

MEMO# 32742

September 4, 2020

For Your Review: Draft Comments to French Tax Administration on Proposed Withholding Tax Exemption Guidance

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September 4, 2020 TO: Tax Committee RE: For Your Review: Draft Comments to French Tax Administration on Proposed Withholding Tax Exemption Guidance

Attached for your review is a draft submission to the French Tax Administration (FTA) regarding their draft guidance to provide at-source withholding tax relief.^[1] Please provide your comments to Katie (at katie.sunderland@ici.org) and me (at lawson@ici.org) by Friday, September 12, as the submission must be filed by Tuesday, September 15.

The draft largely follows the outline that we discussed during our September 2 Tax Committee call.^[2] One change, based upon a call held this morning with French counsels to claimants, is that we have put into Appendix A the information and documents that US funds would provide to establish satisfaction of the seven requirements for at-source relief.

We will submit to the FTA the letter and three appendices (explained below). Please review in particular the letter and Appendix A. Your suggestions for improving the explanation of why each requirement is met and the information and documentation that RICs should provide when seeking a determination of eligibility for at-source relief will be appreciated greatly.

The letter first suggests that the procedures provided by the guidance be modified, beginning in 2023, for those RICs that have received a favorable determination and still meet all of the conditions for exemption as they have not had a chance in circumstance. In this scenario, RICs should provide paying agents with a completed form 000089 and an affidavit that the conditions for exemption still are met. This confirmation would be renewed annually.

The letter also asserts that the requirement imposed in the guidance that service providers have no “relationship of interest” is inappropriate. The correct standard, as also provided in the guidance, is that the parties that perform services comparable to those performed by a depositary be independent from a safekeeping perspective.

Appendix A, as explained above, describes the information that we believe should be treated by the FTA as sufficient to establish that a RIC satisfies the seven characteristics

required to benefit from the exemption. As RICs are subject to the exact same regulatory regime, it should not be necessary for every RIC to provide copies of the relevant US statutes that are referenced in the letter and these appendices.

Appendix B describes the extensive regulatory regime provided by US law for providing investor protections comparable to those provided under French law by a depositary. These same protections are provided under US law by various parties including the management company, the fund's board (which must have a majority of independent directors), the fund's transfer agent, the fund's independent public accountancy firm, and the fund's global custodian.

Appendix C—which is NOT attached to this memorandum—will explain in detail the various laws, including four securities laws, that apply uniformly to all RICs. This appendix will be essentially identical to the “report” that we have provided to support litigation in various EU member states. If you would like to see this document, please let us know.

Keith Lawson
Deputy General Counsel - Tax Law

[Attachment No. 1](#)

[Attachment No. 2](#)

[Attachment No. 3](#)

endnotes

[1] See Institute [Memorandum No. 32702](#), dated August 24, 2020

[2] See Institute [Memorandum No. 32731](#), dated September 1, 2020.