

## UK Tax Alert

March 26, 2013

### United Kingdom HM Revenue & Customs (HMRC) — Brief on Rebates to Investors

Managers may have read with interest this morning's press reports that HMRC has issued a statement to the effect that it considers rebates of certain fees as subject to tax when paid to U.K. investors. Having studied HMRC's statements in detail, sought clarification from HMRC today and received this by telephone this afternoon, the purpose of this alert is to clarify that what HMRC released yesterday is potentially wider than the press reports may suggest.

While the brief suggested that HMRC was focused solely on the tax treatment of "trail commission" passed on to investors ([click here](#)), HMRC has explained to us that the reference to "trail commission" in the title of the brief was adopted only as this covered the statement's main target, by volume of tax at stake, and that it was not intended to suggest a narrow application.

Accompanying the business brief are both guidance notes and a technical explanation of HMRC's position. While the business brief is initially stated to cover the tax treatment of trail commission passed on to investors, it also goes on to state that it:

"...concerns the [U.K.] tax treatment of payments made to investors in a Collective Investment Scheme...by fund managers...or any other person acting as an intermediary between the fund and the investor."

We therefore sought clarification today as to whether HMRC will consider a fee rebate paid by a manager to a U.K. investor as taxable income. HMRC's view, given verbally and supported by the wording of the guidance notes and technical analysis, is that, because the manager falls within the meaning of the term "intermediary," such payments should be subject to tax when paid to U.K. investors.

### Consequences

In addition to U.K. investors potentially bearing tax on fee rebates, HMRC considers that a consequence of this treatment is that U.K. payers will be under an obligation to deduct income tax, at a rate of 20 percent, from the payment and to account for this to HMRC.

In order for the manager to have to withhold tax, the payment must arise in the United Kingdom. HMRC accepts that a payment by a non-U.K. (such as U.S. or the Cayman Islands) manager need not have tax withheld, but this will not alter the ultimate tax result for the U.K. investor ([click here](#)). Investors will have to account for any tax owing in full, rather than being able to claim a credit for tax withheld.

**Application**

For a number of reasons, HMRC has concluded that it would not be justified in seeking to collect tax for earlier years from either the payers or investors.

Going forward, HMRC states that it is required by law to collect the tax due on such payments that arise in the United Kingdom and expects the U.K. managers who are rebating fees to, subject to transitional provisions, begin deducting tax from April 6, 2013 onwards.

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