

MEMO# 5707

March 24, 1994

SURVEY OF UNPAID FRENCH TAX RECLAIMS

March 24, 1994 TO: ACCOUNTING/TREASURERS COMMITTEE NO. 12-94 TAX COMMITTEE NO. 13-94 RE: SURVEY OF UNPAID FRENCH TAX RECLAIMS Introduction As you know, in late 1992/early 1993, the French government stopped refunding excess French tax withholding, i.e., withholding in excess of the level prescribed by the U.S.-France income tax treaty, to U.S. pension funds, individual retirement accounts, regulated investment companies ("RICs") and other U.S. taxpayers with respect to dividends paid by French companies in 1991 and later years. The Institute has been working with the Treasury Department, the Internal Revenue Service and various custodial banks to ensure that RICs receive prompt refunds of all amounts withheld in excess of the applicable treaty rate. Treaty Provisions Two different provisions of the U.S.-France income tax treaty relate to RICs investing in French equities. First, the treaty provides that all RICs are entitled to a withholding rate of 15 percent (rather than the statutory 25 percent rate) on cash dividends. In addition, the treaty provides that RICs that (1) own less than 10 percent of the French company paying the dividend and (2) are owned at least 80 percent by U.S. citizens or residents are entitled to recover the French tax paid by the French company with respect to its distribution (the "avoir fiscal"), less 15 percent withholding on the avoir fiscal reclaim. For example, on a 100 French Franc ("FF") dividend, a RIC would ultimately receive 85 FF on the distribution plus 85 percent of the related 50 FF avoir fiscal (42.5 FF) for a total payment, including reclaim, of 127.5 FF. * Please call me at (202) 326-5832 if you would like to receive a copy of this March 1 letter. - 2 - Recent French Pronouncement On March 1, France took an important step toward processing pending claims by sending a letter to French paying agents which describes procedures that various entities must follow to receive treaty benefits.* Under these procedures, a RIC seeking to reclaim "avoir fiscal" will be required to provide "a certificate from the Internal Revenue Service, or any other probative document" which establishes that: (1) the entity is, in fact, a RIC; (2) it owns less than 10 percent of the French company paying the dividend; and (3) at least 80 percent of its shares are owned by U.S. citizens or residents. To date, the Institute has been unable to ascertain what documents France will accept as "probative" on these three conditions. Prompt clarification of the required documentation is needed because it appears that France will only process claims for which all documentation has been received by December 31, 1994. Survey To assist the Institute in its effort to ensure administrable procedures for proving treaty eligibility, we are asking each fund complex with representation on the Tax on Accounting/Treasurers Committee to complete the attached short survey regarding RIC investments in French equities. If at all possible, please fax the results to me at (202) 326-5841 or (202) 326-5839 no later than Thursday, March 31. If you have any questions or comments regarding the survey, please call me at (202) 326-5832. Your help is greatly appreciated. We will keep you informed of developments. Keith D. Lawson Associate

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.