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IRS Provides Penalty Advice Related to Deficiency Dividends Deduction by a RIC or REIT

In a legal memorandum (ILM 201727004 (https://www.irs.gov/pub/irs-wd/201727004.pdf)), the IRS concluded that a regulated investment company (RIC) or a real estate investment trust (REIT) that is allowed a deficiency dividends deduction under Section 860(a) is not liable for an addition to tax under Section 6651(a)(1) or (2) for failure to timely file a return or timely pay the amount shown on a return. (Section references are to the Internal Revenue Code of 1986, as amended.) The IRS reached this conclusion by distinguishing between the wording of the statutes, specifically, the "amount shown as tax" on a filed tax return in Section 6651(a)(2) compared to "the tax imposed by this chapter" in Section 860(c)(1)(A). However, the IRS noted that a RIC or a REIT that is allowed a deficiency dividends deduction would be subject to interest under Section 6601 and to a penalty under Section 6697 (assessable penalties with respect to liability for tax of RICs, which is now repealed). Further, a RIC or REIT that is allowed a deficiency dividends deduction under Section 860(a) is not liable for any accuracy-related penalty under Section 6662 on an underpayment resulting from the deemed increase in tax under Section 860(c) and is not liable for any other addition to tax, additional amount or penalty under Chapter 68 of the Internal Revenue Code for taxable years beginning after Dec. 22, 2010. The IRS also discussed ways in which a RIC or REIT might be able to secure administrative review of the denial of a claim for a deficiency dividends deduction.

Revised Better Care Reconciliation Act Abandoned

The Senate released a revised version of the Better Care Reconciliation Act of 2017 (the revised Act) on July 13. The revised Act retained several Affordable Care Act taxes, including the net investment income tax and the hospital insurance additional Medicare payroll tax. The revised Act also allowed taxpayers to use health savings accounts to pay insurance premiums for individuals enrolled in high deductible health plans. The revised Act retained the repeal of the individual and employer mandates and delayed the implementation of the Cadillac tax until 2026. Senate Majority Leader Mitch McConnell has acknowledged that the Senate lacks the votes needed to pass the revised Act and he does not intend to bring the revised Act to a vote, suggesting that he favors a vote on the full repeal of the Affordable Care Act, with a two year delay on the appeal to create a new system.

IRS Withdraws Proposed Regulations on Nonrecognition on an Exchange of Net Value

In 2005, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-163314-03 (https://www.irs.gov/irb/2005-14_IRB/ar21.html)) in the Federal Register containing proposed regulations under Sections 332, 351, and 368 (the 2005 Proposed Regulations). The 2005 Proposed Regulations generally would have provided that the non-recognition rules in subchapter C of Chapter 1 of subtitle 1 of the Internal Revenue Code do not apply unless there is an exchange (or, in the case of Section 332, a distribution) of net value. The 2005 Proposed Regulations also provided that Section 332 would apply only if the recipient corporation receives some payment for each class of stock it owns in the liquidating corporation. Finally, the 2005 Proposed Regulations provided guidance on the circumstances in which (and the extent to which) creditors of a corporation are treated as proprietors of the corporation in determining whether continuity of interest is preserved in a potential reorganization (Creditor Continuity of Interest). While certain provisions of the 2005 Proposed Regulations have been adopted as final regulations, e.g. the Creditor Continuity of Interest provisions and provisions that reflected statutory changes to Section 332 and 351, the Treasury Department and the IRS have decided to withdraw (https://www.federalregister.gov/documents/2017/07/13/2017-14723/transactions-involving-the-transfer-of-no-net-value) the remainder of the 2005 Proposed Regulations because current law is sufficient to ensure that the reorganization provisions and Section 351 are used to accomplish readjustments of continuing interests in property held in modified corporate form.

IRS Provides Details of Qualified Derivative Dealer Training

In Private Letter Ruling 201727005 (https://www.irs.gov/pub/irs-wd/201727005.pdf), the IRS released slides from that provide an overview of Section 871(m) and address common equity derivative transactions, QDD status, QDD tax liability, withholding and transition relief.

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Delaware Increases Corporate Franchise Tax

Delaware H.B. 175 was signed into law by the governor of Delaware on July 2. The bill requires corporations in Delaware to pay a new top rate with a maximum of $250,000 each year; the current maximum is $180,000. See our prior coverage here (http://www.stradley.com/insights/publications/2017/05/tax-insights-may-24-2017).

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