Specific Issues for Certain Investors in UK Private Equity Funds

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General – UK tax and funds

- The UK treats most limited partnership fund structures as transparent.
- Thus income and gains arise directly to the UK partners in an LP fund.
- Foreign partners in UK funds are not generally subject to UK tax solely because of their investment in the fund.
- Thus, most investors in a UK investment fund such as an English Limited Partnership can expect to be subject to UK tax on the same basis as if they had received partnership income or gains directly.

General – UK tax and funds

- Investors will thus be subject to tax on income and gains arising from the fund just as if they had made the investment directly themselves.
- The acquisition and holding of a UK fund interest should not generally in itself give rise to tax issues.
- However, some exceptions to this general rule.
- Most common is UK resident but non domiciled individuals.
- This presentation examines the key exceptions.

Foreign financial traders

- Private equity funds are generally investment funds and limited partners in an English limited partnership hold their interests in an investment capacity.
- Foreign financial traders hold their interests as part of their trade.
- Since they are therefore conducting a trade in the UK, their fund profits are income attributable to a UK trade and thus subject to UK tax.
- Treaty relief may be possible.

Non-domiciled individuals

- Individuals who are resident but not domiciled in the UK and who claim the remittance basis of tax are taxed in the UK on their UK source income/gains and on non-UK source income/gains to the extent that these are "remitted" to the UK.
- Can an investment into a UK limited partnership be a remittance to the UK?
- If so, non-domiciled investors might be subject to UK tax on their partnership investment even before any profits result.

Non-domiciled individuals

- Probably the case that investment does not technically constitute a “remittance.”
- However, non-domiciled investors can be concerned about this.
- Such concerned investors can use an offshore feeder fund but a fund targeting non-domiciled UK investors may be wise to set up as e.g. a Cayman or Jersey partnership.

Non-domiciled individuals

- What about fund profits from a UK partnership? Are these automatically UK source to UK resident but not domiciled individuals?
- It should be the case that the fund's transparency means that, even if the fund itself is organised in the UK, profits should be sourced in the investee jurisdiction.
- Thus, profits from investments by a UK partnership in e.g. Sweden, should be Swedish and not UK source and thus not subject to tax in the hands of non-domiciled individuals unless remitted to the UK.

Non-domiciled individuals

- Lack of clarity in some areas and certain non-domiciled individuals very conservative and avoid UK partnerships entirely, even if they can invest through a feeder.
- Thus, again, if non-domiciled individuals are a target market then an offshore fund is advisable.

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Life assurance companies

- Subject to a very complex tax regime to which the usual rules may not apply.
- Details beyond the scope of fund advice.

UK pension funds

- UK pension funds may have certain concerns about income producing funds in case these are perceived as (taxable) trading income.
- Not generally a concern but can arise occasionally.
- Pension funds are usually specifically and well advised.

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Dealing with specific investors

- Not all concerns can be anticipated and investors need to take their own advice.
- In an offering memorandum it should always be clear that any UK tax summary is not intended to offer advice.
- Specific funds should consider if they want to alert certain investors to potential issues but there should always be the caveat that investors' individual circumstances may result in unusual tax treatment.

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