

Is the UK set to become the domicile of choice for hedge funds?

An extract from Rain or Shine? July 2009

Is the UK now set to become the domicile of choice for hedge funds?

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

By: Robert Mellor, PricewaterhouseCoopers (UK), T: +44 (0) 20 7804 1385, Lachlan Roos, PricewaterhouseCoopers (UK), T: +44 (0)20 7213 1309 and Debbie Payne, PricewaterhouseCoopers (UK), T: +44 (0) 20 7213 5443

Is the UK now set to become the domicile of choice for hedge funds?

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

By: Robert Mellor, PricewaterhouseCoopers (UK), T: +44 (0) 20 7804 1385, Lachlan Roos, PricewaterhouseCoopers (UK), T: +44 (0)20 7213 1309 and Debbie Payne, PricewaterhouseCoopers (UK), T: +44 (0) 20 7213 5443

The introduction of the Qualified Investor Scheme ('QIS') in April 2004 provided a regulatory framework for hedge funds which were looking to establish in the UK offering some of the features of an authorised scheme, whilst affording institutional and sophisticated investors the flexibility associated with a wholly unregulated fund in the scheme's operation. The FSA's approach to regulating a QIS is to rely more heavily on disclosure rather than using prescriptive rules. Whilst there are restrictions, for example on the use of derivatives, most hedge fund strategies would be able to be operated within a QIS, which also allows for performance fees to be charged.

To date the main barrier has been the UK tax regime. The availability of the investment manager exemption meant that little regard was paid to whether an offshore hedge fund was actually trading based on a UK tax analysis. Recent developments, including the introduction of the new Reporting Regime for offshore funds and the 'white list' for Authorised Investment Funds and equivalent offshore funds, have

focused attention on this issue, with a number of hedge fund managers concluding that their funds are not trading funds. In addition, if they are established as a UK AIF, provided there is diversity of ownership, the 'white list' provides certainty that the fund is not trading.

Whilst there are still indirect tax issues taken together with the introduction of the Tax Elected Fund ('TEF') regime, which moves the point of taxation from the fund to the investor, managers now have the opportunity to establish onshore funds, in the form of an authorised unit trust or open ended investment company.

Given the proposed draft EU Directive on Alternative Fund Managers establishing funds in the UK, which is actively seeking to enhance its competitiveness, appears to be a logical step to address the concerns of EU Regulators.

pwc.com

© 2009 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

PricewaterhouseCoopers provides industry-focused assurance, tax, and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

This report is produced by experts in their particular field at PricewaterhouseCoopers, to review important issues affecting the financial services industry. It has been prepared for general guidance on matters of interest only, and is not intended to provide specific advice on any matter, nor is it intended to be comprehensive. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers firms do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.