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Date: **1 April 2016**

Dear Ms de Ruiter

RE: OECD DISCUSSION DRAFT TREATY RESIDENCE OF PENSION FUNDS

The Investment Association¹ welcomes the opportunity to comment on the OECD's discussion draft on the treaty residence of pension funds. We are glad to be able to provide greater clarity on treaty entitlements of pension schemes in the OECD Model Tax Convention.

In respect of the proposals for changing the OECD Model Convention and Commentary, we have four comments.

1) Pension scheme arrangements set up as part of an insurance company

In the UK, the most common form of defined contribution pension scheme is set up as a contractual arrangement with an insurance company. The taxation of insurance companies in the UK is complex, but in relation to pension business, a pool of assets is segregated within the insurance company's balance sheet and subjected to a different tax regime relevant to pensions which ensures that returns on pensions assets are exempt from tax.

The pension business of a UK life insurance company is defined in UK tax legislation (Finance Act 2012 s58) as the effecting or carrying out of contracts entered into for the purposes of a registered pension scheme or the reinsurance of such business. However, pension business is normally just one part of a life insurance company's business. As such, the pension business is not a separate person or treated as a separate person under UK tax law. The life insurance company will, in most cases, be carrying on activities as well as pension business (such as writing protection business).

¹ The Investment Association is the trade body that represents UK investment managers, whose members collectively manage over £5.5 trillion on behalf of clients. The money is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The investments of most UK defined contribution pension schemes are therefore not held within a “recognised pension fund” as defined in proposed Art. 3(1) j). A remedy would be to use



“that is treated as a separate person **or as a separate business of a separate person** under the taxation laws of that State”.

2) Paragraph 10.4 of the proposed Commentary on Article 3

We consider it important to refer to trusts in the Commentary, and so welcome the clarification of their treatment in paragraph 10.4.

3) Paragraph 10.5 of the proposed Commentary on Article 3

In the UK most pension funds allow individuals to access retirement benefits from a certain age, typically 55. There is no requirement to retire from employment, and no definition of what it means to “retire”.

We believe this approach (which is common to most countries) could be better reflected in the Commentary with the following amendment:

“... this term is broad enough to cover one or more payments made ~~at~~ **on** or after ~~retirement~~ **reaching a certain age to an employee or** self-employed person even if these payments are not made in the form of regular pension payments.”

4) Multinational pension pooling arrangements

Subparagraph (ii) of the definition includes pension pooling vehicles that are used by different pension funds to pool assets.

Such pooling vehicles are frequently used to pool the assets of pension funds in different jurisdictions. For example, they are commonly used by multinational businesses to rationalise their employee pension arrangements across the various countries in which they operate.

We would strongly support the inclusion of multinational pension pooling vehicles in the definition of recognised pension fund, where all of the pension funds that invest through them are recognised pension funds (provided that the pooling vehicle is treated as a separate person or as a separate business of a separate person under the taxation laws of the state in which it was established).

Thank you for the opportunity to comment on the discussion draft, and I am available at your convenience to discuss anything in this letter at jorge.morley-smith@theia.org or on +44 (0)20 7831 0898.



Yours sincerely

A handwritten signature in black ink, appearing to read 'Jorge Morley-Smith'.

Jorge Morley-Smith
Director