



TaxNewsFlash

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Rev. Rul. 2026-20 and Notice 2026-62: Potentially abusive transactions involving investment funds

The IRS today released two pieces of guidance addressing certain investment strategies that have received significant attention by the press in recent months, including being addressed by top Treasury officials at a recent industry conference.

First, in [Rev. Rul. 2026-20](#), the IRS applied substance-over-form and step-transaction principles to conclude that a transfer of appreciated securities to a newly formed exchange traded fund (ETF) did not qualify for tax-free treatment under section 351. In the transaction, an investor transferred appreciated securities to an ETF. Following the transfer, and as part of the same plan, the ETF distributed some or all of those securities to another investor in the ETF (the “authorized participant”) in redemption of the authorized participant’s shares in a transaction intended to qualify as a tax-free redemption under 852(b)(6). The IRS determined that the transaction is treated as the investor undertaking a taxable exchange under section 1001 with the authorized participant.

The Treasury Department and IRS also released [Notice 2026-62](#), describing “novel investment fund strategies that purport to produce tax results that may be inconsistent with the purpose and proper application of the relevant federal tax rules.” Many of the transactions described in Notice 2026-62 involved the purported application of section 852(b)(6) in ways that, in the view of the IRS and Treasury, may produce results inconsistent with the purpose and proper application of that provision. These transactions listed include the Rev. Rul. 2026-20 transaction, certain variations of that transaction involving partnerships, ETFs employing “record date strategies,” “box spread” ETFs, and ETFs using section 852(b)(6) to circumvent the RIC qualifying income test. The other broad category of transactions described in the Notice 2026-62 are multi-position strategies employed by so-called “tax-aware” funds to create a pattern of generating capital gain and ordinary loss. These strategies include section 1092(a)(2) identified straddles with mixed character, same-day acquisitions and dispositions of foreign currency forward contracts, and selective notional principal contract terminations.

Notice 2026-62 requests additional details regarding those transactions as well as similar transactions, and comments on their appropriate federal income tax treatment. The notice states that Treasury and the IRS are considering issuing additional guidance or taking other action to address those transactions, which may include regulations, notices, revenue rulings, and other guidance published in the Internal Revenue Bulletin, including the potential identification of a transaction as a transaction of interest or a listed transaction. The notice further

states that any such guidance could apply retroactively, and that in addition to issuing guidance, the IRS may challenge an abusive investment fund strategy upon examination as inconsistent with existing law.

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