

Monaco

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

Fund management companies (registered in Monaco) are exempt from Monegasque corporate tax provided that at least 75 percent of their turnover is derived from the activity of advisory/management of hedge funds registered in Monaco.

These management companies are in principle not subject to any other tax in Monaco.

Should the turnover 75 percent rule not be satisfied, the corporate income tax rate is 33.33 percent.

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

Assuming the hedge fund manager (registered in Monaco) is a corporation and the 75 percent rule described above is satisfied, no corporate tax will be levied. On the other hand, should the turnover 75 percent rule not be met, a hedge fund manager (registered in Monaco) may use directors' fees to optimize its corporate tax. In such case, the effective corporate income tax rate commonly accepted by the tax authorities in Monaco is 5 percent of the profit before Directors fees and taxes.

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

There are no concessions, allowances, or exemptions that are specifically available to Monegasque hedge fund managers.

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

Under Monegasque tax law, there are no anti-avoidance rules that might bring the profits of an offshore hedge fund into tax in the Principality of Monaco where the hedge fund manager operates from Monaco.

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

Hedge fund management companies are outside the scope of Monegasque VAT.

However, hedge fund managers (registered in Monaco) can elect for VAT as regards management fees and commissions received. Indeed, hedge fund managers can elect to apply VAT on financial products (this election covers a five-year period and is renewable by tacit agreement for an additional five-year period). Fees and commissions for the issuance and placement of hedge funds' units are VAT-exempt with no election possible.

Due to their VAT-exemption, hedge fund managers cannot recover input VAT, except where they elect for VAT on financial products.

Hedge fund structures

Taxation

Tax rates applying to the fund

In practice, Hedge Funds registered in Monaco can be formed as Fonds Communs de Placements (FCP). FCPs are a co-ownership entities without legal personality.

An FCP, because it is a co-ownership entity without legal personality, is considered for tax purposes as a transparent entity and is not liable to tax itself. Each unit holder is deemed to receive the FCP income directly

Access to double tax treaties

No double tax treaty is available between Monaco and foreign countries except France. Accordingly, foreign-source income accruing to hedge funds located in the Principality of Monaco is subject to full taxation in the source country.

Under the specific double tax treaty entered into with France, dated 18 May 1963, France is allowed to tax according to its internal legislation, French-source income accruing to hedge funds located in Monaco.

Value-added tax registration and charging requirements

Under Monegasque law, hedge funds constituted as FCPs are outside the scope of French VAT. Consequently, they are not required to register for VAT and cannot charge VAT nor recover suffered VAT.

The VAT rate in force in Monaco is currently 19.6 percent.

Withholding tax on dividends or interest payments

No withholding taxes are imposed in Monaco.

However, please also note that Monaco concluded an agreement with the European Community concerning the taxation of savings, which entered into force on 1 July 2005. According to this agreement, paying agents located in Monaco are required to withhold tax on interest payments to EU individuals at the same rates as Belgium, Luxembourg, and Austria under the Savings Directive (that is, 20 percent in 2009).

Tax return requirements

Fonds Communs de Placements are not liable to Monegasque corporate tax. Accordingly hedge funds formed as FCPs do not have to file income tax returns to the Monegasque Tax Authorities (MTA).

Investors

Taxation

Under Monegasque law, no distinction is made between open ended and close ended corporate structures, or between open-ended and close-ended unit trusts.

In principle, Monegasque resident individuals are not subject to any personal income tax in the Principality of Monaco. Accordingly, revenues derived from foreign funds by such individuals would not be taxed in Monaco. As an exception, Monegasque resident individuals who have the French nationality are subject to French personal income tax on the revenues they derive from offshore funds.

As a consequence, the type of entity of offshore funds is not decisive from a tax viewpoint as regards Monegasque resident individuals, provided that they have not the French nationality.

Monegasque resident companies having an industrial or commercial activity are subject to the 33.33 percent corporate tax, provided that more than 25 percent of their turnover, directly or indirectly, arises out of operations realized outside the Principality of Monaco. Financial products, such as interest or dividends, are not retained in the computation of companies' turnover, except in the case of banks.

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

There is no anti-avoidance tax legislation in the Principality of Monaco, applying to Monegasque resident investors where the hedge fund is located in the Principality.

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

There is no anti-avoidance tax legislation in the Principality of Monaco, applying to Monegasque resident investors where the hedge fund is resident offshore.

Tax information needs of investors

From a pure Monegasque point of view offshore funds are not subject to tax reporting requirements.

However, an offshore fund may be subject to specific reporting requirements on the basis of the EU Savings Directive (such as, information on the investment policy or the composition of the assets).

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.