

21 August 2020

By Electronic Delivery (to: taxcommittee@un.org)

Subcommittee on the United Nations Model Tax Convention
between Developed and Developing Countries

RE: *Comments on discussion draft CIVs*

Dear Members of the Subcommittee,

The collective investment vehicle (CIV¹) industry associations signing this letter² support strongly the CIV-specific provisions contained in the discussion draft entitled “[Proposed Changes to the United Nations Model Double Tax Convention Between Developed and Developing Countries Concerning the Tax Treaty Treatment of Collective Investment Vehicles, Pension Funds, and REITs](#).” This discussion draft’s proposed changes to the Commentary on the UN Model identify key issues for treaty negotiators and provide appropriate alternative methods for providing CIVs with treaty relief.

CIVs, as explained in the April 2019 CIV industry association coalition letter (attached), have a paramount need for treaty eligibility certainty and administrable rules for receiving treaty benefits to which they or their investors are entitled. Many important benefits are provided by CIVs to investors³ and to developing countries.⁴

The guidance provided by the draft proposed changes to the Commentary, when incorporated into tax treaties or by memoranda of understanding (MOUs), will provide CIVs with the requisite certainty. The enhanced investment returns provided by this certainty (benefiting investors) will increase the

¹ We use the term “CIV” as it is used in proposed paragraph 9.3 of the proposed Commentary on Article 1 of the UN Model. Specifically, we use the term “CIV” to refer only to funds that are widely-held, hold a diversified portfolio of securities, and are subject to investor-protection regulation in the country in which they are established.

² These organizations, as listed at the end of this letter, are: Association of the Luxembourg Fund Industry; Assogestioni; BVI Bundesverband Investment und Asset Management; EFAMA - European Fund and Asset Management Association; Financial Services Council (Australia); Hong Kong Investment Funds Association; ICI Global; The Investment Association; The Investment Funds Institute of Canada; and Irish Funds Industry Association.

³ Individuals investing in CIVs receive an interest in a diversified portfolio of securities that is professionally managed at reasonable cost. The highly-regulated nature of CIVs make them sound investment vehicles for middle-class investors.

⁴ These benefits include access to capital from portfolio (“non-controlling”) investors. Moreover, as explained in the 2018 paper prepared for your consideration by members of your Subcommittee, engaging in portfolio-type investments “considerably reduces the risk of BEPS.” [E/C.18/2018/CRP.10, dated 2 October 2018](#).

ability to attract capital for economic growth (benefiting governments and their taxpayers). Lower treaty relief administrative costs likewise will benefit CIV investors, governments, and taxpayers.

From the CIV industry's perspective, it is imperative that CIVs be able to claim treaty relief either directly (when the CIV meets all legal requirements) or indirectly on behalf of treaty-eligible investors. Individual investors, as explained in our April 2019 submission, have neither the necessary information nor the individual financial incentive to incur the costs involved in pursuing treaty claims with respect to their CIVs' investments.

We are pleased that the draft Commentary provides mechanisms—which will vary based upon differences in how the CIVs are organized and operated (as a legal matter) and distributed (as a practical matter)—by which all CIVs can claim treaty relief either directly or on behalf of their investors. As the Commentary effectively notes, there simply is not a “one size fits all” solution.

Some CIVs (including both domestically and globally distributed CIVs), we submit, meet every applicable requirement to receive treaty relief in their own right. Paragraph 9.15 of the proposed Commentary provides this treatment. For CIVs that do not meet these requirements, we submit, full treaty entitlement also should be provided when a substantial portion of the investors are treaty entitled. This treatment is provided by paragraph 9.14.

CIVs that cannot claim full treaty relief nevertheless must be given the opportunity to claim treaty relief to the extent of their eligible investors (including, we submit, those who are equivalent beneficiaries). Paragraph 9.9 of the proposed Commentary achieves this result.

Finally, if a large percentage of the owners of a CIV, or a class of CIV interests, are held by pension funds, it is appropriate to look through the CIV and provide relief based upon the treaty eligibility status of the pension fund investors. This treatment, provided by paragraph 9.16, will ensure that pension fund investors (such as those exempt from withholding tax) receive the full benefit negotiated by their treaty negotiators.

For those CIVs for which treaty-eligibility determinations are made at the individual investor level (in paragraphs 9.9 and 9.14), it is essential that practical and reliable approaches be provided for making these determinations. Consequently, we also fully support the approaches provided in paragraph 9.17. Without practical and reliable approaches for ensuring appropriate treaty relief, the cross-border CIV investment incentive intended by the treaty negotiators will not materialize. This unfortunate result would be particularly problematic for developing countries seeking capital from portfolio “non-controlling” investors.

Conclusion

The undersigned CIV industry associations support strongly the CIV-specific mechanisms contained in the discussion draft for claiming treaty relief. Equally important to the various alternative methods by which treaty eligibility may be determined is the Commentary's support, which we appreciate, for practical and reliable approaches for investor tax residency determinations. Finally, we encourage tax administrations to develop MOUs to provide CIV treaty eligibility clarification until certainty can be provided in a new or amended tax convention.

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Please feel free to contact the representatives at the associations signing this letter, at your convenience, if we can provide you with any additional information.

Sincerely,

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Attachment (12 April 2019 letter)