INVESTMENT COMPANY INSTITUTE

**MEMO# 28192**

June 17, 2014

# Materials for Discussion at June Tax Committee Meeting

[28192]

June 17, 2014

TO: TAX COMMITTEE No. 19-14 RE: MATERIALS FOR DISCUSSION AT JUNE TAX COMMITTEE MEETING

Attached are materials that we plan to discuss at the Tax Committee meeting in Denver on June 24th. [1] We are sending these materials to the Committee in advance of the meeting so that members have time to consider the issues prior to the discussion on Tuesday.

RIC Mod Technical Corrections Examples

The first attachment contains four examples relating to the recently introduced Regulated Investment Company ("RIC") Modernization Act technical corrections bill. [2] An outside advisor raised a question with respect to the "savings provision" in paragraph (2) of the effective date provision for the late-year loss fix. Specifically, the savings provision provides that, in the case of a RIC that, before the date of enactment of the technical corrections bill, elected under section 852(b)(8) (as in effect on the date of such election) for any taxable year ending before such date of enactment to treat any loss as arising in the following taxable year, the amendments to the late-year loss rules shall not apply with respect to such election.

The concern is that a RIC does not actually make the election to push late-year losses until it files its tax return. Therefore, how does the savings provision apply if the RIC has to take some action, e.g., make distributions in December, and does not know if the technical corrections will be enacted before it files its return? Could this type of situation create problems? The examples attempt to illustrate how this situation might arise and the possible implications.

Section 871(m) Proposed Regulations – Convertible Bonds and Section 305

The second attachment is a New York State Bar Association report recently submitted on the proposed section 871(m) regulations. In particular, we plan to discuss the issue concerning convertible bonds and withholding under section 305 (see pages 35-40). The NYSBA notes that there is little compliance with the current requirement under section 305 to withhold upon a bond holder if there is an increase in the conversion ratio of a convertible bond that is treated as a taxable distribution of stock to the bondholder. We plan to discuss the implications of this issue on the RIC industry.

AICPA Report on PFICs

The third document is a recent report by the American Institute of CPAs regarding the treatment of shareholders in passive foreign investment companies ("PFICs"). [3] The AICPA makes a number of recommendations for changes to current law, including:

- Expand the start-up exception under section 1298(b)(2);
- Expand the time period for making a qualifying electing fund ("QEF") election under section 1295;
- Expand the eligibility requirements for making a retroactive QEF election;
- Relax the requirements for QEF documentation;
- Simplify the computation of the section 1291 deferred tax amount;
- Provide a de minimis exception for the application of the section 1291 interest computation;
- Allow for annual aggregations of PFIC stock purchases for purposes of section 1291;
- Provide for automatic QEF treatment for foreign money market funds;
- Allow for consolidated Form 8621 filings; and
- Eliminate the Form 8621 for de minimis amounts of excess distribution income from indirectly held PFICs.

Karen Lau Gibian
Associate Counsel

Attachment

**endnotes**

[1] See Institute Memorandum (28155) dated June 5, 2014.

[2] See Institute Memorandum (28077) dated April 30, 2014.

[3] The AICPA report can be found on the AIPCA website at: http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2014.0.12_Comments_on_PFICs_Treatment_of_Shareholders.pdf.

---