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Dear Ms de Ruyter

OECD REVISED DISCUSSION DRAFT ON BEPS ACTION 7

The Investment Association¹ welcomes the opportunity to comment on the revised discussion draft on BEPS Action 7. We are grateful to the OECD for recognising the particular concerns of the investment management industry.

Commentary on Article 5(4)

Proposed paragraph 22.6 of the Commentary says:

“Where, for example, an investment fund sets up an office in a State solely to collect information on possible investment opportunities in that State, the collecting of information will be a preparatory activity and the office will therefore be deemed not to be a permanent establishment.”

The intent of this paragraph is very helpful. However, in order to reflect the actual business models that operate in fund management we believe that the words ‘or its manager’ should be inserted after the word ‘fund’. It is more usual for an investment manager to have an office for these purposes than the investment fund itself (although a self-managed fund may have such an office too).

¹ The Investment Association (formerly the Investment Management Association) represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around \$5.4 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles.

Attribution of profits to PEs and interaction with transfer pricing



The OECD has acknowledged that there will be a need for additional guidance on Article 7 in order to determine the profits of any PEs and to take into account the work on transfer pricing being undertaken within the BEPS project. We would like to emphasise the importance of this.

Activities of an incorporated group company in one country could give rise to a PE of the parent in another company, even in cases where the group company is attributed an appropriate arm's length profit for all of the activities and risks in the other country. Therefore the PE gives rise to no increase in tax payable in the other country. The consequence of this would be for cross border groups of incorporate entities to have multiple PEs and filing obligations, without any additional tax being paid.

Para 32.12 of the proposed Commentary clarifies that this problem should not arise on the transfer of goods, where the legal title of the goods passes to the distributor. This is a welcome clarification, but the circumstances described will be more difficult to replicate for the provision of services. We question whether the transfer of legal title should itself be conclusive in determining whether a PE is created where the functions of group companies are clearly reflected and accurately priced in a group's transfer pricing methodology.

Thank you again for the opportunity to comment on the revised discussion draft. We hope to continue to be able to contribute to the consultation and I am available at your convenience to discuss anything in this letter at jorge.morley-smith@theinvestmentassociation.org or on +44 (0)20 7831 0898.

Yours sincerely

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cc. Mike Williams HM Treasury