

MEMO# 30493

December 22, 2016

ICI Comment Letter on Proposed Regulations Under Sec. 851 on Investments in CFCs and PFICs

[30493]

December 22, 2016 TO: ICI Members SUBJECTS: Tax RE: ICI Comment Letter on Proposed Regulations Under Sec. 851 on Investments in CFCs and PFICs

The Institute has submitted the attached comment letter to the Internal Revenue Service (“IRS”) and the Treasury Department on recently proposed regulations under section 851, regarding whether investments by regulated investment companies (“RICs”) in controlled foreign corporations (“CFCs”) and passive foreign investment companies (“PFICs”) qualify as “good income” under section 851(b) of the Internal Revenue Code.[\[1\]](#) In general, the proposed regulations would provide that (1) inclusions from a CFC under section 951 or from a PFIC under section 1293 will be treated as “dividends” only to the extent that the CFC or PFIC has made a distribution out of its earnings and profits (the “Distribution Requirement”); and (2) Such inclusions will not be treated as “other income” derived with respect to a RIC’s business of investing in stock, securities or currencies (the “Other Income Proposal”).

The Institute is not concerned about the Distribution Requirement in the proposed regulations, as it simply restates the language already set forth in the Internal Revenue Code. Although we do not believe that the language is necessary, we do not disagree with its inclusion in the regulations.

The Institute, however, strongly opposes the Other Income Proposal. We believe that the inclusion of this new rule, which would reclassify many inclusions from CFCs and PFICs as bad income, is unnecessary, arbitrary, and contrary to legislative intent. We thus urge the IRS and Treasury Department to eliminate this provision before finalizing the proposed regulations.

The Institute also recommends that Revenue Rulings 2006-1 and 2006-31, and other similar guidance, remain in effect. This guidance is consistent with current law, and revoking them might create additional uncertainty about other investments routinely made by RICs.

Karen Lau Gibian

[Attachment](#)

endnotes

[1] See Institute Memorandum No. 30286, dated September 30, 2016, available at: https://www.ici.org/my_ici/memorandum/memo30286.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.