

MEMO# 12604

September 13, 2000

GERMAN TAX RECLAIMS

[12604] September 13, 2000 TO: INTERNATIONAL COMMITTEE No. 30-00 TAX MEMBERS No. 26-00 RE: GERMAN TAX RECLAIMS As described in the attached letter, the German Federal Finance Office ("FFO") has announced a new tax reclaim procedure for U.S. mutual funds treated as regulated investment companies ("RICs") under the U.S.-Germany Income Tax Treaty that entered into force on August 21, 1991 (the "Treaty").¹ Under this procedure, RICs will be eligible to file tax reclaims under the Treaty solely on behalf of their U.S. shareholders.² As a result, a RIC will be required to certify on the attached questionnaire, "to the best of its knowledge and belief," the percentage of U.S. shareholders as of the end of the RIC's last fiscal year. The FFO will then use the percentage of U.S. shareholders provided by the RIC to determine the refundable tax reclaim amount. For example, if a RIC certified that it had 98 percent U.S. shareholders, the RIC would receive a refund of 98 percent of outstanding tax reclaims from Germany. The FFO will round any partial percentage to the next whole percentage, with the result that any RIC that has over 99 percent U.S. shareholders (e.g., 99.1 percent) would be entitled to a 100 percent refund of pending German tax reclaims. The FFO reserves the right to audit information provided by a RIC on a random basis. The Institute strongly disagrees with the position of the FFO that RICs are not entitled to claim benefits under the Treaty at the entity level. Further, the Institute has retained German counsel to address this issue with the German tax authorities on behalf of the U.S. mutual fund industry. 1 For this purpose, a tax reclaim represents a receivable owed to the RIC by the German tax authorities in an amount equal to the difference between the German withholding tax rate on dividends (i.e., 25 percent) and the lower withholding rate to which the RIC is entitled under the Treaty (i.e., 15 percent). 2 The new tax reclaim procedure will not apply in the "exceptional case" where a RIC is subject to (i.e., pays) tax at the entity level. 2We will keep you informed of developments. Deanna J. Flores Assistant Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachment for memo 12604. ICI Members may retrieve this memo and its attachment from ICINet (<http://members.ici.org>). Attachment (in .pdf format)