

Via email

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Dear Ms Perez-Navarro

Discussion Draft – Interpretation and Application of Article 5 (Permanent Establishment) of the OECD Model Tax Convention

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 around £4 trillion (\$6 trillion) of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles.

IMA was actively involved in the work that led to the OECD Committee on Fiscal Affairs (CFA) issuing two reports on the Taxation of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors. This work resulted in considerable developments in the recognition of the special tax status of collective investment vehicles within the Model Tax Convention and procedures for reclaiming withholding tax. IMA is now involved in the work of the Treaty Relief and Compliance Enhancement (TRACE) Group established by the CFA to take forward the work procedures for tax relief for cross-border investors.

The first report focussed on the entitlement of collective investment vehicles (and their investors) to treaty benefits, but there remain other areas of the taxation of collective investment schemes where there is uncertainty in the application of tax concepts on a cross-jurisdictional basis. One of these is the attribution of profits and application of the concept of permanent establishment.

This is particularly important now given the efforts of the EU to create a truly single market in asset management and to open up more opportunities for Europe's professional investors, including in funds domiciled outside. For retail funds, the adoption of the "UCITS IV" Directive in 2011 is regarded as a major milestone for the European asset management market. UCITS IV has created a series of challenges for tax authorities, which in many cases will need to modify or clarify aspects of the tax treatment of collective investment schemes in order successfully to implement the measures.

In particular, UCITS IV allows Master-Feeder structures as a pooling technique. Such structures have significant taxation implications in the context of the application of

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permanent establishment principles. We therefore provide specific comments on the points raised in items 10 of the Discussion Draft.

10. Meaning of "place of management" (paragraph 12 of the Commentary) - The "Master-Feeder" Structure

A Master-Feeder structure is a two-tiered fund structure in which investors invest through one of any number of "Feeder" funds, but the assets are held through a separate "Master" fund, whose investors include the Feeder funds. Master-Feeder structures exist at national level in a number of jurisdictions and have been successfully used for some time. There are a number of clear benefits of the Master-Feeder structure, including the realisation of economies of scale and a reduction of charges or better performance for the investor as a result.

Under UCITS IV, a "Feeder" must invest at least 85% of its assets in a "Master" fund that hosts the investments. The other 15% of assets may be invested in cash, derivatives (for hedging purposes only), or movable and immovable property. The Master and the Feeder may be established in the same or in different jurisdictions.

Where cross-jurisdictional Master-Feeder structures are established, it is possible that a Feeder fund could be deemed to have a permanent establishment in the place of domicile of the Master (or vice versa) if, for example, the Master entity performs functions common to the Master-Feeder structure as a whole (eg incurring certain expenses on behalf of the whole fund, or carrying out oversight of the investment management mandate).

In practice this should not be an issue because it is unlikely that such activities in isolation would be regarded as trading in the jurisdiction of the Master, which is usually required to create such a permanent establishment under OECD-compliant DTAs. However given the difficulties in defining the business or enterprise of either the Master or Feeder fund in isolation, this is not free from doubt.

We would welcome clarification in the Commentary that in relation to a Master-Feeder structure, the Master fund should not be deemed to have a permanent establishment in the jurisdiction of the Feeder fund (or vice versa) by virtue of its activities in connection with the operation of the fund, as a whole.

Should you require any further clarification, I would be pleased to discuss this issue with you in more detail. Please do not hesitate to contact me on 020 7831 0898 or at jmorley-smith@investmentuk.org.

Yours sincerely



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