



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

Number: **INFO 2001-0254**
Release Date: 12/31/2001
871.02; 1441.02
CC:INTL:GENIN-148095-01
Br2: [REDACTED]

September 18, 2001

[REDACTED]

Dear [REDACTED]:

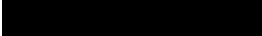
This is in response to your correspondence dated September 4, 2001. Specifically, you request information regarding the U.S. tax treatment of short-term capital gain distributions made by a U.S. regulated investment company (RIC) to its foreign shareholders. The following is a brief analysis of the applicable Internal Revenue Code provisions.

A foreign person is subject to a 30% tax, collected by way of withholding, on U.S. source fixed and determinable annual and periodical (FDAP) income. A dividend distribution from a U.S. corporation is U.S. source FDAP income. However, capital gains generally are not considered FDAP income.

A distribution of earnings and profits from a RIC is either characterized as an ordinary dividend, which is subject to the 30% tax and withholding, or as a capital gain dividend, which is not subject to the 30% tax. A capital gain dividend is treated by the shareholders of a RIC as gain from the sale or exchange of a capital asset held for more than 1 year. A capital gain dividend is defined as any dividend which is designated as a capital gain dividend by the RIC in a written notice to its shareholders. Such designation is only proper, however, for portions of a distribution that represent the RIC's net capital gain. The Code defines "net capital gain" as the excess of net long-term capital gain for the taxable year over the net short-term capital loss for the year. Thus, net short-term capital gain is not included in net capital gain.

Because the Code does not provide special treatment for RIC distributions of net short-term capital gain, the distributions are treated as ordinary dividends. Accordingly, a RIC distribution of net short term capital gain to nonresident alien shareholders constitutes FDAP income and the RIC has a duty to withhold the applicable tax.

This letter is informational and not a ruling or determination. It has no binding effect on the Internal Revenue Service. Section 2.04, Rev. Proc. 2001-1, 2001-1 I.R.B. 9. If you desire


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guidance from the Internal Revenue Service in the form of a letter ruling, you will need to comply with the requirements set forth in Rev. Proc. 2001-1, including payment of the appropriate user fee as specified in Appendix A to Rev. Proc 2001-1.

We hope this information is helpful. If you have any further questions concerning this matter, please contact Laurie Hatten-Boyd of my office at (202) 622-3164 (not a toll-free call).

Sincerely,

Valerie Mark
Senior Technical Reviewer,
Office of Associate Chief Counsel (International)