “Blocker Partnerships”

A taxpayer’s section 163(j) limitation increases as its ATI increases. Moreover, as mentioned above, pursuant to the recent OBBA legislation, ATI now resembles an EBITDA measurement. In calculating a taxpayer’s ATI, its losses or deductions will generally be taken into account to reduce its ATI. With respect to partnerships, section 163(j) is applied at the partnership level, and a partner’s own section 163(j) limitation disregards the partner’s allocation of partnership items other than ETI and EBII. This “entity approach” to partnerships can potentially be used for planning purposes to help increase a taxpayer’s ATI limitation under certain circumstances by placing loss producing assets into their own partnership. In such a scenario the losses would be “trapped” within such partnership and would not “drag down” the ATI of the partner resulting in increased section 163(j) limitation at the partner level. Certain anti-abuse rules should be considered for any section 163(j) structural planning

There are several other ideas related to section 163(j) planning that may be relevant depending on the taxpayer’s situation. For further information please contact [Charles Kaufman](#) or another WNT Passthroughs professional.

Tax Treatment Changes for Domestic R&E Costs

OBBBA added section 174A which changes the federal income tax treatment of domestic research and experimental (R&E) costs, including costs to develop computer software. Under the TCJA, section 174 required taxpayers to capitalize domestic R&E costs and to amortize the costs over a five-year period. Under section 174A, domestic R&E costs incurred in tax years beginning after December 31, 2024, may be immediately deducted or, at the taxpayer's election, capitalized and amortized either (i) over a period of at least 60 months under new section 174A(c), or (ii) over ten years under section 59(e).

Taxpayers are also permitted to elect to recover the remaining unamortized balance of domestic R&E costs from the TCJA years (costs incurred in tax years beginning after 2021 and before 2025) and take the costs into account as additional amortization all in 2025 (or 50% in 2025 and 50% in 2026). Alternatively, Taxpayers can continue to amortize them over the remaining period. These options provide taxpayers with the flexibility needed to determine when it is most beneficial to recover domestic R&E costs given potential collateral impacts of accelerating large deductions on the section 163(j) business interest deduction limitation, BEAT, CAMT and FDEII. Costs incurred for foreign research remain subject to mandatory capitalization and 15-year amortization.

As discussed above, OBBBA also permanently reinstated depreciation, amortization and depletion as an “add back” to adjusted taxable income (ATI) in determining the business interest expense limitation under section 163(j) for tax years beginning after 2024, which likely results in an increase in section 163(j) capacity. This is favorable not only for taxpayers that are capital intensive, but also more broadly for taxpayers who may elect to recover unamortized domestic R&E costs because the additional amortization is amortization for purposes of the ATI add back. Taxpayers may also want to consider electing to capitalize and amortize domestic R&E costs to increase the amount of amortization included in the add back. Taxpayers can also take a closer look at the basis of self-constructed or acquired assets to explore whether there are additional costs that could be capitalized and result in additional depreciation. For tax years beginning after 2025, the ATI calculation will be adversely impacted for multinationals because ATI will exclude foreign income under sections 951(a), 951A, and 78 (and a portion of deductions under sections 245A(a) and 250(a)(1)(B)) which could result in a decrease in section 163(j) capacity. Impacted taxpayers may want to consider accounting methods to accelerate subpart F and tested income into 2025. Also, beginning in 2026, interest that is capitalized (and thus not subject to the limitation) will be limited to interest that is required to be capitalized under section 263A(f) and section 263(g). However, taxpayers may continue to consider elective interest capitalization planning under section 263(a) or section 266 (for example, to capitalize interest to inventory) for the 2025 tax year.

OBBBA also reinstates 100% bonus depreciation under section 168(k) for qualifying property acquired and placed in service after January 19, 2025. Property is treated as acquired no later than the date on which a written binding contract is entered into for such acquisition. Taxpayers may want to consider taking a careful look at 2025 placed in service dates and/or whether acquired property is subject to a written binding contract to determine whether bonus applies. Taxpayers are also given the option to elect to apply a 40% bonus depreciation rate (60% for certain aircraft and long production period property) for property placed in service in the first tax year ending after January 19, 2025. This provides flexibility to continue to use the bonus depreciation rate for 2025 that had applied under TCJA. Taxpayers are also able to elect out of claiming bonus depreciation for a class or classes of qualifying property to the extent that accelerated deductions are not needed.

For further information please contact [Colleen O'Connor](#) or another WNT Methods professional.

Corporate Alternative Minimum Tax (CAMT)

In 2025, the IRS has released four notices, Notice 2025-27, Notice 2025-28, Notice 2025-46 and Notice 2025-49 (the “Notices”), providing additional interim guidance related to the corporate alternative minimum tax (CAMT), which generally imposes a 15% minimum tax on the adjusted financial statement income (AFSI) of certain large corporations (“applicable corporations”). This guidance follows last year's release of a complex set of CAMT

proposed regulations (the “Proposed Regulations”), which Treasury now intends to withdraw and replace in part with revised proposed regulations containing rules similar to those in the Notices.

The new Notices are generally intended to provide flexibility and reduce compliance burdens to taxpayers. They also present a host of planning opportunities, most directly through new elections and adjustments that can reduce AFSI inclusion amounts (including from a distributive share of partnership AFSI). However, taxpayers and advisors should carefully study the Notices before adopting any of their provisions, as the provisions are not universally favorable and many contain complex rules, eligibility requirements, and binding elections that should be weighed against the potential benefits. Certain elections under the Notices require an accompanying statement attached to the taxpayer’s return, so for the upcoming filing season, taxpayers and advisors making any Notice elections should confirm whether any such statement is required (and ensure the most up-to-date Form 4626 is used).

Notice 2025-27 – Interim Scope Safe Harbor

- Notice 2025-27 provides an additional interim scope safe harbor for determining whether a taxpayer is an applicable corporation subject to CAMT.
- This scope safe harbor uses an \$800 million average annual AFSI threshold for U.S.-parented taxpayers (and \$800 million and \$80 million thresholds for foreign-parented taxpayers), and incorporates certain favorable AFSI adjustments (e.g., for certain energy tax credits) and rules for tax-exempt entities.

Notice 2025-28 – New Elections for AFSI Inclusions from Partnerships

- Notice 2025-28 generally permits applicable corporations to determine amounts of AFSI from a partnership investment using a new “Top-Down Election” and, in certain cases, a new “Taxable Income Election.”
- Both elections may result in a smaller AFSI inclusion amount. However, this is not always the case, and taxpayers should note both elections will likely still require certain complex calculations and are generally binding in future years once made.
- The Notice also provides certain generally favorable but complex rules regarding contributions to, and distributions from, a partnership. Taxpayers who engage in partnership joint ventures, particularly M&A transactions, should carefully study these rules because they present a host of potential planning opportunities.

Notice 2025-46 – Corporate Guidance

- Notice 2025-46 provides generally favorable guidance for existing AFSI adjustments related to domestic corporate transactions and stock ownership, financially troubled companies, and tax-consolidated groups with life insurance companies.

Notices 2025-49 – New Favorable AFSI Adjustments

- Notice 2025-49 provides new optional AFSI adjustments, including adjustments for certain mark-to-market amounts, adjustments for certain depreciation deductions embedded in certain regular tax NOL carryovers, and adjustments for section 197 amortization attributable to certain tax goodwill.
- The Notice also provides industry-specific rules, including for nonlife insurance companies and regulated utilities.
- The Notice provides taxpayers significant flexibility in relying upon CAMT guidance issued since September 2024. For tax years beginning before the date that final CAMT regulations are published, a taxpayer generally may rely on any section of the Proposed Regulations (as originally published) without applying any other section of the Proposed Regulations (except to the extent required by or incorporated into the applicable subsequent Notice section), provided the taxpayer consistently follows that section (and that section only) in its entirety. Taxpayers have similar flexibility in applying individual Notice provisions.

For further information please contact [Seevun Dunckzar](#), [Andrew Palmer](#), [Jessica Theilken](#), or [Monisha Santamaria](#).

Additional CAMT information can be found at:

- [New Notices Make CAMT Regime More Favorable But More Complex](#), *Bloomberg Tax Insight* (October 7, 2025)
- [CAMTyland Adventures, Part VII: Will the OBBBA Crack Snow Flake Lake?](#), *Tax Notes Federal* (September 15, 2025)
- [CAMTyland Adventures, Part VI: Notice 2025-28 - A Rainbow of Choices but Few Gumdrops](#), *Tax Notes Federal* (September 1, 2025)
- [CAMTyland Adventures, Part V, Coping with CAMTyland Grief](#), *Tax Notes Federal* (September 16, 2024)
- [CAMT Update: Impacts of the One Big Beautiful Bill Act and Recent Guidance](#), KPMG TaxWatch webcast (August 28, 2025)
- [New CAMT Notice: Reasons Taxpayers Are Breathing a Sigh of Relief](#), *Tax Management Memorandum* (June 4, 2025)
- [KPMG report: Additional CAMT interim guidance and favorable early reliance rules](#) (October 2, 2024)

Generating Passive Activity Income Through Partnership Investment in a Crypto Trade or Business

As the cryptocurrency industry matures, more individual taxpayers are exploring investment opportunities in partnerships that operate crypto-related trades or businesses. These partnerships may engage in activities such as trading, mining, staking, or lending digital assets. Understanding how income from these investments is classified for tax purposes is essential, including when considering the passive activity loss rules under section 469 and related recharacterization provisions.

Passive activity income generally arises from two sources: rental activities and businesses in which the taxpayer does not materially participate. Material participation is defined by the IRS through several tests, but, in essence, if a taxpayer does not regularly and substantially participate in the operations of the business, their share of the income is considered passive.

A partnership engaged in a crypto trade or business might include activities such as cryptocurrency mining, trading, staking, or providing blockchain-related services. When an individual invests as a limited partner or as a member with limited involvement, his or her share of the partnership's ordinary trade or business income is typically classified as passive, provided the partner does not materially participate in the day-to-day operations of the activity (or does not group with an activity which would cause material participation for the group). However, interest, dividends, and capital gains are generally recharacterized as portfolio income, not passive activity income.

For individual taxpayers seeking to generate passive activity income, investing in a partnership engaged in a crypto trade or business can be a viable strategy. Income from mining or direct staking is typically considered business income. If the taxpayer does not materially participate in such activity, this income is generally considered passive. However, it is important to note that not all ordinary income generated by a partnership is treated as passive, even if the investor's participation is limited. Several recharacterization rules exist to prevent taxpayers from offsetting passive losses with income that is not truly passive. For example, under temporary regulation section 1.469-2T(f)(4), certain interest income from lending activities financed with the partnership's own capital may be recharacterized as non-passive (i.e., the income is treated in a similar manner as portfolio income in that such income is not eligible to release suspended passive losses).

Investing in a partnership engaged in crypto trades or businesses can be a compelling way to generate passive activity income. However, due to the IRS's recharacterization rules (especially those affecting portfolio income and equity-financed lending) taxpayers must carefully analyze the nature of the partnership's income. Only income that is truly passive (and not portfolio or otherwise recharacterized as non-passive) can be used to offset passive losses, so understanding these distinctions is critical for effective tax planning.

For further information please contact [Rob Keller](#) or another WNT Passthroughs professional.

Full Expensing and Bonus Depreciation: Lowering Barriers to QSBS Qualification

Previously, the \$50 million gross assets test was a limiting factor for many high-growth startups and capital-intensive businesses. The new full expensing rules for R&E, along with bonus depreciation, allow businesses to immediately deduct qualifying expenditures rather than capitalizing them. This accelerates deductions and reduces the reported asset base for tax purposes, potentially keeping a company's aggregate gross assets below the new \$75 million threshold at the critical moment of stock issuance. As a result, businesses that might have previously exceeded the threshold due to capitalized R&E costs or depreciable assets may now qualify as a QSB, opening the door to QSBS benefits for founders and investors.

Higher Gross Assets Test: More Stock, More Opportunity

The increase of the aggregate gross assets test to \$75 million has a dual impact. First, businesses that were previously ineligible due to asset growth between \$50 million and \$75 million can now issue QSBS and offer the associated tax benefits to shareholders. Second, for companies that issued stock when under the \$50 million threshold, the higher limit means additional stock can potentially be issued as long as the company remains under \$75 million in assets, further expanding the opportunity for tax-free gain on future appreciation. This is particularly relevant for later-stage startups and scale-ups that are raising larger rounds and issuing more equity.

Stacking and Packing Strategies: Supercharged Exclusions

The "stacking" and "packing" strategies for QSBS have become even more powerful under the new rules. With the 10 times basis exclusion rule, under the "packing" strategy, taxpayers may exclude up to \$750 million of gain from federal tax—a 50% increase from the prior \$500 million cap under this strategy. Similarly, the per-issuer, per-taxpayer exclusion has increased from \$10 million to \$15 million, making family and trust-based "stacking" strategies even more attractive. Taxpayers should revisit their estate tax planning and consider whether additional trusts, family members, or other entities can be leveraged to maximize the QSBS exclusion under the new thresholds.

For further information please contact [Sabrina Stimel](#) or another WNT Passthroughs professional.

Carried Interest

Congress enacted section 1061 as part of the TCJA addressing the taxation of carried interests. As a general matter, section 1061 requires a three-year holding period for certain capital gain recognized with respect to "applicable partnership interests" ("APIs") to be treated as long-term capital gain. Certain capital gain or loss from the sale of an asset not meeting the three-year holding period is recharacterized from long-term to short-term resulting in a higher effective tax rate on such items. Applicable partnership interests generally include what is commonly referred to as the carried interest (i.e., the profit share distributable to fund sponsors) although income allocated to interests other than carried interests may also be captured by this rule. Section 1061 provides several exceptions to the definition of an applicable partnership interest and the related three-year holding period requirement, including an exception for interests that are commensurate with contributed capital. Additionally, certain items of income are simply not subject to recharacterization including section 1256 gain and loss, section 1231 gain and loss, and qualified dividend income. Notably, the OBBBA did not make any changes to section 1061 or the general tax treatment of carried interests.

Taxpayers considering transactions should consider the impact of section 1061, including:

- **Contributions: consider holding period implications of any follow-on investments.** Additional contributions to a company (e.g., to fund operations or to finance a follow-on investment) can result in a split holding period in the interests of the company. Importantly, these split holding period rules can differ depending on the tax characterization of the investment (e.g., whether the investment is treated as a corporation or a partnership for tax purposes) and how the additional funding is structured (e.g., whether the additional funding is structured as debt, preferred equity, or common equity). Given the potential for recharacterization under section 1061 and the importance of a taxpayer's holding period under these rules, taxpayers should consider the possible impacts any additional funding could have on the holding period in the company.
- **Sales: analyze the most efficient transaction structure.** The tax character of the gain or loss on exit is generally controlled by reference to the asset being sold for tax purposes. As a result, structuring an exit so that it is treated as a sale of operating assets that could give rise to section 1231 gain could lead to a significantly different tax result than a sale of the equity interests of the entity that generates capital gain that could be subject to recharacterization if the seller has a less than three year holding period in such interests. It is also important to note, however, that commercial considerations can sometimes limit flexibility in structuring the exit and that the tax characterization of a transaction can vary from the legal characterization.
- **Ongoing maintenance: ensure capital interests that qualify as commensurate with contributed capital qualify for capital interest gain and loss allocations.** Treasury regulations do not define what an interest is that was issued as "commensurate with capital." Instead, they prescribe a detailed "capital interest gain or loss" allocation regime which generally excepts the returns on a sponsor's invested capital in a fund from recharacterization under section 1061. The regulations provide that these gains retain this character through an upper-tier partnership (such as the general partner entity, for example) only if the allocations of those gains are made pro-rata to the partner's relative contributions for such interest. It is important, therefore, to be diligent about the timeliness of each upper-tier partner in making their contributions when calls are issued. Avoid having one key partner fund those calls because, for instance, the other partners' call is relatively minor. In addition, if partners oversubscribe, be sure to keep accounting that indicates the overfunded amount was not used to fund the capital interest investment. Finally, the regulations require clear identification of capital interest allocations in the partnership agreement and books and records of the partnership. A little housekeeping may go a long way to protecting each partner's capital interest allocations.

For further information please contact [Matt Busta](#) or another WNT passthroughs professional.

Tax Treatment Changes for Domestic R&E Costs

OBBA added section 174A which changes the federal income tax treatment of domestic research and experimental (R&E) costs, including costs to develop computer software. Under the TCJA, section 174 required taxpayers to capitalize domestic R&E costs and to amortize the costs over a five-year period. Under section 174A, domestic R&E costs incurred in tax years beginning after December 31, 2024, may be immediately deducted or, at the taxpayer's election, capitalized and amortized either (i) over a period of at least 60 months under new section 174A(c), or (ii) over ten years under section 59(e).

Taxpayers are also permitted to elect to recover the remaining unamortized balance of domestic R&E costs from the TCJA years (costs incurred in tax years beginning after 2021 and before 2025) and take the costs into account as additional amortization all in 2025 (or 50% in 2025 and 50% in 2026). Alternatively, Taxpayers can continue to amortize them over the remaining period. These options provide taxpayers with the flexibility needed to determine when it is most beneficial to recover domestic R&E costs given potential collateral impacts of accelerating large deductions on the section 163(j) business interest deduction limitation, BEAT, CAMT and FDEII. Costs incurred for foreign research remain subject to mandatory capitalization and 15-year amortization.

As discussed above, OBBBA also permanently reinstated depreciation, amortization and depletion as an “add back” to adjusted taxable income (ATI) in determining the business interest expense limitation under section 163(j) for tax years beginning after 2024, which likely results in an increase in section 163(j) capacity. This is favorable not only for taxpayers that are capital intensive, but also more broadly for taxpayers who may elect to recover unamortized domestic R&E costs because the additional amortization is amortization for purposes of the ATI add back. Taxpayers may also want to consider electing to capitalize and amortize domestic R&E costs to increase the amount of amortization included in the add back. Taxpayers can also take a closer look at the basis of self-constructed or acquired assets to explore whether there are additional costs that could be capitalized and result in additional depreciation. For tax years beginning after 2025, the ATI calculation will be adversely impacted for multinationals because ATI will exclude foreign income under sections 951(a), 951A, and 78 (and a portion of deductions under sections 245A(a) and 250(a)(1)(B)) which could result in a decrease in section 163(j) capacity. Impacted taxpayers may want to consider accounting methods to accelerate subpart F and tested income into 2025. Also, beginning in 2026, interest that capitalized (and thus not subject to the limitation) will be limited to interest that is required to be capitalized under section 263A(f) and section 263(g). However, taxpayers may continue to consider elective interest capitalization planning under section 263(a) or section 266 (for example, to capitalize interest to inventory) yet for the 2025 tax year.

OBBBA also reinstates 100% bonus depreciation under section 168(k) for qualifying property acquired and placed in service after January 19, 2025. Property is treated as acquired no later than the date on which a written binding contract is entered into for such acquisition. Taxpayers may want to consider taking a careful look at 2025 placed in service dates and/or whether acquired property is subject to a written binding contract to determine whether bonus applies. Taxpayers are also given the option to elect to apply a 40% bonus depreciation rate (60% for certain aircraft and long production period property) for property placed in service in the first tax year ending after January 19, 2025. This provides flexibility to continue to use the bonus depreciation rate for 2025 that had applied under TCJA. Taxpayers are also able to elect out of claiming bonus depreciation for a class or classes of qualifying property to the extent that accelerated deductions are not needed.

For further information please contact [Colleen O'Connor](#) or a WNT Methods professional.

Pass-Through Entity Tax (PTET)

Current section 164(b)(6) (the “Current SALT Cap”), enacted by the TCJA, generally caps an individual’s itemized deductions for state and local income, war profits, and excess profits taxes, as well as real property taxes or state and local personal property taxes not incurred in a trade or business or section 212 activity, at \$10,000 (\$5,000 for married taxpayers filing separately (MFS)). The Current SALT Cap sunsets for tax years beginning after 2025.

In response to the Current SALT Cap, many states enacted regimes through state-level legislation allowing a pass-through entity to elect to pay an entity-level state tax on its income. The owners of the pass-through entity in turn receive a credit or deduction against the state tax imposed on them (“PTET Regimes”). The PTET Regimes have taken various forms and have imposed limitations on an entity’s eligibility to elect into the PTET Regime, including based on ownership composition. PTET Regimes have proliferated as the IRS has appeared to broadly endorse their use in Notice 2020-75. Notice 2020-75 was issued by the IRS in response to uncertainty regarding these PTET Regimes given the legislative history of the Current SALT Cap that indicates that the taxes imposed at the entity level that are reflected in the owner’s distributive share of income or loss will continue to reduce such partner or shareholder’s distributive or pro-rata share of income “as under present law.” The IRS stated its intent to issue proposed regulations “clarifying” that state and local income taxes paid by a partnership or an S corporation are allowed as a deduction by such entity in its non-separately stated taxable income or loss (though no such regulations have been issued as of this writing). These PTET Regimes exist alongside pre-TCJA state and local income tax regimes that impose taxes on passthrough entities which generally do not allow for a partner or S corporation shareholder level credit (e.g., the Texas Franchise Tax).

Both the Current SALT Cap and the treatment of state and local income taxes paid under PTET Regimes were the subject of significant debate through the legislative process of the OBBBA. While multiple regimes were proposed, what ultimately passed was a temporary 5-year increase to the Current SALT Cap with modified dollar limitations and added income phasedowns. Additionally, and importantly for passthrough owners, there was no legislative provision addressing or modifying the existing law governing the treatment of pass-through entity taxes.

Electing into a PTET Regime may not be beneficial in all situations. The state income tax treatment of resident- and non-resident partners and shareholders raise economic considerations among partners and shareholders. Administrative processes may become complicated in tracking the expense across tax years and adjusting for obligations on retirement or withdrawal, or with respect to guaranteed payment partners. Finally, there is uncertainty as to whether the forthcoming guidance promised by Notice 2020-75 will apply to all PTET imposed on the pass-through entity, as it addresses PTET that are non-separately stated, without specific definition, and whether other factors are taken into account in ensuring such treatment.

For further information please contact [Anna Holtsman](#) or another WNT Passthrough professional.

Partnership Exit Planning

A partner exiting a partnership during the tax year can implicate a variety of issues affecting both the redeemed partner and the partnership—each of which should be identified and analyzed as part of year-end planning. Potential issues to consider include the following:

- **Impact of prior contributions.** A liquidating distribution to a partner may, when viewed together with certain prior contributions by such partner (or other partners), trigger taxable gain under the disguised sale rules of section 707 or the “anti-mixing bowl” rules of sections 704(c)(1)(B) and 737. These rules can require complex facts-and-circumstances analyses and contain a variety of exceptions and rebuttable presumptions that should be considered carefully.
- **Gain in excess of partner’s outside basis.** Under section 731(a), an exiting partner will recognize gain on a liquidating distribution from a partnership to the extent the amount of money distributed exceeds the partner’s outside basis immediately before the distribution. Importantly, the term “money” for these purposes includes not only cash, but also certain section 731(c) “marketable securities” and net amounts of any liability relief resulting from a reduction in the partner’s share of partnership liabilities under the section 752 rules.
- **Basis implications for partner and partnership.** The exiting partner also must consider a variety of applicable basis rules. Upon redemption, the partner takes a basis in the property received in the liquidating distribution equal to its outside basis in its partnership interest, reduced by any money received. The section 732(c) rules for allocating such basis among multiple properties should be considered where applicable, along with the rules for when holding periods may “tack” and when remaining depreciation schedules can be assumed. As noted above in the related party basis guidance that was mostly revoked, there may be tax benefits (or detriments) that result from the impact of a transaction on the basis of partnership assets. These benefits (or detriments) should be considered in connection with any partnership transaction.
- **Inside basis issues.** The impact of liquidating distributions on the inside basis of the partnership’s remaining assets should also be considered. Where the partnership has a section 754 election in effect (or if there is a substantial built-in loss in the partnership’s assets), the section 734(b) basis adjustment to the partnership’s remaining assets corresponding to the amount of any gain (or loss) should be calculated and properly allocated among the bases of the partnership’s remaining assets in accordance with the section 755 rules (including consideration of the assets’ character and unrealized appreciation).

- **Partner loans.** Because a loan between a partner and a partnership can be treated as being made between unrelated parties under section 707(a), if the loan is collapsing as part of the transaction (e.g., the partnership is liquidating), a liquidating distribution of property to a partner can be treated instead as occurring in satisfaction of an outstanding loan between the partner (as creditor) and partnership (as debtor) and, thus, as a taxable sale or exchange under section 1001, rather than a nontaxable liquidating distribution under section 731. Therefore, in connection with the exit of a creditor partner, planning should be undertaken to avoid unexpected gain or loss recognition. For instance, a partnership could first use any available cash to satisfy any outstanding debts payable to the partner so that any subsequent liquidating distribution of property benefits from the nonrecognition and carryover basis rules of section 731 and 732. Upon any such satisfaction of partnership liabilities, the impact on the applicable partner's allocable shares of liability relief under the section 752 rules should also be considered (including the treatment of a partner loan as a recourse loan solely allocable to the creditor partner).

For further information please contact [Bryan Rimkee](#) or another WNT Passthroughs professional.

Choice of Entity and Section 199A Qualified Trades or Businesses

When choosing between a C corporation and a partnership structure, tax treatment is a key consideration. The flat 21% corporate tax rate, established by the TCJA, can benefit businesses that prioritize reinvesting earnings for growth, allowing more capital to be retained at a lower tax cost. However, when profits are distributed, C corporations face double taxation: first at the corporate level (21%), and again when shareholders receive dividends, typically taxed at 20%. High-income individuals may also be subject to the 3.8% net investment income tax (NIIT), resulting in a combined tax rate of up to 44% on distributed earnings.

By contrast, partnerships do not pay tax at the entity level. Instead, income is passed through to partners, who are taxed at individual rates up to 37.5%, plus the potential 3.8% NIIT for a maximum rate of 41.3%. If partners materially participate in the business (and the partnership is not engaged in trading financial instruments or commodities), the NIIT does not apply, reducing the effective rate to 37.5%.

Partnerships may also benefit from the section 199A qualified business income (QBI) deduction, which allows eligible owners to deduct up to 20% of their share of qualified business income (which is very generally other than service income). While subject to certain limitations, the deduction's permanence under the OBBBA provides long-term certainty, making the partnership structure especially attractive for businesses that generate qualified income and that plan to regularly distribute profits. Now that it is permanent, if there are individual partners, it may make sense to revisit the section 199A implications for a business to determine choice of entity and organizational structure.

For further information please contact [Beverly Katz](#) or another WNT Passthroughs professional.

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