

MEMO# 31103

February 22, 2018

Draft Letter to Treasury Requesting Clarification on Application of Tax on Deferred Foreign Income to RICs

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TO: Tax Committee RE: Draft Letter to Treasury Requesting Clarification on Application of Tax on Deferred Foreign Income to RICs

Attached for your review is a draft letter to the Treasury Department requesting guidance on the application of the new transition tax on deferred foreign income to regulated investment companies (RICs). The recently enacted tax legislation^[1] provides rules intended to transition taxpayers from the current worldwide system of taxation to a participation exemption system. Amended section 965 generally requires a US shareholder (including a RIC) that owns 10 percent or more of a foreign corporation to include as current income its pro rata share of the foreign corporation's post-1986 undistributed accumulated earnings and profits for its last taxable year beginning before January 1, 2018. Taxpayers are permitted to include those amounts in income over an eight-year period. The Act does not provide specific rules regarding the application of these provisions to RICs.

Amended section 965(m) does provide special rules for real estate investment trusts (REITs). Any deferred foreign income that must be included in income under this provision is not taken into account for purposes of the REIT gross income qualification test under Subchapter M. REITs also may elect to include such income over the eight-year period available to other taxpayers, thus permitting REITs to distribute the income to the REIT shareholders over the same period.

The Institute is asking the Treasury Department and the Internal Revenue Service (IRS) to exercise the regulatory authority granted under section 965(o) to:

- (1) Clarify that any deferred income should be ignored for purposes of the RIC income qualification requirements in Subchapter M, as it is for REITs;
- (2) Permit RICs to elect to include such income over the eight-year period available to REITs and other taxpayers, thus spreading the required distribution of such amounts over the same period;

(3) Clarify that a RIC's share of deferred foreign income is treated as arising on January 1, 2018, for purposes of section 4982 and thus is included in excise tax calculations for 2018, not 2017; and

(4) Provide relief for all taxpayers in situations in which the foreign corporation will not provide the information necessary for a RIC or other US shareholder to determine its share of any undistributed earnings under US tax principles.

We will discuss the draft letter at the Tax Committee meetings on February 26 and 27.^[2] You also may provide comments to me (202-371-5432 or kgibian@ici.org) no later than the close of business on Thursday, March 1, 2018.

Karen Lau Gibian
Associate General Counsel

[Attachment](#)

endnotes

[1] See Institute Memorandum No. 30991, dated December 21, 2017, which can be found at: https://www.ici.org/my_ici/memorandum/memo30991.

[2] See Institute Memorandum No. 31086, dated February 14, 2018, which can be found at: https://www.ici.org/my_ici/memorandum/memo31086.

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