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I. INTRODUCTION

The aim of the present note is to outline the issues raised by the treaty entitlements for investments made through collective investment vehicles (CIVs) on dividend and interest income, as a basis for discussion during the sixteenth session of the Committee.

The economic importance of CIVs (and the relevance of taxation in attracting and providing access to such investment) makes the tax treatment of collective investment vehicles an important question for both developed and developing countries.

Given the economic benefits of CIVs, most countries try to put into place a tax system that provides neutrality between direct investments and investments through a CIV. However, in cross-border situations, investment through a CIV can produce over-, under-, or double taxation for two main reasons: First, two or more States can have differing tax qualifications of the CIVs in their domestic laws, which affects the application of double taxation treaties. Second, from a more practical point of view, it can be very difficult to identify the specific investors in CIV structures or the respective type of income concerned, which can limit substantially the access to the benefits of a tax treaty.

The UN Model at present contains no specific provisions and very limited Commentary concerning CIVs. The Committee will have to consider the issues related to the tax treatment of CIVs, and to determine if these issues need to be addressed in its upcoming work.

1. Definition

The term **widely-held** by investors, that are invested in a **diversified portfolio** of securities, and are subject to **investor-protection regulation** in the country where they are established[1]
the master fund holds a diversified portfolio of investments through feeder funds.

2. Importance of CIVs

In 2016, it is estimated that the total worldwide assets invested through open-ended funds amounted to over US$40 trillion.[2] Since 2009 this figure has more than doubled.

There are multiple reasons for an investor to invest through a CIV rather than directly: cost efficiency, diversification of risk, economies of scale, liquidity of investment (as securities issued by CIVs may be redeemed), efficient reinvestment of income (taking advantage of

[1] Report THE GRANTING OF TREATY BENEFITS WITH RESPECT TO THE INCOME OF COLLECTIVE

[2] http://www.icifactbook.org/deployedfiles/FactBook/Site%20Properties/pdf/2017/2017_factbook.pdf, visited 26 March 2018

market experience and insights of professional managers). The advantages of a diversified and professionally managed portfolio at reasonable cost are in particular beneficial to small investors. However, institutional investors, such as pension or state funds, also increasingly use CIVs. In particular, the recent strong growth of passive investment strategies, i.e. the replication of the performance of a defined basket of assets (such as an index), boosted the use of CIVs by institutional investors, due to competitive cost-performance profiles.

It is to be expected that the importance of CIVs will continue to grow, and that this growth will also focus on developing countries for the management of the savings and retirement benefits of expanding middle-classes and increasingly ageing populations.

3. Structure

CIVs are typically organised by financial services providers (securities firms, banks, or insurance companies), which are referred to as t
a variety of services such as portfolio management or investor recordkeeping but can also

Investment through CIVs is highly regulated. Direct purchases of shares or units can be affected between the ultimate investor and the CIV or its agent. However, in many financial services markets, direct purchases (and holdings) typically only form a part of the investment in CIVs. Also common are indirect share purchases though one or more intermediaries (e.g. securities firms, banks, insurance companies, independent financial advisers).

Interests in the CIVs are distributed through affiliated and/or unaffiliated firms. Distributors will enter into distribution arrangements with other firms that will distribute CIV shares or units. As a result, there may be layers of intermediaries between the CIV and the beneficial owner of the interests in the CIV. In many cases, these intermediaries will be located in a different country than the issuer, the CIV, and/or the investor.

Furthermore, interests in CIVs acquired through intermediaries are often registered at the CIV level only through nominee/street name accounts for two main reasons: competition concerns

III. ISSUES TO ADDRESS

There are two main categories of difficulties related to the tax treatment of CIVs. First, is the question, whether a CIV qualifies or not to claim benefits of tax treaties, and second, if that is not the case, whether and how investors can get relief from double taxation for income received through a CIV.

1. Can a CIV claim the benefits of tax treaties on its own behalf?

A CIV can in principle claim the benefits of tax treaties if the following conditions are fulfilled:

1. The CIV is a person.
2.
3. The income can be attributed to the CIV for the purpose of the treaty.
4. The CIV is the beneficial owner of income it receives.
5. There is no situation of abuse, such as treaty-

A risk of double taxation will occur if the states involved do not agree that these conditions are met. This may often be the case for various reasons. First, CIVs can take different legal forms. In common law countries, both companies and trusts are

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Another question raised in that context concerns the qualification of a CIV as the beneficial owner of received income. Circumstances that give rise to doubt in this respect can for instance lie in the fact that some CIVs are, for regulatory reasons,

2. If one jurisdiction considers the CIV as fiscally transparent, how can the investors get relief from double taxation?

In view of the diversity and complexity of CIV structures and for reasons of operational

insurance companies, to pool investments. Another reason could be that the fund does not invest in a diversified portfolio, for example that the fund holds only a few private equity participations.

As regards the claim of tax treaty benefits on its own behalf, non-CIV funds raise

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the application to non-CIV funds. The difficulty with the application of the said provision is that non-CIVs ar

fulfilled, treaty benefits will be denied to non-CIV funds under this provision.

IV. CIVs IN THE CONTEXT OF DEVELOPING COUNTRIES

Taxation is an important issue for CIVs since their performance and their market position are affected by tax issues. When organising their business CIVs seem to apply a holistic approach taking into account not only taxes payable by the CIV itself on income received, but also taxes owed by investors for income received through the CIV. If over- or double taxation results on an investment through a CIV, the investor or the CIV may need to reconsider the investment.

For tax policy of developing countries, the tax sensitivity of CIVs has several implications. In order to attract investment by CIVs, a country has an interest to ensure that double taxation is normally relieved under its double tax treaties. In this context, it needs to be considered that CIVs usually engage in portfolio-type investments, which considerably reduces the risk of BEPS and also means that under many double tax treaties a higher portfolio rate of residual taxes will result on dividends in the source State. Developing countries may thus wish to take the special situation of CIVs into account when considering treaty policy and practices with a view to attract investment by CIVs.

V. DECISION ON THE WAY FORWARD AND POSSIBLE OUTPUTS

The UN Model Double Taxation Convention and its Commentary do not at present contain any specific provisions on collective investment vehicles.

In view of the multiple issues linked to the treatment of income generated through CIVs under double tax treaties, the Committee is hereby invited to discuss if there is a need to further address this topic in its upcoming work.

If the Committee should decide to include this topic in its future work, a possible output could consist of the inclusion of additional language in the Commentary that could assist jurisdictions when negotiating double tax treaties or applying negotiated treaties to CIVs.

In this context, it might be considered to introduce in the Commentary possible provisions regarding the treatment of CIVs, in particular for the following situations (as is, by comparison, the case for the OECD Model Commentary):

A CIV is treated as a resident and can claim treaty benefits to the extent that beneficial interests in the CIV are owned by residents of the jurisdiction where the CIV is established.
A CIV is not treated as a resident but can claim treaty benefits on behalf of the owners of the beneficial interests that are residents of the jurisdiction where the CIV is established.
A CIV is treated as a resident and can claim treaty benefits to the extent that beneficial interests in the CIV are owned by residents or equivalent beneficiaries (i.e. residents of the jurisdiction where the CIV is established or of a third jurisdiction which has a double tax treaty with the source state providing for the same or a lower rate of tax at source as compared to the treaty between the state where the CIV is established and the source state).
A specific provision dealing with publicly traded CIVs.
Commentary with guidance on the drafting of a provision concerning the entitlement of CIVs to treaty benefits in terms of Article 29 UN Model Double Taxation Convention.