

## THE ASSOCIATION OF GLOBAL CUSTODIANS

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March 27, 2006

Gary Palmer, Chief Executive  
Dublin Funds Industry Association  
1 Gandon House  
Mayor Street,  
IFSC, Dublin 1

### **Re: Inconsistent Global Tax Treatment of Irish Undertakings for Collective Investment in Transferable Securities**

Dear Mr. Palmer:

Further to our meeting with you on Friday, January 27, 2006, and our letters dated June 4, 2004 and June 28, 2005, to the Irish Revenue Commissioners ("IRC") on which you were copied, we are writing on behalf of the Association of Global Custodians ("Association") to express views regarding the current global tax treatment of Irish Undertakings for Collective Investments in Transferable Securities ("UCITs").

#### **Introduction**

The Association is an informal group of ten global custodian banks with affiliates and branches in numerous countries that provide global custody services to cross-border institutional investors. Members of the Association provide custody services to Irish UCITs in jurisdictions around the world. As discussed in the January 27 meeting and our letters to the IRC, the eligibility for treaty benefits for these entities in local markets is inconsistent and needs to be addressed.

#### **Data Gathered**

During our meeting on January 27, 2006, we agreed that in order to move forward, it would be very useful if members of the Association could provide the Dublin Funds Industry Association ("DFIA") with certain data regarding the treaty benefits applicable

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to UCITs in various markets. Attached you will find data collected from Association members regarding markets of investment in which relief at source or relief via reclaim have been offered to Irish funds.

In addition, we have also provided comparative information relating to Luxembourg funds, given the similarity in the fund regime there and the fact that the Luxembourg Tax Authorities have been proactively defining treaty eligibilities of these funds either via foreign tax authority rulings requested by the Luxembourg Funds Administration or by exclusion Articles contained in the relevant double taxation avoidance treaty.<sup>1</sup>

### **Data Results**

The results of our survey demonstrate that Irish funds are experiencing unclear tax treatment on their global investments, as uncertainties in treaty eligibility force custodian banks to adopt different tax relief policies. In addition, the reactions of foreign authorities to applications for relief have also been inconsistent over time. This puts the Irish funds industry at a competitive disadvantage and hinders the marketing of such funds from a pricing perspective, as investors cannot be certain of the tax impact of these investments prior to investing.

While some Association members are concerned that the arbitrary filing of tax reclaims could be considered as "bad tax practice," custodians generally are coming under increasing pressure to make such filings in the absence of a clear policy. This is in part supported by foreign tax authorities choosing, from time to time, to honor such reclaims.

### **Conclusion**

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

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<sup>1</sup> The guidance issued by the Luxembourg Tax Authority indicates that a Luxembourg fonds commun de placement, which is a transparent entity, is not entitled to treaty benefits, whereas a société d'investissement à capital variable, which is a limited liability company, can benefit from treaties in certain markets. The Luxembourg Tax Authorities have issued guidance in this regard. See <http://www.impotsdirects.public.lu/dossiers/conventions/opc/sicav/index.htm>).

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as they are an established corporate form, exempt from tax. Having a clear cut and predictable policy in place will allow the Irish fund industry to retain a competitive stance within the industry at large.

The Association would appreciate the DFIA's support in this matter and looks forward to working together in urging the IRC to work with foreign tax authorities in developing a clear policy for Irish UCITs. Specific wording with regard to the inclusion or exclusion of these entities is necessary, as the current undefined treatment compromises the aim of Ireland's expansive double taxation treaty network (*i.e.*, relief from double taxation).

We would be happy to discuss our position with you in more detail, and will contact you shortly to arrange a conversation.

Sincerely,



Margaret R. Blake  
Counsel to the Association

Attachment – Chart Illustrating Information Gathered Regarding UCIT Tax Treatment,  
as of March 2006.

Association of Global Custodians - Information Gathered Regarding UCIT Tax Treatment, as of March 2006

Countries of Investment	Irish UCITS						Luxembourg					
	VCC			Unit Trusts			SiCAV/SiCAF			FCP		
	Relief At Source	Reclaim	None	Relief At Source	Reclaim	None	Relief At Source	Reclaim	None	Relief At Source	Reclaim	None
<i>Australia</i>	3		2	1		4			Y			Y
<i>Austria</i>		2	3		2	3		Y				Y
<i>Belgium</i>	1 - Domestic relief on corp int only; 1 RAS	2 - Dividends only;	2		2	3	Domestic relief on corp int only			Domestic relief on corp int only		
<i>Canada</i>	1		4	1		4			Y			Y
<i>Croatia</i>	1		3	1		3			Y			Y
<i>Czech Republic</i>	2		3	2		3			Y			Y
<i>Denmark</i>		2	3		2	3			Y			Y
<i>Estonia</i>		2	3		2	3			Y			Y
<i>Finland</i>	2		3	1		4	Y					Y
<i>France</i>		1	4		1	4			Y			Y
<i>Germany</i>		3	2		1	4		Y				Y
<i>Greece</i>			4			4			Y			Y
<i>Hungary</i>		1	3		1	3			Y			Y
<i>Iceland</i>	1		3	1		3			Y			Y
<i>Italy</i>	4		1	1 - Domestic relief on interest only; 3 RAS		1	Domestic relief on interest only			Domestic relief on interest only		
<i>Japan</i>	1 - Domestic relief on Gov int only; 2 - RAS		2	1 - Domestic relief on Gov int only; 2 - RAS		2	Domestic relief on Gov int only			Domestic relief on Gov int only		
<i>Korea (R.O.K)</i>	4		1	3		2	Y					Y
<i>Luxembourg</i>		3	2		2	3			Y			Y
<i>Netherlands</i>	1	3	1		2	3			Y			Y

(Information reflects data collected from five Association members -- numbers represent those responding custodians that provide relief at source, tax reclaims or neither for the instrument noted)

Association of Global Custodians - Information Gathered Regarding UCIT Tax Treatment, as of March 2006

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	VCC			Unit Trusts			SiCAV/SiCAF			FCP		
	Relief At Source	Reclaim	None	Relief At Source	Reclaim	None	Relief At Source	Reclaim	None	Relief At Source	Reclaim	None
<b>New Zealand</b>	1 - Domestic relief on interest only; 2 - RAS		2	1 - Domestic relief on interest only; 2 - RAS		2	Domestic relief on interest only				Domestic relief on interest only	
<b>Norway</b>	2		3	1		4				Y		Y
<b>Pakistan</b>	1 - Govt int only; 1 - RAS		2	1		3				Y		Y
<b>Poland</b>	2		3	2		3	Y					Y
<b>Portugal</b>	1 - Domestic relief on Gov int; 1 - RAS	1	2	2		3	Domestic relief on Gov int	Div and corp int				Y
<b>Spain</b>	1 - Domestic relief on interest only; 3 - RAS	1		1 - Domestic relief on interest only; 3 - RAS	1		Domestic relief on interest only				Domestic relief on Govt interest only	
<b>Sweden</b>	1		4	1		4				Y		Y
<b>Switzerland</b>		1	4		1	4				Y		Y
<b>USA</b>	1 - Domestic relief on interest only; 2 - RAS		1	1 - Domestic relief on interest only; 2 - RAS		1	Domestic relief on interest only				Domestic relief on interest only	

(Information reflects data collected from five Association members -- numbers represent those responding custodians that provide relief at source, tax reclaims or neither for the instrument noted)