

MEMO# 31728

April 24, 2019

IRS Issues Corrections to Section 851 Final Regulations

[31728]

April 24, 2019 TO: ICI Members

Tax Committee SUBJECTS: Tax RE: IRS Issues Corrections to Section 851 Final Regulations

The Treasury Department and the Internal Revenue Service (IRS) have issued [corrections](#) to the final regulations under section 851 released in March.^[1] First, the corrected regulation replaces the reference to “regulated investment company” (RIC) in Treas. Reg. § 1.851-2(b)(1)(i)(F) with a reference to “the corporation.” This is consistent with the terminology used in the rest of the regulation.

Second, the corrected regulation adds a cross reference in Treas. Reg. § 1.851-2(b)(2)(iii) to the corporation mentioned in Treas. Reg. § 1.851-2(b)(1) (i.e., the RIC); it also replaces “a corporation” with “*that* corporation” (emphasis added). This correction purportedly was intended to clarify that an amount included in gross income under section 951(a)(1) or 1293(a) will constitute “other income” if such amount is derived with respect to the RIC’s business of investing in stock, securities, or currencies. There was some concern prior to the correction that “a corporation” referred to the controlled foreign corporation (CFC), not to the RIC.

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endnotes

^[1] See Institute Memorandum No. 31668, dated March 18, 2019, which can be found at: https://www.ici.org/my_ici/memorandum/memo31668.

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