

MEMO# 22490

May 2, 2008

Draft Submission On Exchange-Traded Notes; Conference Call Scheduled For May 7

[22490]

May 2, 2008

TO: TAX COMMITTEE No. 16-08 RE: DRAFT SUBMISSION ON EXCHANGE-TRADED NOTES;
CONFERENCE CALL SCHEDULED FOR MAY 7

The attached draft submission to the Treasury Department on the taxation of exchange-traded notes ("ETNs") responds to Treasury's request for comments (in Notice 2008-2).^{F [1]} The draft builds upon ICI testimony before the House Ways and Means Committee^{F [2]} on ETN legislation (H.R. 4912) introduced by Representative Richard Neal.^{F [3]}

A conference call to discuss the draft will be held on Wednesday, May 7, at 2:00 p.m. (Eastern). Any additional comments regarding the draft are requested by Friday, May 9.

Brief Summary of Draft Submission

The draft submission urges prompt and comprehensive guidance for taxing ETNs. Prompt guidance regarding the proper taxation of ETNs is critical because both the ETN market and the number of taxpayers affected by the lack of comprehensive guidance are growing rapidly. The sooner the changes are made, the fewer the number of investors who either will (i) receive grandfathered (and overly favorable) treatment or (ii) be subjected to different tax treatment while holding the ETNs.

Comprehensive guidance also is necessary. The draft submission urges a comprehensive solution based upon constructive ownership principles. As the Treasury's authority to promulgate constructive ownership regulations is limited, a legislative solution is preferable.

The draft submission urges that regulatory solutions be advanced only if Congress does not enact legislation addressing ETNs in the near term. The draft submission recommends both legislative and regulatory solutions and discusses the limits on Treasury's regulatory authority to implement these recommendations to address all facets of ETN taxation.

Conference Call Information

To participate in the call, please complete the attached response form and return it to Ezella Wynn by e-mail (HUewynn@ici.orgUH) or fax (202-326-5841) no later than 2:00 p.m. on Tuesday, May 6. The call's dial-in number is 1-888-469-1242 and the passcode is 16360.

Comments on the Draft Submission

Please provide all comments to Keith Lawson at HUlawson@ici.orgUH or 202-326-5832 by Friday, May 9.

Keith Lawson
Senior Counsel - Tax Law

[Attachment](#)

endnotes

[\[1\]](#) See Institute Memorandum ([22035](#)) to Tax Members No. 58-07, dated December 11, 2007.

[\[2\]](#) See Institute Memorandum ([22303](#)) to Tax Members No. 4-08, dated March 6, 2008.

[\[3\]](#) See Institute Memorandum ([22067](#)) to Federal Legislation Members No. 15-07 and Tax Members No. 59-07, dated December 20, 2007.

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