

**MEMO# 28854**

March 23, 2015

# **Draft Complaint to Be Filed with European Commission Against French Tax Measure or Practice That Violates European Law**

[28854]

March 23, 2015

TO:

ICI GLOBAL TAX COMMITTEE No. 8-15  
TAX COMMITTEE No. 12-15  
INTERNATIONAL COMMITTEE No. 14-15

RE:

DRAFT COMPLAINT TO BE FILED WITH EUROPEAN COMMISSION AGAINST FRENCH TAX MEASURE OR PRACTICE THAT VIOLATES EUROPEAN LAW

ICI Global – on behalf of US regulated investment companies (RICs) and other funds resident outside of the European Union (EU) and the European Economic Area (EEA), referred to as “Third Country funds” – intends to file a complaint with the European Commission (EC) against France. The complaint (a draft of which is attached) is based upon Article 63 of the Treaty on the Functioning of the European Union (TFEU); this Article provides for the free movement of capital.

Specifically, the complaint contends that France is violating Article 63 TFEU by taxing dividends paid by French resident companies to Third Country funds while exempting from tax the same dividends paid to EU and EEA funds. The complaint also cites several decisions of the Court of Justice of the EU (CJEU). The two most relevant decisions are those issued in Santander [\[1\]](#) and DFA Emerging Markets. [\[2\]](#) As the Third Country funds involved in both cases were RICs, the complaint focuses primarily on US funds.

Please review this draft complaint and provide any comments to the undersigned (at [lawson@ici.org](mailto:lawson@ici.org) or 1-202-326-5832) by Monday, March 30.

Keith Lawson  
Deputy General Counsel - Tax Law

[Attachment](#)

**endnotes**

[1] See Institute Memorandum [#26165](#), dated May 18, 2012.

[2] See Institute Memorandum [#28035](#), dated April 14, 2012.

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