

**MEMO# 28640**

December 30, 2014

# **For Your Review and Comment: Draft of ICI Global Comment Letter on OECD BEPS 7 Permanent Establishment Paper**

[28640]

December 30, 2014

TO:

TAX COMMITTEE No. 44-14

ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 19-14

INTERNATIONAL COMMITTEE No. 45-14

ICI GLOBAL TAX COMMITTEE No. 24-14

RE:

FOR YOUR REVIEW AND COMMENT: DRAFT OF ICI GLOBAL COMMENT LETTER ON OECD BEPS 7 PERMANENT ESTABLISHMENT PAPER

The attached draft comment letter responds to the discussion draft document issued by the Organisation for Economic Co-operation and Development (OECD) entitled “BEPS Action 7: Preventing the Artificial Avoidance of PE Status.” [\[1\]](#) This discussion draft identifies several proposals under consideration for expanding the circumstances in which a country could assert that a company has a “permanent establishment” or “PE.” A company with a PE in another country can be subject to substantial additional tax obligations and liabilities.

The comment letter first describes the global fund industry and explains the relationship between funds and their managers. The letter then explains that the PE rules appropriately limit unproductive tax liability assertions. Finally, the letter makes the following specific recommendations:

- The information collection exception should be retained
- The collection of information exception should not be limited to preparatory or auxiliary activities
- Separate entities created for sound business reasons should be respected for PE purposes
  - PE Rules never should attribute activities of a fund manager to a fund

- PE Rules should respect separate business entities created by a fund manager
- Any expansion of the PE rules should be accompanied by clear and appropriate rules for attributing income and expense and by mandatory binding arbitration.

All comments on the BEPS Action 7 discussion draft must be submitted to the OECD by Friday, 9 January, 2015.

#### Request for Comments

Please provide any comments on this draft letter to Keith Lawson (at [lawson@ici.org](mailto:lawson@ici.org) or 202-326-5832) by Wednesday, 7 January, 2015. If you would like to receive a WORD version of the document, in addition to the attached PDF version, please contact Keith.

Calls to discuss this draft letter, as well as the letter circulated previously on BEPS Action 6 regarding treaty issues [2] will be held on 7 January. The first call, for ICI Global members only, will be held at 10:00 a.m. (Washington DC time) on Wednesday, 7 January. The second call, for ICI members, will be held that day at 2:00 p.m. (Washington DC time). Any ICI Global member who cannot join the 10:00 call is welcome during the 2:00 call. The call-in numbers for both calls are 800-857-2255 (toll-free number within the US) and 1-630-395-0073 (toll number). The passcode for both calls is 63255.

Keith Lawson  
Senior Counsel - Tax Law

#### [Attachment](#)

#### **endnotes**

[1] The OECD's BEPS 7 discussion draft is available at:  
<http://www.oecd.org/ctp/treaties/action-7-pe-status-public-discussion-draft.pdf>.

[2] See ICI Memo # 28570, dated December 11, 2014 and found at  
<http://www.ici.org/iciglobal/pubs/memos/memo28570>