MEMO# 28723

February 9, 2015

ICI Global Submissions to OECD on BEPS Action Items 4, 8, 9, and 10

[28723]

February 9, 2015

TO: TAX MEMBERS No. 5-15
INTERNATIONAL MEMBERS No. 7-15
ICI GLOBAL MEMBERS No. 7-15
ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 5-15 RE: ICI GLOBAL SUBMISSIONS TO OECD ON BEPS ACTION ITEMS 4, 8, 9, AND 10

ICI Global has submitted the attached three letters to the Organisation for Economic Co-operation and Development (OECD) regarding public discussion drafts released in December pursuant to the OECD's Base Erosion and Profit Shifting (BEPS) initiative. [1] The letters relate to:

- BEPS Action 4: Interest Deductions and Other Financial Payments; [2]
- BEPS Actions 8, 9 and 10: Discussion Draft on Revisions to Chapter I of the Transfer Pricing Guidelines (Including Risk, Recharacterisation, and Special Measures); [3] and
- BEPS Action 10: Discussion Draft on the Use of Profit Splits in the Context of Global Value Chains. [4]

BEPS Action 4: Interest Deductions and Other Financial Payments

ICI Global's comments on this discussion draft support the proposition that collective investment vehicles (CIVs) under the control of the same investment manager should not be treated as "connected parties" for purposes of these proposals unless there is another connection between the CIVs.

BEPS Actions 8, 9 and 10: Transfer Pricing Guidelines

ICI Global's comments on this discussion draft support strongly a properly-applied arm's length standard as the most accurate pricing measure for related party transactions. The submission's specific comments and recommendations include the following:

- Transfer pricing analyses must be based upon facts rather than theory. No "one-size-fits-all' approach – particularly one based on economic theory – can account properly for the significant differences between industries, and between firms within a single industry.
- We strongly oppose the use of formulary apportionment if any reasonable basis exists

for performing a transfer pricing analysis.
- Risk considerations in the financial services industry often are dictated by regulatory requirements.

- We urge that this issue's resolution not be tied to the 31 December 2015 deadline for the BEPS project; sufficient time does not exist to consider thoroughly the tax-controversy ramifications of the many extensive changes that are proposed to the transfer pricing guidelines.
- We reiterate our previously-expressed strong support for including mandatory binding arbitration in the BEPS Action 14 recommendations. Transfer pricing controversies already are disproportionately expensive to resolve and create significant potential for cross-border disputes and double taxation. Without the possibility of mandatory binding arbitration, the likelihood of un-resolvable disputes surely will increase.
- Finally, it is essential that the guidelines not apply to the financial services industry a "special measure" based upon "appropriate" returns on capital or levels of capital.

BEPS Action 10: Profit Splits

ICI Global's comments on this discussion draft express certain reservations about applying the profit split method in the financial services industry and, in particular, the fund industry. Among other things, we express concerns that over-inclusive use of the profit split method effectively will lead to formulary apportionment – which we oppose strongly. Finally, as with our comments on the transfer pricing guidelines, we reiterate our strong support for including mandatory binding arbitration in the BEPS Action 14 recommendations.

Keith Lawson
Deputy General Counsel - Tax Law

Attachment

endnotes

[1] http://www.oecd.org/tax/beps-about.htm.

[2] http://www.oecd.org/ctp/aggressive/discussion-draft-action-4-interest-deductions.pdf.

[3]http://www.oecd.org/ctp/transfer-pricing/discussion-draft-actions-8-9-10-chapter-1-TP-Guidelines-risk-recharacterisation-special-measures.pdf.

[4]
http://www.oecd.org/ctp/transfer-pricing/discussion-draft-action-10-profit-splits-global-value-chains.pdf.