

MEMO# 20753

January 5, 2007

ICI Requests Delay in Implementation of REIT TMP Guidance

[20753]

January 5, 2007 TO: Tax Members No. 1-07

SEC Rules Committee No. 1-07< RE: ICI Requests Delay in Implementaion of REIT TMP Guidance

The Institute has submitted a letter (attached) to the Internal Revenue Service (the “IRS”) requesting a delay in the implementation of Notice 2006-97 regarding the tax treatment and reporting of excess inclusion income received from real estate investment trusts (“REITs”) that are, or invest in, taxable mortgage pools (“TMPs”). [\[1\]](#) The Institute’s letter notes that regulated investment companies (“RICs”) and their shareholders will be unduly burdened by the Notice’s immediate and retroactive application for the following reasons:

- RICs cannot identify shareholders that are “disqualified organizations,” as required by the Notice, and therefore cannot pay the entity-level tax with respect to such entities.
- Although the Notice requires REITs, RICs and other pass-through entities to report excess inclusion amounts to their shareholders, it does not set forth any guidelines or requirements regarding when or how such information is to be reported.
- The Notice’s reporting requirements will result in confusion for taxpayers who own RIC shares through brokerage accounts and administrative and operational burdens for brokerage firms, RICs and the IRS.
- The Notice does not provide workable withholding tax rules for distributions paid to foreign shareholders, particularly with respect to prior distributions.

Given these burdens, the Institute’s letter requests that the Notice become effective only after these issues are resolved and RICs and other affected parties are given ample time to comply. It also requests that the Notice, when effective, be applied prospectively only.

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[Attachment](#)

endnotes

[1] See Institute [Memorandum](#) (20515) to Tax Members No. 39-06, dated October 30, 2006.

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