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Maximizing the IRC §199A Deduction:

Increasing Assets and Wages, Separating and Aggregating Businesses, and More

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Pamela provides tax planning services across most industry sectors, including capital markets, investment management, financial services, real estate, healthcare, pharmaceutical, construction & engineering, infrastructure, energy, and especially soft ware & emerging digital technologies, including cryptocurrencies and transactions involving decentralized finance platforms.

Pamela is also an effective taxpayer advocate with many years of experience resolving U.S. federal, state, and foreign tax controversies--skills she first began to hone when serving as Attorney Advisor to several Chief Judges of the U.S. Tax Court in Washington, D.C. where she served for three consecutive terms, handling complex transfer pricing and big tax shelter cases.

As a fellow of both the American College of Tax Counsel, and the American Bar Foundation, Pamela regularly speaks at conferences sponsored by various law associations, and publishes in her field. She is Chair of the International Tax Committee of the American Bar Assoc.'s (ABA) Section of International Law, and the immediate past Chair of the ABA's Tax Policy Committee. She's been appointed to serve on the Council of the International Fiscal Association's USA Branch, the NY State Bar's "Global Law Week," as well as Strafford's and TaxLaw 360's international tax advisory board.

Pamela is a founding member of the New York City Bar's Taskforce on the Independence of Lawyers and Judges. She holds an LL.M. in Tax Law from New York University School of Law, where she served as Graduate Editor of that school's international law review and completed post-LL.M. studies in international law, international taxation, and comparative securities law; a J.D. from Seattle University; and a B.A. from the University of Washington. She is admitted to practice law in several U.S. state jurisdictions and multiple federal courts, including the U.S. Tax Court.

Prior to becoming an attorney, Pamela was a business news reporter and anchor for a highly regarded NBC News affiliate in Seattle covering regional, national, and transnational business, and the emergence of new & varied technologies and tech-related industries.

Agenda

I. Overview of the § 199A Deduction
   A. Statutory Requirements, Mechanics, Defining “trade or business” and QBI
   B. Birdseye View of Strategies to Maximize the §199A Deduction
II. Individual thresholds and Recent Proposals to Amend
III. Maximizing W-2 wages
IV. Increasing UBIA
V. Specified Service Trade or Businesses (SSTBs)
VI. Aggregating & separating businesses
VII. Converting non-qualified income
VIII. Planning for Sales of a Business
IX. Planning for NOLs
X. Key Takeaways; Q&A

I. Overview of §199A deduction

- Policy and Purpose
- Eligibility and Statutory Requirements
- Basic Mechanics

Policy & Purpose of §199A

- “New” Section 199A of the U.S. Internal Revenue Code (IRC), entitled “**Qualified business income**,” was enacted as part of the Tax Cuts & Jobs Act (TCJA) on December 22, 2017, as part of an attempt by Congress to put sole proprietors and owners of tax-transparent entities—including partnerships, S corporations, trusts, and estates--on par with the owners of C Corporations, given that the latter got a huge tax rate cut. The TCJA lowered the top tax rate on C corporations by a full 14 percentage points (i.e., dropping the top U.S. corporate rate from 35% to 21%).
- The TCJA also lowered the top individual federal income tax bracket from 39.6% to 37%--a reduction of just 2.6 percentage points.
- Internal Revenue Code (IRC) Section 199A is the centerpiece provision of the TCJA that ostensibly represents Congress’ intent to make good on a promise (evident in the legislative history) to also lower the effective tax rates (ETRs) for sole proprietorships and owners of flow-through entities. The lower ETR for these “flow-through entities” (or “FTEs”) was achieved through the complex statutory mechanism of Section 199A, with its myriad built-in exceptions and limitations.
- In general, § 199A provides up to a 20 % deduction with respect to an individual’s share of “combined qualified business income” (as defined) from a partnership(s), S-corporation(s), and/or sole proprietorship(s) (referred to in Regulations as “relevant pass-through entities” or “RPEs”).
- But, even when the Section 199A deduction is allowed in full, the rate cut for pass-through entities is significantly smaller than one provided for C corporations—yet qualifying for the 199A deduction is also much more complex and administratively burdensome. Although, these and other disparities caused some business owners to restructure their businesses into C-corporations, the U.S. Treasury reports that most businesses operating in passthrough entities did not change their selected entity form.

Eligibility & Statutory Requirements

- **General Rule:** IRC § 199A provides a deduction of up to 20 percent of qualifying income from a domestic "trade or business" operated as a sole proprietorship or through a partnership, S corporation, trust, or estate.
- The § 199A deduction may be taken by individuals and by some estates and trusts.
- A § 199A deduction is not available for wage income or for business income earned through a C corporation (as defined in section 1361(a)(2)).
- For taxpayers whose taxable income exceeds a statutorily-defined amount ("threshold amount"), the taxpayer's §199A deduction may be limited, based on :
  - i. the type of trade or business engaged in by the taxpayer (cannot be an SSTB),
  - ii. the amount of W–2 wages paid with respect to the trade or business (W–2 wages), and/or
  - iii. the "unadjusted basis immediately after acquisition" (UBIA) of qualified property held for use in the trade or business.

Eligibility & Statutory Requirements
(Continued)

- These statutory limitations are subject to phase-in rules based upon taxable income above the threshold amount.
- Section 199A also allows individuals and some trusts and estates (but not corporations) a deduction of up to 20 percent of their combined qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income, including qualified REIT dividends and qualified PTP income earned through pass-through entities. This component of the section 199A deduction is ***not limited*** by W–2 wages or UBIA of qualified property.

Basic §199A Formula & Mechanics

- Subsection (a) of IRC § 199A (a) provides the basic formula for the deduction. It provides (paraphrasing slightly):

  In the case of a taxpayer other than a corporation, there shall be allowed as a deduction for any taxable year an amount equal to the LESSER of the following two amounts:

  (1) the sum of the combined "qualified business income" of the taxpayer, OR

  (2) an amount equal to 20 percent of the excess (if any) of taxable income of the taxpayer for the taxable year over the "net capital gain" of the taxpayer for the taxable year.

- Also, § 199A(g), as amended in 2018, provides that specified agricultural or horticultural cooperatives may claim a special entity level deduction that is substantially similar to the domestic production activities deduction under former §199. In the Preamble to the Final 2019 Regs to §199A, the IRS says it intends to issue a future notice describing proposed rules for applying § 199A to specified agricultural and horticultural cooperatives and their patrons. (Further discussion of these prospective rules are beyond the scope of this webinar.)

Treasury Regulations under §199A

- **<u>Proposed Regulations</u>:** The Treasury issued proposed regulations on August 8, 2018, illustrating the basic rules as to how the Section 199A deduction should be computed.
- **<u>Final Regulations (T.D. 9847):</u>** Issued Jan. 18, 2019. The Final Regs take into account numerous practitioner comments—some of which are discussed in the Regs' **<u>Preamble</u>** (which is helpful to read in figuring out the parameters of the rules that were adopted).
- **Section 199A is <u>complex</u> in application.** The tax planning often required to obtain the full benefit of this deduction can also be a very complex exercise! (Not for faint of heart; but can deliver significant tax benefits—so often worth it for the client.)
- To fully take advantage of the potential deduction under Section 199A, tax advisors need to first understand the:
  - Basic computational elements of the §199A deduction and its mechanics;
  - Parameters of key definitions like "U.S. trade or business" and "combined qualified business income";
  - Parameters and exceptions to the laundry list of "specified service trade or business";
  - Loss rules that are built into Section 199A; and
  - Aggregation rules and elections, and the various methods by which businesses may be combined or separated in order to combine income, lower wage floors, ring-fence or eliminate tainted businesses, or qualify others as qualified trades or businesses.
- Like many things in tax planning, knowing the rules and modeling out the alternative results is the key to maximizing the Section 199A deduction.

Defining “Qualified Business Income” (QGI) and “Trade or Business” for purposes of §199A

- Two key strategic elements in maximizing the § 199A deduction

Defining Combined "Qualified Business Income" (QBI) for § 199A purposes

- **QBI is defined subsection (b) of §199A:** as the net amount of qualified items of income, gain, deduction and loss from any qualified trade or business of a taxpayer.
- Qualified items of income, gain, deduction and loss must be "effectively connected" with the conduct of a T/biz within the U.S. within the meaning of IRC § 864(c), substituting "qualified trade or business" for the terms "nonresident alien individual" and/or "foreign corporation" where those terms appear. Very generally, this means that the income must arise from the T/biz in order to be qualified.
  - See Reg. § 1.864-4's "asset use" and "business activities" test.

What is NOT "Qualified Business Income"

<u>Excluded</u> from the definition of "qualified business income" are items of:

- Capital gains;
- Wages and salary paid to a person in their capacity as an employee;
- "Reasonable compensation" from an S Corporation
  - "Reasonable comp" is only required by the Code for S Corporations (not partnerships). Economically similar payments may by paid by partnerships (e.g., guaranteed payments or a "profits interest"), and can have different §199A consequences. Consider advantages & disadvantages to using different type of entity to avoid the exclusion of "reasonable compensation" as QBI.
- Guaranteed payments" made by a qualified T/Biz to a taxpayer for services rendered to the T/Biz. (Final Regs also exclude guaranteed payments for the "use of capital" from QBI._
  - The characterization of payments to owner-managers of flow-through entities is one of the significant planning opportunities presented by the Final § 199A Regs. Because wages & guaranteed payments cannot be offset by the § 199A deduction, while business profits (computed prior to compensation) can be offset, tax advisors should consider restructuring compensation packages involving guaranteed payments into something else (e.g., a "profits interest" in the partnership).
- Investment income (e.g., dividends, interest income, and interest expense that is not properly allocable to a trade or business. Note that "interest income" received on working capital, reserves, & similar accounts is not QBI. Gain/loss from certain commodity transactions, or foreign exchange gains, or gains from notional principal contracts are not QBI.
- "REIT dividends and income from qualified PTPs (although certain REIT dividends and PTP income are separately eligible for the deduction).

Identifying a "Qualified Trade or Business" for § 199A purposes

- The calculation of QBI and therefore, the benefits of §199A, are limited to taxpayers with income from a U.S. "trade or business."
- **IRC §199A(d)(1):** For purposes of 199A, the term "qualified trade or business" means any business other than—

  (A) a specified service trade or business, or

  (B) the trade or business of performing services as an employee.
- **No bright-line test:** The term "trade or business" is NOT defined in § 199A or its legislative history.
- **Final Regs define it by reference to §162:** Final Reg. § 1.199A–1(b)(14) says that a "trade or business" for § 199A purposes is a trade or business under section 162 ... *other than the trade or business of performing services as an employee.*
  - Section 162(a) permits a deduction for all the "ordinary and necessary expenses paid or incurred in carrying on a trade or business."
- Although multiple commenters pointed out the significant uncertainties in the meaning of trade or business in the § 162 context, the Treasury declined to adopt a bright-line test, saying in the Final Regs' Preamble that it is an **"inherently factual question."** (And, this facts-and circumstances test provides planning opportunities for delineating the taxpayer's "trade or businesses" so as to maximize the § 199A deduction.)

Delineating a “Trade or Business” (continued)

- **Look to case law for the definition of “trade or business”:** In ***Higgins v. Commissioner***, 312 U.S. 212 (1941), the Supreme Court noted that determining whether a trade or business exists is a factual determination: “whether the activities of a taxpayer are ‘carrying on a business’ requires an examination of the facts in each case.”
- In the absence of a statutory or regulatory definition of a § 162 trade or business, courts have established elements to determine the parameters and scope of a “trade or business.”
- Specifically, the courts have developed two definitional requirements:
  1. **Profit Motive:** Finding of the existence of 162 trade or business requires the taxpayer to enter into and carry on the activity with a good faith intention to make a profit or with the belief that a profit can be made from the activity.
  2. **Continuous business activities:** The second requirement fleshed out in the courts relates to the scope of the activities and is said to require considerable, regular, and continuous activity. See generally **Commissioner v. Groetzinger**, 480 U.S. 23 (1987).

○ In the seminal case of ***Groetzinger***, U.S. Supreme Court stated, “[w]e do not overrule or cut back on the Court’s holding in Higgins when we conclude that if one’s gambling activity is pursued full time, in good faith, and with regularity, to the production of income for a livelihood, and is not a mere hobby, it is a trade or business within the statutes with which we are here concerned.” 480 U.S. 23, 35 (1987). (One may be able to use this broad interpretation in planning under § 199A.)

The "Trade or Business" determination is made at the ENTITY Level

- For purposes of § 199A, the determination of whether an activity is a "trade or business" is made at the entity level.
- Thus, if an relevant pass-through entity (RPE) is engaged in a trade or business, items of income, gain, loss, or deduction from such Trade/Biz retain their character as they pass from the entity to the taxpayer—even if the taxpayer is not personally engaged in the trade or business of the entity.
- Conversely, if an RPE is not engaged in a Trade/Biz, the items of income, gain, loss, or deduction allocated to a taxpayer from such entity will not qualify for the §199A deduction even if the taxpayer or an intervening entity is otherwise engaged in a trade or business
- Compare: the owner of the RPE is the one actually claiming the deduction—not the entity engaged in the T/Biz.

Single or Separate "Businesses"?

- Consider whether the activities of pass-through entity constitute separate "trade or businesses."
- Generally, activities operated in separate taxable entities are considered separate businesses, although taxpayers can potentially make an election to *aggregate the activities of these entities into a single Trade/Biz* **if** the circumstances meet the aggregation standard. (Note: the aggregation standard is different than making "group" elections under § 469 for passive activities. (See Preamble to Final Regs.) The § 199A aggregation standard is not as permissive.
- Also, a single entity may also have multiple businesses.
- In the Final §199A Regs, the IRS declined to adopt any specific bright-line guidance on how to determine if a relevant pass-through entity has more than one trade or business.
- But the Preamble to the Final Regs states that "**multiple trades or business will generally not exist within an entity unless different methods of accounting could be used for each trade or business under [Regs. Sec.] § 1.446-1(d).**"

Possibly look to Analogous Authority under Section 446 for delineating a Trade/Biz?

- Regulations under § 446 provide that: In order for a taxpayer to have separate and distinct trades or businesses, the taxpayer must use a different method of accounting for each trade or business. [Treas. Reg. §1.446-1(d)(1)]
- No trade or business will be considered separate and distinct unless a complete and separable set of books and records is kept for such trade or business. [Treas. Reg. § 1.446-1(d)(2)]
- *However, trades or businesses will not be considered separate and distinct if the maintaining of different methods of accounting creates a shifting of profits and losses between the trades or businesses*. [Treas. Reg. 1.446-1(d)(3)]

Other Relevant Factors in Delineating a Separate (or combined) "Trade or Business"

- Whether each business has the requisite assets and employees for the production of income;
- The "self sufficiency" of the putative separate business;
- Whether the two businesses are operated as separate divisions, with separate books of account, employees, management, and other incidents of business;
- Whether federal law or regulation grant a special right to exist as a separate business?
- Whether federal law requires that the assets, books, records, and activities of the two divisions be segregated;
- The existence of shared office space and a geographic locations of the separate divisions;
- Whether the two divisions have the exact same clientele, overlapping clientele, or completely different clientele;
- Whether one business is a branch of the other business;
- Whether items in common between the two divisions could be shared by any two dissimilar businesses owned by the same taxpayer.
- **NOTE: Some of the above factors can cut both ways... A close functional analysis is usually required.**

Step Two: Take Basic Strategic Steps and Methods of Maximizing the § 199A Deduction

- Maximizing "qualified business income" (QBI) of each trade or business.
- Eliminate, reduce, and/or segregate SSTBs
- Avoid or reduce any loss of the §199A deduction due to the threshold limitations
- When actually aggregating businesses (e.g., converting a "corporation" into a pass-through), consider potential legal consequences of nullifying the "isolation" of liabilities within a separate entity, which is treated as either a "corporation" or LLC for company law purposes.
- Model out quantitatively which businesses are at risk of running into the limits.
- Model out the loss limitations and carryover possibilities.
- Determine the potential reporting obligations for each by owner. Consider if restructuring or aggregation elections would provide a better result.

Overview (Continued) Strategies to Maximize the §199A deduction

Birdseye View of Strategies to Maximize the §199A deduction

Due diligence: Chart out all the facts (in light of rules, thresholds, and key definitions)

- Much of the planning to maximize the 199A deduction revolves around identifying and delineating "trades or businesses" in ways that are advantageous so as to take advantage of the rules.
- So, first determine if the activities of an RPE rise to the level of a trade or business and whether the activities represent a single or multiple trades or businesses.
- Determine if any of the businesses are "specified service trades or businesses" (SSTBs) because those should be eliminated or ring-fenced.
- Model out, quantitatively, whether and when any of the Trade/Bizs are at risk of running into the taxable income limitations.
- Assess and measure the potential W-2 wage limitations.
- Model out the loss limitations, netting rules, and carryover possibilities.
- Determine the potential reporting obligations for each trade/business by owner.

Basic Strategies and Methods of Maximizing the § 199A Deduction

- Maximizing "qualified business income" (QBI) of each trade or business.
- Eliminate, reduce, and/or segregate SSTBs
- Consider restructuring the worker compensation packages to eliminate "guarnateed payments" or "reasonable compensation" in an S-corporation, or turning "wage" income into a profits interest (which would qualify as QBI).
- Avoid or reduce any loss of the §199A deduction due to the threshold limitations
- When actually aggregating businesses (e.g., converting a "corporation" into a pass-through), consider potential legal consequences of nullifying the "isolation" of liabilities that may otherwise be available under the local jurisdiction's law applicable to limited liability companies and corporations. It may not be worth it to expose the Business No. 1 to Business No. 2's losses and liabilities.
- Only after gathering ALL the relevant facts, and getting the big and detailed picture, should you consider whether restructuring or aggregation elections would provide a better result.
- Consider the extent to which restructuring or aggregation elections would provide a better result.
- **But always be aware of "collateral consequences"!** There is a very real risk that changing one thing will bring about a more negative result under a different Code provision!
  - **This may be particularly true in analyzing wages and "unadjusted basis immediately after acquisition of qualified property (UBIA).**

II.
Individual Thresholds

And Proposals to Amend

Individual Thresholds

- Section 199A(e)(2):
  - Taxable income must be not greater than $157,500 ($315,000 in case of a joint return), adjusted for inflation after 2018.
    - **For 2020,** the thresholds were $163,300 ($326,600 - joint return).
    - **For 2021,** the thresholds are $329,800 for married filing joint returns, $164,925 for married filing separate returns and $164,900 for all other returns.
    - **For 2022,** the thresholds are $340,100 for married couples filing jointly, $170,050 for married individuals filing separately, and $170,050 for all others.
  - Section 199A deduction is generally not limited for taxpayers with incomes *under* the above limits.
- Taxable income is determined without taking into account any deduction under §199A.

Individual Thresholds

- Taxpayers with income from SSTBs are subject to limited §199A deductions if their taxable incomes exceed the above thresholds.
  – The §199A deduction is reduced for taxpayers whose income exceeds the limitation by less than $50,000 ($100,000 in case of joint filers).
  – If a taxpayer's income exceeds the threshold by a greater amount, the §199A deduction is not available.

- The limit in § 199A(b)(2)(B) does not apply to taxpayers whose income is *below* the threshold.
  – That section limits the §199A deduction to the lesser of:
  - (i) 20% of QBI, **or**
  - (ii) the greater of
    - (A) 50% W-2 wages with respect to the qualified trade or business, or
    - (B) 25% of W-2 wages plus 2.5% of the unadjusted bases.

Individual Thresholds - Examples

- Example 1:
  - A is an individual that files a single return and earns $100,000 QBI and $25,000 Capital Gains in 2021. A's §199A deduction is $20,000.
- Example 2:
  - Same as Example 1, except A is engaged in an SSTB. A is still entitled to a $20,000 deduction under §199A.
- Example 3:
  - B is an individual that files a joint return and earns $1,000,000 QBI in 2021. More information is needed to advise B on eligibility under §199A.
- Example 4:
  - C is an individual that earns $173,300 QBI in 2021. C's §199A deduction depends on the wage and qualified biz income limitations.

Legislative Proposal(s) to Narrow Eligibility for §199A

Senate Finance Committee Chairman Ron Wyden recently introduced a bill that would make several changes to the §199A deduction. **Sen. Wyden's bill**, if adopted would make the following key amendments to § 199A:

- **Trusts & estates would be eliminated** as businesses qualifying for the § 199A deduction.
- **The §199A deduction would be fully phased out once taxable income reaches $500,000.** The QBI deduction currently has an income threshold of roughly $320,000, above which the deduction begins to phase out over the next $100,000. However, current law includes another eligibility criterion based on W-2 wages paid to employees and the business's tax basis in owned property. Wyden's bill proposes to eliminate the W-2 wages/basis test and changes the current income threshold to $400,000. Thus, a taxpayer's QBI deduction would fall to zero once their income reaches $500,000.
- **Married individuals would have to file separately to claim the § 199A deduction.** (In other words, the "married filing jointly" option would be lost for purposes of the §199A deduction. Rather, each taxpayer would have to file federal income taxes separately to claim the deduction.)
- Sen. Wyden's office has said the bill would generate $147 billion over 10 years.
- Under current law, the § 199A is scheduled to expire after 2025.

III.
Maximizing W-2 Wages

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Wages & Capital Limitations

Wage Limitation

- Determining wages for QBI is a four step process:
  - Step 1: Identify W-2 wages for the year
  - Step 2: If a taxpayer has multiple TorBs, you must allocate wages among the TorBs,
  - Step 3: Determine the amount of wages allocated to each business that are allocable to the QBI of the business
  - Step 4: Allocate the amount from Step 3 among partners or shareholders

Identify W-2 Wages

- Step 1: Identify W-2 wages for the year
  - W-2 wages are wages paid to an employee, plus Section 401(k) deferrals, deferred compensation, and designated Roth contributions.
  - Have to be wages reported on a payroll tax return.
  - Notice 2018-64 offers three methods for determining W-2 wages.

Identify W-2 Wages

- Step 1: Identify W-2 wages for the year
  - *Unmodified box method.* This method is the lesser of the total entries in box 1 of all forms W-2 filed with the Social Security Administration (SSA) by you with respect to your employees OR the total entries in box 5 of all forms W-2 filed with SSA by you with respect to your employees.
  - *Modified box 1 method.* To use this method, total the amounts in of all forms W-2 filed with the SSA by you with respect to your employees. Next, subtract any amounts included in box 1 of forms W-2 that are *not* wages for federal income tax withholding purposes. Now, add to that the total amounts reported in box 12 of forms W-2 with respect to your employees that are properly coded D, E, F, G, and S.
  - *Tracking wages method*. To use this method, total the amounts of wages subject to federal income tax withholding that are paid to your employees and that are reported on forms W-2 that you filed with SSA for the calendar year, and add the amounts reported in box 12 of forms W-2 with respect to your employees that are properly coded D, E, F, G, and S.

Identify W-2 Wages

- Step 1: Identify W-2 wages for the year
  - Allocation to common-law employer: many businesses either use a centralized payroll company or even leased employees.
  - Proposed regulations allow a taxpayer to take into account any W-2 wages paid by another person and reported by the other person on Forms W-2 with the other person listed in Box c of the Forms W-2, provided that the wages were paid to common law employees or officers of the taxpayer.

Ex. S Co. uses a professional employer organization for its staffing needs, which issues W-2s – indicating the PEO as the employer – for S Co.'s common law employees totaling $300,000 in 2021. Even though S Co. does not report the wages on its own Forms W-2, because it is the common law employer of the employees, S Co. may be allocated the $300,000 of W-2 wages from the PEO.

Allocate W-2 Wages – Multiple TorBs

- Step 2: Allocating W-2 wages among multiple trades or businesses
  - Any business that pays wages and has more than one trade or business must allocate the W-2 wages among the businesses.
  - W-2 wages must be allocated to the trade or business that generated those wages.
  - If wages are allocable to more than one business, the portion of the W-2 wages allocable to each business is determined using any reasonable method, provided that it is the same way that wages (as part of total QBI) are allocated among multiple trades or businesses for purpose of Reg. S1.199A-3(b)(5).

Allocate W-2 Wages to QBI

- Step 3: Allocating W-2 wages to QBI
  - Only wages allocable to QBI are allowed.
  - Wages are only allocable to QBI if the expense is taken into account in computing QBI.

Allocate W-2 Wages to Partners and Shareholder

- Step 4: Allocating W-2 wages among partners and shareholders
  - Partners: W-2 wages are allocated to partners in accordance with the percentage of the wage expense of the partnership they are allocated under the partnership agreement.
  - Shareholders: W-2 wages are allocated on a per-share/per-day, pro-rata basis.

IV.
Increasing UBIA

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Unadjusted Basis Immediately after Acquisition (UBIA) of Qualifying Property

- Qualified Property:
  - Tangible property subject to depreciation
  - Held by and available for use in the T or B at close of the tax year
  - Used in the T or B for the production of QBI during the tax year
  - The depreciable period has not ended before the close of the tax year of the T or B
  - Basis adjustments under Sec. 734(b) and 743(b) are not qualified property
    - Excess Sec. 743(b) basis adjustments are qualified property
  - Does not include property acquired within 60 days of year end or disposed of within 120 days of acquisition without being used in a T or B for at least 45 days prior to disposition

UBIA of Qualifying Property

Meaning of “unadjusted basis immediately after acquisition”

- The basis on the placed in service date by the business as determined by general tax principles, unreduced by depreciation
- Acquired by purchase – cost under §1012
- Acquired by contribution to a corporation – c/o basis under §362
- Acquired by distribution from a corporation – FMV under §301
- Acquired by contribution to a partnership – c/o basis under §723
- Acquired by distribution from a partnership – c/o basis under §731

Ex. In 2015, A purchases a building for $1M and places it in service in A’s trade or business. A’s basis under Section 1012 is $1M. On December 31, 2021 A’s basis under Section 1016(a)(2) is $821,550. In 2021 for purposes of §199A, A’s UBIA of the building is $1M.

UBIA of Qualifying Property

- UBIA is not reduced by:
  - Bonus depreciation
  - Deductions under Section 179, 179B or 179C
  - Credits that otherwise reduce basis
- UBIA includes improvements to qualified property that has already been placed in service. The improvement or addition is treated as qualified property first placed in service on the date the improvement is placed in service.
- UBIA does reflect the reduction in basis for an individual or RPE's use of the property for the taxable year other than in the T or B.

UBIA of Qualifying Property

The depreciable period starts on the date the property is placed in service and ends on the later of:

- 10 years or,
- The last day of the last full year in the recovery period under §168(c)

Ex. A purchase a piece of machinery on November 18, 2014 for $10,000. The machinery is used in the business and is depreciated over 5 years. Even though the recovery period of the asset is only 5 years, A will be able to take the unadjusted basis of $10,000 into consideration for UBIA purposes for ten full years, 2014 – 2023, because the qualifying period runs for the longer of the useful life (5 years) or 10 years.

Allocation of UBIA

- Allocation in a partnership is determined in accordance with how the partnership would allocate depreciation under §1.704-1(b)(2)(iv)(g) on the last day of the taxable year.
  - This means it is allocated in accordance with <u>book</u> depreciation.
- Allocation in an S corporation is in proportion to the ratio of shares held by the shareholder at the last day of the taxable year over the total issued and outstanding shares of the S corporation.
- A partner or shareholder must own an interest in the RPE at the end of the partnership's or S corporation's tax year.
  - If they sold their interest before the end of the year their allocation of UBIA should be **none**

Allocation of UBIA

- Proposed regulations - partnerships UBIA would be allocated in accordance with the partnerships tax depreciation (for full year).
- Final regulations - allocation based on §704(b), book depreciation as of the last day of the tax year.

Example of UBIA allocation - Partnership

Partnership 1 has three partners with the below ownership and income/deduction allocations. How is the UBIA allocated?

Partnership 1				
	Partner A	Partner B	Partner C	Total
	25%	25%	50%	100%
Gross Income - $75,000	18,750	18,750	37,500	75,000
Rent Expense - $12,000	(3,000)	(3,000)	(6,000)	(12,000)
Tax Expense - $800	(200)	(200)	(400)	(800)
Supplies Expense - $4,200	(1,050)	(1,050)	(2,100)	(4,200)
Depreciation Expense - $4,000	(1,000)	(1,000)	(2,000)	(4,000)
Net Income - $54,000	13,500	13,500	27,000	54,000
Depreciation Allocation:				
Partner Allocation	1,000	1,000	2,000	
Total Depreciation	4,000	4,000	4,000	
Percentage of Depreciation	25%	25%	50%	
UBIA - $1,000,000	Partner A	Partner B	Partner C	Total
Allocation of UBIA	250,000	250,000	500,000	1,000,000

Example of UBIA allocation - Partnership

Assume A sells 96% of their ownership to D on 12/1 of the tax year. A retains 1% of the partnership and D now owns 24%.

Partnership 1			
	Partner A	Partner D	Total
	11/12	1/12	25%
Gross Income - $75,000	17,250	1,500	18,750
Rent Expense - $12,000	(2,760)	(240)	(3,000)
Tax Expense - $800	(184)	(16)	(200)
Supplies Expense - $4,200	(966)	(84)	(1,050)
Depreciation Expense - $4,000	(920)	(80)	(1,000)
Net Income - $54,000	12,420	1,080	13,500
Depreciation Allocation:			
Partner Allocation	920	80	1,000
Total Depreciation	4,000	4,000	4,000
Percentage of Depreciation	23%	2%	25%
UBIA - $1,000,000	Partner A	Partner D	Total
Allocation of UBIA	10,000	240,000	250,000

Example of UBIA allocation – S corporation

Ex: S Corp has UBIA of $1,500,000 in tax year 2021. The S corp has 2 shareholders, A and B, that each own 50% of the stock from 1/1/21 – 12/30/21. On 12/30/21 A purchases all but 2% of B's stock (1% of total stock of corp.). The ownership on 12/31/21 will be A – 99% and B – 1%. As a result, UBIA will be allocated 99% to A ($1,485,000) and 1% to B ($15,000) on the S corporation K-1's for 2021.

Property Acquired in a §1031 or §1033 Exchange

- §1031 allows for nonrecognition of gain or loss from exchanges of like-kind property.
  - Only real property held for use in a T or B or investment qualifies for like-kind exchange.
  - Previously, both real and personal property were eligible.
- §1033 allows for nonrecognition of gain as a result of an involuntary conversion, if similar property is acquired.
  - Applies to property that has been destroyed or subject to theft, seizure, reclamation or condemnation.
- Replacement property in a §1031 or §1033 exchange will be split for UBIA.
  - Substituted basis is deemed placed in service on the day the relinquished or involuntarily converted property was placed in service
  - Excess basis is deemed placed in service on the day the replacement or involuntarily converted property is placed in service

Property Acquired in a §1031 Exchange

- Proposed regulations – seemed to discourage like-kind exchanges in order to maintain higher UBIA. UBIA of property acquired in a like-kind exchange was the adjusted basis of the relinquished property transferred in the exchange under §1031(d) (reflects adjustment for depreciation)
- Final regulations – UBIA in a like-kind exchange is the UBIA of the relinquished property, adjusted by property or money paid or received.

Property Acquired in a §1031 Exchange

- If there is excess boot received, the UBIA of the property is decreased by it.
  - Excess boot is the amount of money or FMV of other property received over the appreciation in the relinquished property
  - Appreciation is excess of FMV of relinquished property at sale date over purchase date
- If there is other property relinquished or additional money paid by the taxpayer, the UBIA of the replacement property is increased by it.
- If the taxpayer acquires more than one piece of qualified property in the exchange, the UBIA is apportioned between them in proportion to their relative fair values.
- Other property acquired in a §1031 exchange that is qualified property has a UBIA equal to the FMV of that property.

Property Acquired in a §1033 Exchange

- If qualified property is compulsory or involuntarily converted and qualified replacement property is acquired in a transaction that qualifies for deferral of gain under §1033, the UBIA of the replacement property is the same as the UBIA of the converted property.
  - UBIA is decreased by excess boot
  - UBIA is increased by the amount of money paid or FMV of property not similar or related in service or use to the converted property transferred by the taxpayer to acquire the replacement property

§168(i)(7)(B) Transactions

- “Step-in-the-shoes” transactions described under Secs. 332, 351, 361, 721 or 731.
- Post-transaction, the transferee will follow the transferor’s pre-transaction methods and no gain or loss is recognized.
  - The transferor continues depreciation.
- Proposed regulations - the UBIA for these transactions is the UBIA is the basis at the placed in service date of the property. This means that the UBIA would be the basis at the date of the transaction rather than the original basis.
- Final regulations - the UBIA to be that of the original UBIA of the contributing partner or shareholder, increased by the amount of money paid by the transferee and decreased by the amount of money paid to the transferee in the transaction.

§168(i)(7)(B) Transactions

- The transferee's UBIA will be the same as the transferor's, decreased by the amount of money received by the transferor in the transaction or increased by the amount of money paid by the transferee to acquire the property in the transaction.
- The date the property was placed in service is split between:
  - Amount up to the transferor's UBIA in the property is placed in service when the transferor placed it in service.
  - Any excess basis is placed in service when the transferee places the property in service.

Ex: A acquired machinery in 2016 for $10,000 for use in a sole proprietorship. As of 12/31/18, the adjusted basis of the machinery, after accounting for depreciation, is $4,000. On 1/1/19, A contributes the property to an S corporation in a Section 351 transfer in exchange for stock in the S corporation.

On S Co's 2019 tax return, the UBIA of the machinery is $10,000. The depreciable period, however, begins in 2016, because the property was received by the S corporation in a carryover basis transaction.

Excess §743(b) Basis Adjustments

- Corrected Final Regulations made changes to these rules in February of 2019.
- This is taxpayer favorable in the case where the FMV of the property has increased.
- Excess §743(b) Basis Adjustment is calculated as:
  - An amount that is determine with respect to each item of qualified property and is equal to an amount that would represent the partner's §743(b) basis adjustment with respect to the same item of qualified property, but calculated as if the adjusted basis of all of the partnerships property was equal to the UBIA of such property.
  - The absolute value of the excess §743(b) basis adjustment cannot exceed the absolute value of the total §743(b) basis adjustment with respect to qualified property.

Excess §743(b) Basis Adjustments

- Proposed regulations – basis adjustments under §743(b) were not treated as qualified property.
- Final regulations - §743(b) basis adjustments are treated as qualified property to the extent the basis adjustments reflects an increase in the FMV of the underlying qualified property.

Excess §743(b) Basis Adjustments

- If the calculated excess §743(b) basis adjustment is negative, that amount will be subtracted from the partner's UBIA of qualified property.
- If the negative excess §743(b) basis adjustment would take their UBIA negative, their UBIA is zero.
- An excess §743(b) basis adjustment must be with respect to qualified property.
- For property to be qualified, the depreciable period must not have ended.
  - If the depreciable period has ended, there is no excess §743(b) basis adjustment.
- If you had a asset placed in service in 1980 with a 39 year life that generated the original §743(b) basis adjustment, that asset no longer qualifies for UBIA as it is out of its depreciable period. As a result, the excess §743(b) basis adjustment is not qualified.

Recovery Period for Excess §743(b) Basis Adjustments

- Positive excess §743(b) basis adjustments will have a recovery period as determined under §1.743-1(j)(4)(i)(B)
  - Increased portion of basis is taken into account as if it were newly-purchased recovery property placed in service when the transfer occurs.
- Negative excess §743(b) basis adjustments will have a recovery period as determined under §1.743-1(j)(4)(ii)(B)
  - Decreased portion of basis is recovered over the remaining useful life of the partnership's recovery property

Excess §743(b) Basis Adjustment - Example 1

A, B and C are equal partners in partnership, PRS. PRS has a single T or B that generates QBI. PRS has no liabilities and a single asset with UBIA equal to $900,000. Each partners share of UBIA is $300,000. A Sells its one-third interest in PRS to T for $350,000 when a §754 election is in effect. At the time of sale, tax basis in the qualified property held by PRS is $750,000. The amount of gain that would be allocated to T from a hypothetical transaction under §1.743-1(d)(2) is $100,000. Thus, T's interest in PRS's previously taxed capital is equal to $250,000 ($350,000 the amount of cash T would received if PRS liquidated immediately after the hypothetical transaction, decreased by $100,000, T's share of hypothetical gain). The amount of T's §743(b) basis adjustment to PRS's qualified property is $100,000 (the excess of $350,000, T's cost basis for it's interest, over $250,000, T's share of adjusted basis to the partnerships property).

T's §743(b) basis adjustment = $100,000

Excess §743(b) Basis Adjustment - Example 1 Continued

- In order for T to determine its UBIA, T must calculate its excess §743(b) basis adjustment. T's excess §743(b) basis adjustment is equal to the amount that would represent T's §743(b) basis adjustment with respect to the same item of qualified property, but calculated as if the adjusted basis of all of PRS's property was equal to the UBIA of such property.

- T's §743(b) basis adjustment calculated if all of the qualified property were equal to its UBIA is $50,000 (the excess of $350,000, T's cost for its interest, over $300,000, T's share of the adjusted basis to PRS of the partnership's property). T's UBIA is equal to $350,000 ($300,000, T's one-third share of the qualified property's UBIA, plus $50,000, T's excess §743(b) basis adjustment).

Excess §743(b) Basis Adjustment - Example 1 Continued

Pre-Sale								
Assets	UBIA	Tax	FMV		Capital	UBIA	Tax	FMV
Building	900,000	750,000	1,050,000		A	300,000	250,000	350,000
					B	300,000	250,000	350,000
					C	300,000	250,000	350,000
						900,000	750,000	1,050,000
Post-Sale								
Assets	UBIA	Tax	FMV		Capital	UBIA	Tax	FMV
Building	950,000	850,000	1,050,000		**T**	**350,000**	**350,000**	**350,000**
					B	300,000	250,000	350,000
					C	300,000	250,000	350,000
						950,000	850,000	1,050,000

V.
"Specified Service Trades or Businesses" (SSTBs)

- Delineating the SSTB Categories
- Employee v. Independent Contractor
- Strategies – Eliminate or Ringfence an SSTB

How the 2019 Final § 199A Regulations clarified definition of an "SSTB"

- "SSTB" stands for "Specified Service Trade or Business"
- The Final § 1.199A**-5** Regs, defining a ""Specified Service Trade or Business"(SSTB) represent an improvement over the 2018 Proposed Regs, and address many practitioners' questions concerns--clarifying key issues. The Final Regulations also add over a dozen extremely helpful and illuminating examples.
- **Preamble to Final Regs is** also helpful in gaining some insights as to the Government's thinking. **Preamble** emphasizes that whether a particular T/Biz is an SSTB "depends on whether the **facts and circumstances** demonstrate that the trade or business is in one of the listed fields." (Whenever there is a "facts & circumstances" test, that is a potential planning opportunity.)
- In refusing to adopt commenter's suggestion that SSTBS should be limited to the services fields provided in Reg. §1.448 (prohibiting certain Tps from using the cash method), Treasury notes in Preamble that purpose of §199A is different, than §448 and that §199A defines SSTB by reference to §1202(e)(3)(A), with modifications.
- In the various listed services, Final Regs:
  - Removed reference to health professionals providing services directly to patients (thus broadening this category);
  - Explicitly carve out (exclude) architectural & engineering services from the "consulting" SSTB category;
  - Include new rules on "dealing in commodities";
  - Clarify that financial services excludes merely taking deposits and making loans, but includes as an SSTB "arranging lending transactions";
  - Clarify that originating a loan is not treated as "a purchase of security" for purposes of "Dealing in Securities" (a listed SSTB).
- Final Regs remove the 80% threshold in rule attributing an SSTB to a 50% commonly controlled T/Biz. Also eliminate the "incidental rule" of the proposed regs.
- Final Regs limit presumption of "employee" status to a 3-year look-back period , clarifying that the presumption is rebuttable, even if former employee remains at same firm.

Effect of being an "SSTB"

- **For higher-income taxpayers, the statutory definition of "qualified trade/biz" (QTB) explicitly *excludes* an SSTB—i.e., SSTBs cannot qualify for the 199A dd!** § 199A(d)(1)(A) and (d)(3).

- **What "lower income" SSTBs can still qualify for the 199A deduction?** IF the Tp's taxable income is less than "threshold amount" *plus* $50k ($100k for joint returns), then (for any taxable year) a SSTB does not fail to be a "qualified trade/biz." (QTB). § 199A(d)(3)(A). For "threshold amount" *see* §199A(a)(2), (3).

- But, even if a T/biz is below the § 199A(d)(3)(A) floor, still only the "applicable percentage" of qualified items of income, gain, dd or loss, W-2 wages, and the 'unadjusted basis immediately after acquisition' (UBIA) can be taken into account for purposes of computing the § 199A deduction.

- "Applicable Percentage" = 100% minus the percentage equal to the ratio of—

  (i) Taxable income of the Tp exceeding the "threshold amount", bears to

  (ii) $50k ($100k for joint returns). §199A(d)(3)(B).

Effect of being an “SSTB”.... (cont.)

- The SSTB limitation also applies to income earned through a publicly traded partnership (PTP).
- If a T/Biz is being conducted through a “relevant pass-through entity” (RPE) or a PTP, and such T/Biz is an SSTB, any *direct or indirect* owners/partners/members of the business are subject to the SSTB limitation—regardless of whether such person is an “active” or completely “passive” owner/partner/member.
- Direct and indirect owners (active or passive) of the SSTB may, however, qualify for the §199A deduction, in whole or in part, depending on whether their income is below the “threshold amount.”

Definition of an "SSTB" - § 199A(d)

- § 199A(d) defines "SSTB" by reference to 1202(e)(3)(A), which defines a qualified T/Biz for purposes of the "Partial exclusion for gain from certain small business stock."
  - Par. (3) of 1202(e): "The term "qualified trade or business" means any trade or business ***other than*—**
    - (A) any trade or business involving the performance of services in the fields of **health, law, <u>engineering, architecture</u>, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees * * ***
- § 199A(d)(2) explicitly *excludes* "engineering" and "architecture" from the list of SSTBs (why?), and adds several other categories of SSTBs (thus modifying the list of services in § 1202(e)(3)(A):
  - Investing and Investment Management are added to the SSTB list;
  - Trading is added;
  - Dealing in securities, partnership interests, or commodities is added.

Definition of an "SSTB" - § 199A(d)
(continued)

- Statute is not the model of clarity. Fortunately, Reg. §1.199A-5(b) helps by defining SSTB (subject to some exceptions) as: "Any trade or business involving the performance of services in one of more of the following fields:

(i) Health;
(ii) Law;
(iii) Accounting;
(iv) Actuarial science;
(v) Performing arts;
(vi) Consulting;
(vii) Athletics;
(viii) Financial services;
(ix) Brokerage services;
(x) Investing and investment management;
(xi) Trading;
(xii) Dealing in securities (defined § 475(c)(2)), partnership interests, or commodities; **or**
(xiii) Any trade or business where the principal asset of such trade/business is the reputation or skill of one or more of its employees…

The last listed SSTB category (xiii) is NOT a "catch all"

- **Final Reg --5(b)(1)(xiii) sets forth what looks like a broad "catch all" category:** "Any trade or business where the principal asset of such trade or business is the ***reputation or skill of one or more of its employees or owners*** as defined in paragraph (b)(2)(xiv)…"
- But Preamble makes clear this clause is to be ***interpreted narrowly,*** and includes only fees, compensation, or other income received for:
  - **ENDORSEMENTS** (i.e., endorsing products and/or services). Treasury rejected practitioner suggestion that clause (xiii) should apply only if the T/Biz, itself, is in "the endorsement business." It applies if individual or RPE is engaged in T/biz of making endorsements.;
  - **Licensing of Tp's likeness, personal features, name signature, voice, TM,** or other symbols associated w/person's identity;
  - **Personal Appearances at media events – e.g.,** radio/TV including grand openings and premiers?
- "Compensation" includes distributive share, a P/S interest, S-Corp shares.

“Reputation & skill” as “the principal asset”

- Reg. 1.199A-5(b)(1)(xiii): A T/biz in which “*the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners…*”
- **Example:** Well known actress contributes her likeness and use of her name to Shoe Company in exchange for P/S interest and guaranteed payment. She has an SSTB within meaning of –5(b)(1)(xiii)—*i.e.,* her reputation is the principal asset of her T/biz.
- **Example:** K owns an S corp, which operates a bicycle sales and repair business. Income is generated equally from both sales of bikes and related equipment, and from bicycle repairs. Several of his employees and K have acquired substantial skill and excellent reputations in the field. Customers often consult with them on best bicycles for purchase. Result: K is in T/biz of bike sales & repairs—and is NOT an SSTB within meaning of par. (b)(1)(xiii) despite reputation & bike skill of K and his employees. (apparently not rising to level of endorsing?)
- **Example:** Famous chef owns & operates several restaurants. Due to his reputation & skill, Chef also receives (separately) a $500k payment for endorsing a line of cookware. Example concludes that Chef’s restaurant biz is NOT an SSTB, but endorsement fee constitute a SSTB.

Scope of "Health" field as SSTB

- Very important to analyze facts & circumstances because many health-related T/businesses are multi-faceted.
- "Health" field, for SSTB purposes, includes provision of medical services by physicians, nurses, pharmacists, vets, PT therapists, psychologists, dentists, and other similar health care professionals.
- "Health" does NOT include "***services not directly related to medical services field"*** although they purportedly relate to "health" of service recipient (e.g., health clubs; spas; payment processing; equipment maintenance; or R&D, testing, manufacture of pharmaceuticals & medical devices).
- **Ex: Surgical care out-patient facilities.** Y is a private organization that owns a number of out patient surgical care facilities in USA. For each facility, Y ensures compliance with state & federal laws, and administers and manages the facilities. Y does not employ physicians, nurses, or other medical assistants. Rather, Y contracts with medical providers and professionals to perform all medical are. Patients are billed by Y for the facility costs AND by the healthcare professional for the actual costs of the procedure. **Example concludes:** Y does not perform services in field of health for purposes of the SSTB limitation.
- **Ex: Assisted living complex**. X operates residential facility providing wide variety of services to seniors residents, including meals, housekeeping, laundry, and exercise classes. X also contracts with local professional healthcare providers to offer residents a range of medical services provided at the facility, including skilled nursing, certified nursing assistance, PT/OT therapies, medication management, ambulance transport. Any medical services are billed directly by the providers to the senior recipient. **Conclusion:** X is NOT performing services in field of health for purposes of the SSTB limitation.

Scope of "Health" field as SSTB
(continued)

- Final Regs remove requirement in 2018 proposed regs that "health" **services needed to be provided *directly to patients*** to be an SSTB. Thus, physician that uses her skill/judgment to analyze the CT scans, or performs diagnostic testing, is apparently now in the field of "health" for SSTB purposes, even though she has no patient contact. Absent this prerequisite, more medical services-based businesses will be SSTBs.
- *But see* Example 4 at Reg. § 1.199A-5(b)(3)(iv):
- Z is the developer and only provider of a patented test used to detect a particular medical condition. Z accepts test orders only from health care professionals (Z's clients), does not have contact with patients, and Z's employees do not diagnose, treat, or manage any aspect of patient care. A, who manages Z's testing operations, is the only employee with an advanced medical degree. All other employees are technical support staff--not healthcare professionals. In order to perform the duties required by Z, employees receive more than a year of specialized training for working with Z's test, which is of no use to other employers. *Upon completion of an ordered test, Z analyzes the results and provides its clients a report summarizing the findings. Z does not discuss the report's results, or the patient's diagnosis or treatment with any health care provider or the patient. Z is not informed by the healthcare provider as to the healthcare provider's diagnosis or treatment.*
- **Example 4 concludes that Z is NOT providing services in the field of health** for purposes of the SSTB definition. Also, Z's skills and services are **not in category (xiii**) which requires that the principal asset of the T/biz be the reputation or skill of one or more of its employees.

Scope of “Consulting” services as SSTB

- **Includes:** provision of professional ***advice and counsel to clients*** **to assist the client in achieving goals and solving problems. …including matters regarding advocacy** w/intention of influencing decisions made by government or govt agency, attempts to influence legislators and govt officials by lobbyists, and other services by professionals in their capacity as such. Reg. § 1.199A-5(b)(2)(vii).
- **Does NOT include** SALES or training and educational courses.
- **Does NOT include** “embedded consulting services” that are ancillary to the sale of goods or performance of services on behalf of a trade or business that is otherwise not an SSTB (such as services typically provided by building contractor) if there is no separate payment for the consulting services.
- **Does NOT include architecture and engineering services.** *Why not--did they just have good lobbyists? Why so many exceptions for the real estate industry in these rules?*
- **Ex. (x):** F is in T/biz of licensing software to customers. F evaluates customer’s software needs and advises customer on the particular software products it licenses, and is paid a flat price for the software license. F also helps to implement the software F licenses. **Ex (x) concludes:** F is engaged in T/biz of licensing software and *not* engaged in an SSTB in the field of consulting . (embedded consulting ?)
- ***But Cf.*** **Ex. (viii):** D provides services that assist unrelated entities in making their personnel structures more efficient. D studies its client's organization and structure, compares them to industry peers, and then makes recommendations to its clients regarding possible changes in the client's personnel structure, including the use of temp workers. *D does not provide any temporary workers to its clients* and D’s compensation and fees are not affected by whether D’s clients used the temp workers. Example concludes: D is engaged in the performance of the SSTB listed service of “consulting.”
- **Compare Ex. (ix)** where **head hunter,** who also is providing some consulting services, but is compensated for supplying temp workers is treated as NOT engaged in the field of consulting for SSTB purposes. (Why not? More like sales?)

Scope of "Financial Services" as SSTB

- Field of "financial services" remains broadly defined in the Final § 199A Regs.
- **Includes:** providing clients services, *including managing wealth; financial advice to clients; developing retirement plans & wealth transition plans; valuations, M&A , dispositions; restructurings (including Title 11 or similar); raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services.*
- **Includes services typically provided by** financial advisors, investment bankers, wealth planners, retirement advisors, and other similar professionals.
- **Final Regs clarified that it does NOT include:** merely *taking deposits or making loans*, but *does include arranging lending transactions* between a lender and borrower. (Policy reason?)
- Also Final Regs clarified that "financial services" does NOT include merely **franchising a brand of personal financial planning offices.**

  Example: H is in T/Biz of franchising a brand of personal financial planning offices, which provide personal wealth & retirement planning, and other financial advice to customers for a fee.   H does not provide these financial planning services itself. ***Rather, H licenses the right to use the business trade name,*** other branding IP, and a marketing plan to third-party financial planner franchisees that operate the franchised locations and provide all services to customers.   The franchisees compensate H based on a fee structure, which includes a one-time fee to acquire the franchise.   Conclusion: H is not engaged in the performance of services in the field of financial services for purposes of the SSTB definition in §199A.

"Investing/Investment Management" and "Brokerage" Services as SSTBs

- **"Investing and investment management"** field, for § 199A/SSTB purposes, refers to a T/biz involving the receipt of fees for providing investing, asset management, or investment management services (E.g., advice on buying & selling investments). Treasury clarifies in preamble that management through agents is included, but distinguishes "commission sales." Final Regs say it does NOT include
  - directly managing real property.
- **Meaning of T/biz of "brokerage services":** defined, solely for §199A purposes, are services in which a person arranges transactions between a buyer and a seller with **<u>respect to securities</u>** (as defined in §475(c)(2)) for a commission or fee (e.g., stock brokers). But "brokerage services" does <u>NOT</u> include services provided:
  - real estate agents
  - Real estate brokers,
  - Insurance agents
  - Insurance brokers.
- Preamble to Final Regs discusses how "broker" can be interpreted to include broad set of persons who facilitates the purchase/sale of goods/services for a fee or commission, while "brokerage services" is most commonly associated with the purchase & sale of stock/securities.
- **Is Treasury taking a broad or narrow view of "brokerage services"?** Are yacht brokers engaged in a T/biz of "brokerage services" for purposes of these §199A regs?
- Are life insurance products "securities" (or insurance) for purposes of listed category of "brokerage services"?

Scope of “Trading” services as SSTB

- **T/biz of “Trading” includes:**
  - ***Trading in securities*** (defined by reference to § 475(c)(2)),
  - ***Trading in commodities*** (defined by reference to § 475(e)(2)), or
  - ***Trading in partnership interests*.**
- Facts and circumstances test as to whether a person is a “trader,”
  - relevant facts include *source and type of profit* associated with the activity
  - Immaterial whether person is trading for her/his own account, for the account of others, or any combination
- Trading in “Bit coin” for own account included?
- Licensure as a “trader” not necessary to be in T/biz of trading?

Scope of "Dealing in Securities, Partnership Interests, or Commodities" as SSTBs

- This listed SSTB category includes
  - "Dealing in Securities" as defined in § 475(c)(2)
  - "Dealing in Commodities" as defined in § 475(e) (2), or
  - "Dealing in Partnership Interests."
- **"Dealing in Securities":** means regularly purchasing securities from and selling securities to customers in the *ordinary course of a trade or business* or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.
  - Final Regs clarify that performance of **services to *originate a loan is not treated as the purchase of a security*** from the borrower. As discussed in Preamble, Treasury received a lot of comments from those concerned about mortgage finance business, and from those arguing that purchase of a loan should not be construed as dealing in securities. (What about securitization of pools of mortgages?)
  - Final Regs also **removed, for § 199A purposes, the reference to "negligible sales exception**" (re: §1.474(c)-1(2) &(4)) from definition of "dealing in securities."
  - Treasury declined to adopt practitioner suggestion in Final Regs that lender should be considered a "dealer" only if such loans, including retail sales contracts, are held in "inventory" because, according to Treasury, the definition of "dealer in securities" has *neve*r depended on whether securities were held in inventory.
  - Where is line between "lending" and "securities dealing" drawn? (Not clear from the regulations...)

Scope of "Dealing in Commodities"

- Only for purposes of §199A(d)(2), services that consist of dealing in commodities (as defined in §475(e)(2)) means *regularly purchasing commodities from and selling commodities to customers in the ordinary course of a T/biz* or regularly offering to enter into, assume, offset, assign, or otherwise terminate positions in commodities with customers in the ordinary course of a T/Biz.
- Final § 199A Regs limit the definition of "dealing in commodities" to a T/Biz that is ***dealing with financial instruments*** or otherwise **does *not* engage in substantial activities with *physical commodities.***
- **"Qualified Active Sales" exception:** Final Regs adopt rules that apply to "Qualified Active Sales" of commodities in Subpart F, (Reg. §1.954-2(f)(2)), which require a person to be engaged in the active conduct of a commodities business as a "producer, processor, merchant, or handler of commodities" and to perform certain activities with respect to those commodities. Gains & losses from "qualified actives sales" are not taken counted in determining whether a person is engaged in business of "dealing in commodities" for purposes of §199A's SSTB restriction.
- To meet the "Qualified Active Sales" exclusion, Tp must generally hold the commodities as inventory or similar property and satisfy conditions specified in the Regs regarding substantial and significant activities (not performed through an agent or independent contractor) regarding actual (i) production, including planting, harvesting, extracting minerals, or (ii) processing activities like refining, concentrating, milling, or (iii) significant logistical, transport, or warehouse leasing activities, etc.

Scope of "Dealing in Commodities" (cont'd.)

- **Hedging Transactions are also excluded as part of the "Qualified Active Sales" exception:** Income, gain, loss, or deductions from hedging transactions (as defined in §1.1221-2(b)) entered into in the normal course of a commodities business by a producer, processor, merchant, or handler of commodities will also be as gains or losses from "qualified active sales" that are part of the [underlying] trade or business.

- ***See also the general treatment of hedging transactions at*** **Reg. § 1.199A-5(b)(2)(B) –**

  Hedging Transactions: Income, deduction, gain or loss from a hedging transaction(as defined in §1.1221-2(b)) entered into by an individual or RPE in the normal course of the individual's or RPE's trade or business is treated as income, deduction, gain, or loss *from that trade or business* for purposes of this paragraph (b)(2).

- **Example**: If Corn Products S-Corp enters into futures contract to hedge against crop failure, which hedge is in the "normal course of that RPE's trade or business, any gain/loss is treated as derived from that underlying crop business—not from the trade or business of something else.

Scope of "Athletics" services as an SSTB

- **Includes:** services by individuals who participate in athletic competition such as athletes, coaches, *and team managers* in sports such as baseball, basketball, football, soccer, hockey, martial arts, boxing, bowling, tennis, golf, skiing, snowboarding, track and field, billiards, and racing.
- **Does not include:** provision of services not requiring skills unique to athletic competition, such *as maintenance & operation of equipment or athletic facilities;* services by persons who *broadcast or otherwise disseminate video or audio* of athletic events to the public.
- ***See* Ex. (vii):** Partnership owns & operates a professional sports team, employing athletes, and selling tickets and broadcast rights for the games. Partnership sells the broadcast rights to Broadcast LLC, a separate T/Biz, which solely broadcasts the games.

Example (vii) concludes: (a) Partnership is engaged in the performance of services in an SSTB in the field of athletics, and the tickets sales and sale of broadcast rights also included as part of the SSTB. **(b) Partner C--a totally passive owner** in the Partnership—is NOT eligible for the §199A deduction with respect to his distributive share in the athletic Partnership. **(c)** Broadcast LLC, however, is not engaged in the performance of services in an SSTB in the field of athletics.

De Minimis Rule for SSTBs

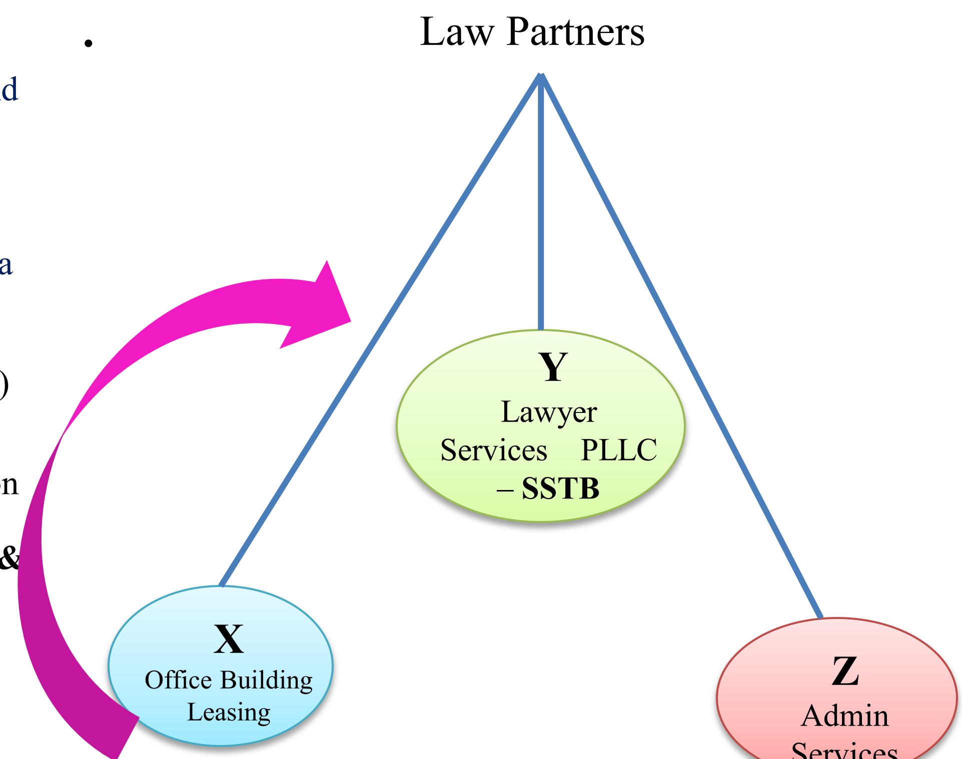
- **Trade/Biz with gross receipts of $25M or less:** Such Trade/Biz is NOT an SSTB if < 10% of its gross receipts are attributable to the performance of services in a listed SSTB.
- **Trade/Biz with gross receipts > $25M:** Such Trade/Biz is NOT an SSTB if < 5% of its gross receipts are attributable to the performance of services in a listed SSTB.
  - Performance of any activity "incident to" the actual performance of services in the field is considered the performance of services in that field.
  - **Query:** How should "attributable to" be interpreted? Should we look to the US international tax rules for meaning of "attributable to" as in attributing business profits to a permanent establishment or income that is "effectively connected" with a U.S. trade or business?
- **Example:** Urban landscape LLC sells landscaping equipment and also provides advice and counsel on landscape design for large office parks. The LLC's landscape design service qualifies as the SSTB of "consulting" for purposes of §199A. Urban landscape separately invoices for its landscape design services and does not sell the trees, shrubs, & flowers it recommends in its designs. Urban Landscape LLC does, however, maintain only one set of books and records, and treats both its landscape design and equipment sales as a single Trade/Business for purposes of §§162 and 199A. Urban landscape has gross receipts of $2M, $250k of which is attributable to the landscape design services, an SSTB. **Result:** Because the gross receipts from Urban Landscape's consulting services is >10% of its total gross receipts, the entirety of Urban Landscape's Trade/Biz is considered an SSTB.
- **Planning Query:** Would it make a difference if Urban Landscape kept separate books & records, and had separate employees? See Example 2 at 1.199A-5(c)(1)(iii)(B) (Vet sells organic dog food and provides vet services and is able to treat them as separate Trade/Businesses due to facts like keeping completely separate books & records.)

Services or Property Provided to An SSTB

- Rule in Final Regs eliminates the proposed 80% threshold and provides that:

  If a Trade/Biz provides property or services TO an SSTB and

- the Trade/Biz and the SSTB are commonly controlled by same person(s) that own at least 50% of each, *then* ***"that portion"*** *of the Trade/Biz* providing property or services to the 50% or more commonly-owned SSTB will be treated as a separate SSTB.
- Note: common ownership includes *direct or indirect* ownership by related parties within the meaning of §§ 267(b) or 707(b).
- **Query:** We should assume that the full panoply of attribution rules of § 267(c) applies for purposes of determining "control" and ownership ? Worry about **control premiums & minority discounts in the valuations too?**
- **Example:** Assume same partners own > 50% value of 3 partnerships (X, Y, and Z), and X, a non-SSTB partnership, leases out 30% of its building to the commonly controlled SSTB-lawyer services partnership Y, which is an SSTB. Because of the common control, 30% of Partnership's X's leasing activity will be treated as an SSTB.



Switching hats: the "you're-still-just-an-employee" Rebuttable Presumption

- Trade/Biz of performing services as an employee is not a "trade or business" for purposes of §199A and the Regs. Thus, no items of income, gain, deduction, and loss from employee services can constitute QBI (qualified business income).
- "Employee" is defined by common law. Regs state that employer's federal employment tax classification is immaterial.
- Performing services as an employee refers to all wages (w/in meaning of §3401(a)), and all other income earned in a capacity as an employee.
- **Anti-Abuse Rule:** Three-year look-back presumption of "employee status" if taxpayer switches to different work role, and is no longer an "employee."
- **Example:** Susi is an engineer employed as a senior project engineer at "Digital -Tech Engineering ." Digital Tech is a partnership for federal tax purposes and structured such that after 8 years, senior project engineers are considered for partner if certain career milestones are met. After 8 years, Susi meets those career milestones and is admitted as a partner. As a partner, Susi shares in the net profits of Digital-Tech Engineering Firm, and meets the common-law definition of "partner." Nonetheless, Susi will be presumed to still be an "employee" for three years after making partner (solely for purposes of §199A(d)(1)(B)). To overcome the presumption of "employee" status, Susi must supply IRS with documentation and other substantiation sufficient to prove she is no longer an employee.
- Effective date: This anti-abuse rule applies to taxable years ending after Dec. 22, 2017.

VI.

Aggregating & Separating Businesses

Aggregation (1 of 5)

- Aggregation Rules are in the **–4 Regs** –i.e., §1.199A-4
- Reg. § 1.199A-4(a)
  - Each trade or business is separate for purposes of determining the QBI component. However, an individual or RPE *may aggregate* trades or businesses.
- Reg. § 1.199A-4(b)
  - **Individuals and RPEs may aggregate multiple trades or businesses only if the following requirements are satisifed:**
    - Ownership of 50% or greater of each T/B for a majority of the taxable year (including the last day);
    - All of the items attributable to each T/B are reported on returns with the same taxable year (not taking into account short years);
    - Cannot aggregate a SSTB; and
    - T/Bs to be aggregated MUST satisfy at least 2 of the following factors:

1. T/Bs provide products, property, or services that are the same or customarily offered together;
2. T/Bs share facilities or significant centralized business elements (e.g., personnel, accounting, legal, manufacturing, purchasing, HR or IT); OR
3. *T/Bs are operated in coordination with, or reliance upon*, one or more of the businesses of the aggregated group (e.g., supply chain interdependencies).

Aggregation

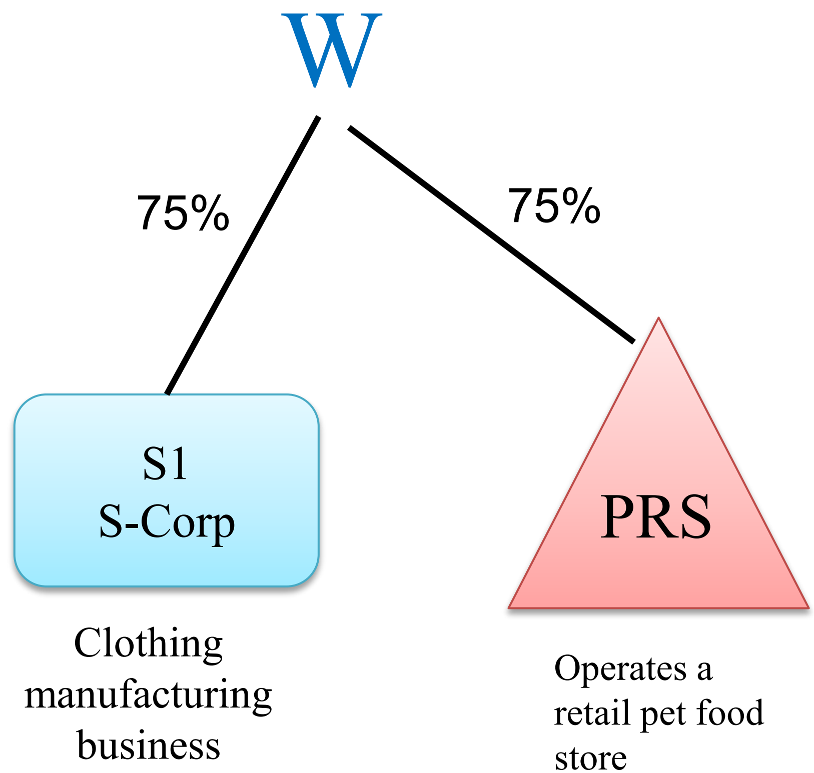
- **Aggregation**
  - Reg. § 1.199A-4(b) (continued)
    - Individuals and RPEs may aggregate T/Bs operated directly or through (lower-tier) RPEs to the extent an aggregation is not inconsistent with the aggregation of a (lower-tier) RPE.
      - **Query:** Is the scope of this rule narrow (individual may pick and choose from RPE-conducted T/Bs to the extent the RPE itself does not aggregate), or broad (individual may not take a conflicting position with an RPE, e.g., under the rules in Reg. §1.199A-4(b)(1)(v)) ??
    - Individuals and RPEs may not subtract from the T/Bs aggregated by a (lower-tier) RPE, but may aggregate additional trades or businesses with the (lower-tier) RPE's aggregation if the rules of this section are otherwise satisfied.
    - If an individual aggregates, QBI, W-2 wages, and UBIA of qualified property must be combined for purposes of Reg. § 1.199A-1(d)(2)(iv).
      - If an RPE itself does not aggregate, its owners need not aggregate in the same manner.
      - If an RPE aggregates, it must compute and report QBI, W-2 Wages, and UBIA of qualified property for the aggregated T/B.

Aggregation (3 of 5)

- ***Consistency Rule***
- **Gen. Rule: one cannot combine & separate businesses from year to year!**
  - Reg. § 1.199A-4(c)
    - An individual or RPE that chooses to aggregate *must consistently report* the aggregated T/Bs in all subsequent taxable years. (A failure to aggregate is not considered to be an affirmative aggregation for purposes of this rule.)
    - An individual or RPE that fails to aggregate may not aggregate on an amended return (other than for the 2018 taxable year).
    - Exception: An individual or RPE may add a newly-created or newly-acquired (including through non-recognition transactions) T/B to an existing aggregated T/B.

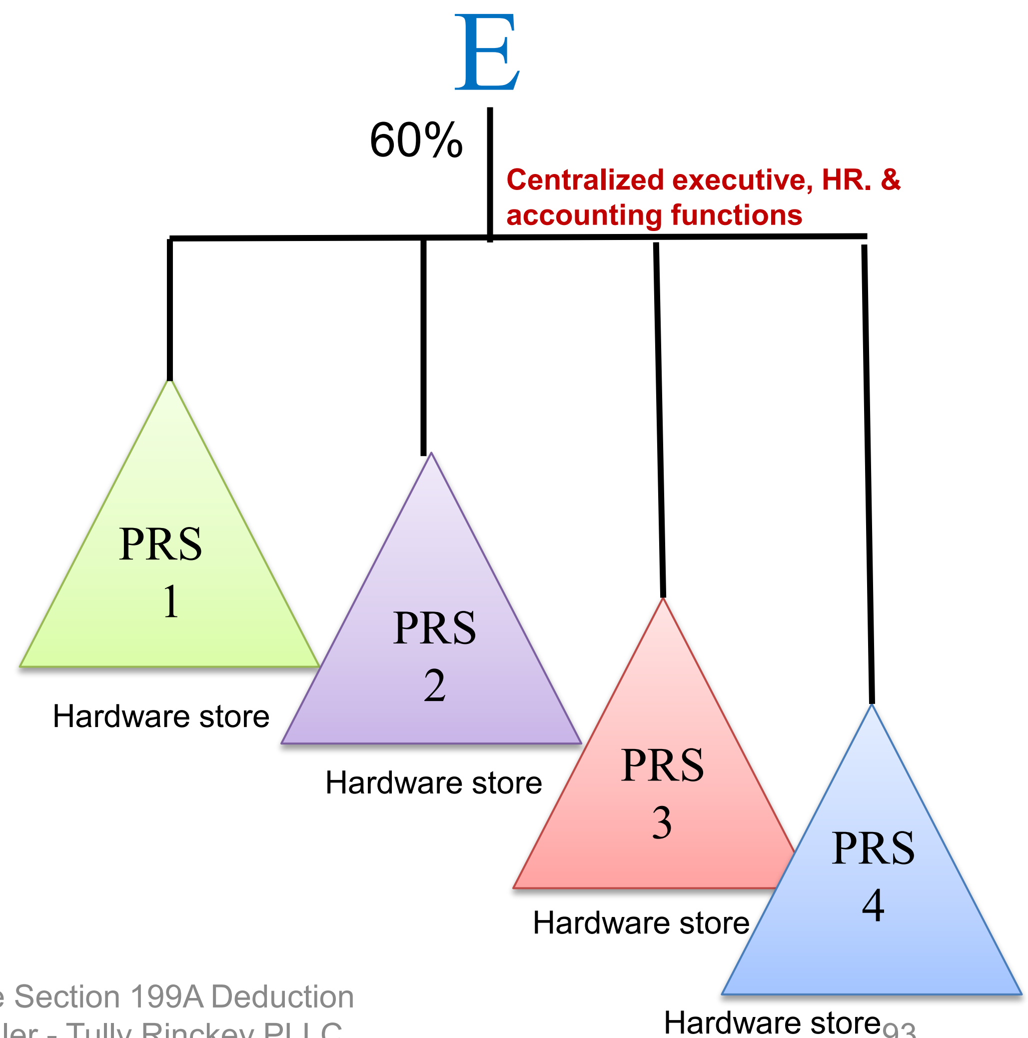
Aggregation – Example 1 (4 of 5)

- The aggregation rules are complex, but fortunately, Reg. §1.199A-4(d) contains 18 helpful examples illustrating the application of the aggregation rules.
- **Example 1:** Assume W owns a 75% interest in S1, an S corporation, and a 75% interest in PRS, a partnership. S1 manufactures clothing and PRS is a retail pet food store. W manages S1 and PRS.
- **Analysis**: Although W manages both S1 and PRS, W is not able to satisfy the requirements of paragraph (b)(1)(v) of this section as the two businesses do not provide goods or services that are the same or customarily offered together; there are no significant centralized business elements; and no facts indicate that the businesses are operated in coordination with, or reliance upon, one another.
- **Result:** W must treat S1 and PRS as separate trades or businesses for purposes of applying Reg. § 1.199A-1(d). (Cannot aggregate!)



Aggregation – Example 2 (5 of 5)

- **Example 2:** Assume E owns a 60% interest in each of four partnerships (PRS1, PRS2, PRS3, and PRS4). Each partnership operates a hardware store. *A team of executives oversees the operations of all four of the businesses and controls the policy decisions involving the business as a whole.* Human resources and accounting are centralized for the four businesses. E reports PRS1, PRS3, and PRS4 as an aggregated trade or business under paragraph (b)(1) of this section and reports PRS2 as a separate trade or business. Only PRS2 generates a net taxable loss.
- **Analysis**: Under paragraph (b)(1)(v) of this section, the following factors are satisfied: Paragraph (b)(1)(v)(A) of this section because each partnership operates a hardware store; and paragraph (b)(1)(v)(B) of this section because the businesses share accounting and human resource functions.
- **Result:** E's decision to aggregate only PRS1, PRS3, and PRS4 into a single trade or business for purposes of applying Sec. 1.199A-1(d) is permissible. The loss from PRS2 will be netted against the aggregate profits of PRS1, PRS3, and PRS4 pursuant to Reg. § 1.199A-1(d)(2)(iii).



VII.
Converting Non-Qualified Income

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Planning and Converting Non-qualified Income

Filing Status

- Married couples may be able to maximize their 199A deduction by filing separately.
  - Spouse A has qualified business income of $150,000 (which is below the threshold for taxpayers not filing jointly)
  - Spouse B has wages of $300,000.
  - Combined, their taxable income is $450,000 which is above the upper limit for MFJ.
  - Spouse with the QBI deduction could receive $150,000 x 20% = $30,000.

Invest in REIT

- Real Estate Investment Trust (REIT) is a company that owns, operates or finances real estate. They are modeled after mutual funds.
  - REITs typically pay out all their taxable income as dividends to shareholders.
  - Qualified REIT dividends obtain a 20% Section 199A deduction without being subject to the W-2 and UBIA limitations.
  - As a result, any income received through a REIT and paid to shareholders are taxed at the individuals 29.6% rate instead of the 37% rate that would usually apply.

Spin-off for SSTB's

- If an SSTB provides ancillary services that would be qualified trades or businesses if they were in a separate entity, consider spinning them off
    - Law firm providing copying and printing services

Rental Real Estate

- Safe-harbor procedures to qualify a “rental real estate enterprise” as a trade or business.
  - At least 250 hours of services are performed each year.
  - Cannot combine residential and commercial in the same enterprise.
  - Must maintain separate books and records for the enterprise.
  - Property under a triple net lease does not qualify.

Guaranteed Payments

- Guaranteed payments are excluded as QBI and are not considered as part of W-2 wages payments to a partner.
  - Consider restructuring (if possible) to reduce guaranteed payments.
  - Guaranteed payments made to a partner are not counted towards their QBI.
  - Consider whether a conversion from a partnership to an S corporation would be beneficial.

Guaranteed Payments - Example

- Partnership ABC has $2 million of QBI split evenly among 4 partners which includes an $800,000 guaranteed payment to Partner A.
  - Partner A receives taxable income of $500,000 (1/4 of $2 million) plus $800,000 guaranteed payment = $1,300,000. Only $500,000 is qualified income, QBI deduction $500,000 x 20% = $100,000.
- If, instead of guaranteed payments, A receives a priority profit allocation:
  - Partnership taxable income is $2,800,000, but A would get the first $800,000 as priority profit allocation. Then, the $2,000,000 would be split evenly. A would still receive taxable income of $1,300,000 but it would all be qualified and that would result in a QBI deduction of $1,300,000 x 20% = $260,000

VIII. Sales of Businesses

Factors to Consider in Maximizing the §199A deduction

IRC §199A Stakes in Selling Business Assets (vs. Stock of the Business)

Maximizing the 199A deduction in the context of the taxable sale of a business can be extremely complex. The complexity is compounded if the business is large, if it has a diversity of assets and divisions, if it has foreign entities and/or divisions, and if it has a lot of intangible property.

At a very high level, the basic stakes are clear if one is debating in the quintessential question of whether it would be better to sell stock (or a partnership interest) versus the underlying business' assets. Aside from the numerous other tax issues involved, consider that:

- Section 199A(c)(3)(B) specifically provides that "any items of short-term capital gain, short-term capital loss, long-term capital gain, or long-term capital loss," is excluded from the calculation of "qualified business income."
- Thus, clearly, if an individual is selling the stock (or his partnership interest), the §199A deduction will not be available to offset the income on the sale of the business.
- The extent of the availability of the 199A deduction on the sale of <u>business assets</u> is less clear, and more complicated, requiring an assessment of the types and relative size of the asset classes that will be sold.
- In general, the gain from the sale of capital assets that flows through to the selling business owner will not qualify for the §199A deduction, while ordinary gain may qualify. One also has to consider complex netting rules under § 1231.
- Valuations and documented appraisals will be important to maximizing the § 199A deduction if business assets are sold.

IRC §199A Stakes in Selling Business Assets
(continued)

- **A key stake in identifying opportunities to maximize the 199A deduction in the context of a sale of business assets is to model out what types of income the sale of each asset is likely to generate. For this, tax advisors need to refer back to fundamental income tax rules that apply to "property" characterization, and income characterization, from taxable property dispositions.**
- **Ordinary income:** Income resulting from the sale of inventory and other "quick assets" like account receivables, or the provision of services. Under current law, these items are taxed to individuals at the highest rate of 37 percent. (Ordinary income from the sale of these assets is eligible to be included in QBI.)
- **Section 1231 gain or loss:** Defined as the sale of business assets held for > 1 year, either land or assets subject to amortization or depreciation (machinery and equipment, office equipment, vehicles, purchased intangibles, for example). At the taxpayer level, all Section 1231 gains and losses are netted. Gains are treated like capital gains (cannot be QBI); losses are treated like ordinary losses (which reduce QBI).
- **Section 1245 gains:** Treated as ordinary income. Triggered when a depreciable asset it sold for > adjusted tax basis (original cost, less depreciation or amortization). Machinery and equipment, office equipment, cars, trucks, etc. will typically sell for less than original cost. If the asset is sold for < original cost, all gain is § 1245 gain. Purchased intangible assets, on the other hand, will often sell for more than original cost. Gain from proceeds up to original cost is §1245 gain; gain from proceeds in > original cost is § 1231 gain.
- **Section 1250 gain**: Like intangible assets, buildings often sell for more than original cost. The excess of proceeds over original cost would result in § 1231 gain. Sale proceeds > tax basis, up to original cost, will give rise to depreciation recapture. (But unlike equipment, the income from depreciation recapture on buildings is taxed at a special rate of 25%.
- **Capital gain:** Capital gain in a business sale most commonly results from the sale of "intangible assets" (like goodwill) that were self-created by the business. Given changes in the law from the TCJA, the taxation of these assets is very complex—particularly with respect to goodwill created abroad.

IRC §199A Stakes in Selling Business Assets (continued)

- So, what does all this mean??

- **In sum, the availability of the § 199A deduction may be a huge factor in reducing the overall tax to the owners of a pass-through entity that operates a qualifying trade or business.** Thus, the potential 199A benefit should always be quantified and compared to other disposition strategies (e.g., the ability to exclude gain on the sale of small business corporate stock qualifying under Code § 1202, which may provide a bigger benefit).

- If the business of a pass-through entity is being sold, the application of the § 199A deduction rules to the sale of business assets can be administratively burdensome, and complex to a small business owner. In addition, there are many uncertainties that are usually not capable of being quickly evaluated. Modeling is needed to identify the risks and opportunities--particularly in connection with the sale of intangibles.

- A business should plan its tax exit-strategy well in advance of any sale, making sure alternatives are considered, positions are clearly documented, and if each sale is supported by appropriate appraisals. Although this is standard planning outside the § 199A context, maximizing the 199A deduction makes planning, modeling, and appropriate valuations all the more important.

IX.
Planning for Losses

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Loss Planning

Loss Planning

- Negative QBI reduces positive QBIs from all sources pro-rata based on their respective amounts without regard to wages or QBAI. See Treas. Reg. section 1.199A-1(d)(2)(iii).
- Aggregating businesses that produce negative and positive QBIs may improve the overall section 199A position.
- To the extent that wages may be shifted, that could also improve the overall section 199A position.
- Consider whether or not business activities rise to the level of a trade or business that generates QBI. Certain rental activies and hobbies do not generate QBI. These types of activities should not generate negative QBI.

Loss Planning - Example

Example:

- A owns businesses ABC and DEF.
- ABC earns $1 million of QBI and has $200,000 of W-2 wages.
- DEF incurs losses of $200,00 and has $200,000 of W-2 wages.
- If the businesses are not aggregated, A's section 199A deduction would be the lesser of (i) 20% of $800,000 or (ii) 50% of $200,000, i.e., $100,000.
- If the businesses are aggregated, A's section 199A deduction would be the lesser of (i) 20% of $800,000 or (ii) 50% of $400,000, i.e., $160,000.

X.

Key Takeaways

and

Q&A