

Jersey

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

If the fund manager is incorporated as a Jersey company or a foreign incorporated company managed and controlled in Jersey it will be subject to Jersey income tax on its taxable profits. A Jersey incorporated company is not resident in Jersey for income tax purposes if its business is centrally managed and controlled in a territory where the highest rate at which any company may be charged to tax on any part of its income is 20 percent or higher and the company is tax resident in that other territory.

The general rate of corporate income tax in Jersey is 0 percent.

Companies with a permanent establishment in Jersey which are regulated to carry out investment business or as administrator or custodians of funds are liable to Jersey income tax at 10 percent.

There are rules to attribute profits to a Jersey resident individual who beneficially owns 2 percent or more of the ordinary shares of a Jersey resident company.

Prior to 2005, companies could apply for international business company (IBC) status. Although IBC status has been removed from 2006, companies that had elected and been granted IBC status in 2005 may continue to enjoy this status until 2011. IBC's are taxed at low rates (2 percent on the first GBP 3 million of profits decreasing on a sliding scale to 0.5 percent on profits exceeding GBP 10 million) on profits derived from international activities, which will include management fees paid by funds.

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

Certain regulated financial services companies are taxed at 10 percent and these include companies registered to carry out investment business and

administrators and custodians of funds. It is vital to check the regulatory status of the company as this will determine the rate of tax.

The general rate of corporate income tax in Jersey is 0 percent. This rate applies immediately to companies' first resident in Jersey after 3 June 2008 and to existing companies with effect from 1 January 2009.

The effective rate for managers which are not viewed as regulated financial services companies will be 0 percent.

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

As above, the general corporate income tax rate in Jersey for certain managers is 0 percent so further concession is unnecessary.

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

The profits of a fund may be brought within the charge to Jersey income tax if either the fund is managed and controlled in Jersey or trading in the Island. However, the effective rate of tax will be 0 percent.

Requirements to charge VAT (or equivalent sales tax) and the rate

There is no VAT in Jersey.

Jersey has its own broad based goods and services tax (GST) levied at 3 percent.

Fund managers, and others in the financial services industry, may elect for international services entity (ISE) status. Having ISE status means that the company is outside the scope of GST and neither charges GST on its outputs or suffers GST on its inputs. For a funds services business there is an annual charge of GBP 2,500 for an ISE application.

Hedge fund structures

Taxation

Tax rates applying to the fund

If structured as a company the rate of Jersey income tax will be 0 percent.

Where a trust is utilized there are longstanding concessions which exempt the non- Jersey income and Jersey bank deposit interest of Jersey trustees where the beneficiaries are all not resident in Jersey.

A limited partnership is transparent for Jersey income tax purposes. A Jersey limited partner is liable on their whole share of the income arising to the limited partnership. A non-Jersey resident limited partner's liability is limited to Jersey-source income excluding, by concession, bank deposit interest.

Access to double tax treaties

Jersey has double tax arrangements with the United Kingdom and Guernsey.

Value-added tax (VAT) registration and charging requirements

There is no VAT in Jersey.

Jersey has its own broad based goods and services tax (GST) levied at 3 percent.

Funds, and others in the financial services industry, may elect for international services entity (ISE) status. Having ISE status means that the company is outside the scope of GST and neither charges GST on its outputs or suffers GST on its inputs. For a fund there is an annual charge of GBP 100 for an ISE application.

Withholding tax on dividends or interest payments

There are no withholding tax requirements in Jersey on either dividends or interest payments.

Tax return requirements

A simple tick box return is required annually to confirm that the 0 percent tax rate applies.

Investors

Taxation

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

Rules exist to attribute to a Jersey resident individual who, directly or indirectly, beneficially owns more than 2 percent of a Jersey resident investment company the profits of that company in proportion to their holding.

In the case of accumulation (roll-up) funds the Comptroller requires that due prominence is given in the prospectus to a health warning to Jersey residents that the anti-avoidance legislation, Article 134A of the Income Tax ((Jersey) Law 1961, may be invoked in certain circumstances. More details are given below.

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

Under general law, an investment, which does not produce any income but generates capital gains on the redemption of the share holding, (such as a hedge fund) should not give rise to a Jersey income tax liability once that investment is realized. It is, however, important to consider the general anti-avoidance provision contained within Article 134A of the Income Tax (Jersey) Law 1961, as amended (Article 134A).

The provision provides for the Comptroller of Income Tax (the comptroller) to raise an assessment to make good any loss in Jersey income tax where he/she is of the opinion that the main purpose, or one of the main purposes, of a transaction, or series of transactions, is the avoidance, or reduction of a liability of any person to Jersey income tax.

It is the comptroller's general policy that, where he/she is made aware that an individual has invested in a non-income producing capital growth product, he/she would seek to invoke Article 134A. An assessment cannot be made if avoiding or reducing the Jersey income tax liability was not the main purpose, or one of the main purposes of the transaction or it was a bona fide commercial transaction.

Tax information needs of investors

None. However, a Jersey investor may find a copy of the fund's account useful if they need to negotiate a settlement with the Comptroller of Income Tax should be invoke the general anti-avoidance provisions.

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.