

---

## Comments on revised discussion draft on Action 6: Prevent Treaty Abuse

EPRA has taken note of the OECD's invitation to submit comments on the revised discussion draft on Action 6 of the BEPS Action Plan, dated May 22, 2015. In line with our previous submissions from April 9, 2014, May 23, 2014, and March 9, 2015, and in accordance with the views expressed by other organisations representing Real Estate Investment Trusts (REITs), including the National Association of Real Estate Investment Trusts (NAREIT), EPRA's comments are related to the following:

### Limitation on Benefits Provision (LOB)

EPRA welcomes the approach taken by the Working Party on Tax Conventions and Related Questions to address the concerns of the REIT industry. In particular, the Working Party's decision to further discuss the inclusion of a specific reference to the conclusions of the 2008 REIT Report, as stipulated under paragraph 20, is a welcome development.

In accordance with the OECD report on "Tax Treaty Issues Related to REITs", REITs, as well as persons wholly-owned by REITs, can be considered qualified persons for purposes of the limitation-on-benefits (LOB) rule. In order to ensure that access to tax treaty benefits is not denied to many *bona fides* REITs, the suggested reference to this report should be included in the footnote to the first part of paragraph 31 of the Commentary on subparagraph 2 f) of the LOB rule included in paragraph 16 of the Report on Action 6. EPRA encourages the Working Party to retain the proposed wording below, with particular clarification to the point underlined. EPRA believe that such clarification would account for the various REIT regimes across the EU (as well as worldwide). EPRA would also welcome further prominence be given to this proposal by placing it in the main body of the text, rather than as a footnote:

31. As indicated in the footnote to subparagraph f), whether a specific rule concerning collective investment vehicles (CIVs) should be included in paragraph 2, and, if so, how that rule should be drafted, will depend on how the Convention applies to CIVs and on the treatment and use of CIVs in each Contracting State.<sup>1</sup> ***Whilst no such rule will be needed with respect to an entity that would otherwise constitute a "qualified person" under other parts of paragraph 2, a specific rule will frequently be needed since a CIV may not be entitled to treaty benefits under either the other provisions of paragraph 2 or under paragraph 3, because, in many cases ...***

---

***[Footnote 1] See also paragraphs 67.1 to 67.7 of the Commentary on Article 10 and the report "Tax Treaty Issues Related to REITs" which deal with the treaty entitlement of Real Estate Investment Trusts (REITs), which should also be applicable to persons wholly-owned by REITs. With respect to the application of the definition of "resident of a Contracting State" to REITs, see paragraphs 8-9 of the report "Tax Treaty Issues Related to REITs".***

Nevertheless, it would be important to add an additional sentence to the aforementioned footnote, noting that “a specific rule concerning CIVs would not be relevant to the application of paragraph 2 to those REITs that would be qualified persons under other subparagraphs of such paragraph. This would provide a REIT-specific illustration of the general point made in the Commentary.

### **Principal Purpose Test Provision**

In relation to the proposed Principal Purpose Test (PPT) provision, paragraphs 97 of the revised discussion draft states that the Working Party agreed to include four new examples in paragraph 14 of the proposed Commentary on the PPT rule. The new examples listed under paragraph 98 do not include investment vehicles. However, paragraph 25 states that the Working Party intends to further discuss adding one or more examples on non-CIVs to the Commentary on the PPT rule. EPRA therefore encourages the Working Party to add a REIT specific example (which EPRA is willing to provide) to paragraph 14 of the Commentary during its meeting in June.

### **New treaty provisions on “special tax regimes”**

Under paragraph 53, the OECD invites comments on a proposal made by the US Treasury delegate to the Working Party for a new provision on “special tax regimes.” The revised discussion draft indicates that it was concluded that a decision on this proposal would need to be reached at the June meeting and would take into account the comments that will be received.

Under the proposed special tax regime provision, withholding tax reductions on interest, royalties and other income would be denied if the income is subject to a special tax regime in the residence country. Special tax regime is defined as anything providing a preferential effective tax rate to an item of income through reductions in the tax rate or the tax base. A series of exclusions from treatment as a special tax regime is set forth in the provision, including an exclusion for any legislation, regulation or administrative practice:

vii) that 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;

This exclusion is conditioned on the entity being subject to investor-protection regulation, which is the same condition that is part of the CIV definition. The inclusion of such a condition would mean that

---

REITs would not qualify for this exclusion from the definition of special tax regime, if REITs would be considered to meet the basic definition.

In line with the position expressed by NAREIT, EPRA requests that, if the Working Party includes the special tax regime provision in its recommendations, the Commentary language accompanying it should explicitly state that European REIT regimes qualify for the exclusion for legislation that facilitates investment in widely-held entities that hold real property.

### **About EPRA**

*EPRA is the voice of the publicly traded European real estate sector: it is the representative association for commercial property companies that are quoted on the public stock exchanges of Europe and other exchanges around the world. With more than 200 active members, EPRA represents over EUR 350 billion of real estate.*

*EPRA's membership also includes the institutional investors such as pension funds and insurance companies that invest in, or have an interest in investing in real estate indirectly via these listed property companies. Through the provision of better information to investors, improvement of the general operating environment, diffusion of best practices and the cohesion and strengthening of the industry, EPRA works to encourage greater investment in listed real estate companies in Europe with long-term and stable income producing assets.*