

MEMO# 35254

April 20, 2023

ICI Submission Requesting IRS Assistance to CITs Seeking to Receive Tax Treaty Benefits

[35254]

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TO: ICI Members

Investment Company Directors

ICI Global Members

Tax Committee SUBJECTS: Pension

Tax RE: ICI Submission Requesting IRS Assistance to CITs Seeking to Receive Tax Treaty Benefits

The ICI has been engaged with US Treasury and Internal Revenue Service (IRS) officials regarding significant difficulties experienced by collective investment trusts (CITs)[\[1\]](#) in receiving treaty benefits. The attached letter, memorandum, and addendums follow up on a recent meeting between the ICI, its members, and Treasury/IRS officials.

The CITs at issue meet the requirements of IRS Revenue Ruling 81-100[\[2\]](#) and are known as "81-100 group trusts." These trusts, which permit tax-exempt retirement plans to combine their assets and therefore invest more efficiently, are exempt from US taxation. US Treasury/IRS policy is to treat a CIT as a US pension fund eligible for reduced withholding taxes provided by US income tax treaties. This treaty rate reduction may be to zero (no withholding, in those treaties that exempt pension funds) or to 15 percent (in those treaties that do not include a pension fund exemption).

The CITs' ability to receive treaty benefits has become more difficult in recent years. Billions of dollars are at issue in just the five jurisdictions—Denmark, France, Germany, Japan, and Switzerland—for which separate addendums have been submitted. Issues raised by treaty partner jurisdictions include: (1) CIT treaty eligibility in general; (2) the level at which relief should be requested in tiered-structure arrangements; and (3) the impact of Puerto Rican (PR) plans investing in the CIT (which have been eligible investors under the IRS guidance since 2014).

The ICI's request, made during the meeting and in the follow-up submission, is for the IRS to reach competent authority arrangements (CAAs) with jurisdictions of concern regarding this industry-wide issue. The CAAs would clarify that CITs meet all relevant requirements for

treaty relief and that PR plans are eligible investors under US treaties.

More specifically, the ICI proposes that CITs claim treaty relief by providing an IRS Form 6166 (US Certificate of Tax Residency (CoR)) at the umbrella (upper tier) level. Filing for relief at this level would reduce greatly the burden on the vehicles, the IRS, and the source country tax authority by reducing to one the number of CoRs that otherwise must be provided for the CIT. Alternatively, although significant extra burden would be imposed on all parties, tax relief could be provided by requiring CoRs at the security holder (lower tier) level. We strongly urge that CoRs not be required for each retirement plan participant as each such vehicle typically will have tens, hundreds, or thousands of retirement plan participants.

Keith Lawson
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Notes

[\[1\]](#) CITs are investment pools, organized and maintained by banks, that are established by a plan/trust instrument. Only certain retirement plans may invest in CITs.

[\[2\]](#) Revenue Ruling 81-100, 1981-1 C.B. 326, as modified by Rev. Rul. 2011-1, 2011-2 I.R.B. 251 (as modified by Notice 2012-6, 2012-3 I.R.B. 293).

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