

Submitted via email to: taxtreaties@oecd.org

2 February 2017

Dear Sirs

BEPS Action 6 - Discussion Draft on non-CIV examples

The Association of Real Estate Funds (AREF) welcomes the opportunity to respond to the OECD's discussion draft which sets out examples on the treaty entitlement of non-CIV funds.

AREF represents the UK real estate funds industry. It has about 65 members with a collective net asset value of around £65 billion under management on behalf of investors. This includes around £20 billion in UK authorised retail funds and similar amounts in various forms of UK unregulated collective investment vehicles (CIVs) and in offshore domiciled funds.

We have had sight of The Investment Association's submission and would fully support their comments. In particular, we would like to re-iterate:

- A critical feature of any fund is that it secures for its investors the same, or substantially the same, tax treatment as direct investment. This feature was recognised by the OECD in its 2010 report 'The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles'. It is therefore essential that non-CIV funds and/ or their investors are able to benefit from treaty entitlement; without it tax neutrality would be lost. However, we understand the OECD's concerns in relation to treaty shopping and deferral of the taxation of income.
- Almost all, if not all, treaties give taxing rights over income from real estate to the state in which the real estate is situated. This means that tax is levied at the fund level for a real estate fund, so non-taxation of intermediaries is not a particular concern and real estate investment represent a particularly low risk of treaty abuse.
- We welcome that the examples indicate that the PPT rule should not be interpreted too strictly and demonstrates that it is acceptable to have tax efficiency as a consideration when structuring non-CIVs. So too is the acknowledgement that the intent of the treaties is to provide benefits to encourage cross-border investment.

- The guidance should be clear that scenarios have to be considered by reference to all the facts and circumstances and that the examples are simply illustrative of how the PPT should be applied.
- We are in agreement with the points that The Investment Association raised in respect of the Real Estate Fund in example 3. In particular, we share the view that the last sentence in the example does not assist with the interpretation of the balance of factors relevant to determining whether the PPT is engaged. It is not clear whether it is the OECD's view that all investors in a real estate fund **must** enjoy equivalent treaty benefits as the fund and whether there is a presumption that the PPT will fail where this is not the case. We are of the view that, given the more limited scope for treaty abuse in the context of real estate and the difficulty in tracking the tax treaty status of each individual investor, this view represents a significant issue for the real estate fund industry.

If there is any further information that you need, or any more detailed analysis, before considering our representations please let me know.

Yours faithfully,



John Cartwright
Chief Executive

Cc, Andrew Dawson, HMRC
Tom Matthews, HMRC

Mike Williams, HM Treasury
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