INVESTMENT COMPANY INSTITUTE
The Asset Management Industry SERVING INDIVIDUAL INVESTORS

**MEMO# 32761**

September 15, 2020

# Submission to French Tax Administration on Proposed Withholding Tax Exemption Guidance

[32761]

September 15, 2020 TO: ICI Members
Investment Company Directors
ICI Global Members
Tax Committee SUBJECTS: International/Global
Tax RE: Submission to French Tax Administration on Proposed Withholding Tax Exemption Guidance

The Institute today submitted the attached letter and three appendices to the French Tax Administration (FTA) regarding the draft guidance that the FTA issued last month by which funds can request exemption from French withholding tax.[1] Although the letter focuses on registered investment companies (RICs) regulated by the Investment Company Act of 1940, it notes that the points made have general applicability.

This guidance was the product of an extensive effort by the industry to recover French taxes withheld in violation of the free movement of capital article (Article 63) of the Treaty on the Functioning of the European Union.[2] We are very pleased to inform you that US funds recently began receiving substantial refunds of the previously withheld taxes.

The letter first suggests that the procedures provided by the guidance be modified, beginning in 2023, for those funds that have received a favorable determination and still meet all of the conditions for exemption as they have not had a change in circumstance. In this scenario, funds should provide paying agents with a completed withholding exemption form (number 000089) and an affidavit that the conditions for exemption still are met. This confirmation would be renewed annually.

The letter also asserts that the requirement imposed in the guidance that service providers have no "relationship of interest" is inappropriate. The correct standard, as also provided in the guidance, that the parties that perform services comparable to those performed by a depositary be independent from a safekeeping perspective.

Appendix A describes the information that we believe should be treated by the FTA as sufficient to establish that a RIC satisfies the seven characteristics required to benefit from the exemption. As RICs are subject to the exact same regulatory regime, it should not be necessary for every RIC to provide copies of the relevant US statutes that are referenced in the letter and these appendices.

Appendix B describes the extensive regulatory regime provided by US law for providing investor protections—regarding the actual safekeeping and segregation of assets—that are comparable to those provided under French law by a depositary.  These same protections are provided under US law by various parties other than the management company, including the fund's board, the fund's transfer agent, the fund's independent public accountancy firm, and the fund's global custodian.

Appendix C explains in detail the various laws, including four securities laws, that apply uniformly to all RICs.

Keith Lawson
Deputy General Counsel - Tax Law

Attachment No. 1

Attachment No. 2

Attachment No. 3

Attachment No. 4

**endnotes**

[1]  The draft guidance and exemption form at the moment are available only in French.

[2] *See e.g.*, ICI Memorandum No. 29002, dated May 21, 2005.