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By email to consultation-2014-09@iosco.org

Ms. Rohini Tendulkar

International Organization of Securities Commissions (IOSCO)

C/Oquendo 12

28006 Madrid

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23 February 2015

Dear Ms. Tendulkar,

ICI Global¹ welcomes the opportunity to provide comments on the *IOSCO Task Force on Cross-Border Regulation Consultation Report* (“the Report”).² ICI Global members operate regulated funds for the benefit of millions of investors and invest fund assets in many different markets. As such, ICI Global members are familiar with the important issues in the Report.

The Report provides a good overview of the mechanisms used to access markets and also contributes to the dialogue on the need for regulators to better accommodate cross-border activities. In the Report, the Task Force generally describes cross-border regulatory tools (“Cross-Border Tools”) as regulatory approaches that are used by a jurisdiction to regulate, oversee or address activities by a foreign entity that are affecting, or are being carried out in, the jurisdiction. The Report details Cross-Border Tools, such as national treatment, passporting and recognition, as well as the experiences of regulators and stakeholders with the tools. Lastly, the Task Force offers suggestions for the role of IOSCO in cross-border regulatory issues.

We have the following comments:

- Despite challenges with the Cross-Border Tools, we believe IOSCO’s work does facilitate the use of the Cross-Border Tools by encouraging coordination and regulatory convergence, where appropriate. In the context of regulated funds, IOSCO’s work on fund issues has educated regulators of regulatory approaches on a worldwide basis. This work is highly valuable to facilitating the use of the Cross-Border Tools. IOSCO’s work helps regulators better understand other regulatory approaches and therefore the

¹ The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US\$19.1 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.

² IOSCO Task Force on Cross-Border Regulation, Consultation Report, CR09/2014, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf>.

potential impacts and workability of the Cross-Border Tools. IOSCO's work helps regulators to be in a better position to identify and avoid, where possible, adverse cross-border impacts and conflicts. We strongly support IOSCO's continued work on global regulatory approaches.

- We recommend that IOSCO more proactively engage with securities regulators and other policymakers in a more forward looking manner. In this way, IOSCO can inform regulatory initiatives and encourage convergence, where appropriate, and innovation. This type of work also will help to mitigate potential cross-border conflicts when national regulators are considering new rules. For example, national and international regulators are working to enhance the data that is collected and reported by regulated funds and others. It would be highly valuable for IOSCO to lead in developing common reporting schemes that serve the needs of regulators in an efficient and cost-effective manner. The specter of each jurisdiction, along with international bodies, seeking different data elements is not productive and simply leads to excessive costs and complexity, along with the substantial risk of non-comparable data from a global perspective.
- Lastly, we urge securities regulators to engage with relevant tax authorities to understand how tax issues can adversely impact the usefulness of Cross-Border Tools. For example, a tax issue can prevent a foreign fund from effectively competing with a local fund regardless of whether there is access via recognition, a passport or national treatment. ICI Global members consistently identify tax as a key issue in the operation, management and distribution of a fund cross-border, irrespective of whether a Cross-Border Tool is available.

IOSCO's Role in Strengthening the Implementation of Cross-Border Tools

We believe an important element to enhancing the implementation of the Cross-Border Tools is helping regulators gain more insight and knowledge of regulatory approaches globally. For example, to improve the use of recognition or the design of passports, it is helpful for regulators to know and understand regulatory approaches outside their own jurisdiction. To better understand the impact of national treatment on a cross-border entity, regulators can benefit from improving their understanding of the regulation to which the entity is already subject (*e.g.*, licensing, reporting, capital) and therefore how additional rules may burden the entity or pose substantial challenges.

This "international learning" also helps regulators gain an appreciation for how their proposals may unintentionally conflict or impose duplicative or unnecessary requirements on cross-border entities, *i.e.*, spot a conflict before creating one. For example, rules on delegation are important to managers operating on a cross-border basis as it allows them to efficiently access expertise globally for the benefit of investors.³ The rules for the delegation of portfolio management are very important to

³ See ICI Global Letter, APEC Consultation Paper: Arrangements for an Asia Region Funds Passport, July 10, 2014, pages 10-11, available at <http://www.iciglobal.org/pdf/28259.pdf> ("ARFP Letter") (describing the importance of delegation for a passport fund and describing other approaches). The ASEAN passport framework would restrict the delegation of fund management to only certain qualifying delegates and up to an aggregate of 20% net asset value of the fund. ASEAN CIS Framework, Standards of Qualifying CIS, Paragraph 1.16.

the workability of the Cross-Border Tools for regulated funds. By helping regulators understand cross-border activities and the rules of other jurisdictions, regulators are better positioned to appreciate impacts and find more workable solutions, *e.g.*, providing a more limited application of local rules on a foreign entity.⁴

IOSCO is well positioned to fulfill this facilitating role. For example, IOSCO's papers on funds provide important insight for regulators on core fund topics such as valuation, suspensions and custody, regardless of fund structure.⁵ No other public repository of global fund regulatory practices exists. As IOSCO members work on a paper, they learn details of other jurisdictions' approaches and why jurisdictions adopted or rejected one approach or why another approach could be more workable.

Increasingly, this "international learning" is now commonly used to inform national regulatory dialogues.⁶ In fact, it is generally expected that the approaches and experiences of other countries will be considered when national regulators propose changes to their rules. While we agree more can be done, IOSCO has been a crucial contributor to this growth in knowledge. This process over time will foster convergence, where workable and appropriate.

Consequently, we strongly support the Task Force's suggestions for strengthening IOSCO's role in facilitating more global dialogues. We support the Task Force's specific suggestions that IOSCO enhance international dialogues, serve as an information hub, provide a forum for exchanges of information, and provide the platform for technical assistance. All of these functions serve the goal of increasing the education and expertise of securities regulators and therefore facilitate better implementation of the Cross Border Tools. We also are optimistic that these activities will help decrease the promulgation of duplicative or conflicting regulations in a cross-border context.

We also believe industry could be of significant assistance to IOSCO in this endeavor and urge IOSCO to continue to encourage public dialogue. We have sought to contribute to this dialogue by publishing papers on topics, such as securities lending, ETFs, fund investments in emerging markets, and money market funds. ICI Global and its members also have sponsored events such as our global retirement savings conferences in Europe and Asia and the 2012 international money market funds summit, which we co-hosted with other associations in Brussels. IOSCO should

⁴ See *Market Access for Regulated Fund Managers in the United States and the European Union* (October 2013), ICI, pages 5-7 (describes the ways in which US investment adviser regulations accommodate foreign managers), available at <http://www.ici.org/pdf/27643.pdf>.

⁵ At times, regulators and members of industry question IOSCO's work (*e.g.* money market fund recommendations), this reaction is, however, indicative of the influence of IOSCO in global regulatory dialogues and the importance of a public international forum for debate.

⁶ See *e.g.*, Hong Kong Securities and Futures Commission, *Risk Focused Industry Meeting Series: Asset Management: Looking Forward*, January 21, 2015, available at [http://www.sfc.hk/web/EN/files/ER/PDF/2015%20RIM%20Report%20\(FINAL\)_ER.pdf](http://www.sfc.hk/web/EN/files/ER/PDF/2015%20RIM%20Report%20(FINAL)_ER.pdf) (describing regulatory initiatives and approaches in other jurisdictions); US Securities and Exchange Commission, Concept Release: Use of Derivatives by Registered Investment Companies, Rel. IC-29776, August 31, 2011, available at <http://www.sec.gov/rules/concept/2011/ic-29776.pdf> (describing approaches in other jurisdictions); European Commission, Impact Assessment, Proposal for Regulation of the European Parliament and Council on Money Market Funds, September 2, 2013, available at http://ec.europa.eu/internal_market/investment/docs/money-market-funds/130904_mmf-impact-assessment_en.pdf (describing international approaches).

encourage industry to continue to actively contribute through these types of papers and events to promote a better understanding of funds and their investors on a global basis.

More specifically on cross-border issues, we have published a paper on regulated fund manager access in the United States and the European Union, describing generally how fund managers access these markets to reach retail and professional fund investors.⁷ We submitted an extensive comment letter on the Asia Region Funds Passport and the proposed regulatory framework of home, host and passport rules.⁸ We also published a research paper on globalization and the global growth of mutual funds.⁹

On national proposals related to OTC derivatives and cross-border dimensions, we have sought to quickly alert regulators when their proposed rules would pose conflicting or incompatible requirements for cross-border transactions. For example, we have submitted a letter to US regulators focused on their proposed approaches to the cross-border application of the margin requirements for uncleared derivatives and situations in which there could be duplicative and/or conflicting regulations.¹⁰

Looking ahead, we encourage IOSCO to engage proactively on emerging issues. We note that international coordination of regulatory standards is most effective when they are developed prior to jurisdictions adopting their final rules in a particular area. For example, we commend IOSCO's foresight in publishing a paper on liquidity risk principles for funds in 2013.¹¹ This is a valuable resource as policymakers take up the topic. We also are aware that IOSCO undertook significant work to encourage harmonization around hedge fund reporting.¹² Moreover, the work of the Basel Committee on Banking Supervision ("BCBS") and IOSCO in developing international margin standards for non-centrally cleared derivatives was critical as national regulators were developing their own rules. This effort to harmonize margin standards will greatly alleviate burdens on market participants and eliminate inefficiencies in the derivatives markets, which are global in nature.

Given interest in enhanced reporting for regulated funds and in other areas, such as securities lending, we encourage IOSCO to take a leading role to encourage a common global approach. We understand that there may be some local information needed by national regulators; however, better coordination would reduce complexity and costs while providing regulators (and markets, where it is public) with better and more comparable data. Given the focus on global financial stability, the need for comparable, accurate data is clear. In the context, of Cross-Border Tools, the ability to file substantially similar data in different countries would be a tangible benefit, reducing costs, complexity and helping supervisory cooperation and oversight.

⁷ Note 4.

⁸ ARFP Letter, note 3.

⁹ ICI Global Research Perspective, Vol.1, No. 1, Globalisation and the Global Growth of Long-Term Mutual Funds (March 2014) "ICI Global Research Paper", available at http://www.iciglobal.org/pdf/icig_per01-01.pdf.

¹⁰ ICI Global Letter to US CFTC and US Prudential Regulators, November 24, 2014, available at <http://www.iciglobal.org/pdf/28537.pdf>.

¹¹ IOSCO, Final Report, *Principles of Liquidity Risk Management for Collective Investment Schemes* (2013), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD405.pdf>.

¹² We acknowledge industry disappointment that hedge fund reporting in the United States and the European Union is not more consistent; however, we do feel IOSCO's work was constructive and the possibility that there could have been more divergence without the international dialogue.

Finally, although market participants may more easily comply with rules in different jurisdictions when there is regulatory convergence, there may nevertheless be some differences among the jurisdictions. Therefore, we encourage IOSCO to provide more specific guidance or a detailed framework regarding how requirements may apply to transactions conducted across borders as it develops international standards for a particular area. We fully recognize that providing this type of guidance or framework is a difficult task. IOSCO members as a group, however, would appear to be better equipped to address these issues rather than leaving the task for national regulators, which may develop individual approaches that may not work on a global basis.

Tax and Its Impact on Cross-Border Regulated Fund Activities¹³

Tax issues present crucial challenges for funds distributed cross-border, whether or not a Cross-Border Tool provides access.¹⁴ Three or more jurisdictions – the fund’s domicile, the investors’ tax residencies and the countries in which the fund invests – must be evaluated to ensure the benefits of investing in a particular fund are not eroded by tax issues. For example, it is critical that tax incentives do not effectively encourage local investors to prefer local or foreign funds over one another – so-called tax neutrality. The taxation of fund manager activities in countries where a fund is sold also can negatively affect the ability of a foreign manager to operate in a jurisdiction.

We therefore recommend that as regulators consider the Cross-Border Tools that they also work with appropriate authorities to solve any tax issues. With attention and resolution of tax issues, the Cross Border Tools can be more successfully implemented.

* * * * *

If you require any further information, please do not hesitate me (dan.waters@iciglobal.org or by phone, +44 203 009 3100), Susan Olson, Chief Counsel (susan.olson@iciglobal.org) or Giles Swan, Director, Global Funds Policy (giles.swan@iciglobal.org).

With best regards,

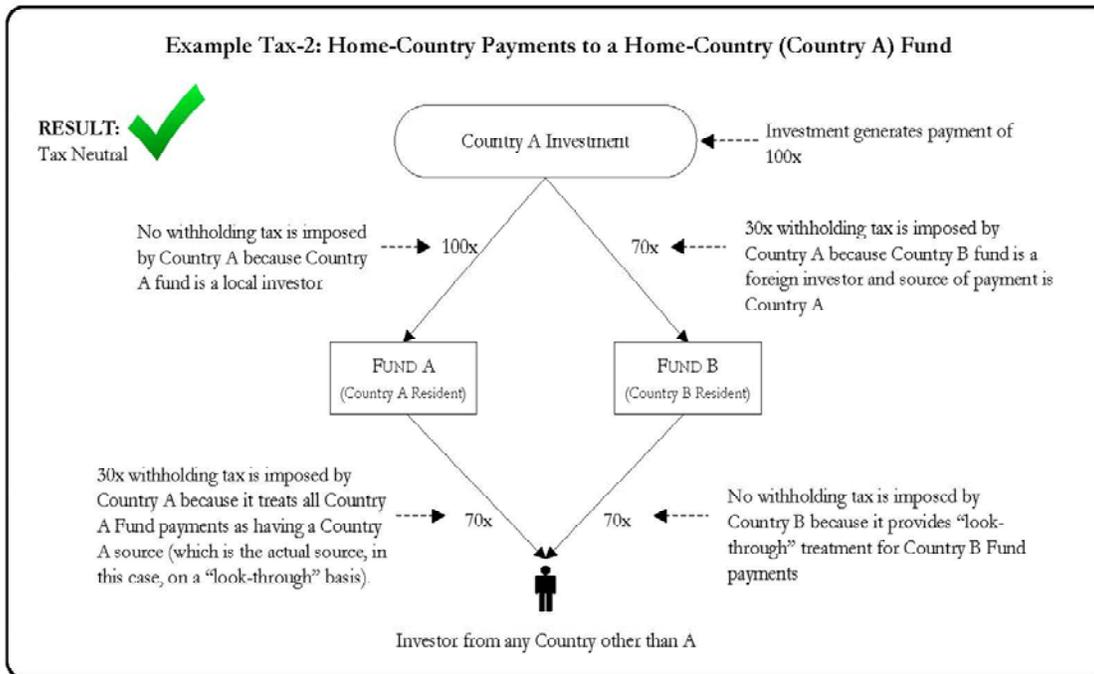
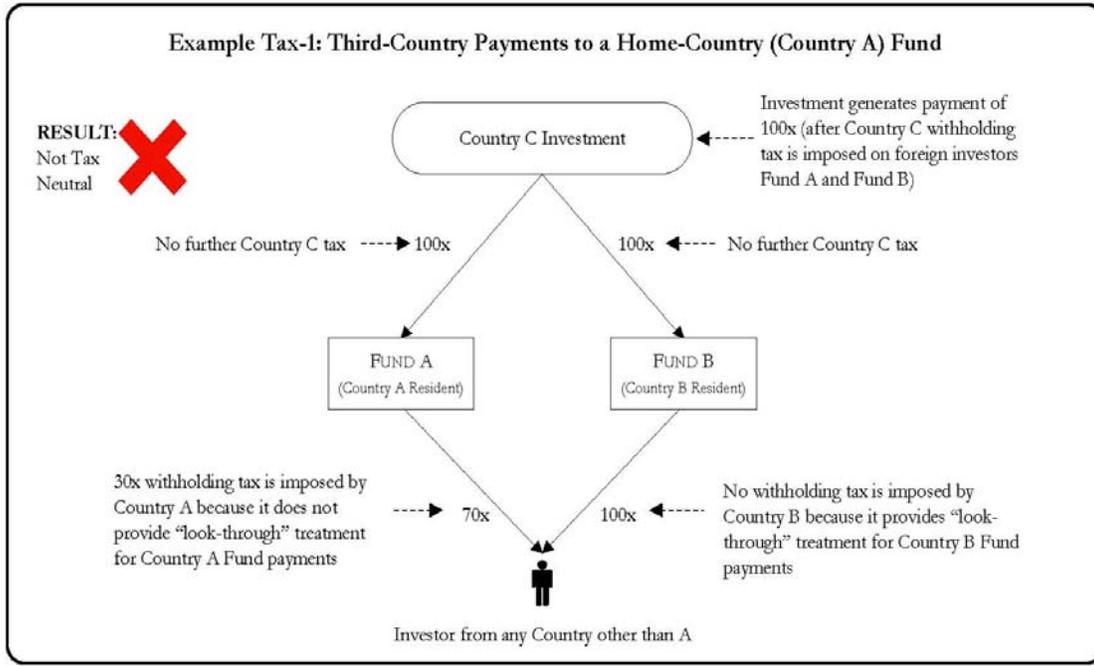
/s/Dan Waters
Managing Director – ICI Global

¹³ We have included an appendix with selected tax examples. Additional detail and descriptions of these examples as well as other cross border tax issues are included in our ARFP Letter, Note 3.

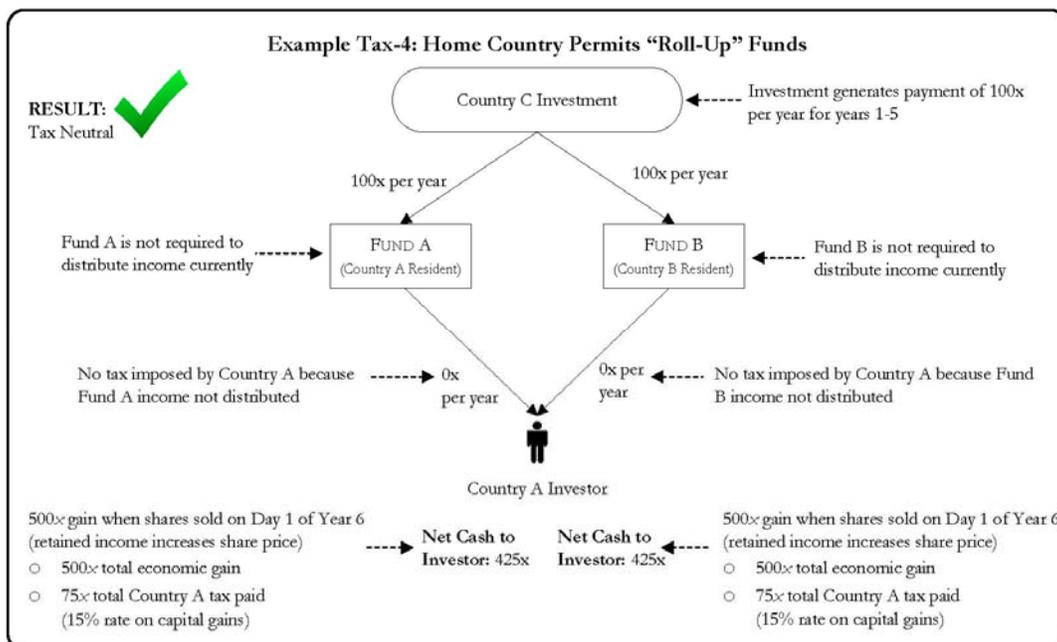
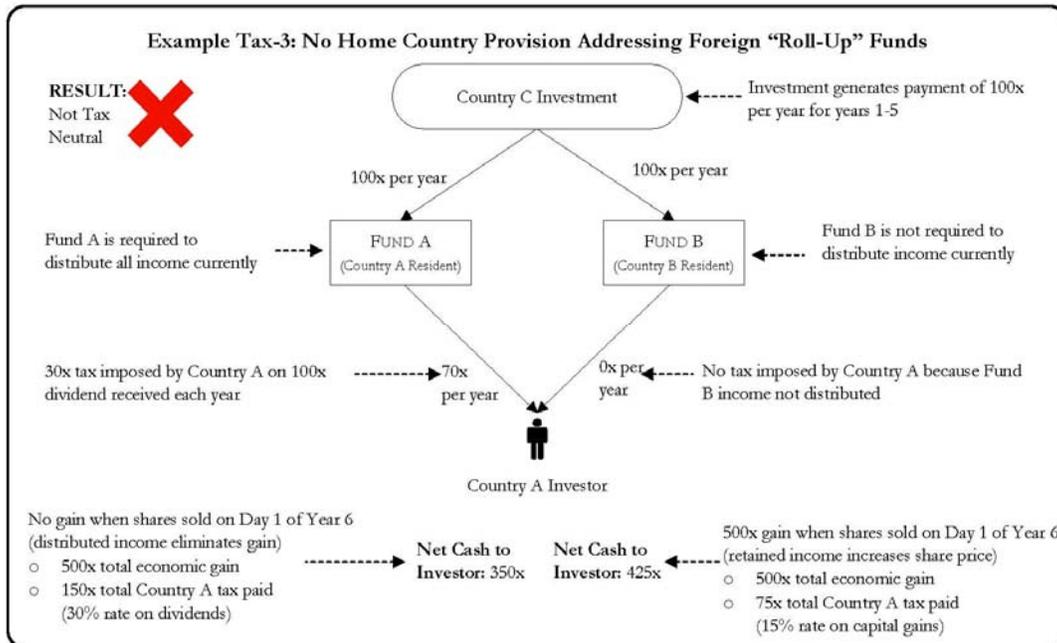
¹⁴ ICI Global research estimates that the number of cross-border funds increased globally by 150% between 2002-2012. ICI Global Research Paper, Note 9.

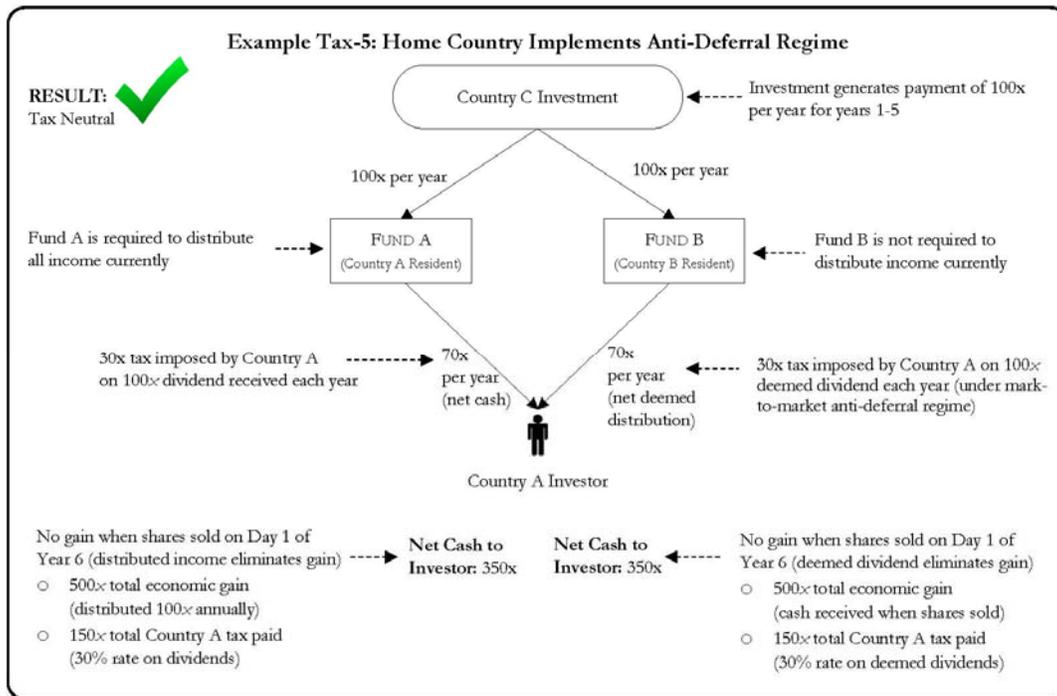
Appendix – Selected Tax Examples

TAX NEUTRALITY FOR FOREIGN INVESTORS IN HOME COUNTRY FUNDS (Examples 1 and 2)



TAX NEUTRALITY FOR LOCAL INVESTORS (THE ROLL-UP ISSUE) (Examples 3, 4 and 5)





TAX-NEUTRALITY FOR LOCAL INVESTORS (THE LOCAL TAX PREFERENCE ISSUE) (Examples 6 and 7)

