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Proposed regulations: Definitions of “registration-required obligation” and “registered form”

The U.S. Treasury Department and IRS late today released for publication in the Federal Register proposed regulations (REG-125374-16) as guidance on the definitions of “registered-required obligation” and “registered form”—including guidance on the issuance of pass-through certificates and participation interests in registered form.

These regulations are proposed to address changes in market practices and to reflect the repeal of the foreign-targeted bearer obligation (bonds) exception to the registered form requirement. With today’s release, proposed regulations (1993) are withdrawn.

The purpose of this release is to provide text of the [proposed regulations](#) [PDF 270 KB]. Comments and requests for a public hearing must be received by a date that is 90 days after the publication of the proposed regulations in the Federal Register (scheduled for September 19, 2017).

Background

The IRS in March 2012 released Notice 2012-20, reflecting guidance following the repeal of the portfolio interest exemption for foreign-targeted bearer bonds under provisions of the *Hiring Incentives to Restore Employment (HIRE) Act of 2010*. Because of the HIRE Act changes, the portfolio interest exception was available only for obligations issued in registered form.

The IRS notice also stated that regulations would be issued to reflect the rules provided in Notice 2012-20.

Proposed regulations

The preamble to today's release states that consistent with Notice 2012-20, the proposed regulations amend the definition of "registered form" to take into account current market practices and changes made by the HIRE Act, including the repeal of the foreign-targeting rules in section 163(f)(2)(B).

In addition, these proposed regulations amend the definition of a "registration-required obligation" in two ways.

- First, the proposed regulations specify the types of obligations that are treated as "of a type offered to the public" and withdraw the 1993 proposed regulations.
- Second, the proposed regulations take into account comments requesting clarification on the types of arrangements that qualify as pass-through certificates.

The preamble explains that in an effort to simplify definitions of the terms "registered form" and "registration-required obligation," the rules are centralized in Reg. section 1.163-5 (and thus relocating the rules from various other regulations).

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