

# NATIONAL ASSOCIATION OF PUBLICLY TRADED PARTNERSHIPS

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June 17, 2015

Attn. Marlies de Ruiter  
Head of Tax Treaties, Transfer Pricing and Financial Transactions Divisions  
Organisation for Economic Cooperation and Development  
Centre for Tax Policy and Administration

Re: Comments with Respect to May 2015 Revised Discussion Draft  
"BEPS Action 6: Prevent Treaty Abuse"

Dear Ms. de Ruiter:

The National Association of Publicly Traded Partnerships ("NAPTP")<sup>1</sup> is pleased to provide written comments with respect to the Revised Discussion Draft referenced above with respect to the entitlement of treaty benefits of Collective Investment Vehicles ("CIVs") and similar vehicles.

NAPTP is a trade association representing U.S. publicly traded limited partnerships, more commonly known as master limited partnerships ("MLPs"). NAPTP currently has 157 full and associate members and represents over 100 MLPs. NAPTP appreciates the opportunity to comment on this matter. Background on MLPs is provided in our letter dated January 8, 2015, and attached hereto. Very generally, MLPs have the following features: (1) they are taxed as partnerships for U.S. Federal income tax purposes, which in practice results in MLPs distributing some or all of their available cash flows each year to their investors; (2) their interests are widely-held and traded on U.S. regulated public exchanges; and (3) the business activities that may be conducted by MLPs are limited by U.S. Federal income tax law to certain activities that were historically conducted in partnership form, primarily in the natural resources sector. Natural resource MLPs currently constitute about 80 percent of MLPs by number, and about 85 percent of the MLP market capital.

NAPTP reiterates its prior comments that the treatment afforded CIVs to ensure appropriate entitlement to tax treaty benefits should be extended to MLPs because they are widely-held and subject to investor-protection regulation in the country in which they are established. This letter provides recommended language related to the presentation of the proposed Limitation on Benefits ("LOB") rules in the OECD Model Tax Convention and Commentaries as well as in the definition of Special Tax Regime.

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<sup>1</sup> The members of NAPTP are listed on Attachment 1.

## May 2015 Revised Discussion Draft Treatment of CIVs and Similar Vehicles

The May 2015 Revised Discussion Draft addresses the entitlement to treaty benefits of CIVs and similar vehicles in two contexts – the application of LOB rules, and the entitlement to treaty benefits of income taxed under a special tax regime. In the context of LOB rules, the Revised Discussion Draft concludes that subparagraph 2(f) of the LOB rule in the Report on the work on Action 6, which itself references relevant paragraphs of the Commentary to Article 1, adequately addresses the treatment of CIVs, and that a footnote should be provided that references the treatment of Real Estate Investment Trusts (REITs). For these purposes, CIVs are defined as funds that are widely-held, hold a diversified portfolio of securities, and are subject to investor-protection regulation in the country in which they are established.

In the context of special tax regimes, the Revised Discussion Draft includes proposed language that would deny tax treaty benefits to income taxed under a special tax regime unless, among other things, such regime “facilitates investment in widely-held entities that hold real property (immovable property), a diversified portfolio of securities, or any combination thereof, and that are subject to investor-protection regulation in the Contracting State in which the investment entity is established.” The Revised Discussion Draft explains that the treatment of non-CIV funds and the proposals related to special tax regimes would be discussed in meetings in late June and possibly thereafter.

### Recommendation: Neutral Treatment Regardless of Underlying Investments

The treatment of CIVs in the Revised Discussion Draft is based on two rationales. First, an investor pooling its capital with other investors in a widely-held vehicle should not be in a worse position than it would have been in had it invested directly in the underlying income producing property held by the vehicle. Second, procedural or administrative accommodations should be afforded to CIVs because of the practical difficulties of determining the tax treaty eligibility of each of its owners on a daily basis. It is noteworthy that neither rationale depends on the type of income producing property held by vehicle. Notwithstanding this, the relevant language referenced or provided in the Revised Discussion Draft is limited to vehicles that invest in a diversified portfolio of securities or real property.

NAPTP recommends that the relevant language referenced or provided in the Revised Discussion Draft be modified to provide equal treatment to all vehicles that are widely-held entities and subject to investor-protection regulation in the Contracting State in which the entity is established. Accordingly, NAPTP recommends the following revisions be made to the Commentary to Article 1 of the OECD Model Tax Convention (the “Commentary”).

First, the language in the Commentary providing considerations and alternatives related to the treaty eligibility of CIVs (notably paragraphs 6.8 – 6.34 of the Commentary on Article 1) should be expanded to include all vehicles that raise similar issues regardless of the nature of the income producing property they hold by adding the following language to paragraph 6.8 of the Commentary:

The issues discussed in paragraphs 6.8 – 6.34 are also relevant to vehicles that are widely-held and are subject to investor-protection regulation in the country in which they are established, regardless of the income producing property held by such vehicles. Accordingly, countries may consider extending the treatment provided to CIVs to all vehicles that are widely-held and are subject to investor-protection regulation in the country in which they are established.

Second, the definition of a “special tax regime” to be included in Article 3 of the Commentary should not include widely-held entities that are subject to investor-protection regulation in the country in which they are established. Accordingly, proposed subparagraph vii) of the definition of special tax regime, which provides an exception for certain vehicles, would be revised as follows:

vii) facilitates investment in widely-held entities ~~that hold real property (immovable property), a diversified portfolio of securities, or any combination thereof, and~~ that are subject to investor-protection regulation in the Contracting State in which the investment entity is established

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We appreciate your willingness to consider this submission as you continue your work on Action 6. Please let us know if you have any questions.

Sincerely yours on behalf of NAPTP,

/s/ Linda E. Carlisle

/s/ Rocco V. Femia

Miller & Chevalier Chartered  
Counsel to NAPTP

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