

Response to the VAT treatment of fund management services consultation

Indirect Tax

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21 March 2023

Budget 2020 announced a review of the UK's funds regime that covered tax and regulation. The government held a consultation on regulatory issues and direct tax in 2021, and launched its VAT consultation, the 'VAT treatment of fund management services', in December 2022.

Following stakeholder suggestions that the UK could enhance the position of the fund management industry by introducing new innovative types of funds to the marketplace, and as part of the review into the UK's funds regime, the consultation document on VAT (tinyurl.com/58safjcf) contains the proposed reforms which seek to simplify the decision-making process to identify the VAT liability of a supply of fund management. The consultation stresses that reformed legislation is not intended to result in policy change, so fund managers currently relying on UK legislation or the direct effect of EU law should not see a change in the VAT liabilities for the management of existing special investment funds (SIFs).

Proposed changes

The consultation document set out the following legislative proposals:

- Retain the current list of qualifying financial products in VAT Act 1994 Schedule 9 (as items 9 and 10 of Group 5). However, this list will not be expanded in the future. Instead, for new products, the VAT position will be determined by applying a set of principles (see below).
- Make legislative changes to bring relevant case law and guidance into UK law.

It is proposed that the following criteria would determine whether a fund qualified as a SIF:

- the fund must be a collective investment;
- the fund must operate on the principle of risk-spreading;
- the return on the investment must depend on the performance of the investments, and the holders must bear the risk connected with the fund; and
- the fund must be subject to the same conditions of competition and appeal to the same circle of investors as an Undertakings for Collective Investment in Transferable Securities (UCITS).

There is also a proposed departure from the criteria set out in the European Commission's EU VAT Committee guidelines, which require that SIFs must be subject to 'state supervision'.

The CIOT response

In its response (www.tax.org.uk/ref1065), the CIOT welcomed reform which translates policy into statute accurately and effectively, without unintended consequences, and where such reform increases clarity and

certainty for taxpayers and their advisers. We also welcomed that the existing legislative provisions in items 9 and 10 would remain embedded within new legislation, as this provides certainty for services provided prior to the changes.

In order to provide clarity, the CIOT would like the terms used in the proposed principles to be clearly defined. We noted that the principles contain a reference to 'UCITS'; as this term is currently defined by reference to EU legislation and guidelines, however, it may need to be revised. We would like the proposed principles to include the words 'the management of' so it is clear that it relates to management services.

The CIOT noted that HMRC's VAT forum for this sector, the Finance Liaison Group, has had its meeting schedule paused since the pandemic and we would like to see that restarted soon so that stakeholders, including the CIOT, may engage via that route.

Jayne Simpson jsimpson@ciot.org.uk