

Jeffrey Owens
Organisation for Economic Cooperation and Development

6th March 2009

Submission by Email

Dear Mr Owens,

Report of the Informal Consultative Group on the Taxation of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors

- Tax Relief for Cross-Border Investors
- Granting of Treaty Benefits with respect to Income of CIVs

International Financial Data Services ("IFDS") provides a range of services to the collective investment scheme and ISA Management industry via three FSA-regulated companies. International Financial Data Services (UK) Limited ("IFDS UK") provides outsourced dealing and, in conjunction with International Financial Data Services Limited, registration services to collective investment products, supporting over 5.8 million accounts across 33 fund management companies (over 40% of the UK market). IFDS Managers Limited ("IFDS ML") operates CIS products (unit trusts/OEICs) designed in conjunction with external asset management firms and product distributors, to whom we delegate certain functions.

Given the current progress towards pan-European fund operations we consider this to be an appropriate time to investigate underlying tax implications for cross-border investment. We recognise the scale of this task, given the range of fund models and jurisdictional issues to be considered, and are in broad agreement with the Group's conclusions to date.

Given our role in investor servicing, we would emphasise the benefits to the industry in having clarity in the treatment to be given to the registered owners of units/shares in a CIV. The coming years are expected to deliver significant achievable scale for European funds, and realising the value of such scale requires clear treatment of registered investors. A model that requires the fund (and/or its transfer agent) to apply a range of processing outcomes to the investors according to their location or status, etc. would incur a degree of costs. While achieving streamlined investor servicing might require some additional treatment in fund accounting work (to ensure the correct taxation arrangements are included in expense accruals, etc.), we would expect such accounting issues have a lower impact on the fund's overall costs than a complex approach to investor servicing.

Should you wish to discuss any of our responses further please call me on 01268 444989. Alternatively please call Chris Selden, Head of Regulatory Business Development, on 01268 445725.

Yours sincerely,

Clive Shelton

Risk & Compliance Director

Granting of Treaty Benefits paper

We believe that the Group's proposal will reduce administrative complexity in respect of underlying investors, by firstly viewing the CIV as being resident in a Contracting State and beneficial owner in respect of income received.

The Group has correctly recorded that the CIV (or its Operator, as appropriate) is unaware of the identity of many underlying beneficial owners. Where a nominee or intermediary holds CIV units on behalf of its clients, the CIV is not advised of the identity of those underlying individual / corporate investors. In the UK, legislation actively prevents beneficial interest from being recorded in a CIV's register.

A threshold approach (as noted in paragraph 45) seems a better administrative requirement than relating benefits to the specific proportion of "good" investors. However, both approaches would – to some extent – require the CIV to determine the circumstances of its underlying beneficial owners.

Any requirement for CIVs (or their Operators) to collate and process data regarding the beneficial owners within the ownership chain would bring significant administrative complexity. Paragraph 36 of the paper states:

"...information identifying the beneficial owners should be available to the source state upon demand."

We would be keen to understand the practical implication of such a model for the administration processes at each stage of the investment chain before supporting such an outcome.

CIV investment may form part of multiple investment strategies, by a range of investor types located in a number of jurisdictions. As evidenced by the Group's work, no single solution can provide ideal solutions in all cases. As such, we suggest that the industry requires a firm foundation on which investors can determine their actions. Enabling CIVs (and their Managers) to communicate clear, consistent messages about the implications of cross-border activity will be a vital aspect of implementation – and in managing investor expectations.

We support the opening comments of paragraph 46 of the Treaty Benefits paper: treatment that provides for only one withholding rate on dividends. The remainder of this paragraph suggests that a country might make relatively arbitrary decisions over which funds would be treated in a "look through" manner. Without clarity over the types of CIV that are subject to the "one withholding tax rate" approach it will be difficult for CIV Operators to document with clarity the fund's position, and for investors to efficiently plan their investment strategy according to their own treaty status.

Tax-Relief for Cross-Border Investors paper

We support the Group's proposal for tax-relief to be available at source. This has clear administrative benefits, as any given fund will make a payment to an investor either with tax applied or not. Administration systems and processes used by many Transfer Agents already adopt the distinction between gross and net payments, and removing the need for individual investors to complete tax reclaims reduces the overall administrative effort across Europe.

The Group is correct to recognise the position of intermediaries. Custodian and other nominee structures represent a significant and growing proportion of registered CIV holders, and the CIV register would not record beneficial ownership in such cases. Indeed, UK legislation prohibits such details being included on the CIV register. It is therefore important that these proposals do not create an administrative requirement for the CIV (or its Manager / Transfer Agent) to collate a record of beneficial ownership.

When considering whether an intermediary should be able to claim tax relief at source in respect of underlying beneficial owners, we would recommend that such a claim should apply to the intermediary's full registered unitholding, and not to a proportion of a registered holding. The CIV should either pay the gross figure or the net figure, and not a hybrid of the two.

Consider the following example. An intermediary is the registered holder of 10,000 CIV units. This holding represents the beneficial interest of 5 individuals, each of whom happen to have an interest in 2,000 units each. Now suppose also that 3 of these beneficial owners would be entitled to claim tax relief at source (for whatever reason according to the requirements in that given jurisdiction). We argue that in such cases it should be acceptable for the intermediary to request that the full entitlement of 10,000 CIV units receive tax relief at source, and that the intermediary be accountable to the relevant tax authority to deduct the appropriate rate of tax in respect of units held on behalf of beneficial owners to whom the tax relief would not otherwise be available.

Such an approach would remove the current requirement for intermediaries to split their holdings into multiple accounts – a requirement that multiplies their positions and reconciliation requirements. Further, as we see greater integration across EU markets and greater potential for pan-European business models, this approach of intermediary responsibility would enable the intermediary to receive gross entitlements for all clients and then allocate it between the different investors: those domestic customers liable for tax, domestic customers using a tax-efficient wrapper, domestic customers exempt from domestic tax, and cross-border customers entitled to relief at source.

While recognising that the Group's focus is this latter category, from an administrative perspective it is valuable to recognise the breadth of tax and entitlement processing for and by intermediaries in order to give lasting value to these proposals. At the same time, legal obligations on CIVs to focus on the registered owners of CIV units are upheld.