

Submitted by email: taxtreaties@oecd.org

FAO Marlies de Ruiter, Head of Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA

17 June 2015

Dear Ms de Ruiter

Revised discussion draft on BEPS Action 6: Preventing treaty abuse

We are grateful for the opportunity to comment on this important aspect of the OECD's work.

CREFC Europe is the voice of the commercial real estate (**CRE**) finance industry in Europe, representing banks, insurers, fund managers and others providing or intermediating the provision of debt to real estate businesses, as well as advisers, consultants and others with a stake in this sector. We seek to promote transparency and liquidity in CRE finance markets by developing and disseminating best practice and engaging with regulators and policymakers, so that our industry can flourish while playing its part in supporting the real estate sector and the wider economy and delivering returns to investors.

We would generally reiterate the points we made in previous submissions on this BEPS work stream (on 9 January 2015, 9 April 2014 and, jointly with other European real estate industry associations, on 23 May 2014). We are also aware of submissions from INREV¹ and the BPF² in response to the current consultation, and generally agree with their comments.

Our broad support for the OECD's policy aims in relation to preventing treaty abuse is qualified by our concerns – shared with INREV and the BPF – regarding the need to find workable solutions for collective investment vehicles in our sector, both CIVs and non-CIVs.

CRE and, by extension, CRE debt are large and relatively illiquid asset classes which especially lend themselves to collective investment, including by institutional and other large-scale investors. If international capital is to continue to support investment in the built environment around the world, it is vital that investors who deploy capital collectively have effective access to a treaty network that gives them the same tax treatment that they would have had for individual direct investment.

We have the following specific comments.

- We welcome the introduction of a simplified LOB. It would be helpful to incorporate clause 2(f) from the Annex (certain collective investment vehicles) within the simplified LOB. We also welcome the reduction in the equivalent beneficiary threshold to 75% in the simplified LOB, and would suggest applying it for intermediaries in investment fund structures too. Practical guidance regarding implementation of the equivalent beneficiary rules, in particular covering evidential questions, would be very useful.
- We believe that a pragmatic solution is needed to allow non-CIV collective investment vehicles to benefit from treaties in appropriate circumstances. One way to ensure that only appropriate entities benefit would be to use a diverse ownership test. Further protection against abuse might take the form of denial of treaty benefits to funds which are ultimately more than, say, 10% owned by a single non-equivalent beneficiary (and its connected parties).

¹ INREV is the European Association for Investors in Non-listed Real Estate Vehicles.

² The BPF is the British Property Federation.

We have read and generally support the submissions of the BPF and INREV in response to the current proposal. We hope that the OECD will continue to listen and respond to legitimate concerns around ensuring that the baby is not thrown out with the bathwater. Bona fide cross-border collective investment in real estate and real estate debt quite properly needs to be able to rely on tax treaties, and should not be stymied by an anti-abuse initiative really aimed at quite different behaviours.

Yours sincerely

A handwritten signature in black ink that reads "Peter Cosmetatos". The signature is written in a cursive style with a large initial 'P'.

Peter Cosmetatos
CEO, CREFC Europe
pcosmetatos@crefceurope.org
+44 20 3651 5696