

**Via Email**

4 March 2009

Mr Jeffrey Owens  
Organisation for Economic and Co-operation and Development  
2, rue André Pascal  
F-75775 Paris Cedex 16  
France

Dear Mr Owens,

**Report of the Informal Consultative Group ("ICG") on the Taxation of  
Collective Investment Vehicles ("CIVs") and Procedures for Tax Relief for  
Cross-Border Investors**

The IMA represents the UK-based investment management industry. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of over £3 trillion of funds (based in the UK, Europe and elsewhere), including Authorised Investment Funds (AIFs), institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK AIFs (i.e. Authorised Unit Trusts and Open-Ended Investment Companies).

We welcome the opportunity to provide comments on these Reports. IMA has been actively involved in the issues raised and discussions held within the ICG, and fully support the work being undertaken. We encourage the ICG to continue with the project into phase two, to ensure that the desired outcome is achieved: CIVs consistently granted tax relief at source.

We provide specific comments on the points raised in the Reports below.

***(i) The Granting of Treaty Benefits with Respect to the Income of  
Collective Investment Vehicles***

The Report discusses the technical questions of whether a CIV should be considered a "person", "a resident of a Contracting State" and the "beneficial owner" of the income it receives under treaties that, like the OECD Model Tax Convention, do not include a specific provision dealing with CIVs. As the Report discusses, the most efficient process for investors to receive treaty relief would be at source through the CIV. We therefore welcome the proposed changes to the Commentary on the Model Tax Convention which would clarify the treatment of the majority of the different forms of CIVs in existence worldwide. This clarification and certainty would more

closely deliver to investors the benefits to which they are entitled, and would reduce administration costs for the industry and governments.

However, we note that the ICG states in the proposed commentary at 6.11 "*In some States, CIVs are treated as fiscally transparent (or as flow throughs). Such a CIV should not be treated as a resident of the Contracting State in which it is established.*" This would have the impact that a 'transparent' CIV would not be able to access treaty benefits itself and the underlying investors would have to follow administrative procedures to secure the available relief. To ease this administration burden, we support the ICG's work on improving the procedures for tax relief for cross-border investors. In this regard, we note that the ICG recognises that the administration difficulties for investors effectively prevents individual claims being made and recommends that countries adopt procedures to allow a CIV to make a claim on behalf of investors.

We support the ICG's favoured approach of treating a CIV as a resident of a Contracting State and the beneficial owner of its income, rather than adopting a full look-through approach. This would provide increased certainty for all stakeholders.

We note that under the proposed Commentary, countries could choose whether to give benefits only in the proportion that the CIV's investors are themselves entitled to treaty benefits, or to give benefits with respect to all the CIV's income, as long as a certain threshold of treaty-eligible investors is met. Consistency of treatment across the different treaty countries in this regard is desired and we would support the "threshold" proposal being applied as consistently as possible. It would be administratively time-consuming and expensive to prepare and maintain the records of the CIV's underlying investors. Indeed, in many cases it may not be possible given the high and increasing proportion of intermediation in the retail marketplace. This process would be even more onerous if there were an additional requirement to analyse the different treaties to determine the investor threshold requirements, which could vary between treaty partners, and to build and maintain a system that handles this.

### ***(ii) Possible Improvements to Procedures for Tax Relief for Cross-Border Investors***

We welcome the Report's recommendation for source countries to allow relief at source, rather than requiring investors to pay tax and then request a refund. This process would significantly reduce the administrative costs for our members in this regard.

As the Report discusses, over recent years there has been a significant change in the methods by which CIVs have been distributed to investors, with CIV sales channels becoming more intermediated. We welcome the ICG's recommendation that countries develop systems for claiming treaty benefits that allow authorised intermediaries to make claims on behalf of their customers on a "pooled" basis. As the Report discusses, this would have the benefit that the information regarding the beneficial owner of the income is maintained by the intermediary at the bottom of the chain, rather than being passed up the chain of intermediaries, creating efficiencies and protecting customer information.

We welcome the Report's recommendations that claims for benefits and reporting should be standardised and be capable of transmission in electronic form. This would create efficiencies and cost-savings for all parties – the industry, investors and governments.

Should you require any further clarification on any of the points raised above I would be pleased to discuss any of the matters in more detail.

Yours sincerely

Stephen Lynam  
Head of Tax