

U.K. Tax Alert

March 7, 2014

Salaried Members Legislation & Alternative Investment Fund Manager (AIFM) Deferral Mechanism

Draft Salaried Member Legislation

Following the publication of further guidance on February 21, 2014, Her Majesty's Revenue & Customs (HMRC) in the U.K. has today issued revised "salaried member" legislation in draft.

- The changes in the legislation reflect those amendments suggested in the recent guidance, for example:
- the "80 percent or more" meaning of the previously used term "substantially wholly" has been included in the draft legislation
- a new, and specific to these rules, method of calculating a member's capital contribution is proposed
- deemed capital contributions if an undertaking (although not necessarily legally enforceable) is in place to make a contribution and this is indeed made within two or three months of the relevant date; the relevant date depending on whether the individual is a member on April 6, 2014, or joins later.

The substance of the legislation, with its three tests, all of which must be met for the individual to be regarded as an employee post April 6, 2014, have been retained. Those individuals wishing to remain self-employed need therefore fail only one of the three tests.

AIFM Deferral Mechanism Form and Guidance Issued

HMRC has also issued the election form for those partnerships wishing to use the proposed "AIFM deferral mechanism" from April 6, 2014.

The election allows deferred profit allocations to be taxed at the U.K.'s highest headline personal tax rate (45 percent) and for deferral to then be on a net of tax basis. The mechanism is HMRC's attempt to address the "dry tax charge" issue that the deferral of partnership profit shares may create i.e., partners paying tax on amounts that they do not initially, and may never, receive.

Once made, the election continues to apply until it is revoked. HMRC has confirmed that the election does not need to be renewed every year.

After the election is made, the partnership will be required to file an additional self-assessment tax return each year and pay the tax due on those profits elected into the mechanism by the relevant members of the AIFM partnership. This return cannot be submitted using HMRC's online filing facility.

The partnership will also be required to submit annual statements of the relevant restricted profits. HMRC states that it will provide a form for this requirement, together with the relevant guidance.

The form and guidance issued today can be found at:

<https://www.gov.uk/government/publications/alternative-investment-fund-managers-mechanism-election-form>

<https://www.gov.uk/government/publications/alternative-investment-fund-managers-mechanism-election-form-guidance>

While the early publication of the form and guidance is useful, the meaning of an “AIFM firm” is still being discussed with HMRC. It remains to be seen whether HMRC will listen to feedback including that the:

- “wholly or mainly” definition of an AIFM firm could be problematic for, and so unfairly exclude, some partnerships
- mechanism should be open to a much wider population, including managers who are not AIFM's but are subject to remuneration rules under the Capital Requirements Directive.

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