



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



**REPORT OF THE INFORMAL CONSULTATIVE GROUP ON THE
TAXATION OF COLLECTIVE INVESTMENT VEHICLES AND
PROCEDURES FOR TAX RELIEF FOR CROSS-BORDER INVESTORS**

ON

**POSSIBLE IMPROVEMENTS TO PROCEDURES FOR TAX RELIEF FOR
CROSS-BORDER INVESTORS**

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At a Roundtable on Selected Tax Issues Related to Collective Investment Vehicles sponsored by the OECD's Centre for Tax Policy and Administration on 1-2 February 2006, government and business participants considered legal questions and administrative barriers that affect the ability of collective investment vehicles ("CIVs") and other portfolio investors to effectively claim the benefits of tax treaties (see http://www.oecd.org/document/1/0,3343,en_2649_33747_36202817_1_1_1_1,00.html). The legal issues relate primarily to the treaty entitlement of the CIVs themselves and of their investors. Even where there is no question regarding treaty entitlement, however, there may be very important compliance and administrative difficulties in ensuring that the benefits of tax treaties are effectively granted (including the possibility of claiming benefits with respect to a very large number of investors in a CIV). These difficulties may result in the benefits of tax treaties not being granted or being inappropriately granted, with risks of double taxation or double non-taxation that are of concern for both the country of source of the income and the country of residence of the investor.

At the conclusion of the Roundtable, participants agreed that work should continue on both the granting of tax treaty benefits to income of CIVs and the procedural impediments to the effective delivery of tax treaty relief to eligible cross-border investors. The OECD's Committee on Fiscal Affairs ("CFA") subsequently established the Informal Consultative Group on the Taxation of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors (the "ICG") to take forward the work (see http://www.oecd.org/document/14/0,3343,en_2649_33747_37840206_1_1_1_1,00.html). The ICG includes representatives from the financial industry as well as representatives of the tax administrations of some OECD member countries (see Annex 2 of this Report for a list of the ICG members).

This Report, which has been prepared by the ICG for consideration by the CFA, discusses the procedural problems in claiming treaty benefits faced by portfolio investors more generally and makes a number of recommendations on "best practices" regarding procedures for making and granting claims for treaty benefits for intermediated structures. (A separate ICG report, relating to the legal issues relevant to the treaty entitlement of CIVs and their investors, is being issued contemporaneously with this Report.) The objective of the work on best practices is two-fold: (i) to develop systems that are as efficient as possible, in order to minimise administrative costs and allocate the costs to the appropriate parties; and (ii) to identify solutions that might address the need for tax administrations to ensure proper compliance with tax obligations, from the perspective of both source and residence countries.

The Report recommends that countries develop systems for claiming treaty benefits that allow authorised intermediaries to make claims on behalf of their customers on a "pooled" basis. One of the major benefits of such a system, variations on which have been adopted by a few countries over the past decade, is that information regarding the beneficial owner of the income is maintained by the intermediary at the bottom of the chain, rather than being passed up the chain of intermediaries.

Although a country may be willing to provide benefits on the basis of pooled information, it may want to maintain the ability to confirm that benefits that have been provided were in fact appropriate. For that reason, and in order to encourage compliance in the residence State, the ICG also recommends that those financial institutions that wish to make use of the “pooled” treaty claim system be required to report directly to source countries (i.e. not through the chain of intermediaries) investor-specific information regarding the beneficial owners of the income.

The conclusions of the report are solely those of the ICG and should not, at this stage, be attributed to the OECD or any of its member states. The CFA will be deciding whether to refer the Report to one of its subsidiary bodies for further consideration. Given the recommendations included in the Report, however, the CFA has decided to invite comments from all interested parties before further consideration of the Report by the CFA or its subsidiary bodies.

Interested parties are therefore invited to send their comments on this Report before **6 March 2009**. Comments should be sent electronically (in Word format only) to Jeffrey.owens@oecd.org. Unless otherwise requested at the time of submission, comments submitted to the OECD in response to this invitation will be posted on the OECD website.

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REPORT ON POSSIBLE IMPROVEMENTS TO PROCEDURES FOR TAX RELIEF FOR CROSS-BORDER INVESTORS

Executive Summary

This Report develops a framework for considering improvements to the current procedures for claiming benefits under tax treaties. The objective of the work on procedures is two-fold: (i) to develop systems that are as efficient as possible, in order to minimise administrative costs and allocate the costs to the appropriate parties; and (ii) to identify solutions that might address the need for tax administrations to ensure proper compliance with tax obligations, from the perspective of both source and residence countries. After analysing the extent to which various proposed systems further these objectives, the Report makes a series of recommendations regarding “best practices” with respect to the granting of treaty benefits.

The Report recommends that source countries allow relief at source, rather than requiring investors to pay tax and then request a refund. Further it recommends that countries develop systems for claiming treaty benefits that allow authorised intermediaries to make claims on behalf of their customers on a “pooled” basis. One of the major benefits of such a system, variations on which have been adopted by a few countries over the past decade, is that information regarding the beneficial owner of the income is maintained by the intermediary at the bottom of the chain, rather than being passed up the chain of intermediaries. Accordingly, intermediaries in the chain can facilitate treaty claims for their customers, without passing proprietary customer information to potential competitors (*i.e.* the other intermediaries). The systems also eliminate the time and expense of handling large amounts of paper. By reducing inefficiencies, the systems make it more likely that investors will in fact receive treaty benefits in a timely manner.

Although a country may be willing to provide benefits on the basis of pooled information, it may want to maintain the ability to confirm that benefits that have been provided were in fact appropriate. For that reason, and in order to encourage compliance in the residence State, the Report also recommends that those financial institutions that wish to make use of the “pooled” treaty claim system be required to report directly to source countries (*i.e.* not through the chain of intermediaries) investor-specific information regarding the beneficial owners of the income.

In that regard, the Report also identifies improved processes that would be necessary to ensure the administrability and cost effectiveness of such a system. This type of reporting would allow the source country to provide such information to the relevant residence countries through normal exchange of information programs, thereby allowing residence countries to apply effective matching programs to ensure taxation of that income. The Report concludes that such an effective exchange of information program should allow source countries that currently grant treaty benefits only upon receipt of a certificate of residence issued by the residence country to eliminate those requirements. The Report also recommends that claims for benefits and reporting should be capable of transmission in electronic form. Finally, the Report recommends the development of standardised documentation for such a system.

I. Introduction

1. In 2006, the Committee on Fiscal Affairs (“CFA”) established the Informal Consultative Group on the Taxation of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors (the “ICG”). One of the objectives set for the ICG was to analyse the significant compliance and administrative difficulties surrounding claims for tax treaty benefits on investment income derived through intermediated structures and to consider whether there are administrative procedures that could be adopted to streamline those claims. In doing so, the ICG was directed to strike an appropriate balance between the tax compliance needs of governments in both source and residence countries and developing administratively feasible procedures. This Report discusses the recommendations of the ICG with respect to “best practices” regarding procedures for making and granting claims for treaty benefits for intermediated structures. The ICG also considered the legal and policy issues relating specifically to collective investment vehicles (“CIVs”) (*i.e.* the extent to which either the vehicles or their investors are entitled to treaty benefits), which are discussed in the Report of the ICG on the Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles.

2. “Intermediated structures” refers to the holding of securities, including interests in CIVs, through one or more financial intermediaries.¹ Thus, the mandate of the ICG extends beyond the context of CIVs. Issues potentially would arise in any situation in which payment is not made directly from the issuer to the investor. Such direct payments seldom arise in the case of portfolio investors, and tend to be limited to situations in which the investor has a large or even controlling stake in the issuer of the securities. As a corollary, it would be exceedingly rare for a controlling shareholder to hold its stake in a subsidiary through an intermediary. Accordingly, the procedural aspects of the project can be viewed as limited to portfolio investors. For these purposes, the term “portfolio investors” would mean those that qualify under tax treaties for the general rate of withholding tax on dividends, rather than those that qualify for lower rates available to those who satisfy a minimum ownership threshold, as under Article 10, subparagraph 2(a) of the OECD Model Tax Convention on Income and on Capital (the “Model Convention”). It would also extend to those governments, pension funds and other entities that, under certain tax treaties, qualify for a preferential withholding rate by reason of their special status.

3. The rest of this Report discusses considerations relevant to the development of the recommendations regarding best practices. Part II of this Report provides background regarding existing impediments to claims for treaty benefits. Part III describes various proposals that have been made to address the problems described in Part II. Part IV develops relevant criteria. Part V discusses how well the various business proposals address these criteria. Part VI sets out a proposed set of best practices to provide a basis for discussion. Part VII elaborates on the application of the proposed best practices to the specific case of CIVs.

II. Impediments to Claims for Treaty Benefits for Intermediated Structures Generally

4. The international financial system is built around financial intermediaries. Investments worth tens of trillions of U.S. dollars are held through financial intermediaries worldwide.² This intermediation

¹ However, it was agreed that the ICG would not consider issues of treaty entitlement with respect to investments through private equity funds, hedge funds or trusts or other entities that do not fall within the definition of CIV set out in the Report of the ICG on the Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles.

² The value of companies listed on global stock markets rose to a more than \$50 trillion record in January 2008 (<http://www.reuters.com/article/idUSL2144839620070321>). This does not include the larger amounts of publicly-listed bonds and other instruments held through intermediaries. The World Federation of Exchanges 2007 Annual Report at <http://www.world->

takes many forms, from global custodians, to omnibus accounts maintained by securities dealers, to pooled vehicles for pension funds, to classic, widely-held mutual funds.³

5. In all of these intermediated structures, there may be a number of layers between the issuer of a security and the beneficial owner. Small investors deal with their local financial institutions, which may purchase and hold securities on their behalf. The investor knows that payments on those securities, or gains from the sales of those securities, are credited to their accounts with those local financial institutions, but in most cases likely is unaware of the process by which payments on the securities flow to that account. In fact, there are a number of different patterns, as the local financial institution has a number of options regarding how it will hold the securities on behalf of its clients.

6. In most markets, the vast quantity of publicly traded securities are held or immobilized in one or more Central Securities Depositories (“CSDs”). However, the number and identity of intermediaries between the CSD and the ultimate investor may vary greatly. For example:

- A limited number of investors may hold securities directly through accounts on the records of the CSD in the country of the investment
- In practice, direct access to CSDs is often restricted to certain types of entities (typically financial institutions), due to membership restrictions, the required technological interfacing capabilities and/or the requirement to have access to a payment mechanism. For these reasons investors (and even foreign financial intermediaries) frequently hold their securities interests in an account with a local agent which is normally a financial institution with membership of the national CSD in the country of investment. The local agent offers its customers a full range of settlement, banking and custody services.
- In order to avoid the need to set up different links with the CSDs and/or local agents of the various countries of investment, investors (and intermediaries) may prefer to make use of the services of a global custodian or International Central Securities Depository (“ICSD”).⁴ Both ICSDs and global custodians provide their customers with a single access point to national CSDs in various countries via a network of sub-custodians in the countries concerned. They eliminate the costs of maintaining multiple accounts with various local agents/CSDs and can offer lower overall costs of settlement and a wide range of other services by exploiting economies of scale and spreading fixed costs (*e.g.* technology investments).
- Another option for cross-border investors to gain access to local markets is via Depositary Receipts (“DRs”) of various forms. These include International Depositary Receipts (“IDRs”), Global Depositary Receipts (“GDRs”), American Depositary Receipts (“ADRs”), and Holding

exchanges.org/files/statistics/excel/2007%20WFE%20Annual%20Report.pdf. The vast majority of these portfolio investments, in the tens of trillions of dollars worldwide, are held through financial intermediaries of one form or another. Approximately US\$20 trillion worldwide is invested through CIVs alone. ICI 2008 Fact Book (http://www.icifactbook.org/pdf/08_fb_table48.pdf).

³ Additional trillions are held through private equity funds and hedge funds, which are not addressed in this report, although many of the issues and principles could also be applied to them.

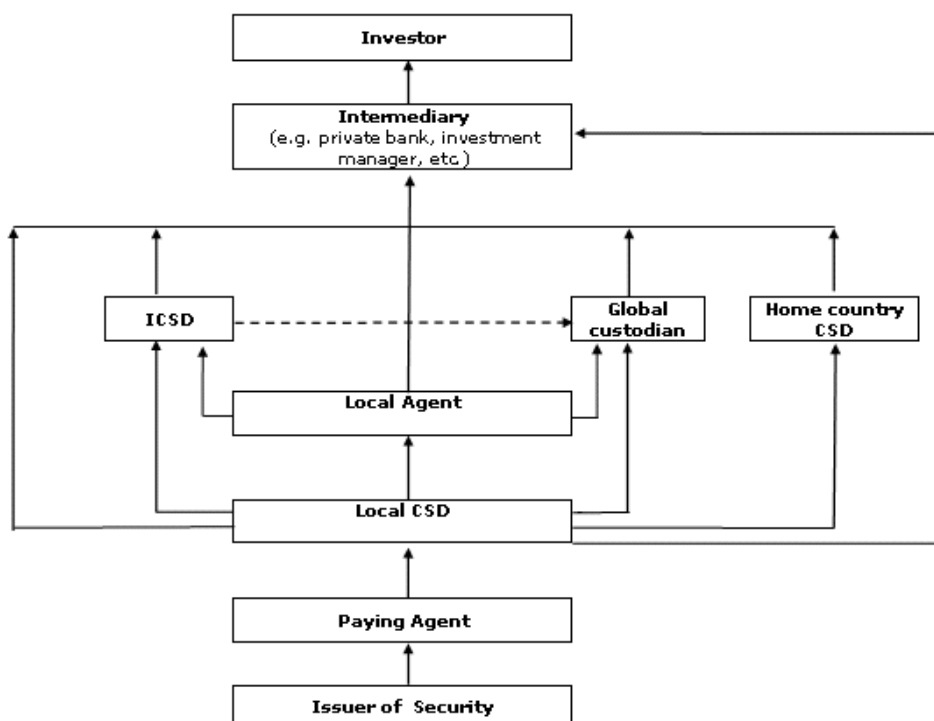
⁴ The two ICSDs, Euroclear and Clearstream, were established in the late 1960s to address the logistical problems created by the need to settle physical Eurobonds across borders. Meanwhile they have broadened their range of activities and have similar functions as global custodians for domestic debt securities and equities.

Company Depositary Receipts (“HOLDERS”). DRs are a type of negotiable (transferable) security that is traded on an investor’s local stock exchange but represents a security, usually in the form of equity, which is issued by a foreign publicly-listed company. DRs can be an effective mechanism for domestic investors to maintain cross-border security interests, with the DRs representing those securities being traded in the investor’s local market. DRs are typically held in street or nominee name via financial institutions that are members of the national CSD in the country of the investor.

7. The above summary is not exhaustive and various other intermediaries may be interposed between the investor and the security issuer, including private banks, investment managers and CSDs in the investor’s country of residence. Separate contractual agreements will normally be in place between each party in the chain (e.g. between the investor and the global custodian, between the global custodian/ICSD and the local agent, etc.).

8. In addition, most intermediaries have, where possible, adopted the practice of holding securities on a fungible basis in omnibus accounts which contain securities pertaining to several beneficial owners in order to maximise the efficiencies of the multi-tiered holding structure. As a result, the ultimate investor’s ownership interest frequently may not be shown in the books of the issuer, the (I)CSD or other upstream intermediary, except the particular intermediary with which it has a direct contractual relationship. The investors’ direct intermediary will typically hold the security in an omnibus account with the CSD or other intermediary at the next level up the multi-tiered structure.

9. Income payments arising from securities typically will flow from the issuer to its paying agent and from the paying agent through the relevant intermediaries to the end investors.



10. Although the vast majority of publicly traded securities is now held through a complex network of domestic and foreign intermediaries, few countries have adapted their withholding tax collection and

relief procedures to recognize this multi-tiered holding environment. If systems are based on the implicit assumption that there is a direct relationship between the issuer (or its local paying agent) and the beneficial owner of income, it may be difficult or impossible to make an effective claim for treaty relief because of the reality of intermediated financial structures. Tax procedures that are too burdensome, such as requiring laborious and costly transmission of detailed paperwork up and down chains of intermediaries to achieve treaty benefits, are unlikely to be followed.

11. A common requirement is that a domestic withholding agent (whether the issuer, paying agent or domestic intermediary) obtain and present to the tax authorities a certificate of residence for the beneficial owner, issued by that owner's home country tax authorities. However, the financial institution that has information regarding the beneficial owner may be several layers away from the withholding agent. Therefore, the requirement that a certificate of residence (whether paper or electronic) be presented to the domestic withholding agent effectively requires the information to be passed through multiple layers of financial intermediaries. Such a requirement is inefficient, as passing such information up a chain of intermediaries imposes substantial administrative burdens on the intermediaries. Some countries require the information (including new certificates of residence) to be provided with respect to each payment date. Given the amount of time it may take to pass information through layers of intermediaries, such requirements may effectively prevent claims for treaty benefits, forcing the investor to either make a claim for refund or to forego treaty benefits entirely.

12. In addition to the administrative burdens involved in processing large amounts of paper (or even electronic communications), a more fundamental problem with any such requirement is that it is inconsistent with the intermediary's business goal of protecting its proprietary customer information. Businesses do not pass their customer lists to their competitors, much less let their competitors know the investment preferences of those customers.

13. Still another problem that has arisen is that the legal systems in some countries do not address the existence of intermediaries, creating difficulties in claiming treaty benefits. A number of countries treat a nominee as the beneficial owner because it is the legal owner. If that is the case, then a nominee should not make a claim under the treaty, but the beneficial owner may not be able to make the claim because it is not recognised as such by the source country. The purpose of the treaty is likely to be frustrated, as neither may be able to make an effective claim.

14. Other administrative requirements may create significant problems, or effectively prevent claims, in the context of intermediated structures. For example, investors may be required to complete multiple tax declarations (*e.g.* a declaration with respect to each payment). Some countries require all documentation to be notarised. In addition to being burdensome in itself, such a requirement may reduce or eliminate the possibility of using electronic certifications rather than paper forms.

15. In addition, a number of countries do not provide relief at source, but withhold tax at the rate provided by domestic law and then require the investor to make a claim for refund. Such systems are generally seen as less investor-friendly than systems providing for relief at source. There can be significant economic costs to the investor of a delay, which sometimes lasts for years, in providing the refund. Other costs are less tangible. Refund systems may fuel uncertainty, as taxpayers frequently feel that their claims for refund disappear into a "black box", with no way of knowing whether the claim is being processed, or whether it has failed because of some deficiency in the paperwork. Refund systems may be confusing to foreign investors. For example, some countries have no central office to process such claims, but require claims to be made in the appropriate "local" tax office. It is not uncommon for the statute of limitations to have run by the time a claimant determines that it has directed the claim to the wrong office. Finally, the administrative costs of producing the relevant paperwork, in some cases having it notarised, and then processed simply exceed the perceived benefit to a portfolio investor.

III. Proposals to Address Impediments to Effective Claims for Treaty Benefits

16. The starting point for the ICG's discussions on procedural issues was a proposal made by BIAC (the "ICG business proposal"), which relies heavily on the proposed tax relief model issued by the International Securities Services Association ("ISSA") in January 2005. A similar model for tax relief recently was proposed by the EU Clearing and Settlement Fiscal Compliance Experts' Group ("FISCO"), which was created in March 2005 to give advice on the removal of fiscal compliance barriers to the clearing and settlement of EU cross-border securities transactions. It is understood that the tax committee of the European Banking Federation is also reviewing the various proposals to see whether its members can agree on the optimal approach to tax relief.

17. These proposals share characteristics of a number of systems that have been adopted by governments within the last decade or so. Although the U.S. "qualified intermediary" ("QI") system may be the best known of the systems that allow for the application of treaty benefits based on "pooled" information (*i.e.* information that does not identify specific investors by name, but characterises a group as having attributes that entitle them to a particular treaty rate) provided by foreign intermediaries (and may also shift withholding responsibilities to such foreign intermediaries), such systems are becoming increasingly common. Japan adopted a system of "qualified foreign intermediaries" for interest withholding in the mid-90's. The Depository Trust Company ("DTC"), the U.S. clearing organisation, currently has arrangements in place with over a dozen countries, pursuant to which it provides pooled information regarding entitlement to treaty and domestic statute tax relief benefits with respect to dividends and/or interest. The governments provide either relief at source or, in some cases, an accelerated refund procedure where refunds are typically received by DTC from the relevant government within 45 days.

18. From a business perspective, one of the major benefits of these systems is that information regarding the beneficial owner of the income is maintained by the intermediary at the bottom of the chain, rather than being passed up the chain of intermediaries. Accordingly, intermediaries in the chain can facilitate treaty claims for their customers, without passing proprietary customer information to potential competitors (*i.e.* the other intermediaries). The systems also eliminate the time and expense of handling large amounts of paper. By reducing inefficiencies, the systems make it more likely that investors will in fact receive treaty benefits in a timely manner.

19. The level of interest and activity in this area, by both governments and industry, reflects the increasing importance of cross-border portfolio investment. For many years, governments focused on, and responded to, the needs of direct investors, because cross-border portfolio investment was relatively small. The rules for applying tax treaty benefits to cross-border portfolio income streams have not kept pace with the huge increases in the volume and complexity of those investments and the changes in how securities are held through intermediaries. Corporations that hold direct investments in foreign subsidiaries usually have enough at stake that they make sure they have complied with whatever procedures are necessary to claim treaty benefits. For the smaller portfolio investor, however, the same administrative costs may be prohibitive. He/she may decide to forego the tax benefits, or to forego the investment. In either case, the treaty will not achieve the goals for which it was negotiated.

IV. Developing the Analytical Framework

20. In developing best practices in this environment, and in analysing the various proposals that have been made to date, it is useful to consider a few basic questions. First, what information do governments, both in the source country and in residence countries, need in order to ensure compliance? Second, where does that information reside? Third, what is the most efficient way to transfer that information from the person that has it to the person that needs it?

21. Finally, it is worth noting that the solutions that are chosen will affect how the costs of processing claims for treaty benefits will be shared among the investors, intermediaries, source countries and residence countries. For example, a country that requires that treaty claims be supported by a certificate of residence effectively shifts some portion of the administrative costs to the residence country. As the amount of cross-border portfolio investment increases, the costs will increase as well. The goal should be to develop systems that are as efficient as possible, in order to minimise those costs, and that allocate the costs to the appropriate parties.

Information needed by Governments

22. Governments' interests can be broken down between the source country and the residence country (which may also be the source country acting in its capacity as a residence country). A system will only be successful in satisfying the interests of both countries if it provides the information that the governments need in both of these capacities, and if it is administrable.

Source country information needs

23. The source country, in its capacity as such, has a strong interest in ensuring that its treaties are not used by residents of third countries that are not themselves entitled to treaty benefits. That is, treaties are, with few exceptions, bilateral in nature, with each of the Contracting States giving up taxing rights in exchange for reciprocal benefits in the other Contracting States. This basic bargain is violated when a treaty is used by residents of a third State, which may not provide benefits to residents of the source State. Moreover, a resident of a third State that inappropriately derives benefits of a bilateral treaty has no incentive to encourage its own government to enter into a treaty with the source State, thereby reducing the chances that residents of that source State would receive reciprocal benefits in the future.

24. The practical implications of the source country's interest in ensuring that its treaties are not used by residents of third countries that are not themselves entitled to treaty benefits can be different depending on the type of income involved. For example, even though many treaties between OECD countries provide for taxation of interest only in the residence country, investors in the debt markets have generally not relied on such treaty exemptions in order to obtain interest at a zero withholding rate. That is because most major debtor countries have recognised that such investors want a fixed and predictable return that will not be threatened by the potential difficulties of claiming treaty benefits and have therefore provided in their domestic law for an exemption from withholding tax for publicly issued or publicly traded securities. These source countries are generally only concerned that the interest is beneficially owned by a non-resident of the source country and are often willing to provide the exemption upon receipt of a certification to that effect, or upon satisfaction of other conditions providing assurance of that circumstance, without needing to know more about the identity or specific country of residence of the investor.

25. Even in situations involving dividends, where entitlement to reduced rates of withholding is based squarely on bilateral tax treaties, it is unclear that, at the time a payment is made, the source country needs to know very much, if anything, about the identity of specific investors or even about their countries of residence, provided it knows the investors are resident in one of the countries with which it has a treaty relationship. That is because the treatment of these types of income is reasonably uniform across tax treaties. In most tax treaties between developed countries, the withholding rate on portfolio dividends is 15%, although it is lowered in some treaties to 10%. Although there is more variation in treaties with developing countries, the UN Model treaty also provides for a 15% rate on portfolio dividends and many developing countries follow suit.

26. Although a country may be willing to provide benefits on the basis of pooled information, it may want to maintain the ability to confirm that benefits that have been provided were in fact appropriate. To

do so, the country may wish to receive, or at least to have access to, information regarding the names, addresses and treaty residence status of the beneficial owners of income for which treaty benefits have been claimed. Such information would allow the source country to make further inquiries regarding additional eligibility criteria that might be relevant; for example, while individuals generally would be entitled to treaty benefits on the basis only of residence, certain entities may present more difficult questions regarding treaty entitlement which the source country might want to explore. A source country might also be worried about potentially abusive transactions, such as dividend stripping (*i.e.* the sale immediately before a dividend payment date to a person entitled to more favourable treatment). Reporting of information to the source country would also facilitate exchanges of information with the residence country to make sure that the income is effectively taxed in the residence country and to confirm the treaty eligibility of investors on a more systematic basis. Finally, countries also may wish to receive such information for statistical purposes. For example, countries may use such information during treaty negotiations in order to determine appropriate withholding rates. Others may use it as a form of risk management, in order to allocate audit resources appropriately.

Residence country information needs

27. The stakes surrounding access to information about the identity of the specific investor are significantly different, and (depending on relative taxing rights) arguably higher, for the country of residence of the investor, whether that country is also the country of source or a different country. The country of residence of the investor is deeply interested in receiving information regarding the names of the investors, their addresses and the types and amount of income earned by such investors. In many cases, it would also need to have their residents' taxpayer identification number or "TIN" (*i.e.* the identification number recognisable in the residence country's tax system or other identifying information used in a particular residence country) in order to match the information more quickly and with the minimum manipulation of the data.

28. The usefulness of this information to the residence country is not dependent on the investor having made a claim for treaty benefits from the source country. However, where investor-specific information becomes available to the source country in the process of applying treaty benefits to income arising in the source country, the exchange of information provisions of tax treaties typically provide a mechanism by which such information can be shared with the investor's country of residence. In principle, therefore, that system should be capable of satisfying the residence country's information needs, although it must be acknowledged that there is still room to improve the quality of the data and the timeliness of exchange. But where intermediated financial structures make it difficult for that information to make its way into the hands of the source country, the residence country may have an even greater concern that its resident investors may be receiving low taxed income from the source country without the knowledge of the residence country.

Where does the Relevant Information Reside?

29. Information about the investor and his eligibility for treaty benefits of course resides first with the investor. That information can be checked by the financial institution with which the investor has a direct relationship. It is safe to say that, in almost every case, no other intermediary in the chain will be in a position to independently confirm information regarding the investor. Accordingly, every other intermediary can only rely on the information that it receives from intermediaries further down the chain.

30. With respect to governments, the country of source is in essentially the same position as intermediaries other than the intermediary with the customer relationship. Since it likely has no independent information about the investor, all it can do is rely on the information that it receives. Because of the difficulties in assessing the investor's right to treaty relief in these circumstances, a number

of countries condition treaty relief on the receipt of a certificate of residence from the tax authorities in the country of residence of the investor.

31. The proliferation of certificate of residence requirements may soon involve quite crippling costs. For example, the U.S. Internal Revenue Service processed 2.4 million certificates of residence for the fiscal year ending 30 September 2007, over a 60 percent increase from just a few years earlier. This procedure has been centralised into one service centre, and a user fee has been instituted to help defray the costs. As a result, the costs of granting and claiming treaty benefits have been shifted from the source country (the one asking for the forms) to the residence country (the one providing the forms) and then charged to the investors, who benefit from the treaty. There has been some debate over whether this is an appropriate allocation of costs.

32. On the other hand, other countries have not centralised the process and may even refuse to provide certificates of residence, although they may stamp forms that are issued by the source country. When the demand for certificates of residence increases slowly over time, tax administrations that have not centralised the process may be unaware of the costs that are incurred in performing this service to taxpayers. However, as a result of cross-border merger activity, there has been an increase in the number of cases where a large number of investors in one country suddenly find themselves in possession of stock of a foreign company. It is understood that such cases have caused affected countries to become more aware of these costs and occasionally to seek negotiations with source countries over which country will bear them. The general growth in cross-border portfolio investment can also give rise to similar concerns about the costs of producing certificates of residence. In addition, for some countries, the entire process of providing or certifying certificates of residence runs counter to management objectives to limit contacts with small taxpayers and focus on larger taxpayers who present potentially greater risks to the tax system.

33. Moreover, the value of a certificate of residence is unclear. There are a number of reasons why they may be of limited value. Although it is understood that a number of European countries require their residents to maintain current addresses with their local governments, that practice is by no means universal, nor does it necessarily give those countries' tax administrations real-time information about the residence of individuals. In many cases, the certificate of residence is based in large part on representations made by the taxpayer on the form requesting the certificate of residence. In a number of countries, a certificate of residence will be issued if the relevant person has filed a tax return within the past x number of years. Thus, even on the basic question of whether the claimant is resident in the residence country, the residence country may not be able to confirm current residence without relying upon the claimant's representations. Accordingly, a requirement that a claimant obtain a certificate of residence from the residence country tax administration does not guarantee that the claimant is a resident of that country either on the date of requesting the certificate or on the date of receipt of the income with respect to which it will be used, although it may ensure that the claimant was a resident of that country at some point in the not too distant past. Moreover, while a requirement that separate certificates of residence be generated for each specific payment may be viewed by some as improving the currency of the certificates, such a requirement can impose a substantial burden and cost on the residence country itself which must generate the certificates and on the taxpayers, intermediaries and withholding agents who must process such certificates and in many cases prevents an effective claim for treaty benefits.

34. This problem is exacerbated by the fact that treaties and their interpretation are becoming more complicated. Many treaties now have multiple rates of withholding tax for various categories of investors. Some, such as those with Ireland, Japan, the United Kingdom, and a number of Commonwealth countries, include a subject-to-tax test to deal with income that might be earned by resident non-domiciliaries. The forms produced by some source countries ask residence countries to certify that the claimant is the beneficial owner of income. It is unclear how a residence country would make that certification, since the source country's view of beneficial ownership may vary considerably from that of the residence country.

Even if the legal analysis in the two countries is similar, the tax administration is unlikely to be aware of facts that might be relevant to the determination, but that are within the control of the investor seeking the form. Accordingly, a residence country that actually certified as to beneficial ownership is likely to depend heavily on a representation by the investor. It is believed that in practice many residence countries refuse to make such a certification and simply cross out that line on the form. Anti-treaty-shopping and anti-abuse provisions present the same issues, and are presumably handled in much the same way.

35. For purposes of satisfying its interests as a residence country, a country providing a certificate of residence could check to see whether the person who requested the certificate actually subsequently reported income from the relevant source country, although only if the process of applying for the certificate required the person to identify the source country or countries from which he expected to receive income for which the certificate would be used (*i.e.* a requirement which itself can complicate the application process where the investor may not yet know the locations in which his investments will be made in the ensuing period for which he hopes to have the certificate available). It is argued by some source countries that the certificate of residence requirement therefore provides protection to the residence country, as well as to the source country, which can then rest assured knowing that treaty-benefited income will not go untaxed. In practice, however, it is not clear that, even if such information is received as part of the process of providing certificates of residence, the information is routinely matched in such a way by residence countries. Many countries' matching systems are based on checking specific amounts of income reported by payers to determine if they have been reported by payees. For those countries that do not or cannot tie the certificate of residence to a specific payment or to payments from a specific source country, then the matching system is missing half of the necessary inputs. Countries may note the request in a taxpayer's file and then manually check to see whether income has been reported, a process that is more likely to occur when the amount at issue is substantial. At best, however, this system provides the residence country less useful information than a robust reciprocal program of automatic exchange of information, and does so only at the cost of further complications to the certificate of residence application process for both the taxpayer and the residence country tax administration.

36. Accordingly, the level of due diligence conducted by countries before providing a certificate of residence varies significantly. In some countries, tax or other authorities may be able to say with a great deal of confidence that a particular person is a current taxpayer, based on governmental requirements such as registering changes of address with local police. However, in a number of countries, the system is essentially a self-certification system. In the latter case, it is unclear what the increased administrative burden of having the residence country process the forms achieves in terms of increased compliance. This is especially true when a source country requires a certificate of residence with respect to each payment date, even though the information on which the certificate is based is by no means current. From the perspective of a source country, the different approaches taken by various residence countries make it difficult to assess the value of a certificate of residence it receives from another country. Finally, investors themselves may be confused, and believe that a certificate of residence confirms qualification for treaty benefits. This can place an intermediary in an awkward position if it believes that the investor does not meet other requirements for benefits that are not addressed by the certificate of residence.

37. In summary, then, doubts exist as to whether the information in the hands of the residence country is adequate for satisfying the broad information needs of either the source country or the residence country, and whether under those circumstances source country requirements for the residence country to provide certificates of residence are justified. Moreover, it is unclear that countries have sufficiently analysed the risk of relying on certificates of residence that they now receive, or the risk of giving them up.

What is the Most Efficient Way to Transfer Information from the Person who has it to the Person who Needs it?

38. In order to develop the most efficient, comprehensive system for transferring information, it is necessary to consider not only what information is needed by each of the source and residence countries, but also when and for what purposes that information is needed.

Transfer of information to the source country

39. The conclusion from the discussion above is that the source country may need two different types of information to be available: pooled information available to the source country withholding agent at the time of payment, and investor-specific information available to the source country tax authorities thereafter. At the time of a payment, the source country has no independent means to analyse any information that it may receive with respect to the specific beneficial owners of income. It therefore is unclear what benefit to the source country is achieved from passing that investor-specific information to the source country at the time that a payment that is potentially subject to withholding tax is made. Rather, what the source country (or its withholding agent) needs in order to provide relief at source is reliable information regarding the treaty rate to be applied, which can be determined on the basis of pooled information. The most efficient way for information regarding treaty rates to be transferred to the issuer (or its withholding agent) is through the chain of intermediaries that stands between the issuer and the investor. Information must flow that way, or else there will be no way to ensure that the correct amount has been withheld – by aggregating the total claims, the issuer will know whether it has received information regarding treaty eligibility (or non-eligibility) with respect to the entire amount of the relevant payment.

40. However, it is clear that many source country tax authorities, particularly those that currently require certificates of residence, would want to continue receiving investor-specific information for the reasons described in paragraph 26 above. Such information should not flow through the chain of intermediaries because of the business concerns regarding disclosure of proprietary information. Accordingly, it will be necessary for that information to get to the source country in some other way.

Transfer of information to the residence country

41. Although the residence country also needs investor-specific information, most residence countries would not expect to receive that information at the time of payment. They would need to receive the information in time to impose a tax if the relevant income had not been reported correctly on the investor's tax return for the relevant year. That is, the information must be received by the residence country in time for its use before the end of the residence country's statute of limitations for the relevant taxable year of the investor (taking into account time needed for internal processing, etc.).

42. No country that has instituted a regime that allows treaty benefits to be applied on the basis of pooled information provided by foreign intermediaries has imposed across-the-board requirements for the underlying investor-specific information to be routinely provided directly or indirectly to the residence country. The most that has been done is to protect the source country's own interests as the country of residence of some investors. This can be done by requiring investor-specific information to be provided to the source country in those cases where the investor is also a resident of the source country. Alternatively, the source country may seek to prevent its own residents from holding through foreign intermediaries by instructing those intermediaries that are authorised to act for foreign holders that they may not also act for residents of the source country.

Transfer of information to both the source and residence countries

43. With respect to providing investor-specific information to the source and/or residence countries, there are essentially three choices:

- The financial intermediary with a direct customer relationship with the investor could provide the information directly to the country of residence of the investor, which would then pass it to the source country to the extent necessary.
- Alternatively, the financial intermediary could provide it to the tax authorities of the country in which the intermediary is located, which would then pass it on to the tax authorities of both the residence country and the source country under exchange of information provisions between the intermediary's country and the investor's country or the source country.
- Finally, the financial intermediary could pass the information directly to the source country (without the information flowing through the chain of intermediaries), which would then pass it on to the country of residence of the investor.

44. The first approach, direct reporting to the residence country, is the approach taken under the U.S. QI program when the investor happens also to be a resident of the United States. Because the QI is required to report to the IRS using the same forms as domestic intermediaries, use of the information is seamless. Moreover, direct reporting by-passes certain governments that are not in a position to exchange information automatically. For example, a number of U.S. QIs are located in countries that do not have a tax treaty or tax information exchange agreement with the United States, or that have such an agreement that does not provide for automatic exchange of information. The obligation on a foreign intermediary to provide information about U.S. investors to the IRS is imposed as part of the contract between the foreign intermediary and the IRS which gives the intermediary its QI status. It is backed up by the IRS's contractually given right to subject the QI to an audit by external auditors. The U.S. QI regime does not require the QI to provide investor-specific information to the countries of residence of any investors other than U.S. investors, nor to provide such information to the IRS for potential forwarding to the residence countries.

45. If a source country did wish, as part of a regime allowing the granting of treaty benefits based on pooled information from foreign intermediaries, to require the foreign intermediary to provide investor-specific information to residence countries other than the source country itself, a legal mechanism would have to be developed to impose (and presumably to review compliance with) that requirement. Conceivably, the requirement could be imposed pursuant to a contract with the source country. Difficulties could arise in determining the scope of the requirement to be imposed by the source country for the benefit of the residence country (*e.g.* the form, destination and timing of the reporting to be made to the residence countries, whether it would have to include investors' residence country taxpayer identification numbers, etc.) and, from the intermediary's perspective, in determining the potential cost and burden of agreeing to this obligation. Further difficulties could arise in designing a review mechanism for such direct reporting (*e.g.* would the source country itself have an interest in ensuring the intermediary's compliance for the benefit of residence countries? Who would bear the cost of the relevant review?).

46. From the perspective of the governments of the residence countries, this approach of direct reporting to them might be the most advantageous. It would also potentially provide some benefits to source countries. If the information is provided to the residence country in a form compatible with that country's matching system, the residence country will be in the best position to confirm the accuracy of the taxpayer's claim for benefits. That is, a residence country should be able to determine that an investor is using an incorrect TIN (or other applicable identifying information) and to notify the source country and

relevant financial institution of that fact so that the investor is not permitted to claim benefits to which it is not entitled. Thus, rather than processing thousands of certificates of residence, the system would rely on automatic reporting and matching to confirm that claims are appropriate and income is being reported. It is likely that significant efficiency benefits would be achieved, and much of the cost would fall on the intermediaries and investors who benefit from reduced withholding taxes, rather than on either the source or residence country governments.

47. However, this approach is efficient only if most, if not all, source countries are willing to receive only pooled information and to rely on the matching systems of residence countries to discover those that are not entitled to treaty benefits. The approach would not be advisable if a number of source countries still preferred to have investor-specific information with respect to all investors claiming treaty benefits from them because, in that case, the approach would require the development of completely new systems for automatic exchange of information, flowing in a different direction than currently is the case. In other words, that situation would require residence countries to have a system for automatically transferring to source countries information about the residence country investors who have claimed treaty benefits on source country income.

48. Further, this approach may not be as attractive to financial intermediaries as some other approaches, as they would be required to handle transmission of forms to a large number of different residence countries. In addition, if the goal is to allow the residence country to confirm the accuracy of the TIN, information will need to be provided to the residence country on forms compatible with the residence country's computer systems, so that it is likely that the intermediary would be required to handle forms from a large number of different residence countries. On the other hand, if the system persuaded more source countries to give up certificate of residence requirements, some of those costs might be recovered through more efficient processing of treaty claims.

49. The second approach, reporting to the country in which the intermediary is located, is the approach taken under the EU Savings Directive with respect to interest income. It is more consistent with existing structures for exchange of information, in that a financial institution would be required to deal only with one tax authority, and that tax authority would then deal with other tax authorities. Therefore, it would probably involve the smallest transition costs for the financial institutions. In particular, this system likely would require the least in terms of changing computer systems, since in many cases intermediaries will already have some reporting obligations with their local tax authorities, which likely take place in electronic form. On the other hand, it is unlikely that any of those systems requires reporting of the breadth of information contemplated here, so systems will need to be upgraded in any event.

50. Moreover, the second approach also shares the strengths and weaknesses of existing programs for automatic exchange. In particular, use of the information that is exchanged under existing systems frequently is difficult, because the financial institution may not provide the information in a form that is compatible with the matching systems of the relevant residence country.

51. Under this second approach, an alternative to using existing structures for automatic information exchange would be to have the financial institutions pass the information to its local tax authorities using the form for the relevant residence country. Adopting this alternative could cause all of the problems of multiple forms that result from the first approach, without the efficiency gains of reporting directly to the residence country. However, if agreement is reached on standardised forms for reporting, this problem would be alleviated.

52. More generally, this second approach would rely on the willingness of the intermediary's local government to participate in a system of automatic information exchange and on the existence of treaties or other exchange of information agreements between the intermediary's country, the source country and the

residence country of the investor, which might or might not be the case. Because some countries are likely to refuse to participate in automatic exchange of information, one of the other approaches would have to be adopted for financial intermediaries located in those countries, or such financial intermediaries would have to be barred from the system. It has been suggested that the system could allow intermediaries located in jurisdictions that have such information exchange agreements in place to report to their local tax authorities, while intermediaries located in jurisdictions without such agreements would report to the source or residence countries. Other intermediaries have suggested that such a dual approach would be too confusing.

53. As with the first approach, the second approach would require a legal mechanism to impose the requirement that the intermediary provide investor-specific information to the tax authorities of the intermediary's country, and to give the local tax authorities the right to review the intermediary's compliance, with the same difficulties as described above. The second approach also poses the difficulty that it imposes administrative costs on the government of the intermediary's country, even though that government has no tax at stake.

54. Because it involves a third-country government that has no tax at stake, the second alternative is likely to be less efficient overall than either the first or third approach, even though the costs to financial intermediaries would be lower under this approach. Financial institutions would deal only with their local tax authority. However, in many cases there would need to be two subsequent transfers of information, to the source and residence states, while the first and third approaches involve only one additional transfer of information. Accordingly, administrative costs would be both higher and borne more heavily by governments in the second approach. However, these costs could be minimised with increased standardisation since, in that case, the tax authorities of the country in which the intermediary is located would be acting simply as a clearinghouse.

55. The third approach, reporting to the source country, approximates the result that would apply if there were no special regime for foreign intermediaries and if investor-specific information flowed through withholding agents to the source country tax authorities. One significant advantage of this approach is that it would facilitate the sharing of information between the two countries that have a direct interest in the information. Because the withholding tax benefit would have been granted by the source country only to those account-holders of the intermediary who are resident in treaty countries, there would by definition be an information exchange relationship between the source country and the investor's country of residence that in almost all cases would provide for the transmission of information from the former to the latter. A residence country that then determined that the information provided by an investor is incorrect could provide that information directly to the source country, rather than sending it back through the tax authorities of the country in which the intermediary is located. Although the source country government would incur some administrative costs in order to provide the information to the residence country through its automatic exchange of information program there might be some offsetting reduction in costs if the source country is able to focus its resources on specific problem areas discovered through the information it receives automatically, rather than conducting wide-ranging audits.

56. The approach would seem on its face to be less attractive to financial institutions, which would be required to deal with multiple source country tax authorities (while not requiring them to deal directly with multiple residence country tax authorities). On the other hand, source countries that were otherwise reluctant to adopt the pooled reporting approach might be persuaded by the idea that they would receive automatically investor-specific beneficial ownership information. This automatic reporting might also supplant random or even external reviews of the financial institutions by source countries. If so, the approach may be cost-effective for financial institutions. Although there may be significant upfront costs in developing the reporting system, on-going costs will likely be lower, and certainly more predictable. Thus, the approach ultimately might be palatable to financial institutions if it eliminated the need for random

audits or even external reviews. It is also more likely that financial institutions would accept this approach if the costs of reporting to multiple source countries were minimised through the development of standard formats, that would be accepted by most, if not all, source countries, both for obtaining information from the investors that establishes treaty entitlement and for providing that information to the source country tax authorities.

57. The legal mechanism for imposing the intermediary's obligation to provide information to the source country tax authority (and for any authority to review compliance) would be the same as that which allows the intermediary to obtain source country treaty benefits for its account-holders on the basis of pooled information. That is, if the source country could enter into a contract to allow the intermediary to perform certain functions, that same contract could impose certain conditions on the intermediary, such as reporting of information. On the other hand, if change to law were necessary to authorise the intermediary to provide information on a pooled basis, it may be that the same law would need to impose the information reporting obligations.

58. Under each of these approaches, it would be necessary to define the source country income that is subject to reporting.⁵ The most limited approach would be that used by certain source countries today, namely requiring reporting only with respect to income paid to residents of the source country. An approach which would represent a significant advancement on that, but which might also be viewed as somewhat limited, would be to require reporting only with respect to income for which treaty benefits have been claimed by an investor resident in a treaty partner. The broadest approach would be to require reporting with respect to any income (presumably investment income on portfolio investments), whether treaty-benefitted or not, paid through the intermediary to any investor (*i.e.* whether resident in a treaty jurisdiction or not). Various middle ground approaches might be to require reporting with respect to income for which treaty benefits have been claimed, as well as income paid to a resident of the source country, or to require that plus reporting of non-treaty-benefitted income paid to residents of treaty partners. As with other aspects of the arrangements, it will be necessary to strike the right balance regarding the legitimate compliance needs of governments and the administrative burdens on financial intermediaries. Source countries' investment climate interests may also be a consideration.

59. Source countries that require reporting with respect to their own residents are, of course, protecting their interests as residence countries. A country that is both the source and the residence country wants to ensure that it is not giving up all or part of a withholding tax unless it is able to apply its domestic taxing regime to its own residents. In most cases, a financial institution that is a resident of that country would be required to withhold tax or to report income paid to the resident to the taxing authorities. The government therefore may feel justified in asking a financial institution that is allowed to take on certain tasks that otherwise could be performed only by a domestic financial intermediary to also take on this basic compliance obligation. Otherwise, its own residents would have an incentive to hide untaxed income in an offshore account; although they would be subject to withholding tax on the income accruing on the account, the principal untaxed amount might forever go undetected.

60. Source countries that require reporting with respect to treaty-benefitted income are protecting their interests as source countries. As noted above, many countries currently will provide treaty benefits only if they have received the names of the beneficial owners claiming treaty benefits. This information is viewed as necessary to allow the source country to confirm that benefits have been provided appropriately. For those countries, allowing claims for benefits on the basis of pooled information is basically a matter of

⁵ For purposes of this discussion, it is assumed that any reporting of investor-specific information to the source country would be limited to income from sources in the source country. Any attempt to impose a broader requirement could raise problems of jurisdiction, duplicative burdens on intermediaries and duplicative information exchanges to residence countries.

timing – they still want to receive investor-specific information, but will agree to receive it after the fact in order to ensure that treaty benefits are provided at the time payment is made.

61. A source country that required reporting with respect to source country portfolio investment income paid through intermediaries that is not described in paragraphs 59 and 60 (*i.e.* income that is neither paid to a resident of the source country nor eligible for source country treaty benefits) would not be protecting its own interests, but rather would be doing so to protect the interests of other residence countries. However, the source country could share that information with residence countries only if there were a tax treaty or other agreement that would allow the source country to provide information to the residence country. Most stand-alone tax information exchange agreements do not provide for automatic exchange of information. If there is a tax treaty, and the income were subject to a reduced rate of tax under that agreement, then it would be covered by paragraph 60. That leaves income paid to a resident of a treaty partner for which no benefits are claimed under the treaty. In most cases, this will result from the fact that the source country has decided to exempt such income, or to set the domestic law rate of withholding at the rate provided in most of its treaties, so that it does not have to incur the administrative costs of providing treaty benefits. In those cases, it is unlikely that the source country would want to incur the administrative costs of collecting information on behalf of, and passing it on to, the residence country.

62. Furthermore, the source country may have a difficult time enforcing compliance in cases other than those described in paragraph 59 or 60. An investor who is resident in the source country could be subject to sanctions in that country for failing to provide information to an intermediary that would allow the intermediary to comply with reporting obligations to the source country. A non-resident investor who is deriving income eligible for treaty relief has an incentive to provide the information necessary to claim treaty benefits, and therefore is likely to cooperate with the intermediary to provide the information necessary to make the claim. In other cases, the investor may not comply with requests from the intermediary to provide the relevant information. It is at best unclear whether a contract between the source country and the intermediary is sufficient to force an investor to comply. In many cases, the only effective way to require an investor to provide the necessary information would be through legislation in the country in which the intermediary is located.

63. In any event, data protection laws in some countries will require the intermediary to procure authorisation from the investor in order for the intermediary to report information to the source country. This could be done through the standard investor self-declaration.

64. The development of efficient and effective reporting under any of the three approaches described in paragraphs 43-57 depends on efficient and effective exchange of information programs. Within the OECD, work on improving the efficiency of exchange of information is pursued by the Working Party 8 of the CFA. In that work, increased use of TINs is seen as crucial. Routine use of TINs would allow residence countries to match more efficiently and at a lesser cost incoming information from other countries with the tax returns of their own residents. Moreover, a residence country could also inform another country that the TIN provided by an investor was incorrect, information that could then be passed back to a financial intermediary so that it could correct its records and past withholding, as well as future claims for treaty benefits. The source country could also check the validity of the TIN provided by an investor. This would require that countries are made aware of the structure of the TINs of their treaty partners (number of digits, numeric or alphanumeric TIN; the algorithm itself would remain confidential). The possibility to check the validity of TINs could also be offered to financial institutions. This is the case in the EU for the implementation of the Savings Directive where information on the structure of TINs is made publicly available to the European Banking Federation by the European Commission (see the document TAXUD.D4(2006) DOC 2506-rev.3 of June 2007 at Annex 1). Also the Council of the OECD recommended as early as 1997 that countries require the use of TINs in the cross-border context

(C(97)29/FINAL) and that countries that do not issue or use TINs for domestic purposes issue special TINs for use in the cross-border context.

65. It appears that a growing number of OECD member countries would be able and willing to provide the residence country TINs to their treaty partners on a routine or automatic exchange of information basis. However, only a very small number require non-resident recipients of income to provide their residence-country TINs. Some countries issue a non-resident country TIN (Canada, Norway, United States, etc.) to their foreign investors which could also be used for matching purposes, but only if the foreign investor has been required to provide the source country with his residence country TIN in order to obtain the source country TIN and if the source country TIN is required to be used to obtain treaty benefits.⁶ For the implementation of EU Savings Directive 2003/48/EC, financial institutions have to establish the identity of the beneficial owner of interest consisting of the name, address and, if there is one, the TIN allocated by the Member State of residence for tax purposes. When available in the source country, the residence country TIN is generally provided to the residence country together with other information exchanged automatically. There is no comparable EU requirement for dividend income. In short, a review of the current situation reveals that there is substantial work to be done before information received under automatic exchange programs can be used effectively in the computerised matching programs that are the backbone of many residence country compliance systems.

V. Analysing the Business Proposals

66. Many existing systems for granting treaty benefits are inefficient. In many cases, they require information to be passed up a chain of intermediaries and, in some cases, for all the intermediaries to certify the information. They may also require a certificate of residence from the residence country. In other cases, they require the investor to wait months or years for his claim to be processed. All of these requirements increase substantially the cost of making treaty claims, and therefore can only be justified if they demonstrably reduce false claims. For the reasons described above, that is unlikely to be the case, at least in the case of portfolio investors.

67. The ICG business proposal, the ISSA tax relief model, and the FISCO proposals share common elements that would substantially improve efficiency. In each of them, information regarding the beneficial owner would not be passed up the chain of intermediaries, but would reside with the intermediary that has a direct customer relationship with the investor. In the ICG business proposal and the ISSA model, intermediaries would pass to other intermediaries only pooled information regarding the correct withholding rate to be applied by the withholding agent. The FISCO proposal, like the U.S. QI system, would allow intermediaries to choose between passing on pooled information or taking on the actual withholding and reporting obligations. Intermediaries would not be responsible for information about which they have no actual knowledge, but would be entitled to rely on information received from other intermediaries. All three of the proposals recommend that countries give up certificate of residence requirements. All three proposals favour self-certifications and the development of a standard investor declaration (although the FISCO report does include what is essentially a minority view that know-your-customer rules, discussed at paragraph 73 below, should be a sufficient substitute). All three propose that any regulated financial institution should be able to participate in the system and take on the relevant obligations.

68. Thus, the argument from the business community is that the intermediary that has a direct business relationship with the client is in the best position to verify the investor's claim. It can do so at the time the account is established, at the same time that it is collecting relevant information for purposes of its

⁶ Note, however, that the United States does not require foreign investors to obtain a U.S. TIN to obtain treaty benefits on income from marketable securities.

anti-money laundering obligations. It is hard to see how any other verification system could be more efficient in terms of timing. There may, however, be different views on what documentation should be provided by the customers.

Assessing the self-certification alternative

69. The discussion of certificates of residence at paragraphs 31 to 37 above suggests that the only person that is in possession of all the facts necessary to certify as to qualification for treaty benefits is the investor himself or itself. This calls into question the usefulness of government-issued certificates of residence and supports the business position in favour of self-certifications.

70. Some governments have expressed the concern that, although the investor may be in possession of the relevant facts, in many cases they will not be familiar with the law (*i.e.* the terms of the relevant tax treaties). They therefore question whether the self-certification is adequate. They may also question whether the financial institution dealing with the customer has any incentive to question the claims made by their customers.

71. In looking at these questions, it is useful to break the investors down into different categories. The legal questions regarding treaty qualification may be more straightforward in the case of individuals than entities. Individuals are less likely to be functioning as a nominee for another investor. There is no question about whether they are transparent, opaque or “translucent”. Issues regarding residence are in most cases reasonably straightforward. On the other hand, individuals are likely to be less sophisticated regarding tax treaties in general, and unlikely to feel confident about declaring the correct treaty rate. Accordingly, it is likely that financial institutions will need to invest in computer systems designed to automate the process, so that the financial institution's computer systems essentially provide the appropriate rate once the individual investor has provided the appropriate information to establish his country of residence.

72. Investors that are entities may present more complicated legal questions, but may also be more sophisticated. Because of these legal questions, a U.S. QI that does not receive a Form W-8BEN from an entity must have both documentary evidence supporting the claim of treaty eligibility and an explicit declaration from the investor that it is entitled to the benefits of the relevant tax treaty with the United States, taking into account limitation on benefits provisions, etc. Even in the case of legal entities, however, it is possible to overstate the difficulties. Many cross-border portfolio investments are made by companies that present no issues with respect to treaty entitlement. The residence status of companies is reasonably clear, and most are acting as the end investors with respect to their investments. Similarly, large pension funds and other institutional investors tend to be reasonably familiar with the issues regarding treaty eligibility and know which countries will grant them benefits and which will not. These issues are not, of course, completely resolved. For CIVs in particular, there may be many questions about when a CIV can claim benefits in its own right, and when it will be necessary to look through the entity. However, these legal issues can and should be resolved in the future through clear agreements between and among countries.

73. Some further comfort may be provided by the know-your-customer rules that are applicable to most financial institutions under anti-money laundering and anti-terrorist financing laws. Under these rules, financial institutions are required to conduct customer due diligence in connection with the opening of accounts and certain specified transactions on an on-going basis. The rules generally require the financial institution to identify the customer and to verify that customer's identity using reliable, independent source documents, data or information. The financial institution generally is also required to determine whether its account-holder is acting on the account-holder's own behalf or on behalf of another person (and if so, to identify that other person). In the case of accounts maintained by legal persons and

arrangements, the financial institution is generally required to take reasonable measures to understand the ownership and control structure of the account-holder.

74. In some respects, the know-your-customer rules go beyond what is required by tax treaties. For example, because anti-money-laundering rules are concerned about the source of income, they frequently will look to the ownership structure of companies, even though such a company would be treated as the beneficial owner of its income for purposes of tax treaties. However, the existence of such rules can provide comfort to governments that financial institutions will have information that in certain circumstances may be of use in determining whether an investor is properly entitled to treaty benefits.

75. Because of these differences in purpose, application and scope, it is unlikely that the know-your-customer rules will be sufficient in and of themselves to allow an institution to determine the investor's qualification under all relevant tax treaties. Accordingly, it is likely that most source country governments will want at least a self-certification from investors to be provided to someone in the chain. All three business proposals suggest the development and use of a standard investor declaration that would be accepted by all source countries. The potential efficiency gains that would result suggest that it is an effort worth undertaking.

Mechanisms for ensuring intermediaries' compliance with their obligations

76. The willingness of governments to accept self-certification is contingent on the adoption of what they see as adequate means to verify the treaty eligibility of those claiming treaty benefits. That is, governments may be willing to accept self-certification in the interests of efficiency, and they see the benefits of shifting the initial costs of such verification to the intermediaries (and their clients). However, they may do so only if they retain the ability to double-check what the intermediaries are doing. Some point to the possibility that internal government auditors will question whether treaty benefits have been granted appropriately and the need to be able to justify the granting of benefits. Others point out that the intermediary has an inherent conflict of interest, in that they have a financial interest in maintaining the customer relationship. Others may be concerned that eliminating any threat of review by the tax authorities may tempt institutions to cut corners.

77. Business is concerned about the prospect of multiple source country tax authorities combing through the intermediary's books, conducting detailed and duplicative audits. If this were to occur, the costs of compliance could be seen as outweighing the potential benefits of the system. If compliance costs are too great, financial institutions, particularly smaller, regional banks, may opt out of the system entirely. Initially, business's preferred solution to this legitimate concern would have been to charge the tax authorities of the country in which the intermediary is located with ensuring compliance. However, if source countries adopt a reporting system, as set out in paragraphs 43 to 63, then even this level of compliance review is likely to become superfluous.

78. Thus, although it may initially appear difficult to reconcile these government needs with those of business, it should in fact be possible to find a reasonable balance between the competing interests of government and business. To do so, it is useful to begin again with the basic question of what governments need to know in order to ensure that intermediaries are complying with their obligations. The question that then follows is what remedy a government has if it determines that the intermediary in fact has failed to comply with its obligations.

79. As to the first question, the government needs to know: (1) that those who are claiming treaty benefits are in fact eligible for treaty benefits; and (2) that, if benefits have been claimed with respect to a certain amount of a payment, the relevant amount of the payment in fact flows to the persons on whose behalf benefits have been claimed.

80. As discussed above, the financial intermediary that has a direct relationship with the beneficial owner of income is in a better position to determine treaty eligibility than anyone other than the beneficial owner itself. In most cases, that intermediary will be subject to know-your-customer rules that require it to consider whether the information that has been provided to it by the investor is in fact reliable. If it is determined that know-your-customer rules are inadequate, additional guidance regarding procedures to be followed by intermediaries could be provided. However, standardisation of such procedures would be necessary because intermediaries are unlikely to find it cost effective to comply with dozens of different rules regarding account-opening procedures.

81. Governments will receive additional assurances regarding investors' identity, entitlement to treaty benefits and actual receipt of treaty benefits if one of the systems of reporting described in paragraphs 43 to 63 above is adopted. For example, if intermediaries are required to report to the source country the names and other identifying information of investors, the governments will be in a position to make further inquiries regarding any of those investors who appear to present particular risks. If the governments proceed to improve automatic exchange of information, source countries could provide that information to the purported countries of residence of the investors. The residence countries would then be expected to notify the source country if the investor were not in fact a resident. The residence countries would also be in a position to check that the income reported as paid to the investor matched the investor's account of income received, as detailed within the investor's tax return.

82. In addition to prospective matching by residence countries, there are a number of practical considerations which should give governments confidence that, if benefits have been claimed with respect to a certain amount of income, that income has in fact been credited to the account of the investor for which benefits have been claimed. To put it another way, the manner in which an intermediary conducts its business means that the intermediary could not claim treaty benefits with respect to particular items of income, and then systematically divert that income to an investor that is not entitled to treaty benefits.

83. Starting with first principles, the *raison d'être* of intermediaries, in their capacity as intermediaries, is to hold securities and collect money on behalf of investors. Accordingly, an intermediary's business procedures are established in such a way as to facilitate the smooth handling of cash flows, because an intermediary that does not credit its client's accounts with the right amount of income will not keep that client very long. An intermediary that comes up with "extra" money, or with less than it should, also will have problems with its regulators. Accordingly, an intermediary must constantly reconcile its accounts. Moreover, the investor is not interested in providing the intermediary with free money in the form of a "float", so the goal is to credit income to the investor's account on the same day as the intermediary receives the income. Because investors expect to be credited with income on the day that it is paid by the issuer, an intermediary will sometimes have to credit the amount to its client pending the reconciliation. In those cases, every day that goes by before the intermediary can close out the credit increases the intermediary's costs and risks.

84. Accordingly, an intermediary will establish systems intended to ensure that reconciliation of its own books takes place as quickly as possible. The intermediary's system thus would be set up so that it "expects" a certain amount of income on a certain payment date. If the amount received from the issuer or upstream intermediary is equal to the amount expected, then the payment can be reconciled immediately, without human intervention, and credited to the various investors' accounts in what is called straight-through processing (frequently referred to as STP, pronounced "step"). However, if the amount received differs from the amount expected, then the reconciliation must be done manually, thus increasing the costs to the intermediary. Because of the potential costs and risks of failing to reconcile accounts promptly, intermediaries and their auditors pay particular attention to the aging of payables. There are various reasons for a failure to reconcile, but the most common relate to trades that take place close to the payment date. In that case, an intermediary may receive more than it should have, and will wait for "the market" to

request payment of that extra amount before it can reconcile the entire payment. Conversely, an intermediary may receive less than it should have, and may have to claim the difference from “the market”.

85. It is important to note that reconciliation generally is done on an all or nothing basis with respect to a particular payment. Accordingly, a discrepancy that might relate to a single investor would prevent any amount of that payment being credited to the accounts of any of the investors. Thus, for example, if an intermediary expected to receive a specific dividend of \$10 million, 90% of which was entitled to a treaty rate of 15%, and 10% of which was subject to the domestic withholding rate of 25%, the intermediary’s systems would show that the intermediary should receive \$8.4 million (85% of \$9 million plus 75% of \$1 million). If the intermediary received \$8.4 million, the amounts would be credited immediately to the accounts of the investors. If the intermediary received either a higher or lower amount, then the amounts would be held until the discrepancy could be explained.

86. In order to achieve the efficiency benefits of STP, the process of determining the amount “expected” must also be automated. Thus, the intermediary will also have a system that tells it what the withholding tax should be with respect to particular payments. This is based on information provided by the client regarding treaty eligibility, etc. Because these systems are automated, with various personnel in an intermediary having access to only certain parts of the system, it would be very difficult for an intermediary to systematically divert income for which treaty benefits have been claimed to someone who is not entitled to treaty benefits. Accordingly, as long as there is a robust system in place to determine whether investors are in fact entitled to treaty benefits, the risk of improper claims is low.

87. The internal reconciliation described above is quite different from the reconciliation required under the U.S. QI system (which does not generally require investor-specific information). Under that system, if an upstream QI has reported making dividend payments totalling \$10 million at a reduced treaty rate to a downstream QI, the downstream QI is required to demonstrate that \$10 million was in fact paid to investors who qualified for treaty benefits (or to other QIs who provided pooled information to the downstream QI), or to explain why the amounts differed. The problem is that the QI reconciliation is not internal, but a reconciliation to the books of a different upstream or downstream intermediary. Accordingly, if an upstream intermediary has characterised a payment as a dividend, whereas a downstream intermediary treats it as capital gain, there will be a variance between what is reported by the two intermediaries. This gives the impression that there is leakage in the system, even if all of the income for which treaty benefits has been claimed by the downstream intermediary in fact is properly credited to the accounts of investors who are entitled to treaty benefits.

88. Moreover, because the QI reconciliation takes place once a year, variances can arise from thousands upon thousands of transactions. While it may be relatively easy to isolate the cause of a variance with respect to a particular transaction, calculating and then determining each of the causes of a large aggregate variance may be more difficult. The QI audit guidelines anticipate that there may be variances between the amounts coming in and the amounts being paid on, and state that they are permitted “within reasonable limits based on the facts and circumstances”. Intermediaries may, however, be somewhat nervous regarding what variances various source country tax authorities might view as “reasonable”. Moreover, the fact that the tax authorities may not require that every penny be accounted for does not mitigate the fact that the exercise of reconciling the books of one financial institution to another is fundamentally flawed. It requires substantial resources to perform because it is not based on the books maintained by the institution for its own business purposes. Intermediaries are thus required to explain “variances” that are artificial as well.

89. By contrast, the internal reconciliation described above is self-verifying because it relates to the day-to-day operation of the intermediary. Both the financial auditors and the relevant regulators will assure themselves that the intermediary is properly crediting the accounts of its investors in an efficient and

expeditious manner. Tax authorities should be able to rely heavily on reviews conducted by these other auditors and regulators and should not need to duplicate the basic work regarding the manner in which the intermediary keeps its accounts.

90. The preceding discussion assumes that it will be the source country that will be monitoring and enforcing compliance by intermediaries. For governments, the issue of who will ensure compliance is quite simple. It is the source country that is giving up its taxing rights pursuant to its treaty obligations. Because it is the source country's tax that is being given up, it is clear to them that it is the responsibility of the tax administrator of the source country to determine that the relief was granted appropriately. Others have pointed out the "revenue rule" contained in their common law ordinarily would prevent the government from enforcing the tax claims of another country, and therefore would also argue in favour of oversight by the source country.

91. As noted above, business originally proposed an alternative under which the tax authorities of the country in which the intermediary is located would be charged with ensuring compliance. However, in most cases, the local tax authorities would not have very much at stake, calling into question their interest in expending significant resources in reviewing the intermediary's compliance with the source country's requirements. If the investors are also residents of the country in which the intermediary is located, then the local authorities do have an interest in the information. In that case, however, they presumably would already have the right to impose investor-specific reporting obligations on the intermediary and to be verifying compliance with those obligations. Moreover, if the investors are located in a third country, the local tax authorities also would have no direct stake in the question of whether the investors are actually entitled to the benefits of a treaty between the source and residence countries or, if a reporting regime is adopted as described in Part IV, the reporting of income to a third country in accordance with that regime.

92. Moreover, unless the intermediary's country has a tax treaty or other exchange of information arrangement with each of the source and residence countries, it is not clear that the intermediary's local authorities would be authorised to transmit information about the investor to the source or residence country, respectively (*e.g.* a treaty between the intermediary's country and the source country would not provide a legal basis for the intermediary's country to provide information to the investor's residence country, nor could the source country use that treaty to obtain information for the benefit of the residence country). In addition, there is also the question of whether all countries monitor their financial institutions with the same rigor. Some countries might be reluctant to hand over that responsibility to the tax authorities of a tax haven.

93. For these reasons, governments proved reluctant to adopt business's initial proposal to consolidate compliance review in local tax authorities. However, a balanced resolution of the competing concerns of business and governments would suggest an approach where any additional routine reviews (beyond reporting) would be performed once with respect to a particular period, for the benefit of multiple source countries. An independent review team would actually perform the physical, on-site review of procedures and documentation. In principle, the team's report would be available to any source country that had adopted the system. As the system of automatic exchange of information and residence-country verification described in paragraph 81 became more reliable, even this degree of routine review might no longer be necessary. On the other hand, information reporting and automatic exchange of information might not be an effective means for a source State to discover that an investor is engaged in a dividend-stripping transaction or does not satisfy the source State's concept of beneficial ownership. For this reason, the source State will need to retain the right to perform spot checks of its own when it suspects some problem that would not be disclosed through information reporting and exchange of information.

94. Implementing the system of independent reviews for multiple source States would require the development of a standardised set of procedures for intermediaries to follow, and an agreed-upon

procedure for reviewing compliance that maximises efficiency by building on existing regulatory requirements and out-sourcing the “fact-finding” process to the fullest extent possible. For those countries that legally cannot shift the responsibility for “audit” to a non-governmental entity, the legal status of the fact-finding process would have to be carefully considered.

95. Countries should also be willing to re-consider their needs regarding compliance as the system becomes more standardised and accepted. It may be expecting a lot of countries to adopt a new system and at the same time agree to limited review of intermediaries – if they have never conducted a particular type of audit, it is hard to imagine where the “soft spots” would be. However, once countries gain experience with the system, it is to be hoped that they will be willing to further simplify or eliminate the routine review by independent reviewers while retaining the right to conduct spot checks when there is a reason to suspect non-compliance.

Authorisation of Intermediaries

96. Closely related to the question of compliance is the issue of authorisation of the intermediaries, and the legal mechanism to do so. As a practical matter, a government ensures compliance by intermediaries through the threat of withdrawing authorisation to act as an intermediary. This is an effective threat, even for small countries, because a financial intermediary in a globalised world cannot tell its clients that the client must go elsewhere if it wants to invest in a particular country. Moreover, the intermediary must be concerned about a cascading effect. That is, to the extent that countries have agreed to a standardised set of procedures, a finding by one country that the intermediary has failed to comply might well cause other countries to review that intermediary’s compliance.

97. All three business proposals argue that any regulated financial institution should be able to participate, so long as they comply with any specified requirements. However, that proposal undermines the effectiveness of the threat. If the source country’s primary leverage is to deny access to its markets, that leverage would be taken away if authorisation rests with a different country.

98. This leaves open the question of what legal mechanism would be used to authorise intermediaries. The options appear to be to develop a legal mechanism, such as a treaty, or to rely on contract. The FISCO report notes various possibilities regarding legal mechanisms, many of which are relevant to the European Union but not necessarily to the OECD, but then suggests the development of a model contract as being more practical. The ISSA tax relief model does not address this issue, but the business members of the ICG propose that authorisation consist of a contract between the intermediary and its local tax administration, or that the local government could enact legislation providing for reporting and appropriate oversight. The Internal Revenue Service, as a source country tax administration, enters into actual contracts with QIs, which spell out in exquisite detail the obligations of the QI, audit methods and penalties for failure to comply. The contractual option may not be immediately available in all source countries, as some countries may need to modify their internal laws in order to give themselves the authority to allow foreign intermediaries to take on certain responsibilities.

99. In considering the criteria for authorisation, the question has arisen whether the intermediary needs to be located in a country that has a tax treaty with the source country. The Model Convention allows a beneficial owner to claim treaty benefits without regard to the treaty eligibility of the intermediary. This would argue against imposing such a requirement. On the other hand, some countries have argued that there needs to be an information exchange relationship between the source country tax authorities and the local tax authorities, either through a tax treaty or stand-alone tax information exchange agreement. It is unclear as a technical matter why such an information exchange relationship would be necessary if source countries required authorised intermediaries to report investor-specific information directly to them. In that case, there is no need to involve the tax authorities of the country in which the

intermediary is located at all. On the other hand, if the local tax authorities received information from the intermediaries organised therein, as proposed by business, the local tax authorities might not be able to pass on such information (directly or indirectly) to either the source or the residence country in the absence of such an agreement between the intermediary country and the source or residence country, respectively.

100. The source country may, however, want to ensure that the financial intermediary is located in a country that imposes robust know-your-customer rules. As noted in paragraph 73 above, such rules require financial institutions to rely on independent evidence of a customer's status and so provide some additional comfort that the claim made by an investor can be substantiated.

Liability of Intermediaries

101. An important aspect of the practical operation of any withholding regime relates to the circumstances in which either domestic or foreign withholding agents (including intermediaries) will be held liable for any under-withholding.

102. From the perspective of governments, holding intermediaries liable for under-withholding is a means to ensure that the correct amount of tax is collected with respect to a particular taxpayer. Countries as a practical matter will often focus on domestic withholding agents, over whom they have greater jurisdiction, to recoup any under-withheld tax that may be determined to exist, even if other intermediaries in the chain are also theoretically jointly liable. Governments often express concerns that limiting the liability of intermediaries effectively would prevent them from collecting the under-withheld tax from anyone other than the ultimate investor. Moreover, the fact that the investor is likely to be several layers of intermediaries removed from the source country may make it difficult to find him and collect.

103. The government also may believe that the threat of being held liable for mistakes may cause an intermediary to be more careful in terms of how it performs the functions relating to determining treaty eligibility of its customers and making claims for benefits on their behalf. Finally, there may be intangible benefits, such as reinforcing a culture of compliance.

104. As a business matter, an intermediary can be expected to evaluate the risk that it will make a mistake with respect to matters and functions that are within its control. Such risks are a normal cost of business. On the other hand, it is very difficult for an intermediary to take on the risk that someone else has made a mistake unless the intermediary has some control over that other person or is in a position to judge whether the actions taken by that other person are sufficient. For example, if a claim for benefits must be accompanied by a government-issued certificate of residence, it is relatively easy for a higher-tier intermediary to determine that the lower-tier intermediary has provided certificates that, at least on their face, support the claims that have been made. However, if claims need not be accompanied by certificates of residence, the higher-tier intermediary would have to rely on the exercise of judgment by the lower-tier intermediary regarding investors' qualification for treaty benefits. The higher-tier intermediary may be unwilling to take on that risk if, as seems likely, it is unable to perform any due diligence regarding the manner in which the lower-tier intermediary exercises that judgment.

105. Accordingly, if a regime imposes strict liability on all persons in the chain, each intermediary will have to find some way to protect itself against the risk of mistakes by others. It can do so in a number of ways. One is to participate in the system only if the tasks performed by lower-tier intermediaries are relatively mechanical and therefore easily verified. Another is to seek contractual indemnities from the next person down the chain. Of course, this process may increase other business risks. An intermediary that accepts an indemnity takes on the credit risk of the lower-tier intermediary, and an intermediary that refuses to accept an indemnity may jeopardise business relationships. In any event, the negotiation of the indemnities, which would need to be replicated in each contractual relationship in the chain, is likely to be

cumbersome, and enforcement of any claim under an indemnity potentially would be difficult. Finally, if the costs become too high, or the risks outweigh the potential benefits, the intermediary will simply decline to apply reduced withholding, forcing investors to make claims for refund rather than receiving treaty benefits at the time of payment.

106. Thus, the risks to both governments and intermediaries increase when there is a transition from a system that relies on procuring and passing on certificates of residence to a system in which treaty benefits are provided on the basis of pooled information. However, finding a way to allocate and manage those risks in a fair, balanced and efficient manner is crucial to ensuring that the system is acceptable to all parties.

107. As a policy matter, the question seems to be very basic. That is, if an investor has made a claim for relief that is inappropriate, who should bear the cost of that mistake – the government, the intermediaries, or the investor? An additional consideration is how liability can be imposed so as to minimise the risk of such inappropriate claims in a cost-effective manner.

108. The investor, of course, should not benefit from his inappropriate claim. The goal, therefore, should be to increase the ability of governments to collect the under-withheld tax from the investor. Adopting a system of reporting to the source country, as described in paragraphs 55 to 57 above, supports this goal, because the source country should itself have the information necessary to collect the tax from the investor (rather than involving the intermediary). Alternatively, if there is a provision in the tax treaty between the source State and the residence State that conforms to Article 27 (Assistance in the Collection of Taxes) of the Model Convention, or even the type of limited collection assistance provision found in Paragraph 2 of the Commentary on Article 27, the source State may request assistance from the relevant residence country. Member States of the European Union also can rely on the Mutual Recovery Assistance Directive.⁷ In other cases, the source State may be able to claim assistance in recovery under the 1988 Convention on Mutual Administrative Assistance.

109. Although in principle these methods are available to governments, much work needs to be done before they provide a sufficiently reliable, practical solution to the problem of collection of under-withholding. Accordingly, there may still be circumstances in which a government may be interested in pursuing an intermediary with respect to such under-withheld tax. Whether it is appropriate in a particular case will depend, however, on the functions performed by the intermediary and whether it acted in good faith in performing those functions.

110. If the intermediary has paid on to the investor the money that it has received, and holds no assets of the investor, then holding the intermediary liable would impose a cost on the intermediary while effectively giving the investor the benefit of the reduced rate. The cost imposed on the intermediary would amount to a penalty that would seem to be appropriate only if the intermediary knows or, based on industry standards, has reason to know that the investor has made a claim to which it is not entitled. Moreover, imposing liability on the intermediary in the absence of knowledge regarding the investor's true position may not minimise the risk of mistakes.

111. In the case of the proposed system, the intermediary that is closest to the beneficial owner is in the best position to determine whether the information that has been provided by the investor is correct, and therefore whether the investor in fact is entitled to treaty benefits. If the problem is that the information provided to the intermediary was so obviously faulty that the intermediary should have known

⁷ Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by the Council Directive 2001/44/EC of 15 June 2001.

that there was a problem, then it should be held liable. Of course, the source State has available the option of terminating the authorised intermediary's status as an authorised intermediary if there is a pervasive and persistent failure by an authorised intermediary to comply with its obligations as such.

112. In most cases, therefore, other intermediaries more remote from the investor in the chain of intermediaries should not be held liable for mistakes made by the intermediary closest to the investor with respect to that investor's eligibility for treaty benefits. Since the function of those intermediaries is essentially limited to accurately passing on tax rate information provided by lower-tier intermediaries, their liability should be limited, as a practical matter, to mistakes that they themselves make with respect to such processing.

113. These considerations strongly support the use of a "good faith" or "reason to know" standard as discussed below. Such a requirement would require an intermediary to act when it comes into possession of information according to which it knows or, based on industry standards, should have known, that there was or will be incorrect withholding. In addition, it would seem reasonable to require an intermediary who continues to hold assets for, or to make payments with respect to, such an investor to help the government in recouping the under-withheld tax.

114. The approach obviously puts a premium on specifying quite carefully what obligations the agent/intermediary must fulfil to avoid potential liability. Even those governments that would generally hold agents/intermediaries to a fairly strict standard of liability may decide that this is not ideal for those agents/intermediaries who are receiving the pooled information from an intermediary lower in the chain, because those higher-tier agents/intermediaries are not in a position to detect from the pooled data any anomalies that are obvious in the underlying information. So even those countries may be willing to relieve upper-tier agents/intermediaries of liability for incorrect information underlying the pooled information they receive from a lower-tier intermediary. Those governments may wish to ensure, however, that the intermediary who is authorised to pool information is subject in practice to the same potential liability as would be a domestic withholding agent receiving un-pooled information from foreign payees (*e.g.* through requiring that intermediary to submit itself contractually to jurisdiction in the source country).

115. A complementary strategy may be to make the tasks performed by the intermediaries in terms of verifying information provided by investors as mechanical as possible. If the intermediary is provided very explicit instructions regarding the documents on which it can rely in determining whether an investor is entitled to treaty benefits, then it is relatively easy to determine whether the intermediary has in fact performed its functions correctly. The difficulty is when the intermediary is told only to "be reasonable" and it must accordingly exercise judgment. The risk then is that it will be second-guessed by each of the relevant source countries. The objective therefore should be to make the responsibilities and procedures as clear and as uniform as possible.

116. There is a risk, however, that setting out too detailed a set of procedures would be viewed as eliminating an institution's responsibility to exercise judgment as well. This basic concept is expressed in different ways in different countries. Some use the term "reasonable belief", others "good faith" and others "actual knowledge" or "reason to know". Fundamentally, however, the point is that an institution should not be able to rely on a document that it knows or, based on industry standards, should have known to be untrue. Moreover, the institution should not be able to ignore information that it possesses that undermines a claim made by its customer. This obligation should not be limited to circumstances in which the institution was involved in creating the document or establishing the structure.

117. Another approach that has been suggested to manage the level of risk to governments is to allow only claims below a certain size to be made on a pooled basis. This approach, however, could increase administrative costs because of the uncertainty of whether a particular investor would be in the system of

pooled claims or outside with respect to a particular year, a determination that could be made only with hindsight.

Relief at source versus refund claims

118. In addition to the basic model for making claims for treaty benefits on the basis of pooled information, the business proposals make several recommendations relating to refund systems. The first recommendation is that countries should move from refund systems to relief at source. In this regard, Paragraph 26.2 of the Commentary on Article 1 of the Model Convention already states that relief at source is “the highly preferable method”. Refund systems should be used only to the extent that there are “observable difficulties in identifying entitlement to treaty benefits”. As discussed above, the source country is not in a particularly good position to analyse entitlement to treaty benefits with respect to the vast majority of claims by portfolio investors. Accordingly, it is not clear whether there is any compliance benefit from operating a refund system rather than relief at source, but there are clear inefficiencies and costs.

119. Even though the vast majority of tax relief would likely be secured “at source” under the business proposals, in exceptional circumstances it may still be necessary to make a retrospective claim for treaty relief. Accordingly, the FISCO report and ISSA tax relief model recommend several measures with a view to making refund systems more efficient, such as maintaining a central office for such claims, and instituting consistent procedures across the European Union. The FISCO report also proposes the development of consistent “quick refund” procedures pursuant to which withholding agents are permitted to adjust initial over-withholding (*e.g.* by the withholding agent returning the over-withheld tax to the investor before it is deposited with the source country tax authorities or by offsetting the amount of the over-withholding against subsequent deposits to the source country tax authorities), rather than requiring investors to make a refund claim to the government in such cases.

120. It seems clear that refund procedures will need to co-exist with even improved and stream-lined systems for relief at source. Such systems will need to be co-ordinated to ensure that investors cannot make a claim for refund in situations where relief at source has already been provided. Although the fact that claims for treaty benefits may be made on a pooled basis would seem to increase the risk of double claims, it should be possible to minimise or eliminate that risk by adopting a system of reporting investor-specific information to the source country.

Electronic filing

121. Finally, one of the most vexing aspects of the current procedures for making treaty claims, or claims for domestic exemptions, is that in many cases claims must be made using physical claim forms. This is particularly incongruous in the financial area, where most securities have been effectively dematerialised, and wealth consists of data entries on the books of financial institutions.

122. The continuing reliance on paper in the area of treaty claims contrasts sharply with the systems regarding automatic exchange of information. There are an increasing number of countries involved in automatic exchange using different types of media but essentially CD ROMs. To improve the efficiency and effectiveness of automatic exchanges of information the OECD has designed both a standard paper format and in 1992 a standard electronic format (known as the OECD Standard Magnetic Format or “SMF”). In 1997, the OECD recommended the use of the revised SMF (C(1997)29/FINAL). The OECD also has designed in 2004 a “new generation” and more flexible transmission format for automatic exchange (known as the Standard Transmission Format or “STF”) based on XML (extensible markup language) which is in the process of replacing the SMF. All the OECD standards include specific fields to provide the source country and residence country TINs when available.

123. Because of this on-going focus on improving the efficiency of information exchange, including automatic exchange of information, a substantial amount of automatic exchange now takes place through electronic media, with increasing use of the Internet. In many cases, the information that is exchanged also is provided by financial institutions to the relevant tax authorities electronically. If information is provided to the tax authorities on paper forms, then the tax authorities must undertake the labour-intensive process of converting the information on the paper form to electronic form. If the information is required to be collected by the financial institutions in paper form but is provided to the tax authorities in electronic form, then the financial institutions will incur the costs of performing that function. It appears that significant efficiency gains could be achieved by automating the treaty claims system and bridging the gaps between the treaty claims system and the automatic information exchange system in order to allow the entire process to be automated.⁸ Working Party 8 is continuing to work to expand the use of electronic exchange to more countries, to migrate to the STF system and to ensure that the information that is exchanged is as compatible as possible with the matching systems employed by most member states to ensure compliance.

124. Accordingly, tax authorities that continue to insist on paper documentation appear to be fighting a losing battle, and whatever documentation is required should be provided electronically. Nevertheless, electronic submission of forms would simply eliminate the cost of passing physical pieces of paper around; it would not eliminate the administrative costs to governments of providing such documents as certificates of residence. Accordingly, electronic submission of documents is not a sufficient answer to the question of how to create an efficient system for making and granting claims for treaty benefits. However, development of standard formats for such electronic submissions could accelerate the adoption of new reporting systems.

VI. Recommendations Regarding “Best Practices”

125. The preceding sections provide a basis for developing a number of proposals regarding best practices that, if adopted by source countries, could substantially improve the process of making claims for treaty benefits. These proposals, which are set out in this Part VI, therefore should achieve the goals of reducing costs, and allocating those costs more appropriately among the governments, intermediaries and investors.

126. Some of these best practices could be adopted and provide substantial benefits on a stand-alone basis. However, in most cases the best practices are interdependent. For example, in most cases governments will not adopt a system of pooled claims for benefits as described in paragraph 129 in the absence of an information reporting obligation as described in paragraph 131.

Relief at Source

127. As noted above, relief at source is the preferred method for providing treaty benefits. Countries that currently do not provide such a system should re-examine that decision in light of the analysis in Part V. Moreover, the additional proposals in this Part VI may address concerns that governments or business may have had about relief at source systems more generally.

128. Nevertheless, even if these best practices are widely adopted, in exceptional circumstances it may still be necessary to make a retrospective claim for treaty relief. Accordingly, countries should consider measures that would make refund systems more efficient, such as maintaining a central office for such claims, and work towards standardising such procedures across the European

⁸ In its recent report on the U.S. withholding system, the U.S. Government Accountability Office criticised the fact that much of the information provided by U.S. withholding agents and qualified intermediaries is provided in paper form, making the information much less useful.

Union and the OECD. Similarly, countries should develop consistent “quick refund” procedures pursuant to which withholding agents themselves are permitted to adjust initial over-withholding, rather than requiring investors to make a refund claim to the government in such cases.

Pooled Claims for Benefits

129. The most pressing problems regarding claims for benefits revolve around the failure of many systems to deal adequately with the role played by financial intermediaries in the system. Countries should develop systems for claiming treaty benefits that allow authorised intermediaries to make claims on behalf of their customers on a “pooled” basis at or before the time a payment is made. By contrast, intermediaries that have not been authorised would be required to provide investor-specific or intermediary-specific information at or before the time of payment in order to receive relief at source.

130. Some countries also may allow foreign intermediaries to assume actual withholding obligations. If so, that possibility should not be imposed on foreign intermediaries, but should be available at their option.

Improved Information Reporting and Automatic Exchange of Information

131. Governments should work to improve the efficiency and efficacy of information reporting and automatic exchange of information. Investor-specific information with respect to treaty-benefitted income and income paid to residents of the source country should be reported by the intermediaries who have such information to the source countries, which then would provide such information to residence countries under automatic exchange of information programs.

132. Increased use of TINs and automatic exchange of information would allow the governments of both source and residence countries to confirm that treaty claims are legitimate and that the relevant income is not going untaxed. Countries that have received such investor-specific information would have the tools necessary to focus their further inquiries on the specific taxpayers that may present issues. Thus, improved information reporting can be expected to minimise or eliminate the need for independent review of the intermediary’s compliance with a system of making treaty claims based on pooled information. Further, improving automatic exchange of information could replace any lingering requirements for certificates of residence by providing a more robust process for checking treaty eligibility.

Authorisation of Intermediaries

133. Intermediaries should be authorised to provide pooled information (rather than investor-specific information) by the tax authorities of the source country. Such authorisations should consist of a contract between the intermediary and the relevant source countries where such a contract is possible under domestic law. Those countries that would need to modify their domestic law to authorise such contracts should explore doing so.

134. Those contracts should be standardised across countries to the extent possible. Ideally, the EU and OECD jointly would develop a standard document, and authorisation would consist of a relatively short agreement incorporating the more detailed provisions of that document by reference. Individual source countries would have the right to terminate authorisation for non-compliance by an intermediary. An intermediary could, of course, withdraw from the contract as well.

Standard of Care

135. Countries should provide specific and detailed procedures to be followed by authorised intermediaries in terms of establishing investors' eligibility for treaty benefits. The procedures should be standardised as much as possible between source countries, preferably through the standard document described in paragraph 134 above.

136. An authorised intermediary that complies with those procedures should not be held liable for withholding tax or penalties if it relies on information received from its customers that are beneficial owners unless it knows or, based on industry standards, should have known that the information was incorrect. Similarly, an authorised intermediary should not be held liable for withholding tax or penalties if it relied on information received from other intermediaries, whether authorised intermediaries making pooled claims for benefits, or non-authorised intermediaries providing investor information, unless it knows or, based on industry standards, should have known that the information was incorrect.

Establishing Compliance with the Procedures

137. Although intermediaries have a legitimate interest in shielding customer information from competitors, those concerns do not extend to shielding customer information from the tax authorities. Accordingly, governments should not give up their right to see information held by intermediaries regarding beneficial owners.

138. However, to the extent possible under their laws, governments should develop a process by which at least initial fact-finding would be conducted by an approved independent reviewer. The work of the independent reviewer should build, when relevant, on reviews that already are undertaken for other regulatory purposes, in order to avoid duplication of effort. Such an option could greatly reduce compliance costs as more countries adopt a pooled claim approach. Such compliance reviews should not only focus on whether the intermediary has in place appropriate training and procedures, but also should review the documentation provided by the investor to support the claim in a representative sample of (certainly not all) accounts. Governments would have the right to review investor-specific beneficial ownership information to the extent necessary to confirm the results of the initial fact-finding report.

139. Standardisation in this area is also highly desirable. Thus, it would be more efficient for the independent reviewers to provide to multiple source countries a single report based upon agreed procedures. Such an arrangement would alleviate the prospect of intermediaries having to deal with multiple reviews, standardise compliance arrangements and minimise costs (as a single review would cover multiple source countries).

140. Governments should also consider advances in technology that can streamline the review process. In the next few years, it should be possible to conduct much of a review remotely. Systems are being developed that could allow financial intermediaries to give source countries electronic access to the documents underlying treaty claims.

141. Finally, governments should also be willing to re-consider their needs regarding compliance as the system becomes more standardised and accepted. In particular, the system of information reporting and cross-checking described in paragraph 132 above should allow governments to further simplify or eliminate the routine review by independent reviewers while retaining the right to conduct spot checks.

Reducing or Eliminating Reliance on Certificates of Residence

142. Certificate of residence requirements create a related, but independent, set of barriers for investors claiming treaty benefits. Governments that currently require government-issued certificates of residence to accompany claims for treaty benefits should re-consider those requirements.

143. Ideally, certificates of residence would be replaced by investor self-declarations. Such a declaration should include the investor's residence country TIN (if its residence country requires TINs) or such other identifying information (such as date and place of birth, address, etc.) as its residence country uses to identify residents for tax purposes. Such declarations would need to provide sufficient information to allow an intermediary to determine the appropriate withholding rate under all relevant treaties. Self-declarations would be valid indefinitely, but the investor would be obligated to update the declaration if facts regarding residence change. If a source country believes that a change in law could affect a large number of existing claims (*e.g.* introduction of a limitation on benefits or similar clause in a treaty), requiring an updating of self-declarations, the source country should provide public guidance to that effect. In those cases, intermediaries would be required to follow up with clients in order to ensure the continued accuracy of existing declarations. A standardised self-declaration that would be accepted by all (or at least a large number of) source countries should be developed.

144. Countries that wish to maintain certificate of residence requirements can still make a number of changes in their procedures that would improve significantly the process for claiming treaty benefits. Most importantly, certificates of residence should be held by the intermediary with the customer relationship, and should not be forwarded up the chain of intermediaries to the government. If this process were adopted, then governments could still gain some comfort from the existence of the certificate of residence, while allowing pooled claims for relief. Because most countries can only retroactively confirm residence at the time a payment is made, countries should not require a certificate of residence with respect to each payment. Rather, certificates of residence should be valid for at the very least one year. Of course, the same updating rules should apply to certificates of residence as apply to self-declarations. Certificates of residence should be limited to questions of residence, and should not address other questions of treaty qualification (such as beneficial ownership or satisfaction of limitation on benefits provisions). Accordingly, intermediaries should also be required to obtain the self-declarations described above.

Increased use of Electronic Transmissions

145. As noted above, both the private sector and governments should seek to automate as much of the process as possible. Doing so should not only make the process more efficient, but should also increase compliance by facilitating the use of computer matching programs, the primary basis by which many governments ensure the taxation of investment income.

VII. Application of the Best Practices to Claims by Collective Investment Vehicles

146. In the Report of the ICG on the Granting of Treaty Benefits with respect to the Income of Collective Vehicles, four general scenarios for the granting of treaty benefits are described. In the first, the CIV will be entitled to treaty benefits with respect to all of the income it receives, without regard to the identity of the owners of interests in the CIV. In the second, the CIV will be entitled to benefits, at the treaty rate applicable between the source country and the country in which the CIV is established, with respect to a portion of its income, the relevant portion being determined by reference to the ownership of the CIV. In the third, really a subset of the second, the CIV will be entitled to benefits with respect to a portion of its income, determined by reference to the ownership of the CIV, with the possibility of claiming benefits with respect to all of its income if a certain percentage of the CIV is owned by "good" investors. Finally, the CIV may claim benefits at the rates that would be applicable under the treaty between the

source country and the investors in the CIV, rather than the rates applicable to the CIV itself. The “best practices” described in Part VI of this Report would apply somewhat differently to these different cases. Which scenario applies will depend on the terms of the treaty or of any relevant mutual agreement.

147. In the first case, the CIV would be treated as the beneficial owner of the income it receives, without regard to the identity of its owners. This situation could arise where there are no CIV-specific rules in the applicable treaty, and the CIV meets all of the criteria for treaty eligibility. It might also arise, for example, where the two Contracting States have agreed that a CIV will be entitled to benefits with respect to all of its income, which entitlement might be subject to certain conditions not relating to ownership, such as restrictions on where interests in the CIV might be offered for sale. In some cases, a CIV that was subject to limitation on benefits requirements might fall under this scenario, if the relevant source country left it to the CIV to make a determination on the basis of its best information.⁹ In this first case, the CIV would be treated as the beneficial owner. It would provide an investor self-declaration stating that it is entitled to benefits, either to the withholding agent or to a financial intermediary that holds securities on behalf of the CIV. It would have to update the self-declaration only if one of the underlying facts had changed.

148. In the second and third cases, the CIV’s entitlement to treaty benefits would depend on the identity and treaty entitlement of its owners. These cases would arise where the treaty between the two Contracting States provides for proportionate benefits, with the third case also involving the possibility of claiming benefits with respect to all of a CIV’s income where a threshold percentage of ownership by “good investors” was surpassed. These cases could also arise if the two Contracting States had agreed to such proportionate treatment through a mutual agreement. In these cases, the CIV would be required to determine the proportion of “good” ownership. The means by which it would do so would be spelled out in the agreement. If it were required to make quarterly determinations (*i.e.* the most onerous approach described in the proposed Commentary on Article 1), it is expected that the CIV would request information regarding its owners from its direct investors, as well as from any financial intermediaries holding interests in the CIV on behalf of other investors. The CIV would rely on pooled information that it receives from such intermediaries; investor-specific information regarding the beneficial owners of interests in the CIV would remain with the financial intermediary with the direct relationship with the investor. Because the CIV would be treated as the beneficial owner in the relevant proportion, it would provide an investor self-declaration stating the proportion of the payment that should receive the treaty rate, either to the withholding agent or to a financial intermediary that holds securities on behalf of the CIV. That self-declaration would need to be updated in accordance with the terms of the relevant agreement. For example, if the agreement stated that the CIV could use the proportion of “good” investors on a specific date each year to make claims for the entire following year, then the self-declaration would only need to be updated once a year, if then. If, however, the relevant agreement required the CIV to make the determination at the end of each quarter, and then use the rolling average of the four preceding quarters, the self-declaration might need to be updated quarterly. In either case, care would have to be taken in choosing the measurement dates to ensure that the CIV would have enough time to update the self-declaration and avoid over-withholding at the beginning of each relevant period. The only difference between the second and third scenarios is whether the CIV would provide the actual percentage of good investors, or 100%.

149. In the fourth scenario, the CIV is acting as an intermediary, making claims on behalf of its investors. This situation could arise because the two Contracting States have reached an explicit agreement to that effect. Because of the increased administrative burden placed on the CIV, this would be

⁹ Such a situation could be similar to the third case, except that in the first case the CIV would not be required to provide specific information about the status of its investors in order to claim the treaty benefits.

expected only in cases where there is a significant advantage to be gained by looking through the CIV – for example, where the investors in the CIV are expected to be entitled to a preferential rate, such as that applicable in some treaties to pension funds and charities. For such an agreement to be practical, it should include provisions allowing periodic, rather than constant, updating, as described in the preceding paragraphs. However, the fourth scenario might also arise in the absence of any explicit agreement between the relevant Contracting States, if the domestic law of the source country would permit such a claim by the CIV. In this case, the CIV should be treated as any other intermediary. It could be authorised to provide pooled information to the source country. Whether it would be able to keep such information current would depend on the composition of its investor pool. If the CIV limited its investors to those who were entitled to a preferential rate, then it might be practical. The source country might also take a “rough justice” approach, and allow the CIV to make claims on a quarterly basis. Otherwise, the administrative difficulties described in the Report on CIVs are likely to make it impossible for the CIV to act as a pure intermediary. As noted in the Report on CIVs, this strongly supports the negotiation of new treaty provisions and mutual agreements to maximise the number of situations described in the preceding scenarios and minimise the number of cases falling under this fourth scenario.

Annex 1:

Tax Identification Number Structure in the EU



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Administrative cooperation and fight against fiscal fraud

Brussels, 28 June 2007

ACDT N° 017-EN rev.3

TAXUD.D4(2006) DOC 2506-rev.3

WORKING DOCUMENT
FOR OFFICIAL USE ONLY

**WORKING GROUP ON ADMINISTRATIVE COOPERATION
IN THE FIELD OF DIRECT TAXATION**

TAX IDENTIFICATION NUMBER STRUCTURE

MEETING N° 12 OF 03/04 OCTOBER 2007

This document has been prepared on the basis of available information included in Member States' replies in order to give a quick overview on the different systems to make a TIN used within the EU.

As agreed by all MS, the structure of the tax identification numbers has been disclosed to the FBE. However, taking into account the position held by MS and their preferences, the algorithm remains confidential, and therefore, no information concerning this issue has been provided to the FBE.

More detailed information regarding the TIN in each Member State can be found in the annex attached to this document.

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
AT-Austria	999999999 ¹	1 block of 9 digits with the last one as check digit.	N ²	Y	Y
BE-Belgium	YYMMDD XXX XX	1 block of 11 digits. The first 6 digits concern the date of birth, the following 3 digits regard an order number	National ID card Passport	Y	N

¹ 9 : indicates a digit
L ; indicates a letter
DDMMYY : indicates a date (day, month, year)

² TIN can change when a person changes its domicile.

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
		and the last 2 digits form a control key.			
BG-Bulgaria	9999999999	1 block of 10 digits. The last digit is a scheduled figure. Known as "Unified Civil Number"	National ID card Passport	Pending	Pending
CY- Cyprus	99999999L	1 block of 8 digits and 1 letter. The first 8 digits are numbers and one digit at the end is a letter calculated as a check digit character.	N	Y	Pending
CZ- Czech Republic	99999999 999999999 9999999999	The TIN has the code prefix of the Czech Republic- CZ- followed by, 9 digits or 10 digits (for individuals).	National ID card Passport Driving license Health Card	Y	N
DE-	999999999999	1 block of maximum 12 digits. The digits might be separated by slashes.	N ³	Y	N ⁴

³ TIN can change when a person changes its domicile.

⁴ DE has agreed to disclose to the FBE the structure of the current TIN, but not the algorithm, since it is not unitary. DE will adopt a real TIN in a near future (2008/2009), and will provide the algorithm for this real TIN to the FBE.

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
Germany					
DK-Denmark	DDMMYY-9999	1 block of 10 digits. There is a dash between the sixth and the seventh digit.	Passport	Y	Y
EE-Estonia	9999999999	1 block of eleven digits.	National ID card Passport Driver license	Y	Y
EL-Greece	999999999	1 block of 9 digits, 8 "normal" and 1 "check digit".	N	Y ⁵	Y
ES-Spain	1) 99999999A	1) A regular TIN belonging to individuals with Spanish nationality is composed of 9 characters and digits with the following structure: - 8 digits - one character used for control purposes	National ID card Passport	Y	N ⁶

⁵ Greece also suggests: a) Centralized development of a tool implementing the available validation rules/check, to confirm the validity as soon as a TIN and its country of origin are entered, and, b) Distribution of such a tool to the competent authorities and paying agents of all Member States

⁶ ES would agree to disclose the information in the annex, but only if it is subject to a confidentiality clause.

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
	<p>2) X9999999A M0000001A L0000001A K0000001A</p> <p>3) E99999999 G99999999 H99999999</p>	<p>2) Other TIN belonging to specific types of individuals, as well as foreign citizens with a Spanish identity card, are composed of a string of 9 characters and digits with the following structure/ - one character describing the type of individual - 7 digits - one character used for control purposes.</p> <p>3) For residual entities, TIN is composed of/ - one character: E, G or H. - 7 digits - one final digit used for control purposes.</p>			
FI-Finland	DDMMYY(+,-,A) 999 (L/9)	<p>1 block of 11 digits as follows: Date of birth DDMMYY Punctuation mark (+, -, A) Individual number 999 Checking mark L/9</p>	National ID card Passport Driver license ⁷	Y	N

⁷ TIN in National ID Card and Passport is quite cryptic, but it clearly appears in the driving license. Self-employed people may have a second TIN.

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
	9999999-9	The company code is a block of seven digits, and one check digit (9999999-L) where 9999999 is the number of order and L is the check digit).			
FR-France		France doesn't have a TIN.	N/A	N/A	N/A
HU – Hungary	9999999999	1 block of 10 digits. For the Savings Directive this is HU's unique taxpayer number. All of the characters are numeric. The gender of the individual is indicated in the following way: An even number = female gender; An odd number = male gender.	N	Y	Pending
IE-Ireland	9999999L(W)	Seven numeric digits followed by either one or two letters. If there are two letters, the second one is a "W". The first letter is calculated by an algorithm as a check digit.	Document from the Office of Revenue Commissioners Document from the Office of	Y	Y

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
			Social and Family Affairs.		
IT-Italy	LLLLLL99L99L999L	The tax code of individuals is made of an alphanumeric block of 16 characters.	Health Card Tax Code Card	Y	N
LT-Lithuania	9999999999 9999999999	1 block of 11 digits. The TIN of 10 digits concerns individuals, who don't have TIN of 11 digits.	National ID card Passport	Y	N
LU-Luxembourg		Luxembourg doesn't have a TIN	N/A	N/A	N/A
LV-Latvia	DDMMYY99999 "9"9999999999	1 block of 11 digits (DDMMYY – date of birth; 9 – digits from 0 to 9) 1 block of 11 digits (the first digit is always "9"; the other digits – from 0 to 9) Granted to natural persons, which do not have TIN	Passport Driving license	Y	N/A

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
		"DDMMYY99999".			
MT-Malta	<p>999L</p> <p>999999999</p>	<p>The TIN is the Identity Card Number of the individual. Numbers (minimum of 3/maximum of 7) + letter (M,G,A,P,L,H,B or Z).</p> <p>Those persons who do not have a Maltese Identity Card will be issued a TIN by the Inland Revenue Department. This is a nine digit number with the last two digits being check digits. These persons may apply for an ID Card with the respective authority. Once it is issued, it will be used as the TIN similar to Maltese residents.</p>	National ID card Passport ⁸	Y9	N/A

⁸ In MT, non residents receive an ID number that is stated in their bank account.

⁹ A web service is available and can be accessed (in secure authentication mode) and will provide a valid response for a TIN number provided against part of the name or surname.

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
NL-Netherlands	999999999	1 block of 8 or 9 digits. If the TIN number consists of 8 digits, you must place a "0" in front of it first.	National ID card Passport Driving License	Y	Y
PL-Poland	9999999999	1 block of 10 digits with the last one calculated by an algorithm as check digit.	N	Y	Y
PT-Portugal	999999999	1 block of 9 digits with the last one calculated by algorithm as check digit.	N	Y	Y
RO-Romania	9999999999999	1 block of 13 digits. The check digit is calculated by an algorithm.	National ID card Passport	Y	N
SE-Sweden	YYMMDD-NNNX	YYMMDD is the date of birth; NNN is a birth number; X is a check digit. The birth number is odd for men and even for women. The check digit is calculated automatically on the basis of the date of birth and the birth number.	National ID card Passport Driving License	Y	Y
SI-Slovenia	99999999	1 block of a random 8-digit number (first digit cannot be 0). The eighth digit is a control number.	N	Y	Y

MEMBER STATE	STRUCTURE	FORMAT	AVAILABILITY of TIN in official documentation	DISCLOSURE FBE as regards the structure	DISCLOSURE FBE as regards the annex (algorithms)
SK-Slovakia	9999999999	1 block of 10 digits.	N	Y	Y
UK-United Kingdom	UTR: 99999 99999 NINO: LL999999(A/B/C/D/space)	The UK doesn't have a TIN but two <i>quasi</i> TIN as follows: 1. UTR (Unique Taxpayer Reference) which usual format is 11 characters in the format 1-5 numeric, 6 space, 7-11 numeric; 2. NINO (National Insurance Number) which usual format is 9 characters: position 1&2 are letters (but not D,F,I,O,Q,U or V or combinations FY,GB,NK or TN) 3 to 8 numbers, final character A,B,C,D, or a space.	Passport	Y	Y

Annex 2:

Members of the Informal Consultative Group on the Taxation of Collective Investment Vehicles and Procedures for Tax Relief for Cross-Border Investors

Chairperson/Président(e)	<p>2008: Mr. Douglas RANKIN Senior Policy Advisor - Treaty Negotiations and Interpretation HM Revenue and Customs United Kingdom</p> <p>2006-2007: M. Robert WALDBURGER Chef de la Division des Affaires de Droit Fiscal Administration fédérale des contributions (AFC) Switzerland</p>
Austria/Autriche	<p>Ms. Judith HERDIN-WINTER Deputy Head of Division International Tax Law, Division IV/4 Federal Ministry of Finance</p> <p>Mr. Helmut LOUKOTA Consultant International Tax Law, Division IV/4 Federal Ministry of Finance</p>
Canada/Canada	<p>Mr. Wayne ADAMS Director General, Income Tax Rulings Legislative Policy Division Canada Revenue Agency</p> <p>Ms. Stephanie SMITH Senior Advisor - Tax Treaties Canada Revenue Agency</p>
France/France	<p>Mme Sandrine CHAPOT Inspectrice Principale - Bureau E1 Service de la Législation Fiscale Ministère du Budget, des comptes publics et de la fonction publique</p> <p>M. Blaise-Philippe CHAUMONT Chef du Bureau Ministère de l'Economie, des Finances et de l'Industrie</p> <p>M. Christian COMOLET-TIRMAN Sous Directeur des Affaires Internationales Direction de la législation fiscale Ministère de l'économie, des finances et de l'industrie</p>

M. Jean-François LATOUR
Rédacteur
Ministère des Finances

Germany/Allemagne

Mr. Christian BRODKORB
Assistant Head of Section, Tax Treaty Policy Division (IVB5)
International Tax Law
Federal Ministry of Finance (BMF)

Mr. Frank BURMEISTER
Tax Expert
Federal Ministry of Finance (BMF)

Mr. Michael WICHMANN
Head of Division
Federal Ministry of Finance

Ireland/Irlande

Mr. Brendan MCCORMACK
Director
Revenue Commissioners

Italy/Italie

Mme A. Luisa PERROTTI
Head of Unit II (Consulting and Coordination)
Ministry of Economy and Finance

Japan/Japon

Mr. Yuichi KATO
Assistant Chief
National Tax Agency

Mr. Chishiro MATSUMOTO
Deputy Director, International Operations Division
National Tax Agency

Mr. Yuji MIYAKI
Section Chief, International Tax Policy Division
Ministry of Finance

Mr. Toshihiro MIZUTANI
National Tax Agency

Mr. Gota NAKAZAWA
Section Chief
Japanese Ministry of Finance
Tax Bureau, Ministry of Finance

Mr. Takafumi SAITO
Section Chief
Ministry of Finance

Mr. Yuji SENUMA
Assistant Chief
National Tax Agency

Mr. Hiroyuki TAKAHASHI
Transfer Pricing Director
National Taxation Agency

Mr. Hideo YANASE
Assistant Chief
International Operations Division
National Tax Agency

Luxembourg/Luxembourg

Mr. Georges BRUCH
Chef de division
Administration des Contributions Directes

Netherlands/Pays-Bas

Dr. Arnaud DE GRAAF
Senior staff member
Netherlands Ministry of Finance

Norway/Norvège

Mrs. Johanne RIAN
Legal Adviser
Tax Law Department
Ministry of Finance

Spain/Espagne

Mrs. Elena DE LA MORENAS
International Tax Coordinator
Ministry of Economy and Finance

Mrs. Carolina DEL CAMPO
Deputy General Director for Non Residents Taxation
General Directorate for Taxation
Ministry of Economy and Finance

Mr. Francisco DELMAS
General Directorate for Taxation
Ministry of Economy and Finance

Mme María-José GARDE
Assistant Deputy Director General for Non Residents Taxation,
General Directorate for Taxation
Ministère de l'Economie et des Finances

M. Antonio LAGUARTA
Conseiller Financier
Délégation Permanente

Switzerland/Suisse	Mr. Sebastian BENZ Head of Section Swiss Federal Tax Administration FTA
United Kingdom/Royaume-Uni	Mr. Andrew DAWSON Head of Tax Treaty Team HM Revenue and Customs
United States/Etats-Unis	Mr. Carl COOPER Senior Counsel Office of the Associate Chief Counsel (International) Internal Revenue Service Ms. Quyen HUYNH Attorney Office of Associate Chief Counsel (International) Internal Revenue Service Mr. William STRANG International Economist U.S. Department of Treasury
EC/CE	Ms. Kerstin MALMER Head of Unit, Direct Tax Legislation European Commission DG TAXUD Mr. Tomas THORSEN Administrateur Principal à la DG Marché Intérieur European Commission Mr. Rogier WEZENBEEK Unit G2 Financial Markets Infrastructure European Commission Unit G2 Financial Markets Infrastructure
People's Republic of China/République populaire de Chine	Ms. Fu YAO Deputy Director of Treaty Division International Taxation Department SAT M. Huaishi ZHOU Deputy Director State Administration of Taxation

**Business and Industry
Advisory Committee
(BIAC)/Comité consultatif
économique et industriel
(BIAC)**

Mr. Markus FOELLM
Vice Chair, BIAC Tax Committee
Executive Director, Group Tax
UBS AG
Switzerland

Ms. Nicole PRIMMER
Senior Policy Manager
Permanent Delegation
France

Ms. Lynda WALKER
Vice President and International Tax Counsel
United States Council for International Business (USCIB)
United States

Private Sector/Secteur Privé

Mr. Martin BURNS
Director, Institutional Operations and Distribution
Investment Company Institute
United States

Mr. Robin DEANS
Vice President
JP Morgan Asset Management
United Kingdom

Mrs. Lynne ED
Tax Partner
Ernst & Young
United Kingdom

Mr. Robert FOLEY
Director, Product Tax Department
Product Tax Department
State Street Bank and Trust Company
United States

Mr. Shigeki FUJITANI
Managing Director, Corporate Planning Department
Nomura Asset Management Co., Ltd.
Japan

Mr. Chris GILBERT
Executive Director
JPMorgan Chase Bank N.A.
United Kingdom

Mme Arianna IMMACOLATO
Head of Taxation
Assogestioni
Italy

Mr. Nigel JOHNSTON
Partner
McCarthy Tétrault LLP
Canada

Mr. Urs KAPALLE
Director, Taxation and Fiscal Policy
Swiss Bankers Association (SBA)
Switzerland

Mr. Philip KERFS
Director, Euroclear SA/NV
Belgium

Mr. Hideki KONO
General Manager / Investment Trust Department
Japan Securities Depository Center, Inc.
Japan

Mr. Keith LAWSON
Senior Counsel (Tax Law)
Investment Company Institute
United States

Ms. Patricia MCCLANAHAN
Managing Director, Tax Policy
Securities Industry & Financial Markets Association
United States

Yuko MIYAZAKI
Attorney at law, Partner
Nagashima Ohno & Tsunematsu
Japan

Mme Annick MONTEL
Directrice des Affaires Fiscales et Comptables
Association Française de la Gestion Financière (AFG)
France

Mr. Morihiro NAKANO
Senior Manager of International dept.
Japan Securities Depository Center Inc
Japan

Mr. Keith O'DONNELL
Partner
ATOZ Tax Advisers
Luxembourg

Mrs. Julie PATTERSON
Director, Authorised Funds and Tax
Investment Management Association (IMA)
United Kingdom

Mr. William SALVA
Director, Tax Product Management
The Depository Trust & Clearing Corporation
United States

Mr. Jun SHIMIZU
Senior Manager / Global Business Development
Japan Securities Depository Center, Inc.
Japan

Mr. Richard SIMPSON
Principal, Product Taxation
Barclays Global Investors
United States

Mr. Shinji SUZUKI
Director (Investment Trust Department)
Japan Securities Depository Center, Inc.
Japan

Ms. Annette VON OSTEN
Junior Policy Advisor
EFAMA (European Fund and Asset Management Association)
Belgium

Mr. Pat WALL
Partner,
PricewaterhouseCoopers
Ireland

Mr. Andreas WALTER
Union Asset Management Holding AG
Bereich Recht/ Immobilienrecht
Gruppenleiter Strukturierungm Rechtsanwalt
Germany