

MEMO# 28009

April 1, 2014

For Your Review - Draft Letter to OECD on Treaty Shopping

[28009]

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TO: TAX COMMITTEE No. 8-14

INTERNATIONAL COMMITTEE No. 9-14

ICI GLOBAL TAX COMMITTEE No. 5-14 RE: FOR YOUR REVIEW - DRAFT LETTER TO OECD ON
TREATY SHOPPING

The Organisation for Economic Co-operation and Development (OECD) last summer published a detailed “Action Plan” for addressing 15 separate “Base Erosion and Profit Shifting” (BEPS) tax issues of global concern. [1] On 14 March 2014, the OECD released a public discussion draft on “BEPS Action 6: Preventing The Granting of Treaty Benefits in Inappropriate Circumstances” (the Action 6 draft). [2]

The attached draft letter prepared for submission jointly by ICI and ICI Global expresses our concern that the Action 6 draft may reverse, possibly unintentionally, the extensive work undertaken by the OECD and a business group on collective investment vehicle (CIV) eligibility for tax treaty relief. Specifically, the Informal Consultative Group (ICG) formed in 2006 by the OECD (a group in which ICI participated actively) prepared a detailed report [3] on CIV treaty eligibility that was endorsed by the governing body for OECD tax issues and then included in the Commentary to the 2010 Update to the OECD’s Model Income Tax Convention. [4] This report, which was based upon an extensive consultation between Governments and business, reached sound conclusions.

The ICI/ICI Global letter recommends that the BEPS Action 6 Final Report cite the CIV Report, and the changes made to the OECD’s Model Tax Convention Commentary, as providing the relevant Action 6 guidance for CIVs. Paragraph 8 of the Article 6 draft would be an appropriate place to discuss CIVs; this paragraph discusses already various contexts in which the OECD has examined treaty shopping issues.

The OECD has requested that all comments on the Action 6 draft be received no later than Wednesday, 9 April. [5] Consequently, please provide any comments on this draft letter to the undersigned (at lawson@ici.org or 001-202-326-5832) by Monday, 7 April.

Keith Lawson
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[Attachment](#)

endnotes

- [1] www.oecd.org/ctp/BEPSActionPlan.pdf.
- [2] <http://www.oecd.org/ctp/treaties/treaty-abuse-discussion-draft-march-2014.pdf>.
- [3] www.oecd.org/tax/treaties/45359261.pdf.
- [4] <http://www.oecd.org/tax/treaties/45689328.pdf>.
- [5] <http://www.oecd.org/tax/treaties/discussion-draft-action-6-prevent-treaty-abuse.htm>.

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