Final IRS Rules on REIT Dividends Create Statutory Conflict

Law360
07.14.2020

In this article, Andy Howlett discusses the Internal Revenue Service's (IRS) final rules on whether income paid to regulated investment companies (RICs) by publicly traded partnerships (PTPs) and real estate investment trusts (REITs) qualifies for the Section 199A deduction. Howlett noted that Section 199A treats qualified PTP and REIT income similarly, and that Congress intended both qualified PTP and REIT income to be eligible for the deduction. However, that intention was not reflected in the final rules. "It is also clear that the policy behind the RIC rules is to provide RIC shareholders with the same tax treatment that would arise if they held the RIC's asset directly, *i.e.*, conduit treatment. Given these two tenets, it is hard to argue that Congress intended to provide conduit treatment to qualified REIT dividends but not to qualified PTP income. Yet, that's where the final regulations leave us," Howlett wrote. The effect of this, Howlett said, "is that to the extent mutual funds own PTP shares, their shareholders continue to miss out on the benefits of IRC Section 199A." Howlett added that future rules allowing conduit treatment for qualified PTP income is possible but given this issue has not been addressed in the two previous guidance packages, it does not seem to be a priority.