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MEMO# 30781

July 14, 2017

Draft Letter to IRS on EU Reclaims Notice 2016-10 for Your Review

[30781]

July 14, 2017 TO: Tax Committee RE: Draft Letter to IRS on EU Reclaims Notice 2016-10 for Your Review

The attached draft letter sets forth the methodology we propose for resolving EU reclaim issues for which the netting approach of IRS Notice 2016-10 cannot be applied. The methodology, as described in greater detail in the draft letter, involves the following five steps:

Step 1: Determine the portion of taxable versus tax-exempt investors.

Step 2: Multiply the amount of the recovered ("refunded") taxes by the taxable shareholder percentage. The product of this calculation is the "unadjusted fee amount."

Step 3: To determine the "compliance fee" that the RIC will pay pursuant to the closing agreement, multiply the unadjusted fee amount (as determined in Step 2) by a factor that reflects the additional tax that will be collected when the RIC distributes the portion of the refunded tax that is not paid over pursuant to the closing agreement.

Step 4: The RIC will treat as investment company taxable income the excess of the refunded amount over the compliance fee. The RIC will then distribute this excess to shareholders in order to satisfy the general RIC distribution requirements and avoid a RIC-level tax on the income.

Step 5: The excess refund distribution will be characterized as "qualified dividend income" (or not), as discussed in our April 2016 submission, based on the nature of the previously-included income on which the tax was paid.

We will discuss this draft letter during the Tax Committee Monthly Call scheduled for Tuesday, July 18. Please feel free to provide comments in advance of the call to the undersigned at 202-325-5832 or lawson@ici.org.

Keith Lawson
Deputy General Counsel - Tax Law

Attachment
