

Client Alert

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IRS Issues Proposed Regulations That Would Clarify Definition of “Real Property” for REITs

The Internal Revenue Service (“IRS”) recently issued proposed regulations (the “Proposed Regulations”) clarifying the definition of “real property” for purposes of the REIT rules. The Proposed Regulations generally reflect the IRS’s approach to defining “real property” in the context of private letter rulings. If finalized, the Proposed Regulations would, unlike private letter rulings, provide published guidance upon which all taxpayers may rely. The Proposed Regulations provide a list of items that are considered to be “real property” under the REIT rules. They further provide a list of factors to be employed in a facts and circumstances analysis for items that do not appear on the list. Discussed below are some of the more significant provisions of the Proposed Regulations.

Continue reading for a description of some of the more significant provisions of the Proposed Regulations.

The Proposed Regulations clarify that the following items, which are not currently addressed by published IRS guidance, constitute “real property” under REIT rules:

Qualify as Real Property	
<ul style="list-style-type: none"> Water and air space superjacent to land 	<ul style="list-style-type: none"> Natural products (including crops) and deposits (including ores and minerals) that are unsevered from land
<ul style="list-style-type: none"> Microwave transmission, cell, broadcast and electrical transmission towers 	<ul style="list-style-type: none"> Transmission lines, pipelines and offshore drilling platforms
<ul style="list-style-type: none"> Storage structures (including silos and oil and gas storage tanks) 	<ul style="list-style-type: none"> Stationary wharves and docks (e.g., marinas)
<ul style="list-style-type: none"> Outdoor advertising displays for which an election has been made under Internal Revenue Code Section 1033(g) (e.g., billboards) 	<ul style="list-style-type: none"> Central refrigeration systems, integrated security systems and humidity control systems
<ul style="list-style-type: none"> Goodwill attributable to real property 	<ul style="list-style-type: none"> Licenses, permits or other rights for the use of real property

The Proposed Regulations also provide factors to be utilized in making a “facts and circumstances determination” as to whether items not specifically listed above or otherwise in the Proposed Regulations qualify as real property. The IRS provided several examples indicating certain types of property that do or do not qualify as “real property.” Based on the facts in the examples, the Proposed Regulations made the following classifications:

Qualify as Real Property	Do Not Qualify as Real Property
<ul style="list-style-type: none"> • Permanently affixed sculptures 	<ul style="list-style-type: none"> • Bus shelters
<ul style="list-style-type: none"> • Conventional partition systems 	<ul style="list-style-type: none"> • Modular partition systems
<ul style="list-style-type: none"> • Solar mounts for photovoltaic (“PV”) modules; buried exit wire for a solar energy site; integrated solar energy systems providing electricity to the tenants of a building where the building and the solar energy system are owned by the same REIT 	<ul style="list-style-type: none"> • PV modules in solar energy sites that sell electricity to third parties
<ul style="list-style-type: none"> • Valves in a pipeline transmission system 	<ul style="list-style-type: none"> • Meters and compressors in a pipeline transmission system
<ul style="list-style-type: none"> • Electrical and telecommunications infrastructure systems in data centers 	<ul style="list-style-type: none"> • Casino licenses

Effective Dates

The Proposed Regulations would be effective for calendar quarters beginning after the Proposed Regulations are finalized.

A copy of the Proposed Regulations is available [here](#).

Hunton & Williams LLP Tax Practice

Hunton & Williams LLP attorneys are available to provide more information about the Proposed Regulations. If you would like to receive more information, please contact **George C. Howell, III** at 804.788.8793 or ghowell@hunton.com, **Mark C. Van Deusen** at 804.788.8349 or mvandeusen@hunton.com, or **Christopher Mangin, Jr.** at 804.787.8188 or cmangin@hunton.com.

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