

MEMO# 31477

November 13, 2018

IRS and Treasury Release 2018-2019 Priority Guidance Plan -- Tax Items

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November 13, 2018 TO: ICI Members

Accounting/Treasurers Committee

ICI Global Tax Committee

Tax Committee

Transfer Agent Advisory Committee SUBJECTS: Tax RE: IRS and Treasury Release
2018-2019 Priority Guidance Plan -- Tax Items

The Treasury Department and the Internal Revenue Service (“IRS”) have released the [2018-2019 Priority Guidance Plan](#), listing their priorities for tax regulations and other administrative guidance through June 30, 2019. The Institute requested guidance to resolve uncertainties arising from the 2017 tax law changes, as well as additional items largely based on prior requests for guidance.^[1] The 2018-2019 Priority Guidance Plan contains 239 guidance projects for which 45 items have already been released, including some that were requested by the Institute:

- Computational, definitional, and other guidance under new § 163(j); *Published Notice 2018-28, confirming that all interest expense and income of a corporation is business interest expense and income.*
- Guidance on 529 Recontributions, *Published Notice 2018-58*; see Institute [Memorandum No. 31310](#), IRS Announces Guidance on 529 Plan Recontributions, Rollovers from 529 Plans to ABLE Accounts, and Elementary and Secondary School Tuition as Qualified Expense for 529 Plans, dated August 1, 2018.
- Guidance under § 4982 for regulated investment companies (RICs) on the treatment of amounts that § 965 requires to be included in gross income under § 951(a)(1) for the excise tax year ended on December 31, 2017; *Published Rev. Proc. 2018-47*; see Institute [Memorandum No. 31380](#), Excise Tax Relief for Section 965 Inclusions, dated September 10, 2018.
- Definitional and other guidance under new § 451(b) and (c); *Published Notice 2018-80*; see Institute [Memorandum 31414](#), Amended Section 451(b) Does Not Apply to Market Discount, dated September 27, 2018.

Several items of interest to funds and fund shareholders that were requested by the Institute are included in the plan:

- Regulations under § 199A and other guidance for cooperatives and their patrons.

- Final regulations under § 851 on the treatment by RICs of certain inclusions with respect to foreign corporations, including those arising under §§ 965 and 951A.
- Guidance regarding application of the cure provisions under § 851(i) for RICs.
- Final regulations under § 305(c) regarding the amount and timing of deemed dividend distributions from conversion ratio adjustment on convertible debt and stock.
- Guidance under §§ 1295, 1297, and 1298 on passive foreign investment companies.

The 2018-2019 Priority Guidance Plan includes other items of interest to funds, fund shareholders, and management companies:

- Guidance for real estate investment trusts (REITs) under § 856(c)(5)(J) on the treatment of certain foreign income inclusions as qualifying income for purposes of § 856(c)(2). *Published 10/01/18 in IRB 2018-40 as Rev. Proc. 2018-48 (Released 09/13/18).*
- Guidance regarding Opportunity Zones under §§ 1400Z-1 and 1400Z-2. *Published 11/05/18 as Rev. Rul. 2018-29 (released 10/19/18).*
- Regulations under §§ 864(c) and 1446 on the treatment of gain or loss of foreign persons from the sale or exchange of partnerships engaged in trade or business within the United States. *Notice 2018-08 (regarding withholding obligation under § 1446(f) with respect to certain publicly traded partnerships) was published on February 12, 2018. Notice 2018-29 (regarding withholding obligations under § 1446(f) with respect to certain non-publicly traded partnerships) was published on April 16, 2018.*
- Regulations concerning the participation exemption system for the taxation of foreign source income under §§ 245A, 1248(j) and (k), and 91.
- Regulations under new § 250 regarding the deduction for foreign derived intangible income and global intangible low-taxed income.
- Regulations on certain foreign tax credit issues arising under the 2017 Tax Cuts and Jobs Act under §§ 901, 960, 78, and related provisions.
- Regulations under new § 951A regarding the inclusion of global intangible low-taxed income by United States shareholders. *Published 10/10/18 in FR as REG-104390-18 (NPRM).*
- Proposed modification of regulations under § 337(d) regarding certain transfers of C corporation property to RICs and real estate investment trusts.
- Delay and proposed removal of documentation regulations under § 385 and review of other regulations under § 385. *Published 09/24/18 in FR as REG-130244-17 (NRPM).*
- Guidance addressing issues relating to mark-to-market accounting under § 475.
- Regulations under § 1001 on the modification of debt instruments, including issues relating to disregarded entities.
- Guidance clarifying the definition of income in § 856(c)(3) for purposes of the REIT qualification tests.
- Guidance on the treatment of fees relating to debt instruments and other securities.
- Regulations under § 7872.
- Final regulations under § 1411 regarding issues related to the net investment income tax.
- Guidance under § 871(m), including with respect to non-delta-one transactions. *Notice 2018-05 (regarding the continued reliance of certain transition rules under the final regulations) was published on February 5, 2018. Published Notice 2018-72 (released 9/20/18).*
- Guidance under Chapter 3 (§§1441–1446) and Chapter 4 (§§1471–1474) that may address withholding on gross proceeds and foreign passthru payments under Chapter 4; withholding requirements on insurance premiums under Chapter 4; certain due

diligence requirements of withholding agents under Chapter 3, including the requirement to collect and report foreign taxpayer identification numbers of certain accountholders; and certain issues related to refunds and credits.

- Guidance under the new partnership audit rules.
- Guidance under Chapter 3 (§§1441-1446) and Chapter 4 (§§1471-1474), including finalizing temporary and proposed regulations and regulations on verification requirements for sponsoring entities for Chapter 4 purposes.
- Guidance on private activity bonds under §§ 141, 142, and 147.
- Guidance on safe harbors for de minimis errors on information returns and payee statements under § 202 of the Protecting Americans from Tax Hikes Act of 2015.
- Regulations under §§ 897 and 1445 relating to changes in the Protecting Americans from Tax Hikes Act of 2015.

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[Attachment](#)

endnotes

[\[1\]](#) The Institute's recommendations for the 2018-2019 Priority Guidance Plan are attached.

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