

**MEMO# 31713**

April 12, 2019

## **CIV Industry Coalition Letter to UN Experts Committee Supporting Guidance on CIV Tax Treaty Eligibility**

[31713]

April 12, 2019 TO: ICI Members

ICI Global Members

ICI Global Tax Committee

Tax Committee SUBJECTS: International/Global

Tax RE: CIV Industry Coalition Letter to UN Experts Committee Supporting Guidance on CIV Tax Treaty Eligibility

Eleven collective investment vehicle (CIV) associations<sup>[1]</sup> today submitted to the United Nations' Committee of Experts on International Cooperation in Tax Matters the attached coalition letter, crafted by ICI Global, urging CIV-specific Commentary for the UN Model Income Tax Convention.<sup>[2]</sup> The guidance we request would complement guidance issued in 2010 by the Organisation for Economic Co-operation and Development (OECD)<sup>[3]</sup> following an extensive consultation with the Institute and several of the other associations signing this letter.

The letter states that, from the CIV industry's perspective, it is imperative that CIVs be able to claim treaty relief directly (when the CIV meets all legal requirements) or indirectly on behalf of treaty-eligible investors. Individual investors have neither the necessary information nor the individual financial incentive to incur the costs involved in pursuing treaty claims with respect to their CIVs' investments.

To address these difficulties, the coalition members support inclusion in the UN's Model Convention Commentary of CIV-specific guidance. This guidance must provide mechanisms—which will vary based upon differences in how the CIVs are organized and operated (as a legal matter) and distributed (as a practical matter)—by which all CIVs can claim treaty relief either directly or on behalf of their investors. There simply is not a “one size fits all” solution.

Some CIVs (including both domestically and globally distributed CIVs), we submit, meet every applicable requirement to receive treaty relief in their own right. Many of these CIVs also typically would recover essentially all of the potential relief if, instead, they were claiming relief only to the extent of their eligible investors. CIVs that are sold only in their domestic market—which can occur because of tax or securities law reasons or because of

cultural preferences—should be presumed to be held only by the domestic residents. This presumption also would be subject to any applicable anti-abuse limitations such as a principal purpose test.

CIVs that cannot claim full treaty relief in their own right also must be given the opportunity to claim treaty relief to the extent of their eligible investors (including, we submit, those who are equivalent beneficiaries). The mechanisms by which this relief is provided can vary based upon the extent to which the CIV meets the applicable legal requirements.

We have two other suggestions for the Commentary. First, the Commentary should suggest memoranda of understanding (MOUs) between countries regarding the treatment of a country's CIVs. These MOUs would accelerate treaty eligibility clarification as treaty modifications can be time consuming. Second, the Commentary should support "practical and reliable approaches" to investor tax residency determinations. For example, where a CIV is distributed globally and does not meet every applicable requirement to receive treaty relief in their own right, investor information should be required annually; if market conditions suggest high ownership turnover, this information could be required more frequently—although no more often than quarterly.

The letter concludes by stating that the coalition's members stand ready to provide the UN Experts Committee with whatever technical assistance they need regarding how CIVs are organized and operated, how their interests are distributed, how the tax residencies of their investors can be determined, and what requirements are administrable as a practical matter.

Keith Lawson  
Deputy General Counsel - Tax Law

## [Attachment](#)

### **endnotes**

[1] The eleven industry associations are: Association of the Luxembourg Fund Industry; Assogestioni; BVI Bundesverband Investment und Asset Management; [EFAMA](#) - European Fund and Asset Management Association; Financial Services Council (Australia); Hong Kong Investment Funds Association; ICI Global; The Investment Association; The Investment Funds Institute of Canada; Irish Funds Industry Association; and Swiss Funds & Asset Management Association SFAMA.

[2] A working paper prepared by a member of the UN Experts Committee for discussion at the April 2019 meeting of the UN Experts Committee — E/C.18/2018/CRP.10, dated 2 October 2018 — is found at:  
<https://www.un.org/esa/ffd/wp-content/uploads/2018/08/CRP10-Taxation-of-Collective-Investment-Vehicles-CIVs.pdf>.

[3] <http://www.oecd.org/dataoecd/59/7/45359261.pdf>.

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