

MEMO# 14563

March 21, 2002

DRAFT INSTITUTE COMMENTS FOR YOUR REVIEW ON THE INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN) REGULATIONS

[14563] March 21, 2002 TO: PENSION COMMITTEE No. 9-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 18-02 TAX COMMITTEE No. 9-02 RE: DRAFT INSTITUTE COMMENTS FOR YOUR REVIEW ON THE INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN) REGULATIONS As we previously informed you, the Internal Revenue Service (IRS) has issued temporary and proposed regulations under sections 1441 and 6109 of the Internal Revenue Code providing 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 U.S. withholding tax under an income tax treaty.¹ The regulations could apply to unexpected distributions (i.e., death benefits) to foreign individuals from qualified plans, annuities or individual retirement accounts that hold investments in U.S. mutual funds.² While the regulations generally lessen the administrative burden for foreign individuals receiving unexpected payments from U.S. sources, the Institute recommends two further simplifications of the ITIN rules in the attached draft comment letter. First, we recommend that the proposed regulations exempt foreign individuals from the ITIN requirement when claiming treaty rates for death benefits distributed from U.S. retirement plans. If adopted, the proposal would permit foreign individuals to claim treaty rates for these distributions by submitting Form W-8BEN without an ITIN. Second, we recommend that where a foreign individual does provide an ITIN on Form W-8BEN when claiming a treaty rate and elects to receive a death benefit in the form of an annuity or other “non-lump sum” payment, the Form W-8BEN be permitted to remain valid indefinitely, regardless of whether a distribution is made and reported to the foreign individual on Form 1042-S for each consecutive year.³ For purposes of both proposals, a U.S. retirement plan would be defined as (1) a trust described in section 1 See Institute Memorandum to Pension Committee No. 3-02, Pension Operations Advisory Committee No. 6-02 and Tax Committee No. 2-02, dated January 24, 2002. 2 Foreign investors claiming treaty rates for dividend distributions from U.S. mutual funds are exempted from the requirement to provide an ITIN on Form W-8BEN under Treas. Reg. 1.1441-6(c)(2). 3 Under Treas. Reg. 1.1441-1(e)(4)(ii)(B), a Form W-8BEN with an ITIN may remain valid indefinitely only if the withholding agent reports at least one payment annually to the beneficial owner on Form 1042-S or the ITIN otherwise is provided by the withholding agent to the IRS. 2 401(a), (2) an annuity plan described in section 403(a), (3) an annuity, custodial account, or retirement income account described in section 403(b), or (4) an individual retirement account or individual retirement annuity described in section 408.4 ACTION REQUESTED

Please provide your comments to the undersigned (dflores@ici.org/(202) 371-5436) by Wednesday, April 10, 2002 so that we may submit our letter to the IRS by the due date. In particular, please consider whether the letter (1) appropriately defines a “U.S. retirement plan” for purposes of the two proposals and whether we also should define a covered “death benefit” and (2) accurately describes the current withholding tax treatment of the covered distributions and the potential application of the temporary and proposed regulations to them. Deanna J. Flores Associate Counsel Attachment (in .pdf format) 4 This language currently is used to define distributions that may be presumed to be paid to a U.S. person for withholding tax purposes in the absence of documentation under Treas. Reg. 1.1441-1(b)(3)(iii)(C).

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