

MEMO# 33187

March 12, 2021

Request to Treasury and IRS for Additional Guidance for RICs Receiving EU Reclaims

[33187]

March 12, 2021 TO: ICI Members

Investment Company Directors

ICI Global Members

Accounting/Treasurers Committee

ICI Global Tax Committee

Tax Committee SUBJECTS: International/Global

Tax RE: Request to Treasury and IRS for Additional Guidance for RICs Receiving EU Reclaims

The ICI today urged the Treasury Department and the Internal Revenue Service (IRS) to issue additional guidance addressing reclaim amounts received by regulated investment companies (RICs) from European Union countries.[\[1\]](#) Published guidance adopting the recommendations made in the attached letter will prevent harm to tax-exempt investors, reduce substantially the need for closing agreements, and accelerate payments to the IRS.

First, we renewed our request[\[2\]](#) for published guidance that will permit RICs to carry forward the amount of any refunded taxes and pre-refund interest that cannot be offset in the year received under Notice 2016-10.[\[3\]](#)

Second, we requested published guidance that would provide clear procedures by which a RIC that cannot apply the Notice's netting procedure, ideally with carryforwards, can make a settlement payment expeditiously. The specific formula that we proposed, based upon a proposed IRS closing agreement template, is as follows:

1) Determine the surrogate tax amount of the compliance fee:

- a. Determine the "foreign tax adjustment," which equals (i) the amount of the refund, converted into US dollars using the same exchange rates used to translate the withholding tax into dollars when such tax was originally reported as paid, plus (ii) pre-refund interest, converted into US dollars using the exchange rate on the date the interest was received, minus (iii) any amounts previously netted against creditable foreign taxes under Notice 2016-10 (including amounts that were carried forward to subsequent years, as requested above).

- b. Multiply the foreign tax adjustment by 85%.
- c. Multiply the product of (a) and (b) by the percentage of the total average number of outstanding shares of the RIC held, during the taxable year to which the reclaim relates, by taxable shareholders.

2) Determine the amount of post-refund interest by applying the rules for an underpayment of US tax liability under section 6601 to the amount calculated in (1), for the period beginning on:

- a. The day the RIC received the reclaim amount until the date the compliance fee is paid to the IRS, if the RIC is ineligible to use the credit-offset approach in Notice 2016-10; or
- b. The first day of the taxable year in which the RIC can no longer apply the credit-offset approach in Notice 2016-10 (including using the carryforward as requested above), until the date the compliance fee is paid to the IRS, if the RIC is eligible to use the credit-offset approach when it receives the reclaim.

3) Add the surrogate tax amount in (1) to the post-refund interest in (2) to determine the compliance fee due to the IRS.

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[Attachment](#)

endnotes

[1] See, e.g. ICI Memorandum No. [27211](#) (dated May 1, 2013); see also, ICI Memoranda Nos. [26165](#) (dated May 18 2012), [28035](#) (dated April 14, 2014), and [32702](#) (dated August 24, 2020).

[2] See Institute Memorandum No. [29806](#) (dated April 4, 2016).

[3] See Institute Memorandum No. [29650](#) (dated January 15, 2016).