

110 Bishopsgate
19th Floor, Suites 19-06 and 19-07
London EC2N 4AY, UK
+44 (0) 207 961 0830
www.iciglobal.org

Suite 715–717, Level 7
Two Exchange Square
8 Connaught Place
Central, Hong Kong
+852 2168 0882

1401 H Street, NW
Suite 1200
Washington, DC 20005, USA
+001 202 326 5800
www.ici.org

+001 202 326 5832
MOBILE: +001 202 957 7226
lawson@ici.org

By Electronic Delivery

27 June 2019

Wayne Strangwood
HMRC Policy & Technical Lead – Collective Investment Schemes
Business, Assets, and International (BAI)
Room 3C.04
100 Parliament Street
London, SW1A 2BQ

RE: *UK NRCGT Registration and Reporting
Exemption for US CIVs*

Dear Mr. Strangwood,

ICI Global¹ requests confirmation that US collective investment vehicles (CIVs)² are not subject to registration or reporting requirements when investing in UK real estate investment trusts (REITs). This confirmation will eliminate considerable confusion regarding application to treaty-entitled CIVs³ of the new UK non-resident capital gains tax (NRCGT).⁴

Confusion has arisen regarding the registration and reporting requirements, if any, for treaty-entitled CIVs. Although HMRC's 8 April 2019 registration guidance⁵ refers to companies

¹ ICI Global carries out the international work of the [Investment Company Institute](#), the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$30.0 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

² Specifically, we are seeking clarification for CIVs that are taxed under the Internal Revenue Code as regulated investment companies (RICs). As persons, residents, and the beneficial owners of their income, RICs are treaty-entitled under the US-UK income tax treaty.

³ As explained below, these CIVs are exempt from tax on these gains pursuant to the US-UK income tax treaty.

⁴ See, http://www.legislation.gov.uk/ukpga/2019/1/pdfs/ukpga_20190001_en.pdf. See also, http://www.hmrc.gov.uk/gds/cg/attachments/CG-APP15__Non-resident_capital_gains_from_6_April_2019_Collective_Investment_Vehicles_draft_guidance.pdf.

⁵ <https://www.gov.uk/guidance/register-a-non-resident-company-for-corporation-tax>.

“chargeable to UK Corporation Tax”—which clearly suggests no registration requirement for treaty-entitled CIVs—the guidance also says that “From April 6, Corporation Tax rather than Capital Gains Tax will be charged on gains for UK property or Land for all non-resident companies.” Related HMRC guidance from 6 April 2019 provides that a NRCGT return must be filed within 30 days of a disposal “even if you’ve no tax to pay.”⁶

Article 13 (entitled “Gains”) of the US-UK income tax treaty is clear. US residents are exempt from UK tax—whether “corporation tax” or “capital gains tax”—on shares of REITs that invest in UK real property. Specifically, Article 13(2)(c)(i) provides this exemption for “shares in which there is regular trading on a stock exchange, deriving their value or the greater part of their value directly or indirectly from real property situated in the United Kingdom.”

Confirmation that treaty-entitled CIVs have no registration or reporting responsibilities under the new NRCGT is needed promptly. These CIVs, as well as HMRC, otherwise will incur unnecessary burden and expense. As companies must register “within 3 months of the date you become chargeable to UK Corporation Tax,” registration (if required) could become necessary as soon as 6 July. Penalties for failing to meet this obligation and perhaps others,⁷ unless relieved, could apply.

The requested confirmation also will obviate the need for treaty-entitled CIVs to navigate the numerous other uncertainties that have arisen under the new NRCGT. These uncertainties, we understand, are being raised in detail by our colleagues in other CIV industry associations.

Please feel free to contact me (at lawson@ici.org or 1-202-326-5832) or my colleague Katie Sunderland (at katie.sunderland@ici.org or 1-202-326-5826) if you would like to discuss this request with us or if we can provide you with any additional information.

With kind regards,

/s/ Keith Lawson

Keith Lawson
Deputy General Counsel, Tax Law
Investment Company Institute and ICI Global
1401 H Street, NW
Washington, DC 20005

cc: Deborah Palacheck
Director, Treaty Administration
Internal Revenue Service

⁶ <https://www.gov.uk/guidance/capital-gains-tax-for-non-residents-uk-residential-property>.

⁷ Among the NRCGT’s many uncertainties is the date by which dispositions must be reported. Although some have suggested that reporting is required only annually, others have suggested that more frequent reporting is required when dispositions are sporadic (and could be required as soon as 30 days after disposition).