

Guernsey

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

Guernsey tax resident companies, including hedge fund managers, are subject to a 0 percent tax rate on all but certain regulated activities (none of which would ordinarily be undertaken by a fund manager) and income from Guernsey land and buildings.

The effective tax rate usually suffered by hedge fund managers/advisors

Zero percent

Tax concessions, allowances, or exemptions specifically available to hedge fund managers/advisors

Not applicable, since the standard corporate tax rate is already set at 0 percent.

Details of anti-avoidance tax rules that could bring the profits of an offshore hedge fund into tax

None

Requirements to charge VAT (or equivalent Sales Tax) and the rate

Value-added tax is not chargeable in Guernsey.

Hedge fund structures

Taxation

Tax rules applying to the fund

Funds will not be subject to any income tax in Guernsey under normal circumstances. The only exception relates to income arising from specified banking activities, activities regulated by the Office of Utility Regulation, or Guernsey land and buildings.

Funds established in Guernsey as companies or unit trusts ordinarily apply for exempt status for Guernsey tax purposes.

Open-ended mutual funds are organized in Guernsey as unit trusts, mutual fund companies, and limited partnerships.

Unit trusts and mutual fund companies, whether incorporated in Guernsey or not, may become registered in Guernsey for tax purposes. Such trusts and companies and any entities owned by them can apply to be exempt from income tax under the provisions of the Income Tax (Exempted Bodies) (Guernsey) Ordinance 1989. If they do not apply for or are not granted exempt status they will be subject to income tax in Guernsey at the standard corporate rate of 0 percent.

Limited partnerships are transparent for tax purposes with any liability to tax being in the hands of the investors (that is, the limited partners) rather than in the hands of the partnership itself.

Closed-ended mutual funds due to their capital structure are unable to meet the provisions of the Income Tax (Exempted bodies) Guernsey Ordinance 1989 but by concession they can still be exempt if they meet all the remaining requirements for exempt tax status.

Protected cell companies are treated as single entities in respect of taxation to the extent that specific cells cannot be exempt whilst others are taxable. However, an individual cell will not be liable for any tax attributable to the profits of other cells.

Access to double tax treaties

Guernsey has double tax agreements with the United Kingdom and Jersey. Guernsey tax exempt funds do no benefit from these treaties.

Value-added tax registration and charging requirements

No VAT is chargeable in Guernsey.

Withholding tax on dividends or interest payments

Payments of dividends and interest by a fund that has exempt status for Guernsey tax purposes are regarded as having their source outside Guernsey and hence are payable without deduction of tax in Guernsey.

Guernsey tax resident companies are required to account for Guernsey income tax on distributions (both actual and deemed) made to any Guernsey resident individual shareholder who individually holds an interest of greater than 1 percent in the fund.

Guernsey has introduced measures that are the same as the EU Savings Tax Directive. In the absence of an election for voluntary disclosure, tax will be withheld at the rates specified in the Directive from payments of savings income made to individuals resident in an EU Member State by paying agents established in Guernsey. However, paying agents located in Guernsey are only required to operate the measures on payments made to shareholders out of collective investment schemes established in Guernsey that are equivalent to UCITS. Primarily, these would be Class A Schemes; it would be very unusual for a hedge fund to register as a Class A Scheme.

Tax return requirements

A fund with exempt status is not required to make any tax returns in Guernsey beyond the annual application for exempt status and disclosure to the Administrator of Income Tax of any distributions made to residents of Guernsey, Alderney, or Herm. Fund companies which do not obtain exempt status will have tax compliance obligations, but these will be limited where there are no Guernsey resident investors.

Limited partnerships are not required to make any tax returns in Guernsey.

Investors

Taxation

Guernsey resident individuals will not generally be concerned about the type of investment vehicle, except that tax transparency in an accumulation fund which does not offer a cash distribution alternative would generate negative tax timing differences. If a Guernsey resident investor holds more than a 1 percent interest in the fund then investment in a fund vehicle with exempt status for Guernsey tax purposes would be preferable.

Most non-individual Guernsey based investors would be part of an international fund structure where the needs of non-Guernsey resident investors would be the determining factors.

Specific anti-avoidance tax legislation applying to an investor in an onshore fund

There are no specific measures beyond a general anti-avoidance provision which can be invoked where the effect of a transaction is to avoid or reduce liability to income tax. However, this is unlikely to apply to an investment in a third-party investment fund.

Income distributions and the portion of proceeds from the sale or redemption of fund holdings which relate to accumulated income are subject to income tax in the hands of Guernsey resident individuals. Where funds provide a cash alternative to the reinvestment/accumulation of income, investors will be subject to income tax on a current basis rather than on the eventual disposal of the fund holding.

Specific anti-avoidance tax legislation applying to an investor in an offshore fund

The position is the same as for a fund which is resident in Guernsey.

Tax information needs of investors

Details of income distributions paid or income accumulated/reinvested, along with details of any tax withheld on such distributions, are required on an annual basis. Additional requirements will arise where the Guernsey resident individual holds more than a 1 percent interest in the fund.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.