

# Trading and investment for authorised investment funds

An extract from Rain or Shine? January 2009

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Click on each PricewaterhouseCoopers author's name to contact them directly via email

By: Elizabeth J Stone E: [elizabeth.j.stone@uk.pwc.com](mailto:elizabeth.j.stone@uk.pwc.com) T: +44 (0) 20 780 49678 and Rebecca L McGerty E: [rebecca.l.mcgerly@uk.pwc.com](mailto:rebecca.l.mcgerly@uk.pwc.com) T: +44 (0) 20 780 42272

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The investment management industry has long sought clarification on this complex area and this opportunity for open and constructive dialogue is likely to be welcomed by many.

As the law currently stands there is no clear definition of what constitutes trading for an AIF or indeed any fund. Fund managers and their advisors have had to struggle with a difficult and arcane set of principles that apply when looking to distinguish between trading and investment. Such analysis can be costly and indeed often results in uncertainty rather than clarity regarding the appropriate tax treatment.

At the heart of the proposals is a ‘white list’ of transactions which if undertaken by an AIF meeting a ‘genuine diversity of ownership test’ will be deemed to constitute investment transactions. The proposed white list takes as its starting point the classes and definitions of investment transactions listed in the investment manager exemption and similarly does not include commodities or real estate.

Whilst the proposals are to be welcomed it is difficult to see why such proposals should not be applied to other investment activities undertaken across the industry by alternative investment funds. A failure to grant corresponding exemptions to other investment activities may distort investment behaviours, thereby breaching one of the Government’s stated aims; that UK investors continue to choose their investments for commercial rather than tax reasons. Furthermore a failure to grant a similar exemption to certain EU domiciled offshore funds seeking reporting fund status may itself be anti-competitive.

Finally whilst the proposed exemption is undeniably broad in terms of the transactions that it covers, it is evidently the case that it does not extend to a full exemption for all trading activities, nor does it exempt any activities fully from tax. As part of the consultation process the industry may wish to consider whether a full exemption akin to the models operated in Ireland or Luxembourg might not offer a simpler approach and greater certainty as a result.

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