



## Captive Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies and Combined Groups

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Tax: Corporation Business Tax

P.L. 2023, c. 96, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT). This Technical Bulletin discusses the changes to the CBT treatment for Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies in relation to combined groups, the exclusion of such entities from the group if they are owned by a bank or a savings & loan association with \$15 billion or less in assets, and return filing procedures.

### **"Captive" Versions of Investment Companies, Regulated Investment Companies, and Real Estate Investment Trusts are Included Entity Types for Combined Reporting**

For privilege periods ending *before* July 31, 2023, investment companies, regulated investment companies, and real estate investment trusts were required to file separate returns and could take advantage of the tax benefits provided to those entities under the law. Effective for privilege periods ending *on and after* July 31, 2023, the Corporation Business Tax Act was amended to require the inclusion of investment companies, regulated investment companies, and real estate investment trusts meeting the statutory definition of "captive" versions of those entities as members of the combined group and taxed as C corporations. Additionally, the "captives" must add back any deductions and expenses that are only permitted to investment companies, regulated investment companies, and real estate investment trusts under the Internal Revenue Code.

### **Captive Investment Company, Regulated Investment Company, and Real Estate Investment Trust**

**Defined** - N.J.S.A. 54:10A-4(hh), (ii), and (jj) state:

- (hh) **"Captive investment company"** shall mean, for privilege periods ending on and after July 31, 2023, an investment company that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than an investment company, that is not exempt from federal income tax. **For purposes of this subsection, a captive investment company shall not include any captive investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion.**

For privilege periods ending on and after July 31, 2023, any voting stock in an investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether an investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive investment company shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L. 1945, c. 162 (C. 54:10A-5) shall not apply. A captive investment company shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being an investment company, when computing federal taxable net income. A captive investment company shall be a member of a combined group and shall be included as a member on the combined return.

- (ii) **"Captive real estate investment trust"** shall mean, for privilege periods ending on and after July 31, 2023, a real estate investment trust that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the Internal Revenue Code, is not exempt from federal income tax, and is not a real estate investment

trust. **For purposes of this subsection, a captive real estate investment trust shall not include any captive real estate investment trust of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion.**

For privilege periods ending on and after July 23, 2023, any voting stock in a real estate investment trust that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a real estate investment trust is a captive real estate investment trust. For purposes of this subsection, an association taxable as a corporation shall not include any listed Australian property trust or any qualified foreign entity.

For privilege periods ending on and after July 31, 2023, a captive real estate investment trust shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L.1945, c.162 (C.54:10A-5) shall not apply. A captive real estate investment trust shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being a real estate investment trust, when computing federal taxable net income. A captive real estate investment trust shall be a member of a combined group and shall be included as a member on the combined return.

As used in this subsection:

“Australian property trust” means an Australian unit trust that is registered as a managed investment scheme under the Australian Corporations Act, and in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests of shares of the trust.

“Qualified foreign entity” means a corporation, trust, association, or partnership that is organized outside the laws of the United States and that satisfies the following criteria:

- (1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined at subparagraph (B) of paragraph (5) of subsection (c) of section 856 of the Internal Revenue Code (26 U.S.C. s.856), including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States Government securities;
- (2) The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;
- (3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;
- (4) No more than 10 percent of the voting power or value in the entity is held directly, indirectly, or constructively by a single entity or individual, or the shares or certificates of beneficial interests of the entity are regularly traded on an established securities market; and
- (5) The entity is organized in a country that has a tax treaty with the United States.

- (jj) **“Captive regulated investment company”** shall mean, for privilege periods ending on and after July 31, 2023, a regulated investment company that is not regularly traded on an established securities market, and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than a regulated investment company, that is not exempt from federal income tax. **For purposes of this subsection, a captive regulated investment company shall not include any captive regulated investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion.**

For privilege periods ending on and after July 31, 2023, any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive regulated investment company shall be taxed in the same manner as a C corporation and subsection d. of section 5 of P.L.1945, c.162 (C.54:10A-5) shall not apply. A captive real estate investment company shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being a regulated investment company, when computing federal taxable net income. A captive regulated investment company shall be a member of a combined group and shall be included as a member on the combined return. (*Emphasis added.*)

### **Inclusion Exception for a Real Estate Investment Trust, Regulated Investment Company, or Investment Company Owned by Banks or Savings & Loan Associations**

N.J.S.A. 54:10A-4(hh), (ii), and (jj) include an exception from inclusion as members in the combined group for real estate investment trusts, investment companies, and regulated investment companies of which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings & loan association with assets of \$15 billion or less. If the state or federally chartered bank, savings bank, or savings & loan association has assets that exceed \$15 billion during the group privilege period, the real estate investment trusts, investment companies, and regulated investment companies that meet the definition of "captive" must be included as members of the combined group filing a combined return.

Investment companies, regulated investment companies, and real estate investment trusts that do not meet the definition of "captive" **or** whose parent meets the exception for a bank (or savings & loan association) with assets of \$15 billion or less, during group privilege period will continue to file separate returns, and will receive the benefits provided to such entities at N.J.S.A. 54:10A-5(d).

The exception for a bank (or savings & loan association) with assets of \$15 billion or less found in N.J.S.A. 54:10A-4(hh), (ii), and (jj) **does not apply to the banks or the savings & loan associations themselves.** The bank (or savings & loan association) exception applies to the "captive" investment companies, "captive" regulated investment companies, and "captive" real estate investment trusts owned by the banks or the savings & loan associations. Banks and saving & loan associations are required to be included as members of a combined group filing combined returns, even if the investment companies, regulated investment companies, and real estate investment trusts can be excluded.

### **Determining the Value of the Assets for Purposes of the Bank or Savings & Loan Association Exception**

In determining whether the bank's (or savings & loan association's) assets exceed \$15 billion for the group privilege period for the purposes of N.J.S.A. 54:10A-4(hh), (ii), and (jj), the corporation will use an annual average value of its assets. The collective asset values must be reported and measured for this purpose following the same method of accounting used for financial and regulatory reporting to the regulatory authorities governing banks and financial institutions (e.g., FDIC, Federal Reserve, etc.). In most instances, this means the annual average assets based on the bank's quarterly reports filed with the regulatory authorities reported in accordance with U.S. G.A.A.P. or I.F.R.S. For example, Bank A's quarterly reports filed with the FDIC and Federal Reserve reported assets of \$15 billion in Q1, \$16 billion in Q2, \$20

billion in Q3, and \$18 billion in Q4. Bank A's annual average assets were \$17.25 billion (add the asset values from each of the four quarterly reports together and then divide by four).

However, there are some instances in which an annual average of the assets may not be the best measure for determining whether the investment companies, regulated investment companies, and real estate investment trusts must be included as "captives," which include the following:

1. *Mergers or Acquisitions Occurring During the Final Month of the Privilege Period* – If there is a merger or acquisition occurring during the last month of the group privilege period that involves two or more banks (or savings & loan associations) and the combined annual average assets exceed \$15 billion, the bank (or savings & loan association) can use the average value of the assets during the preceding eleven months in the group privilege period.
2. *Mergers or Acquisitions Occurring During the First Eleven Months of the Privilege Period* – If there is a merger or acquisition occurring during the first eleven months of the group privilege period that involves two or more banks (or savings & loan associations) and the combined annual average of the assets exceed \$15 billion, a different calculation needs to be made. The surviving bank will use a weighted average value of the assets from the pre-merger months and the post-merger months to determine whether its assets exceed the annual \$15 billion limit.
3. *Mergers into a New Corporation in the Context of a Combined Group* – Regardless of whether two combined groups are merging or a combined group is reorganizing its business structure, if the banks (or savings & loan associations) merge into a newly created entity that is also a bank (or savings & loan association) that is the surviving entity in the merger, then the assets of the non-surviving entity are treated as the assets of the new entity. Thus, for the months during the privilege period, each bank would determine its own average assets for the months the non-surviving entities existed during the period and not for the full 12 months. If the new corporation is the new managerial member of the combined group, the combined group must update its [managerial member](#) information instead of requesting a new NU number.
4. *Mergers into a New Corporation in the Context of Banks Previously Filing a Separate Returns* - If two previously unrelated separate return filing banks (or savings & loan associations) merge into a newly created entity ("NewCo") that is also a bank (or savings & loan association) that is the surviving entity in the merger, then the assets of the two non-surviving entities are treated as the assets of the newly created entity. The two non-surviving banks would file short period returns for the months prior to the merger, and each bank would determine its own average assets for the months prior to the merger. If, as a result of the merger, NewCo's assets exceed \$15 billion for its privilege period, then it would file a combined return with its "captives." In addition, NewCo must register as the [managerial member](#) of the combined group.
5. *Abnormal Market Increases or Losses* – If there is a temporary (less than 30 days) abnormal market fluctuation that results in the value of the bank's (or savings & loan association's) assets temporarily increasing or decreasing, the annual average asset values may be calculated without including the temporary abnormal increase or decrease in assets values.
6. *Unforeseeable Events: Total Loss* – If an event, such as a natural disaster (Act of God), nationalization by a government, war, civil unrest, or riot, results in the bank (or savings & loan association) having to write-off certain assets as a total loss during the group privilege period, the bank (or savings & loan association) must include the value of the impacted assets in the same manner as it is required to report for financial and regulatory reporting purposes. For example, a bank owns \$2 billion commercial bonds in an insurance company and during the group privilege period a Category 4 hurricane directly hits the areas where the insurance company insures the

majority of its customers' risks resulting in the insurance company declaring insolvency and the bonds to be worth *negative* \$1 billion. As a result, the bank has to report the *negative* \$1 billion as the asset value of the bonds for the group privilege period for financial and regulatory purposes. For the group privilege period, the bank would report the value of the bonds as *negative* \$1 billion.

7. *Unforeseeable Events: Mark-Down* – If an event, such as a natural disaster (Act of God), nationalization by a government, war, civil unrest, or riot, results in the bank (or savings & loan association) having to mark-down the value of the assets impacted by the event, the bank (or savings & loan association) must include the value of the impacted assets in the same manner as it is required to report for financial and regulatory reporting purposes. For example, a bank owns commercial real estate in County A valued at \$150 million and a drought caused a riot which damaged but did not destroy the real estate. As a result, the bank had to mark-down the value of the building to \$140 million for financial and regulatory reporting purposes. For the group privilege period, the bank would report the asset value of the real estate at \$140 million.

## Return Filing Procedures

Banks (or savings & loan associations) and the captive investment companies, captive regulated investment companies, or captive real estate investment trusts are subject to the rules of combined reporting, and ordinarily are included as members of a New Jersey combined return (form CBT-100U). However, there are some instances in which banks and savings & loan associations may have previously filed separate returns for periods ending before July 31, 2023, but as a result of the law changes must now file combined returns.

If the annual average value of the bank's (or savings & loan association's) assets *exceed \$15 billion* for the privilege period, the bank (or savings & loan association) and its captive investment companies, captive regulated investment companies, and captive real estate investment trusts must file a New Jersey combined return. If the bank (or savings & loan association) *is not already a member of a combined group*, it must register as the [managerial member](#) and the group privilege period will be the bank's (or savings & loan association's) 12-month privilege period. However, if the bank (or savings & loan association) *is a member* of an existing combined group, the group privilege period follows that of the managerial member.

If the bank's (or saving & loan association's) assets are *\$15 billion or less* for the privilege period, and the bank (or saving & loan association) is not part of a combined group, then the bank (or savings & loan association) and its investment companies, regulated investment companies, and real estate investment trusts each file separate returns. However, if the bank (or savings & loan association) *is a member* of a combined group, the bank (or savings & loan association) will continue to be a member of the combined group, and the investment companies, regulated investment companies, and real estate investment trusts owned by the bank (or savings & loan association) will file separate returns for the privilege period.

**Note:** Form BFC-1 was [discontinued](#). Banking corporations and financial corporations that are separate return filers must file Form CBT-100.

### Captives Aligning Income Reporting with the Combined Group Privilege Period

Investment companies, regulated investment companies, and real estate investment trusts that are part of a combined group that are "captives," cannot file a separate return except to align the income reporting for the group privilege period. If the "captives" have a different privilege period than the group privilege period, the investment companies, regulated investment companies, or real estate investment trusts must file short period returns for the months preceding the start of the group privilege period. If they have a different federal tax year than the group privilege period, the income of the investment companies, regulated investment companies, and real estate investment trusts occurring during the months of the

group privilege period must be reported on the combined return, and a short period return must be filed for months preceding the investment companies, regulated investment companies, and real estate investment trusts being included as members of the combined group

If in a subsequent group privilege period the investment companies, regulated investment companies and real estate investment trusts were excluded from the combined group, due to their parents meeting the exception for bank and savings & loan associations with assets valued at \$15 billion or less, then the investment companies, regulated investment companies, and real estate investment trusts would file separate returns. However, the investment companies, regulated investment companies, and real estate investment trusts will maintain the same 12-month reporting period that these entities had while they were members of the combined group, even if the months differ from the entity's tax year months for federal purposes. This is so that if/when the bank's (or savings & loan association's) average annual assets exceed \$15 billion in a subsequent group privilege period, these investment companies, regulated investment companies, and real estate investment trusts will not have to file short period returns to subsequently realign their income reporting with the combined group for New Jersey purposes.

### **Filings Required in the Event of a Merger or Acquisition**

Whether investment companies, regulated investment companies, and real estate investment trusts are included in the combined group or file separate returns varies depending on the value of the assets of the bank (or savings & loan association) owner and the timing of the merger or acquisition. The following examples illustrate whether the investment companies, regulated investment companies, and real estate investment trusts file as part of the combined group or file separate returns:

#### **Example 1**

Bank A is a member of Combined Group A. The value of Bank A's assets are \$15.5 billion at the start of the group privilege period. Bank A owns REIT A and Investment Co A. Bank B is a member of Combined Group B. The value of Bank B's assets are \$10 billion at the start of the group privilege period. Bank B owns RIC B. Combined Group A acquires Combined Group B on August 1. Shortly thereafter, Bank B is merged into Bank A. Note: The average value of Bank A's assets for the 12 month group privilege period exceeds \$15 billion. The average value of Bank B's assets for the pre-merger and acquisition months is less than \$15 billion.

Combined Group A files a combined return for the full 12-month group privilege period on which REIT A and Investment Co A are included as members of the combined group as "captives." Combined Group B will file a short period combined return for the months January 1 through July 31. For the period of August 1 through December 31 they will be included as members of Combined Group A's combined return. RIC B will file a separate short period return for the months January 1 through July 31. For the period of August 1 through December 31, RIC B will be included as a member of Combined Group A since Bank A's average assets exceed \$15 billion.

#### **Example 2**

Bank C is a member of Combined Group C. The value of Bank C's assets are \$12.5 billion at the start of the group privilege period. Bank C owns REIT C and Investment Co C. Bank D is a member of Combined Group D. Bank D owns RIC D. The value of Bank D's assets are \$11 billion at the start of the group privilege period. Combined Group C acquires Combined Group D on December 1. Shortly thereafter, Bank D is merged into Bank C. Combined Group C files a combined return for the full 12-month group privilege period.

Combined Group D will file a short period combined return for the months January 1 through November 30. For the period of December 1 through December 31 they will be included as members of Combined Group C's combined return. As the merger and acquisition happened in the last month of the group privilege period and Bank C' and Bank D's average value of their respective assets was less

than \$15 billion during the preceding 11 months, REIT C, Investment Co C, and Regulated Investment Co D are not included as “captives” for the group privilege period. REIT C, Investment Co C, and RIC D will file separate returns for the full 12-month period beginning January 1 and ending December 31. In the subsequent group privilege period for Combined Group C, REIT C, Investment Co C, and Regulated Investment Co D will be included as members of the combined group since they are “captives,” assuming Bank C’s average asset value for the group privilege period is in excess of \$15 billion.

### **Example 3**

Same facts as in Example 2 above, except Bank D also owns REIT D and Investment Co D. Shortly after the December 1 acquisition, REIT D and Investment Co D merged into REIT C and Investment Co C, respectively.

Combined Group C files a combined return for the full 12-month group privilege period. Combined Group D will file a short period combined return for the months January 1 through November 30. For the period of December 1 through December 31, they will be included as members of Combined Group C’s combined return. As the merger and acquisition happened in the last month of the group privilege period and Bank C’ and Bank D’s average value of their respective assets was less than \$15 billion during the preceding 11 months, REIT C, Investment Co C, Investment Co D, and REIT D, are not included as “captives” for the group privilege period and must file separate returns for the period. However, REIT D and Investment Co D will file short period returns for the months prior to the merging into REIT C and Investment Co C (i.e., January 1 through November 30). Assuming the average annual assets of Bank C remains in excess of \$15 billion during the subsequent group privilege period for Combined Group C, REIT C and Investment Co C will be included as members of the Combined Group C since they are “captives.”

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division’s interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.