

THE ASSOCIATION OF GLOBAL CUSTODIANS

THE BANK OF NEW YORK  
BROWN BROTHERS HARRIMAN  
CITIBANK, N.A.  
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STATE STREET BANK AND TRUST COMPANY

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June 28, 2005

**VIA FEDERAL EXPRESS**

Ms. Marie Hurley  
Ms. Susan Cummins  
Direct Taxes, Interpretation and International Division  
Irish Revenue Commissioners  
Dublin Castle  
Dublin 2  
IRELAND

Re: Follow-Up on the Inconsistent Global Tax Treatment of Irish UCITs

Dear Ms. Hurley and Ms. Cummins:

On June 4, 2004, the Association of Global Custodians ("Association") sent a letter concerning the global tax treatment of Irish Undertakings for Collective Investments in Transferable Securities ("UCITs") under Ireland's double tax treaty network.<sup>1</sup> In general, the Association is concerned that UCITs may be foregoing treaty benefits in certain markets due to the lack of clarity surrounding eligibility for reduced treaty rates of withholding.

In its letter, the Association urged the Irish Revenue Commissioners ("IRC") to aid in the development of a clearly defined policy by collaborating with foreign tax authorities, including the negotiation of specific wording in double tax treaties for UCITs either allowing or disallowing treaty relief. Additionally, we sought guidance on the eligibility of UCITs (both corporate and trust forms) for treaty benefits from the IRC's perspective.

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<sup>1</sup> Letter, dated June 4, 2004, to Marie Hurley and Susan Cummins, Direct Taxes, Interpretation and International Division, Irish Revenue Commissioners, from Margaret R. Blake, Counsel to the Association of Global Custodians, Regarding Inconsistent Global Tax Treatment of Irish UCITs. A copy is attached for your convenience.

Ms Marie Hurley  
Ms Susan Cummins  
Direct Taxes, Interpretation and International Division  
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The Association has not received a response to its letter and its concerns remain outstanding.<sup>2</sup> Therefore, we would be grateful to receive clarification of the IRC's current position and any information regarding work with foreign tax authorities on this matter at your earliest convenience. If the IRC is not yet in a position to comment, we would appreciate knowing when the IRC's comments may be available. If the Association can provide any assistance, please do not hesitate to contact us.

We look forward to hearing from you.

Sincerely,



Margaret R. Blake  
Counsel to the Association

Attachment - Letter, dated June 4, 2004, to Marie Hurley and Susan Cummins, Direct Taxes, Interpretation and International Division, Irish Revenue Commissioners, from Margaret R. Blake, Counsel to the Association of Global Custodians, Regarding Inconsistent Global Tax Treatment of Irish UCITs.

cc: Dublin Funds Industry Association

WASDMS-#7201812-v2

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<sup>2</sup> On June 18, 2004, the Association received a letter from the IRC indicating that a formal response would be forthcoming.

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June 4, 2004

Ms. Marie Hurley  
Ms. Susan Cummins  
Direct Taxes, Interpretation and International  
Division  
Irish Revenue Commissioners  
Dublin Castle  
Dublin 2  
Ireland

**Re: Inconsistent Global Tax Treatment of Irish UCITs**

Dear Ms. Hurley and Ms. Cummins:

On behalf of the Association of Global Custodians ("Association"), we are writing to express concern over the unclear global tax treatment of Irish Undertakings for Collective Investment in Transferable Securities ("UCITs").

The Association is an informal group of nine custodian banks with affiliates and branches in numerous countries that provide global custody services to cross-border institutional investors.<sup>1</sup> Members of the Association provide custody services to Irish UCITs in jurisdictions around the world. However, the eligibility for treaty benefits for these entities in local markets is inconsistent.

Irish UCITs may be established as one of the following:

- a unit trust, which is transparent in nature, or
- a variable capital company ("VCC"), which is corporate in form.

Both of the above-mentioned entity types are generally exempt from Irish withholding tax on income and gains. Additionally, Irish law does not prohibit such entities from benefiting from double tax treaties despite their tax-exempt nature. However, whether Irish UCITs are afforded treaty benefits ultimately depends on the wording of each treaty and is at the discretion of the foreign tax authorities in each jurisdiction. This case-by-case approach leads to inconsistent and unclear market practice in affording these entities treaty benefits.

<sup>1</sup> The members of the Association are listed in the letterhead above.

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In contrast, a similar funds regime exists in other jurisdictions, but a clearly defined policy on the tax treatment of these funds is generally available. In Luxembourg, for example, such policy exists either via foreign tax authority rulings requested by the Luxembourg funds administration or by exclusion articles contained in the relevant double taxation treaty. For example, a Luxembourg fonds commun de placement (i.e., FCP), which is a transparent entity, is not entitled to treaty benefits (although it may qualify for certain exemptions under the investment country's domestic law), whereas a société d'investissement à capital variable (i.e., SICAV), which is a limited liability company, can benefit from treaties in certain markets. The Luxembourg Tax Authorities have issued guidance in this regard that may be referenced at <http://www.impotsdirects.public.lu/dossiers/conventions/opc/sicav/index.htm>).

Whether an Irish UCIT is a unit trust or a VCC may need to be taken into consideration in the case of developing a policy for Irish funds similar to that noted above for Luxembourg funds. However, we believe a consistent approach needs to be adopted to ensure that Irish UCITs are not foregoing treaty benefits to which they are entitled, particularly with respect to VCCs as they are an established corporate form, albeit exempted from tax.

The Association urges the Irish Revenue Commissioners ("IRC") to work with foreign tax authorities to develop a clear-cut policy for Irish UCITs to ensure that such entities are not unduly denied benefits. Also, we would encourage that future treaty negotiations include specific wording with regards to the inclusion or exclusion of these entities. Should the treaty eligibility of Irish UCITs continue to be undefined, Ireland's expansive double taxation treaty network may be compromised.

We would welcome your urgent consideration of this matter and your clarification of the position of the IRC on the eligibility of treaty benefits to Irish UCITs, distinguishing between both the corporate and trust forms, if necessary. If you have questions or comments, please feel free to contact Patrick C. Costello, Chair of the Association's Tax Issues Committee or the undersigned.

We look forward to hearing from you.

Sincerely,



Margaret R. Blake  
Counsel to the Association