National Association of Tax Professionals

NATP's Summary of Proposed Regulations on §199A

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Contents

Introduction

On August 8, 2018, the IRS released proposed regulations on §199A, providing guidance on their interpretation of provisions regarding the new 20% deduction for pass-through entities. The proposed regulations span 184 pages and provide numerous definitions, examples, and anti-abuse provisions.

The following covers some of the most notable and arguably important provisions to our members, as well as how it impacts your practice. Note that these proposed regulations are not law, however, they may be relied upon as guidance.

General Information

Taxpayers Under the Threshold [see Prop. Reg. §1.199A-1(c)]

The regulations confirm that taxpayers under the taxable income threshold ($157,500, or $315,000 for MFJ), will generally be able to claim the deduction with little limitations. However, remember that the deduction is the lesser of 20% of QBI (including a specified service trade or business – SSTB) or the taxpayer's taxable income in excess of capital gains. In addition, any capital gains part of taxable income effectively reduces the taxable income limit.

> Example 1. A, an unmarried individual, owns and operates a computer repair shop as a sole proprietorship. The business generated $100,000 in net taxable income from operations in 2018. A has no capital gains or losses. After allowable deductions not relating to the business, A's total taxable income for 2018 is $81,000. The business's QBI is $100,000, the net amount of its qualified items of income, gain, deduction, and loss. A's section 199A deduction for 2018 is equal to $16,200, the lesser of 20% of A's QBI from the business ($100,000 x 20% = $20,000) and 20% of A's total taxable income for the taxable year ($81,000 x 20% = $16,200).
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> Example 2. Assume the same facts as in Example 1 of this paragraph (c)(3), except that A also has $7,000 in net capital gain for 2018 and that, after allowable deductions not relating to the business, A's taxable income for 2018 is $74,000. A's

taxable income minus net capital gain is $67,000 ($74,000 - $7,000). A's section 199A deduction is equal to $13,400, the lesser of 20% of A's QBI from the business ($100,000 x 20% = $20,000) and 20% of A's total taxable income minus net capital gain for the taxable year ($67,000 x 20% = $13,400).

Example 3. B and C are married and file a joint individual income tax return. B earned $500,000 in wages as an employee of an unrelated company in 2018. C owns 100% of the shares of X, an S corporation that provides landscaping services. X generated $100,000 in net income from operations in 2018. X paid C $150,000 in wages in 2018. B and C have no capital gains or losses. After allowable deductions not related to X, B and C's total taxable income for 2018 is $270,000. B's and C's wages are not considered to be income from a trade or business for purposes of the section 199A deduction. Because X is an S corporation, its QBI is determined at the S corporation level. X's QBI is $100,000, the net amount of its qualified items of income, gain, deduction, and loss.

The wages paid by X to C are considered to be a qualified item of deduction for purposes of determining X's QBI. The section 199A deduction with respect to X's QBI is then determined by C, X's sole shareholder, and is claimed on the joint return filed by B and C. B and C's section 199A deduction is equal to $20,000, the lesser of 20% of C's QBI from the business ($100,000 x 20% = $20,000) and 20% of B and C's total taxable income for the taxable year ($270,000 x 20% = $54,000).

Taxpayers Within the Threshold [see Prop. Reg. §1.199A-1(c)]

Taxpayers within the threshold may have to limit their QBI based on how far they are in the phase-in range ($50,000 or $100,000 MFJ).

Example. B and C are married and file a joint individual income tax return. B is a shareholder in M, an entity taxed as an S corporation for Federal income tax purposes that conducts a single trade or business. M holds no qualified property.

B's share of the M's QBI is $300,000 in 2018. B's share of the W-2 wages from M in 2018 is $40,000. C earns wage income from employment by an unrelated company. After allowable deductions unrelated to M, B and C's taxable income for 2018 is $375,000. B and C are within the phase-in range because their taxable income exceeds the applicable threshold amount, $315,000, but does not exceed the threshold amount plus $100,000, or $415,000. Consequently, the QBI component of B and C's section 199A deduction may be limited by the W-2 wage and unadjusted basis immediately after acquisition (UBIA) of qualified property limitations but the limitations will be phased in.

The UBIA of qualified property limitation amount is zero because M does not hold qualified property. B and C must apply the W-2 wage limitation by first determining 20% of B's share of M's QBI. Twenty percent of B's share of M's QBI of $300,000 is $60,000. Next, B and C must determine 50% of B's share of M's W-2 wages. Fifty percent of B's share of M's W-2 wages of $40,000 is $20,000.

Because 50% of B's share of M's W-2 wages ($20,000) is less than 20% of B's share of M's QBI ($60,000), B and C must determine the QBI component of their section 199A deduction by reducing 20% of B's share of M's QBI by the reduction amount.

B and C are 60% through the phase-in range (that is, their taxable income exceeds the threshold amount by $60,000 and their phase-in range is $100,000). B and C must determine the excess amount, which is the excess of 20% of B's share of M's QBI, or $60,000, over 50% of B's share of M's W-2 wages, or $20,000. Thus, the excess amount is $40,000. The reduction amount is equal to 60% of the excess amount, or $24,000. Thus, the QBI component of B and C's section 199A deduction is equal to $36,000, 20% of B's $300,000 share M's QBI (that is, $60,000), reduced by $24,000. B and C's section 199A deduction is equal to the lesser of (i) 20% of the QBI from the business as limited ($36,000) or (ii) 20% of B and C's taxable income ($375,000 x 20% = $75,000). Therefore, B and C's section 199A deduction is $36,000 for 2018.

Where to Apply Calculations

The calculation of QBI is done at the entity level (applying W-2 wages limit, unadjusted basis, etc.). However, the calculation of the deduction is done at the taxpayer (individual level). Note that it is possible that pass-through entities can own other pass-through entities, in which case, the QBI information needs to be reported on both the upper-tier and lower-tier entities as the information must pass-through and be available to the individual.

How it impacts you: If your taxpayer is below the threshold, you are able to focus on the calculation in comparison to taxable income without much concern of W-2 limitations and SSTB exclusions. However, taxpayers close to the threshold or those with a large influx of income, such as a withdrawal from a 401(k), may need extra planning from you to keep the deduction intact. In addition, it is also noteworthy that the 20% deduction can effectively lessen the impact that after-year end deductions have on the tax return. For example, if a taxpayer's QBI deduction is limited due to taxable income and you advise the taxpayer to make an IRA contribution, the taxpayer may only get a benefit of effectively 80% of the deduction, since it will further reduce taxable income.

Rentals

The proposed regulations do not directly address rentals as qualifying for the QBI deduction. Rather, the IRS states that the activity must rise to the level of a §162 trade or business. However, the IRS states that property rented to a trade or business that is under common control is still treated as a trade or business, effectively, providing certainty that self-rentals to a taxpayer's trade or business can qualify. For rentals to an SSTB, see the anti-abuse provisions later.

How it impacts you: The IRS did not provide a bright-line test to rentals, rather, they look at all the facts and circumstances, such as the activity of the taxpayer and other subjective actions, such as whether the taxpayer issues a 1099-MISC. Note, however, it may not always be in the taxpayer's best interest to treat a rental as a trade or business, such as

when it consistently produces losses. A loss from one QBI trade or business must reduce the income from another QBI trade or business, lessening the deduction. If the rental loss is not treated as a QBI trade or business, this can help maximize the 20% QBI deduction.

Qualified Business Income [See Prop. Reg. §1.199A-3(b)]

Gain on the sale of trade or business assets

The commentary of the proposed regulations state

> *Specifically, if gain or loss is treated as capital gain or loss under section 1231, it is not QBI. Conversely, if section 1231 provides that gains or losses are not treated as gains and losses from sales or exchanges of capital assets, section 199A(c)(3)(B)(i) does not apply and thus, the gains or losses must be included in QBI (provided all other requirements are met)*

Section 199A precludes capital gains from being included in the calculation of QBI. Section 1231 governs most trade or business assets. Losses that exceed gains from §1231 assets are not treated as from a capital asset [§1231(a)(2)]. However, gains that exceed losses are treated as the sale from capital assets. One notable, and equally important, exception is §1245, which overrides §1231 and treats gain as ordinary and not from a capital assets, see Reg. §1.1245-6(a). Thus, to the extent gain is ordinary, and the loss is ordinary, it must be included in the calculation of QBI. Conversely, if the gain or loss is capital, the amount is excluded from QBI.

Other Noteworthy Items of QBI

QBI will also be impacted by the following:

1.) Section 751 (hot asset gain) is included in QBI.
2.) Guaranteed payments for use of capital reduce QBI (but the recipient does not include guaranteed payments in QBI)
3.) Section 481 adjustments for change of accounting methods are included in QBI, but only for adjustments rising after 12/31/2017.
4.) Suspended losses (basis, at-risk, passive) impact QBI in the year they are allowed, except for suspended losses that arose in years prior to 2018.
5.) Net operating losses do not impact QBI, but if there's an excess business loss under §461(l), the net operating loss is considered in computing QBI to such extent.
6.) Reasonable compensation rules are not applied to partnerships.

How it impacts you: Clients who are selling assets subject to ordinary income or loss will include these amounts in QBI, however, capital gains are excluded. One important consideration is the sale of real estate. While in practice, many practitioners call the gain on real estate recapture of depreciation, in actuality, the gain is unrecaptured §1250 gain. This is a critical distinction as unrecaptured §1250 gain is still treated as the sale from a capital asset, falling under the purview of this rule, which means the gain would be excluded from QBI, albeit taxed at a maximum of 25%.

Specified Service Trade or Business (See Prop. Reg. §1.199A-5)

The IRS took a narrow view in interpreting specified service trades or business (SSTBs). SSTBs do not qualify for the QBI deduction if the taxpayer is in excess of the phase-in of the threshold ($207,500 or $415,000 MFJ). The IRS defines 13 sets of SSTBs. The definitions are summarized as follows.

Health

Means the provision of medical services by individuals such as physicians, pharmacists, nurses, dentists, veterinarians, physical therapists, psychologists and other similar healthcare professionals performing services in their capacity as such who provide medical services directly to a patient (service recipient). The performance of services in the field of health does not include the provision of services not directly related to a medical services field, even though the services provided may purportedly relate to the health of the service recipient. For example, the performance of services in the field of health does not include the operation of health clubs or health spas that provide physical exercise or conditioning to their customers, payment processing, or the research, testing, and manufacture and/or sales of pharmaceuticals or medical devices.

Law

Means the performance of services by individuals such as lawyers, paralegals, legal arbitrators, mediators, and similar professionals performing services in their capacity as such. The performance of services in the field of law does not include the provision of services that do not require skills unique to the field of law, for example, the provision of services in the field of law does not include the provision of services by printers, delivery services, or stenography services.

Accounting

Means the provision of services by individuals such as accountants, enrolled agents, return preparers, financial auditors, and similar professionals performing services in their capacity as such.

Actuarial Science

Means the provision of services by individuals such as actuaries and similar professionals performing services in their capacity as such.

Performing Arts

Means the performance of services by individuals who participate in the creation of performing arts, such as actors, singers, musicians, entertainers, directors, and similar professionals performing services in their capacity as such. The performance of services in the field of performing arts does not include the provision of services that do not require skills unique to the creation of performing arts, such as the maintenance and operation of equipment or facilities for use in the performing arts. Similarly, the performance of services in the field of the performing arts does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of performing arts to the public.

Consulting

Means the provision of professional advice and counsel to clients to assist the client in achieving goals and solving problems. Consulting includes providing advice and counsel regarding advocacy with the intention of influencing decisions made by a government or governmental agency and all attempts to influence legislators and other government officials on behalf of a client by lobbyists and other similar professionals performing services in their capacity as such. The performance of services in the field of consulting does not include the performance of services other than advice and counsel, such as sales or economically similar services or the provision of training and educational courses. For purposes of the preceding sentence, the determination of whether a person's services are sales or economically similar services will be based on all the facts and circumstances of that person's business. Such facts and circumstances include, for example, the manner in which the taxpayer is compensated for the services provided. Performance of services in the field of consulting does not include the performance of consulting services embedded in, or 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 typical services provided by a building contractor) if there is no separate payment for the consulting services.

Athletics

Means the performance of 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. The performance of services in the field of athletics does not include the provision of services that do not require skills unique to athletic competition, such as the maintenance and operation of equipment or facilities for use in athletic events. Similarly, the performance of services in the field of athletics does not include the provision of services by persons who broadcast or otherwise disseminate video or audio of athletic events to the public.

Financial Services

Means the provision of financial services to clients including managing wealth, advising clients with respect to finances, developing retirement plans, developing wealth transition plans, the provision of advisory and other similar services regarding valuations, mergers, acquisitions, dispositions, restructurings (including in title 11 or similar cases), and raising financial capital by underwriting, or acting as a client's agent in the issuance of securities and similar services. This includes services provided by financial advisors, investment bankers, wealth planners, and retirement advisors and other similar professionals performing services in their capacity as such.

Brokerage

Means services in which a person arranges transactions between a buyer and a seller with respect to securities (as defined in section 475(c)(2)) for a commission or fee. This includes services provided by stock brokers and other similar professionals, but does not include services provided by real estate agents and brokers, or insurance agents and brokers.

Investing and Investment Management

Means a trade or business involving the receipt of fees for providing investing, asset management, or investment management services, including providing advice with respect to buying and selling investments. The performance of services of investing and investment management does not include directly managing real property.

Trading

Means a trade or business of trading in securities (as defined in section 475(c)(2)), commodities (as defined in section 475(e)(2)), or partnership interests. Whether a person is a trader in securities, commodities, or partnership interests is determined by taking into account all relevant facts and circumstances, including the source and type of profit that is associated with engaging in the activity regardless of whether that person trades for the person's own account, for the account of others, or any combination thereof. A taxpayer, such as a manufacturer or a farmer, who engages in hedging transactions as part of their trade or business of manufacturing or farming is not considered to be engaged in the trade or business of trading commodities.

Dealing

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. For purposes of the preceding sentence, however, a taxpayer that regularly originates loans in the ordinary course of a trade or business of making loans but engages in no more than negligible sales of the loans is not dealing in securities for purposes of section 199A(d)(2) and this section. See §1.475(c)-1(c)(2) and (4) for the definition of negligible sales.

Reputation or Skill of One or More Employees

Means any trade or business that consists of any of the following (or any combination thereof):

(A) A trade or business in which a person receives fees, compensation, or other income for endorsing products or services,
(B) A trade or business in which a person licenses or receives fees, compensation or other income for the use of an individual's image, likeness, name, signature, voice, trademark, or any other symbols associated with the individual's identity,
(C) Receiving fees, compensation, or other income for appearing at an event or on radio, television, or another media format.

How it impacts you: There was concern on how the IRS would interpret these definitions. However, on page 65 of the proposed regulations in the commentary the IRS notes that it believes that the definition of the catch-all provisions (reputation or skill) should be narrow, objective, and measurable. Thus, the IRS limited the definition which practitioners were concerned would include various professions such as real estate agents, brokers, beauticians, and others where the clientele would typically follow one owner or employee. Note that the IRS is still looking for commentary on this rule to clarify the definitions above.

W-2 Wages

The IRS clarified the definition of W-2 wages and provided guidance on how to calculate wages. The IRS does confirm that wages are based on what's actually reported on Form W-2, thus, guaranteed payments, for example, do not qualify. Some notable clarifications on W-2 wages include leasing employees from a professional employer organization (PEO) and calculating wages. Note, however, that wages are more of a concern for taxpayers above the thresholds.

Leasing Employees

There were concerns on who would obtain the W-2 wages from an organization that leases their employees. The IRS defers to common law in defining who obtains the W-2 wages. Thus, wages of the PEO can be counted for the taxpayer. Prop. Reg. §1.199A-2(b)(2)(ii). However, in this scenario, the PEO may not also use the W-2 wages the taxpayer uses for purposes of §199A.

Calculating Wages

Notice 2018-64 was issued in conjunction with the proposed regulations, containing Rev. Proc. 2018-XX that provides three methods to calculate W-2 wages. Note that in all cases, common law employees and officers of corporations are included, but not statutory employees (Rev. Proc. 2018-XX Sec. 3.01).

The three methods are as follows:

1.) Unmodified Box Method.
2.) Modified Box 1 Method.
3.) Tracking Wages Method.

Unmodified Box Method

Under the unmodified box method, W-2 wages are calculated by taking, without modification, the lesser of—

(A) The total entries in Box 1 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer; or
(B) The total entries in Box 5 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer

Modified Box 1 Method

W-2 wages under this method are calculated as follows—

(A) Total the amounts in Box 1 of all Forms W-2 filed with SSA by the taxpayer with respect to employees of the taxpayer for employment by the taxpayer;
(B) Subtract from the total amounts included in Box 1 of Forms W-2 that are not wages for Federal income tax withholding purposes, including amounts that are treated as wages for purposes of income tax withholding under section 3402(o) (for example,

supplemental unemployment compensation benefits within the meaning of Rev. Rul. 90-72); and

(C) Add to the amount obtained after paragraph .02(B) of this section the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, and S.

Tracking Wages Method

W-2 wages under this method are calculated as follows—

(A) Total the amounts of wages subject to Federal income tax withholding that are paid to employees of the taxpayer for employment by the taxpayer and that are reported on Forms W-2 filed with SSA by the taxpayer for the calendar year; and

(B) Add to the amount obtained after paragraph .03(B) of this section the total of the amounts that are reported in Box 12 of Forms W-2 with respect to employees of the taxpayer for employment by the taxpayer and that are properly coded D, E, F, G, and S

How it impacts you: Clients above the thresholds who lease their employees can qualify still for the QBI deduction, as well as be able to calculate the W-2 wages required to be filed on pass-through entities so shareholders and partners can calculate their own QBI deduction.

Aggregation/Grouping

There were concerns on whether multiple entities can be aggregated for purposes of calculating QBI. Historically, the IRS has held that a trade or business cannot be conducted through more than one entity (see page 43 of proposed regulations). The IRS will not apply the grouping elections of §469, however, will permit rules to aggregate entities and businesses solely for purposes of §199A. Prop. Reg. §1.199A-4 sets rules on aggregating businesses. Note that the IRS does not require taxpayers to aggregate, nor do they appear to require taxpayers to disaggregate, at this time. Furthermore, if an entity contains multiple trades or businesses (such as a vision doctor who provides services, but also sells glasses), the taxpayer may allocate expenses to QBI gross receipts on a reasonable method, however, Prop. Reg. §1.199A-5(c)(3) contains one glaring drawback. If, for example, the eye doctor's gross receipts from eyeglasses is less than 5% of its total gross receipts, the sale of glasses is treated as incidental, in which none of the sales are QBI, if they share common overhead expenses and ownership.

Tip: If this is the case, the taxpayer may have to consider bifurcating the LLC into separate entities with separated expenses and books and records, if feasible.

Example

A, a dermatologist, provides medical services to patients on a regular basis through Dermatology LLC, a disregarded entity owned by A. In addition to providing medical services, Dermatology LLC also sells skin care products to A's patients. The same

employees and office space are used for the medical services and sale of skin care products. The gross receipts with respect to the skin care product sales do not exceed 5% of the gross receipts of Dermatology LLC. Accordingly, the sale of the skin care products is treated as incidental to A's SSTB of performing services in the field of health and is treated as part of such SSTB.

Aggregation Requirements

1.) Each trade or business must itself be a trade or business.
2.) The same person, or group of persons, must directly or indirectly, own a majority interest in each of the businesses to be aggregated for the majority of the taxable year in which the items attributable to each trade or business are included in income.
    a. All of the items attributable to the trades or businesses must be reported on returns with the same taxable year (not including short years). Proposed §1.199A4(b)(3) provides rules allowing for family attribution. Because the proposed rules look to a group of persons, non-majority owners may benefit from the common ownership and are permitted to aggregate.
3.) None of the businesses are SSTBs.
4.) Individuals and trusts must establish that the trades or businesses meet at least two of three factors, which demonstrate that the businesses are in fact part of a larger, integrated trade or business. These factors include:
    a. the businesses provide products and services that are the same (for example, a restaurant and a food truck) or they provide products and services that are customarily provided together (for example, a gas station and a car wash);
    b. the businesses share facilities or share significant centralized business elements (for example, common personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources); or
    c. the businesses are operated in coordination with, or reliance on, other businesses in the aggregated group (for example, supply chain interdependencies).

How it impacts you: Analyze the activities in your clients who are above the threshold to see if there are feasible ways to aggregate businesses for purposes of §199A, or separate, for that matter.

K-1 Reporting

A relevant passthrough entity (RPE) is a passthrough entity that conducts the trade or business and passes the items of income, gain, loss, or deduction to an individual. This can include a partnership, S corporation, trust, or estate. Publicly traded partnerships (PTPs) are included in QBI, but not considered an RPE.

RPEs are required to report information to its individuals under Prop. Reg. §1.199A-6. This includes

- Whether the business is an SSTB.
- Whether there is more than one trade or business.
- QBI for each trade or business.

- W-2 wages and UBIA of qualified property.
- Any REIT dividends.
- Any PTP income.

Failure to report any item above, the QBI, W-2 wages, UBIA of qualified property will be presumed to be zero. Prop. Reg. §1.199A-6(b)(3)(iii).

Note that RPEs with a fiscal year not based on a calendar year (year beginning before 01/01/2018), all items of QBI, W-2 wages, and UBIA of qualified property are all treated as incurring in the individual's tax year in which the year of the RPE ends. Prop. Reg. §1.199A-2(d)(2)(ii). Thus, not requiring an allocation of pre-2018 wages, QBI, and UBIA of qualified property. Note that K-1 codes have not yet been assigned.

How it impacts you: You are required to report QBI information on RPEs. This may increase the time it takes to prepare tax returns of RPEs.

Negative QBI

If an individual has multiple trades or businesses, the individual must calculate the QBI from each trade or business and then net the amounts. Section 199A(c)(2) provides that, for purposes of §199A, if the net QBI with respect to qualified trades or businesses of the taxpayer for any taxable year is less than zero, such amount shall be treated as a loss from a qualified trade or business in the succeeding taxable year. Proposed §1.199A-1(c)(2)(i) repeats this rule and provides that the section 199A carryover rules do not affect the deductibility of the losses for purposes of other provisions of the Code. While not explicitly stated, the language infers that because the negative QBI is treated as a loss of a separate trade or business in the subsequent year, that losses may accumulate. W-2 wages and UBIA of qualified property does not carryover.

The negative QBI is apportioned to businesses with positive QBI based on the percentage the positive QBI business contributes to positive QBI. Thus, for example, if business A has a loss, business B has QBI of $60,000 and business C has QBI of $40,000, the loss from A would be apportioned 60% to B, and 40% to C before applying any wage limitation. The wages and UBIA of the negative QBI companies are not factored anywhere after the netting occurs. Once the netting is done, then the W-2 wage limitation and UBIA of qualified property limitations are applied.

How it impacts you: You will need to track carryover losses of QBI and request prior year tax returns from new clients in which you don't have their prior year QBI information.

Alternative Minimum Tax

The rules are set to prevent the QBI deduction from being added back for AMT purposes.

Qualified Business Property

Pages 22 through 27 explain that the IRS will use the unadjusted basis immediately after acquisition (UBIA) of qualified property using general cost basis principals set forth by §1012 and nonrecognition transactions. Thus, for example, property acquired in nonrecognition transactions (such as contribution to a partnership), will have the cost and depreciable

period (including the placed in service date) that the transferor had, also known as the “step in the shoes” concept. Partnership basis adjustments under §743 and §734 are not considered.

How it impacts you: The general principals of determining cost and placed in service, as generally used prior to the TCJA, will typically apply. Remember, the depreciable period is the later of 10 years, or the depreciable life under §168(c), for example, 27.5 years for residential rental property and 39 years for nonresidential real property.

Anti-Abuse Provisions

There are several anti-abuse provisions that the IRS issued as part of the proposed regulations. The IRS anticipated that taxpayers may attempt to restructure SSTBs in order to salvage the 20% deduction. While there are various anti-abuse provisions in regards to UBIA of qualified property and other areas, the more notable anti-abuse provisions revolve around providing services or property to an SSTB and trusts.

Services and Property to an SSTB

Prop. Reg. §1.199A-5(c)(2) provides that an SSTB includes any trade or business with 50 percent or more common ownership (directly or indirectly) that provides 80 percent or more of its property or services to an SSTB. Additionally, if a trade or business has 50 percent or more common ownership with an SSTB, to the extent that the trade or business provides property or services to the commonly-owned SSTB, the portion of the property or services provided to the SSTB will be treated as an SSTB (meaning the income will be treated as income from an SSTB). For example, A, a dentist, owns a dental practice and also owns an office building. A rents half the building to the dental practice and half the building to unrelated persons. Under proposed §1.199A-5(c)(2), the renting of half of the building to the dental practice will be treated as an SSTB.

Trusts

Prop. Reg. §1.643(f)-1 provides that, in the case in which two or more trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and a principal purpose for establishing such trusts or contributing additional cash or other property to such trusts is the avoidance of Federal income tax, then such trusts will be treated as a single trust for Federal income tax purposes. This was meant to produce anti-abuse rules where some taxpayers contemplated moving their SSTB into multiple non-grantor trusts in order to allocate income to several trusts to take advantage of the threshold. While this rule was created in light of §199A, the IRS noted that this anti-abuse rule can be applied to other areas of taxation, not just §199A.

How it impacts you: The IRS is aware of methods to take advantage of splitting an SSTB into other businesses (rental of building/equipment to SSTB, trusts), in order to obtain the benefit of §199A. Note that these are proposed regulations and are not currently law, but gives an idea on what the IRS is looking to enforce.