



TaxNewsFlash

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Notice 2018-37: Future regulations to clarify effective date, trust income payment to former spouse

The IRS today released an advance version of Notice 2018-37 stating that the U.S. Treasury Department and IRS intend to issue regulations that will clarify the application of the effective date provisions concerning the repeal of section 682—the Code provision that provided rules for trust income payable to a former spouse—by the new tax law (Pub. L. No. 115-97, enacted December 22, 2017).

[Notice 2018-37](#) [PDF 17 KB] includes a request for comments as to whether guidance is needed with respect to application of Code sections 672(e)(1)(A), 674(d), and 677 to trusts for the benefit of a spouse following a divorce or separation.

Repeal of deduction for alimony payments, and corresponding inclusion in income

Prior to the new tax law, alimony and separate maintenance payments were deductible by the payor spouse and includible in income by the payee spouse.

The new tax law prospectively repealed these measures. Under the new tax law, alimony and separate maintenance payments are not deductible by the payor spouse and are not includible in the income of the payee spouse for any divorce or separation agreement executed after December 31, 2018, and for any agreement executed before but modified after that date if the modification expressly provides that this new provision applies to that modification.

Section 682—also before being repealed—provided rules regarding the tax treatment of the income of certain trusts payable to a former spouse who was divorced or legally separated.

Notice 2018-37

Today's IRS notice states that the future regulations will provide that section 682 (as in effect before December 22, 2017) will continue to apply to trust income payable to a former spouse who was divorced or legally separated under a divorce or separation instrument executed on or before December 31, 2018, unless that instrument is modified after that date and the modification provides that the changes made by the new tax law apply to the modification.

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