

INFORMAL CONSULTATIVE GROUP ON TAXATION OF COLLECTIVE INVESTMENT VEHICLES ESTABLISHES WORK PROGRAM

The OECD Informal Consultative Group on the Taxation of Collective Investment Vehicles (the ICG)¹ held its first meeting in London, 9-10 May 2007. The ICG achieved its objectives for the meeting, which were to establish a common understanding of the facts on which to base future work, and to agree on its future work program.

The factual presentations by members of the ICG representing the business community described the structures, attributes and benefits of CIVs as well as the significant practical difficulties related to the granting of treaty benefits when investments are made through CIVs and other intermediaries, such as custodians. These difficulties may arise because of different legal structures, different tax structures, and different interpretations of tax treaty provisions. In addition, whilst some withholding tax systems facilitate claims for benefits made by intermediaries on behalf of investors, many do not.

With respect to the scope of its work, the ICG agreed that the term “CIV” would be limited 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 organized. Because interests in CIVs, like most other securities, frequently are held through layers of financial intermediaries, the ICG would also address more general impediments for claims by intermediaries on behalf of investors who are entitled to treaty benefits. However, the mandate will not extend to issues of treaty entitlement with respect to investments through private equity funds, hedge funds or trusts or other entities that do not fall within the definition of CIV set out above.

The ICG agreed to pursue further work along several different lines. The approaches are intended to provide CIVs with certainty regarding the extent to which they or their investors are entitled to claim treaty benefits. In addition, all of the approaches are intended to address the concerns of tax administrations in both source and residence countries in a way that strikes an appropriate balance between satisfying those needs and developing administratively feasible procedures.

With respect to existing treaties, the work is two-fold. The first goal is to provide further guidance regarding the circumstances in which a CIV would be entitled to the benefits of a treaty on its own behalf. Second, the ICG will develop recommendations regarding practical procedures that would allow a CIV that does not qualify for benefits in its own right to make claims for benefits on behalf of its investors who would be entitled to benefits had they invested directly. In order to avoid creating distortions in the market, such a solution may need to apply to intermediated structures more broadly, and not just to traditional CIVs.

1 The ICG is an informal consultative group of government and private sector representatives that was set up by the OECD Committee on Fiscal Affairs to address the tax treaty issues raised by cross-border portfolio investments held through collective investment vehicles and global custodians: see http://www.oecd.org/document/14/0,2340,en_2649_33747_37840206_1_1_1_1,00.html

The ICG also agreed to consider various proposals for provisions that treaty negotiators could consider including in new agreements to provide greater certainty for CIVs. It is envisaged that such proposals would be tied to determining the percentage of investors that are entitled to treaty benefits.

Progress on many aspects of the project thus depends on whether it is possible to develop practical and reliable procedures for determining ownership of interests in CIVs and of securities held through other intermediated structures. Accordingly, it is expected that the next meeting of the ICG will focus on these administrative procedures.

The ICG established a timetable and scheduled the next two meetings, which will be held in October 2007 in Japan and March 2008 in Washington. The ICG will keep the relevant subsidiary groups of the OECD's Committee on Fiscal Affairs (i.e., Working Party No. 1 on Tax Conventions and Related Questions and Working Party No. 8 on Tax Avoidance and Evasion) informed of the work as it progresses and take account of any views expressed by the Working Parties. The goal of the ICG is to make recommendations to the Committee on Fiscal Affairs of the OECD by the end of 2008. The CFA then will determine, taking into account the views of WP1 and WP8, whether and how to continue the work within its Working Party structure.