

**MEMO# 32055**

November 13, 2019

## **Draft Letter to IRS Regarding REIT Excess Inclusion Income - Comments Requested**

[32055]

November 13, 2019 TO: Tax Committee RE: Draft Letter to IRS Regarding REIT Excess Inclusion Income - Comments Requested

The Internal Revenue Service (IRS) and the Treasury Department recently requested comments on the taxation and reporting of excess inclusion income from real estate investment trusts (REITs), as part of its continuing effort to reduce paperwork and taxpayer burden.<sup>[1]</sup> Attached for your review is a draft ICI letter reiterating its comments from 2006 and 2007 (attached) regarding Notice 2006-97. Specifically, ICI argues that regulated investment companies (RICs) and their shareholders are unduly burdened by the Notice's requirements for the following reasons:

1. The Notice imposes requirements on RICs with respect to disqualified organizations (for purposes of the entity-level tax under section 860E(e)) that RICs cannot identify;
2. The Notice does not contain specific reporting requirements;
3. The Notice results in shareholder confusion; and
4. The Notice does not provide workable withholding tax rules.

ICI also recommends that the IRS and the Treasury Department implement a new *de minimis* rule for REITs, RICs, and other passthrough entities, as suggested by Nareit in its 2007 letter (attached). The *de minimis* rule provided in Notice 2006-97 is of little value because the thresholds are too easily surpassed. Instead, ICI urges the government to provide that RICs, REITs, and other pass-through entities are not required to report excess inclusion income if the amount of excess inclusion income that would be reported does not exceed one percent of the total dividend or other taxable income that the entity reports to its shareholders for that year.

The IRS and the Treasury Department have requested comments on Notice 2006-97 by December 2, 2019. Therefore, please provide any comments to me ([kgibian@ici.org](mailto:kgibian@ici.org) or 202-371-5432) **no later than Thursday, November 21, 2019.**

Karen Lau Gibian

Associate General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

[Attachment No. 3](#)

[Attachment No. 4](#)

**endnotes**

[1] See [84 F.R. 52593](#). Additional information about this issue can be found on the [ICI Tax Committee member page](#).

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.