

**MEMO# 2296**

November 30, 1990

# **UNITED KINGDOM AGREES TO REFUND DIVIDENDS WITHHELD TO MASSACHUSETTS BUSINESS TRUSTS**

- 1 - November 30, 1990 TO: TAX MEMBERS NO. 52-90 ACCOUNTING/TREASURERS  
MEMBERS NO. 26-90 INTERNATIONAL FUNDS TASK FORCE NO. 29-90 RE: UNITED KINGDOM  
AGREES TO REFUND DIVIDENDS WITHHELD TO MASSACHUSETTS BUSINESS TRUSTS

We are pleased to inform you that the United Kingdom ("U.K.") Inland Revenue has consented, subject to the conditions set forth in the attached exchange of letters, to permit regulated investment companies ("RICs") organized as Massachusetts business trusts ("MBTs") to receive refunds of tax withheld in excess of the 15 percent rate provided by the U.S.- U.K. Income Tax Treaty for dividends paid by U.K. companies. As you may know, the Institute and three custodian banks (Brown Brothers Harriman & Company, Chase Manhattan Bank, N.A., and State Street Bank and Trust Co.) have been jointly negotiating with Inland Revenue for over a year to convince Inland Revenue to refund these monies to the MBTs; the group met once with Inland Revenue in London, met several times with the Internal Revenue Service in Washington, submitted several memoranda to Inland Revenue and, later, to IRS and had numerous telephone conferences with each government agency. (See, e.g., Institute Memorandum to Tax Committee No. 22-90, Accounting/Treasurers Committee No. 25- 90, Independent Accountants Advisory Committee and International Funds Task Force No. 18-90, dated August 13, 1990.) As the attached letters indicate, Inland Revenue's consent to permit MBTs to reclaim the taxes withheld is subject to three conditions. The reason for the conditions is that Inland Revenue continues to hold its legal position that the MBT's shareholders, rather than the MBTs themselves, are the beneficial owners of the dividends and that, consequently, only the shareholders may request the refunds. Inland Revenue has decided to treat the MBTs as the shareholders' agents and permit them to receive the reclaims, however, to effect the Treaty's purpose to permit one country's residents to invest in another country through pooled investment vehicles and receive the benefits of the applicable tax treaty. The industry has agreed to accept the refunds - 2 - subject to the conditions, but without prejudice to our legal position (which we continue to hold) that the MBTs themselves are the beneficial owners of the dividends. The Three Conditions The three conditions imposed by Inland Revenue on the payment of reclaims to RICs organized as MBTs are as follows: First, Inland Revenue will reduce reclaims paid to an MBT by any amount previously paid to a shareholder in that MBT with respect to the same claim. However, Inland Revenue will oppose any claim filed by a shareholder if the MBT has already received payment on that claim. Second, Inland Revenue may change its position permitting MBTs to file reclaims if the United States changes its position and no longer permits U.K. collective investment schemes (e.g., unit trusts) to receive the treaty benefits

provided to beneficial owners of securities. The United States is not, however, a party on our agreement and need not provide any certification or other communication to the Inland Revenue on this point. Third, Inland Revenue may change its position permitting MBTs to file reclaims if there is a material increase in the number of shareholders in MBTs (on an industry-wide, rather than fund-by-fund, basis) that are not U.S. residents for Treaty purposes. To satisfy itself that this third condition continues to be satisfied, Inland Revenue may request information directly from individual funds regarding the number and percentage of nonresident alien shareholders, but only to confirm that nonresidents continue to constitute a small percentage of MBT shareholders. If Inland Revenue makes such a request to a particular fund, they will also notify the Institute of the request so that we may ensure that the Inland Revenue receives information it requests and thereby remains satisfied that the number/percentage of foreign shareholders is not increasing materially. Before these three conditions were agreed to, the Institute reviewed the proposal with a large number of Institute members. The unanimous conclusion of the group was that the industry should accept Inland Revenue's proposal and its three conditions, notwithstanding the merits of our legal position and the possibility that at some future time the second or third condition may cause the reclaim issue to be reopened. Further, the members acknowledged their responsibilities to provide shareholder information in the future to ensure that the agreement with Inland Revenue remains in effect. - 3 - Procedure for Receiving Reclaims We understand from Inland Revenue that (1) MBTs with pending claims that have not been rejected will have their reclaims processed "as quickly as possible"; (2) MBTs with pending claims that have been rejected must resubmit their claims; and (3) MBTs that have not yet filed claims should do so now. \* \* \* \* \* We will keep you informed of developments. Keith D. Lawson Associate General Counsel Attachment KDL:bmb