By Electronic Delivery

September 22, 2021

John Hinding, Director
Cross Border Activities Practice Area
Internal Revenue Service
999 North Capitol Street NE
Washington, DC 20003

Cindy Kim
Program Manager, Practice Network
Internal Revenue Service
230 S. Dearborn St
Chicago, IL 60604-1505

RE: IRS Form 1099-DIV, Boxes 2e and 2f

Dear Mr. Hinding and Ms. Kim:

The Investment Company Institute[1] and Nareit[2] respectfully request that the Internal Revenue Service (IRS) delay mandatory use of the new boxes (2e and 2f) on IRS Form 1099-DIV to report section 897 gains attributable to US real property interests (USRPIs). These new boxes have created substantial confusion within the compliant tax reporting community; further discussion with the IRS may be needed to clarify some technical and interpretative questions. The more immediate concern, however, is that the system changes required to report amounts correctly for 2021 may not be possible within the remaining timeframe. In addition, we request penalty relief for those firms making good faith efforts to comply with this new reporting requirement for 2021.

[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of $31.8 trillion in the United States, serving more than 100 million US shareholders, and $10.2 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in Washington, DC, London, Brussels, and Hong Kong.

[2] Nareit serves as the worldwide representative voice for real estate investment trusts (REITs) and real estate companies with an interest in U.S. real estate. Nareit's members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses. Through the diverse array of properties they own, finance, and operate, REITs help provide the essential real estate that revitalize neighborhoods, enable the digital economy, power community essential services, and build the infrastructure of tomorrow, while creating American jobs and economic activity along the way. REITs of all types collectively own more than $3.5 trillion in gross assets across the U.S., with stock-exchange listed REITs owning over $2.5 trillion in assets. U.S. listed REITs have an equity market capitalization of more than $1 trillion. REITs provide everyday Americans the opportunity to invest in real estate, and more than 145 million Americans live in households that benefit from ownership of REITs through stocks, 401(k) plans, pension plans, and other investment funds.

We understand, from our recent discussion, that the new reporting items are intended to address a tax reporting gap by alerting US pass-through entities that section 897 gains have been distributed to them; this information will allow these entities to properly withhold on distributions to their foreign owners and beneficiaries. We recommend that the Form 1099-DIV instructions be updated accordingly as the current reference to section 897 for the definition of USRPI and the exceptions to the look-through rule are not clear. While we support tax reporting gap measures and combating tax avoidance, sufficient lead time must be provided to ensure compliance.

Background

Regulated investment companies (RICs) investing in a real estate investment trust (REIT) routinely receive capital gain dividend distributions attributable to the REIT's sale or exchange of a USRPI. The tax consequences of these distributions to a shareholder in a RIC turn on whether the RIC is a qualified investment entity and the shareholder's percentage interest in the class of shares held. A RIC, for sound business reasons, can determine a shareholder's interest in a class of RIC shares in only limited situations. Specifically, this determination is possible only for shares held directly with the RIC's transfer agent ("directly held shares"). In all other situations this determination must be made by the intermediary holding the shares in an "omnibus" or "street name" account on behalf of the foreign investor ("indirectly held shares"). Customer identification, recordkeeping (including ownership percentage), and tax reporting is performed by the financial institution that has the business relationship with the investor.

As RICs do not have the relevant information about their indirect investors, RICs that are qualified investment entities would need to report certain distributions as section 897 gain distributions to brokers and other intermediaries. The brokers and intermediaries would then determine how to characterize such distributions to shareholders (such as US partnerships).

Programming complexities

To assist funds and brokers with their tax reporting obligations, the ICI annually publishes Year-End Reporting Layouts that provide columns for every possible tax characteristic of a fund's distributions. The layouts are populated for every fund and provided by the funds to brokers and other intermediaries that use the information to report to their customers (who are the RIC's indirect shareholders). The ICI has updated the Year-End Reporting Layouts to reflect these two new boxes on the Form 1099-DIV. All payors, including funds, brokers, banks, and other intermediaries, will need to update their computer and information reporting systems to accommodate the new information that will be provided via the ICI Year-End Reporting Layouts.

This new tax reporting obligation is challenging because the information is reportable to only a subset of a fund's investors—pass-through entities such as US partnerships. The IRS payor instructions are clear that boxes 2e and 2f are not to be populated on Forms sent to US individuals (who receive most Forms 1099-DIV). The unique challenge is that, today, all boxes are populated for all investors (other than exempt recipients) based upon each investor's actual receipts. Systems today do not easily allow for distribution information to be reported to only a subset of investors. Making this system change before programming is "locked down" (prior to year-end) will be problematic. Indeed, one vendor already has told its fund clients that it will be able to report amounts in box 2e and 2f to either all shareholders or to none.

We fear that US individuals will experience considerable confusion about their tax filing obligations should they receive section 897 information in one of the new Form 1099-DIV boxes. It is therefore imperative that the IRS also clarify on the Form 1099-DIV, Instructions for Recipient, that amounts that may be reported in box 2e and box 2f should be disregarded by US individuals.

Requested relief

The ICI and Nareit respectfully request:

- a one-year delay of the new reporting requirement to enable RICs, brokers, and other intermediaries, to adequately program their systems for these changes to ensure that only taxpayers for whom section 897 gains are relevant receive this information;
- temporary penalty relief be provided to payors if they in good faith attempt to comply with the new reporting obligations for this tax year;
- clarification to the IRS Form 1099-DIV instructions to specify the intended recipients of this new reporting information; and
- clarification to the IRS Form 1099-DIV, Instructions for Recipient, that amounts that may be reported in box 2e and box 2f should be disregarded by US individuals.

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We appreciate your consideration of our concerns. Please do not hesitate to contact Katie Sunderland (at katie.sunderland@ici.org or (202) 326-5826) or Dara Bernstein (at dbernstein@nareit.com or (202) 739-9448) if you have any questions regarding this letter or would like any additional information about the tax reporting process.

Sincerely,

Katie Sunderland

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Investment Company Institute

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