

By Electronic Delivery

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Jeffrey Owens
Director, CTPA
OECD
2, rue André Pascal
75775 Paris
FRANCERE: *ICI Support for TRACE Project*

Dear Jeffrey:

The Investment Company Institute,¹ on behalf of the almost 90 million shareholders in U.S. collective investment vehicles (“CIVs”), supports strongly the effort to be undertaken by new Treaty Relief and Compliance Enforcement (“TRACE”) Group. We commend the Committee on Fiscal Affairs (“CFA”) of the Organization for Economic Cooperation and Development (“OECD”) for taking forward the work done by the Informal Consultative Group (“ICG”) during 2007 and 2008 and continued by the Pilot Group during 2009 to improve the procedures for cross-border investor treaty relief. The Pilot Group’s implementation package was crafted with the interests of Governments, intermediaries, and investors in mind. It is important that the TRACE Group continue this important dialogue with the business community and build upon the successes of the Pilot Group.

Individuals saving through CIVs for retirement, education, and other long- and short-term needs benefit when the procedures for receiving the tax treaty benefits that have been negotiated for them by their Governments are uniform, streamlined, and administrable. Two specific issues to be considered by the TRACE Group are particularly important to CIV investors.

First, we urge the TRACE Group to develop administrable procedures that maximize the ability of intermediaries to claim treaty benefits for their customers at the time the income (*e.g.*, dividends) is received from source-country payors. At-source treaty-rate withholding is particularly beneficial for CIV investors because of the certainty provided. Every CIV organized in the U.S. (like

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$11.18 trillion and serve almost 90 million shareholders.

CIVs organized in other countries) calculates each day its net asset value (“NAV”); the NAV typically is the price at which investors every day may purchase and sell CIV shares. Knowing with certainty the source-country tax liability ensures that the NAV is calculated correctly and, therefore, daily investor purchases and sales are at the correct price.

Second, we urge that the TRACE Group develop and support one uniform, simple, and long-lasting investor self-declaration (“ISD”) for individuals. The process for securing an ISD from a CIV investor is not administrable if the investor must complete a separate self-certification for each country in which a CIV invests or may invest. Likewise, even a single, uniform ISD is not particularly useful if it cannot be completed easily by the average investor. Finally, the less frequently a new ISD must be received from an individual investor, the greater the value of an existing ISD.²

As the TRACE Group proceeds with its deliberations, it is essential that the Group remember that the typical CIV investor is an individual of modest means; his or her investment in a single diversified CIV most likely will be small. In general, the ISD will be secured when the individual makes his or her first purchase of CIV shares. The typical investor will be able, at this point, to provide his or her permanent residence address, mailing address, taxpayer identification number (if any), and whether the shares are being purchased for himself or herself (as the beneficial owner) or as an agent for another investor. The typical investor, however, most likely will have little if any familiarity with tax treaty entitlement nuances, will not have ready access to an international tax attorney, and may well not know in which countries the CIV is authorized to invest. These facts, we submit, inform the contents of a uniform, simple, and long-lasting ISD.

We appreciate greatly the work done by the ICG and the Pilot Group on (1) the granting of treaty benefits with respect to CIV income and (2) the possible improvements to procedures for cross-border investor tax relief. As noted in the Pilot Group’s Report, the model mutual agreements (“MMAs”) regarding procedures for determining CIV ownership are an important stand-alone product that can be adopted without implementing fully the at-source withholding envisioned by the implementation package and supported strongly by the ICI. While outside the scope of the TRACE Group’s mandate, we urge TRACE’s Government representatives to use MMAs to address any uncertainties regarding treaty benefits for CIV income.

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The ICI remains committed to improving the efficiency of the treaty reclaim process. Please contact me at 001-202-326-5832 or lawson@ici.org if the ICI can assist the OECD, the CFA, or the

² In this regard, we suggest that the TRACE Group support treating an ISD as remaining valid indefinitely, unless and until the ISD recipient knows, or has reason to know, that the investor’s treaty-entitlement may have changed. This “reason to know” might be present, for example, if an investor’s mailing address changes from one country to another. Such a mailing address change could indicate a change as well in the investor’s permanent residence. At this point, the ISD recipient could be compelled to seek a new ISD, with the existing ISD remaining valid until the ISD recipient has had a reasonable period of time to secure a new ISD.

TRACE Group as procedures are considered for ensuring that appropriate treaty benefits are provided in the most efficient manner to investors, generally, and most particularly to individual investors in CIVs.

Sincerely,

/s/ Keith Lawson

Keith Lawson
Senior Counsel – Tax Law

cc: Mary Bennett
Jacques Sasseville
Achim Pross