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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 Blueprints for Pillars One and Two*

Dear OECD Centre for Tax Policy and Administration,

ICI Global[1] supports the effort, reflected in the Blueprints, to develop a global consensus on modifying the multinational entity (MNE) taxing regime in appropriate cases. Clear rules that prevent double taxation are necessary for taxing rights to be allocated fairly between taxpayer residence and market jurisdictions. As an association representing the global collective investment vehicle (CIV) industry,[2] ICI Global urges careful consideration of the potential application of these rules to both CIVs and their managers.[3]

Our comments supplement those we made, during prior consultations, regarding two specific issues involving the CIV industry.[4] First, we support strongly the complete Amount A exemption provided under Pillar One for the asset management industry. Second, we support the Blueprint's

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[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$34.1 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.

[3] As we do not represent non-CIVs, this submission does not make any representations or recommendations regarding non-CIVs.

[4] *See* ICI Global comments dated 11 November 2019 (Pillar One) and 29 November 2019 (Pillar Two).

CIV exemption from Pillar Two and additional guidance necessary to prevent inappropriate taxation of certain unique structures and circumstances by which CIV investments are offered to individual investors. By adopting our positions, the Inclusive Framework will provide the CIV industry with certainty without harming the tax policy objectives of this important initiative.

The Asset Management Industry is Properly Excluded from the Scope of Amount A

We support strongly the Pillar One Blueprint's exemption for the asset management sector. The Blueprint's rationale for exempting fund vehicles, financial intermediaries, and investment managers from the scope of Amount A is compelling.

Funds, as detailed in the OECD's 2010 CIV Report[5] and explained in the Blueprint, are not active businesses. Instead, they are investment pools organized by asset managers to make portfolio (non-controlling) investments for retail investors.[6] As CIVs are not operating companies and do not have business profits, they appropriately are outside the scope of Amount A.

While financial intermediaries and investment managers are operating companies, market jurisdictions already receive their appropriate share of these firms' business profits. Hence, the Blueprint's scope exemption—based upon regulatory and administrative considerations—is fully consistent with the Pillar One objectives.

The entire asset management industry—because of governments' understandable demand that industry firms act in the best interest of fund investors—is heavily regulated. Local regulation is key to ensuring that firms meet their fiduciary responsibilities to local investors. This regulation, as explained in the Blueprint, is comparable to that imposed on retail banking and retail insurance. Indeed, banks and insurance companies are prominent members of the asset management industry.

Equally importantly, simplification and administrative considerations compel the scope exemption for financial intermediaries and investment managers. These considerations are discussed in detail in our 11 November 2019 submission and summarized below.

First, the CIV manager often will not know in which jurisdictions the unaffiliated distributors' customers reside. Considerable controversy would result from jurisdictions taking different positions regarding investors' residences and their allocable share of any residual profits.

Second, the task of actually calculating and collecting tax, and the accompanying controversy, would be considerable. The CIV manager is compensated by the CIV and only for so long as assets of its constantly changing customer base remain invested in the CIV. Revenues are not attributed to market jurisdictions as no payments are made by the CIV's investors to the CIV manager.

Third, given that CIV manager revenues are based upon assets under management (which fluctuate as securities trade in the markets), residual profits are not economically attributable to market jurisdictions simply because securities may appreciate rapidly.

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[5] *See* The Granting of Treaty Benefits with respect to the Income of Collective Investment Vehicles.

[6] The ICI Global submission dated 11 November 2019 explains in detail the rationale agreed by the Blueprint for exempting CIVs from Amount A's scope.

A final implementation consideration—implicated by the minority position that asset management is "less regulated" than retail banking and should be within scope—involves the considerable complexity of separating "exempt" and "within scope" activities of large financial services firms. Asset managers are not monolithic; often, asset managers are only one interrelated component of firms that also provide banking and/or insurance services to both institutional and retail customers. Finance-related activities often create value for multiple business units—both institutional and retail. Bringing asset management (or some portion thereof) within scope, and also achieving the Inclusive Framework's stated objective of simplifying Pillar One's application, are inconsistent propositions.

Eliminating the asset management exception, importantly, might have a significant unintended consequence. Specifically, because CIV managers would be required to file tax returns in any jurisdiction in which unrelated parties distribute their shares, CIV managers would need to consider in which jurisdictions to allow their shares to be distributed. If the costs of entering new markets (both compliance burdens and potential tax controversies) exceeded the benefits of new customers, it would be uneconomic to enter those markets. To the extent that individuals are deprived of investment options, the result would be less saving, fewer gains, and less tax collected by governments.

Only one conclusion arises from these considerations: CIV managers do not provide a service to consumers for which market jurisdiction taxing rights are appropriate under Pillar One's Amount A.

Investment Funds are Properly Exempted from the GloBE rules

We support strongly the Pillar Two Blueprint's exemption for Investment Funds. As noted in the Blueprint and emphasized in our 29 November 2019 comments, the policy rationale for Pillar Two does not apply to funds exempt from tax under domestic law. The entire investment return on a CIV's portfolio will be taxed—just not at the CIV level. The OECD's CIV Report recognizes that the tax is borne, appropriately, at the CIV investor level. Subjecting this return to an additional level of tax—the GloBE tax—would run counter to the strong governmental goal of encouraging individuals to save through CIVs for retirement and other long-term objectives.

The Investment Fund definition provided by the Blueprint—as explained by the Blueprint's commentary—covers essentially all CIVs. One minor drafting issue involves the definitional requirement that the Fund be "designed to pool assets . . . from . . . a number of investors." Paragraph 81 states that this definition "requires" that there be "at least two unconnected investors." Paragraph 82, in contrast, appears to recognize that a CIV typically will be formed with only one investor—the asset manager that provides the initial capital (called "seed money") required by securities regulators when a CIV is organized. Specifically, paragraph 82 states that "the fund manager may be required to hold a de minimis shareholding in the entity or arrangement." As the CIV, per the Investment Fund definition, clearly is "*designed* (emphasis added) to pool assets . . . from . . . a number of investors," the statement in paragraph 81 that the Fund is "required" to have at least two unconnected investors is inconsistent with both the Investment Fund definition and paragraph 82's accurate understanding of how CIVs are organized. This requirement should be restated in paragraph 81 to indicate that an Investment Fund "is designed to have" at least two unconnected investors.

Importantly, the definition's inclusion of investment vehicles owned by Investment Funds accommodates various structures by which CIV investments are offered to individual investors. By exempting from Pillar Two those Investment Funds that are the Ultimate Parent Entity (UPE), the Blueprint addresses the tiered-structure concerns raised in our 29 November 2019 submission.

Situations will arise, however, in which a CIV is not the UPE. Asset managers in the United States, for example, may offer CIVs registered under the Investment Company Act of 1940[7] to insurance companies as an investment to support their liabilities under variable insurance and annuity contracts. Because the insurance companies include the income from such investments in their taxable income, they do not create potentially abusive situations that are the target of Pillar Two. Consequently, to prevent unintended harm, we request that all CIVs be included within the definition of Investment Fund irrespective of whether or not they are the UPE.

Conclusion

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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[7] 15 United States Code (U.S.C.) §§ 80a-1 et seq.