

Buchalter

CLIENT ALERT

April 3, 2019

Comments on Proposed 199A Regs Regarding Qualified REIT Dividends Due Soon

Comments are due on April 9, 2019 with respect to the recent proposed regulations regarding eligibility of qualified REIT dividends for the qualified business income deduction under Code Section 199A.

On January 18, 2019 the Treasury Department and IRS released its second round of proposed regulations under Code Section 199A that relate to treatment of dividends paid by real estate investment trusts (REITs). Code Section 199A is the qualified business income (QBI) deduction enacted under the 2017 tax reform law that generally provided a deduction of up to 20% of income from a U.S. business operated as a sole proprietorship, partnership, S corporation, trust or estate. The deduction distinguishes between certain types of income identified as QBI that is eligible for the deduction.

Under Code Section 199A and the initial regulations, an individual with a direct ownership interest in a REIT would be eligible for the QBI deduction with respect to any qualified REIT dividends. An individual holding his/her interest in a REIT through a regulated investment company (RIC), however, would not benefit from the QBI deduction. The proposed regulations provide a solution by treating the RIC as a conduit and permitting it to passthrough qualified REIT dividends to its non-corporate shareholders. The goal of the proposed regulations is to provide parity between holding REIT interests directly or through a RIC. The preamble to the regulations notes the benefits of professional management and broad investment diversification that RICs afford small investors.

The proposed regulations also note that the Treasury Department is considering providing similar conduit treatment to ownership of publicly-traded partnerships (PTPs) through RICs to benefit from the QBI deduction. The preamble to the proposed regulations presents several issues surrounding additional complexities in affording PTPs similar conduit treatment as REIT interests held through RICs.

The full text of the proposed regulations can be found here: <https://www.irs.gov/pub/irs-drop/REG-134652-18.pdf>

Please contact a member of our REIT Transactions and Compliance Industry Group if you are interested in submitting comments to the proposed regulations. We would be pleased to assist you in that effort.



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