NCREIF Fall Conference 2024

Accounting Committee

DAY 1 AGENDA

Introductions

Accounting Technical Update

Task Force Updates

Hot Topics

Tax Update

NCREIF PREA Reporting Standards Update

DAY 2 AGENDA

Joint Session – Accounting, Performance & Valuation

- Debt Manual Overview

Joint Session – Accounting & Valuation

- Valuation Overview

ATTENDANCE

- Session check-in with the conference app for committee attendance.
- Check-in code: Accounting1
- Paper sign in sheets are at the registration desk.

CHAIR INTRODUCTIONS

Megan Hess, DWS

Mark Wojteczko, Deloitte

Christy Daniels, Principal

Amy Pearce, SS&C

CHAIR TRANSITIONS

Thank you to Megan Hess as she completes her term as a Co-Chair!

Welcome to our new Co-Chair!

John Confrey, Forvis Mazars

ABOUT US

- NCREIF is a Not - For - Profit Premier Industry Association
- Membership is comprised of Real Estate Investment Managers, Industry Consultants and Service Providers, Investors and Academicians.
- Leading source of institutional real estate performance data and information.

ACCOUNTING COMMITTEE - MISSION STATEMENT

- To enhance the consistency, transparency, and verifiability of accounting and reporting for institutional real estate assets held in a fiduciary setting.
- Reviews, develops, documents and promotes standards for accounting and reporting with the intention to supplement and in some cases, clarify, but not replace other established standards from authorized bodies, including but not limited to US GAAP.
- Monitors the actions of applicable standard-setting and supervisory agencies and works with the Reporting Standards Council to ensure the entire organization is aware of these agencies' activities and as appropriate assists the Reporting Standards Council in communication with these agencies.
- Provides members with tools and/or resources created through the collective efforts of the membership, and supports the activities of other NCREIF committees by supplying information and research when appropriate.

WHO IS IN THE ROOM?

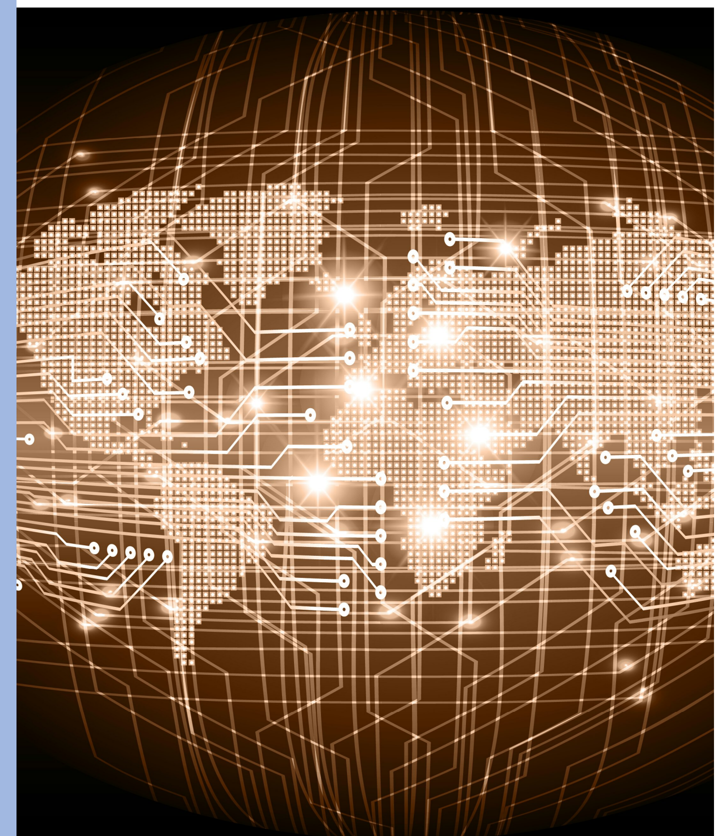
Who is at NCREIF for the first time?

What discipline do you work in?

- Real Estate Investment Advisor
- Public Accounting
- Fund Administration
- Other

ACCOUNTING TECHNICAL UPDATE

Amy Heyman, KPMG



Accounting & Financial Reporting Update

NCREIF Fall Conference 2024

- October 15, 2024

Introductions

Robert Fraher

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Agenda

- New and newly effective accounting standards
- SEC Developments
- PCAOB
- FASB Projects and Agenda Priorities
- Debt Modifications
- Questions
- Closing

New & Newly effective accounting standards

FASB Accounting Standards Updates- 2024

ASU 2024-01: Compensation—Stock Compensation (Topic 718)—Scope Application of Profits Interest and Similar Awards
ASU 2024-02: Codification Improvements—Amendments to Remove References to the Concepts Statements

Newly effective accounting standards

Effective for calendar year-end companies in 2024
ASU 2020-06: Accounting for convertible instruments and contracts in an entity's own equity
ASU 2021-08: Accounting for contract assets and contract liabilities from contracts with customers
ASU 2022-01: Fair value hedging – Portfolio layer method
ASU 2023-01: Common control lease arrangements
Effective for calendar year-end companies in 2025
ASUs 2018-12 and 2022-05: Insurance – Targeted improvements to the accounting for long-duration contracts (Topic 944)*
ASU 2022-03: Fair value measurement of equity securities subject to contractual sale restrictions
ASU 2022-05: Insurance – Transition for sold contracts
ASU 2023-02: Expanding the proportional amortization method
ASU 2023-05: Joint venture formations: Recognition and initial measurement
ASU 2023-08: Accounting for and disclosure of crypto assets

*This ASU is effective for annual periods in 2025 and interim periods in 2026

SEC Developments

SEC Developments

• SEC prioritizes cybersecurity disclosures

- The final cybersecurity disclosure rules, which became effective on September 5, 2023, require registrants to disclose (1) material cybersecurity incidents on Form 8-K Item 1.05, and (2) their processes for assessing and managing material risks from cybersecurity threats, including the role of management and board of directors' oversight, on Form 10-K. The SEC staff's first statement, issued in May, further emphasized the importance of disclosing material cybersecurity incidents under Item 1.05 of Form 8-K.

• SEC approves new and amended PCAOB standards and rules

- Between August and September, the SEC approved two new auditing standards that govern the auditor's role and responsibilities and set out enhanced requirements for quality control at audit firms.

• US Court of Appeals overturns SEC's Private Fund Adviser Rule

- On June 5, 2024, the US Court of Appeals for the Fifth Circuit unanimously overturned the entirety of the SEC's Private Fund Adviser Rule, which was adopted by the SEC on August 23, 2023, and applies to investment advisers to private funds. The court ruled in favor of six private equity and hedge fund groups that challenged the regulations, stating that the SEC exceeded its statutory authority in adopting the Rule.
- The final rules had intended to protect those who directly or indirectly invest in private funds and address the SEC's primary concerns that it has observed in the industry, including lack of transparency, conflicts of interest and lack of governance mechanisms.

SEC Developments (continued)

• SEC stays its climate rule

- On April 4, less than one month after its issuance, the SEC issued an order to stay its final climate rule. The purpose of the voluntary stay is to provide sufficient time for the upcoming judicial review while preventing potential regulatory uncertainty that could arise if registrants were subjected to the rule as it awaits judicial review. However, the SEC maintains its authority and plans to vigorously defend the rule's validity in court. In a subsequent court filing, the SEC stated it will address a new effective date for the climate rule when the stay is lifted.
- Although the stay pauses the need for companies to calculate the effect of certain climate-related events or conditions on the financial statements, the remaining provisions of the rule are required for other reporting regimes (e.g. California laws and international standards).

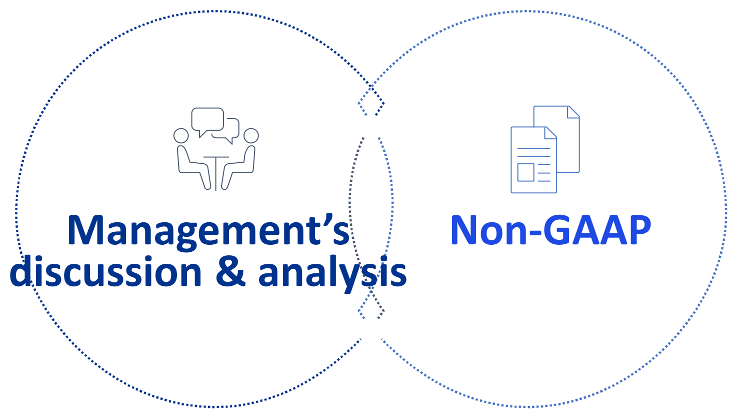
Top SEC Staff comment letter topics

Top accounting comment topics

- **Business combinations**
- **Revenue recognition**
- **Segment reporting**
- **Internal controls**

Top SEC Staff comment letter topics (continued)

Top regulatory comment topics



PCAOB

PCAOB

• PCAOB shares observations on use of Generative AI

- In a recent Spotlight, the PCAOB provided insights from its outreach to audit firms and companies regarding integration of generative Artificial Intelligence (GenAI) in audits and financial reporting. Among other things, the Spotlight discussed:
- • how auditors and preparers currently use GenAI;
- • potential areas where GenAI tools may assist audit engagement teams in planning and performing audits in the future;
- • the importance of appropriate oversight over the development, integration and use of GenAI tools; and
- • limitations on and risks related to the use of GenAI, including questions around the auditability of certain GenAI created input.

• PCAOB highlights auditing considerations related to commercial real estate

- The PCAOB has issued a Spotlight publication that discusses vulnerabilities faced by financial institutions and other public companies with exposure to commercial real estate (CRE), including declining property values and defaults on commercial mortgages. These conditions indicate that assumptions underlying valuation of CRE assets and financial instruments based on real estate or loans collateralized by such assets are areas of increasing audit risk and require heightened auditor skepticism. Impacted areas of the audit may include:
- • risk assessment, including the risk of fraud;
- • auditing asset impairments and the allowance for credit losses;
- • evaluating a company’s ability to continue as a going concern; and
- • performing interim reviews.

- According to the PCAOB, the current conditions in the CRE industry and environment may also necessitate increased communication between auditors and audit committees. Auditors should inform the audit committee about significant changes to the planned audit strategy and any new significant risks identified as a result of changes made by management to the company’s accounting policies, practices or estimates due to the conditions in the CRE industry and environment. These conditions may also affect the auditors’ determination and communication of critical audit matters.

FASB projects and agenda priorities

Forthcoming FASB developments

Exposure Drafts (Q3)

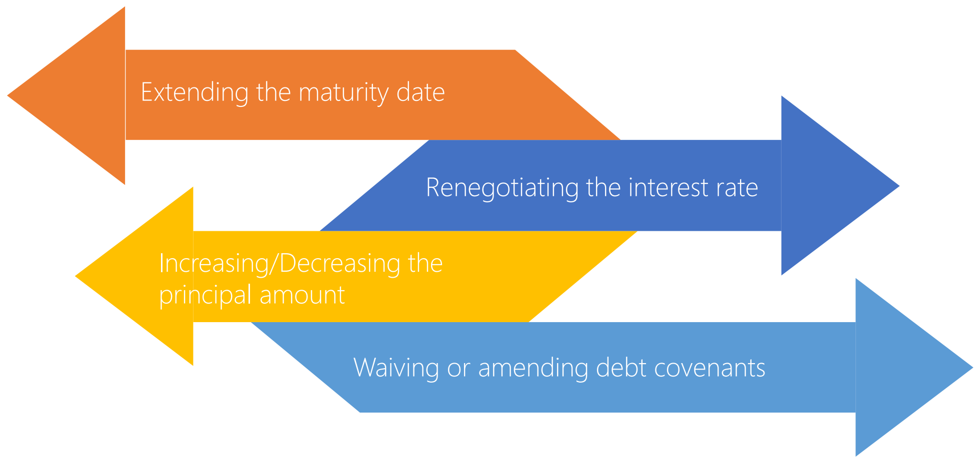
- Accounting for/disclosure of software costs
- Interim reporting
- Share-based consideration payable to a customer
- Topic 815 – Derivative scope refinements
- Topic 815 – Hedge accounting improvements

Final standard (Q4) – Disaggregation—Income statement expenses

Debt modifications

What is a modification?

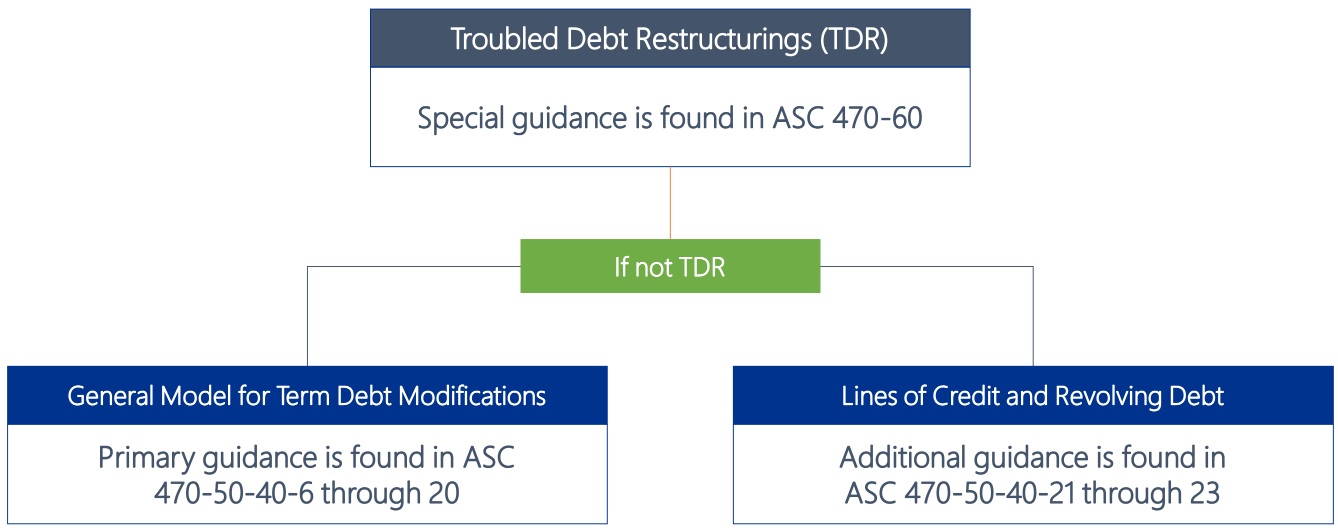
Any change to the original terms of a debt arrangement, including (but not limited to):



All modifications and exchanges with the same lender must be evaluated to determine whether there are accounting consequences.

What about reference rate reform?

Three basic models in accounting for debt modifications



Always analyze whether you have a TDR under ASC 470-60 first.

TDR – Scoping considerations

Some scope exceptions include (see ASC Section 470-60-15):

- Lease modifications
- Changes to employment agreements
- Debt reported at fair value through earnings under the Fair Value Option in ASC 825-10
- Debt restructured as part of a reorganization under federal statutes (bankruptcy and ASC 852) where the majority of the debtor’s liabilities are modified
- Debt was investment grade before the modification and after the modification

General model for term debt modifications

The basics

Is the modification considered substantial?

A modification is considered substantial if: The present value of the cash flows under the terms of the new debt instrument is at least 10% different from the present value of the remaining cash flows under the terms of the original instrument. This is referred to as the '10% cash flows test.'

Additional considerations may apply – e.g. if modification involves convertible debt.

The basics (continued)

If the modification *is* substantial:

- Accounted as a debt extinguishment
- Extinguishment gain or loss is recognized by comparing:
  - The fair value of the new debt plus fees paid to creditor (less fees received by the debtor from the creditor)
  - The full carrying amount of the old debt

If the modification is *not* substantial:

- Accounted as a debt modification
  - No extinguishment gain or loss is recognized
  - New effective interest rate for the original debt is determined based on the modified cash flows

Summary of accounting for fees paid

Item	Substantial modification (cash flows >10%)	Insubstantial modification (cash flows <10%)
Unamortized discounts, premiums, and debt issue costs of old debt	Include in gain/loss on extinguishment of old debt	Continue to amortize
Fees paid to or received from creditors	Include in gain/loss on extinguishment of old debt	Increase or decrease debt discount or premium and amortize
Fees paid to third parties	Capitalize and amortize	Expense as incurred

Example 1

Company A requested the following changes to its debt arrangement. Assume Company A is not experiencing financial difficulty.

	Original debt	Modified debt
Original Date	1/1/20X1	1/1/20X5
Principal	$1,000,000*	$1,000,000
Maturity Date	12/31/20X5	12/31/20X9
Interest	8% annually	16% annually
Prepayable	At par	$50,000 penalty
Lender Fees	$30,000*	$10,000
Third Party Costs	$20,000*	$13,000

* Assume the net carrying amount of the debt immediately before the modification was $988,000 ($1,000,000 face value – $7,000 unamortized discount – $5,000 unamortized debt issue costs).

Example 1 (continued)

- All contractual cash flows between the debtor and creditor under the new debt instrument are considered, including fees paid to the creditor.
- Separate cash flow analyses are performed assuming exercise and nonexercise of the prepayment option

In this example, Company A could elect to immediately prepay both the original debt instrument and the new debt instrument for their $1,000,000 face amount on the modification date. These cash flows are not discounted because they are assumed to occur immediately (i.e. on the modification date).

	Cash flows	Date
Original Debt	$1,000,000	1/1/20X5
New Debt	$1,060,000 (par + $10,000 fee +$50,000 penalty)	1/1/20X5

~6% change in cash flows; modification is not substantially different

Example 1 (continued)

Item	Amounts	Insubstantial Modification (cash flows <10%)
Unamortized discounts or premiums Debt issue costs of old debt	$7,000 unamortized discount $5,000 unamortized debt issue costs	Continue to amortize
Fees paid to creditors	$60,000	Increase debt discount and amortize
Fees paid to third parties	$13,000	Expense as incurred

Company A would determine a new effective interest rate on the debt based on:

- The increased debt discount,
- Increased interest rate, and
- Extended term of the instrument

Example 2

- Company A has term debt outstanding in the amount of $100 million
- On 1/1/20X5, Company A modifies the terms of debt with the lender:
  - All the terms stay the same but the principal amount increases to $150 million
- The principal amount changed by $50 million, which is more than 10%
- Both the original and the restructured debt are prepayable without penalty

Should Company A apply extinguishment accounting?

Example 2 (continued)

No, the model is a present value model.

- The net present value of the old versus new debt may not have changed at all
- All contractual cash flows between the debtor and creditor under the new debt instrument are considered, including fees paid to the creditor.

These cash flows are not discounted because they are assumed to occur immediately (i.e. on the modification date).

	Cash Flows – Gross Method	Date
Original Debt	$100,000,000	1/1/20X5
New Debt	$100,000,000 (i.e. cash inflow of $50,000,000 for principal increase + cash outflow of $150,000,000)	1/1/20X5

0% change in cash flows; modification is not substantially different

Accounting for line of credit modifications

Line-of-credit (LC) modifications

- No “10% test”
- Compare the “borrowing capacity” of the old and new arrangements

Borrowing capacity = LC remaining term x LC maximum available credit

Accounting for LC modifications

	Borrowing capacity increases (or stays the same)	Borrowing capacity decreases
Unamortized deferred costs	Deferred and amortized over new term	Written off in proportion to the decrease
New fees paid*	Deferred and amortized over new term	Deferred and amortized over the new term

* Under ASC 470-50-40-21 through 23: new fees paid are always capitalized and amortized

Example 1

	Original LC	Modified LC
Original date	1/1/20X1	1/1/20X5
Maximum available credit	$1,000,000	$1,500,000
Outstanding balance	$500,000	$800,000
Maturity date	12/31/20X6	12/31/20X8
Interest	8% annually	14% annually
Lender fees	$20,000	$8,000
Third party costs	$14,000	$5,000
Number of years remaining	2 years	4 years

Example 1 (continued)

Original LC's borrowing capacity =

2 years (remaining term) x $1,000,000 (maximum available credit)

= $2,000,000

Modified LC's borrowing capacity =

4 years (remaining term) x $1,500,000 (maximum available credit)

= $6,000,000

As the borrowing capacity **increased**, the unamortized deferred cost would be amortized over the new term of the modified LC. The associated lender and third party fees of $13,000 would also be deferred and amortized over the new term.

Debt extinguishment

Debt extinguishment

Paragraph 405-20-40-1

Generally a debtor can consider a liability extinguished under paragraph 405-20-40-1 if either of the following conditions are met:

1. The debt is paid off and the debtor is relieved of its obligation.
2. The debtor is legally released from being the primary obligor under the liability.

Debt extinguishment by transfer of noncash asset to the creditor

- Background

Year 1: Original debt issuance
Face value $1,000,000 (no pre-payment features)
Term 5 years
Stated interest rate 10%

Debt extinguishment by transfer of noncash asset to the creditor

- Background

Year 1: Original debt issuance
Face value
$1,000,000 (no pre-payment features)
Term
5 years
Stated interest rate
10%

Year 4: Transfer of the asset
Carrying value
$1,250,000
Fair value of the asset
$1,250,000
Accrued interest
$100,000

Debt extinguishment by transfer of noncash asset to the creditor

- Analysis
- The debtor determines the loss on the debt extinguishment as follows:

Year 4: Calculation of loss on debt extinguishment	
Carrying value of note	$1,000,000
Accrued interest payable	100,000
Carrying value of the asset transferred	(1,250,000)
Loss on extinguishment	($150,000)

Debt extinguishment by transfer of noncash asset to the creditor

- Journal entry
  - The entity would record the following journal entry to record the extinguishment:

	Debit	Credit
Notes payable	$1,000,000	
Accrued interest payable	100,000	
Noncash asset		$1,250,000
Loss on extinguishment	150,000	

Debt extinguishment resulting from a modification or an exchange of debt

- When a nonconvertible debt instrument is modified or exchanged in a transaction and it is determined that the new instrument is substantially different, the original debt is considered extinguished and is accounted for as follows:

Carrying basis of the new debt instrument	• The new debt is initially recorded at fair value
Gain or loss on debt extinguishment	• A gain or loss on debt extinguishment is recognized as the difference between the fair value of the new debt and the net carrying amount of the old debt. • The net carrying amount of the old debt includes any unamortized debt discounts/premiums or issuance costs.
Fees paid to the creditor relating to the modification or exchange	• Fees between the creditor and debtor are considered to be associated with the old debt and are included in determining the debt extinguishment gain or loss.
Transaction costs paid to third parties directly relating to the exchange or modification	• Third party transaction costs are considered to be associated with the new debt and are deferred and amortized over the term of the new debt using the effective interest rate method.
New effective interest rate determined	• New rate is based on the cash flows of the new debt instrument and is used to amortize deferred issuance costs and/or discount of the new debt under the effective interest rate method.

Debt extinguishment by modification

- Background

Year 1: Original debt issuance
Face value
$1,000,000
Term
5 years
Stated interest rate
8%
Lender fee
$30,000
Debt issuance costs
$20,000

Year 5: Immediately before modifying the debt
Carrying value, net
$991,000
Unamortized discount
$5,000
Unamortized debt issuance costs
$4,000

Year 5: Modified debt
Face value
$1,035,000
Term
9 years
Stated interest rate
12%
Modification fee
$10,000
Third party costs
$13,000

Debt extinguishment by modification

- Background

Year 1: Original debt issuance

Face value

Debt issuance costs

$20,000

Year 5: Immediately before modifying the debt

Year 5: Modified debt

Face value

Third party costs

$13,000

Analysis

Debtor must determine whether the new debt instrument is substantially different than the original debt.

Debt extinguishment by modification

- Analysis
- The debtor determines the loss on the debt extinguishment as follows:

Year 5: Calculation of loss on debt extinguishment	
Net carrying amount of old debt	**$991,000**
Fair value of new debt	(1,035,000)
Modification fee	(10,000)
Reacquisition price	**(1,045,000)**
Loss on extinguishment of debt	**($54,000)**

Solution

Debt extinguishment by modification

- Journal entry
  - The entity would record the following journal entry to record the extinguishment:

	Debit	Credit
Notes payable (old)	$1,000,000	
Unamortized discount (old)		5,000
Unamortized debt issuance costs (old)		4,000
Modification fee (new)		10,000
Notes payable (new)		$1,035,000
Loss on extinguishment	54,000	

	Debit	Credit
Notes payable - unamortized debt issuance costs (new)	13,000	
Cash		13,000

Questions & Answers

kpmg.com/socialmedia

TASK FORCE UPDATES

Debt Manual

Fair Value Accounting Manual (upcoming)

REPORTING STANDARDS FOR DEBT FUNDS

Phase II – Debt Fund Manual

What's the purpose of the manual?

- Provide guidance and instruction on complying with the Reporting Standards for Debt Funds published in April 2023.
- Align with the NCREIF Debt Fund Aggregate product launched in August 2023.
- Promote consistency, transparency, and comparability in accounting, valuation, and performance reporting for debt funds.
- Supplement existing accounting, valuation, and performance measurement manuals.
- Educate users on key accounting, valuation, and performance measurement topics specific to debt funds.
- Anticipated publication by end of year 2024

DEBT FUND MANUAL: ACCOUNTING

Highlights from the Accounting Section

Key concepts covered:

- Investments in mortgage notes and other loans receivable
- Accounting for participating and non-participating loans
- Accounting for preferred equity investments
- Financing alternatives
- Real estate owned (REO) and accounting implications
- Accounting for debt securities

Development of example financial statements and related footnotes

THANK YOU!

- Japhet Lupondo – CBRE
- Lauren Demartini – Metlife
- Ryan DeReus – LaSalle
- Jules Melhado - LaSalle
- Jefrey Gonzales - Ares
- Edgar Carlier – BNY Mellon
- Rebecca Devries – Sundance Bay
- Kara Jenkins – Deloitte
- Zack Smith – Deloitte
- Jason Aguiar - EY
- Kathleen Rosenbaum - EY
- Haley Waldron – Invesco
- Dylan Anderson - PwC
- Dillon White – PwC
- Louis DeFalco – PwC
- Veronica Bulman - RSM

UPCOMING TASK FORCE

- NCREIF PREA Reporting Manual Update
  - Annual update of the fair value manual
  - Interested? Email: mwojteczko@deloitte.com and/or john.confrey@mazarsusa.com

HOT TOPICS

FINANCIAL HIGHLIGHTS: COMMON PITFALLS & BEST PRACTICES

Jess Ritchie – EY Real Estate, Hospitality & Construction

Guidance – Financial Highlights

946-205-50-1 Financial highlights shall be presented either as a separate schedule or within the notes to financial statements for each class of common shares outstanding.

946-205-50-3 Nonregistered investment partnerships shall disclose per-share data for all common classes in general-purpose financial statements. However, it is permissible for financial highlights to be presented only for those classes of shares that are included in reports to those classes.

946-205-50-4 Only the classes related to the nonmanaging investors (that is, classes of investors that do not consist exclusively of managing investor interests) are considered to be the common interests requiring financial highlight disclosure.

946-205-50-5 If a fund is not unitized, only investment returns (either total return or internal rate of return) and net investment income and expense ratios shall be disclosed as indicated in paragraphs 946-205-50-10 through 50-25.

946-205-45-1

The overall objective of financial statements, including financial highlights, of investment companies is to present net assets, results of operations, changes in net assets, and financial highlights resulting from investment activities and, if applicable, from capital share transactions.

Disclosure Requirements

ASC 946 requires disclosure of financial highlights for the following:

- Net investment income ratio = net investment income/average net assets
- Expense ratio = total expenses/average net assets
- Internal rate of return (IRR) - the implied discount rate calculated based on a series of cash flows and residual values as of the beginning and end of the period

Common Pitfalls: Annualizing

946-205-50-10

Ratios of expenses and net investment income to average net assets are generally annualized for periods less than a year.

We see errors in calculating for partial periods as followed:

Investment Income/Expense Ratios

Numerator amounts from the financial statements are not annualized

Weighted Average Capital

Weighted Average Capital does not either start or end at the appropriate partial period

Disclosures

Financial Highlights do not state that the ratios are annualized

Common Pitfalls: Including GP & Affiliates

Weighted Average Capital

- Net income, contributions and distributions used in calculating weighted average capital should only be related to non-affiliated limited partners
- Ending NAV should (generally) agree to the limited partner ending NAV on the SOE

Ratios

- Net investment income and expenses should only include amounts attributable to non-affiliated limited partners
- Management fees should be generally included at the full amount (unless GP pays)

Internal Rate of Return

- Only contributions and distributions from non-affiliated limited partners should be included in the IRR calculation
- Ending NAV included in IRR calculation should (generally) agree to the limited partner ending NAV on the SOE

946-205-50-4

Only the classes related to the nonmanaging investors (that is, classes of investors that do not consist exclusively of managing investor interests) are considered to be the common interests requiring financial highlight disclosure.

Common Pitfalls: Incorrect Signs

Correct signs for the financial highlights are as follows:

Investment Income Ratio:

- Net income presented positive

-Net loss presented negative

Expense Ratio:

-Presented positive

Carried Interest Ratio:

- Carried interest presented positive (cost of the LP)

-Claw back presented negative (benefit to the LP, opposite sign as expense ratio)

Weighted Average Capital:

- Ensure contributions and distributions shown with appropriate signs

Internal Rate of Return:

- Ensure contributions and distributions shown with appropriate signs for all periods

- Ending NAV included in calculation as a distribution

Other Common Pitfalls:

- Inconsistency between whether contributions and distributions are included at the date transacted or quarter/period end for weighted average capital and internal rate of return calculations
  - Inconsistency between the disclosure of how it is calculated in the footnotes and how the actual calculation is performed
  - Inconsistency of dates and amounts between weighted average capital and internal rate of return calculations
  - Inconsistency between calculations and how it is stated within the LPA or other governing docs
- Specifically for feeder funds, either the feeder level expenses or the allocated expenses incorrectly excluded from the expense ratio
- Prior year NAV utilized in last year's IRR calculation not removed (incorrectly included as a prior year distribution in the current year calculation)

Best Practices

- Creating a template that automatically pulls inputs from standardized sources
- Comparing calculations between funds for consistency in treatment throughout the portfolio
- Create a checklist for the reviewer of common pitfalls to consider

Review Checklist Example

Create a checklist for the reviewer of common pitfalls to consider when reviewing:

1. Is the report over a partial or off year end period?

- ☑ Is that period currently reflected in the weighted average capital calculation?
- Did we annualize the IS amounts when calculating ratios?
- Did we disclose whether or not it is annualized?

2. Is the entity a feeder?

- Does the calculation include expenses from both the feeder level and the allocated master fund expenses?

3. Was there a net loss in the current period?

- Is the net investment loss appropriately shown as negative?
- Was there any income in the period? If not, are the net loss and the expense ratio just the inverse of one another?

4. Was there a claw back in the current year?

- Did we check the amount used in the calculation to the statement of changes in partners' capital?
- Is the claw back shown as an opposite sign as the expense ratio? (as this is a benefit to the LPs)

THANK YOU

Jess Ritchie

RHC Assurance Manager

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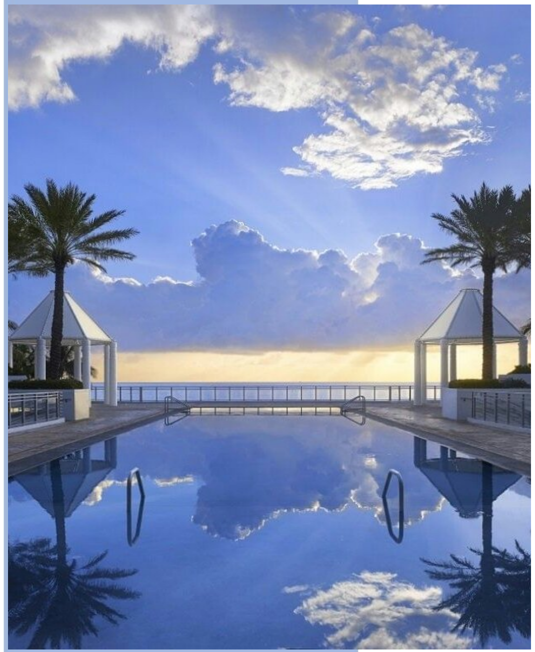


TAX UPDATE

Susan Steele, Deloitte

2024 Tax Update

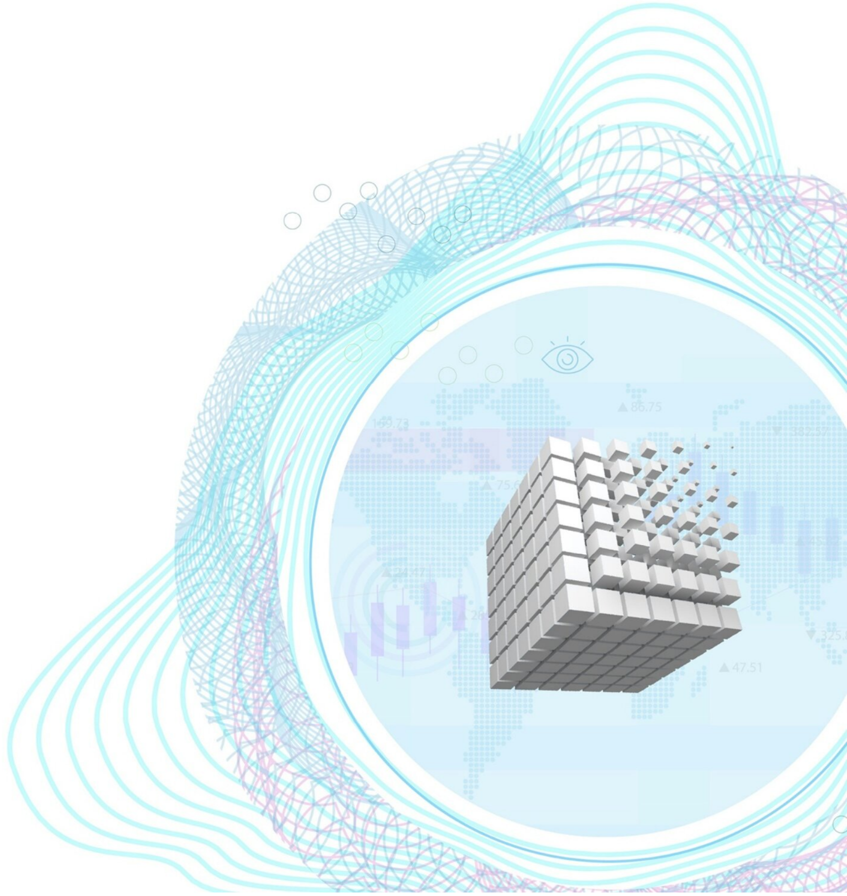
NCREIF Fall Conference of 2024

Accounting Committee Meeting

October 15, 2024

Deloitte.

Is your REIT domestically controlled under new tax law regulations?



Introduction

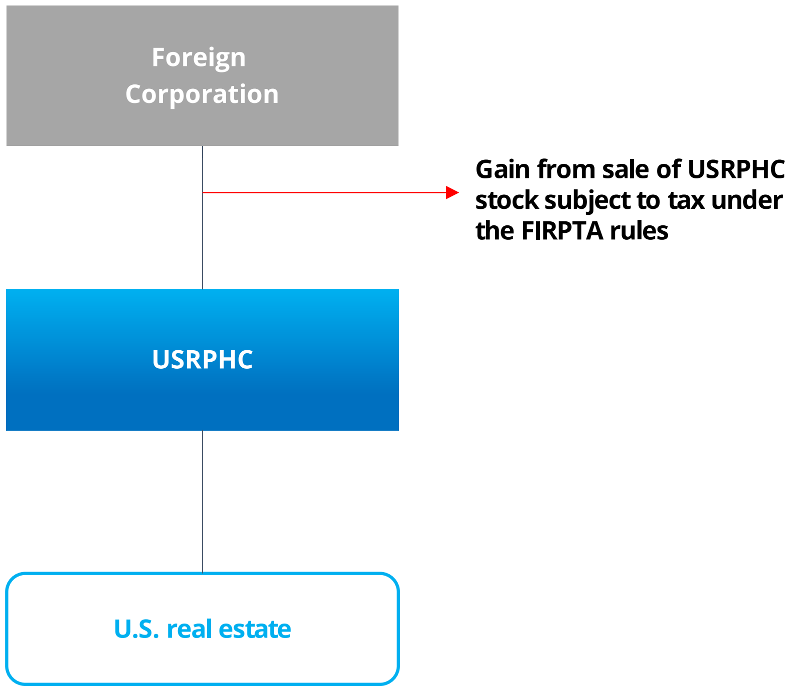
Final Regulations under section 897(h)(4)(B)

- On April 25, 2022, the Internal Revenue Agency ("**IRS**") and the Department of the Treasury ("**Treasury**") published final regulations (the "**Final DC-QIE Regulations**") regarding the determination of whether a qualified investment entity (a "**QIE**") is "domestically controlled" under Internal Revenue Code ("**IRC"**) section 897(h)(4) (also referred to as the "**DC-QIE exception**").
  - The Final DC-QIE Regulations finalized proposed regulations under section 897(h)(4) that were published on December 29, 2022 (the "**Proposed Regulations**").
  - The Final DC-QIE Regulations did not finalize the proposed regulation under section 892 originally included in the Proposed Regulations. The preamble notes these will be addressed in a separate rulemaking.
- The Final DC-QIE Regulations are effective on April 25, 2024 (the date of publication in the Federal Register), subject to a transition rule discussed later.
  - Also applies to any deemed transactions occurring before April 25, 2024, that result from a "check the box" election that (a) is filed on or after April 25, 2024, and (b) has an effective date that is on or before April 25, 2024.

Gain from Disposition of a Real Property Interest

Section 897

- Section 897 was enacted in 1980 as part of the Foreign Investment in Real Property Tax Act ("FIRPTA").
- Deems gain or loss of a non-resident alien or foreign corporation from the sale of a US real property interest ("USRPI") to be effectively connected income ("ECI").
    - Applies to gain or loss from the sale of real property interests and interests in US real property holding corporations ("USRPHCs").
- IRS imposes a gross withholding tax on dispositions of USRPIs by foreign persons.



Domestically Controlled REIT

Section 897(h)(2) and (4)

Background

- Under section 897(h)(2), an interest in a domestically controlled qualified investment entity ("DC-QIE") is not a USRPI.

- A DC-QIE is any QIE which at all times during the testing period less than 50% in value of the stock was held directly or indirectly by foreign persons.

  - A QIE is any real estate investment trust ("REIT") and certain regulated investment companies ("RICs").

  - The testing period is generally the shorter of:

    - The 5-year period ending on the date of the disposition or distribution, or
    - The period during which the QIE was in existence.

- Treas. Reg. § 1.897-1(c)(2)(i) provides that for DC-QIE purposes, the actual owners of stock, as determined under Treas. Reg. § 1.857-8 (i.e., the person required to include in gross income in his return the dividends received on the stock), must be taken into account (the "Actual Owner Rule").

Defining a “Foreign Person”
Section 897(h)(2) and (4)

Background (cont.)

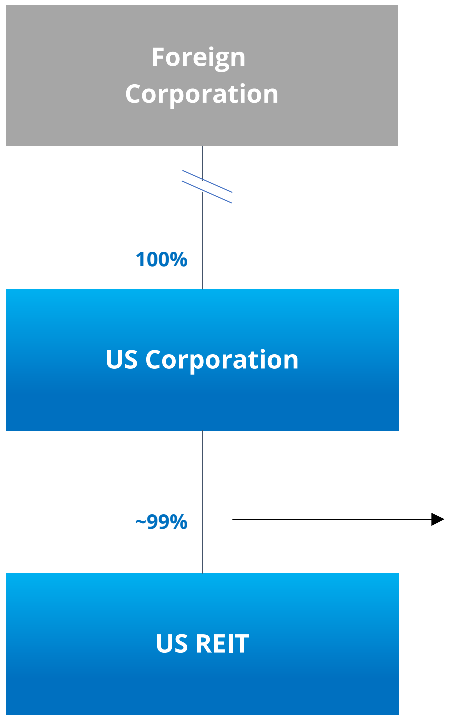
- **Treasury Reg. § 1.897-9T(c) provides, in part, that the term foreign person means a “nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation . . . , a foreign partnership, a foreign trust or a foreign estate, as such persons are defined respectively by Treas. Reg. § 1.871-2 and by section 7701 and the regulations thereunder.”**
  - **Section 7701 does not define the term foreign person. It defines the term "person" to include an individual, a trust, estate, partnership, association, company or corporation. It defines the term “foreign” when applied to a corporation or partnership as a corporation or partnership which is not domestic.**

Actual Owner Rule

Section 897(h)(2) and (4)

Background (cont.)

- Relying on the Actual Owner Rule, IRS concluded that, so long as the domestic C-corporation shareholder of a REIT is not a REIT, RIC, pass-through, look-through, etc., the stock held by such corporation will be considered held by a domestic person (PLR 200923001)



- Proposed syndication of a portion of the REIT's stock to domestic and foreign investors
- Is the REIT's stock "domestically controlled"?

Final DC-QIE Regulations

1

Framework in Proposed Regulations largely retained

- The Final DC-QIE Regulations largely retained the content and structure of the Proposed Regulations, with limited modifications.
- The IRS and Treasury generally disagreed with comments that questioned the appropriateness of the domestic corporation "look-through" rule and that requested either a withdrawal or significant modification.

2

"Foreign-owned" (25%) changed to "Foreign-controlled" (50%) for "look-through" of domestic corporations

- A domestic corporation must be greater than 50% owned, directly or indirectly, by foreign persons (increased from 25% under the Proposed Regulations).
- No guidance is provided for how a domestic corporation QIE shareholder may certify its status for purposes of determining if the DC-QIE exception applies or procedures a QIE must follow in determining/confirming its ownership.

3

Transition Rule

- The Final Regulations are generally effective on April 25, 2024. However, a new transition rule delays the application of the domestic corporation 'look-through" rule to certain existing structures for a 10-year period so long as the below criteria are satisfied at all times:
  - The QIE otherwise qualifies as a DC-QIE (ignoring the domestic corporation "look-through" rule);
  - The QIE does not acquire (directly or indirectly) new USRPIs in excess of 20% of the FMV of USRPIs held as of the close of the last quarter before April 24, 2024; and
  - The non-look-through person ownership of the QIE does not increase by more than 50 percentage points in aggregate as compared to such persons' ownership on April 24, 2024.

Look-Through vs. Non-Look-Through Persons

Treas. Reg. § 1.897-1(c)(3)

Look-through persons

- Any person other than a non-look-through person.
- Includes:
  - Non-public RICs and REITs
  - S Corporations
  - Non-publicly traded partnerships
  - Trusts
  - Foreign-controlled domestic corporations

Non-look-through persons

- Individuals
- Domestic C Corporations (not foreign-controlled)
- Nontaxable holders
- Foreign corporations (including foreign governments)
- Publicly traded partnerships
- Estates
- International Organizations
- Public RICs and REITs
- QFPFs and QCEs

Selected Definitions

Treas. Reg. § 1.897-1(c)(3)

- Domestic C corporation: any domestic corporation other than a RIC, a REIT, or an S corporation
- Non-public domestic C corporation: any domestic C corporation that is not a public domestic C corporation
- Nontaxable holder: any exempt organization under section 501(a), the United States, any US state, any US territory, or a political subdivision of any US state or territory, any Indian tribal government or its subdivision

Selected Definitions (cont.)

Treas. Reg. § 1.897-1(c)(3)

- Public domestic C corporation: a domestic C corporation any class of which is regularly traded on an established securities market within the meaning of Treas. Reg. § § 1.897-1(m) and 1.897-9T(d), provided the QIE whose domestically controlled status is being determined does not have actual knowledge that the corporation is foreign controlled domestic corporation

- Public QIE: a QIE any class of stock of which is regularly traded on an established market within the meaning of Treas. Reg. § § 1.897-1(m) and 1.897-9T(d), or a RIC that issues redeemable securities within the meaning of section 2 of the Investment Company Act of 1940

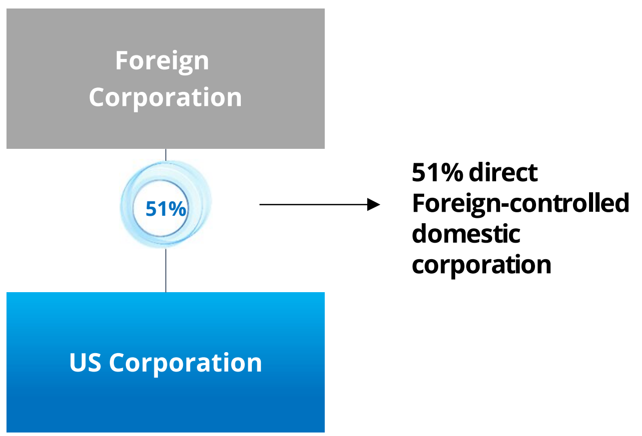
- Public RIC: a RIC that is not a QIE any class of stock of which is regularly traded on an established market within the meaning of Treas. Reg. § § 1.897-1(m) and 1.897-9T(d), or common stock is continuously offered pursuant to a public offering (under section 4 of the Securities Act of 1933) and held by or for no fewer than 500 persons, provided the QIE whose domestically controlled status is being determined does not have actual knowledge that the RIC is foreign controlled

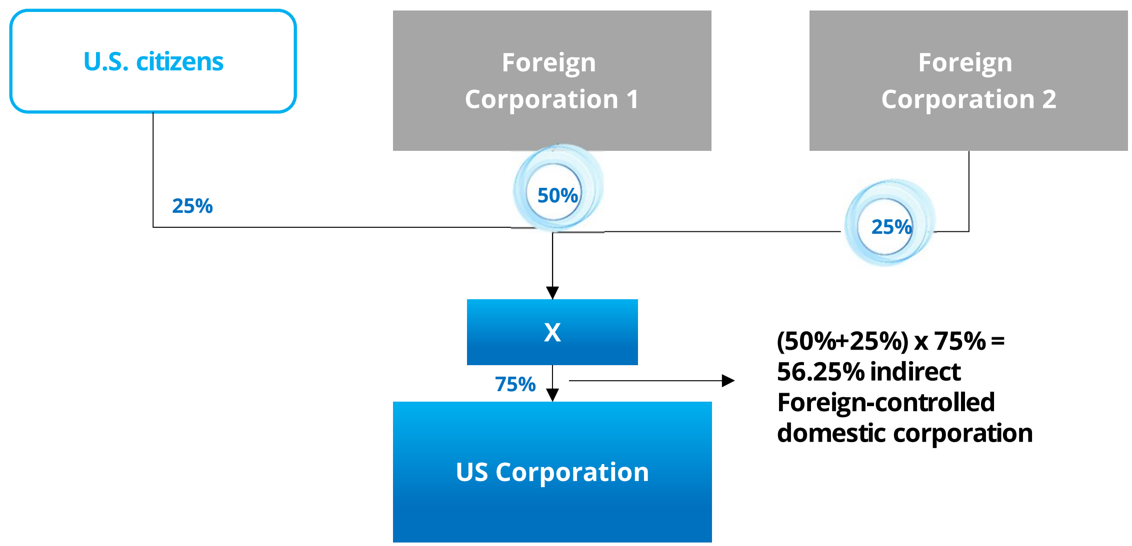
- Publicly traded partnerships: a partnership any class of interest of which is regularly traded on an established market within the meaning of Treas. Reg. § § 1.897-1(m) and 1.897-9T(d), provided the QIE whose domestically controlled status is being determined does not have actual knowledge that the partnership would be a foreign controlled domestic corporation if it were a non-public domestic C corporation

Foreign-Controlled Domestic Corporation

Treas. Reg. § 1.897-1(c)(3)

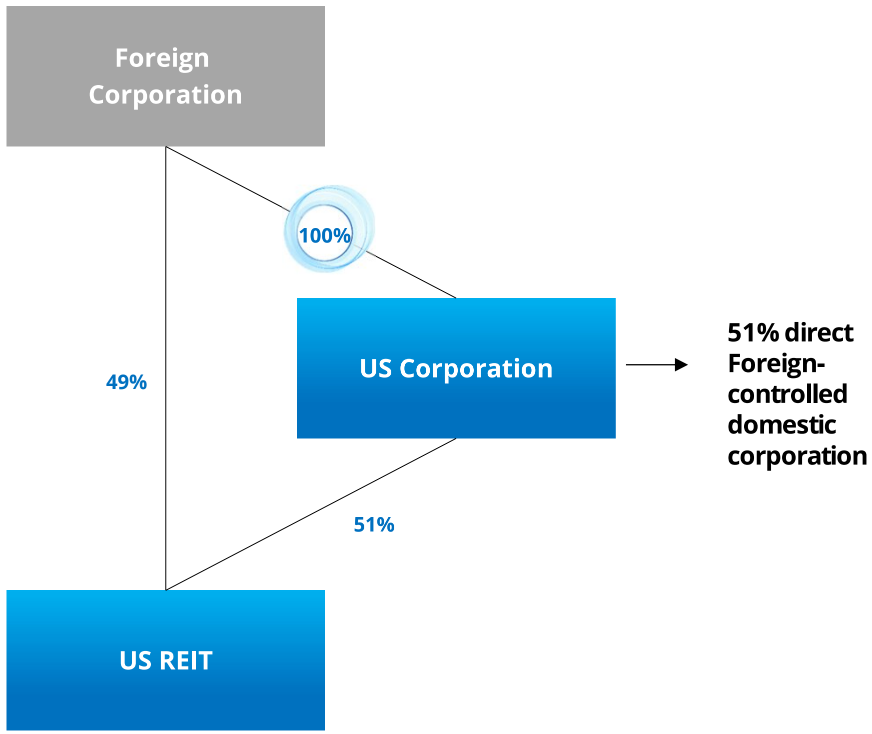
- A non-public domestic C corporation is treated as a look-through person if it is a foreign-controlled domestic corporation.
  - Foreign-controlled domestic corporation: any non-public C corporation if foreign persons hold <u>directly or indirectly</u> more than 50% of the FMV of the corporation's outstanding stock.
    - The rules of Treas. Reg. § 1.897-1(c)(3), with certain modifications, apply in determining ownership for this purpose.





Foreign-Controlled Domestic Corporation

Treas. Reg. § 1.897-1(c)(3)



Facts

- Foreign Corporation directly holds 49% of the shares of US REIT and 100% of the shares of US Corporation.
- US Corporation, in turn, directly holds 51% of the shares of US REIT.

Analysis

- Foreign Corporation, a foreign person, owns 100% of US Corporation, making US Corporation a look-through person for DC-QIE purposes.
- As a look-through person, US Corporation is <u>not</u> considered to hold 51% of the shares of US REIT for DC-QIE purposes. Rather, Foreign Corporation is treated as indirectly holding its proportionate share (100%) of the 51% US REIT shares.
- Because Foreign Corporation, a foreign person, is treated as owning, directly and indirectly, more than 50% of the shares of US REIT, <u>US REIT is not a DC-QIE</u>.

Transition Rule

Treas. Reg. § 1.897-1(c)(3)

Transition Rule

- Treas. Reg. § 1.897-1(c)(3)(vi) provides a transition rule for QIEs existing on April 24, 2024, that delays the application the domestic corporation "look-through" rule for a 10-year period, so long as the following requirements are satisfied at all times on and after April 24, 2024:

Testing on 4/24/24

The QIE is a DC-QIE under the Treas. Reg. § 1.897-1(c)(3) (but without regard to the domestic corporation "look-through rule");

ASSET REQUIREMENT

The aggregate FMV of any USRPIs acquired by the QIE directly or indirectly after April 24, 2024, is no more than 20% of the aggregate FMV of the USRPIs held directly and indirectly by the QIE as of the close of the last quarter before April 24, 2024.

OWNERSHIP REQUIREMENT

The % of QIE stock held directly or indirectly by one or more non-look-through persons does not increase by more than 50 percentage points in the aggregate over the % of QIE stock owned directly or indirectly by such persons on April 24, 2024.

Timeline of Transition Rule

Treas. Reg. § 1.897-1(c)(3)

Transition Rule

A QIE in existence on April 24, 2024, may determine its ownership without regard to the domestic corporation "look-through" rule if the following requirements at all times are met:

1. The QIE is otherwise a DC QIE (ignoring the domestic corporation "look-through" rule).
2. The Asset Requirement is met.
3. The Ownership Requirement is met.

2024

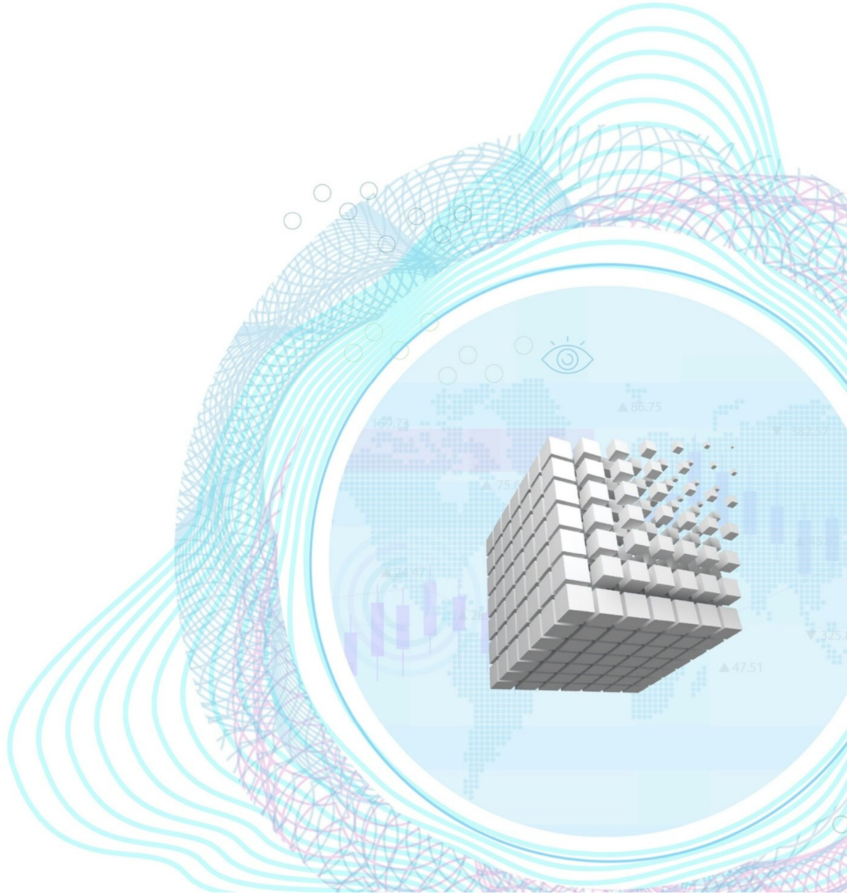
Regulations generally effective on go-forward basis

Final DC-QIE Regulations Published
April 25, 2024

2034

Termination of Transition Rule (assuming compliance with requirements at all times)
April 23, 2034

Presidential Candidates Tax Policy Agendas



Trump's 2024 campaign

continues to focus on his America First agenda

Specific tax policy proposals President Trump is campaigning on:

- Extend individual and business tax changes from TCJA that are due to sunset[1]
- Lower the corporate income tax rate to 15% for companies that make their products in America[2]
- Eliminate income taxes on Social Security benefits[3]
- Eliminate both income and payroll taxes on tips[4]
- Eliminate all taxes on overtime pay[5]
- Provide a tax deduction for the "major costs" associated with newborn babies[6]
- Ensure state and local taxes (SALT) are fully deductible for individuals[7]
- Impose tariffs of 10-20% on most imported goods, tariffs of 60%+ on imports from China[8], and 100% tariffs on goods from countries that break from the US dollar for trade[9]

The former president would like to cut corporate taxes for domestic manufacturers

VP nominee Sen. JD Vance has proposed increasing the child tax credit to $5k[10]

Sources: [1] Trump-Vance campaign press release, Aug. 19, 2024; [2] Trump speech, Sept. 5, 2024; [3] Trump Truth Social post, July 31, 2024; [4] Trump speech, July 18, 2024; [5] Trump-Vance campaign press release, Sept. 12, 2024; [6] Trump speech, Aug. 30, 2024; [7] Trump speech, Sept. 18, 2024; [8] Trump interview transcripts, Time, published April 30, 2024; [9] Trump pledges '100% tariff' for countries that shun dollar," by Stephanie Lai, Bloomberg, Sept. 7, 2024; [10] Vance interview transcript, CBS' Face the Nation, Aug. 11, 2024

Harris' 2024 campaign

generally picks up Biden tax proposals but diverges in a few areas

Specific tax policy proposals Harris is campaigning on:

- Restore and make permanent the American Rescue Plan's child tax credit and add a $6k credit for newborns[1]
- Expand the earned income tax credit[2]
- Provide $25k (which could be in the form of tax credits or direct subsidies) to first-time homebuyers[2]
- Provide a tax incentive for homebuilders selling to first-time homebuyers; and expand the low-income housing credit[2]
- Eliminate income taxes on tips, paired with an increase in the federal minimum wage[3]
- Increase the corporate tax rate to 28%[4]
- Impose a 25% minimum wealth tax on "billionaires"[1], tax long-term capital gains at 28% for those with income >$1M[5], and increase the net investment income tax from 3.5% to 5%[5]
- Increase the startup-expense deduction for small businesses from $5k to $50k[1]

The VP has endorsed a lower top cap gains rate than Biden and added credits for newborns and homebuyers

Harris has committed to Biden's vow not to raise taxes on those earning <$400k[1]

Harris has not addressed a proposal from her 2019 candidacy for president to impose a financial transactions tax[6]

Sources: [1] Trump-Vance campaign press release, Aug. 19, 2024; [2] Trump speech, Sept. 5, 2024; [3] Trump Truth Social post, July 31, 2024; [4] Trump speech, July 18, 2024; [5] Trump-Vance campaign press release, Sept. 12, 2024; [6] Trump speech, Aug. 30, 2024; [7] Trump speech, Sept. 18, 2024; [8] Trump interview transcripts, Time, published April 30, 2024; [9] Trump pledges '100% tariff' for countries that shun dollar," by Stephanie Lai, Bloomberg, Sept. 7, 2024; [10] Vance interview transcript, CBS' Face the Nation, Aug. 11, 2024

Putting Change in Perspective

While many provisions in the TCJA will sunset on January 1, 2026, it is important to put all the changes in income tax rates and deductions in perspective

	Current Law	Upon Sunset of the TCJA
Top ordinary income tax rate	37%	39.6%
Section 199A deduction	In affect	Eliminated
Bonus depreciation	Decreases 20% per year from 2023 until completely phased out for property placed in service after 12/31/2026	
Section 461(l) limitation	Applies to tax years beginning before 1/1/2029	Eliminated for tax years beginning after 12/31/2028
Charitable deduction	Cash gifts to public charity offset 60% of adjusted gross income (AGI)	Cash gifts to public charity offset 50% of adjusted gross income (AGI)
Limit on SALT deduction	$10,000	None
Mortgage limitation	$750,000 acquisition indebtedness	$1M acquisition indebtedness + $100,000 home equity
Miscellaneous deductions subject to the 2% floor	Eliminated	Reinstated
PEASE limitation	Eliminated	Reinstated
Standard deduction	2023 - $27,700 married filing jointly/$13,850 single	Reverts to pre-TCJA amounts
Personal exemption	Eliminated	Reinstated

Governing 2025

Taxes will take center stage

Lapsed and lapsing provisions will ensure tax system remains fluid

Effective January 1, 2022

- Adjusted taxable income base used in section 163(j) calculation changes from earnings before interest, taxes, depreciation and amortization (EBITDA) to earnings before interest and taxes (EBIT)
- Requirement to amortize research and experimentation expenditures begins

Effective January 1, 2023

- 100% expensing of new and used business property begins phases out

Expiring December 31, 2025

- New Markets Tax Credit (NMTC)
- Work Opportunity Tax Credit (WOTC)
- Look-through treatment of payments between related CFCs for purposes of Subpart F
- Exclusion for cancellation of debt income on a principal residence
- Empowerment zone tax incentives
- Seven-year recovery period for motorsports entertainment complexes
- Expensing of certain qualified film and live theater productions
- Employer credit for paid family and medical leave

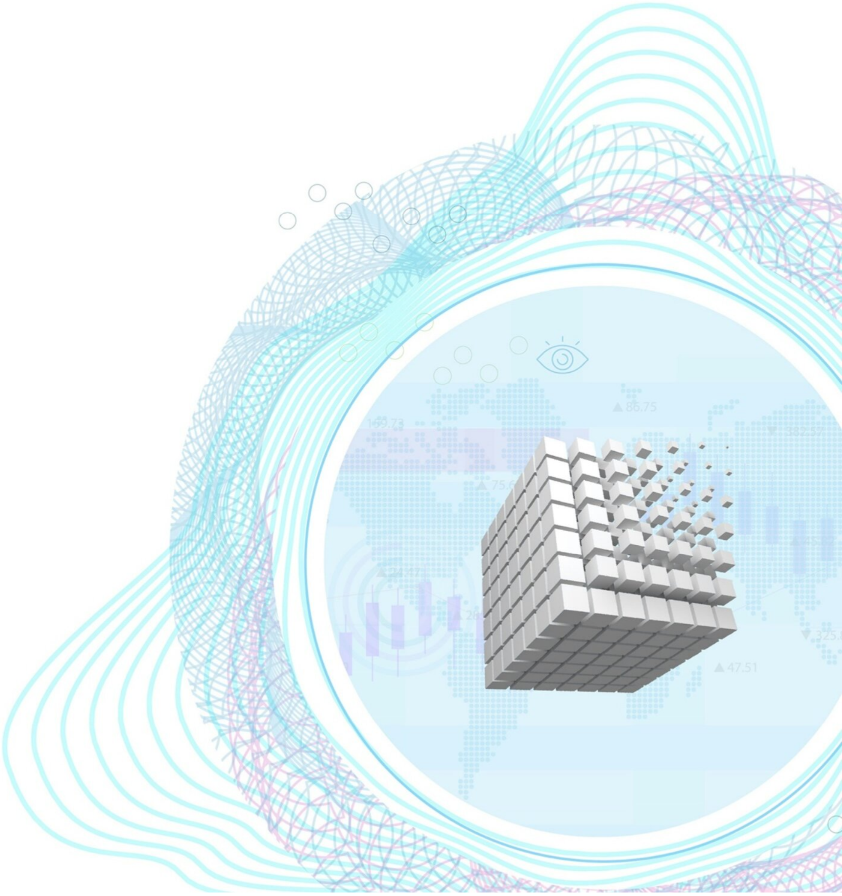
Effective January 1, 2026

- Enhanced Affordable Care Act (ACA) premium assistance credits expire
- 10% base erosion and anti-abuse tax (BEAT) rate increases to 12.5%
- Deduction for GILTI falls from 50% to 37.5%
- Deduction for foreign derived intangible income (FDII) falls from 37.5% to 21.875%
- Reduced individual rates and nearly all other changes to personal tax rules – including SALT deduction cap, PEASE limitation, and estate tax changes – expire
- 20% deduction under section 199A on qualified business income expires

Effective January 1, 2029

- Limitation on deduction for pass-through owners' "excess business losses" expires

Tax Considerations for Solar in REITs



Are Solar Panels Real Estate Assets?

- "Distinct assets" that are "structural components" of an "inherently permanent structures", within the meaning of Treas. Reg. § 1.856-10(d)(2), are real property for purposes of the 75% REIT asset test.
- Distinct assets are generally not structural components if they produce or contribute the production of income other than for the use or occupancy of space.

Are Solar Panels Real Property? (cont.)

- Treas. Reg. § 1.856-10(g) provides the following guidance with respect to solar panels:
  - Example 8: Solar panels used to generate electricity sold to third parties are not treated as real property.

Are Solar Panels Real Property? (cont.)

- Example 9: Solar panels which produce electricity for the REIT's own building are treated as real property notwithstanding that excess electricity is occasionally transferred to a utility company.

- Other significant factors included that the solar panels
  - Were expensive and time consuming to install and remove;
  - Will be damaged, but will not cause damage to the office building, upon removal;
  - Designed with the size and specifications needed to serve only the office building; and
  - Served a utility-like function with respect to the building.

Provision of Electricity to Tenants

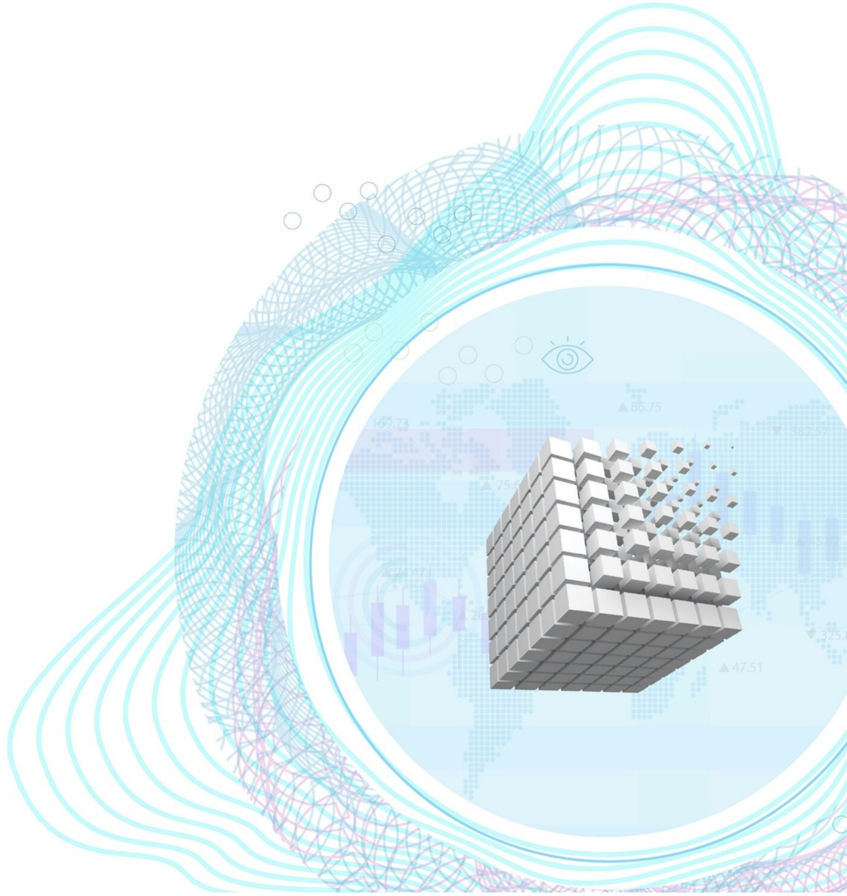
- In general, income a REIT derives from selling electricity to its tenants where it is geographically customary to do so:
  - Constitutes qualifying income for purposes of the income tests under section 856(c)(2) and (c)(3); and
  - Does not trigger any prohibited transactions tax under section 857(b)(6).

- PLR 200828025 – The generation and furnishing of electricity and steam to tenants by a REIT:
  - Would not cause rental income from the property to be treated as other than "rents from real property"; and
  - Any amounts derived from the furnishing of electricity to tenants will qualify as "rents from real property" under section 856(d).

Provision of Electricity to Tenants (cont.)

- **If a REIT sells electricity to third parties, however, the income the REIT derives from the sales clearly would not constitute qualifying income and the IRS would likely contend that the 100% prohibited transactions tax applies.**

“Net Metering” of Electricity



Safe Harbor for "Net Metering" of Electricity

The preamble to Treas. Reg. § 1.856-10 provides a safe harbor for net metering of electricity.

- **Applies to any distinct asset that serves an IPS and qualifies as a structural component of the IPS and produces electricity that is also sold to third parties.**

- **Applies if during the taxable year**
  - **The excess electricity transferred to the utility company does not exceed**
  - **The electricity purchased from the utility.**

- Observations
  - The test regarding transfers and purchases sales is a cliff: If transfers exceed purchases by 1 kilowatt, the safe harbor does not apply.
  - The safe harbor applies on a property-by-property basis.
  - The safe harbor is not limited to solar assets. Any "distinct asset" could qualify.

Safe Harbor for "Net Metering" of Electricity (cont.)

If the safe harbor applies, the REIT receives the following treatment.

- **Asset Tests**
  - **The transfer of the excess electricity will not affect the qualification of such distinct assets as structural components of the IPS for REIT purposes.**
- **Income Tests**
  - **Income resulting from the transfer of the excess electricity will be ignored for purposes of the 75% and 95% REIT gross income tests.**
- **Prohibited Transaction Tax**
  - **Net income from the transfer of excess electricity will not be subject to 100% prohibited transaction tax.**

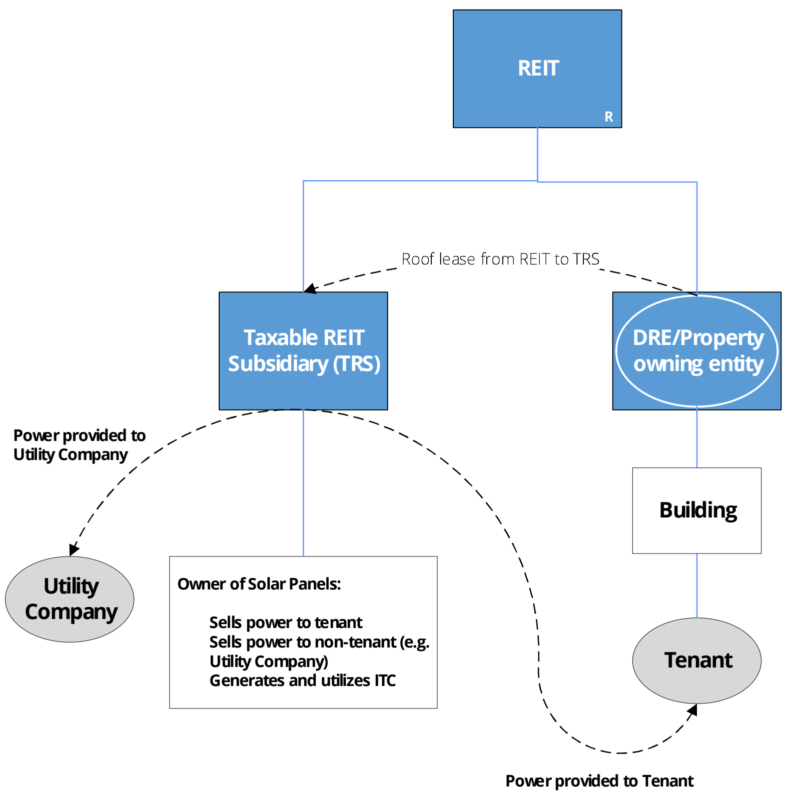
New Tax Legislation

- The Inflation Reduction Act (IRA) provides an option for taxpayers to transfer certain tax credits to an unrelated taxpayer in exchange for cash consideration.

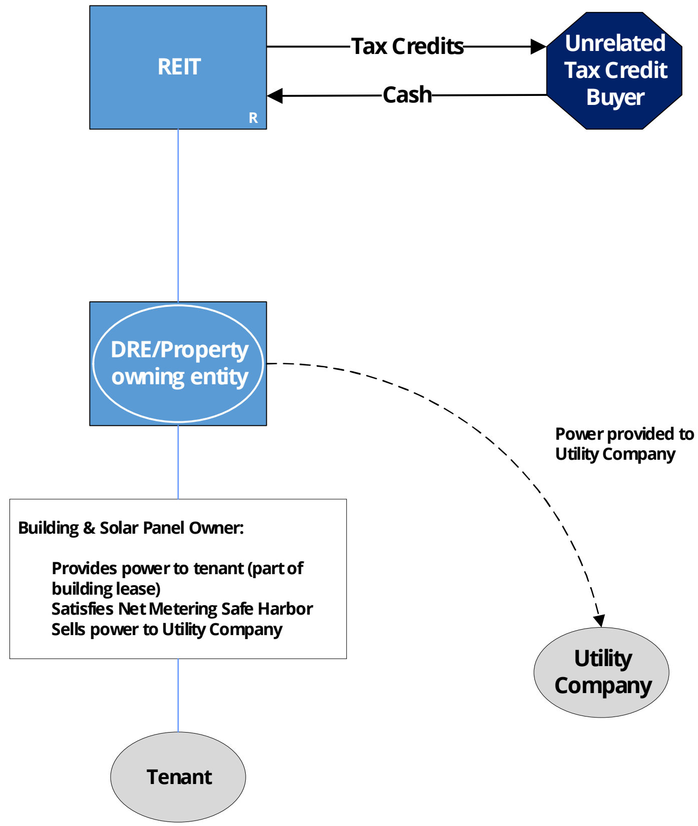
- Eligible credits include the Investment Tax Credit (ITC) for solar.
- Before the IRA, the ITC available to a REIT was limited. This limitation is "turned off" for a REIT that elects to transfer the ITC.
- The cash is not included in the transferor's gross income. The cash is included in the REIT's E&P.
- Credits can only be transferred once.
- Credits that have been carried forward or back cannot be transferred.

Solar Structuring

Before the IRA



After the IRA



Thank you

NCREIF PREA REPORTING STANDARDS UPDATE

Benay Kirk- Alter Domus, Reporting Standards Council

SEC PRIVATE FUND RULES

5th Circuit Court Ruled against the SEC on 6/5/24 stating that the SEC did not have the authority to adopt these rules

Why are we still talking about this then?

Prior to the 5th Circuit Court's ruling was issued, Institutional Association of Limited Partners ("ILPA") announced that regardless of the outcome of the litigation, ILPA will press ahead with the effort to provide more transparency and will be releasing updated templates to the industry for comment.

ILPA RELEASES NEW PROPOSED TEMPLATES

- Comments due 10/11/24 for the two proposed templates:
  - The Reporting Template builds upon the foundation leveraged by the existing version of the Reporting Template (2016 version)
  - The Performance Template is comprised of three tables: the Cash Flow table, the Fund Performance table, and the Portfolio Performance table.
- Implementation timeline for new templates is Q1 2026 reporting cycle

ILPA Reporting Template Tables

Capital Account Statement table

Detailed accounting of all fees and expenses including offsets, rebates, waivers or discounts allocated to or paid by the private fund

Schedule of Fees, Inventive Allocation and Reimbursements Received by the GP and Related Persons table

Detailed accounting of all portfolio investment compensation allocated or paid to the investment adviser (on a portfolio investment by portfolio investment level).

ILPA Performance Template Tables

Cash Flow Table

Transaction types, dates, and amounts needed for the recalculation of fund-level performance metrics. For the purposes of the Performance Template, "fund-level" refers to the transactions occurring between the **fund and its investors**.

ILPA Performance Template Tables

Fund Performance Table - Between Fund and Investors:

- Gross IRR/TVPI for Illiquid Funds with and without the impact of fund-level subscription facilities (**Optional**)
- Net IRR/TVPI for Illiquid Funds both with and without the impact of fund-level subscription facilities

ILPA Performance Template Tables

Fund Performance Table Between Fund and Investments:

- Gross IRR/MOIC for the realized portfolio (**Optional for Fund of Funds**)
- Gross IRR/MOIC for the partially realized portfolio (**Optional for All Funds but should provide if typically included within quarterly financial statements**)
- Gross IRR/MOIC for the unrealized portfolio (**Optional for Fund of Funds**)
- Gross IRR/MOIC for the total portfolio

Reporting Standards Projects

Asset Level Reporting

- Provide enhanced reporting on investments by adding additional data points
- Amend and expand FR.04 Schedule of Investments
- Increase frequency from annually to quarterly
- Exposure draft is out for public comment through 11/30/2024
- For Fiscal Years beginning after December 31, 2024 with early adoption encouraged

Reporting Standards Projects

Dividend Yield - develop a standard calculation

- Task force formed
- **Goal –** include in the Performance Manual
- Defined DRAFT:
  - **Numerator:** The numerator for the dividend yield is the nominal amount of income distributed to clients before fees (gross) and after fees (net). This represents the actual amount of income declared as a distribution.
  - **Denominator:** The denominator for the dividend yield is the time-weighted equity denominator and should match the same Time Weighted Equity used for the purposes of return calculations.

Reporting Standards Projects

Debt Funds Phase II – Debt Manual to include in Handbook Volume II year end 2024

Reporting Standards Projects

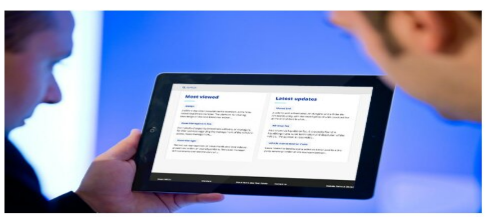
Standardized DDQ – Global Initiative with INREV/ANREV

- Initiative was delayed but we picked it back up in Summer 2024
- Mapping exercise with major consultant DDQs has been completed with 100 common elements identified.
- Template under final review and to be sent to ILPA for comments.
- Scheduling discussions with consultants.
- Reviewing mapping to INREV to understand alignment/differences.

Global Definitions Database

https://reportingstandards.info/global-standards

Global Definitions Database



The Global Definitions Database (GDD) is the leading global source of definitions for the non-listed real estate sector.

Global definitions are an important step towards producing global standards and aligning the INREV Guidelines with the NCREIF PREA Reporting Standards. The GDD provides a common glossary of non-listed real estate terms. Many terms have been agreed to globally, while others are specific to Asian, European and North American standards, guidelines and data products.

A common set of terms is a critical component of the global standardisation initiative and our interactive online tool makes them easily accessible. This provides the industry with one unique depository of definitions that will help increase transparency and align the industry globally.

ANREV INREV NCREIF PREA Reporting Standards

SHOW ALL DEFINITIONS

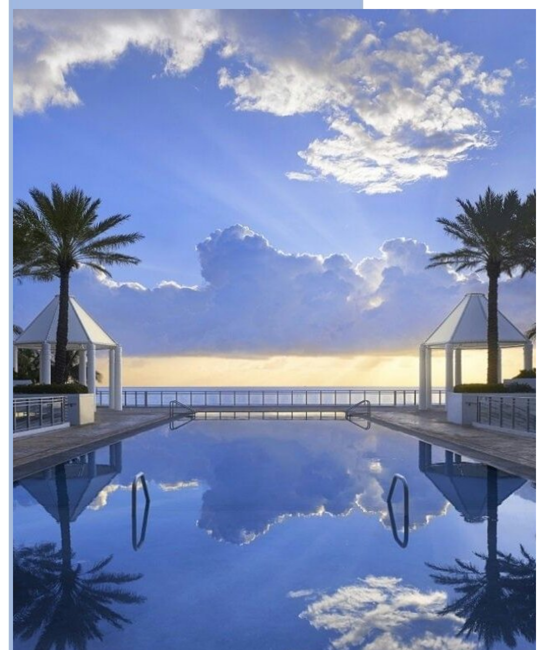
CALL FOR VOLUNTEERS

Email jkingsley@ncreif.org or administrator@reportingstandards.info if interested!

THANK YOU

Benay Kirk

Benay.kirk@alterdomus.com



THANK YOU

Session Check-in Code: Accounting1