Tax Insights

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Investments Will Not Cause Contract Holder to Be Treated as the Owner

The IRS ruled in private letter ruling 201705003 (https://www.irs.gov/pub/irs-wd/201705003.pdf) that the investments of three portfolios — Portfolio A, Portfolio B and Portfolio C (collectively, the Portfolios), which are series of trust (the Trust) and all of which are taxed as regulated investment companies (RICs) — will not cause the variable contract holders to be treated as the owners of the portfolio for federal income tax purposes, and each portfolio will be eligible for the exception from the excise tax imposed by Section 4982. Section references are to the Internal Revenue Code of 1986, as amended. Portfolios A and B invest in equity and fixed income passive index RICs. These investments are both series of the Trust (presumably insurance dedicated funds) and publicly available funds. Portfolio C invests in fixed income securities through funds that are series of the Trust and publicly available funds. The ruling does not specify the anticipated percentages of each Portfolio's investment in insurance dedicated funds versus publicly available funds.

RICs Granted Extension to Pass Foreign Tax Credits to Shareholders

In private letter ruling 201705005 (https://www.irs.gov/pub/irs-wd/201705005.pdf), the IRS ruled that the taxpayers satisfied the requirements for granting a reasonable extension of time to make an election under Section 853 for four separate years. In the ruling, an individual on the taxpayers' administrator's tax team failed to elevate to appropriate personnel on the tax team the Section 853 election information received from certain RICs in which the taxpayers invested. As a result, the written statements were not included in the annual workpapers provided by the administrator to the taxpayers' auditor. The auditor was therefore not aware that the taxpayers had the opportunity to elect on a timely filed return to pass through to the taxpayers' sole shareholder, a life insurance company, the benefit of the foreign tax credits attributable to foreign taxes paid by the underlying RICs.

Spin-Off From REIT Would Result in Taxable Sale Transactions

In private letter ruling 201705004 (https://www.irs.gov/pub/irs-wd/201705004.pdf), the IRS ruled that certain proposed transactions in a spin-off from a REIT, including two partnership sales and a stock sale, would each be respected as taxable sales, and that any losses recognized on such sales will be deferred (rather than disallowed) under Section 267(f) until the partnership interests or the stock, as applicable, leave the REIT's controlled group in the spin-off.

IRS Clarifies Six-Month Extension Period for Calendar-Year C Corps

The IRS announced on its website (https://www.irs.gov/uac/rda-2017-02-08-2016-form-7004) that although Section 6081(b) provides a five-month automatic extension period for calendar year C corporations, it is granting a six-month automatic extension under Section 6081(a) instead. The instructions for Form 7004 reflect this change. C corporations filing a return for tax years that end on June 30 have a seven-month automatic filing extension (rather than six-month) under Section 6081(b). For C corporations other than those that file on a calendar-year

basis or that have a June 30 year-end, the due date is the 15th day of the fourth month following the end of the year, with a six-month automatic extension period.

IRS Advises on Structured Settlement Payment Rights

In program manager technical assistance (https://www.irs.gov/pub/lanoa/pmta-2017-02.pdf), the IRS addressed the treatment under three scenarios of a payee's structured settlement payment rights in a factoring arrangement.

- First, if a factoring company obtains a court order from a state other than the state of the payee's domicile and the state of the payee's domicile has a structured settlement protection act and the factoring company did not obtain a "qualified order" within the meaning of Section 5891(b)(2) approving the transfer of the structured settlement payment rights, the tax imposed by Section 5891(a) may be asserted against the factoring company.

- Second, if the factoring company did not obtain a qualified order in advance of the transfer of the structured settlement payment rights but subsequently did obtain a court order from the state of the payee's domicile after the transfer of the structured settlement payment rights, but the latter court order did not approve the transfer of such rights "in advance in a qualified order" as required by Section 5891(b)(1), the tax imposed by Section 5891(a) can be asserted against the factoring company.

- Third, the facts are the same as the facts in the first scenario, except that the payee decides to sell the future payment rights to another factoring company. In addition, in its petition to the court in a state other than the state of the payee's domicile, the factoring company requests that the court approve and order the assignment of the payments to its wholly owned subsidiary, which finances its factoring transactions. The factoring company did not obtain a qualified order within the meaning of Section 5891(b)(2) approving the transfer of the structured settlement payment rights, and therefore the tax imposed by Section 5891(a) may be asserted against the factoring company. Further, the tax may be asserted against the subsidiary under Section 5891(a) if, for example, the subsidiary indirectly acquired the structured settlement payment rights or the factoring company is a shell company or a conduit for the payments to the subsidiary, or is acting as a straw man.

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