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IRS Releases Rulings Revoking Prior CLN Rulings Issued to RICs

The IRS released a number of private letter rulings revoking rulings previously issued to RICs relating to their investments in commodity linked notes (CLNs). The private letter rulings were revoked because of the issuance of guidance providing that the IRS will no longer issue letter rulings on questions relating to the treatment of a corporation as a RIC that requires a determination of whether a financial instrument or position is a security under the 1940 Act. (See our prior coverage here (<http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-september-28-2016>.) The IRS’s private letter rulings involving a RIC’s investment in CLNs implicitly required such a determination and, therefore, rulings where a RIC was able to demonstrate that it relied upon the ruling (i.e., by investing in CLNs) were revoked prospectively. These normally permitted a RIC to rely on the ruling for CLN investments made on or prior to June 30, or retroactively to all years open under the statute of limitations on assessment, as of the date of the letter of revocation, and to all future years (i.e., because despite the CLN ruling the RIC either did not invest in CLNs or invested in CLNs indirectly through a wholly owned offshore subsidiary). A RIC’s investment in a CLN still is permissible, in part, if the CLN constitutes a security under Section 2(a)(36) of the Investment Company Act of 1940, as amended. The rulings issued are categorized as follows:

Rulings Providing for Prospective Revocation	Rulings Providing for Retroactive Revocation
Private Letter Rulings: 201716001, 201716025, 201716026, 201716029, 201716030, 201716033, 201716036, 201716038	Private Letter Rulings: 201716024, 201716027, 201716028, 201716031, 201716032, 201716034, 201716035, 201716037, 201716039, 201716040, 201716041, 201716042, 201716046

IRS Rules on REIT’s Qualifying Income From Grant

The IRS ruled, in Private Letter Ruling 201716043 (<https://www.irs.gov/pub/irs-wd/201716043.pdf>), that income from an economic redevelopment and growth incentive grant constitutes qualifying income for purposes of REIT’s gross income tests under Sections 856(c)(2) and 856(c)(3). (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Finds Stock Was Nonqualified Preferred Stock

In Chief Counsel Advice 201716045 (<https://www.irs.gov/pub/irs-wd/201716045.pdf>), the IRS determined that stock ranked senior to other classes of stock both in dividend payments and at liquidation was nonqualified preferred stock under Section 351(g)(2)(A) because it had no meaningful opportunity to participate in the future growth of the corporation. The IRS found that while the stock

purported to have a participating redemption premium and participating dividend, it really had only “illusory” rights to share in any appreciation in the value of the corporation. When nonqualified preferred stock is received by a transferor in exchange for property transferred to a controlled corporation, the nonrecognition rule of Section 351(a) does not apply.

Seventh Circuit Agrees That Corporate Overpayment Interest Rate Applies to Nonprofit Corporations

The Court of Appeals for the Seventh Circuit in *Medical College of Wisconsin Affiliated Hospitals, Inc. v. U.S.* (<http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2017/D04-25/C:16-3863:J:Estbrook:aut:T:fnOp:N:1953421:S:0>), affirming a district court, joined the Second and Sixth Circuits in concluding that the interest rate the IRS is required to pay with respect to tax overpayments by corporations, which is a lower rate than that which applies to overpayments by other taxpayers, applies to overpayments by nonprofit corporations.

Trump Signs Executive Order to Review Tax Regulations

President Donald Trump signed an executive order (<https://www.whitehouse.gov/the-press-office/2017/04/21/presidential-executive-order-identifying-and-reducing-tax-regulatory>) April 21 requiring an immediate review of “all significant tax regulations” since the beginning of 2016 and requiring Treasury to provide within 60 days an interim report on its findings. Pursuant to the executive order, the interim report will identify regulations that “impose an undue burden” on taxpayers, “add undue complexity” to the tax laws or “exceed the statutory authority of the Internal Revenue Service.” The order also requests that the Treasury secretary submit within 150 days of the date of the order a report recommending specific actions to lessen the burden of the regulations



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identified in the interim report. The speculation is that the executive order targets, in part, regulations under Section 385 that attempt to limit inversions.

IRS Releases International Practice Units

The IRS made available the following international practice units:

- Foreign tax credit limitation (https://www.irs.gov/pub/int_practice_units/ftm_c_03_03_07_01.pdf): provides an overview of the rules on the allocation and apportionment of a taxpayer’s expenses, losses and other deductions when determining the foreign tax credit limitation.
- Foreign income exclusion (https://www.irs.gov/pub/int_practice_units/jto_p_09_06_05_06.pdf): discusses how to determine if an individual meets the physical presence test for purposes of claiming the foreign earned income exclusion under Section 911, and if the individual does meet the test, how to determine the number of qualifying days and the maximum amount of foreign earned income that may be excluded.

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