

Fact Sheet on Treasury Proposed Guidance on the Definition of Real Property For the Purposes of REIT Investment: Effect on Renewable Energy

Last week, President Obama spoke to the importance of advancing our nation's energy and climate goals while expanding opportunity for all Americans. As part of that, the President announced a series of related executive actions, and referenced Treasury's important work to clarify the definition of real property for the purposes of real estate investment trust (REIT) investments. This definition is significant because REITs, which are an important component of many retail investors' portfolios, concentrate their investments in real property. This guidance specifically clarifies that certain components of renewable energy installations are real property for the purposes of REIT qualification.

Impact on the Renewable Energy Sector:

This guidance clarifies that, for renewable energy installations, certain complex assets may be broken into their component assets to determine whether each of these components is real property. For example, the guidance clarifies that certain components of solar energy installations, such as the mounts and exit wires, are real property for purposes of REIT investment. This will provide important clarity for the industry and for its investors.

Background on the Proposed Guidance:

The rules defining real property for purposes of REIT investment were issued in 1962 and haven't been updated since. Since then, many REITs have requested and received private letter rulings (PLRs) from IRS Chief Counsel regarding real property status of various assets that are not directly addressed in the published guidance. However, a PLR cannot be relied upon by persons other than the taxpayer to whom the PLR was issued.

When finalized, the proposed regulations would update the existing regulations and would provide a comprehensive framework to analyze whether an asset is real property for purposes of investment by a REIT. Thus, even though these rules are generally consistent with current IRS administrative practice, they will provide important clarity to industry and investors.

Read the proposed regulations [here](#).