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IRS Chief Counsel Advice Finds Disgorgement Payment Is Not Deductible

The IRS issued Chief Counsel Advice 201748008 (<https://www.irs.gov/pub/irs-wd/201748008.pdf>) finding that, based on the Supreme Court's decision in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), disgorgement payments were penalties and not compensatory; therefore, Section 162(f) prohibited deductions under Section 162(a) for amounts paid as disgorgement for violating federal securities law. (Section references are to the Internal Revenue Code of 1986, as amended.)

IRS Releases Notice Relating to Donor-Advised Fund Issues

The IRS issued Notice 2017-73, 2017-51 IRB (<https://www.irs.gov/pub/irs-drop/n-17-73.pdf>) describing approaches that the Department of the Treasury and the IRS are considering to address certain issues regarding donor-advised funds of sponsoring organizations and requesting comments on those approaches. Specifically, Treasury and the IRS are considering developing proposed regulations under Section 4967 that would, if finalized, provide that (1) certain distributions from a donor-advised fund that pay for the purchase of tickets that enable a donor, donor advisor or related person under Section 4958(f)(7) to attend or participate in a charity-sponsored event result in a more-than-incidental benefit to such person under Section 4967 (relating to excise tax on prohibited benefits); and (2) certain distributions from a donor-advised fund that the distributee charity treats as fulfilling a pledge made by a donor, donor advisor or related person do not result in a more-than-incidental benefit under Section 4967 if certain requirements are met. In addition, Treasury and the IRS are considering developing proposed regulations that would change the public support computation for organizations described in Sections 170(b)(1)(A)(vi) and 509(a)(1) and in Section 509(a)(2) to prevent the use of donor-advised funds to circumvent the excise tax rules applicable to private foundations under the Code. The notice requests comments regarding the issues addressed in the notice as well as certain other issues.

IRS Updates FATCA FAQs to Add Information on Agreements and Periodic Reviews

The IRS has updated a list of frequently asked questions (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>) on Foreign Account Tax Compliance Act requirements to provide information for qualified intermediaries and withholding foreign partnerships and trusts regarding qualified derivatives dealer status, agreements, certifications and periodic reviews.

SIFMA Comments on Forms W-8 and W-9

The Securities Industry and Financial Markets Association (SIFMA) submitted comments on Forms W-8 and W-9 (<https://www.sifma.org/wp-content/uploads/2017/12/SIFMA-Comments-on-IRS-Forms-W-8-and-W-9.pdf>) and their instructions. SIFMA seeks clarification on the requirements for completing and validating Forms W-8 and an updated version of the requestor instructions.

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