

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

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Guidance on Tax Treatment of MMF Liquidity Fees Not Expected Soon

We wrote to you last week with an update from the ICI Tax and Accounting Conference that Helen Hubbard announced the IRS' release of guidance on commodity subsidiary distributions and limitations on the definition of a security for RIC qualification purposes. (See our coverage at <http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-september-28-2016>.) Helen Hubbard was also asked at the conference by Karen Gibian (Associate General Counsel — Tax Law, ICI) whether the IRS planned to release guidance on the tax treatment of liquidity fees by money market funds. The ICI has requested guidance from the IRS stating that the receipt of liquidity fees by a money market fund does not constitute taxable income to the fund, and that the fund will be deemed to have sufficient earnings and profits if liquidity fees received by the fund are distributed to shareholders (to avoid a return of capital distribution). Hubbard commented that the IRS is not currently working on guidance relating to the tax treatment of liquidity fees by money market funds, as the guidance is not currently viewed as urgent. Hubbard also commented that the IRS could release guidance on the issue quickly if the need for such guidance becomes urgent.

Amendments to 817 Regulations Not Expected Soon

The IRS issued Notice 2016-32 providing guidance to taxpayers regarding the diversification requirements under Section 817(h) (section references are to the Internal Revenue Code of 1986, as amended) for a segregated asset account that invests in a money market fund that is a government money market fund. (See our prior coverage of Notice 2016-32 at <http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-may-11-2016>.) The notice states that the IRS will amend the regulations under Section 817(h) consistent with the guidance provided in the notice. Also at the ICI Tax and Accounting Conference, Gibian asked Hubbard about the status of the revised Section 817(h) regulations. Hubbard stated that the revised regulations are on the list of projects that the IRS currently is not working on and the IRS will dedicate time to drafting the revised regulations when resources permit.

Helen Hubbard Discusses Notice 2016-10 — Foreign Tax Credits — Credit Offset Method

At the ICI Tax and Accounting Conference, Hubbard also discussed Notice 2016-10. Notice 2016-10 was released on Jan. 16 to address the application of Sections 853 and 905(c) to the receipt by a RIC of a refund of a tax that was eligible for a foreign tax credit under Section 901 or Section 903 ("foreign tax") if that foreign tax, when paid by the RIC, was treated as paid by the RIC's shareholders under Section 853(b)(2) because an election was made under Section 853(a). (See our prior coverage of Notice 2016-10 at <http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-jan-20-2016>.) Hubbard mentioned that someone has inquired whether Notice 2016-10 could be read to require netting on a country-by-country basis, and in response, Hubbard commented that she does not see how the Notice could be read in that manner and that doing so would make the Notice unworkable and ineffective. Hubbard further commented that closing agreements will provide for netting to the extent of current year foreign tax

credit refunds. If a RIC receives refunds in excess of foreign taxes paid in such refund year, then the RIC will be required to obtain a closing agreement from the IRS as to that excess. The IRS is working on standard closing agreement terms and conditions and is considering in what manner, if any, Notice 2016-10 could apply to RICs predominantly held by insurance companies, as such RICs are not permitted to use the method described in Notice 2016-10.

Helen Hubbard Discusses Impact of Change in Accounting Method Under Section 305(c)

At the ICI Tax and Accounting Conference, Hubbard discussed the proposed regulations under Section 305(c) that cover the amount of taxable income, and the timing of the recognition of taxable income, from deemed distributions that are, or that result from, adjustments to rights to acquire stock (see our prior coverage at <http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-april-20-2016>). Hubbard noted that the IRS has received several comments regarding the audit protection afforded to the taxpayer under Section 481 resulting from a change in accounting method caused by the adoption of the proposed regulations by a taxpayer. Hubbard advised that the audit protection would not apply to any withholding that was required for adjustments for instruments disposed of prior to the year of change.

IRS Updates Form W-8IMY and Instructions

The IRS released the final September 2016 version of Form W-8IMY (<https://www.irs.gov/pub/irs-pdf/fw8imy.pdf>), “Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding,” along with instructions (<https://www.irs.gov/instructions/iw8imy/ch01.html>) that include changes regarding nonreporting intergovernmental agreement foreign financial institutions, a qualified derivatives dealer (QDD), and a qualified intermediary that does not assume primary withholding responsibility. In September 2015, temporary and final regulations (T.D. 9734) were published regarding nonresident alien individuals and foreign corporations that hold some financial products providing for payments that are contingent on or determined by reference to U.S.-source dividend payments. Those regulations created a special category of qualified intermediary known as a QDD. Such status is relevant after Dec. 31. The IRS updated Form W-8IMY to include the certifications made by a QI acting as a QDD. The form must be used by QDDs for payments made after Dec. 31.

IRS Releases Additional International Practice Units

The IRS released the following international practice units:



Christopher C. Scarpa



Kristin M. McKenna

For more information, contact Christopher C. Scarpa at 215.564.8106 or cscarpa@stradley.com or Kristin M. McKenna at 215.564.8145 or kmckenna@stradley.com.

- Inbound Income Shifting (https://www.irs.gov/pub/int_practice_units/isi_c_06_04.pdf) and Outbound Income Shifting (https://www.irs.gov/pub/int_practice_units/iso_c_01_03.pdf) (each provides a comparison of the common valuation approaches used by taxpayers instead of the arm’s-length standard for purposes of inbound income shifting).
- Compensation Arrangements, FTC Limit (https://www.irs.gov/pub/int_practice_units/ftc_c_10_02_04.pdf) (providing an overview of the sourcing of multiyear compensation arrangements, including stock options, for purposes of computing the foreign tax credit limitation; the unit also explains how equity-based compensation, such as statutory and nonstatutory stock options, is taxed).

Senate Finance Committee Members Ask IRS Not to Finalize Political Subdivision Regulations

Senate Finance Committee members Rob Portman, R-Ohio, and Sherrod Brown, D-Ohio, asked, in a Sept. 23 letter (<http://www.portman.senate.gov/public/index.cfm/2016/9/portman-brown-oppose-new-irs-rule-that-hurts-local-infrastructure-financing>) to IRS Commissioner John Koskinen, that the proposed political subdivision regulations (REG-129067-15 (https://www.irs.gov/irb/2016-10_IRB/ar17.html)) not be finalized in their current form, as they would deny tax-exempt financing to unintended entities.

Estate Can Deduct Theft Loss From Madoff Ponzi Scheme

The U.S. Tax Court held, in *Estate of James Heller et al. v. Commissioner*, 147 T.C. No. 11; No. 11390-12 (<https://www.ustaxcourt.gov/UstcInOp/OpinionViewer.aspx?ID=10958>), that an estate was entitled to a theft loss deduction under

Section 2054 for the decedent's interest in a limited liability company whose sole asset was an account with Bernard L. Madoff Investment Securities LLC that became worthless because of the Madoff Securities Ponzi scheme.

German Bankers Association Comments on 871(m) Regulations

The German Banking Industry Committee has urged the IRS to delay implementation of dividend equivalent regulations (T.D. 9734) or at least not sanction foreign financial institutions for noncompliance, adding that the revised proposed qualified intermediary agreement in Notice 2016-42 fails to provide adequate guidance on the treatment by qualified derivatives dealers of dividend equivalent payments. (See https://bankenverband.de/media/files/Comments_Dividend_equivalent_payments.pdf and https://bankenverband.de/media/files/20160830_GBIC_Comments_on_Notice_2016-42.pdf for comment letters.)

SIFMA Comments on Proposed 305(c) Regulations

The Securities Industry and Financial Markets Association has commented (<http://www.sifma.org/issues/item.aspx?id=8589962301>) on proposed regulations (REG-133673-15 https://www.irs.gov/irb/2016-18_IRB/ar11.html) on deemed stock distributions under Section 305(c). SIFMA seeks clarification of the actual knowledge rule and changes to account closing obligations as well as the timing of issuer reporting and broker or custodian withholding.

IRS Releases TE/GE Work Plan for Fiscal 2017

The IRS has released the fiscal 2017 work plan of the Tax-Exempt and Government Entities Division (https://www.irs.gov/pub/irs-tege/tege_fy2017_work_plan.pdf), addressing its programs regarding exempt organizations; employee plans; federal, state and local governments; Indian tribal governments; tax-exempt bonds; and government entities compliance services.

Stradley Ronon's Tax Practice Group

Todd C. Vanett, Chair.....	215.564.8070	.....	tvanett@stradley.com
Zachary P. Alexander	215.564.8043	.....	zalexander@stradley.com
Jacquelyn Gordon	215.564.8176	.....	jgordon@stradley.com
Kristin M. McKenna	215.564.8145	.....	kmckenna@stradley.com
William S. Pilling III.....	215.564.8079	.....	wpilling@stradley.com
William R. Sasso.....	215.564.8045	.....	wsasso@stradley.com
Christopher C. Scarpa	215.564.8106	.....	cscarpa@stradley.com
Roger Wise.....	202.419.8436	.....	rwise@stradley.com