

Tax Insights | September 23, 2022  
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You Need to Know**



### Appeals Court Reverses Tax Court on IRS Penalty

The U.S. Court of Appeals for the Eleventh Circuit [found](#) that the U.S. Tax Court erred in barring the IRS from issuing penalties because of supervisory approval requirements. The case concerns tax-advantaged conservation easement, where land is donated to be protected in perpetuity, and taxpayers claim a deduction under Section 170(h). The Tax Court held that the taxpayers' donation of land as a conservation easement did not meet the protected in perpetuity requirement due to the language retaining the rights for future development. The Appeals Court found that the Tax Court's holding should be reversed because the IRS failed to secure a supervisor's approval before notifying the taxpayer.

### IRS Issues 2021 Domestic Asset/Liability Percentages, Investment Yields

The IRS has [provided](#) domestic asset/liability percentages and investment yields needed by foreign insurance companies to compute their minimum effectively connected net investment income under Section 842(b) for the tax year beginning after Dec. 31, 2020. Foreign companies operating insurance businesses in the U.S. are taxed on the amount of minimum net investment income that is effectively connected to their U.S. insurance business as if they were domestic insurance companies. The minimum net investment income cannot be less than the required U.S. assets multiplied by the company's current year domestic investment yield. For the first tax year, beginning after Dec. 31, 2020, the relevant domestic asset/liability percentages are 125.8% for foreign life insurance companies and 209% for foreign property and liability insurance companies.

### Treasury Clarifies Guidance for Taxpayer Validity Arguments

The Department of the Treasury outlined [guidance](#) to ensure consistent treatment of cases where a taxpayer argues that a Treasury regulation or an IRS notice or revenue procedure is invalid. This guidance is a result of provisions in the 2019 Taxpayer First Act regarding access to appeals. However, if there is an unreviewable decision from a federal court, litigating hazards could be applied.



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