UK Tax Issues for Non-UK Investors in Private Equity Funds

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General – UK tax and funds

- The UK treats most limited partnership fund structures as transparent.
- Thus, income and gains arise directly to the investors as partners in an LP fund.
- In an opaque fund, income and gains arise to the fund itself.
- Tax issues may arise to the fund or its investors from UK investments by a fund because of UK source income/gains.

General – UK tax and funds

- This presentation examines key areas of consideration.
- Important note – except where stated, this presentation assumes that the fund is an investment and not a trading fund and that investors are holding their fund interests as investments not as part of their trade.
- This presentation does not address ways of dealing with potential UK tax issues (e.g., use of holding companies) which are the subject of separate presentations.

Gains

- General rule – the UK does not seek to tax UK-source gains arising to a non-resident.
- Exceptions – certain residential property (discussed below) and assets used in a UK trade.
- Thus, for a typical private equity investor resident outside the UK, gains on sale of UK investments do **not** give rise to UK tax.

Interest

- Withholding tax is imposed on UK-source interest paid to non-residents.
- The rate of withholding is the prevailing UK "basic" rate, currently 20%.
- Can be reduced or eliminated by treaty.
- In a transparent fund, each investor would generally need to claim treaty relief depending on eligibility.
- In the case of an opaque fund, the residence of the fund itself will determine relief but most opaque funds are not located in treaty jurisdictions.

Dividends

- Withholding tax is not imposed on UK-source dividends paid to non-residents.
- Thus, dividends can be paid to investors free of any UK tax.

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Other income

- Profits attributable to a UK "permanent establishment" are taxable in the UK – thus, if a fund trades through a permanent establishment, there would be potential issues.
- As stated, in a typical private equity investment fund this would not be the case.

Property issues – ATED

- Funds investing in UK residential property should be aware of the Annual Tax on Enveloped Dwellings ("ATED") and the imposition of capital gains tax on the sale of certain residential property.
- UK residential property with a value of £1 million or more owned by non-natural persons is subject to ATED.
- Non-natural persons are corporations, partnerships with a corporate member or collective investment schemes. Thus, funds are likely to be included.
- Tax ranges from £7,000 to over £200,000 depending upon the value of the property.

Property issues – ATED

- Some exemptions to this rule – property owned as a rental business can help some funds.
- Each fund must be considered on its facts.
- If, e.g., a block of flats is owned, each “residence” is considered separately.
- Gains on sale of ATED related property are subject to UK capital gains tax at 28%.

Property issues – gains

- Gains on the sale of non-ATED residential properties are also subject to UK capital gains tax.
- This is imposed at a rate of 20% on corporations and 18% or 28% on individuals, depending upon the level of their income subject to UK tax.
- Some exemptions from this, but much fewer, e.g., rented out properties not exempt.

Property issues – other

- UK source rental income is taxable in the UK – at 20% for corporations and at income tax rates for individuals (20%, 40% or 45% graduated rates); withholding is typically imposed at 20%.
- For non-residents, the "non-resident landlord scheme" can allow them to receive the rental income without withholding, but they will still need to file a tax return and pay any UK tax due.

Stamp taxes & VAT

- The UK imposes stamp duty land tax on purchases of land and stamp duty on share purchases.
- These will not arise directly to fund investors but will be an investment cost to the fund.
- VAT may arise on the acquisition of assets other than shares by the fund (e.g., a typical “asset sale”); there is usually an applicable exemption called the transfer of a business as a going concern (“TOGC”) but otherwise this will also be a fund cost rather than a liability for the investor directly.

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Further details

- This presentation gives a high level view applicable to most investment funds, but each structure needs to be considered in light of the fund activity and its investor profile.
- Specific advice should always be sought in relation to potential UK investments.

Further information

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