

Malta

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

If the Maltese fund manager is incorporated as a company and tax resident in Malta it will be subject to tax in Malta on its taxable profits on a worldwide basis, at the flat tax rate of 35 percent. However, upon a distribution of dividends to its non-resident shareholders, the latter would be entitled to a non-taxable refund, thereby reducing the effective rate of tax in Malta to 5 percent.

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

If the fund management company is owned by non-residents, the effective rate of tax is 5 percent after receipt of a partial refund of the tax paid by the hedge fund manager/advisor due on a dividend distribution of its profits to such non-resident shareholders.

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

There are no concessions, allowances or exemptions that are specifically available to U.K. hedge fund managers/advisors. The above tax system is applicable generally.

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

The offshore fund's profits will be brought to charge to Maltese tax if either:

- the fund is managed and controlled in Malta; or
- it trades in Malta.

Management and control

There are no specific anti-avoidance rules applicable to offshore hedge funds. However it should be noted that if the hedge fund is incorporated outside Malta but it is managed and controlled from Malta, the hedge fund would be deemed to be tax resident in Malta in terms of Maltese domestic law and hence subject to tax in Malta. Management and control is understood to refer to the place where the board of directors meet to make policy decisions, or in the case of a single director, where that director exercises his powers (generally, where he/she is resident).

Trading in Malta

In addition the Maltese Income Tax Act provides that a non-resident person is taxable in Malta on the basis of income and capital gains arising in Malta and income (not capital gains) arising outside Malta which is received in Malta. When a non-resident carries on trading in Malta by some activity performed in Malta by that non-resident or by someone on its behalf, it will have income arising in Malta which will be taxable in Malta. Thus, if the hedge fund manager acts on behalf of the offshore fund, the performance of work in Malta by the fund manager on behalf of the hedge fund would generate trading income for the hedge fund arising in Malta. Such trading income would be taxable in Malta, unless limited by a double tax treaty concluded between Malta and the relevant jurisdiction.

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

In terms of Maltese VAT legislation, a supply will only be subject to Maltese VAT if the place of supply is in Malta. With respect to the provision of investment management services, the supply is deemed to take place where the customer is established if the supply is provided to a person established outside the Community or to a taxable person (a hedge fund is invariably considered to be a taxable person) established in the Community but not in the same Member State as the supplier.

Consequently, the supply of investment management services by a Maltese fund manager to a hedge fund established outside the EU or established in an EU Member State other than Malta will fall outside the scope of Maltese VAT, because the place of supply being the place where the offshore fund is established.

If on the other hand the fund is established in Malta, the supply of fund management services thereto by a Maltese fund manager will take place in Malta. However, the supply of services consisting of the management or arrangement of collective investment schemes by a fund manager duly authorized by a license issued under the Maltese Investment Services Act would be exempt without credit.

Hedge fund structures

Taxation

Tax rates applying to the fund

Assuming that the fund falls within the definition of and is set up as a collective investment scheme (CIS), the tax treatment will be as described hereunder. A CIS could be set up as a limited liability company, a company with variable share capital, a company with fixed share capital, a unit trust, a mutual fund, or a limited partnership. A CIS is defined as an arrangement having one of its objects the investment of capital acquired by means of an offer of units for subscription, sale or exchange, which operates according to the principle of risk-spreading, where the contributions by participants and the income payments made to them are pooled or units are re-purchased/redeemed at short intervals out of the scheme's assets at the request of unit-holders, or units are issued continuously or at short intervals. A CIS includes an undertaking for collective investment in transferable securities authorized in accordance with Council Directive 85/611/EEC (UCITS).

A CIS, or in the case of a CIS divided into sub-funds, a sub-fund of that scheme will be categorized either as a prescribed fund or a non-prescribed fund.

A fund will be treated as a prescribed fund if:

- it is a fund of a CIS that is incorporated in Malta;
- the value of the assets situated in Malta allocated to that fund for the purpose of;
- its operations is expected to be at least 85 percent of the value of the total assets; or
- it has been so classified by the Commissioner of Inland Revenue by means of a notice in writing.

If a fund does not satisfy any of the aforementioned conditions it will be classified as a non-prescribed fund.

Prescribed funds

In the case of a prescribed fund:

- any interest, discounts, or premiums earned on Maltese government stocks or bonds;
- bonds issued by listed companies; and

- investment income payable by corporate entities are subject to a final withholding tax at 10 percent.

Bank interest income is subject to a 15 percent final withholding tax.

Income from immovable property situated in Malta is subject to tax at the standard rate of 35 percent.

It is the CIS's responsibility to inform the payer of local investment income of its status as a prescribed or non-prescribed fund.

Income from foreign sources is not taxed at fund level.

Dividends received from other CISs or from Maltese companies are not subject to any further tax.

Capital gains derived from the disposal of securities or units in other schemes are not subject to tax.

Non-prescribed funds

Non-prescribed funds fall outside the scope of the withholding tax provisions described above and, other than for income from immovable property situated in Malta which is subject to 35 percent tax, any income payable thereto including local investment income, is exempt from tax.

Any dividends received from Maltese and foreign companies are not subject to further tax in the hands of non-prescribed funds.

Capital gains derived from the disposal by the collective investment scheme of securities or units in other schemes are not subject to tax.

Taxation of private schemes

If a fund does not operate as a licensed CIS but only as a recognized fund, it does not fall within the definition of a collective investment scheme for income tax purposes and is therefore taxed at normal rates applicable to taxable persons.

Access to double tax treaties

If the fund is resident for tax purposes in Malta, it will have access to Malta's wide range of double taxation treaties. It is common practice for the Maltese tax authority to issue a certificate that the fund is resident in Malta for income tax purposes. A fund that is a non-prescribed CIS is not exempt from tax in itself, but is only exempt on certain items of income.

Value-added tax registration and charging requirements

A fund is generally engaged in the provision of transactions in shares, interest in companies or associations, debentures and other securities. In terms of the VAT legislation, the supply of the above-mentioned services are exempt without credit. Therefore the fund would not be obliged to register for VAT and if it opts to voluntarily register for VAT, it would not be entitled to reclaim any input tax suffered being solely engaged in the provision of exempt without credit supplies. If the fund is engaged in the provision of other taxable supplies or exempt with credit supplies, it would be obliged/entitled respectively to register for VAT, charge VAT at 18 percent (the standard rate) where applicable, and recover input VAT through the partial attribution formula.

Withholding tax on dividends or interest payments

The withholding tax obligations of a resident fund depend on the status of the recipient of the income.

- A final 15 percent withholding tax is levied by the prescribed and non-prescribed fund when Maltese residents receive a distribution from the fund's foreign sourced income.
- Furthermore, a distribution of profits which would not have been taxed at the fund level is also subject to a final 15 percent withholding tax by a prescribed and non-prescribed fund when paid to resident individuals and other persons which are not companies.
- Capital gains arising on the disposal of units held in a non-prescribed fund which is resident in Malta and payable to Maltese resident individuals and companies are subject to a final 15 percent withholding tax unless investors opt to receive the gross amount.

Tax return requirements

Income tax returns are to be submitted by the fund on a yearly basis in respect of income received for the year immediately preceding the year of assessment.

The tax return date is the later of:

- the last day of the ninth month following that to which the accounts for the relative financial period are made; or
- 31 March following the close of the relevant financial period.

Investors

Taxation

For an investor resident in Malta the preferred investment vehicle for an offshore hedge fund structure is one that can be classified as a collective investment scheme (see above), because when this is the case the resident investor can choose to receive distributions and gains on disposal through a local Authorized Financial Intermediary and thus pay a final tax of 15 percent, instead of at the applicable ordinary rates. Consequently provided that the non-resident non-prescribed fund qualifies as a CIS, the nature – partnership or corporate, open, or close-ended – is irrelevant for qualifying for the above treatment.

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

There is no specific anti-avoidance legislation.

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

There is no specific anti-avoidance legislation

Tax information needs of investors

A certificate of residency of the fund may be required for the application of certain double taxation treaties. For the purpose of treaty or unilateral relief, proof of any foreign tax would be required.

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.