

**MEMO# 7020**

June 12, 1995

## **IRS ISSUES PROPOSED REGULATIONS PROVIDING NEW TIN FOR FOREIGNER'S TAX RETURNS**

\* See Institute Memorandum to Tax Committee No. 40-94, Operations Committee No. 38-94 and Transfer Agent Advisory Committee No. 52-94, dated December 29, 1994. June 12, 1995 TO: TAX MEMBERS No. 30-95 OPERATIONS COMMITTEE No. 21-95 TRANSFER AGENT ADVISORY COMMITTEE No. 34-95 RE: IRS ISSUES PROPOSED REGULATIONS PROVIDING NEW TIN FOR FOREIGNER'S TAX RETURNS

As you probably know, the Internal Revenue Service ("IRS") for some time has been studying tax compliance issues relating to nonresident aliens ("NRAs") with a view to improving tax reporting and revising the regulations governing tax withholding on dividend and interest payments to NRA investors. The IRS has been considering requiring all NRA investors to obtain U.S. taxpayer identification numbers ("TIN") and to supply them to payers on Forms W-8 to avoid backup withholding on dividend payments. The Institute wrote to the IRS opposing the TIN proposal and urging extreme caution in revising the rules in this area.\* The IRS has issued the attached proposed regulations that provide procedures for certain alien individuals to obtain TINs and requiring use of those numbers on certain tax returns. The proposed regulations require foreign persons without social security numbers or employer identification numbers to use the new IRS numbers on all income tax returns, such as forms 1040NR, filed after December 31, 1995. The Institute is pleased to report that the proposed regulations do not apply to information reporting documents such as Forms W-8 and Forms 1042. The preamble to the regulations states that the Treasury Department and the IRS are still considering changes to the procedures for withholding tax on payments to foreign persons, including replacing the address rule for dividends. The preamble states that Treasury and the IRS "intend to move very cautiously" in changing the withholding rules and will provide adequate opportunity for public comment and appropriate transition periods before any changes take effect. The Social Security Administration currently provides social security numbers only to U.S. citizens and aliens admitted to the U.S. for permanent residence or other immigration status that permits U.S. employment. The proposed regulations introduce an IRS-issued TIN for aliens who are not eligible for social security numbers, called an "individual taxpayer identification number ("ITIN"). The ITIN will be applied for on new Form W-7, Application for IRS Individual Taxpayer Identification Number, which generally will be submitted directly to the IRS together with documentation designed to substantiate foreign status and the applicant's identity. The IRS plans to separately issue rules describing acceptable documentation, based on identifying documents customarily used in foreign jurisdictions. According to the

IRS, acceptable documents will vary from country to country, with acceptable - 2 - documents likely to include original or certified copies of passports, driver's licenses, birth certificates, identity cards or U.S. visas. To facilitate processing the applications, the proposed regulations authorize the IRS to enter into agreements with "acceptance agents" who will be authorized to act on behalf of foreign persons applying for ITINs. The agreements will spell out the duties of the acceptance agent and the assistance the agent can provide to applicants, such as providing necessary forms, assisting with completing and submitting forms and possibly reviewing the applicant's documentation concerning identity and residence and submitting to the IRS a certification that the agent has reviewed documentation (rather than submitting the documents themselves). Financial institutions, educational organizations and federal agencies are identified as possible acceptance agents. Comments on the proposed regulations are due September 7, 1995 and a public hearing is scheduled for September 28, 1995. Please contact the undersigned by July 7, 1995 with any suggestions concerning comments the Institute should submit concerning the proposed regulations. We will keep you informed of developments. Peter J. Cinquegrani  
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