

Stradley Ronon Stevens & Young, LLP  
2005 Market Street  
Suite 2600  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Washington, D.C.  
New York  
New Jersey  
Illinois  
Delaware



www.meritas.org

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## IRS Re-Issues Partnership Audit Regulations in Almost Identical Form

On June 13 the IRS re-issued proposed regulations (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-12308.pdf>) for auditing partnerships. The proposed regulations initially were issued in January to provide guidance on the new partnership audit regime that was enacted as part of the Bipartisan Budget Act of 2015 (the BBA). The proposed regulations provided rules for partnerships subject to the new regime, including procedures for electing out of the centralized partnership audit regime, filing administrative adjustment requests and determining amounts owed by the partnership or its partners attributable to adjustments that arise out of an examination of a partnership. The proposed regulations also addressed the scope of the centralized partnership audit regime and provided definitions and special rules that govern its application, including the designation of a partnership representative.

On Jan. 20, the White House issued a memorandum ordering a freeze of all regulations, including the regulations relating to the partnership audit regime introduced by the BBA. The re-issued partnership audit regulations are almost identical in form to those withdrawn in January. The BBA included dramatic changes to the rules on IRS examination of partnerships, eliminating the “TEFRA” unified partnership audit rules (so-called because they were introduced in the Tax Equity and Fiscal Responsibility Act of 1982) and the electing large partnership (ELP) rules, and replacing them with a more streamlined set of partnership audit rules. The BBA causes the current TEFRA and ELP rules to be repealed, and introduces a streamlined single set of rules for auditing partnerships and their partners at the partnership level. Similar to the current TEFRA rule excluding small partnerships, the rules permit partnerships with 100 or fewer qualifying partners to opt out of the new rules, in which case the partnership and partners would be audited under the general rules applicable to individual taxpayers.

The BBA also replaces the “tax matters partner” rules with a simplified partnership representative provision that allows a partnership to designate either a partner or nonpartner to be the representative with the sole authority to act on behalf of the partnership for purposes of partnership audit and judicial proceedings. The provisions would apply to returns filed for partnership tax years beginning after 2017; however, with limited exceptions, partnerships may elect to apply the new rules to any return of the partnership filed for partnership taxable years beginning after the date of the enactment of the BBA and before Jan. 1, 2018. For our prior coverage of the partnership audit rules under the BBA click here (<http://www.stradley.com/insights/publications/2015/tax-insights-web-versions/tax-insights-november-4-2015>).

## IRS Provides Guidance on Disclosure to Bondholders in Audits of Tax-Exempt Bond Issuers

In email Chief Counsel Advice 201721017 (<https://www.irs.gov/pub/irs->

[wd/201721017.pdf](#)), the IRS describes what information can be disclosed to bondholders and third-party intermediaries when the IRS's Office of Tax-Exempt Bonds is performing an audit of the issuer of the bonds.

### **IRS Finds Earnings Stripping Rules Were Not Self-Executing**

In email Chief Counsel Advice 201721015 (<https://www.irs.gov/pub/irs-wd/201721015.pdf>), the IRS concludes that the regulatory authority in Section 163(j), which provides that the IRS may prescribe such regulations as may be appropriate to carry out Section 163(j)'s purpose, was not self-executing. (Section references are to the Internal Revenue Code of 1986, as amended.)

### **IRS Rules on Qualifying Income of Publicly Traded Partnership**

The IRS ruled, in Private Letter Ruling 201722023 (<https://www.irs.gov/pub/irs-wd/201722023.pdf>), that gross income derived from the processing, transportation, storage and marketing of wood pellets and wood chips constitutes qualifying income under Section 7704(d)(1)(E).

### **District Court Rules on Tax Avoidance Transaction**

*Wells Fargo & Company v. U.S.*, DC MN, 119 AFTR 2d ¶2017-797, involved a complex tax avoidance/STARS transaction which had been bifurcated between the trust and loan components. The jury previously found that the trust component lacked both a nontax business purpose and economic substance. However, the U.S. District Court for the District of Minnesota found that the loan component, although also entered into solely for tax reasons, was a "real transaction" with substantial nontax-related economic effects/economic substance. The court adopted a "flexible approach" to the sham transaction analysis, rejected the government's argument that the absence of a nontax business purpose by itself meant the loan had to be a sham, and determined instead that the loan's economic substance was enough under the circumstances here to show that it was not a sham, and thus the taxpayer could deduct the attendant interest expenses. Although the taxpayer's purpose in entering the loan was to disguise the sham nature of the trust component, the loan was not economically integral thereto and didn't play a role in generating abusive tax benefits flowing therefrom.

### **SIFMA Identifies Burdensome Regulations for Treasury's Review**

The Securities Industry and Financial Markets Association,



**Christopher C. Scarpa**



**Kristin M. McKenna**

*For more information, contact Christopher C. Scarpa at 215.564.8106 or [cscarpa@stradley.com](mailto:cscarpa@stradley.com) or Kristin M. McKenna at 215.564.8145 or [kmckenna@stradley.com](mailto:kmckenna@stradley.com).*

in response to an executive order calling for review of all significant tax regulations, has identified regulations (<http://www.sifma.org/issues/item.aspx?id=8589966697>) under Sections 871(m), 385, 367(d) and 1471 through 1474 as imposing an undue financial burden on U.S. taxpayers or adding undue complexity to the federal tax laws.

### **IRS Updates Publication on REMICs Reporting Information**

The IRS has released an updated version of Publication 938 (rev. May 2017) (<https://www.irs.gov/pub/irs-pdf/p938.pdf>), "Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs))," which provides directories relating to REMICs and CDOs.

### **IRS Releases Updated FATCA User Guide With Information on FFI Agreement Renewals**

The IRS has released Publication 5118 (rev. June 2017) (<https://www.irs.gov/pub/irs-pdf/p5118.pdf>), "Foreign Account Tax Compliance Act Online Registration User Guide," updating the December 2016 version based on changes to the FATCA online registration system, including a change that allows financial institutions to renew their foreign financial institution agreement with the IRS.

### **IRS Releases Practice Unit on Functional Currency Determinations**

The IRS made available an international practice unit ([https://www.irs.gov/pub/int\\_practice\\_units/fcu\\_c\\_18\\_03\\_02\\_0.pdf](https://www.irs.gov/pub/int_practice_units/fcu_c_18_03_02_0.pdf)) on the rules for determining an entity's functional currency for both book and tax purposes.