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Tax Policy and Statistics Division
Centre for Tax Policy and Administration
Organisation for Economic Co-operation and Development
2, rue André Pascal - 75775 Paris Cedex 16

RE: *Application to CIV Industry of Secretariat
Proposal for Pillar One Unified Approach*

Dear Members of the Inclusive Framework and the OECD Secretariat,

ICI Global¹ supports the effort, reflected in the Secretariat's public consultation document, to develop a global consensus on modifying the multinational entity (MNE) taxing regime in appropriate cases. This consensus should allocate taxing rights fairly between taxpayer residence and market jurisdictions through clear rules that prevent double taxation; an effective response to the perceived need for unilateral measures will promote tax certainty. By focusing on consumer-facing businesses, some limit is placed on the debate about taxable nexus and profit allocation. Without limits, this initiative could produce radical changes that upend the global economy and impair economic growth without providing additional tax revenues to appropriate jurisdictions.

As an association representing the collective investment vehicle (CIV)² industry globally, ICI Global urges careful consideration of the potential application of these rules to both CIVs and their managers. Because these issues are of such importance to the CIV industry, we have requested the

¹ ICI Global carries out the international work of the [Investment Company Institute](#), the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$30.8 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

² The term "CIV," as provided in paragraph 22 of the Commentary on Article 1 of the OCED Model Tax Convention on Income and on Capital ([November 2017 version](#)), "is limited to funds that are widely-held, hold a diversified portfolio of securities and are subject to investor-protection regulation in the country in which they are established." As noted in the OECD's 2010 Report entitled "[The Granting of Treaty Benefits with respect to the Income of Collective Investment Vehicles](#)," in which this CIV definition first was provided, the term CIV "would include 'master' and 'feeder' funds that are part of 'funds of funds' structures where the master fund holds a diversified portfolio of investments on behalf of the feeder funds that are themselves widely held." 2010 Report, paragraph 4, page 3.

opportunity to attend the public consultation and contribute to policymakers' understanding of our industry.

This submission discusses distinct issues for CIVs and for CIV managers—and urges that both CIVs and their managers be exempt from any international tax law changes advanced under Pillar One. Most particularly, the submission urges that neither CIVs nor their managers be required by the new nexus standard to allocate any deemed residual profit (Pillar One's "Amount A") to market jurisdictions.³

- As CIVs are the vehicle through which investors receive the benefit of asset managers' portfolio management skills, they are not consumer-facing businesses. Indeed, the CIVs themselves are not even businesses (let alone MNEs). Instead, they are financial accounts similar to bank accounts, securities accounts, or insurance contracts.
- Investment firms that manage CIVs, as explained below, are not the type of business to which the proposal apparently is targeted. These asset managers are not highly digitalized and, to a large extent, are not "consumer-facing businesses." They create value through the expertise of their investment professionals and not from user participation, marketing intangibles, or substantial economic presence.

The submission also urges that communications with investors or their advisers that are required by securities regulators be expressly excluded from "Amount B" marketing and distribution activities.

The factual, policy, and implementation considerations supporting these exemptions (which obviously could be subsumed within a broader financial services exemption) are discussed in detail below. This submission also suggests certain features of relevant defined terms, like "consumer-facing businesses," that may help advance a global consensus on this important initiative.

Overview of CIV Industry

CIVs are investment pools organized by asset managers to make portfolio (non-controlling) investments for retail investors. The typical CIV has thousands (often hundreds of thousands and sometimes even millions) of investors.

Unlike other companies, CIVs are externally managed; they are not operating companies and do not have employees in the traditional sense. Instead, CIVs rely upon third party service providers—either affiliated organizations or independent entities—to invest CIV assets and carry out other business functions. CIVs, in effect, consume the portfolio management expertise and related investment services provided by an asset manager. In the United States and many other countries, these services are provided pursuant to a management contract between the asset manager and officers of the CIV.

CIV interests may be purchased either directly from the CIV's principal underwriter (typically an affiliate of the manager) or, more often, from unrelated third-party distributors that routinely hold the interests in nominee ("street name") accounts. The identity of the investor holding CIV

³ Because CIVs themselves do not engage in any activities (such as marketing or distribution) that would be subject to tax under Amounts B and C, Amount A is the only part of Pillar One that has potential application to CIVs.

interests through a nominee account generally will not be known by the CIV's asset manager—although the distributor through which the interests are acquired will know the individual's identity.

As the OECD has noted, CIVs provide small investors with important financial security benefits. Specifically, as noted in paragraphs 8 through 10 of the 2010 Report,⁴

- “CIVs allow small investors to gain the benefits of economies of scale.”
- “They provide access to . . . markets that might be closed to the small investor.”
- “These benefits are provided in a form that is highly liquid.”
- “CIVs also allow for highly efficient reinvestment of income.”
- “Investors in CIVs benefit from the market experience and insights of professional money managers.”
- “Governments have long recognised the importance of CIVs as a complement to other savings vehicles in terms of facilitating retirement security.”

Rather than earning income from operating a business, CIVs receive dividends and interest from their non-controlling investments in the securities of unrelated operating companies. CIV investment strategies also may involve investing in derivatives to hedge against investment risk or as an alternative to investing directly in securities. Finally, CIVs occasionally may hold securities through “tiered structures.” These structures, including the “master-feeder structures” examined in the 2010 CIV Report, improve the ability of investors to acquire CIV interests and benefit from enhanced returns attributable to reduced costs, efficient investing strategies, and economies of scale.

The income earned by CIVs generally will be taxed in multiple jurisdictions. As the OECD recognized in the Commentary on Article 1 of the OCED Model Tax Convention on Income and on Capital, CIV income may be taxed in the source country, at the investor level, and at the CIV level.⁵ Indeed, CIV income from cross-border investments may be taxed multiple times—particularly when CIVs are distributed globally. This potential for over-taxation arises because the

⁴ [CIV Report](#), page 4.

⁵ See, for example, paragraph 22 of the Commentary on Article 1 of the OCED Model Tax Convention on Income and on Capital ([November 2017 version](#)).

- First, source countries impose tax (generally withholding tax) on specified cross-border investments at applicable statutory rates, subject to potential reduction by treaty. Dividend income from cross-border investments traditionally is taxed by all source countries. Interest and gains are less likely to be taxed, but the incidence of source-country taxation of these income streams is growing. The taxes imposed on CIV cross-border investments, including potential treaty reductions, apply to portfolio (non-controlling) investments made by all cross-border investors (including CIVs).
- Second, the residence jurisdictions of individual CIV investors will tax the full investment return (including capital gains) either currently (such as on distributions) and/or when the CIV interests are sold. Tax will be imposed at each individual investor's applicable tax rate, based upon that investor's individual circumstances.
- Third, tax may be imposed on CIVs by the applicable domicile jurisdiction. In some jurisdictions, tax is imposed directly on the CIV. In other situations, withholding tax is imposed on distributions to CIV investors resident in other jurisdictions.

tax rules in the respective source, investor residence, and CIV domicile jurisdictions may not be coordinated sufficiently to ensure that foreign tax credits are available to CIV investors.

ICI Global Perspective on Policy Rationale for the Unified Approach Proposal

The Secretariat’s proposal commendably seeks to merge three different considerations—user contribution, marketing intangibles, and substantial economic presence—into a single approach. We support this effort to respond appropriately—through carefully considered and targeted measures—to concerns raised by both the public and governments.

The rationale for applying Pillar One to consumer-facing businesses, as we understand it, is to focus on those MNEs with business models least easily accommodated under existing taxing regimes. The business models utilized by the CIV industry, in contrast, do not present these concerns; the existing tax regimes, in our experience, tax appropriately all CIV industry income.

We recognize that the term “consumer-facing business” is not limited to highly-digitalized firms, to those for which user participation creates significant value, to those with marketing intangibles that are taxed insufficiently in market jurisdictions, and to those with substantial economic presence. Nevertheless, we submit, an MNE should not be subject to Pillar One in general, and to Amount A in particular, unless it exhibits these factors to more than an insubstantial degree.

CIVs Should be Exempt from Pillar One’s Amount A Regime

Factual considerations

CIVs are not “businesses.” They are not “operating companies.” They do not have “business profits.” They are not “MNEs.” They are not “consumer-facing.” They do not have “customers.” If anything, CIVs are customers—of the asset managers that invest CIVs’ assets and provide management and administrative services.

CIVs, as explained above, are investment pools managed by unrelated third parties. Interests in CIVs are comparable to bank accounts, securities accounts, insurance contracts, and similar financial accounts. In effect, financial products such as CIVs are analogous to products developed and sold by operating companies.

Persons (including individuals, pension funds, corporate entities, and others) holding CIV interests own 100 percent of the CIV. They are entitled to 100 percent of the CIV’s net income from its portfolio investments (after the CIV pays its expenses, including fees paid to the CIV manager). CIV interests are valued based upon their “net asset value” (or NAV); NAV is determined by totaling the value of a CIV’s assets, subtracting its liabilities (including accrued management fees), and dividing the net amount by the number of investment units outstanding.

Importantly, CIVs generate tax revenues for the jurisdictions in which their investors reside. This income comes from the dividends and interest received from portfolio investments in operating companies’ stocks and bonds and from gains when those securities are sold. This income will be taxed, depending on the jurisdiction, either annually or when the CIV interests are sold.

CIVs likewise generate tax revenues for the jurisdictions in which their portfolio investments are located. Jurisdictions typically collect withholding tax on income (such as dividends) arising from

cross-border securities investments. CIVs may hold securities issued by operating companies that may be resident in one hundred or more different jurisdictions.

Policy considerations

CIVs exhibit none of the characteristics underlying the policy rationale for Pillar One. CIVs have no digital presence. Individuals purchasing CIV interests do not interact with the CIV; they merely purchase interests in the CIV. Nothing about that purchase rises to the level of a “contribution” such as the “user contributions” that have been discussed under this initiative. Moreover, CIVs themselves do not have intangible assets of any kind; they simply hold securities. Finally, CIVs do not have any “presence” whatsoever, let alone a “substantial economic presence;” they are mere pools for portfolio (non-controlling) investments.

Equally importantly, CIVs are not “businesses” with “operations” from which “profits” (routine or non-routine) arise. All investment earnings arise from the performance of the securities in which CIV invests, less expenses. CIVs likewise do not engage in cross-border tax planning. As CIVs are not operating companies, they do not present transfer pricing considerations.

Finally, CIVs are products that, as the OECD has noted, provide small investors with important financial security benefits including investment opportunities akin to those available to direct investors. The securities purchased directly by wealthy individual investors are not subject to Pillar One—except to the extent that the securities they hold are issued by MNEs that are within scope. No tax policy rationale would support imposing Pillar One tax on CIVs both directly and indirectly (at the level of the CIV itself and to the extent that the securities in which the CIVs invest are issued by MNEs that are within scope)—particularly when wealthy investors would incur this tax only once and indirectly (if the securities they hold are issued by within-scope MNEs).

Implementation Considerations

Substantial implementation considerations would need to be addressed were CIVs within Pillar One. First, as explained in detail in the OECD’s CIV Report, a CIV itself may have very little information regarding the tax residences of those individuals who hold its interests through nominee accounts. As the CIV investors generally are treated as the “clients” of the financial institutions through which the interests are acquired, and these financial institutions often will be competitors of the CIV’s asset manager, investor details often are not disclosed; instead, this proprietary information regarding client identity is kept confidential. Of course, client information is provided to tax authorities through tax compliance regimes such as the common reporting standard. Because CIVs do not have access to this information, however, they would be unable to determine the market jurisdictions in which their interests are held and hence unable to allocate “profits” to those jurisdictions.

Second, there would be no “sale” upon which a market jurisdiction could impose withholding tax. Investors acquire their CIV interests based upon the CIV’s per-unit net asset value; investors are paying only for an allocable share of the portfolio securities held by the CIV. The CIV itself does not pay for distribution and does not collect “distribution payments.” Various mechanisms have been created under which customers compensate their advisers for investment advice and acquisition-related services; CIVs, however, are not a party to these arrangements.

Finally, and perhaps most importantly, application of Pillar One to CIVs would impose the tax directly on the CIVs' investors. CIVs do not have "shareholders" who benefit from the profits of operating companies. CIV investors earn a return based upon the extent to which the income generated by the CIV investments exceeds the amounts that the CIV must pay for the services it receives. Taxes are just one more expense that reduces a CIV's net return.

Nothing underlying the rationale for Pillar One would support imposing Pillar One taxes on individuals saving for retirement or other long-term needs through an investment pool such as a CIV. The exemption from Pillar One for CIVs themselves could be provided through a targeted CIV exemption, through a broader exemption for all "financial services," or through a carefully crafted definition of "consumer-facing" business.

CIV Managers Should be Exempt from Pillar One's Amount A Regime

Factual considerations

CIV managers are not monolithic. Their business models vary widely. Some manage only regulated products such as CIVs. Many manage CIVs and other investment products (that often are developed for institutional investors such as pension funds). Many manage investment products and provide investment advice directly to individuals and/or institutions. Many manage investment products, provide investment advice, and develop investment strategies and structures for investment and hedging purposes. A substantial portion of the average CIV manager's interactions are with other businesses.

CIV managers typically enter into a management contract directly with the CIV. In some cases, the manager enters into a separate contract with a sub-adviser to manage a portion, or all, of the assets of a CIV. CIV managers are compensated for the services they provide to the CIV pursuant to a management fee agreed in the contract and paid by the CIV based upon the assets under management (AUM).

A separate entity, often affiliated with the CIV manager, will serve as the "principal underwriter" of CIV interests. This party will sell CIV interests either directly or through other firms (such as broker-dealers).

CIV interests purchased through unaffiliated distributors often are held in nominee or "street name" accounts. It is common for CIV interests to be held through a tier of unaffiliated distributors, with nominee accounts within nominee accounts.

The CIV interests, unless they are acquired on a stock exchange, are acquired at NAV. To the extent that a CIV investor pays for assistance in acquiring CIV interests (such as for the investment advice to purchase a specific CIV), that service is provided by the distributor and paid for by the investor. The CIV manager is not a party to the acquisition; any fee paid for that service comes from the investor.

When CIV interests are held in nominee accounts, the identity of the persons (such as individuals or pension funds) acquiring the interests often are not known to the CIV manager or principal underwriter; the underlying investors' identities, of course, are known to the unaffiliated distributor with the direct business relationship with the investor. Depending on the business model of the

unaffiliated distributor, the CIV manager may not even know in which jurisdictions the unaffiliated distributors' customers reside.

Policy considerations

CIV managers, in general, bear little resemblance to “consumer-facing” businesses that exhibit the characteristics underlying the policy rationale for Pillar One. The discussion below provides strong support for exempting CIV managers from Pillar One’s Amount A regime. At a minimum, clear guidance should be provided regarding the extent, if any, to which the activities of CIV managers involve “consumers,” constitute a “sustained and significant involvement in the economy of a market jurisdiction,” and therefore potentially create Pillar One Amount A tax liabilities.

We support the Secretariat proposal’s definition of “consumer” as referring, in general, to “individuals who acquire or use goods or services for personal purposes.” We likewise support the proposal’s definition of “customer” as referring, in general, to “all recipients of a good or service (including business customers who are not end-users).”

The first policy consideration involves determining what is the good or service that is being supplied by the CIV manager and whether that good or service is being consumed for personal purposes. CIV managers provide investment expertise to CIVs that are acquired by investors typically looking to save for long-term needs such as retirement. The manager or another party (often an affiliate) also must ensure, among other things, that the CIV receives appropriate legal, accounting, and recordkeeping assistance, satisfies all relevant securities offering requirements, and complies with all tax laws.⁶

When an unaffiliated broker-dealer or investment adviser is reviewing potential CIVs for investment by the adviser’s clients, the focus largely is on one thing: investment performance. CIVs are not recommended to clients because the CIV manager hires the best accountants or drafts offering documents that are easiest to understand. Instead, an investment adviser will recommend CIVs to its clients that meet the clients’ investment preferences and risk profiles (for growth stocks, government bonds, etc.,) and, in the adviser’s judgment, are likely to provide the best after-tax performance net of fees.

Expected performance is largely a function of the CIV manager’s investment expertise in navigating changing market conditions and the manager’s ability to contain fees; fee containment is an important consideration for all CIVs. For “index funds,” investment expertise includes cost-effectively tracking an index by managing cash flows without typically purchasing every security in that index. Although past performance does not guarantee future performance, a CIV manager’s successful record of providing favorable returns is an important consideration when advisers recommend CIVs to their clients. Thus, in our view, the service being provided by the CIV manager that is relevant for Pillar One is the investment advice and portfolio management provided by the CIV manager to the CIV itself.

⁶ These requirements must be met because, as the OECD has noted (see footnote 2, *supra*), CIVs are widely held and subject to investor protections in the countries in which they are established.

The second policy consideration involves determining who is the “customer” of the investment services. The CIV manager’s “customers” could include the CIV, the unaffiliated distributors, all investors in the CIV, or only those CIV investors who acquire their interests directly from the principal underwriter. Only those customers who also are individuals, however, might be “consumers.”

The CIV clearly is a customer—as the management contract pursuant to which the investment advice is provided is between the CIV manager and the CIV itself. There is neither a contractual relationship between the CIV investors and the CIV manager nor a payment directly from the CIV investors to the CIV manager. Instead, the CIV manager is compensated for its services to the CIV pursuant to a management fee paid by the CIV based upon assets under management.

Because all investors in a CIV benefit from the CIV’s performance—which is a direct result of the service provided by the CIV manager to the CIV—all CIV investors (including those holding as nominees) could be viewed as customers of the manager. Also benefiting from the CIV’s performance are investment advisers that are compensated by their clients based upon the value of their clients’ (hopefully increasing) assets and governments that receive tax based on the income and gains that their residents receive from their CIVs. Determining the extent to which a benefit received is treated as making the recipient a customer will not be easy in all cases.

The third policy consideration involves determining who is the “consumer” of the investment services. Given that the term consumer generally refers to individuals acquiring goods or services for personal purposes, CIVs, broker dealers, and other investment advisers operating in a business capacity would not appear to be consumers. Because pension funds also operate in a business environment, and are not individuals, they also presumably would not be consumers of the CIV manager’s investment services.

The only individuals who might be “consumers” of the CIV manager’s investment services—even though they have no contractual relationship with the manager and do not pay for those services directly—would be the individual investors (“savers”) in the CIV. The only question—if one assumes that CIV investors are consuming the manager’s expertise for personal purposes—is whether this consumption occurs only if the investor acquires CIV interests directly from the principal underwriter or whether this consumption occurs irrespective of in whose name the shares are held. Said another way, is the consumption of the CIV manager’s investment expertise limited to those who acquire their interests without receiving recommendations from a paid investment adviser or are all CIV investors recipients of the manager’s expertise (including those who received CIV investment advice from unrelated third parties)?

The fourth policy consideration—if one assumes that CIV interest holders somehow are “consuming” services provided by the CIV manager— involves determining whether this “consumption” creates sufficient value in the market jurisdiction to justify an allocation of CIV manager profit. CIV managers have little digital presence. Like most businesses, CIV managers utilize the internet to communicate. These communications, however, are unlike the communications that rise to the level of the “user contributions” that have been discussed under this initiative. Moreover, investor data is not monetized in the same way as in some other industries. Finally, the value provided by CIV managers arises from their ability to cost-effectively identify attractive securities investments that will increase the wealth, and financial security, of the CIV’s investors. Marketing intangibles do not create value for CIV managers; investment expertise, based upon extensive market research and skillful decision-making, creates value.

These four policy considerations, in our view, lead to one conclusion: CIV managers do not provide a service to consumers for which market jurisdiction taxing rights are appropriate under Pillar One's Amount A regime. Specifically, CIV managers do not have "non-routine" profits arising in market jurisdictions from the factors (e.g., highly-digitalized activities, user participation, marketing intangibles) underlying the proposal. Instead, CIV managers' profits are the direct result of portfolio managers' abilities to generate favorable returns for their CIVs. Value therefore is created where the CIV managers reside and not in the jurisdictions of the CIVs' investors.

Three different avenues are available to prevent inappropriate market jurisdiction taxation of CIV managers. The simplest approach, which we support strongly, is to exempt all financial services from Pillar One—which is mentioned in the public consultation document as an option for consideration. We expect that this submission's description of the policy considerations that apply to CIV managers will be supplemented by comparable submissions from others in the larger financial services community. Financial services firms, broadly speaking, do not provide goods and services for "consumption" using business practices similar to those for which Pillar One's Amount A regime has been crafted. Indeed, the financial security services provided by financial services firms, in contrast to goods manufactured by consumer products companies, are not "consumed" in the traditional sense. Instead, these services are utilized to generate savings and promote economic growth—all of which will be taxed.

The second approach for exempting CIV managers from Pillar One's Amount A regime would be through a targeted carveout. The difficulty with this approach involves segregating the CIV management line of business from other financial services lines of business (assuming that policymakers determine that some such businesses should be within Pillar One's scope). Given the extent to which asset managers operate multiple similar business lines simultaneously and in tandem, such as when an investment analyst provides securities recommendations to both a CIV and a non-CIV investment pool, providing administrable rules for a CIV manager carveout would be extremely challenging.

The final approach would be to provide clear rules that have the effect of preventing CIV managers from being within scope under the Pillar One Amount A regime. Should explicit exemptions not receive support from the Inclusive Framework, significant time will be needed to develop administrable rules that are understood, and applied consistently, by all market jurisdictions.

Implementation considerations

If an express carveout is not agreed, several implementation considerations will be presented. These considerations, many of which have been alluded to already, provide further support for a financial services industry (or CIV manager) Amount A exemption.

The first implementation questions would involve identifying the CIV manager's "customers" who also are "consumers" for profit-allocation purposes. As noted above, even if one assumes that the CIV investors are the customers of the CIV manager, the manager often (perhaps even typically) will not know the market jurisdiction in which the investors reside or whether the investors are individuals, pension funds, corporates, etc. This information deficiency is a natural byproduct of competitors (other financial services firms) not sharing client details with CIV managers. Significant tax disputes and the potential for substantial double and triple taxation would be expected unless all jurisdictions agreed to respect safe harbors, based upon "informed estimates" provided by CIV managers, regarding the relevant profile characteristics of the CIV investors.

The next set of implementation questions would involve determining when a CIV manager's activities constitute a sustained and significant involvement in the economy of a market jurisdiction. Irrelevant for this purpose should be all activities undertaken by third parties advising their clients to invest in a manager's CIVs. These third parties, because they are advising their clients regarding investments offered by many competing CIV managers, clearly are not agents for any particular CIV manager. Moreover, the profits of these third parties (that typically are subject to significant securities law requirements) will be taxed in the jurisdictions in which they operate.

If the Inclusive Framework concludes that revenue thresholds are appropriate proxies for sustained and significant involvement purposes, the amount invested in CIVs is not the relevant measure. Unlike purchasers of consumer products (such as shampoo), the amount invested in a CIV does not reflect the value of the service provided. Indeed, none of the amount invested is revenue to the CIV manager. Instead, the CIV manager's revenue for investment services is received over time from the CIV itself based upon assets under management and a contractually-agreed fee. That fee (typically well below one percent of the assets under management) would be allocable (should Amount A rules apply) based upon the portion of the CIV interests held by individuals who are residents of each market jurisdiction. Determining the residence of a CIV's investors, as noted above, will be extremely challenging for many CIV managers.

A third set of implementation questions would involve calculating the "non-routine" profits to which market-based allocations should apply. Because CIV managers' profits are attributable to their abilities to make successful investment decisions based upon careful analysis, we submit that CIV managers do not have any "non-routine" profits that are properly allocable to market jurisdictions. CIV managers, as noted above, do not generate value from digital presence, "user contributions," or marketing intangibles. If arbitrary routine profit percentages nevertheless are applied, careful consideration will be needed to apply an appropriate percentage based upon product lines. CIV managers, because their fees are dependent on the value of the securities held by the CIVs that they manage, are fully exposed to securities market volatility. Consequently, CIV managers should be provided with a much higher "routine profit" percentage to reflect the significant downside risks to which they are exposed.

A fourth set of implementation questions would involve collection. No sales proceeds, as discussed above, are paid to the CIV manager when CIV interests are purchased. The full amount paid for the CIV interests is invested by the CIV in portfolio securities. The CIV manager is compensated only as long as the amounts remain invested in the CIV.

Because there is no cash payment upon which withholding tax could be imposed, CIV managers presumably would be required to file tax returns in every jurisdiction in which CIV investors reside—if the individual investors are treated as consuming the managers' investment expertise. This new obligation arising from Amount A's new nexus standard, however, might change fundamentally how CIV managers view their business prospects. Specifically, CIV managers might undertake a new cost/benefit analysis and make a business decision to restrict investments to residents of specified jurisdictions. Investors no longer eligible to invest would have fewer investing options. Fewer investment gains would mean less tax collected by governments.

Securities Law-Required Communications Should be Excluded from “Amount B”

If financial services are not fully exempt, Pillar One should exclude from Amount B marketing and distribution activities the costs associated with disclosures required by securities regulators. These disclosures, typically designed to ensure that individuals understand the potential risks of their investments (sometimes, consequently, known as “investor-protection” materials), have no profit-generating component; they instead are a legally-imposed cost.

Under these securities laws, CIV managers and others routinely are required to provide investors with disclosures such as offering documents and annual statements. These materials provide information on matters such as investments, fees, and related charges. Governance issues, and obligations imposed on CIV managers and others by the securities laws, also are required to be described.

Amount B, as we understand the public consultation document, would establish a fixed return for certain “baseline” or routine marketing and distribution activities occurring in market jurisdictions. While it may be appropriate, for dispute-reduction reasons, to apply a fixed return to certain activities, no such rationale applies to documents that securities laws require to be provided to potential investors.

Additional Non-CIV-Industry-Specific Issues

Many additional issues, that surely will be raised by numerous other commentators, also will need to be addressed. As these issues are not specific to the CIV industry, this submission will mention only a few.

First, the Secretariat’s undertaking to provide consensus rules under Pillars One and Two is a monumental challenge; this initiative will fail unless sufficient time is provided for consulting extensively with all stakeholders and crafting fully-developed and administrable rules. For this reason, members of the Inclusive Framework must give the process time to succeed and not adopt unilateral measures following the expiration of unrealistic and artificial deadlines.

Second, robust dispute resolution mechanisms are essential. Jurisdictions with in-scope MNEs should not agree to other jurisdictions’ imposition of Pillar One tax liabilities on their resident MNEs unless the other jurisdictions agree to (1) provide up-front dispute-minimizing guidance and (2) mandatory binding arbitration to resolve those disputes that nevertheless arise.

Finally, Pillar One must provide MNEs with the ability to use losses to offset future tax liabilities. Absent clear rules for such relief, MNEs will be whip-sawed and taxed multiple times and well beyond what is intended by the Inclusive Framework.

Conclusion

Carefully crafted, and generally incremental, tax law changes are necessary for certainty that promotes economic growth. The Inclusive Framework must ensure that sufficient time is provided to develop administrable guidance under Pillar One. As explained in detail in this submission, this administrable guidance should exempt from Pillar One’s Amount A regime both CIVs and CIV managers.

We look forward to sharing our views during the public consultation on 21-22 November. Please feel free to contact Keith Lawson (at lawson@ici.org or 1-202-326-5832) or Katie Sunderland (at katie.sunderland@ici.org or 1-202-326-5826) if we can provide you with any additional information.

With kind regards,

/s/ Keith Lawson

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