

**MEMO# 15105**

September 5, 2002

# **INSTITUTE COMMENTS ON ENFORCEMENT PROPOSALS FOR ABUSIVE TAX AVOIDANCE TRANSACTIONS**

[15105] September 5, 2002 TO: TAX COMMITTEE No. 27-02 RE: INSTITUTE COMMENTS ON ENFORCEMENT PROPOSALS FOR ABUSIVE TAX AVOIDANCE TRANSACTIONS The Treasury Department has announced an initiative to broaden and align the rules and regulations for disclosure, registration and list keeping of abusive tax avoidance transactions under sections 6011, 6111 and 6112. The expanded definition of a “reportable transaction,” as proposed under these initiatives, may place undue disclosure burdens on regulated investment companies (“RICs”) engaged in routine portfolio transactions on behalf of their shareholders. Of particular concern, the Treasury Department’s proposals would require disclosure of:

1. Loss transactions – Defined as any transaction resulting in, or that is expected to result in, certain specified losses under Code section 165. For corporate taxpayers, including RICs, the loss threshold would be \$10 million in any single year or \$20 million in any combination of years.
2. Transactions with brief asset holding periods – Defined as any transaction resulting in a tax credit (including a foreign tax credit) in excess of \$250,000 if the underlying asset giving rise to the credit was held by the taxpayer for less than 45 days.
3. Transactions with significant book-tax differences – Defined as a transaction giving rise to a book-tax difference of at least \$10 million, subject to specific exceptions for book-tax differences that are not indicative of potentially abusive tax avoidance practices.

2 Under the Treasury Department’s proposals, taxpayers also would be required to disclose any “listed transactions” or transactions marketed under conditions of confidentiality and that provide minimum tax benefits (“Confidential Transactions”). A listed transaction means any transaction specifically identified by the IRS in published guidance as a tax avoidance transaction without regard to the size of the tax savings.<sup>1</sup> In the attached letter, the Institute requested that the Treasury Department adopt specific rules exempting RICs from disclosure obligations for loss transactions, transactions with brief asset holding periods and transactions with significant book-tax differences.<sup>2</sup> As explained in the attached letter, such disclosure exemptions would be appropriate because RICs are not tax avoidance vehicles. Importantly, RICs are subject to extensive SEC regulation and the income and excise tax regimes to which RICs are subject effectively preclude tax avoidance (or deferral) by investors. The Institute also requested that the Treasury Department provide comparable disclosure exemptions for domestic master-fund partnerships with RIC partners. Deanna J. Flores Associate Counsel Attachment Attachment (in .pdf format)

1 On June 14, 2002, the Treasury Department issued temporary and proposed regulations under sections 6011 and 6111 (T.D. 9000) defining “reportable

transactions” to include listed transactions, regardless of their projected tax effect. The regulations also extend the disclosure obligation for listed transactions to individuals, trusts, partnerships and S corporations. 2 Mindful of the policy underlying the Treasury Department’s proposals, the letter does not recommend carve-outs for RICs from the listed transactions or Confidential Transactions categories.

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