

MEMO# 14396

January 24, 2002

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

[14396] January 24, 2002 TO: PENSION COMMITTEE No. 3-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 6-02 TAX COMMITTEE No. 2-02 RE: IRS REQUESTS COMMENTS ON TEMPORARY AND PROPOSED REGULATIONS PROVIDING EXPEDITED PROCESS TO OBTAIN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS FOR FOREIGN PAYEES As we previously informed you,¹ the Internal Revenue Service ("IRS") has issued the attached temporary and proposed regulations under sections 1441 and 6109 of the Internal Revenue Code² 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. Where the new regulations apply, they would 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.³ The attached regulations would not apply to dividends paid by US mutual funds.⁴ They could, however, be relevant for distributions from qualified plans, annuities or individual retirements accounts ("IRAs") to foreign individuals.⁵ The IRS has requested comments on the attached regulations by April 17, 2002. While the attached regulations are helpful, the Institute is considering whether to submit comments to the IRS suggesting additional changes that would further reduce the administrative burden on foreign individuals and withholding agents in limited circumstances. For example, the Institute

1 See Institute Memorandum to Pension Members No. 3-02, Pension Operations Advisory Committee No. 5-02 and Tax Members No. 4-02, dated January 24, 2002. 2 Treas. Reg. 1.1441-1T, 1.1441-6T and 301.6109-1T. 3 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"). 4 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). 5 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.

2 could consider recommending that (1) the ITIN requirement for a Form W-8BEN be eliminated for a foreign individual receiving a death benefit from a qualified plan, annuity or IRA and/or (2) a Form W-8BEN with an ITIN be permitted to remain valid indefinitely for a distribution from a qualified plan, annuity or IRA to a foreign individual, without regard to whether a distribution has been reported to that individual on Form 1042-S for each consecutive year.⁶ If you have suggestions regarding these or other potential comments on the attached regulations, please contact Catherine Barré (cbarre@ici.org or 202/326-5821) or Deanna Flores (dflores@ici.org or 202/371-5436). Catherine Barré Assistant Counsel
Deanna J. Flores Associate Counsel Attachment (in .pdf format) 6 See Treas. Reg. 1.1441-1(e)(4)(ii)(B).

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