

we hold a direct or indirect interest will not be treated as property held for sale to customers or that the safe-harbor provisions will apply.

The potential application of the prohibited transactions tax could cause us to forego potential dispositions of our farms or interests therein or to forego other opportunities that might otherwise be attractive to us (such as developing property for sale) or to undertake such dispositions or other opportunities through a TRS, which would generally result in corporate income taxes being incurred.

We have acquired and expect to continue to acquire from time to time crops, including (i) crops received as in-kind payments of rent and/or (ii) with respect to certain of our farms under development, crops we harvest during the development phase prior to leasing the farm. In past years, we have not sold any such crops through a TRS, and going forward it may not be feasible (or desirable) to earn the revenue from such sales through a TRS for tax purposes (especially in the case of crops harvested off our development properties). Any such crops should be characterized as inventory or "dealer property" held primarily for the sale to customers in the ordinary course of business (and as noted above, with respect to certain development properties we generally are relying on and may continue to rely on inventory/dealer property treatment to avoid a violation of the gross income tests). Any gain from a sale of inventory/dealer property in excess of directly connected deductions (and without any offset for any losses from other inventory sales) is subject to 100% prohibited transaction tax. We have incurred prohibited transaction tax in the past, and we may incur such taxes in future periods. Moreover, current law provides little guidance as to the deductions that are allowed to offset the gain subject to 100% tax, and thus the IRS might disagree with our calculations of the amount of gain subject to 100% tax.

Foreclosure Property

Foreclosure property is real property (including interests in real property) and any personal property incident to such real property (1) that is acquired by a REIT as a result of the REIT having bid in the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on a lease of the property or a mortgage loan held by the REIT and secured by the property, (2) for which the related loan or lease was made, entered into or acquired by the REIT at a time when default was not imminent or anticipated and (3) for which such REIT makes an election to treat the property as foreclosure property. REITs generally are subject to tax at the maximum corporate rate (currently 35%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property is held primarily for sale to customers in the ordinary course of a trade or business.

Hedging Transactions and Foreign Currency Gains

We may enter into hedging transactions with respect to one or more of our assets or liabilities. Hedging transactions could take a variety of forms, including interest rate swaps or cap agreements, options, futures contracts, forward rate agreements or similar financial instruments. Except to the extent provided by Treasury Regulations, any income from a hedging transaction (i) made in the normal course of our business primarily to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred by us to acquire or own real estate assets or (ii) entered into primarily to manage the risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% income tests (or any property that generates such income or gain), which is clearly identified as such before the close of the day on which it was acquired, originated or entered into, including gain from the disposition or termination of such a transaction, will not constitute gross