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IRS Loosens Safe Harbor for RIC and REIT Stock Distributions

The IRS issued [Revenue Procedure 2020-19](#), which temporarily modifies the safe harbor for stock distributions by “publicly offered” regulated investment companies (RICs) and “publicly offered” real estate investment trusts (REITs). The Revenue Procedure provides that when a publicly offered RIC or REIT allows its shareholders to elect to receive a portion of a distribution in cash or stock, then any stock received under the election will be treated as a dividend under Sections 301 and 305 provided that the amount of cash to be distributed in the aggregate to all shareholders under the election is not less than 10% of the aggregate declared distribution. (Section references are to the Internal Revenue Code of 1986, as amended (Code).) Under [Revenue Procedure 2017-45](#), which provides the above-referenced safe harbor for stock distributions, at least 20% cash must be offered to shareholders as part of the distribution. (See our prior coverage [here](#).) The IRS issued Revenue Procedure 2020-19 in recognition of the need for enhanced liquidity during the current economic disruption caused by the outbreak of the coronavirus. The modification to the safe harbor for stock dividends is temporary. It is effective solely with respect to distributions declared by a publicly offered REIT or publicly offered RIC on or after April 1 and on or before Dec. 31. (A publicly offered RIC is a RIC the shares of which are continuously offered pursuant to a public offering, regularly traded on an established securities market, or held by or for no fewer than 500 persons at all times during the taxable year. A publicly offered REIT is a REIT that is required to file annual and periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934.) Neither Revenue Procedure 2020-19 nor Revenue Procedure 2017-45 applies to RICs or REITs that are not publicly offered, which creates uncertainty for private RICs and REITs. Additional information about the RIC and REIT distributions requirements and the requirements and history of Revenue Procedure 2017-45 follows below.

RICs and REITs each must satisfy an annual distribution requirement. In order to keep their tax-advantaged status, RICs must distribute at least 90% of their investment company taxable income, while REITs must distribute 90% of their real estate investment trust taxable income. RICs also must make a distribution of at least 98.2% of their ordinary income and net capital gain income to avoid excise tax. Similarly, to avoid excise tax, REITs must make a distribution of 85% of their ordinary income and 95% of their capital gain net income. Generally, if a RIC or a REIT credits shareholders with a dividend rather than making an actual distribution of the dividend, no dividends paid deduction can be claimed by the RIC or the REIT. Also, certain kinds of distributions of stock do not qualify as a dividend for purposes satisfying the foregoing of distribution requirements. Generally, for example, a pro-rata distribution that is solely of stock to existing shareholders is not treated as a distribution of property that qualifies as a dividend for tax purposes. This means that the distribution could not be included

for purposes of satisfying the RIC and REIT distribution requirements.

A RIC or a REIT with liquidity issues could face concerns with maintaining its status as a RIC or a REIT because of the annual distribution requirement. In 2017, the IRS released Revenue Procedure 2017-45, which allows a publicly offered RIC or REIT to pay a stock distribution that satisfies the annual distribution requirements if the following requirements are satisfied:

- The distribution must be made to shareholders with respect to the RIC's or REIT's stock.
- Each shareholder must receive a cash-or-stock election with respect to all or part of the distribution.
- At least 20% cash must be offered to shareholders as part of the distribution.
- Each shareholder, other than those that request a cash percentage exceeding the cash limitation set forth in the dividend declaration, must receive cash equal to the amount that such shareholder elected to receive.
- If the aggregate of all the shareholders' elected cash amounts does not exceed the cash limitation amount set forth in the dividend declaration, then each shareholder that requested a cash percentage exceeding the limit must receive cash equal to their elected cash amounts.
- If the aggregate of all the shareholders' elected cash amounts exceeds the cash limitation amount set forth in the dividend declaration, then each shareholder that elected to receive a cash percentage exceeding the limit must receive an amount that is calculated based on a formula that generally reduces the cash distributed to those that elected more than the minimum percentage of cash so as to provide a pro rata reduction for all excess cash claimants based on each excess cash claimant's share of the total excess claims of all shareholders.
- The calculation of the number of shares to be received by a shareholder is determined based on a formula that: (a) utilizes the market price of shares, (b) is designed so that the value of the number of shares to be received in lieu of cash corresponds to the amount of cash to be received with respect to that share, and (c) uses data from a period of not more than two weeks ending as close as practicable to the payment date of the distribution.

Revenue Procedure 2017-45 is similar to Revenue Procedures [2008-68](#), [2009-15](#) and [2010-12](#) that were released by the IRS in light of the Great Recession to assist RICs and REITs facing a liquidity crunch.



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IRS Publishes UBTI Proposed Regulations

The IRS and Department of Treasury have published [proposed regulations](#) that provide guidance on how an exempt organization subject to the unrelated business income tax would determine if it has more than one unrelated trade or business, and, if so, how the exempt organization would calculate unrelated business taxable income (UBTI). Under the 2017 Tax Cuts and Jobs Act (TCJA), Section 512(a)(6) was enacted, which requires the separate computation of unrelated business taxable income for each trade or business of a tax-exempt organization that is subject to the unrelated business income tax. (Prior to the enactment of the TCJA, tax-exempt organizations could aggregate the income and losses from all unrelated, regularly carried on active trades or businesses to calculate UBTI.) The IRS issued Notice 2018-67 in August 2018, which provided interim guidance and transition rules for the calculation of UBTI. The proposed regulations generally provide guidance on, among other items: (1) the use of 2-digit NAICS codes to identify different trades or business; (2) the aggregation of investment activities; (3) allocation of expenses between exempt purposes and non-exempt purposes; (4) qualifying partnership interests; (5) amounts included in UBTI under Sections 512(b) (4) (unrelated debt-financed income), (13) (payments from controlled entities) and (17) (amounts derived from foreign corporations); (6) the treatment of NOLs; and, (7) individual retirement accounts. The proposed regulations, in general, would apply to taxable years beginning on or after the date the regulations are published as final, but exempt organizations may rely on them for taxable years beginning before the regulations are final. Exempt organizations also may continue to rely on the guidance in Notice 2018-67.

IRS Releases Additional Guidance on PPP

The IRS, in [Notice 2020-32](#), has released additional guidance on the Paycheck Protection Program (PPP). (See our prior coverage [here](#) and [here](#).) The Notice clarifies that no deduction is allowed

under the Code, for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan under the CARES Act, like the PPP loans. Additionally, the income associated with the forgiveness is excluded from gross income for purposes of the Code.

IRS Posts FAQs on NOL Carrybacks of Taxpayers with Section 965 Inclusions

The IRS has posted [frequently asked questions \(FAQs\)](#) regarding recent guidance on elections to carryback, or waive the carryback period for net operating losses (NOLs). In the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), an NOL arising in a tax year beginning after Dec. 31, 2018, and before Jan. 1, 2021 is now permitted to be carried back to each of the five tax years preceding the tax year of such loss. (See our prior coverage [here](#).) Specifically, the FAQs address the mechanics of carrying back an NOL to a tax year with a Section 965 inclusion and certain questions regarding filing Forms 1139, Corporation Application for Tentative Refund, or 1045, Application for Tentative Refund.

IRS Issues FAQs on the Employee Retention Credit

The IRS has posted [FAQs regarding the Employee Retention Credit](#) that was created under the CARES Act. Generally, the CARES Act provided a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis. (See our prior coverage [here](#).) The FAQs are extensive and cover various issues related to the credit, including determining employer eligibility and special issues that may arise.

IRS Updates FAQs on Filing and Payment Deadlines

The IRS has updated its [FAQs on filing and payment deadlines](#) pursuant to additional relief provided by Notice 2020-23, which generally extended the deadline for such items to July 15, 2020. (See our prior coverage [here](#).) These FAQs also address issues regarding the extended deadline for filings in the U.S. Tax Court.

IRS Provides Guidance on Completing Form 7200

In an e-News for Tax Professionals bulletin sent on April 24, 2020, the IRS has provided tips for avoiding errors when filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, which include:

- Each EIN on a tax return should be exact.
- Check only one box for applicable calendar quarter.
- Check only one box for Part 1, Line A.
- In Part 1, Line B check either “Yes” or “No”.

- Complete all the lines in Part II.
- Part II should be completed using dollar amounts, not the number of eligible employees. All lines in Part II should be completed with an actual dollar amount.
- Check the math on lines 4, 7 and 8.
- Failure to sign the form will result in an automatic rejection.

IRS Updates FATCA FAQs to Address Extension

The IRS has updated its [FATCA FAQs](#) to inform affected taxpayers that there is an automatic extension of time to submit a FATCA certification for an entity with a certification due date of July 1, 2020, to Dec. 15, 2020, without the need to file an extension request with the IRS. The new due date will automatically show on the FATCA registration system.

Philadelphia DOR Releases Updated Guidance on BIRT and NPT

The Philadelphia Department of Revenue has released [updated guidance](#) for the Philadelphia business income and receipts tax (BIRT) and net profits tax (NPT), stating that it is honoring the IRS’s July 15, 2020 extension and applying it to BIRT and NPT payments and filings. Additionally, where the IRS grants an extension of time for filing the federal return, the Philadelphia Department of Revenue will automatically grant a matching extension for filing BIRT and NPT. The taxpayer does not need to take any action with the Philadelphia Department of Revenue to receive this extension.

Philadelphia DOR Releases Guidance on BIRT and NPT Nexus Policies

The Philadelphia DOR has [released guidance](#) stating that it will temporarily waive the legal nexus threshold established under §19-2603 of the Philadelphia Code and under Section 103 of the BIRT regulations, which considers the presence of employees working temporarily from home within Philadelphia as establishing sufficient nexus for out-of-Philadelphia businesses. Services performed by Philadelphia non-residents who are temporarily working from home solely as a result of COVID-19 will be deemed to be performed within Philadelphia for the purposes of the BIRT and NPT sourcing rules. However, services performed by Philadelphia resident employees who previously had been performing services for employers outside of Philadelphia before COVID-19, but are now temporarily working from their homes in Philadelphia, will not be sourced to Philadelphia for purposes of BIRT and NPT.

Philadelphia Extends Property Tax Due Date

Philadelphia [extended](#) the due date for 2020 real estate taxes from April 30, 2020, to June 15, 2020.