

MEMO# 14392

January 24, 2002

IRS ISSUES TEMPORARY AND PROPOSED REGULATIONS PROVIDING EXPEDITED PROCESS TO OBTAIN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS FOR FOREIGN PAYEES

[14392] January 24, 2002 TO: PENSION MEMBERS No. 3-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 5-02 TAX MEMBERS No. 4-02 RE: IRS ISSUES TEMPORARY AND PROPOSED REGULATIONS PROVIDING EXPEDITED PROCESS TO OBTAIN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS FOR FOREIGN PAYEES The Internal Revenue Service ("IRS") has issued the attached temporary and proposed regulations under sections 1441 and 6109 of the Internal Revenue Code¹ which provide an expedited process for withholding agents to obtain individual taxpayer identification numbers ("ITINs") for foreign payees receiving "unexpected payments" that are eligible for reduced rates of US withholding tax under an income tax treaty. The new regulations would not apply to dividends paid by US mutual funds.² They could, however, be relevant for distributions from qualified plans, annuities or individual retirement accounts to foreign individuals.³ Background US withholding tax generally applies at a rate of 30 percent to payments of US source income to a foreign individual, unless reduced by an income tax treaty between the United States and the home country of the foreign individual. To claim a reduced rate of US withholding tax under a treaty, a foreign individual generally must provide a withholding agent with an IRS Form W-8BEN ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") that includes an ITIN in advance of the payment. A foreign individual without an ITIN is unlikely to be able to apply for and receive an ITIN in time to complete a Form W-8BEN for an unexpected payment.⁴ Where the new rules apply, they would 1 Treas. Reg. 1.1441-1T, 1.1441-6T and 301.6109-1T. 2 Foreign individuals are not required to provide an ITIN to claim reduced rates of US withholding tax on mutual fund dividends under an income tax treaty. See Treas. Reg. 1.1441-6(c)(2). 3 For example, it arguably could be necessary to obtain an ITIN on an expedited basis for payment of a death benefit to a foreign individual. 4 In this case, the foreign payee would be required to file a US tax return to obtain a refund of any overwithheld amounts. This presumes that the refund (or payment offset) procedures available to a withholding agent under Treas. Reg. 1.1461-2 do not apply. 2 lessen the administrative burden on foreign individuals that receive unexpected payments by permitting withholding agents (1) to obtain an ITIN for the individual on an expedited basis or, in certain limited cases, (2) to rely on a Form W-8BEN without an ITIN to apply a reduced withholding tax rate available to the individual under an income tax treaty.⁵ Expedited ITIN Procedure Under the temporary regulations, a

withholding agent may enter into an agreement with the IRS under which the agent (called an “acceptance agent”)⁶ is permitted to request an ITIN on an expedited basis for a foreign individual because of the circumstances of a payment or the unexpected nature of a payment required to be made by the agent. The IRS intends for the expedited procedure to be used only when an application for an ITIN using the standard IRS process would not generate an ITIN prior to an unexpected payment.⁷ At this time, the IRS expects to issue ITINs using the expedited procedure from 6:00 am until 11:30 pm (EST), except weekends and holidays.⁸

Limited Exception from ITIN Requirement for Unexpected Payments

Pursuant to a limited exception, a withholding agent that also qualifies as an acceptance agent may rely on a Form W-8BEN without an ITIN to apply a reduced US withholding tax rate to an unexpected payment made to a foreign individual. This exception is available only if (1) the withholding agent is required to make an unexpected payment to a foreign individual; (2) the IRS is not issuing ITINs at the time of the unexpected payment to the individual or at any time prior to the unexpected payment when the withholding agent had knowledge of the unexpected payment;⁹ (3) the unexpected payment cannot reasonably be delayed until the withholding agent is able to obtain an ITIN by using the expedited ITIN procedure; and (4) the IRS receives the foreign individual’s application for an ITIN on the first business day following the payment. This exception applies to payments made after December 31, 2001.

⁵ The temporary and proposed regulations also apply to IRS Form 8233 (“Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual”).

⁶ The IRS anticipates that withholding agents who qualify as “acceptance” agents under current law and expect to make covered payments will be allowed to enter into such agreements. See Treas. Reg. 301.6109-1(d)(3)(iv).

⁷ According to IRS Publication 1915 (“Understanding Your IRS ITIN”), it takes about six to eight weeks to obtain an ITIN in the mail after submitting IRS Form W-7 (“Application for IRS Individual Taxpayer Identification Number”).

⁸ The IRS intends to increase the availability of this expedited procedure in the future.

⁹ For this purpose, a withholding agent will not lack the requisite knowledge of a forthcoming payment solely because the amount of the payment is not fixed.

3 ACTION REQUESTED: The IRS has requested comments on the attached temporary and proposed regulations by April 17, 2002. Please contact Catherine Barré (cbarre@ici.org or 202/326-5821) or Deanna Flores (dflores@ici.org or 202/371-5436) with your comments on the attached regulations.

Catherine Barré Assistant Counsel Deanna J. Flores Associate Counsel

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