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IRS Rules on Consequences of Settlement Involving REMICs

In private letter ruling 201713007 (<https://www.irs.gov/pub/irs-wd/201713007.pdf>), the IRS ruled on the following matters with respect to a settlement agreement executed by several REMICs and the payment each received in settlement of a dispute alleging breaches of representation and warranty claims under agreements with mortgage sellers:

1. None of (i) the execution of the settlement agreement, (ii) the right to receive the settlement payment or (iii) the receipt of the settlement payment cause the taxpayers to fail to meet the requirements of Section 860D(a)(4), relating to the definition of a REMIC (section references are to the Internal Revenue Code of 1986, as amended).
2. The receipt of the settlement payment will be treated as a payment received on qualified mortgages within the meaning of Treasury Regulations Section 860G-2(g)(1)(ii).
3. The distribution of the settlement payment in accordance with the applicable governing agreements of the REMICs and the settlement agreement will not cause any regular interest in the taxpayers to fail to qualify as a “regular interest” as defined in Section 860G(a)(1) or the sole class of residual interest in the taxpayers to fail to qualify as a “residual interest” as defined in Section 860G(a)(2).
4. The receipt of the settlement payment will not be treated as a “prohibited transaction” within the meaning of Section 860F(a)(2) or as a contribution that is subject to the tax imposed under Section 860G(d)(1).

Merger Costs Not Necessarily Required to Be Capitalized

In a legal memorandum (ILM 201713010 (<https://www.irs.gov/pub/irs-wd/201713010.pdf>)), the IRS concluded that where a regulatory agency approves a merger subject to certain conditions, the costs of activities undertaken in satisfaction of the regulatory agency’s conditions are not per se required to be capitalized under Treasury Regulations Section 1.263(a)-5 as amounts paid to facilitate a transaction. The IRS noted that the costs at issue appear to be in the nature of annual operating or investment expenses and not analogous to deal costs paid to service providers that assist with financing, investigating, documenting or otherwise administratively facilitating the transfer of property. Additionally, most of the costs are commonly and frequently required by regulators and are annually incurred by similar companies in the taxpayer’s industry as part of their ordinary and recurring business operations.

IRS Extends Deadline for Renewing QI Agreements

The IRS has announced that it will grant an effective date of Jan. 1, 2017, for all

properly submitted and approved renewal applications, including renewals containing a request for qualified derivatives dealer (QDD) status, submitted by May 31, 2017 (a two-month extension). Additionally, because a QDD is a new entity type, all new qualified intermediary (QI) applications that are approved and that also contain a request for QDD status submitted by May 31, 2017 will be granted an effective date of Jan. 1, 2017. However, for new withholding foreign partnerships, new withholding foreign trusts and new QIs that are not applying for QDD status, the March 31 new application deadline for a Jan. 1, 2017, effective date is still in effect. See question 22 of the Qualified Intermediary section of the FATCA FAQ page (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>) for more information.

Three Countries Added to Tax Data Exchange List

The IRS has added Belgium, Colombia and Portugal to the list of countries with which the United States has in force an information exchange agreement, such that interest paid to residents of such countries must be reported by payors to the extent required. See Rev. Proc. 2017-31; 2017-16 IRB 1 (<https://www.irs.gov/pub/irs-drop/rp-17-31.pdf>), supplementing Rev. Proc. 2016-56, 2016-52 IRB 920.



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IRS Updates Publication on Backup Withholding Requirements

The IRS has updated Publication 1281 (rev. March 2017) (<https://www.irs.gov/pub/irs-pdf/p1281.pdf>), “Backup Withholding for Missing and Incorrect Name/TIN(s),” containing information about the backup withholding requirements that apply to information returns filed, including rules regarding information returns with a missing or incorrect name or taxpayer identification number.

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