

**MEMO# 30466**

December 8, 2016

## **Draft ICI Comment Letter to IRS on Sec. 851 Proposed Regulations -- Comments Requested**

[30466]

December 9, 2016 TO: Tax Committee RE: Draft ICI Comment Letter to IRS on Sec. 851 Proposed Regulations -- Comments Requested

Attached for your review is a draft letter to the Internal Revenue Service ("IRS") and the Treasury Department regarding the recently proposed regulations under section 851 on distributions from controlled foreign corporations ("CFCs") and passive foreign investment companies ("PFICs").<sup>[1]</sup> The proposed regulations would provide that: (1) inclusions from a CFC or a PFIC that is a qualified electing fund ("QEF") would qualify as dividends under section 851(b) only to the extent that an actual distribution is made; and (2) such inclusions would not constitute "other income" derived with respect to a regulated investment company's ("RIC's") business of investing in stock, securities or currencies.

The Institute recommends that the IRS and the Treasury Department strike the second proposal from the final regulations. The comment letter argues that this proposed regulation regarding the other income provision would represent a significant change to current law, would result in illogical and arbitrary results not supported by sound tax policy, and is contrary to legislative intent.

In the preamble to the proposed regulations the IRS also asked for comments on whether they should withdraw Rev. Rul. 2006-1, 2006-31, and other guidance addressing the issue of whether a financial instrument or position held by a RIC is a security under the Investment Company Act of 1940. The Institute recommends that this guidance remain in effect. We believe it is consistent with current law and revoking the guidance might create unnecessary uncertainties in the industry.

Please provide any comments on the draft letter to me ([kgibian@ici.org](mailto:kgibian@ici.org) or 202/371-5432) no later than Friday, December 16, 2016. Comments are due to the IRS and the Treasury Department on Tuesday, December 27, 2016.

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[Attachment](#)

## endnotes

[1] See Institute Memorandum No. 30286 , dated September 30, 2016. Available at: [https://www.ici.org/my\\_ici/memorandum/memo30286](https://www.ici.org/my_ici/memorandum/memo30286).

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