

Chapman Client Alert

May 2, 2017

Current Issues Relevant to Our Clients

IRS Revokes Commodity Linked Note PLRs

On May 1, Tax Notes published a flurry of revocations of private letter rulings that had been issued to regulated investment companies. In each of the revocations, at least one of the rulings requested in the original private letter ruling was that the income from a commodity linked note was qualified income for the purposes of IRC § 851. Although the original rulings were favorable, the IRS indicated in the revocations that the rulings were not in accord with the current views of the Service.

Some of the revocations granted retroactive relief. Others did not.

The revocations are sparse on analysis, but each of them cites REG-123600-16, 81 Fed. Reg. 66576-77 (Sept. 28, 2016) as an indication that the original private letter rulings were not in accord with the current views of the Service. REG-123600-16 did not actually say that the income from commodity linked notes was not qualified income, but it did say that the IRS should no longer issue letter rulings on questions relating to the treatment of a RIC that require a determination of whether a financial instrument or position is a security under the 1940 Act. The preamble to the proposed regulation also said any future guidance regarding whether particular financial instruments, including investments that provide RICs with commodity exposure, are securities for purposes of the 1940 Act is within the jurisdiction of the SEC.

Putting the revocations together with the preamble for REG-123600-16, it would appear that the revocations do not mean that the income from the commodity linked notes is bad income for the purposes of IRC § 851. Instead, the revocations move the authority to make the decision as to whether the instruments are securities from the IRS to the SEC.

Separately, a number of the revoked rulings also contained a second ruling related to the qualification of income from controlled foreign corporations. In each revocation, the CFC ruling was carved out and not revoked.

For More Information

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