

Singapore

Taxation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Taxation

Tax rates applying to hedge fund managers/advisors

Singapore income tax is imposed on income that is accrued in or derived from Singapore. Generally, foreign-sourced income is subject to Singapore income tax when it is received or deemed to be received in Singapore. There are certain tax exemptions available under the Singapore Income Tax Act for remittance of specified foreign-sourced income (that is, foreign-sourced dividend, foreign branch profits, and foreign-sourced service income) into Singapore. Gains or profits which are capital in nature are not subject to Singapore income tax.

The prevailing corporate tax rate in Singapore is 18 percent with effect from the Year of Assessment 2008 (that is, basis period ended in 2007). Based on the 2009 Budget Announcements made by the Minister of Finance on 22 January 2009, it is proposed that the corporate tax rate be reduced to 17 percent with effect from year of assessment 2010.

In addition, for profit subject to tax at the corporate rate, the following partial exemptions are applicable:

- Seventy-five percent of the first SGD 10,000 of taxable profit; and
- Fifty percent of the next SGD 290,000 of taxable profit.

A hedge fund manager/advisor may apply for the Financial Sector Incentive (Fund Management) Company (FSI-FM) award or Financial Sector Incentive - Islamic Finance award (FSI-IF) which offers concessionary tax rates of 10 percent and 5 percent respectively in respect of qualifying income. KPMG in Singapore will elaborate further on this incentive in the subsequent sections.

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

The effective tax rate may vary depending on the amount of taxable profit and whether tax incentives are applicable.

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

FSI-FM

Under the FSI Scheme, income derived by a company from either managing the funds of a qualifying fund for the purpose of any designated investments or providing investment advisory services to a qualifying fund in respect of designated investments, subject to certain conditions, will be taxed at a concessionary tax rate of 10 percent.

If any of the investors of the qualifying fund is not a qualifying investor, the concessionary tax rate of 10 percent under the FSI-FM scheme would not be applicable for the full year of assessment relating to the financial year of the qualifying fund in which the breach occurs.

A qualifying fund refers to:

- A company not resident in Singapore or an approved company incorporated and resident in Singapore, where the value of issued securities of the company is not 100 percent beneficially owned, directly or indirectly, by investors in Singapore (including investors who are resident individuals, resident non-individuals and PEs in Singapore), and where the company:
 - does not have a PE in Singapore (other than a fund manager); and
 - does not carry on a business in Singapore; or
- A trust administered by a trustee not resident in Singapore, where the value of the fund is not 100 percent beneficially held, directly or indirectly, by investors in Singapore (including investors who are resident individuals, resident non-individuals and PEs in Singapore), and where the trustee of the trust:
 - does not have a PE in Singapore (other than a fund manager); and
 - does not carry on a business in Singapore.

Where an individual (who is neither a citizen of Singapore nor resident in Singapore) places his/her monies with any fund manager in Singapore for

management by such a fund manager, such individual accounts would also be deemed to be a qualifying fund.

A qualifying investor of a qualifying fund is:

- *An individual investor;
- *A bona fide non-resident non-individual investor (excluding a PE in Singapore) that:
 - does not have a PE in Singapore (other than a fund manager) and does not carry on a business in Singapore; or
 - carries on an operation in Singapore through a PE in Singapore but does not use funds from its operation in Singapore to invest in the qualifying fund;
- *A designated person; and
- An investor other than listed with an asterisk (*) above:
 - where the qualifying fund has less than 10 investors and such an investor, alone or with his/her associates, beneficially owns not more than 30 percent of the total value of issued securities of the qualifying fund (being a company) or the total value of the qualifying fund (being a trust fund), as the case may be; or
 - where the qualifying fund has 10 or more investors and such an investor, alone or with his/her associates, beneficially owns not more than 50 percent of the total value of issued securities of the qualifying fund (being a company) or the total value of the qualifying fund (being a trust fund), as the case may be.

For the purpose of determining whether an investor of a qualifying fund is an associate of another investor of the fund, the two investors shall be deemed to be associates of each other if:

- at least 25 percent of the total value of the issued securities in one investor is beneficially owned, directly or indirectly, by the other; or
- at least 25 percent of the total value of the issued securities in each of the two investors is beneficially owned, directly, or indirectly, by a third entity.

FSI-IF

A new FSI-IF award was introduced with effect from 1 April 2008 to encourage prescribed Shariah-compliant financial activities to be carried out in Singapore.

Under the FSI-IF scheme, a company that has been granted an FSI-IF award will be taxed at a concessionary tax rate of 5 percent for a period of five years on the following income:

- Managing a qualifying fund for the purpose of any designated investment, or providing investment advisory services to a qualifying fund in respect of designated investments (including the provision of such services to a foreign fund manager under a fund management delegation arrangement); or
- Arranging, on behalf of a qualifying fund, any loan of designated securities under a securities lending arrangement in writing to another FSI (standard-tier) company or an FSI-FM company.

For the purpose of the FSI-IF award, in addition to the definition of qualifying fund mentioned above, the fund must also be Shariah-compliant.

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

Singapore general tax avoidance rules will not apply to an arrangement carried out for bona fide commercial reasons and the avoidance or reduction of Singapore income tax is not one of the main purposes for entering into the arrangement.

Where the fund manager/advisor has or is deemed to have discretionary authority to make investment decisions (that is, to buy and sell investments) on behalf of the fund, profit accruing to the offshore funds may be subject to Singapore income tax on the basis that it is derived from Singapore. Notwithstanding, income derived by qualifying funds is not subject to Singapore income tax provided the prescribed conditions (as mentioned above) are satisfied.

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

The GST-registered fund managers are required to charge GST on taxable supplies of services made to the fund. Depending on the nature of the services, the GST rate may be 7 percent or 0 percent.

The GST-registered fund managers can claim the input tax incurred in the course or furtherance of their businesses subject to the usual input tax recovery rules.

Hedge fund structures

Taxation

Tax rates applying to the fund

The prevailing normal corporate tax rate in Singapore is 18 percent (proposed to be reduced to 17 percent with effect from year of assessment 2010).

Where the fund is constituted as a trust in Singapore, the income from a trade or business carried on by the trustee will be subject to a final tax at the trustee level. Distributions made out of such income are capital in nature and will not be subject to any further income tax in the hands of the beneficiaries.

Where the income derived by the trustee does not constitute trade or business-sourced income, no income tax will be imposed at the trustee level provided the beneficiaries are tax resident in Singapore and entitled to the trust income. In this regard, the beneficiaries would be subject to tax on the distributions received. The beneficiaries entitled to the trust income will be accorded the concessions, exemptions, and foreign tax credits as though the beneficiaries had received the trust income directly.

If the trustee derives income other than trade or business income and where the beneficiaries are not Singapore tax residents or not entitled to the trust income, a final tax will be imposed at the trustee level. The distributions made out of such income are capital in nature and not subject to further income tax in the hands of the beneficiaries.

However, the funds may seek exemption from incentives such as the following:

Designated unit trust (DUT)

Under the DUT scheme, specified income (such as gains or profits from the disposal of securities, interest and foreign dividends received in Singapore, etc.) derived from designated investments are exempted from Singapore income tax at the trust level.

In general, DUT Trusts are essentially taxed only on Singapore franked dividend and interest income where Singapore tax has been withheld at source. No deductions of expenses are allowed against the Singapore taxable dividend and interest income where Singapore tax has been withheld.

Distributions made by DUT are not subject to Singapore withholding tax provisions.

Qualifying fund

Subject to conditions, specified income derived by a qualifying fund managed or advised by any fund manager in Singapore in respect of designated investments will be exempted from Singapore income tax. This incentive is applicable to funds constituted as trusts and companies outside Singapore provided that the funds are not 100 percent beneficially owned/held, directly, or indirectly, by investors in Singapore (including investors who are resident individuals, and permanent establishments (PE) in Singapore). The funds or its trustees (where the funds are constituted as trust) should also not have a permanent establishment in Singapore (other than a fund manager) and should not carry on a business in Singapore.

Resident fund exemption

Subject to conditions, specified income derived by an approved company incorporated and resident in Singapore from designated investments arising from funds managed in Singapore by a fund manager in Singapore are exempted from Singapore income tax at the fund level provided the company is not 100 percent beneficially owned, directly or indirectly, by investors in Singapore (including investors who are resident individuals and PE in Singapore).

Enhanced tier fund incentive

Based on the 2009 Budget Announcements, a new Enhanced Tier Fund Incentive would be introduced for funds with a minimum fund size of SGD 50 million at the point of application. Under the proposed scheme, the tax exemption incentive under Qualifying Fund and Resident Fund Exemption Scheme as highlighted above would be enhanced as follows:

- no restriction on the residence status of the fund vehicles and investors;
- extending to funds constituted as limited partnerships; and
- lifting of the investment limit imposed on resident non-individual investors.

This scheme has not been promulgated as law yet.

Access to double tax treaties

Singapore has concluded extensive double tax treaties concluded with a number of countries. Where the fund is a tax resident of Singapore, the fund should be able to enjoy the benefits available accorded in the double tax treaties entered into by Singapore.

Value-added tax registration and charging requirements

If the fund belongs outside Singapore and does not make taxable supplies in Singapore, the fund is not required to register for GST. The fund cannot claim the input tax, if any, levied by the GST-registered fund manager if it is not GST-registered.

The reverse charge provisions in Singapore are presently suspended.

A GST-registered fund can claim the input tax incurred in the course or furtherance of its business subject to the usual input tax recovery rules and potentially there would be a restriction on the quantum of input GST claimable if it is predominantly engaged in the making of exempt financial services.

Nevertheless, the Minister for Finance has announced on 22 January 2009 in Budget 2009 that qualifying funds managed by a prescribed fund manager in Singapore would be allowed, by way of Ministerial remission, to claim a substantial portion of the GST incurred on prescribed expenses. The remission is effective from 22 January 2009 to 31 March 2014 (both dates inclusive). The Monetary Authority of Singapore is expected to release details of the GST remission (such as the types of qualifying funds, qualifying conditions, prescribed list of expenses, and procedures to claim the GST incurred) by April 2009.

Withholding tax on dividends or interest payments

There is no Singapore withholding tax imposed on payments of dividends made by the fund and realization of any equity interest in the fund.

Generally, payment to a non-resident for any interest, commission, fee or any other payment in connection with any loan or indebtedness and borne directly or indirectly by a tax resident in Singapore or a permanent establishment in Singapore will be subject to Singapore withholding tax. However, if the payment is in respect of any business carried on outside Singapore through a permanent establishment outside Singapore or any immovable property situated outside Singapore, Singapore withholding tax is not applicable.

The Singapore withholding tax rate on such payments is 15 percent of the gross amount unless mitigated by the relevant double tax treaties that Singapore has concluded with the other countries. This is on the premise that the interest is not derived by the non-resident person through its operations carried out in or from Singapore. For operations carried out in or from Singapore, the withholding tax rates applicable on the gross payment are as follows:

- Non-resident corporate: 18 percent (proposed to be reduced to 17 percent with effect from year of assessment 2010)

- Non-resident individuals: 20 percent

Tax return requirements

Generally, the type of tax returns that should be filed includes the Singapore income tax return and GST return, where applicable.

The Singapore income tax return should be filed annually together with a tax computation based on the financial statements of the year preceding the year of assessment (that is, basis period).

A GST-registered fund is required to submit GST F5 return for the prescribed accounting period on a monthly or quarterly basis as approved/allocated by the Comptroller of GST. The due date for submission of the GST F5 return is one month after the end of the prescribed accounting period of that return. For example in the case of quarterly submission, the GST-registered fund is required to submit its GST F5 return for the quarter ended 31 December 2007 by 31 January 2008.

Investors

Taxation

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

There is no specific anti-avoidance tax legislation on this. However, non-qualifying investors of a qualifying fund will have to pay a financial amount to the Inland Revenue Authority of Singapore. The financial amount is computed as follows: Financial Amount = A x B x C

Where "A" is:

the percentage which the value of the issued securities of the qualifying fund (being a company) beneficially owned at the last day of the qualifying fund's financial year (basis period) by the non-qualifying investor bears to the total value of all issued securities of the qualifying fund as at the same day; or

the percentage which the value of the part of the qualifying fund (being a trust fund) beneficially owned at the last day of the qualifying fund's financial year (basis period) by the non-qualifying investor bears to the total value of the qualifying fund on the same day.

"B" is the amount of income of the qualifying fund as reflected in the audited account of the qualifying fund for the basis period relating to that year of assessment.

“C” is the normal corporate tax rate applicable to that year of assessment.

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

In addition to the financial charge outline above, distributions made by an offshore qualifying fund that are remitted to Singapore by a non-qualifying investor will be subject to the normal Singapore income tax rules, notwithstanding that the resident non-individual investor may have paid the financial amount to the Inland Revenue Authority of Singapore.

Notwithstanding, it is proposed that with effect from 22 January 2009, resident non-individuals and resident partners of partnerships in Singapore would be exempted from Singapore income tax on their remittance of all foreign-sourced income earned or accrued outside Singapore on or before 21 January 2009, where that income is remitted to Singapore between 22 January 2009 and 21 January 2010 (both dates inclusive).

Tax information needs of investors

Generally, the following basic information is required.

- For a fund set up as an corporate:
 - Dividend vouchers or certificates; and
 - Audited financial statements of the fund.
- For a fund set up as a unit trust/trust fund:
 - Statement of distribution; and
 - Audited financial statements of 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.