

April 2009

**Title**

**New Filing Requirements for Computing Disqualified Interest Expense Under Section 163(j)**

**Subject**

The Internal Revenue Service has issued a new form, Form 8926, *Disqualified Corporate Interest Expense Disallowed Under Section 163(j) and Related Information*, to compute disqualified interest expense under section 163(j).

**Affecting**

United States corporations (other than S corporations) that paid or accrued “disqualified” interest subject to the “interest stripping” provisions of section 163(j) under any of the following circumstances:

1. to related persons not subject to United States income tax on the interest;
2. to an unrelated person if there is a disqualified guarantee of the indebtedness and the interest is not subject to a United States gross basis income tax; or
3. to a real estate investment trust (“REIT”) by a taxable REIT subsidiary.

**Effective Date**

Form 8926 is required for any corporation filing its United States federal income tax return that has interest deduction limitations or interest deduction carry forwards under section 163(j).

**Details**

Interest paid or accrued to, or guaranteed by, a related party not subject to United States income tax or interest paid or accrued by a taxable REIT subsidiary to a REIT may ultimately be disqualified interest. Generally, the amount of disallowed interest is equal to the lesser of the taxpayer’s net interest expense in excess of 50 percent of its adjusted taxable income or its disqualified interest. This limitation applies if the debt-to-equity ratio of the United States corporation (including all members of an affiliated group) exceeds 1.5 to 1.0 using the tax basis balance sheet of the United States affiliated group. Special considerations apply when interest is paid to a foreign “flow through” entity or where income tax treaties reduce the tax rate on interest income in a foreign jurisdiction.

*Continued on next page*

As a Member Firm of BDO Alliance, MillerMusmar CPAs serves multi-national clients by leveraging a global network of 1,095 offices in 110 countries. BDO Alliance is a worldwide network of public accounting firms. Each BDO Member Firm is an independent legal entity in its own country.

For more information, please contact:

**Joey Musmar**  
MillerMusmar CPAs  
1861 Wiehle Ave, Suite 125  
Reston, VA 20190  
703.437.8877 ext. 117  
[Joeym@millermusmar.com](mailto:Joeym@millermusmar.com)

## INTERNATIONAL TAX ALERT

Any disqualified interest may be carried forward indefinitely, subject to the applicable limitation in the subsequent taxable years. Any excess limitation amount may be carried forward up to three taxable years to allow for the deduction of future disqualified interest. A single Form 8926 should be filed for the affiliated group (as defined under section 1504(a)).

Form 8926 also requires certain information to be provided regarding the related party to whom interest was paid or accrued. This information should be reconciled with any disclosure of related party payments included on Form 5472, *Information Return of a 25% Foreign-Owned Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, or Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, regarding interest paid or accrued to a related party.

Finally, Form 8926 also requires the taxpayer to provide information regarding the tax basis of assets for purposes of the debt-to-equity limitation calculation as well as requiring a supporting statement for any information to reconcile taxable income to adjusted taxable income for purposes of the interest limitation calculation.

*To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.*

*Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.*