

RIC MODERNIZATION ACT OF 2010

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Circular 230

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RIC Modernization Act Overview

- Signed into Law on December 22, 2010
- Generally, provisions apply to tax years beginning after the date of enactment
- Key areas of the law:
 - Capital Loss Carryovers
 - RIC Qualification Test Remedies
 - RIC Excise Tax
 - Distributions

Capital Loss Carryovers

PROVISION	OLD RULE	NEW RULE **
Term of Carryover	8 years	Unlimited
Character of Carryover	Short-term	Maintain character

Capital loss carryovers generated after enactment must be fully utilized before pre-enactment capital loss carryovers

*** Effective for tax years beginning after December 22, 2010*

RIC Qualification Test Remedies

PROVISION	OLD RULE	NEW RULE **
“Good Income” (90%) Test	No remedy for failure	Pay a deductible tax equal to 100% of the amount of the failure ⁽¹⁾

(1) The tax imposed is calculated as 100% of the amount of unqualified gross income in excess of 1/9 of the qualified gross income

*** Effective for 1120 RIC tax returns due (including extension) after December 22, 2010*

RIC Qualification Test Remedies, cont.

PROVISION	OLD RULE	NEW RULE
Diversification Tests	30-day cure period for failures	30-day cure period still applies a) If De Minimis, correct the failure within 6 months of identification b) If not De Minimis and can demonstrate “reasonable cause”, correct the failure within 6 months AND pay a tax (\$50,000 minimum)

De Minimis is defined as the LESSER of: a) 1% of the fair value of total assets at the end of the quarter OR b) \$10 million

RIC Excise Tax

- Law applies for excise periods starting January 1, 2011
- RIC's required capital gain distribution to avoid excise tax is increased from 98% to 98.2%
- Current tax code is modified to treat all ordinary income or loss attributable to the sale of property after October 31st as arising on the first day of the next calendar year
 - PFICs
 - Swaps

Distributions

- Designation Rules
- 60 Day Notification Rules
- Loss Deferral Rules
- Spillover Distributions

Distributions, cont.

PROVISION	OLD RULE	NEW RULE
Designation Rules	Amend 1099's if use of estimates caused over-distribution of LTCG	Over-distributions can first be used to offset LTCG in the subsequent year
60 Day Notification Rules	Written designations must be sent out within 60 days of taxable year-end	1099 reporting is sufficient
Loss Deferral Rules	Post-October losses allowed for capital losses and foreign currency losses	"Post-Excise" losses ALSO allowed for net investment losses incurred after December 31

Distributions, cont.

PROVISION	OLD RULE	NEW RULE
Spillover Distributions	<ul style="list-style-type: none">a) Spillover must be declared before the due date of the tax returna) Spillover must be paid within 12 months of year end and no later than the next regular distribution was made	<ul style="list-style-type: none">a) Spillover must be declared on or before the later of:<ul style="list-style-type: none">1) the 15th day of the ninth month after year end or2) the extended due date of the tax returna) Spillover must be paid with the first subsequent distribution of the same character

Other Provisions

- Earnings & Profits (E&P) Allocations
- Preferential Dividends
- Fund of Funds Passthrough

Questions

If you have any general or fund-specific questions, please contact Rob Velotta or another member of your Cohen Fund Audit Services team.

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