

Investment Management

Harvest

Investment Management Industry Updates
Issue 3 • May 2009

Welcome to the latest issue of PricewaterhouseCoopers' (PwC's) investment management newsletter.

The 2009 Budget was presented by the government on 22 January 2009. The announcements in relation to the investment management industry generated considerable excitement, despite the current market downturn. There were two reasons for this – firstly, the announcements granted benefits, which were a direct result of feedback from the industry. Secondly, they were symbolic of the government still seeing the investment management industry as one of the pillars of growth for the Singapore economy. It implied that the industry may be down but certainly not out.

In April, the authorities issued circulars providing details of these Budget announcements.

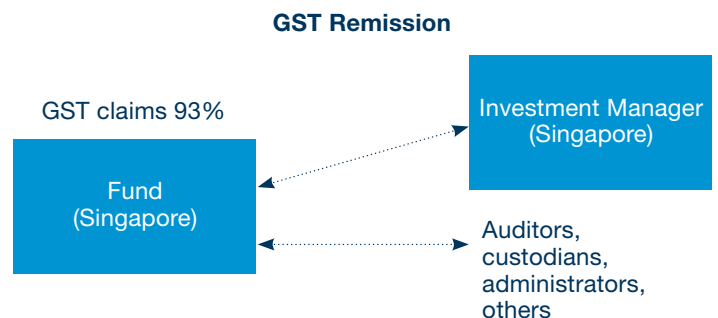
In this issue, PwC highlights the key aspects of the circulars and other corporate tax developments affecting the investment management industry in Singapore over the last few months.

GST savings for Singapore based funds

On 3 April 2009, the Monetary Authority of Singapore (MAS) issued a circular (GST Circular) introducing a new Goods and Services Tax (GST) remission for Singapore based funds.

The problem was that funds that wanted to take advantage of the scheme that provides tax exemption for funds constituted in Singapore, faced a GST cost if they did so. Many of these funds, particularly those with longer gestation periods for their investments, simply could not register for GST. This meant they could not recover the GST inevitably charged to them by their Singapore based service providers.

The remission is aimed at providing relief to Singapore based funds if they are unable to claim GST incurred on goods or services provided to them under the normal GST rules. This should help to reduce substantially the cost of GST for Singapore based funds and thereby keep them competitive with funds set up in other financial centres.



Fixed recovery rate

According to the GST Circular, funds that meet the qualifying conditions can claim GST based on a fixed recovery rate determined by the IRAS annually. The GST remission will apply to 'prescribed expenses' incurred from 22 January 2009 to 31 March 2014. For the period 22 January 2009 to 31 December 2009, the recovery rate is 93% of the GST charged on these expenses.

Prescribed expenses

The list of prescribed expenses is included in the GST Circular. It includes interalia, management fees, trustee fees and fund administration fees.

Qualifying conditions

To qualify for GST remission in the current financial year, the fund must, as at the last day of its preceding financial year, satisfy the conditions for income tax concessions being either:

- A fund under section 13C, 13G, 13R fund of the Income Tax Act (the 'Act'),
- A designated unit trust, or
- A fund under the enhanced-tier scheme.

In addition, the fund must be managed or advised by a fund manager as defined.

Funds liable for GST registration

Funds that are liable to register for GST must still apply for GST registration with the IRAS and claim the GST incurred based on the normal input tax recovery rules. However, as a concession, these funds can opt to claim the GST incurred on the prescribed expenses at the same fixed recovery rate as funds under the GST remission scheme if this gives a better result. This election is irrevocable.

Introduction of Enhanced Tier status

On 30 April 2009, the MAS issued a circular (the Circular) providing details of the Enhanced Tier Fund Tax Incentive Scheme (the Scheme). The Scheme provides benefits to investment managers in addition to what is already available under Singapore tax incentives. In doing so, the government's aim is to provide greater flexibility to investment managers in sourcing mandates.

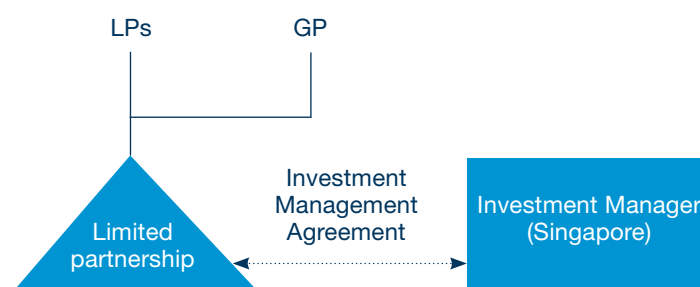
Benefits of the Scheme

The key benefits of the Scheme as compared to the current tax incentive schemes are:

- (a) Singapore non individuals can make investments in fund vehicles, without triggering a financial penalty. In the existing scheme, a financial penalty becomes payable by Singapore non-individuals making an investment in excess of 30% (50% in some cases – the '30–50 rule') of a qualifying fund;

- (b) Fund vehicles can be set up as limited partnerships, and unlike the existing tax incentive schemes where the incentive conditions were applied at the level of each partner (i.e. look-through), the conditions of the Scheme will be applied at the limited partnership level (i.e. the partnership is treated as the fund in its own right). The General Partner will be held responsible for meeting the incentive conditions.

Additional option with Enhanced Tier Scheme



- (c) Funds set up as trusts and administered by a Singapore trustee currently do not fall under the liberalised 30-50 rule. The old '80-20' rule continues to apply to them. The Scheme covers funds set up as trusts and which are administered by a Singapore trustee (other than a trust that is an approved pension or approved provident fund, an approved CPF unit trust or designated unit trust, or a real estate investment trust, as defined in the Act).

With the expansion of the category of fund vehicles that are tax exempt, the Circular concurrently extends the concessionary tax rate of 10% to the following income derived by a financial sector incentive (FSI) company:

- (a) Income from managing an Enhanced-Tier Fund for the purpose of any designated investment; and
- (b) Income from providing investment advisory services in relation to an Enhanced-Tier Fund for the purpose of any designated investment.

Duration

An application to be placed under the Scheme can be made to the MAS between 1 April 2009 and 31 March 2014. Enhanced-Tier Funds approved during this period will be granted tax exemption on specified income from designated investments for the life of the fund.

All conditions discussed below, other than condition (b), will have to be fulfilled throughout the life of the fund. In the event that the fund fails to satisfy the specified conditions for any basis period, it will not enjoy the tax exemption for that basis period concerned. The fund can however enjoy the tax exemption in any subsequent period during its life if it is able to satisfy the conditions in that subsequent period. This is considered a good approach since, failure to meet conditions in one year does not bring down the whole structure.

In relation to condition (b) below, the condition has to be satisfied only at the point of application. This is again a good approach and shows that the authorities recognise that investment managers and investors should not be penalised for a reduced fund size as a result of market conditions.

Qualifying conditions

To be approved for this Scheme, a fund must undertake to meet the following conditions. The fund must:

- (a) be a company, trust (other than a trust that is an approved pension or approved provident fund, an approved CPF unit trust or designated unit trust, or a real estate investment trust) or limited partnership;
- (b) have a minimum fund size (committed capital for private equity funds) of SGD 50 million;
- (c) be managed or advised directly throughout each basis period relating to any year of assessment by a fund management company (FMC) in Singapore, where the FMC must:
 - (i) hold a capital markets services licence for the regulated activity of fund management under the Securities and Futures Act (Cap 289) or is exempt from the requirement to hold such a licence under the same Act, or as otherwise approved by the Minister or such other persons as he may appoint; and
 - (ii) employ at least three investment professionals;
- (d) incur at least SGD 200,000 local business spending (according to accounting principles) in each basis period relating to any year of assessment;
- (e) use a Singapore-based fund administrator if the fund is a company incorporated in Singapore, with its tax residency in Singapore where the control and management is exercised in Singapore.

- (f) not change its investment objective/strategy after being approved for this scheme; and
- (g) not concurrently enjoy other tax incentive schemes. Funds that are currently under the existing fund vehicle tax exemption schemes can also be considered for the Scheme if they are able to meet the relevant conditions.

Filing requirements

All Enhanced-Tier Funds are required to submit annual tax returns to the Comptroller of Income Tax, as well as annual declarations to the MAS and Comptroller of Income Tax.

This filing requirement is rather odd when applied to funds based outside Singapore, and could deter foreign funds from applying for the Scheme. Consider this – a large global investment management group wants to set up an office in Singapore to manage a small part of the investment fund which is constituted as a limited partnership in the Cayman Islands. Will the group apply for exemption for the fund (which is a limited partnership) under the Scheme? In our view, the requirement that such an offshore fund is to file a Singapore tax return may not be met with enthusiasm. This is despite the fact that the return may well show a nil taxable income. The authorities should consider removing this restriction for funds constituted as limited partnerships outside Singapore.

Specified income and designated investments

Also included in the Budget were measures to expand the list of specified income. This now includes:

- (a) Income realised, in other forms other than through sale, on or after 22 January 2009 from designated investments. Other forms include (i) holding to maturity, (ii) redemption and (iii) any other forms of realisation where the realisation leads to a transfer of both economic and legal ownership of the designated investment concerned.
- (b) Certain income from debt securities under the Qualifying Debt Securities (QDS) scheme

The list of designated investments will be expanded to include:

- (a) Investments in structured products as defined in the Act;

- (b) Units in any trusts registered under the Business Trusts Act;
- (c) Islamic investments that are commercial equivalents of the designated investments, and involve any of the following concepts: Murabaha, Mudaraba, Ijara wa Igtina, Musharaka, Istisna and Salam;
- (d) Emission derivatives;
- (e) Stocks and shares of unlisted companies (whether resident or non-resident in Singapore), denominated in any currency; and
- (f) Adjudicated and non-adjudicated liquidation claims.

The enhancements take effect from 22 January 2009.

In addition, the authorities have clarified that the list of designated investments will exclude shares of private companies that are mainly in the business of trading in or holding Singapore immovable property (which is not a designated investment in its own right). Accordingly, gains from the sale or transfer of such shares derived on or after the date of this circular will no longer be exempt from tax, although it was never entirely clear they would be in the first place. Shares in private companies however, that are in the business of developing properties will not be excluded from the definition of designated investments.

Other updates

Singapore Limited Partnership Act

The Limited Partnerships Act 2008 came into operation on 4 May 2009.

In summary, for income tax purposes, there is unrestricted flow through tax treatment for the general partner, however flow through of losses for limited partners is restricted, as with a limited liability partnership (LLP). In addition, carry forward of unabsorbed losses, capital allowances and industrial building allowances are similar to LLP rules.

The use of LPs is most prevalent in the investment management industry. This new vehicle on offer in Singapore is a welcome move for the investment management industry. Of course, investment managers will need to weigh the benefits of using an LP in Singapore against an LP in a jurisdiction like the Cayman Islands which is tried and tested.

From purely a tax perspective, one of the draw backs of using a Singapore LP rather than a Singapore company (which can potentially be tax exempt pursuant to Section 13R of the Act) as an investment fund, is that a LP will not be entitled to benefits under Singapore's tax treaties. As a result of this, we would anticipate that investment managers are likely to keep to the tried and tested route of setting up LPs in places like the Cayman Islands, and if there are compelling reasons to use Singapore as an investment platform then the first choice will be a Singapore company. An LP does however remove 'cash-trap' issues that may feature in a corporate fund vehicle.

Tax treaties

Singapore recently signed and entered into tax treaties/ amendments to treaty protocols with Belgium, Estonia, Kazakhstan, Malta, Russia and Uzbekistan. This expands Singapore's current treaty network to 60 countries.

How PricewaterhouseCoopers (PwC) can help you

PwC is a global market leader for tax services. Our tax practice is among the largest in Singapore. With more than 250 tax professionals and directors, we help individuals and businesses with tax strategy, planning and compliance, while also delivering a wide range of business advisory services. From fund management, treasury, transfer pricing to international tax planning, our team of Investment Management tax experts provides you with the ideal tax solutions.

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