

**MEMO# 11056**

June 17, 1999

## **AUSTRALIA SECURITIES & INVESTMENTS COMMISSION SEEKS COMMENT ON POLICIES TO FACILITATE US MUTUAL FUND SALES IN AUSTRALIA**

1 See, e.g., Institute Memorandum to International Members No. 16-98 and Tax Members No. 22-98, dated July 15, 1998. [11056] June 17, 1999 TO: TAX COMMITTEE No. 13-99 RE: AUSTRALIA SECURITIES & INVESTMENTS COMMISSION SEEKS COMMENT ON POLICIES TO FACILITATE US MUTUAL FUND SALES IN AUSTRALIA

The Australian Parliament currently is considering proposed amendments to its foreign investment fund or "FIF" rules that would remove a significant tax disincentive to Australian investment in US funds that are treated for US tax purposes as regulated investment companies ("RICs"). Under existing FIF rules, Australian investors generally are taxed each year on an offshore fund's realized income, as well as the unrealized gains in the securities held by the fund, thereby accelerating the recognition of income to the investor. As sought by the Institute, the proposed amendments would exempt interests in RICs from the FIF rules.<sup>1</sup> The proposed amendments also would exempt from the FIF rules interests in other US entities, including corporations, real estate investment trusts, and certain entities taxed as partnerships. In light of anticipated changes to the FIF rules, the Australian Securities & Investments Commission ("ASIC") recently confirmed that it will grant relief to US funds from certain procedural and disclosure aspects of the Australian securities laws, in accordance with ASIC Policy Statement 65: Foreign Collective Investment Schemes ("PS 65"). ASIC requested comments on this general approach to US funds by June 15, 1999. In ASIC Policy Statement 136 Managed Investments: Discretionary Powers and Closely Related Schemes ("PS 136"), ASIC also stated that it will conduct a general review of PS 65. As part of this general review, ASIC requested specific comments on PS 65 by September 3, 1999. Copies of the relevant ASIC press releases, PS 65 and PS 136 are attached. On June 15, 1999, the Institute submitted the attached comment letter to ASIC supporting ASIC's clarification that it intends to grant relief to US fund applicants in accordance with PS 65 and ASIC's decision to conduct a general review of PS 65. The letter also notes that the Institute expects to submit an additional comment letter by September 3, 1999, addressing several specific conditions for relief under PS 65 that should be revised or clarified to ensure that they will have no unintended tax or securities law effects on a fund or its adviser relating to the offer and sale of US fund shares in Australia. ACTION REQUESTED: After reviewing the attached materials, please let me know if there are tax-related comments that you would like the Institute to make with respect to PS 65 no later than Friday, July 23, 1999. I can be reached by phone at (202)371-5436, by fax at

(202)326-5841, and by e-mail at [dflores@ici.org](mailto:dflores@ici.org). Deanna Flores Assistant Counsel  
Attachments

---

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.