Wolters Kluwer

SEPTEMBER 4, 2024
ISSUE NUMBER 36

FEDERAL TAX WEEKLY

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FinCEN Issues Final Rules for Residential Real Estate Transfers and Investment Advisor Industry

FinCEN Final Rule RIN 1506-AB54; Real Estate Reports: Frequently Asked Questions; Fact Sheet: FinCEN Issues Final Rule to Increase Transparency in Residential Real Estate Transfers; FinCEN Final Rule RIN 1506-AB58

The Financial Crimes Enforcement Network (FinCEN) has issued final rules designed to combat and deter money laundering by increasing transparency in the U.S. residential real estate sector. Under the final rules, certain professionals involved in real estate closings and settlements will be required to report information to FinCEN on a nationwide basis about specified transfers of residential real estate that are a high risk for illicit finance. The final rules will take effect on December 1, 2025.

The Financial Crimes Enforcement Network (FinCEN) has also issued final rules for the investment adviser industry that will require certain advisers to establish minimum standards for anti-money laundering/countering the financing of terrorism (AML/CFT) programs, and to report suspicious activity to FinCEN pursuant to the Bank Secrecy Act (BSA). The final rules also amend the definition of "financial institution" under the BSA, and make several other related changes to FinCEN regulations. The final rules will be effective January 1, 2026.

Illicit Residential Property Transactions

Bad actors often favor non-financed transfers of residential real estate (including "all-cash" sales) to avoid scrutiny from financial institutions that have anti-money laundering and countering the financing of terrorism (AML/CFT) program and Suspicious Activity Report (SAR) filing requirements under the Bank Secrecy Act (BSA). These illicit actors also often try to obscure their identities and ownership interests by holding the residential real estate in the name of a legal entity or trust. These transfers are of higher risk for money laundering, and make the proceeds of crime and their owners more difficult to track and identify.

The reporting requirements under the final rules are intended to help curtail the anonymous laundering of illicit proceeds through the purchase of residential real property which threatens U.S. economic and national security.

Real Estate Reporting Rules

The final rules will require reporting persons performing specified closing or settlement functions in certain reportable residential real property transfers to report information to FinCEN about the transfer, including information about the parties to the transfer and the property itself.

In general, a transfer will be reportable under the new rule if:

- the property is residential real property located in the United States (including vacant or unimproved land on which the transferee intends to build a structure designed for occupancy by one to four families, and mixed-use property);
- the transfer is "non-financed" (i.e., the transfer does not involve an extension of credit to all transferees that is both secured by the transferred property, and extended by a financial institution subject to an AML program and SAR obligations);
- the property is transferred to a legal entity or trust; and
- an exemption does not apply.

Transfers meeting these requirements must be reported regardless of purchase price or the value of the property, so gift transfers will be subject to the reporting rules.

Transfers made directly to an individual are not covered by final rules. There are also exemptions for certain common lower-risk transfers, including transfers of an easement, transfers resulting from the death of an individual, and transfers incident to divorce.

The reporting obligation will generally rest with settlement agents, title insurance agents, escrow agents, and attorneys. However, the final rules include a "cascade" system for determining which professional has primary filing responsibility, and a flexible option for industry professionals to designate compliance responsibilities. The final rules also include a reasonable reliance standard with respect to information provided by others.

Real Estate Reporting Effective Date

The final rules will be effective on December 1, 2025. On that date, reporting persons will be required to comply with all of the reporting requirements, chief among them the requirement to electronically file a "Real Estate Report" with FinCEN. FinCEN believes that this delayed effective date will provide reporting persons with the opportunity to understand the requirements and put appropriate compliance measures into place. The delayed date will also provide FinCEN with additional time to issue the Real Estate Report.

Misuse of Investment Advisers

In February 2024, the Treasury Department documented an illicit finance risk assessment that highlighted many instances where sanctioned persons, corrupt officials, fraudsters, and other criminals have exploited the investment adviser industry to access the U.S. financial system and launder funds. The assessment revealed that foreign states (including the People's Republic of China and the Russian Federation) have been leveraging investment advisers and their advised funds through investment in early-stage companies to access certain technologies and services with national security implications.

The final rules are intended to address the uneven application of AML/CFT requirements across investment adviser industry, and will apply to certain investment advisers who may be at risk for misuse by bad actors who seek access to the U.S. financial system for illicit purposes and threaten U.S. national security.

Investment Advisers as "Financial Institutions"

The final rules add "investment adviser" to the definition of "financial institution" under the BSA's implementing regulations. This generally includes (1) investment advisers registered with or required to register with the U.S. Securities and Exchange Commission (SEC) (i.e., registered investment advisers (RIAs)), and (2) investment advisers that report information to the SEC as exempt reporting advisers (ERAs).

An RIA is not an "investment adviser" for this purpose if the RIA is registered with the SEC solely because they are a mid-sized

IRS Reminds Employers to Use Educational Assistance Programs for Student Loan Payments Until 2025

The IRS has reminded employers that educational assistance programs can be used to help employees pay off student loans until December 31, 2025. This option, available since March 27, 2020, allows funds from these programs to cover both the principal and interest on qualified student loans. Traditionally used for expenses like tuition and books, these programs now offer tax-free benefits up to $5,250 per employee annually, covering federal income, Social Security, Medicare, and federal employment taxes. Amounts above this limit are taxable. Employers without such programs may consider establishing them, as they can attract and retain talent. The programs must be in writing and nondiscriminatory. For more details, employers can refer to IRS publications, including Publication 15-B and Chapter 10 of Publication 970.

IR-2024-227

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

FEDERAL TAX WEEKLY, 2024 No. 36. Published by Wolters Kluwer, 2700 Lake Cook Road, Riverwoods, IL 60015.
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adviser, a multi-state adviser, or a pension consultant, or if the RIA is not required to report any assets under management to the SEC on Form ADV.

AML/CFT Requirements for Investment Advisers

The final rules will require RIAs and ERAs to:

- implement a risk-based and reasonably designed AML/CFT program;
- file certain reports, such as Suspicious Activity Reports (SARs), with FinCEN;
- keep certain records, including records relating to the transmittal of funds (i.e., comply with the Recordkeeping and Travel Rules); and
- fulfill other obligations that apply to financial institutions subject to the BSA and FinCEN's implementing regulations, such as special information sharing procedures to deter money laundering and terrorist activity and voluntary information sharing among financial institutions. An investment adviser will be able to exclude from its obligations (1) any mutual fund advised by the investment adviser (without being obligated to verify that the mutual fund has implemented an AML/CFT program); (2) bank- and trust company-sponsored collective investment funds, and (3) any other investment adviser subject to the final rules that is advised by the investment adviser.

Investment Advisor Effective Date

FinCEN will require that an investment adviser must be in compliance with the final rules on or before January 1, 2026. FinCEN believes that this compliance date provides adequate time for investment advisers to comply with the new rules.

IRS, Treasury, and DOE Open Full Applications for Advanced Energy Project Tax Credit

The Treasury, IRS, and DOE have officially opened full applications for the second round of the Qualifying Advanced Energy Project Tax Credit (48C) Program. Following the submission of over 800 concept papers, representing nearly $40 billion in tax credits and $200 billion in project investments, applicants are now invited to proceed to the next stage.

Full applications are due by October 18, 2024, with a webinar scheduled for September 16, 2024 to assist applicants. The program reserves up to $6 billion in tax credits for this round, with $2.5 billion earmarked for projects in designated energy communities. Those interested in advancing clean energy initiatives were encouraged to learn more about the Qualifying Advanced Energy Project Credit (48C).

IR-2024-228

Change of Accounting Method Procedures Updated

Rev. Proc. 2024-34

The IRS has released guidance listing the specific changes in accounting method to which the automatic change procedures set forth in Rev. Proc. 2015-13, I.R.B. 2015-5, 419, apply. The latest guidance modifies the current list of automatic changes found in Rev. Proc. 2024-23, I.R.B. 2024-23.

Significant changes to the list of automatic changes in Rev. Proc. 2023-24 include:

Modification of section 7.01(5) and (6) of Rev. Proc. 2024-23. Section 7.01(5)

a) The eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, do not apply to a change described in section 7.01(1)(a) of this revenue procedure made by a taxpayer in any taxable year beginning in 2022 or 2023.

a) The eligibility rules in section 5.01(1)(d) and (f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, do not apply to a change described in section 7.01(1)(a) of this revenue procedure made by a taxpayer in any taxable year beginning in 2022 or 2023.

b) A taxpayer may make a change described in section 7.01(1)(a) of this revenue procedure for a taxable year beginning in 2022 or 2023, regardless of whether the taxpayer made a change for the same item for any previous taxable year beginning in 2022 or 2023.

A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for the change under section 7.01(1)(a) of this revenue procedure with respect to expenditures paid or incurred in taxable years beginning on or before December 31, 2021. Additionally, a taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 7.01(1)(a) of this revenue procedure made in any taxable year beginning in 2022 or 2023 (other than the first taxable year beginning after December 31, 2021), with respect to expenditures paid or incurred in the first taxable year beginning after December 31, 2021, if the taxpayer did not change its method of accounting under section 7.01(1)(a) in an effort to comply with §174 for the first taxable year beginning after December 31, 2021.

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Changes Under SECURE 2.0 Act to Affect Amounts Report by Businesses on Forms W-2

FS-2024-29

The IRS has reminded businesses that starting in tax year 2023 changes under the SECURE 2.0 Act may affect the amounts they need to report on their Forms W-2. The provisions potentially affecting Forms W-2 (including Forms W-2AS, W-2GU and W-2VI) are:

- De minimis financial incentives;
- Roth Savings Incentive Match Plan for Employees (SIMPLE) and Roth Simplified Employee Pension (SEP) Individual Retirement Arrangements (IRAs); and
- Optional treatment of employer nonelective or matching contributions as Roth contributions.

Businesses can now complete and print various copies (excluding Copy A) of Forms W-2 (including Forms W-2AS, W-2GU and W-2VI) on IRS.gov for recipients. Any information entered on one copy (excluding Copy A) will automatically appear on the others. Copy A cannot be completed online to print and file with the Social Security Administration.

If a business filed 2023 Forms W-2 without following these new guidelines, they may need to file Form W-2c to correct any errors. Refer to the General Instructions for Forms W-2 and W-3 for details on when and how to file Form W-2c.

Minnesota, Kentucky, and Iowa Disaster Relief Notices Updated

An August 12, 2024, notice granting relief to victims of severe storms flooding that began on June 16, 2024, in parts of Minnesota was updated by the IRS on August 22, 2024, to include Brown, Martin, McLeod, Redwood and Renville counties and was updated by the IRS on August 28, 2024, to include Houston and Sibley counties. A July 31, 2024 notice granting relief to victims of severe storms, straight-line winds, tornadoes, landslides, and mudslides that began on May 21, 2024, in parts of Kentucky was updated by the IRS on August 22, 2024, to include Bell county. A June 27, 2024, notice granting relief to victims of severe storms, flooding, straight-line winds and tornadoes that began on June 16, 2024, in parts of Iowa was updated by the IRS on August 28, 2024, to include Dubuque and Jackson counties.

Minnesota Disaster Relief Notice (MN-2024-01); Kentucky Disaster Relief Notice (KY-2024-03); Iowa Disaster Relief Notice (IA-2024-08)

Important Tax Guidelines on Contributions and Distributions From Online Crowdfunding Highlighted

FS-2024-28

The IRS has highlighted important tax guidelines for taxpayers who are involved in making contributions and receiving distributions from online crowdfunding. The crowdfunding website or its payment processor may be required to report distributions of money raised, if the amount distributed meets certain reporting thresholds, by filing Form 1099-K, Payment Card and Third Party Network Transactions, with the IRS.

The reporting thresholds for a crowdfunding website or payment processor to file and furnish Form 1099-K are:

- Calendar years 2023 and prior – Form 1099-K is required if the total of all payments distributed to a person exceeded $20,000 and resulted from more than 200 transactions; and
- Calendar year 2024 – The IRS announced a plan for the threshold to be reduced to $5,000 as a phase-in for the lower threshold provided under the ARPA.

Alternatively, if non-taxable distributions are reported on Form 1099-K and the recipient does not report the transaction on their tax return, the IRS may contact the recipient for more information.

If crowdfunding contributions are made as a result of the contributor's detached and disinterested generosity, and without the contributors receiving or expecting to receive anything in return, the amounts may be gifts and therefore may not be includible in the gross income of those for whom the campaign was organized. Additionally, contributions to crowdfunding campaigns by an employer to, or for the benefit of, an employee are generally includible in the employee's gross income. If a crowdfunding organizer solicits contributions on behalf of others, distributions of the money raised to the organizer may not be includible in the organizer's gross income if the organizer further distributes the money raised to those for whom the crowdfunding campaign was organized. More information is available to help taxpayers determine what their tax obligations are in connection with their Form 1099-K at Understanding Your Form 1099-K.

U.S. Corporation Allowed DRD for Amounts Treated as Dividends Under Code Sec. 78

Varian Medical Systems, Inc. and Subsidiaries, 163 TC —, No. 4, Dec. 62,497

A taxpayer could claim the participation exemption dividends received deduction (DRD) under Code Sec. 245A for an amount treated as a dividend under Code Sec. 78. The taxpayer was allowed the deduction, as a result of an effective date mismatch between the effective date of an amendment to Code Sec. 78 prohibiting the DRD for amounts treated as dividends under Code Sec. 78 and the effective date of the DRD.

Interaction Between DRD and Code Sec. 78

The DRD was enacted by the Tax Cuts and Jobs Act of 2017 (P.L. 115-97) to move the United States from a worldwide system of taxation to a partial territorial system of taxation. The DRD allows a domestic corporation that is a U.S. shareholder of a specified 10-percent owned foreign corporation to claim a 100-percent deduction for the foreign-source portion of dividends received from the foreign corporation. The DRD applies to distributions made after December 31, 2017.

Under Code Sec. 78, taxes deemed paid by a foreign corporation for purposes of the foreign tax credit are treated as a dividend received by the foreign corporation (i.e., gross-up for deemed-paid taxes). As a result of the enactment of the DRD, Code Sec. 78 was amended to prohibit the gross-up as being treated as a dividend for purposes of the DRD. The amendment was effective for tax years of foreign corporations beginning after December 31, 2017, and tax years of U.S. shareholders in which or with which such tax years of foreign corporations end.

The mismatch in the effective dates created a window for some taxpayers in which the DRD was in effect, but the Code Sec. 78 amendment was not in effect.

Plain Reading of Statutory Text

Under a statutory analysis, the Tax Court concluded that the text of Code Sec. 245A allowed the U.S. corporation to deduct an amount equal to the foreign-source portion of any dividend received from a specified 10-percent owned foreign corporation and that the Code Sec. 78 dividend qualified as a dividend received within the meaning of Code Sec. 245A(a), for the tax year for which there was a mismatch. The text of Code Sec. 78 was clear that the amount included under Code Sec. 78 was treated as a dividend received from a foreign corporation for all purposes of the Code (with an exception for Code Sec. 245 which was not at issue).

The disparate effective dates of the DRD and the Code Sec. 78 amendment provided a gap period for the taxpayer in which the Code Sec. 78 dividend qualified for the DRD.

The Tax Court rejected the IRS's argument that Code Sec. 78 dividends were not qualifying dividends because they were not distributed or treated as distributed out of the foreign corporation's earnings to the U.S. shareholder. The operative DRD rules said nothing about distributions. The Tax Court also concluded that a Code Sec. 78 dividend was a dividend, as the text of Code Sec. 78 treated it as a dividend for all purposes of the Code, with one exception. Various other coordinated statutory amendments in the TCJA confirmed that a dividend or deemed dividend—without an express provision for a distribution—suffices to qualify for the DRD. The Tax Court also felt that its conclusion was consistent with historical practice in the area.

The Tax Court also dismissed the argument that Code Sec. 275(a) precluded the deduction of the Code Sec. 78 dividend. Finally, Congress knew how to draft a contemporaneous exemption, but chose a different course. Because Congress spoke clearly when it enacted the DRD and selected mismatched effective dates, appeals to policy concerns were rejected.

A revised regulation under Code Sec. 78 did not interpret prior Code Sec. 78, and made the same change as the amended Code Sec. 78, but with an earlier effective date. The regulation could not, however, contradict the clear effective date in the statutory text.

Limited Foreign Tax Credit

The deduction of the Code Sec. 78 dividend, under the DRD required the taxpayer to limit its foreign tax credits by an appropriate amount. The amount was the deemed paid foreign tax attributable to foreign earnings reflected in the Code Sec. 78 dividend.

IRS Urges Tax Professionals to Strengthen Security Measures Against Rising Threats

IR-2024-224

The IRS and the Security Summit concluded their eight-week summer awareness campaign by urging tax professionals to implement stronger security measures to protect themselves and their clients from escalating identity theft threats. This final installment of the "Protect Your Clients; Protect Yourself" series focused on the importance of safeguarding sensitive information against increasingly sophisticated cyberattacks.

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Throughout the campaign, the IRS highlighted the alarming trend of identity thieves targeting tax professionals to harvest personal and financial data. Despite the Security Summit's efforts since its inception in 2015, which have successfully bolstered the tax system's defenses, cybercriminals have adapted by focusing on more direct methods to compromise tax professionals. In the first half of 2024 alone, nearly 200 data breaches involving tax professionals have been reported, potentially affecting up to 180,000 clients.

Key recommendations from the IRS include implementing multi-factor authentication (MFA) and adhering to a Written Information Security Plan (WISP), as mandated by the Federal Trade Commission. These steps are crucial for ensuring that only authorized individuals can access sensitive tax information, thereby reducing the risk of data breaches. The IRS also stressed the importance of recognizing phishing schemes and social media scams that attempt to deceive tax professionals into divulging sensitive information.

As the campaign wraps up, the IRS and the Security Summit continue to provide resources and guidance to help tax professionals stay vigilant. By adopting these enhanced security measures, tax professionals can better protect their clients and contribute to the overall integrity of the tax system in the face of ongoing cyber threats.

IRS Urges Taxpayers to Perform End-of-Summer Tax Checkup

IR-2024-225

The IRS has urged taxpayers to conduct an end-of-summer tax checkup to avoid unexpected tax bills in the upcoming year. The agency emphasized that many taxpayers, particularly those engaged in the gig economy or side jobs, might find themselves owing taxes if they did not adjust their withholding or make estimated payments. The IRS recommended using its Tax Withholding Estimator to help taxpayers align their tax payments with what they owed, thereby avoiding penalties and unnecessary stress during tax season.

Recent statistics revealed that while two-thirds of taxpayers received refunds in 2024, many others incurred estimated tax penalties due to underpayment throughout the year. The IRS stressed the importance of adjusting tax withholding or estimated payments, particularly for those who experienced significant life changes such as a new job, marriage, or the birth of a child. The agency also reminded taxpayers that proactive tax planning could save them time and frustration later, urging them to take advantage of the remaining months of the year to ensure their tax payments were accurate and up-to-date.

In addition to using the Tax Withholding Estimator, the IRS encouraged taxpayers with more complex financial situations, such as those subject to the Alternative Minimum Tax or those with substantial capital gains, to consult Publication 505 for more detailed guidance. This resource provided more tailored instructions for those with intricate tax scenarios, helping them navigate potential challenges and avoid surprises when filing their taxes.

U.S. Virgin Islands Victims of Tropical Storm Ernesto Granted Tax Relief

U.S. Virgin Islands Disaster Relief Notice (VI-2024-01)

The president has declared a federal disaster area in the U.S. Virgin Islands. The disaster is due to Tropical Storm Ernesto that began on August 13, 2024. The disaster area includes the islands of:

- St. Croix,
- St. John,
- St. Thomas, and
- Water Island.

Taxpayers who live or have a business in the disaster area may qualify for tax relief.

U.S. Virgin Islands Filing Deadlines Extended

The IRS extended certain deadlines falling on or after August 13, 2024, and on or before February 3, 2025, have been postponed to February 3, 2025. This extension includes filing for most returns, including:

- individual, corporate, estate and trust income tax returns;
- partnership and S corporation income tax returns;
- estate, gift and generation-skipping transfer tax returns;
- the Form 5500 series returns;
- annual information returns of tax-exempt organizations; and
- employment and certain excise tax returns.

However, the extension does not include information returns in the Form W-2, 1094, 1095, 1097, 1098, or 1099 series or Forms 1042-S, 3921, 3922 or 8027.

U.S. Virgin Islands Payment Deadlines Extended

Also, the relief includes extra time to make tax payments. This includes estimated tax

payments due on September 16, 2024, and January 15, 2025. Further, taxpayers have until November 1, 2024, to perform other time-sensitive actions due on or after August 13, 2024, and on or before February 3, 2025.

The IRS excused late penalties for employment and excise tax deposits due on or after August 13, 2024, and before August 28, 2024. But, the taxpayer must make the deposits by August 28, 2024.

Casualty Losses

Affected taxpayers can claim disaster-related casualty losses on their federal income tax return. Taxpayers may get relief by claiming their losses on their 2023 or 2024 return. Individuals may deduct personal property losses not covered by insurance or other reimbursements.

Taxpayers claiming a disaster loss on their 2023 or 2024 return should write the assigned FEMA declaration number 3611-EM at the top of the return. This will allow the IRS to speed refund processing.

Also, the IRS will provide affected taxpayers with copies of prior year returns without charge. To get this expedited service, taxpayers should add the disaster designation at the top of Form 4506, Request for a Copy of Tax Return, or Form 4506-T, Request for Transcript of Tax Return; and submit it to the IRS.

TAX BRIEFS

Liens and Levies

A married couple's case related to a proposed levy was remanded to the IRS Independent Office of Appeals (Appeals) to reconsider the taxpayers' ability to pay, and to afford the taxpayers a final opportunity to submit a legible tax return. The administrative record showed shortcomings on both sides.

Keith, TC, Dec. 62,498(M)

Statute of Limitations

The government brought charges of making materially false statements against a taxpayer, over five years after the alleged offense was committed. Congress provided no express grant to suspend the statute of limitations based on a global pandemic. The appeals court vacated this portion of the district court ruling. The taxpayer knowingly participated in a conspiracy to defraud the government through underreporting income and concealment of illegal case running kickback payments.

Plezia, CA-5, 2024-2 USTC ¶50,187

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