AREF

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Tax Treaties, Transfer Pricing and Financial Transactions Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development

By email: taxtreaties@oecd.org

Dear Sir/Madam

**OECD Discussion Draft on BEPS Action 6: Preventing the granting of treaty benefits in appropriate circumstances**

AREF[1] is supportive of the efforts of the OECD to reduce treaty abuse and treaty shopping. However, we are concerned that the impact on Collective Investment Schemes (CIVs) in accessing treaty benefits has not been adequately considered.

The 2010 OECD report: *The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles* (the CIV report) recognised the benefits of investing through a CIV, including providing smaller investors the opportunity to invest in markets they would not otherwise have access to. For this reason and the economic efficiencies provided to investors, CIVs are popular structures for investing into real estate, and are therefore a significant source of capital for long term investment.

The CIV report recognised that one of the main objectives of tax treaties is to reduce tax barriers to cross-border trade and investment. We are concerned that the proposals in the Discussion Draft would jeopardise the level of cross-border investment as many CIVs would unlikely qualify for treaty benefits under the recommendations. In order for CIVs to remain a viable option for real estate investment, it is essential that investors are afforded the protection of double taxation treaties. Furthermore, the recommendations in the Discussion Draft if implemented would also place funds who distribute cross-border at a competitive disadvantage compared to funds whose investors are primarily domestic.

AREF is concerned that the introduction of a limitation on benefits clause as recommended will violate the principle of tax neutrality. The CIV report and the Commentary on Article 1 both recognise the importance of ensuring investors are not worse off by investing in a CIV compared to if they had invested directly. As it stands, many CIVs will not meet the criteria to be considered a "qualified person" under the proposed limitation on benefits clause because CIVs that are widely held might pool investors from many jurisdictions.

Because CIVs are widely held they do not represent a risk of tax avoidance or treaty shopping (as was found by the OECD in the CIV report).

[1] The Association of Real Estate Funds represents the UK unlisted real estate funds industry and has about 70 member funds with a collective net asset value of over £40 billion under management on behalf of their investors. These member funds represent about 75% of the UK commercial real estate held in CIS and includes £9 billion of net asset value in UK-authorised retail funds (NURS), £17 billion in various forms of UK UCIS and £14 billion invested in offshore (mostly Jersey) domiciled funds.

We therefore recommend that if a LOB clause is adopted, the definition of a qualifying person includes a CIV which is widely held and regulated in its country of residence.

AREF recognises the importance in combatting tax evasion and appreciate the efforts of the OECD to address this important issue. However, we strongly urge the OECD to take into account the policy objectives highlighted in the CIV report and the Commentary to Article 1 to ensure CIVs are not inadvertently negatively impacted by these proposals.

Yours sincerely

**John Cartwright**
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The Association of Real Estate Funds