

MEMO# 30507

January 6, 2017

European Commission Responds to ICI Global Complaints Against France and Germany for Taxes Withheld in Violation of EU Law

[30507] January 6, 2017 TO: ICI Members

ICI Global Members SUBJECTS: International/Global

Tax RE: European Commission Responds to ICI Global Complaints Against France and Germany for Taxes Withheld in Violation of EU Law

The European Commission has responded to complaints that ICI Global filed in May 2015.[\[1\]](#) These complaints asked the Commission to bring infringement actions against France and Germany for imposing withholding tax on “foreign” funds in violation of Article 63 of the EU Treaty.

France and Germany, like several other European countries, have been exempting their own funds from withholding tax on dividends paid by local companies while imposing this tax on some or all “foreign” funds. This disparate treatment, the complaints assert, restricts the free movement of capital in violation of Article 63. ICI Global, in addition to filing these complaints, has supported members’ efforts to recover these taxes in many countries in other ways.[\[2\]](#)

The Commission notes that they have had extensive discussions with the relevant tax authorities. The responses then explain that, in the Commission’s view, recent changes to French and German law have eliminated any ongoing infringement (which is the only basis for Commission involvement). The German legislative change eliminates the discrimination prospectively by imposing withholding tax on German funds. While the French guidance theoretically allows non-EU funds to pursue claims, in practice these claims are not being accepted.

ICI Global is discussing with counsel and others whether to raise with the Commission the current practical difficulties being confronted in France. Commission involvement, while helpful in sensitizing the governments to the strength of our arguments, may be less relevant now that coordinated industry litigation is being pursued in both countries.

Keith Lawson

[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

[1] See ICI [Memorandum No. 29002](#), dated May 21 2015.

[2] See, e.g., ICI [Memorandum No. 29630](#), dated January 12, 2016, [No. 28433](#), dated October 6, 2014, and [No. 27031](#), dated February 20, 2013.

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