FSC FINANCIAL SERVICES COUNCIL

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TREATY ENTITLEMENT OF NON –CIV FUNDS

The Financial Services Council welcomes the opportunity to make a submission in response to the BEPS consultation document on the treaty entitlement of Non – CIV funds that was released for public discussion on 24 March 2016.

The Financial Services Council (FSC) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than $2.5 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia’s GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world.

Please contact me with any questions in relation to this submission on (02) 9299 3022.

Yours sincerely,

Andrew Bragg
Director of Policy

In responding to this discussion paper it is acknowledged that there will be some overlap with issues contained within the OECD's paper – The Granting of Treaty Benefits with Respect to the Income of Collective Investment Vehicles- of 23 April 2010. However, as that paper does not specify "what is a CIV", we are concerned that there are some Australian investment entities not covered, particularly unit trusts. The current discussion paper seems to implicitly recognise this in its discussion questions and this has influenced the entities envisaged in this response.

Australian funds management industry

Australia's long-term retirement income challenges mean that long-term investment options are needed, with stable and transparent tax outcomes. Existing international investment structures have been designed to allow for co-investment with institutions from diverse countries, pooling investment capital and diversifying investment risk, and allowing for efficient repatriation of profits and capital.

Jurisdictions such as Luxembourg, Ireland or the Cayman Islands are often used by Australian fund investors, as they have existing fund vehicles, and legal and financial regimes that support these needs by providing flow-through tax treatment.

Superannuation funds

We refer to the submission from the Association of Superannuation Funds of Australia ("ASFA") dated 1 April 2016 in response to the OECD's Public Discussion Draft entitled "Treaty Residence of Pension Funds" (dated 29 February 2016 with comments released by the OECD on 1 April 2016), which contains a description of the Australian superannuation fund sector.

A superannuation fund must be set up in accordance with the Superannuation Industry (Supervision) Act 1993. The taxable income of a complying superannuation fund will be taxed at 15%, with certain capital gains taxed at 10%. However, income earned from assets held to provide for "super income stream benefits" (namely pensions) can be exempt from tax in certain circumstances.

Large superannuation funds often offer different asset classes for investors to choose from, which requires numerous assets to be held. The assets of a superannuation fund are likely pooled through a life insurance company, a pooled superannuation trust or a unit trust.

The units in a pooled superannuation trusts can only be held by Australian superannuation funds and life insurance companies in respect of policy holders which are Australian superannuation funds. Pooled superannuation trusts are taxed in the same manner as superannuation funds.

Life insurance companies

Life insurance was traditionally designed for individuals, and provided a lump sum pay-out on death or an income stream in the case of sickness or disability. However, life insurance is now commonly used as an investment product and by superannuation funds to pool investments.

In Australia, life insurance companies are those companies that carry on life insurance business and are registered under the Life Insurance Act 1995 to write life insurance policies.

Life insurance companies determine the amount of the premium payable by the insured, and invests its assets (premiums less expenses) in a range of assets, including offshore investments. These accumulated assets are then used to pay out risk policies when certain events occur.

The taxation of a life insurance company basically splits the taxable income into three components:

- The accumulation phase superannuation business of a life insurance company is taxed at 15% (similar to a superannuation fund), and only applies to superannuation policies that relate to members of a superannuation fund where the members are still in the accumulation phase;

- The pension / annuity phase business of a life insurance company is exempt from tax (similar to the "super income stream benefit" exemption discussed above); and

- The remainder of the life insurance company's business (including fees from the superannuation related business) are taxed at the general corporate tax rate of 30%.

Other trusts

Another common investment vehicle in Australia is a unit trust or managed investment scheme. Managed investment schemes are regulated by the Corporations Act 2001.

The basic concept of a trust relationship is that the beneficiary is the beneficial owner of property which is the subject of the trust, which is legally owned by the trustee. There is no restriction in relation to the ownership of unit trusts, and these may include other Australian trusts, Australian superannuation funds and non-resident investors.

Generally, a trust will be taxed as a flow-through vehicle. That is, the beneficiary or unitholder will be taxed on their share of the taxable income of the trust, where they are presently entitled to that income. The beneficiary will pay tax on their share of the taxable income of the trust at their relevant tax rate.

Typical fund structures

Australian superannuation funds, managed investment trusts and life insurance companies regularly invest through non-CIV entities. This pooling of investments allows for economies of scale to allow for investments in larger assets, access to other fund managements or advisors and diversification of risk.

Often a regional platform is set up by an Australian fund (or funds), for example a Luxembourg entity for all European investments. This would allow for the following benefits:

- Pooling of various investors and capital (i.e. various Australian funds can take a stake in the same underlying asset); and

- Personnel with greater knowledge of the asset are likely to be closer to the asset, in terms of knowledge and time zones.

A variety of factors would contribute to the determination of the location of the regional platform entity, of which tax certainty would be one factor.

1. What would be the threshold for determining that a fund is "widely held" for the purpose of such a proposal?

While we welcome the suggestion that the limitation on benefits ("LOB") clause should be widened to deal with flow-through vehicles, the suggestions in paragraph 7 may be too limiting. This is on the basis that many of these suggestions deal with provisions in specific jurisdictions (specifically the European Union and Ireland). This may mean that vehicles outside the European Union may have greater difficulty in determining whether the exemption could apply to them.

We agree with the suggestion of a provision which allowed a flow-through vehicle to access the LOB provisions where they have a sufficiently high level of investors (80% is mentioned in paragraph 15) would be entitled to the same or better treaty benefits.

However, we would argue that this should be broadened to introduce the concept of a "deemed widely held" vehicle. If the intention is to allow vehicles held by certain investors to have access to the LOB provisions, then a vehicle that is held by another vehicle held by certain investors should also have the same access to the LOB provisions.

For example, where an Australian superannuation fund or Australian life insurance company owns 80% of the units in an Australian unit trust, which owns 100% of an offshore asset, then the superannuation fund or life insurance company should be a widely held entity and the unit trust should be a "deemed widely held" entity. This would require a certain level of tracing of investors by each of the entities, but would fit with the intention that if the ultimate investor could access treaty benefits, then the holding vehicle should be able to access those benefits.

Further, paragraph 8 discusses the suggestion from certain commentators that a safeguard be added such that a vehicle should be denied treaty benefits where 10% (for example) or more of the fund was owned by a single beneficiary. However, we note that this measure should not apply where that 10% owner is a "deemed widely held" entity, is itself able to access treaty benefits or a flow-through vehicle where more than 80% of its owners are able to access treaty benefits (e.g. an Australian superannuation fund or life insurance company). This should be in line with the policy intent that a vehicle with a majority of its investors (at all levels of investment) should be entitled to access treaty benefits.

2. What types of regulatory frameworks would be acceptable in order to conclude that a fund is "regulated" for the purposes of such a proposal? For instance, would these include the types of regulatory requirements described in paragraph 16 of the 2010 CIV report (i.e. "regulatory requirements relating to concentration of investments, restricting a CIV's ability to acquire a controlling interest in a company, prohibiting or restricting certain types of investments, and limiting the use of leverage by the CIV") as well as disclosure requirements relating to distribution of interests (e.g. "know your customer" rules)?

A regulatory framework requiring participation in the Common Reporting Standard ["CRS"], FATCA or any successor regime is an acceptable requirement. Additionally it is suggested that the entity be registered with the national securities regulator for its home jurisdiction [or another international regulator in the case of the EU]. If a non – CIV is widely held it may not be necessary to specify a requirement for registration under a local regulator.

3. Since the proposed exception would apply regardless of who invests in the funds, it would seem relatively easy for a fund to be used primarily to invest in a country on behalf of a large number of investors who would not otherwise be entitled to the same or better treaty benefits with respect to income derived from that country. How would this treaty-shopping concern be addressed?

Concern about treaty shopping by third country investors in the non- CIV is best addressed by first considering what sort of non – CIV would be attractive for such a scheme. It is suggested that a Non-CIV that is widely held and subject to regulation is unlikely to be used as a treaty shopping entity, particularly if the entity is resident in an OECD country.

4. Is it correct that investors in a non-CIV are typically taxable only when they receive a distribution? Would there be mandatory distribution requirements for a fund to be eligible for the proposed exception and if yes, would intermediate entities be required to distribute earnings up the chain of ownership on a mandatory basis? If not, how would concerns about deferral of tax be addressed?

Fundamentally there are three possible scenarios. A. the non CIV is a roll up vehicle that does not distribute but pays tax in its own right. This scenario should not pose a problem. B. the non CIV is not taxable as its income is distributed [deemed or actual] to its investors. Such investors would be taxable in their own right hence there is no mischief. C. the non – CIV vehicle is a roll up vehicle which is not taxable in its own right or is only nominally taxed. This last scenario does give rise to deferral issues. Hence the use of treaty benefits by non – CIVs should be limited to exclude non Taxable CIVS that are roll up vehicles.

[Pension funds could be construed to be non-taxable CIVS that are roll up vehicles. However, their special status has been recognised in most treaties with specific rules such that for the purposes of the proposed LOB rules pension Funds can be a qualified person under paragraph 2(d)]

Additionally, jurisdictions with a controlled foreign company ("CFC") or similar attribution regime means there should not be significant deferral of income. As the OCED will be aware, Australia has robust CFC rules that operate to ensure that passive income is attributed to Australian controlled foreign entities.

5. States that support the inclusion of LOB rules in their treaties are unlikely to agree to a broad exception from the LOB rule that would apply to any widely-held fund, even if it is regulated, especially since that exception would seem more generous than the exception already provided for publicly-listed companies. What features could be incorporated into a specific non-CIV exception in order to make it more acceptable to these States?

As suggested in the response to question 3 this concern is somewhat theoretical. However, it is suggested that restricting the exception to non – CIVs in OECD countries may alleviate these concerns.

6. One argument that was put forward in relation to suggestions for a specific LOB exception for non-CIV funds was that it would avoid or reduce the cascading tax when investment is made through a chain of intermediaries. In practice, what is the intermediate entity-level tax, if any that is typically payable with respect to income received from a State of source? Are there special purpose vehicles that are commonly used by funds to invest indirectly? How are intermediate entities typically funded, debt or equity? If debt, is it unrelated party financing?

True intermediaries are usually fiscally transparent vehicles that funnel equity investment into the non- CIV. Taxable intermediaries are usually special cases such as life insurance companies and some retirement funds. These can be considered as the equivalent to the ultimate investor.

7. Where an entity with a wide investor base is treated as fiscally transparent under the domestic law of a State that entered into tax treaties, the application of the relevant tax treaties raises a number of practical difficulties. Are there ways in which these difficulties could be addressed? Are there other practical problems that would prevent the application of the new transparent entity provision in order to ensure that investors who are residents of a State are entitled to the benefits of the treaties concluded by that State?

A practical difficulty encountered by fiscally transparent vehicles is that the source jurisdiction may insist upon beneficial interest details at the time of each interest or dividend payment from each investment. This may result in excess of 100 test dates across tens of thousands of investors, which is commercially not practical to comply with. It is suggested that the non – CIV should be able to adopt an average beneficial interest statement based upon the respective values at the beginning of the previous financial year and the end of the previous financial year. Such an average would be used for all income derived in the relevant financial year.

Given the practical difficulties, we recommend that the treaty address this matter (rather than being a matter for the laws of each jurisdiction). Consistent with the concept outlined in paragraph 15 of the OECD's public discussion draft, it is suggested that non-CIV funds be entitled to treaty benefits where they have a sufficiently high level of investors who would be entitled to treaty benefits. As already mentioned, we would propose this threshold should apply to various levels of holdings.

8. The rationale that was given for the above proposal refers to the fact that "investors in Alternative Funds are primarily institutional investors, and are often entitled to benefits that are at least as good as the benefits that might be claimed by the Alternative Fund". What is the meaning of "institutional investors" in that context? In particular, does it include taxable entities or other non-CIVs? Absent a clear definition of "institutional investors", how can it be concluded that institutional investors "are often entitled to benefits that are at least as good as the benefits that might be claimed by the Alternative Fund"? Also, is it suggested that "institutional investors" are less likely to engage in treaty-shopping and, if yes, why?

Institutional investors include:

- *Life insurance companies*
- *Pension funds and retirement funds*
- *Wholesale CIVs*
- *General Insurance companies*
- *Recognised charities.*

9. Unlike CIVs, which are defined in paragraph 6.8 of the 2010 Report on CIVs, the term "non-CIV" has no established definition. What would be the main types of investment vehicles to which the proposal could apply?

The definition in para 6.8 is –"funds that are widely led, hold a diversified portfolio of securities and are subject to investor-protection regulation in the country in which they are established". The challenge represented is that the meaning of "widely held" does not allow for investment by intermediate vehicles. Further, what amounts to a "fund" is unclear which causes difficulties for financially transparent vehicles such as unit trusts. A more specific definition of CIV is required before it is possible to delineate acceptable and non- acceptable non-CIVs..

10. Paragraph 17 above refers to the possible inclusion of "specific anti-abuse rules". What would these rules be?

Such rules could address the use of nominees and other types of investor who have no beneficial interest but confer residency in a jurisdiction that provides attractive benefits.

11. What would constitute a "bona fide investment objective" for the purpose of paragraph 17 above?

A bona fide investment objective is an investment that is predominantly passive and is part of a portfolio of investments.

12. How would it be determined that a fund is “marketed to a diverse investor base” for the purpose of paragraph 17 above?

Funds may be designed for differing investment objectives and typically will be offered to certain types of investor’s e.g. individual or large institutional wholesale customers. Not all investors will be able to invest in all funds, however that should not mean those funds are not being “marketed to a diverse investor base”. We suggest such a determination be based on the fund being openly offered to investors for investment, without a restriction being placed on whether that fund has specific eligibility criteria e.g. minimum investment amount.

Paragraph 17 makes the suggestion that the derivate benefits rules could only apply to funds that are wholly owned by institutional investors. For clarity, we recommend that such a requirement not be needed as there should be no difference in the eligibility of treaty benefits whether you are an institutional or individual investor. As long as there is a sufficiently high level of investors in the fund who would be entitled to the same or better treaty benefits, the derivate benefits rule should treat them equally. KYC/AML requirements are imposed on all investors, not just institutional.

13. Is the ownership of interests in non-CIV funds fairly stable or does it change frequently like the interests in a typical collective investment fund that is widely distributed?

As indicated in the answer to question 7 ownership interests do change hands not infrequently particularly for widely held entities. Hence it is practically necessary to develop an acceptable method of establishing the appropriate qualifying percentage for treaty relief.

14. How would the proposal address the concern, expressed by some commentators, that many non-CIV funds would be unable to determine who their ultimate beneficial owners are and, therefore, would not know the treaty residence and tax status of these beneficial owners?

Whilst many non- CIVS cannot assert the residency status of 100% of their beneficial owners it is usually possible to assert the residency status of a lesser percentage and that percentage should be capable of attracting available treaty benefits even if the remainder cannot. If necessary such percentages could be vetted by external auditors or the revenue authority of the home jurisdiction.

15. What information do those concerned with the management and administration of non-CIV funds currently have concerning persons who ultimately own interests in the fund (for example under anti-money laundering, FATCA or common reporting standard rules)?

All widely held regulated funds resident in jurisdictions participating in the CRS regime are in process of establishing residency certification and KYC procedures. Hence for individuals typically and address, country of tax residence and date of birth are normally held.

16. Is this information currently sufficient for relevant parties to identify the treaty benefits that an owner would have been entitled to if it had received the income directly? If not, what types of documents and procedures could be used by a non-CIV to demonstrate to tax authorities and/or payers that the residence and treaty entitlement of its ultimate beneficial owners are such that the non-CIV qualifies for treaty benefits under that suggested derivative benefits rule? What barriers would exist to the communication of these documents or the implementation of these procedures? In particular, does intermediate ownership present obstacles to obtaining

information about ultimate beneficial ownership and, if yes, how might these obstacles be addressed?

17. Since beneficial interests in non-CIV funds are frequently held through a chain of intermediaries, including multiple subsidiary entities (which is not the case of typical CIVs), how would the proposal overcome the difficulties derived from such complex investment structures with multiple layers and ensure that a fund is not used to provide treaty benefits to investors that are not themselves entitled to treaty benefits?

There are very often commercial reasons for an investment to be made through multiple subsidiary entities. As examples, to provide greater flexibility (and therefore price) in a potential sale in the future, ring-fencing assets for the purposes of financing, to facilitate co-investment/partnering and to undertake specific investment activities.

The consideration of the purpose of a structure should not be limited to just the "top" entity in the structure within a jurisdiction. Rather, the entire holding structure should be considered together when considering whether the principal purpose of an arrangement or transaction would be in accordance with the object and purpose of the relevant treaty provisions. Consideration of an overall structure, rather than a piecemeal approach to each entity, is not inconsistent with the intention of these provisions. That is, an organisational structure utilising more than one entity in a jurisdiction neither adds to nor detracts from the economic and commercial nexus to that jurisdiction.

18. The proposal would grant treaty benefits if a certain high percentage of a non-CIV is beneficially owned by investors entitled to similar or better benefits. Even a percentage as high as 80% would leave substantial room for treaty-shopping as a 20% participation in a very large fund could represent a significant investment. How could this concern be addressed?

If a fund was only able to claim an 80% benefit that would mean that "non treaty shopping investors" were being required to partially share their treaty benefits with the treaty shopping investors. If the treaty shopping investors were substantial and deliberate then the managers/ trustees of the non- CIV would be in breach of their fiduciary obligations to all investors. Additionally the non-treaty shopping investors would quickly realise they were being exploited and would desert the non – CIV.

19. One of the proposed requirements for the application of the suggested derivative benefits rule would be a 50% base erosion test. Since one of the main concerns expressed by governments relates to the possible use of non-CIV funds for treaty-shopping purposes, wouldn't the 50% threshold proposed for the base erosion test be too generous?

The 50% base erosion requirement would mean that less than 50% of the taxable income of the fund is distributed to non-equivalent beneficiaries. Provided the derivate benefits test requires a sufficiently high level of investors (as proposed by the paper at 80%) to be equivalent beneficiaries it would be unlikely that the base erosion percentage would need to be lifted. The 80% test should contain the treaty benefits to the eligible claimants.

20. According to the proposal, acceptable ultimate beneficial owners would include persons who would "include their proportionate share of the fund's income on a current basis". How would a State of source be able to determine when this requirement is met? Also, what would be considered an acceptable anti-deferral regime? In particular, would a regime under which a taxpayer is taxed on a deemed amount of income or deemed return on investment be considered as an anti-deferral regime even if the amount that is taxed is significantly lower than the actual return? Would the United States PFIC regime be an example of an acceptable anti-deferral regime?

See our answer to question 4.

21. As regards the application of the proposal in the case of indirect ownership, who will be tested in relation to the condition that an ultimate owner is either tax exempt or taxed on a current basis?

Firstly it should be noted that many retirement funds are tax exempt but are acceptable investors for treaty purposes. Hence retirement funds investing trough non – CIVs do not give rise to a mischief. In the case of multiple layers in an investment structure it is challenging to be prescriptive. What is needed is for the managers of the Non – CIV to receive adequate assurance as to ultimate beneficial ownership. Such assurances may not cover 100% of the investor base and hence not all income will attract the benefit of treaty concessions.

22. The proposal above was presented as a possible additional derivative benefits rule that would apply specifically to non-CIV funds but that would not replace the more general derivative benefits provision that appeared in the detailed version of the LOB rule included in the Report on Action 6. The Working Party is now looking at possible changes to that derivative benefits provision in the light of the new derivative benefits provision included in the United States Model Treaty released on 12 February 2016 (see ***https://www.treasury.gov/resource-center/tax-policy/treaties/Documents/Treaty-US%20Model-206.pdf***, paragraph 4 of Article 22 “Limitation on Benefits”). Based on previous comments, it is acknowledged that many non-CIV funds could not satisfy the “seven or fewer” condition of that derivative benefits provision. What other aspects of the new derivative benefits provision included in the United States Model Treaty would be problematic for non-CIV funds?

    - *More onerous requirement of 95% ownership rather than the OECD 75% (simplified version) ownership by equivalent beneficiaries.*
    - *Requirement of seven or fewer will not work for widely held funds*
    - *Certain funds may be additionally subject to the ‘tested group’ limitation. This would largely depend of the definition of what should be contained with a group for tax purposes (exemption if any).*

23. Are there practicable ways to design a “substantial connection” approach that would not raise the treaty-shopping and tax deferral concerns described in paragraph 21 above?

24. Although the above proposal for a “Global Streamed Fund” regime is very recent and has not yet been examined by Working Party 1, the Working Party wishes to invite commentators to offer their views on its different features. In particular, the Working Party invites comments on:

    - Whether the approach would create difficulties for non-CIV funds that do not currently distribute all their income on a current basis?
    - Whether the approach would create difficulties for non-CIV funds that cannot, for various reasons, determine who their investors are?
    - Whether the suggestion that tax on distributions be collected by the State of residence and remitted to the State of source would create legal and practical difficulties?
    - What should be the consequences if, after a payment is made to a GSF, it is subsequently discovered that the fund did not meet the requirements for qualifying as a GSF or did not distribute 100% of its income on a current basis?

25. Commentators wishing to suggest new examples related to the application of the PPT rule to common types of legitimate arrangements that are commonly entered into by non-CIV funds are invited to do so. These examples should be brief and should focus on common transactions that do not raise concerns related to treaty-shopping or inappropriate granting of treaty benefits

26. Commentators who share the concern described above in relation to conduit arrangements are invited to provide one or more examples where the PPT rule could apply to legitimate types of arrangements that are commonly entered into by non-CIV funds because these could be seen as conduit arrangements in the light of the examples already included in paragraph 19 of the Commentary on the PPT rule included in paragraph 26 of the Report. These examples should be brief and should focus on common transactions that do not raise concerns related to treaty-shopping or inappropriate granting of treaty benefits.

27. Commentators who shared the concern described above in relation to the proposal for "special tax regime" rules are invited to indicate whether they have similar or different concerns with respect to the new version of the proposal that was included in the new United States Model Tax Treaty released in February 2016 (see question 22 above). If yes, what is the type of "statute, regulation or administrative practice" related to non-CIV funds that could constitute a special tax regime and that would give rise to these concerns?

28. Please describe briefly any approach not already mentioned in this consultation document or in previous comments that could address concerns related to the way in which the new treaty provisions included in the Report on Action 6 may affect the treaty entitlement of non-CIV funds without creating opportunities for treaty-shopping or tax deferral.

Example

TNon-CIV fund, treated as fiscally transparent under the domestic law of a third State, State T, is established to invest in a portfolio of investments internationally. The fund is marketed to pension schemes, life insurance companies and non-CIVs and CIVs of institutional investors on the basis of the investment mandate of the fund. The investment strategy of the fund is not driven by the tax position of the investors, rather the investment strategy is driven by short-term or long-term investment return.

RCo, a company resident in State R, is an intermediate vehicle of TNon-CIV. RCo is established exclusively to acquire the investments of TNon-CIV in jurisdictions consistent with the investment mandate of the fund. The decision to establish RCo in State R takes into account the existence of tax benefits provided under State R's extensive tax convention network. However, this decision is mainly driven by business friendly environment, economic, legal and political stability, proximity to markets and underlying investments in mandated jurisdictions, legal flexibility and simplicity to repatriate proceeds from sales of the portfolio, appropriately qualified personnel and time zone efficiencies.

In making its decision to establish RCo in State R, the fund manager of TNon-CIV did consider the existence of benefits under the tax conventions between State R and the jurisdictions in which the target investments are made, but this alone would not be sufficient to trigger the application of paragraph 7. The intent of tax treaties is to provide benefits to encourage cross-border investment and, therefore, to determine whether or not paragraph 7 applies to an investment, it is necessary to consider the context in which the investment was made. In this example, if RCo's investments are made for commercial purposes consistent with the investment mandate of the fund, it should receive treaty benefits. Unless RCo's investments are part of an arrangement, or relates to another transaction undertaken for a principal purpose of obtaining the benefit of the Convention, it would not be reasonable to deny the benefit of the tax treaties between State R and the jurisdictions in which the target investments are made.

RCo's invests in the shares of SCo, resident in State S, and the making of the investment has had regard to the existence of benefits under the tax conventions between State R and State S, but this alone would not be sufficient to trigger the application of paragraph 7. The intent of tax treaties is to provide benefits to encourage cross-border investment and, therefore, to determine whether or not paragraph 7 applies to an investment, it is necessary to consider the context in which the investment was made. In this example, if RCo's investment is made for commercial purposes consistent with the investment mandate of the fund, RCo should receive treaty benefits. Unless RCo's investment is part of an arrangement, or relates to another transaction undertaken for a principal purpose of obtaining the benefit of the Convention, it would not be reasonable to deny the benefit of the tax treaty between State R and State S.

The establishment of a series of separate entities in State R to function as a regional platform to make the portfolio investments and which facilitate international pension schemes, sovereign wealth funds and other institutional investors such as life companies to invest via CIVs or Non-CIVs into one or more of the State R entities is a factor that alone would not be sufficient to change this conclusion.