

DISGUISED MANAGEMENT FEES - HMRC GUIDANCE PUBLISHED

BACKGROUND

- ◆ Further to our [briefing](#) on 24 March, HMRC have issued their guidance accompanying the new legislation. This addresses a number of the uncertainties identified in that briefing and makes a number of other interesting points.

STATED PURPOSE AND ANTI-AVOIDANCE

- ◆ HMRC state that the overall intention of the legislation is that *“fees for [UK] investment management services will always be charged to income tax in full”* and that *“..if funds are restructured in an unacceptable way to avoid the effects of the charge, then they will be caught by the anti-avoidance provisions in the legislation”*.
- ◆ This should act as a warning to managers that any contrived steps to circumvent the legislation are likely to be challenged and/or short lived.
- ◆ However, HMRC do accept that steps taken to ensure that arrangements fall within the carried interest and co-investment exclusions from the legislation should be effective – presumably on the basis that they will have a commercial effect.

GPS STREAMING

- ◆ In relation to this planning, HMRC state, ominously, *“It is not clear that the planning actually has the effect that the fees escape an income tax charge, and HMRC are considering the position.”* Therefore, there may be more from HMRC on this.

TERRITORIAL SCOPE

- ◆ HMRC have confirmed that, under the new rules, only one deemed trade exists. Accordingly, the territorial scope provisions do not assist UK resident non-domiciled individuals who perform part of their duties outside the UK.

TIMING OF “SUMS ARISING”

- ◆ HMRC state that a sum arises to an individual when the individual actually has access to the sum. In the context of GPS offset, this should mean that the charge only arises when the underlying investments are sold and the proceeds distributed. However, in the context of GPLP planning, when amounts are recycled voluntarily by an executive into the fund, as the individual could be said to

have access to the cash at that point, the charge would arise at the time of the reinvestment. However, it would also seem that mandatory reinvestment in the fund at the GPLP level before the cash reaches the individual (and before they have a choice how it is applied) might result in a deferral of the charge until the investments are realised.

COMMENCEMENT

- ◆ HMRC have confirmed that the rules do not apply to GPS arising (by way of profit allocation or loan) before 6 April 2015 nor to subsequent allocations of profits which discharge any such loan (as such allocation will not be available to the individual at that stage).

CO-INVESTMENT

- ◆ HMRC have confirmed that an investment is reasonably comparable to that of an external investor if made on a no-fee, no carry basis.

BLOCKER STRUCTURES

- ◆ HMRC have given their view on when corporate blockers can cleanse management fee cashflows. There are two principal points here:
 - First, HMRC state that simply interposing a company or other structure between the individual and GPS flows is not effective, nor is using a trust from which the executive could benefit. However, rather than stating that distributions from such a structure would be caught by the rules, they state that the tax liability arises to the relevant individual when the amounts are received by the blocker entity as the individual has indirectly received the sum at that time. This interpretation seems dubious to us (as sums have not arisen to the individual) but it would be a brave taxpayer that disregards this guidance.
 - Second, HMRC seem to accept that an investment management group should act as an effective blocker. They state:

“In short, genuine corporate management vehicles (i.e those with sufficient substance to carry on the management activity and who actually do so with their own employees, contracts and other assets) will generally be sufficient to “break” the link with the scheme such that dividends paid on shares held in those vehicles or their parent are not caught

by this measure (provided the individual is receiving an arm's length rate of remuneration from the company and this is not part of a wider structure which seeks to avoid the application of this measure). However, HMRC consider that more contrived structures will be caught."

- ◆ On this basis, washing GPS streaming through the management structure should be effective, however, doing so is likely to mean that such amounts are "on the table" for transfer pricing purposes. In this regard, HMRC state that they will:

"pay particular attention to structures which rely on claiming that investment management activities are partially performed by a vehicle outside the UK in a low (or no) tax jurisdiction. HMRC will closely examine the substance of the purported offshore activity, the transfer pricing of the transactions in place."

- ◆ On that basis, any offshore retention of such amounts will need to be based on acceptable transfer pricing principles.

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