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IRS Issues Revenue Procedure on Stock Distributions by Publicly Offered RICs and REITs

The IRS released Revenue Procedure 2017-45, 2017-35 IRB 1 (<https://www.irs.gov/pub/irs-drop/rp-17-45.pdf>), to provide guidance regarding certain stock distributions by real estate investment trusts (REITs) and regulated investment companies (RICs). If a publicly offered RIC, as defined in Section 67(c)(2)(B), or a publicly offered REIT, as defined in Section 562(c)(2), makes a distribution of stock in a transaction that satisfies certain requirements listed in the revenue procedure (including a distribution that is at least 20 percent cash), then the IRS will treat the distribution of stock as a distribution of property to which Section 301 applies by reason of Section 305(b). (Section references are to the Internal Revenue Code of 1986, as amended.) The value of the stock received by any shareholder in lieu of cash will be considered equal to the amount of cash for which the stock is substituted. The revenue procedure adds that if a shareholder participates in a dividend reinvestment plan, the stock received by that shareholder pursuant to the dividend reinvestment plan is treated as received in exchange for cash received in the distribution. The revenue procedure is effective with respect to distributions declared on or after Aug. 11.

IRS Rules on Tax Consequences of Reorganization

In Private Letter Ruling 201731003 (<https://www.irs.gov/pub/irs-wd/201731003.pdf>), the IRS ruled that the acquisition of another corporation engaged in a different business by a publicly traded parent corporation engaged in multiple businesses for at least five years constitutes an expansion of the parent corporation's business within the meaning of Treasury Regulation Section 1.355-3(b)(3)(ii) and does not constitute the acquisition of a new or different business. Further, it ruled that shares retained as part of a proposed reorganization will not be in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax within the meaning of Section 355(a)(1)(ii) and Treasury Regulation Section 1.355-2(e).

Several Groups Submit Comments on Regulations Targeted as Burdensome

The following groups have recently submitted comments in response to Notice 2017-38, which identified regulations issued in 2016 as potentially either imposing a substantial burden on taxpayers or adding undue complexity to the law:

- American Bar Association Tax Section (<https://www.americanbar.org/groups/taxation/policy.html>)
- National Association of Real Estate Investment Trusts ([https://www.reit.com/sites/default/files/NAREIT-Submission-re-Notice-2017-38-\(8-4-17-Final\).pdf](https://www.reit.com/sites/default/files/NAREIT-Submission-re-Notice-2017-38-(8-4-17-Final).pdf))
- New York State Bar Association (http://www.nysba.org/Sections/Tax/Tax_Section_Reports/Tax_Reports_2017/Tax_Section_Letter_1376.html)
- Securities Industry and Financial Markets Association (<https://www.sifma.org/resources/submissions/executive-order-13777/>)

New York State Releases Guidance for Owners of Single Member LLCs That Are Registered Broker-Dealers

New York State Department of Taxation and Finance (Department) released NYT-G-17(2)C (https://www.tax.ny.gov/pdf/guidances/corp/g17_2c.pdf) to provide guidance as to whether a corporation may be considered a registered securities broker-dealer for purposes of computing its receipts factor pursuant to Tax Law Section 210(a)(3)(9), even though the corporation itself does not qualify as such a broker-dealer. In the guidance, the Department describes a taxpayer that indirectly owns a limited liability company (LLC) registered as a broker-dealer (the LLC is treated as a disregarded entity for tax purposes). The Department noted that the broker-dealer status of the LLC cannot serve to qualify taxpayer as such, and that neither the taxpayer's distributive share from certain underlying entities nor its own receipts can be apportioned as the receipts of a registered securities broker-dealer.



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