Tax Insights
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Services

Proposed rules clarify Section 250 property dispositions

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In brief

What happened?

Treasury and the IRS on August 20 published proposed regulations under Section 250 addressing the scope of the new exclusion from deduction eligible income (DEI) for certain property dispositions. Section 250(b)(3)(A)(i)(VII), as amended, excludes from DEI income and gain from sales or other dispositions of intangible property and any other property of a type that is subject to depreciation, amortization, or depletion by the seller. The proposed regulations are largely consistent with Notice 2025-78, issued in December 2025, which addressed similar issues, while adding definitions, examples, and anti-abuse rules. The proposed regulations also clarify that FDDEI is a subset of DEI and thus cannot exceed DEI.

Why is it relevant?

The proposed regulations may require taxpayers to reassess positions taken under the statute or in reliance on Notice 2025-78. Notably, the proposed regulations define an 'excluded seller' to include a partnership, whether domestic or foreign, a provision that was not included in Notice 2025-78, and may affect dispositions of property held through partnerships. The proposed regulations also provide additional guidance on when property is treated as depreciable or amortizable and when a transaction constitutes a sale or other disposition. These rules rejected comments advocating for treating sales of previously depreciated property that has been refurbished, remanufactured, or converted to inventory as DEI. Certain implementation questions were not addressed but will be addressed in forthcoming guidance, including the allocation of deductions in determining DEI, the treatment of losses, and the treatment of deferred income from prior dispositions.

Actions to consider

Domestic corporations claiming the Section 250 deduction should review dispositions occurring after June 16, 2025, including dispositions of property held directly through partnerships and transactions involving intellectual property, software, previously depreciated or amortized business assets, inventory conversions, and related-party transfers, to assess whether amounts treated as DEI or FDDEI remain supportable.

Companies should consider providing comments on the proposed regulations, which are due by October 5, 2026.

In detail

Background

The OBBBA amended Section 250 to exclude from DEI income and gain from certain sales or other dispositions of intangible property and any other property of a type that is subject to depreciation, amortization, or depletion by the seller. These statutory changes generally apply to sales or other dispositions occurring after June 16, 2025. Treasury and the IRS subsequently issued Notice 2025-78, outlining rules expected to appear in proposed regulations, which permitted taxpayers to rely on those rules, subject to consistency requirements. For additional discussion of Notice 2025-78, see this PwC Tax Insight.

Proposed regulations

The proposed regulations address the following items.

In general

The proposed regulations would add 'excluded property sales income' to the categories of gross income excluded in determining DEI. Proposed Reg. 1.250(b)-1(h) would define the term as income and gain from the sale or other disposition of either intangible property or 'other excluded property.' Because FDDEI is any DEI that meets certain requirements, income excluded from DEI cannot qualify as FDDEI even if the underlying transaction otherwise satisfies the applicable foreign-customer or foreign-use requirements.

Observation: The proposed regulations make asset and transaction characterization a threshold question. Taxpayers should determine whether an item is excluded property sales income before evaluating whether the income otherwise qualifies as foreign-derived.

Intangible property

Section 250(b)(3)(A)(i)(VII)(aa) excludes income and gain from sales or other dispositions of intangible property, defined by reference to Section 367(d)(4). Consistent with existing Section 250 regulations and Notice 2025-78, the proposed regulations provide that intangible property does not include a 'copyrighted article' described in Reg. 1.861-18(c)(3). A sale or other disposition (including in a transaction subject to Section 367(d)) of the underlying copyright or other Section 367(d)(4) intangible may fall within the exclusion, while a sale of a copy of software or other copyrighted content generally is not treated as a disposition of intangible property solely because the item embodies copyrighted content.

Observation: Taxpayers should apply Reg. 1.861-18 to determine whether they have a transfer of a copyright right or a copyrighted article. If the transfer is of a copyright right, taxpayers should determine under Reg. 1.861-18 and general federal income tax principles whether such transfer is a sale or license. The rights actually transferred, rather than contractual labels, may determine the Section 250 result.

Other excluded property

Under the proposed regulations, 'other excluded property' generally means property that, in the seller's hands, is or has been of a character subject to depreciation under Section 167, has been subject to amortization, or has been subject to depletion under Section 611. Thus, property that has always been held as inventory generally is not included.

The proposed regulations take a broad approach to prior use. Previously depreciable property remains within the exclusion even if the property is refurbished, remanufactured, or later converted to inventory. Similarly, property remains within the exclusion even if it was never actually depreciated, amortized, or subject to depletion in the seller's hands (for example, if the taxpayer acquired the property fully depreciated).Treasury and the IRS declined requests for a remanufacturing exception and for a rule limiting the exclusion to depreciation-recapture amounts.

The proposed regulations also include a related-party anti-abuse rule. Property that was other excluded property in the hands of a member of the seller's modified affiliated group may retain that character if transferred in a basis-carryover transaction with a principal purpose of avoiding the statutory exclusion.

Observation: Asset history is critical; current inventory classification does not necessarily eliminate prior excluded-property status. Further, the proposed regulations interpret the statutory language 'of a type' to mean 'of a character,' pointing to this term of art's use in other provisions. Treasury and the IRS explain that this is also intended to clarify that property that may be 'of a type' subject to depreciation does not fall within the exclusion if the seller treats such property in its hands as inventory.

Sale or other disposition

As amended, the general Section 250 definition of 'sale,' which broadly includes leases and licenses, does not apply to Section 250(b)(3)(A)(i)(VII). Instead, consistent with the statute, only sales or other dispositions (including deemed sales or dispositions and transfers subject to Section 367(d)) are subject to the exclusion. The proposed regulations apply general federal income tax principles to determine whether a transfer is treated as a sale or other disposition subject to the exclusion. A transaction properly characterized as a lease or license is not treated as a sale or other disposition for purposes of this exclusion.

Observation: Contract labels are not controlling; a purported license may still be treated as a sale depending on the rights transferred. Taxpayers should consider the application of general tax principles such as the 'all substantial rights' test.

Observation: A Section 367(d) transfer occurring on or before June 16, 2025, is outside the new exclusion even if deemed payments are included in income after that date. Similarly, post-June 16 payments attributable to a contingent sale completed on or before June 16 generally should not become subject to the exclusion solely because the payments are received or recognized after the effective date.

Software transactions

The proposed regulations acknowledge that software transactions present uncertainty and provide examples to illustrate the rule's application to software transactions. In one example, an exclusive, irrevocable transfer of substantial copyright rights for the remaining copyright term is treated as a sale of intangible property even though it is labeled a license and paid through royalties. An alternative example, by contrast, states that a nonexclusive, revocable license is not a sale and is thus not subject to the exclusion. The proposed regulations also confirm that sales of software copies may constitute sales of copyrighted articles rather than intangible property, while certain limited-duration transfers may be treated as leases.

Observation: Software businesses may reach different DEI results depending on whether a transaction transfers copyright rights, copyrighted articles, or only limited-use rights.

FDDEI as a subset of DEI

The OBBBA eliminated the former deemed intangible income and deemed tangible income return components of the Section 250 calculation, and thus the need for a foreign-derived ratio. Previously, the Section 250 calculation required determining a foreign-derived ratio, calculated as FDDEI over DEI, which was multiplied by a taxpayer's deemed intangible income to arrive at the taxpayer's FDII. Existing regulations provide that the foreign-derived ratio cannot exceed 1.0, based on Treasury's and the IRS's view that FDDEI is a subset of DEI. The proposed regulations purport to clarify that FDDEI still cannot exceed DEI.

Applicability dates

The proposed regulations use different applicability dates for the property-disposition rules and the clarification that FDDEI remains a subset of DEI:

Provision	Applicability
Section 250(b)(3)(A)(i)(VII) statutory exclusion	Sales or other dispositions occurring after June 16, 2025
Proposed excluded property sales income rules	Sales or other dispositions occurring after June 16, 2025
Clarification that FDDEI is a subset of DEI	Taxable years beginning after December 31, 2025
Reliance on proposed regulations	Permitted before final regulations are published, provided the taxpayer and its related parties apply the proposed regulations in their entirety and consistently

Financial reporting considerations

The proposed regulations represent new information that should be assessed in the period of issuance. The impact of the proposed regulations on a company's financial statements, including the recognition and measurement of uncertain tax positions, if any, will depend on the company's intent to rely on the proposed regulations. Accordingly, companies should determine their intent in the reporting period that includes the issuance date of the proposed regulations and account for any resulting impacts within that respective period.

See also

- **Tax Insight:** Highlights of Treasury guidance on OBBBA international tax items (December 10, 2025)

Let's talk

For a deeper discussion of how these proposed regulations might affect your business, please contact:

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