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Through a Glass Darkly: REIT Earnings and Profits

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In this report, Zhang and Grisolia discuss real estate investment trust earnings and profits, which reflect REIT taxable income with some important differences.

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I. Introduction

The term "earnings and profits" is an important one for all C corporations, because E&P generally determines the amount of corporate distributions that is treated as a taxable dividend for the shareholders. Although E&P is not defined in the code, it can generally be understood as a company's "ability to pay dividends," in that it reflects a corporation's gains from its investments and business and thus the return on its shareholders' investments.[1] E&P is similar to taxable income, with some differences. For example, tax-exempt income increases E&P, and E&P is adjusted for straight-line depreciation under section 312(k)(1) instead of accelerated depreciation.

E&P is especially important for C corporations that elect to be real estate investment trusts. The principal attraction of REIT status lies in section 857(b)(2)(B), which allows a REIT to deduct its paid dividends, and reduce the REIT taxable income subject to corporate income tax. The effect is that a REIT can be similar to a partnership or other passthrough entity, with taxation only at the shareholder level. However, the REIT's dividends paid deduction (DPD) is determined by reference to the REIT's E&P, which is only loosely related to REIT taxable income. The REIT shareholders' taxable dividends are also generally based on REIT E&P rather than REIT taxable income.[2] REIT shareholders may have taxable dividends substantially exceeding REIT taxable income.

For non-REIT C corporations, two types of E&P exist: current-year E&P (current E&P) and accumulated E&P. Any distribution is a taxable

[1] *See, e.g.*, *Henry C. Beck Co. v. Commissioner*, 52 T.C. 1, 6 (1969); and Boris I. Bittker and James S. Eustice, *Federal Income Taxation of Corporations and Shareholders*, para. 8.04[2] (2000).

[2] Shareholders are generally taxed on REIT dividends at ordinary income rates, not qualified dividend rates.

dividend to the extent of current E&P, even if the accumulated E&P is negative — an outcome sometimes called a "nimble dividend." For a REIT, however, the term "earnings and profits" can mean four different amounts, as discussed next. Some provisions in the Tax Cuts and Jobs Act (P.L. 115-97) create additional disparities between taxable income and the four types of E&P, giving rise to more numerically complex calculations for REITs.

II. REIT E&P

In addition to gross income tests, asset tests, and other requirements to qualify for REIT treatment, a REIT is generally required under section 857(a) to make distributions so that it has a DPD equal to at least 90 percent of its ordinary income. A REIT will generally wish to offset 100 percent of its REIT taxable income with the DPD in order to eliminate REIT-level corporate income tax (paid at the corporate income tax rate of 21 percent). However, a DPD is allowed under section 562 only to the extent of REIT E&P. Because of the disparities between REIT taxable income and REIT E&P, a REIT may lack sufficient E&P to have a DPD that reduces its taxable income by the required 90 percent. Some REIT-specific E&P rules have been enacted to facilitate REITs' compliance with their distribution requirements.

The REIT-specific adjustments significantly complicate the computation of E&P. Some apply only to current E&P and not accumulated E&P, and some apply differently to E&P for REIT DPD purposes compared with E&P for shareholder dividend income purposes. A REIT may thus have to track up to four different categories of E&P, each using slightly different rules: accumulated E&P for shareholder dividend income purposes, current E&P for shareholder dividend income purposes, accumulated E&P for REIT deduction purposes, and current E&P for REIT deduction purposes.

For example, section 562(e) increases a REIT's current E&P, but only for purposes of the REIT DPD, in two ways: (1) current E&P is increased by the amount of taxable gain on a disposition on real property that exceeds the gain for E&P purposes,[3] and (2) current E&P is not reduced by any amount that is not allowable in computing its current-year taxable income. The general effect is to help ensure that a REIT will have sufficient current E&P to make the dividend distributions necessary to meet REIT requirements and prevent REIT-level taxation, while not subjecting the shareholders to additional taxable dividend income.

As another layer of complexity, the prior version of section 562(e), in effect for 2015 and earlier, provided that excess tax gain was added to accumulated E&P as well as current E&P for purposes of the REIT DPD.[4] The excess tax gain was not added to accumulated E&P for shareholder dividend income purposes. The prior rule continues to apply to E&P accumulated before 2016, so a REIT that had a difference in accumulated E&P for REIT DPD purposes, compared with accumulated E&P for shareholder dividend income purposes, must continue to track that difference until it is eliminated.

For E&P for shareholder dividend income purposes, section 857(d)(1) provides that current E&P is not reduced by any amount that was not allowable in computing REIT taxable income for the current year and any prior tax year.[5]

For all four types of REIT E&P, section 857(d)(2) provides that a REIT will be deemed to have sufficient E&P to treat any distribution as a dividend to the extent necessary to avoid the section 4981 excise tax. Section 4981 generally imposes a 4 percent excise tax on a REIT that fails to distribute at least 85 percent of its ordinary income within the same tax year.[6]

[3] The taxable gain on a disposition of real property can exceed the E&P gain when the property's tax basis is lower than its E&P basis because of bonus or accelerated depreciation not reflected in E&P.

[4] The rule in section 562(e), modifying only current E&P, was established by the Protecting Americans From Tax Hikes Act (PATH Act) of 2015, enacted as Division Q of P.L. 114-113.

[5] The current section 857(d)(1) was also enacted by the PATH Act. The prior version of section 857(d)(1), in effect for 2015 and earlier, provided that E&P for shareholder dividend income purposes was not reduced by any amount that was not allowable in computing taxable income for the current year.

[6] Section 4981 also imposes an excise tax to the extent that less than 95 percent of a REIT's capital gain income is distributed, although it deems capital gains as distributed to the extent subject to REIT corporate-level tax under section 857(b)(1) or (3)(A).

Table 1 (Example 2)

	Current E&P for Determining Shareholder Income	Accumulated E&P for Determining Shareholder Income	Current E&P for Determining REIT DPD	Accumulated E&P for Determining REIT DPD
2015				
Taxable income	$100	$100	$100	$100
Excess of tax gain over E&P gain	($50)	($50)	$0	$0
Total E&P	$50	$50	$100	$100

Table 2 (Example 3)

	Current E&P for Determining Shareholder Income	Accumulated E&P for Determining Shareholder Income	Current E&P for Determining REIT DPD	Accumulated E&P for Determining REIT DPD
2015				
Accumulated E&P from prior years		$100		$100
Taxable income	$100	$100	$100	$100
Excess of tax gain over E&P gain	($50)	($50)	$0	$0
Total E&P	$50	$150	$100	$200
Distributions	($100)	($100)	($100)	($100)
E&P carried over to 2016 as accumulated E&P		$50		$100

Example 1: In year 1, a REIT has $100 of ordinary income and a $100 capital loss, which is suspended and carried over to year 2. Normally, recognized capital losses reduce E&P under reg. section 1.312-7(b)(1). However, the REIT must distribute $100 of dividends to reduce its REIT taxable income to zero in year 1, and sections 562(e) and 857(d)(1) therefore provide that the REIT's current E&P is not reduced by the suspended capital loss. The REIT accordingly has $100 of current E&P, which allows it to pay out $100 for a $100 REIT DPD and $100 of dividend income to the shareholders. The REIT's accumulated E&P is reduced to zero.

In year 2, the REIT has $100 of capital gain, which is entirely offset by the $100 capital loss carryover. Although REIT taxable income is zero, the REIT still has $100 of E&P in year 2 because of the capital gain. The capital loss carryover does not reduce E&P in year 2.

The following examples further illustrate the discrepancies that arise with taxable gain exceeding E&P gain.

Example 2: A REIT has no accumulated E&P at the beginning of 2015. The REIT sells real property for $100 and has no other net taxable income in 2015. The real property has zero tax basis (fully depreciated) but has $50 of E&P basis. The REIT has $100 of taxable income for 2015. For purposes of shareholder dividend income, the REIT has $50 of current E&P in 2015 under the general E&P rules. For purposes of the DPD, the REIT has $100 of current E&P under section 562(e)(1). When the REIT distributes $100 to its shareholders, the shareholders have $50 of dividends, with the remaining $50 treated as a return of capital. However, the REIT has a $100

Table 3 (Example 4)

	Current E&P for Determining Shareholder Income	Accumulated E&P for Determining Shareholder Income	Current E&P for Determining REIT DPD	Accumulated E&P for Determining REIT DPD
2016				
Accumulated E&P from prior years		$50		$100
Taxable income	$90	$90	$90	$90
Excess of tax gain over E&P gain	($40)	($40)	$0	($40)
Total E&P	$50	$100	$90	$150

DPD, which fully offsets its $100 of REIT taxable income. See Table 1.

Example 3: Same facts as Example 2, except that the REIT had $100 of accumulated E&P (for purposes of both shareholder dividend income and the DPD) at the beginning of 2015. The REIT's shareholders have $100 of taxable dividends, and up to another $50 of distributions will be taxable dividends as well, because of the $100 accumulated E&P. The REIT will carry over to 2016 its $50 of accumulated E&P for purposes of shareholder dividend income, but $100 of accumulated E&P for purposes of the DPD. See Table 2.

Example 4: Same facts as Example 3, and in 2016 the REIT sells additional real property, with $90 of taxable gain but only $50 of E&P gain. The section 562(e)(1) adjustment to increase E&P by the $40 additional tax gain applies only to current E&P for REIT DPD purposes in 2016 and later, which means that there is no conformity for accumulated E&P for REIT DPD purposes. See Table 3.

III. Recent Developments Under the TCJA

A. Section 965

The TCJA imposed a tax on deferred foreign income kept in specified foreign corporations (controlled foreign corporations and other foreign corporations with 10 percent corporate U.S. shareholders) by treating those amounts as additional subpart F income, resulting in tax on their U.S. shareholders. To achieve the intended lower rates of taxation on that income (15.5 percent generally on amounts up to the specified foreign corporations' "aggregate foreign cash position" and 8 percent on any remaining amounts), section 965(c) provides the U.S. shareholders with deductions expressly calculated to yield the 15.5 percent and 8 percent effective rates based on corporate tax rates.

Section 965(h) allows a U.S. shareholder to defer the resulting tax liability, paying it over eight years (with larger portions in the later years). The tax deferral is not as useful for a REIT, because a REIT normally reduces its taxable income to zero and pays no corporate income tax. Further, absent provisions to the contrary, the income could affect a REIT's gross income tests and distribution requirements. Congress recognized the special nature of REITs with section 965(m), which excludes the deemed income from REITs' gross income tests and allows REITs to elect to defer the income over an eight-year period rather than deferring the tax.

A REIT will still ultimately make distributions to its shareholders as the income is recognized over the eight years, and this will create a rate disparity depending on the shareholders' identities. Individual REIT shareholders are taxed at a rate higher than 8 percent or 15.5 percent, as illustrated by Example 5.

Example 5: A REIT owns 100 percent of the stock of a CFC. The REIT has $200 of section 965(a) income in 2017 because of the accumulated post-1986 deferred foreign income of the CFC, half subject to the 8 percent rate equivalent percentage and half subject to the 15.5 percent rate equivalent percentage. The REIT has taxable income as follows, which it must generally distribute in the absence of a section 965(m) election. Corporate and individual shareholders then pay tax on the distributions at their respective ordinary income rates.

Table 4

	8% Rate Equivalent Percentage	15.5% Rate Equivalent Percentage
Section 965(a) income	**$100**	**$100**
Section 965(c) deduction	($77.14) [(35% - 8%)/ 35% x $100]	($55.71) [(35% - 15.5%)/ 35% x $100]
Net section 965 income	**$22.86**	**$44.29**
U.S. corporate tax at 35% in 2017	$8	$15.50
Effective U.S. tax rate for corporate shareholder of REIT	**8%**	**15.5%**
U.S. individual tax at 43.4% in 2017 (including 3.8% section 1411 tax)	$9.92	$19.22
Effective U.S. tax rate for individual shareholder of REIT	**9.92%**	**19.22%**

The section 965(c) deduction is based on the REIT's corporate income tax rate in the year of the section 965(a) income. A section 965(m) election defers income for the shareholders, who may have a lower tax rate in the later years as a result of the corporate income tax rate cut to 21 percent or the 20 percent section 199A deduction for individuals' REIT ordinary dividends, in 2018 and later.

Example 6: Same facts as Example 5, but the REIT makes the section 965(m) election to defer taxable income over an eight-year period. The portion of taxable income recognized in 2017 is taxed at 2017 rates, while the remainder is taxed at the rates in effect beginning in 2018.

Table 5

	8% Rate Equivalent Percentage	15.5% Rate Equivalent Percentage
Section 965(a) income	**$100**	**$100**
Section 965(c) deduction	($77.14) [(35% - 8%)/ 35% x $100]	($55.71) [(35% - 15.5%)/ 35% x $100]
Taxable income	**$22.86**	**$44.29**
2017		
2017 taxable income (8%)	$1.83	$3.54
U.S. corporate tax at 35% in 2017	$0.64	$1.24
U.S. individual tax at 43.4% in 2017	$0.79	$1.54
2018-2024		
2018 income (8%)	$1.83	$3.54
2019 income (8%)	$1.83	$3.54
2020 income (8%)	$1.83	$3.54
2021 income (8%)	$1.83	$3.54
2022 income (15%)	$3.43	$6.64
2023 income (20%)	$4.57	$8.86
2024 income (25%)	$5.71	$11.07
Total taxable income 2018-2024	$21.03	$40.75
Corporate Total		
U.S. corporate tax at 21% in 2018-2024	$4.41	$8.56
U.S. corporate tax (all years)	$5.05	$9.80
Effective U.S. tax rate for corporate shareholder of REIT	**5.05%**	**9.8%**
Individual Total		
U.S. individual tax at 33.4% in 2018-2024 (includes 20% section 199A deduction and 3.8% section 1411 tax)	$7.02	$13.61

Table 5 *(Continued)*

	8% Rate Equivalent Percentage	15.5% Rate Equivalent Percentage
U.S. individual tax (all years)	$7.81	$15.15
Effective U.S. tax rate for individual shareholder of REIT	**7.81%**	**15.15%**

The result differs when the specified corporation has a fiscal tax year rather than a calendar year. Section 965(a)(1) generally triggers the section 965(a) income in the specified foreign corporation's last tax year beginning before January 1, 2018. That fiscal tax year ends sometime in 2018, which causes the section 965(a) income to be included in the U.S. shareholders' 2018 tax year. The section 965(c) deduction is reduced in 2018 as a result of the reduction in the corporate tax rate to 21 percent in 2018. Noncorporate shareholders of the REIT will pay a higher tax on their REIT distributions because of the reduced section 965(c) deduction.

Example 7: Same facts as Example 6, except that the $200 of section 965(a) income is from a specified foreign corporation with a tax year ending November 30, 2018, which causes the income to be included in the REIT's 2018 tax year. The REIT makes the section 965(m) deferral election.

Table 6

	8% Rate Equivalent Percentage	15.5% Rate Equivalent Percentage
Section 965(a) income	**$100**	**$100**
Section 965(c) deduction	($61.90) [(21% - 8%)/ 21% x $100]	($26.19) [(21% - 15.5%)/ 21% x $100]
Taxable income	**$38.10**	**$73.81**
2018 Income (8%)	$3.05	$5.90
2019 income (8%)	$3.05	$5.90
2020 income (8%)	$3.05	$5.90
2021 income (8%)	$3.05	$5.90
2022 income (8%)	$3.05	$5.90
2023 income (15%)	$5.71	$11.07
2024 income (20%)	$7.62	$14.76
2025 income (25%)	$9.52	$18.45
Total taxable income 2018-2025	$38.10	$73.81
U.S. corporate tax at 21%	$8.00	$15.50
Effective U.S. tax rate for corporate shareholder of REIT	**8%**	**15.5%**
U.S. individual tax at 33.4% (includes 20% section 199A deduction and 3.8% section 1411 tax)	$12.72	$24.65
Effective U.S. tax rate for individual shareholder of REIT	**12.72%**	**24.65%**

An individual U.S. shareholder with section 965(a) income can generally make a section 962(b) election so that the section 965(a) income is subject to the 21 percent corporate tax rate in 2018. But the section 962(b) election is not available for section 965(a) income from a REIT.

The section 965(c) deduction does not reduce E&P, creating problems with excess shareholder dividend income.

Example 8: Same facts as Example 6, and the REIT has no other income or E&P. Instead of distributing only an amount equal to its $67.15 of taxable income, the REIT distributes $200 to its shareholders. The shareholders are taxed on the entire $200 as a REIT dividend because of the $200 of E&P from the $200 of section 965(a) income.

Also, REIT shareholders do not receive the same step-up in basis for the 965(c) deduction that S corporation shareholders and partners do under section 965(f)(2)(A), so there is no eventual recovery of their tax on dividends upon a subsequent sale of REIT stock or REIT liquidation.

B. Section 168(k)

The TCJA expanded first-year bonus depreciation under section 168(k) to allow a 100 percent deduction for some purchases in late 2017 through 2022, with diminishing levels of bonus depreciation thereafter. Eligibility for bonus depreciation was expanded as well, covering previously used property for the first time. All these changes will increase REITs' ability to claim deductions for bonus depreciation. However, reg. section 1.168(k)-1(f)(7) provides that bonus depreciation does not reduce E&P. This creates a mismatch between taxable income and E&P — specifically, an excess of E&P — that will result in more of a REIT's distributions being taxable dividends than would otherwise be the case.

Example 9: A REIT has $100 of income from rental of real property and spends $100 on personal property improvements with a five-year class life and are eligible for bonus depreciation. Because of the $100 bonus depreciation deduction, the REIT has $0 of taxable income for year 1. However, for E&P purposes, only $20 of deduction is allowed, so the REIT has $80 of E&P. Even though the REIT has no taxable income, its first $80 of shareholder distributions in year 1 will be taxable dividends.

C. Section 163(j)

The TCJA amended section 163(j) to generally limit business interest deductions to the sum of business interest income plus 30 percent of other business income, in 2018 and later. Any disallowed business interest is carried forward to subsequent tax years.[7] Although section 163(j)(7) allows a REIT to elect out of this limitation for interest paid in its real property trade or business, section 168(g)(1)(F) then requires the REIT to take depreciation deductions for some real property under the alternative depreciation system, which has longer recovery periods and no bonus depreciation. The electing REIT may claim any allowable bonus depreciation and continue to use the general depreciation system for all of its personal property and other classes of real properties (that are not qualified improvement property, residential rental property, or nonresidential real property), such as depreciable land improvements, solar or wind energy property, retail motor fuel outlets, motorsport entertainment complexes placed in service in late 2004 through 2017, and single purpose agricultural or horticultural structures for livestock, plants, and mushrooms.

Limits on interest deductions might create problematic E&P disparities for REITs because E&P is ordinarily reduced by the full expense, even though taxable income is not reduced, according to reg. section 1.312-7(b)(1). Although section 857(d)(1) provides that REIT E&P is not reduced by any amount that was not allowed to reduce taxable income in the current year or a prior year, as discussed earlier, there is no corresponding provision causing E&P to be reduced in a later year when the deduction is allowed, similar to the issue with capital loss carryovers. The result is excess E&P, potentially resulting in excess dividend income to REIT shareholders.

IV. Other New Deduction Limitations

Several other provisions of the TCJA deny deductions for purposes of calculating taxable income. Each of those amounts is likely still deductible for E&P purposes, resulting in a permanent difference between taxable income and E&P.

A. Entertainment and Fringe Benefit Expenses

Section 274(a) was amended to generally eliminate all deductions for business-related entertainment, amusement, and recreation, with some exceptions.[8] The 50 percent limitation on deductions for meals in section 274(n) was also expanded to generally cover de minimis fringe benefits, on-premises dining facilities, and meals provided for the convenience of the employer on premises, which were formerly 100 percent deductible.

Section 274(e)(4) contains an important exception to both deduction limitations, for recreational, social, or similar activities for the benefit of general employees. A REIT can therefore continue to deduct all of its expenses for holiday parties, annual picnics, summer outings, and swimming pools for employees. Section

[7] Section 163(j)(2).

[8] *But see* Notice 2018-76, 2018-42 IRB 1 (entertaining meals are 50 percent deductible, based on congressional intent).

274(e)(5) has a separate exception that allows a REIT to deduct 50 percent of its meals and 100 percent of non-meal expenses (50 percent before the TCJA) for business meetings of the REIT's employees, stockholders, agents, and directors, such as when the latter group is managing the REIT.

B. Executive Compensation

The TCJA expanded the limitations under section 162(m) on the deduction of executive compensation by publicly traded corporations and their affiliated groups so that the $1 million deduction limit now applies to incentive-based compensation and to a broader pool of covered employees. Those expenses are still counted in calculating E&P, potentially creating mismatches and excess shareholder income as in Example 1. The effect on REITs may be limited to the extent that compensation is paid by an operating partnership owned by a REIT. In LTR 200614002, the IRS ruled that because such a partnership was neither the publicly traded corporation nor (being a partnership) part of its affiliated group, the deduction limitation did not apply to the compensation paid by the partnership, either directly or in the REIT's distributive share of the partnership's income or loss that includes the compensation deduction.

C. Local Lobbying Expenses

Section 162(e) generally disallows deductions for lobbying and political expenditures, but it previously had an exception for some local lobbying expenses. The TCJA eliminated that deduction exception for income tax purposes.

D. Fines

Section 162(f) previously disallowed deductions of fines or penalties paid to a government for any violation of law, but it was expanded to also disallow the deduction of any other amounts paid at the direction of a government (or self-regulatory entity) in connection with a violation or potential violation.

V. REIT E&P in Spinoffs

Another issue with E&P tracking that has particular salience for REITs occurs in the context of a nontaxable spinoff under section 355. Although section 355(h)(1) generally prohibits nontaxable spinoffs involving REITs, section 355(h)(2) provides broad exceptions for REITs spinning off other REITs or specified taxable REIT subsidiaries.

Section 312(h)(1) and reg. section 1.312-10(a) provide that when a spinoff follows a nontaxable reorganization under section 368(a)(1)(D) (a D reorganization), the distributing REIT's prior E&P must be allocated between itself and the (spun-off) controlled REIT.

If the controlled corporation is newly formed, reg. section 1.312-10(a) provides that E&P will normally be allocated proportionately to the fair market value of the businesses and properties in the distributing corporation and the controlled corporation. However, there is no rule that allocates any of the distributing REIT's current-year taxable income to the controlled REIT, creating an incongruity that can lead to excess taxable income or excess E&P.

Example 10: REIT P has no accumulated E&P at the beginning of year 1. In the first six months of year 1, P earns $100 of rental income. On July 1 of year 1, P contributes half of its assets, by FMV, into a newly formed subsidiary REIT S and then distributes the stock of S to its shareholders in a tax-free spinoff qualifying under sections 355 and 368(a)(1)(D). P allocates $50 of its year-to-date current E&P to S and retains the other $50 of its current E&P. Over the remainder of the year, P and S each earn an additional $50 of rental income. At the end of the year, P has $100 of E&P and $150 of taxable income, while S has $100 of E&P and only $50 of taxable income.

If P distributes $150 (and relies on the special REIT rules to be treated as having the necessary E&P to meet the REIT requirements and avoid excise taxes) and S distributes $100, the shareholders of P and S will have $250 of taxable income in year 1 from REIT distributions, even though P and S had only $200 of taxable income in aggregate. S can choose to distribute only $50, but it will carry over $50 of accumulated E&P to future years, which defers but does not eliminate the potential excess shareholder dividend income.

REITs may temporarily mitigate the effect of this incongruity by considering which assets are contributed to a controlled REIT in preparation for a spinoff so that excess cash will be in the distributing REIT rather than the controlled REIT. As illustrated in the above example, there will be excess taxable income only to the extent the controlled REIT distributes cash exceeding its taxable income. An alternative, when possible, is to have the spinoff occur when the REIT has negligible current-year taxable income, either in a year with low taxable income or at the beginning of a year, so that the spinoff creates little or no difference between taxable income and E&P.

This issue exists in a numerically different and computationally more complex form when the distributing REIT is spinning off an existing subsidiary REIT, in a section 355 spinoff that is not a D reorganization, under reg. section 1.312-10(b).

VI. Conclusion

In Lewis Carroll's *Through the Looking Glass*, Humpty Dumpty said, "When I use a word, it means just what I choose it to mean — neither more nor less." In the REIT context, Congress decided that the words "earnings and profits" can mean four different amounts.

A chain reaction of perhaps taxpayer-friendly intentions has created a minefield of complexity. Allowing REITs to avoid entity-level corporate income tax through dividends led to special rules that help REITs have enough E&P to make those dividends. Avoiding excess dividend income at the shareholder level means both tracking some of those adjustments through a separate set of E&P records solely for the purposes of paying dividends, and reversing some of the special adjustments when going from current to accumulated E&P. The TCJA addressed the effect of deferred foreign income on REITs' distribution requirements with income deferral rules, but it left potential complications arising from the interaction between the income deferral, the changing corporate tax rate, and E&P. The substantive tax advantages for REITs may be improving with the 20 percent section 199A deduction and other favorable tax provisions for REITs and real estate generally, but their need for accurate and diligent recordkeeping is growing as well. ■