

MEMO# 33824

October 14, 2021

ICI Follow-Up Letter to Treasury on EU Reclaims Carryforward Guidance

[33824]

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TO: ICI Members

Accounting/Treasurers Committee

Tax Advisory Committee

Tax Committee SUBJECTS: Tax RE: ICI Follow-Up Letter to Treasury on EU Reclaims Carryforward Guidance

ICI submitted the attached letter to the Treasury Department regarding reclaim amounts received by US regulated investment companies (RICs) from European Union countries under Article 63 of the Treaty of the Functioning of the European Union.[\[1\]](#) Specifically, the letter addresses the following questions raised by Treasury staff during a recent meeting to discuss the issue:

1. Would RICs expect to see a change in the number of taxable versus non-taxable shareholder accounts if carryforward is permitted?
2. Do the Treasury Department and the Internal Revenue Service (IRS) have the authority to permit carryforward of reclaim amounts that cannot be fully netted against foreign tax credits in the year received under Notice 2016-10?

First, a Treasury official expressed concern that the presence of EU reclaim carryforwards, which would reduce the amount of foreign tax credits available to a RIC's shareholders in future years, could cause taxable shareholders to leave the RIC. Our members do not believe that this will occur. In examining the shareholder base of their RICs over many years, members tell us that they have seen very little, if any, change in the ratio of taxable to non-taxable investors. This is true even when a RIC has significant tax attributes, negative or positive, such as capital loss carryforwards. Therefore, they do not expect the carryforward of tax reclaim amounts to impact the investor base of their RICs.

Second, a Treasury official asked whether the government has authority under the Internal Revenue Code to permit RICs to carry forward to future years any reclaim amounts that cannot be netted currently against foreign tax credits under Notice 2016-10. Section 7805(a) provides the Secretary of the Treasury with authority to "prescribe all needful rules and regulations for the enforcement" of the tax laws. This authority is especially warranted in situations such as this in which the Code does not contemplate application of the law to a

particular set of taxpayers or circumstances. We thus believe that that the Treasury Department and the IRS have the authority under section 7805(a) to permit RICs to carry forward reclaim amounts to future years.

Alternatively, we urge the IRS to issue a revenue procedure permitting RICs to carry forward reclaim amounts. Such guidance would be consistent with the purpose of revenue procedures, which generally provide instructions that enable taxpayers to achieve a particular result. A revenue procedure would enable the industry to achieve the desired result of ensuring that the federal government is made whole for taxes that are due while avoiding the administrative burdens of an extensive closing agreement process.

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endnotes

[1] See Institute Memorandum No. 33187, dated March 12, 2021, which can be found at: <https://www.ici.org/memo33187>.

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