



IRISH FUNDS  
INDUSTRY  
ASSOCIATION

By email to [jeffrey.owens@oecd.org](mailto:jeffrey.owens@oecd.org)

6<sup>th</sup> March 2009

Dear Mr Owens,

**Re: OECD Reports relating to Treaty Benefits for Collective Investment Vehicles**

The Irish Funds Industry Association (IFIA) is the representative body of the international investment funds community in Ireland, representing the custodian banks, administrators, managers, transfer agents and professional advisory firms involved in the international fund services industry in Ireland. Its 80 members and 23 associate members are responsible for the administration of more than 10,000 funds with a net asset value of Euro 1.4 trillion. The IFIA supports and compliments the development of the international funds industry in Ireland to ensure it continues to be the location of choice for the domiciling and servicing of investment funds. The vast majority of Irish registered collective investment vehicles (CIVs) are established for cross border marketing purposes and Irish funds are distributed to investors located in over 60 countries. Ireland is the second largest domicile of cross-border UCITS funds, UCITS being a passportable European retail fund product with a high level of acceptance by regulators worldwide. As such, the Irish funds industry plays an important role in the global investment funds market and supports initiatives to increase treaty access for collective investment vehicles.

The IFIA welcomes the OECD's work in the area of treaty benefits for CIVs, the publication of these reports and their aim to provide clarity and consistency in the application of tax treaty access to internationally distributed investment funds. The IFIA agrees with the favoured approach of the consultative group to treat a CIV as a resident of a contracting state and the beneficial owner of its income, as this is the most feasible way of achieving the objectives of the report in a timely and workable manner. As referenced in the report, the increasingly favoured business model for internationally distributed funds and the model operated in Ireland is one where the fund is domiciled in one jurisdiction, administered in that jurisdiction (or another jurisdiction) and distributed to numerous other countries. This model would have significant operational challenges with a full look through approach in the treatment of investment funds for tax treaty purposes, as the only source of information available is the shareholder register which contains name and address information provided to fund administration companies. Information beyond the registered address regarding the tax residence of all underlying investors may not be available from the fund administrator. An

investor's registered address may not always be the same as their tax residence, and furthermore where nominee accounts have invested in a fund, only the address of the nominee is held on the shareholder register, with no look through ability to the underlying investor.

Given the very significant, unresolved, practical challenges in obtaining the residency information of all underlying investors, the funds industry in Ireland is strongly of the view that a full look through approach should not be adopted when accessing future treaties. However, in acknowledging the current discussion to link the granting of treaty benefits to CIVs with the residency of the underlying investors, the IFIA would support the option put forward by the consultative group under which a CIV would be entitled to benefits with respect to all of its income if "good investors" exceed a specific ownership threshold, where "good investors" would be determined based on the countries in which a fund is registered for sale. To satisfy requests for information with respect to the residency of the underlying investors, we propose that a fund could provide a list of countries where it is registered for sale, as this would be representative of the tax residence of the underlying investors. The countries where a fund is registered for sale are the only countries where a fund can be marketed to the public and while it is possible for there to be no investors resident in a country where a fund is registered for sale or to have investors resident in a country where it is not registered for sale, this would be unusual and unlikely. Therefore, it would be reasonable to assume that the list of countries where a fund is registered for sale represents the list of possible or likely probable countries where investors would be resident. In this context, the IFIA also agrees with the proposal to treat all residents of OECD countries as "good investors" (based on the "registered for sale" information) for the purposes of claiming treaty benefits.

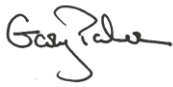
The report on the granting of treaty benefits recommends that in situations where a CIV is not entitled to claim benefits in its own right, procedures should be adopted to allow a CIV to make the claim on behalf of its investors, including where necessary, through the conclusion of mutual agreements. This type of individual investor-based strategy with respect to claiming treaty benefits could introduce and highlight a number of practical limitations in its implementation. For example, a mutual fund would typically have thousands of underlying investors located in numerous jurisdictions and may not have access to tax residency information of the underlying investors. Therefore, attempting to assess and process/claim treaty benefits on behalf of individual investors could potentially involve thousands of individual claims, which would prove unworkable for fund administrators from a practical and resources perspective. As outlined in the report, CIVs provide economies of scale, access to multiple markets and the benefits of investment expertise that would otherwise not be available to smaller investors. Given that the logic of a CIV is to provide mutual benefits through economies of scale, it would be neither realistic nor cost efficient to require the CIV to make claims on behalf of individual underlying investors, rather in our view a CIV should always be treated as a single investor in the interests of efficiencies, which will in turn benefit individual investors.

The Irish funds industry would also have concerns with respect to a further option outlined in the report which seeks to limit entitlement to treaty benefits to residents of the same country in which the CIV is established. It is our opinion that the application of this option would leave investment funds sold on the international market at a significant competitive disadvantage to domestic investment funds. As the report outlines, global CIVs have the potential to be much more efficient through economies of scale and a reduction of

duplication, therefore helping to maximize returns to investors. The IFIA believes it would be unfair and regressive to place international investment funds at a competitive disadvantage by enabling countries to limit benefits to residents of the domicile of the fund.

As previously stated, the IFIA greatly welcomes the OECD's work in this area and the opportunity to participate in a consultative process and is happy to provide further input or assistance should you find it helpful. We look forward to the results of the consultation process in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Gary Palmer". The signature is written in a cursive style with a large initial "G".

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Gary Palmer  
Chief Executive