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IRS Issues Guidance on Transition From LIBOR to IBORs: NABL

On Friday, October 9, 2020, the US Internal Revenue Service (IRS) released Revenue Procedure 2020-44 (the RP) which provides interim guidance to facilitate the transition from the London interbank offered rate (LIBOR) and other interbank offered rates (IBORs) to alternative reference rates through adoption of fallback language recommended by the Alternative Reference Rates Committee (ARRC) and the International Swaps and Derivatives Association (ISDA).

Specifically, the RP addresses whether modifying existing documents to incorporate fallback language published by the ARRC and ISDA results in a reissuance for federal income tax purposes. The RP states that interim guidance was needed as the U.S. Department of the Treasury (Treasury) continues the process of finalizing related Proposed Treasury Regulations promulgated in 2019 (view the NABL comment letter regarding the Proposed Treasury Regulations here).

The RP is intended to support modifications that follow the ARRC and ISDA fallback language and protocols by providing that such modifications will not cause a reissuance, and applies to bonds, leases, and swaps and certain other contracts referencing an IBOR, as well as to variable rate private student loans that may be based on LIBOR.

The relief under the RP applies only to modifications where a contract is modified to:

- Incorporate an ISDA fallback.
- Incorporate an ARRC fallback.
- Incorporate either of the above, with certain specified deviations, such as deviations to confirm the fallback is enforceable under local law, changes to terms that are not relevant to a particular transaction, adjustments to incorporate ISDA language into a contract that is not otherwise a contract covered by the ISDA protocol, adding or revising technical items necessary to adopt the new language (but the RP relief does not apply to the addition of a term that obligates one party to make a one-time payment (or similar payments) as a substitute for any portion of an ARRC or ISDA fallback).

The RP also provides that such adjustments to a qualified hedge under Treas. Reg. § 1.148-4 will not result in a deemed termination of the qualified hedge.

The RP is effective for modifications to contracts occurring on or after October 9, 2020 and before January 1, 2023. The RP can be relied on for modifications to contracts occurring before October 9, 2020.

View Revenue Procedure 2020-44 here.