



25 January 2010  
Luxembourg

Mr Jeffrey Owens  
Director, CTPA  
OECD  
2, rue André Pascal  
75775 Paris  
France

Dear Mr Owens,

**Re: Taxand comments on the OECD report on the granting of treaty benefits with respect to the income of collective investment vehicles**

Taxand welcomes the opportunity to submit comments on the public discussion draft dated 9 December 2009 on the granting of treaty benefits with respect to the income of collective investment vehicles ("CIV"s).

Taxand supports the initiative undertaken by the OECD in this area and agrees that the commentaries to the OECD Model Tax Convention have to evolve to be in line with market practice i.e. investors are investing increasingly via CIV rather than directly due to practical/economic considerations rather than tax reasons.

CIVs in most cases benefit from a formal or de facto exemption regime in the country in which they are established, with taxation taking place at investor level. As a consequence, treaty benefits are often not granted and, as a result, investing via this type of vehicle will be more onerous for an investor rather than investing directly.



Given this situation, it is crucial that the position of CIVs towards treaty entitlement be clarified as soon and extensively as possible.

A common approach via an amendment of the commentaries to the Model Tax Convention appears to us to be the best and most efficient alternative. Dealing with this issue on a bilateral basis has been the solution so far for some countries in their tax treaties (via a “CIV” specific treaty provision), due to the absence of any global answer. However, in a world where global investments are prevalent, it is crucial that common and (as far as possible) simple solutions can be adopted and that the same or at least similar approaches and views can be taken in the various OECD countries. In our discussions with clients, the constant refrain is that any solution must be simple and consistently applied across the OECD in order for it to be workable.

CIVs with investors in many different countries are some of the largest players in the market globally and will become more so in the future. Within the EU, the sale of CIVs to investors in multiple jurisdictions has been encouraged by EU policy, especially by virtue of the so called “UCITS” directives which have been in place since 1985. The efficiency of this model has led to its widespread acceptance outside the EU, with the result that many EU-domiciled funds may be distributed in 50 or more jurisdictions. To us, the ideal would be to apply the same method to CIVs in respect of their numerous relationships with all of their different investors.. We are aware that a common approach is always more difficult to reach but it would be the most effective and simple solution to the question of the treaty application to CIVs.

### **Conclusions on existing treaties**

As far as existing treaties are concerned, the Report concludes that, if a CIV is not entitled to claim benefits in its own right, its investors should in principle be able to claim treaty benefits.



The Report presents different views regarding whether such a right should be either limited to investors who are residents of the Contracting State in which the CIV is established, or whether this right should be extended to treaty-eligible residents of other countries. Given the EU dimension mentioned above, we recommend that that the right should be at least granted to all EU investors, in order to be consistent with the European Union policy, but ideally also to all OECD investors.

### **❖ Conclusions on future treaties**

With respect to future treaties, the Report says that the Commentary on Article 1 of the Model Tax Convention should be expanded in order to include a number of optional provisions for countries to consider in their future treaty negotiations. We think that it would make sense to reduce the number of options as far as possible, bearing in mind the complexity for CIVs with investors in many different countries.

We recommend the favoured approach for such a provision - i.e. to treat a CIV as a resident of a Contracting State and as the beneficial owner of its income - because, despite potential difficulties due to the legal characteristics of CIVs (some are not even a person for legal purposes), open-ended funds, can in practice be compared to publically listed companies, which almost invariably benefit from tax treaties, regardless of the residence of their investors.

We appreciate this opportunity to provide comments and would be pleased to discuss this further and / or to participate in any further discussion on these matters. More information on how to contact me and about Taxand is provided as Appendix I. Taxand is wholly committed to supporting the OECD Committee of Fiscal Affairs and we look forward to contributing to further debate.

Kind regards,  
Peter Kleingarn  
Taxand Luxembourg



## APPENDIX I

### CONTACT DETAILS

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