

INFORMAL CONSULTATIVE GROUP ON  
TAXATION OF COLLECTIVE INVESTMENT VEHICLES  
AND PROCEDURES FOR TAX RELIEF FOR CROSS-BORDER INVESTORS

MANDATE

The Informal Consultative Group (ICG) has been created to develop recommendations to the Committee on Fiscal Affairs (CFA) regarding the taxation of collective investment vehicles (CIVs) and other investments held through custodians and nominees. The mandate of the ICG has two aspects: (1) legal and policy issues, primarily relating to the extent to which either the vehicles or their investors are entitled to treaty benefits; and (2) procedural aspects regarding claims for treaty benefits when assets are held indirectly, whether through CIVs or through nominees and custodians.

The work contemplated by this mandate is to be completed by November 2008, when the recommendations of the ICG will be forwarded to the CFA for further consideration by the CFA and/or its subsidiary bodies. The mandate may be extended by the CFA if further input regarding the implementation of such recommendations is deemed necessary.

Background

The legal and policy issues relate primarily to the treaty entitlement of the funds themselves and of their investors. CIVs take different legal forms (e.g., companies, limited partnerships, trusts, contractual arrangements) and their tax treatment varies from country to country. It therefore is often unclear whether the benefits of tax treaties are available to the CIVs themselves. If the benefits are not available to the CIV itself, in principle such benefits should be available to investors who are residents of countries which have concluded a tax treaty with the country from which the fund derives income.

There are important compliance and administrative difficulties, however, if benefits are to be granted to investors rather than at the level of the CIV. The benefits of tax treaties may not be granted or may be inappropriately granted, with risks of double taxation or double non taxation that are of concern for both the country of source of the income and the country of residence of the investor. These risks are increased by the fact that the number of investors in a given fund may change on a daily basis and that there are a number of different intermediaries involved.

In developing a solution to these problems, it is helpful to consider the role of CIVs in the financial markets. CIVs act both as intermediaries and as issuers of securities. Accordingly, CIVs encounter problems in claiming treaty benefits that are common to other intermediaries. Similar types of intermediation take many forms, from global custodians, to omnibus accounts maintained by securities dealers, to pooled vehicles for pension funds. A solution to many of the problems faced by CIVs therefore may rely on a broader solution applicable to intermediated holdings more generally.

## Specific Areas to be Analysed

With that background in mind, the ICG thus will consider the following issues:

- Current impediments to claims for treaty benefits that affect intermediated financial structures generally;
- The specific problems faced by CIVs in claiming treaty benefits on their own behalf;
- Whether the Model Convention or its Commentaries should be modified to include a provision dealing specifically with CIVs; and
- Whether there are administrative procedures that could be adopted, under current or future treaty provisions, to streamline claims for treaty benefits for all intermediated structures and that strike an appropriate balance between the tax compliance needs of governments in both source and residence countries and developing administratively feasible procedures.

For these purposes, the term “CIV” is 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.

## Timetable

The proposed timetable for completing this analysis and making recommendations to the CFA is just under two years. This is a relatively short time frame for such complicated work. However, it is anticipated that the work can be completed on time on the basis of the following schedule:

- May 2007 – First meeting of ICG.
- May through August 2007 – Follow-up work by business on verifying ownership information.
- August 2007 – Follow-up report on first meeting made available to participants in the ICG.
- October 2007 – Second meeting of ICG, including discussion of follow-up report.
- January 2008 – Follow-up report made available to participants in the ICG, and Progress Report to CFA.
- March 2008 – Third meeting of ICG, including detailed consideration of follow-up report.

- May 2008 –First draft of final report made available to participants in the ICG with a request for written comments
- June 2008 – Progress Report to CFA.
- August 2008 – Second draft of final report made available to participants in the ICG.
- October 2008 – Fourth meeting of ICG, approval of final report.

The ICG will keep WP1 and WP8 informed of the work as it progresses and take account of any views expressed by the Working Parties.