

**MEMO# 1567**

December 4, 1989

# **SUBMISSION TO UNITED KINGDOM CONCERNING ITS DIVIDEND WITHHOLDING ON MASSACHUSETTS BUSINESS TRUSTS**

- 1 - December 4, 1989 TO: TAX COMMITTEE NO. 21-89 ACCOUNTING/TREASURERS COMMITTEE NO. 52-89 INTERNATIONAL FUNDS TASK FORCE NO. 20-89 RE: SUBMISSION TO UNITED KINGDOM CONCERNING ITS DIVIDEND WITHHOLDING ON MASSACHUSETTS BUSINESS TRUSTS \_\_\_\_\_ As you know, the Institute has been working to reverse the position taken by the United Kingdom's Inland Revenue that regulated investment companies ("RICs") organized as Massachusetts Business Trusts ("MBTs") are not the "beneficial owners" of the dividends they receive from British corporations and, therefore, are not entitled to claim refunds for U.K. tax withheld in excess of the 15 percent withholding rate provided by the U.S.-U.K. Treaty. (See Institute Memorandum to Tax Committee No. 14-88 and International Funds Task Force No. 11-88, dated November 14, 1988). Recently, the Institute and three custodian banks, State Street Bank and Trust Co., The Chase Manhattan Bank, N.A., and Brown Brothers Harriman & Co., retained the Boston law firm Ropes & Gray to prepare a legal memorandum setting forth why MBTs, rather than MBT shareholders, are the beneficial owners of dividends for purposes of the U.S.-U.K. treaty. Attached are the memorandum and covering letter prepared by Ropes & Gray that were sent today to the U.K. Inland Revenue. The memorandum concludes that, for two reasons, RICs organized as MBTs are entitled to claim refunds of withheld U.K. dividends. First, the term "beneficial owner", as used in the Treaty, refers to the person who receives the income in a capacity other than as a mere intermediary nominee or agent. Because no RIC receives dividends as a nominee or agent for its shareholders, all RICs are the beneficial owners of the dividends they receive. Second, if an analysis of Massachusetts law is relevant in construing the term "beneficial owner", an MBT is the beneficial owner of dividends it receives because the relationship of the shareholders and trustees of an MBT to income received by the business trust is indistinguishable from the relationship of the stockholders and directors of a Massachusetts - 2 - business corporation to the income received by the corporation, and is fundamentally different from the relationship of trustees and beneficiaries of a private trust to the income received by the private trust. We will keep you informed of developments. Keith D. Lawson Assistant General Counsel Attachments

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.