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IRS Issues Final Regulations on Exempt Bond Arbitrage Restrictions – Revises Definition of Issue Price

The IRS has issued final regulations (TD 9801 at <http://docs.regulations.justia.com/entries/2016-12-09/2016-29486.pdf>) that provide a general and two alternate definitions of “issue price” for purposes of the arbitrage investment restrictions under Section 148 (section references are to the Internal Revenue Code of 1986, as amended).

Under the general rule in the final regulations, for bonds issued for money, the issue price is the first price at which a substantial amount of the bonds, i.e., 10 percent, is sold to the public. In addition, the final regulations provide that for a bond issued for money in a private placement to a single buyer that is not an underwriter or a related party to an underwriter, the issue price of the bond is the price paid by that buyer. The issue price is not reduced by any issuance costs. The term “public” for purposes of determining the issue price of tax-exempt bonds means any person other than an underwriter or a related party to an underwriter.

The final regulations clarify that for bonds for which more than one rule for determining issue price is available (such as the general rule or one of two special rules in the final regulations), an issuer may select the rule it will use to determine the issue price for the bonds at any time on or before the issue date of the bonds by identifying the rule selected in its books and records maintained for the bonds.

The final regulations apply to bonds that are sold on or after 180 days after Dec. 9.

IRS to Issue Regulations on Certain Triangular Reorganizations With Foreign Corporations

The IRS issued Notice 2016-73, 2016-51 IRB (<https://www.irs.gov/pub/irs-drop/n-16-73.pdf>), announcing that it intends to issue regulations under Section 367 to modify the rules relating to the treatment of property used to acquire parent stock or securities in certain triangular reorganizations involving one or more foreign corporations, and the consequences to persons who receive parent stock or securities pursuant to such triangular reorganizations. The IRS also intends to issue regulations under Section 367 to modify the amount of an income inclusion required in certain inbound nonrecognition transactions.

The notice states that the IRS is aware that certain taxpayers are engaging in transactions that are designed to repatriate earnings and basis of foreign corporations without incurring U.S. tax. The notice provides descriptions of the transactions about which the IRS is concerned. The IRS believes that these transactions “raise significant policy concerns.” The regulations that the IRS intends to issue will modify the Section 367(a) priority rule to apply only when the acquired entity is a domestic corporation. Therefore, when the acquired entity is a foreign corporation, the regulations generally will treat as a distribution any property provided by the acquiror to its domestic parent in exchange for stock used in the acquisition regardless of the amount of gain that might

otherwise be recognized in the triangular reorganization by reason of Treasury Regulation Section 1.367(b)-10(a)(1).

IRS Rules on Settlement Proceeds Received by REMICs

The IRS issued Private Letter Rulings 201649006 (<https://www.irs.gov/pub/irs-wd/201649006.pdf>), 201649009 (<https://www.irs.gov/pub/irs-wd/201649009.pdf>) and 201649010 (<https://www.irs.gov/pub/irs-wd/201649010.pdf>), in which it found that for each REMIC investor/taxpayer that made a timely, valid and continuing REMIC election pursuant to the applicable governing agreement, and who sued mortgage sellers for breaching sales agreements representations and warranties and a master servicer for violating its servicing obligations, their (a) execution of settlement agreement; (b) methodology for determining and right to receive allocable share of settlement payment; (c) receipt of allocable share of settlement payment; or (d) reduction of unreimbursed advances owed to master servicer attributable to any master servicing fee adjustment did not cause each taxpayer to fail to meet the requirements of Section 860D(a)(4), since the settlement payments arose from each of their interests in mortgage loans and status as a REMIC. Section 860D(a)(4) defines a REMIC, in part, as an entity with substantially all of its assets consisting of qualified mortgages and permitted investments as of the close of the third month beginning after the startup day and at all times thereafter.

IRS Rules on REIT Qualifying Income Attributable to CFCs and PFICs

The IRS found, in Private Letter Ruling 201649013 (<https://www.irs.gov/pub/irs-wd/201649013.pdf>), that under Section 856(c)(5)(J)(ii), a REIT's income inclusions attributable to Subpart F and ownership in foreign subsidiaries that are controlled foreign corporations (CFCs) or passive foreign investment companies (PFICs) constitute qualifying gross income for purposes of Section 856(c)(2)'s 95 percent gross income test. The IRS also found that under Section 856(n)(3)(C), the taxpayer's Section 986(c) gains are excluded from gross income under Section 856(c)(2) as passive foreign currency gains.

IRS Updates Lists of Countries With Nonresident Alien Interest Reporting Requirements

The IRS issued Revenue Procedure 2016-56, 2016-51 IRB (<https://www.irs.gov/pub/irs-drop/rp-16-56.pdf>), in which it updated two lists of countries with which the U.S. has in effect an agreement that requires payors to report certain deposit interest paid to nonresident alien individuals who are residents of the other country under Treasury Regulation Sections 1.6049-8(a) and 1.6049-4(b)



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(5). One list is of countries with which the U.S. has in effect an income tax or other treaty or a bilateral agreement; the other is of countries with which the IRS has determined that an automatic exchange of information is appropriate.

Grenada-U.S. FATCA Agreement Available

The text is available of the agreement (<https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Grenada-10-17-2016.pdf>) signed by Grenada and the United States to improve international tax compliance and implement the information reporting and withholding tax provisions of FATCA.

IRS Updates Publication on REMICs

The IRS has released an updated version of Publication 938 (rev. Nov. 2016) (<https://www.irs.gov/pub/irs-pdf/p938.pdf>), Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs)), which provides directories relating to real estate mortgage investment conduits and collateralized debt obligations.

Pennsylvania Issues Reminder of 2017 Tax Amnesty Program

The Pennsylvania Department of Revenue, in Pennsylvania Tax Update No. 187 (http://www.revenue.pa.gov/GeneralTaxInformation/News%20and%20Statistics/Documents/Tax%20Update/taxupdate_187.pdf), reminded taxpayers it will administer a 60-day tax amnesty program from April 21, 2017, through June 19, 2017. During the amnesty period, all penalties and half of the interest owed will be waived for those who apply and pay delinquent taxes. Those eligible to participate in the amnesty program are individuals and businesses with unpaid (or underpaid) Pennsylvania taxes or unfiled returns as of Dec. 31. Participants in the 2010 Tax Amnesty Program are

ineligible to participate, as are taxpayers under criminal investigation, criminal prosecution or criminal restitution for allegedly violating a tax law, and taxpayers with a voluntary disclosure agreement for periods eligible for tax amnesty (taxpayers in bankruptcy must be granted permission from bankruptcy court). More than 30 state taxes administered by the department are eligible for amnesty,

including personal income tax, corporate net income tax, sales and use tax and inheritance tax. Participants must file an application, file missing returns, and pay any taxes due, along with half of the interest owed, by the end of tax amnesty on June 19, 2017. Individuals and businesses with tax liabilities eligible for tax amnesty that do not participate in the program will be assessed a 5 percent penalty.

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