

C54 **FUND ADMINISTRATION** (sections 2(2), 66A, 122 and the Fourth Schedule)

Introduction

With effect from 1 January 2015, the company intermediate income tax rate (the “10% rate”) was extended to include the activity of administration of controlled investments (as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“POI Law”)) to unconnected third parties.

Income from the provision of fund administration services in respect of controlled investments to connected third parties is subject to the company standard income tax rate (the “0% rate”).

Any company having more than one class of income chargeable to income tax at more than one rate will compute its tax liability accordingly. Please refer to Statement of Practice C47 for further guidance on the principles to be applied in the tax computation where this applies.

Further explanation

Fund administration services

As set out above, the extension of the 10% rate only applies to fund administration services provided in relation to controlled investments. For income tax purposes, the Director would regard a scheme whose purpose is to enable investors to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of property, even where that property only consists of a single asset, as a controlled investment, unless specifically exempted by section 1(3) of Schedule 1 of the POI Law.

Persons that are involved in the contract chain for the provision of such services, but who do not in substance actually carry out the fund administration activities (as they have outsourced such services on an arm’s length basis), such as a principal manager (“PM”) of a collective investment scheme, would not be within the scope of the extension of the 10% rate in respect of income from those services.

A business, other than a fund administrator (for example an audit and advisory practice), that provides ad hoc accounting or valuation services in respect of a controlled investment, would not be within the scope of the extension of the 10% in respect of income from those services.

Example 1

A PM of a collective investment scheme contracts with a fund administrator to provide fund administration services in relation to a collective investment scheme. Provided that the fund administrator is not otherwise connected to the PM or the collective investment scheme, then the income received by the fund administrator for administration of the collective investment scheme will be subject to the 10% rate.

The PM is also involved in the contract chain as the PM contracts to provide administration to the collective investment scheme, and is licensed to do so. However, as the PM outsources the fund administration to the fund administrator, on an arm’s length basis, and does not in substance actually carry out the fund administration activities, the income received by the PM from the collective investment scheme will remain subject to the 0% rate.

The “connected to” test

Section 66A(8) defines when a person is “connected to” another person.

In determining whether a company providing fund administration services is connected to a third party, it is necessary to determine whether a “corporate relationship”, a “partnership relationship”, a “personal relationship” or a “trust relationship” exists between them or between each of them and the same third person. In this context, the concept of “control” (including partial control or control together with other people) is important to the corporate relationship

In relation to a company, “control” is defined in section 122(1) of the Law as, the power of a person or persons to secure, by means of the holding of shares, by being a loan creditor, by having the possession of voting powers, or pursuant to the articles of incorporation (or other document regulating that or any other body corporate) that the affairs of the company are conducted in accordance with the wishes of that person or persons.

If the only relationship that exists is the sharing of some common directors, there is no “corporate relationship” so this will not be considered as two persons being “connected to” each other.

In relation to partnerships, the Director accepts that a partner is "connected to" the partnership in which it is a partner for the purposes of determining whether fund administration services have been provided to unconnected third parties.

Example 2

A corporate general partner (“GP”) of a collective investment scheme comprised as a limited partnership contracts with a fund administrator to provide fund administration services to the GP, acting on behalf of the limited partnership.

In relation to the fund administrator:

- if both the GP and the fund administrator share common beneficial owners, a “corporate relationship” exists between them and the income received by the fund administrator for administration of the limited partnership will be subject to the 0% rate;
- however, if the fund administrator is not connected to the GP, then the income received by the fund administrator for administration of the limited partnership will be subject to the 10% rate.

The GP is also involved in the contract chain as the GP contracts to provide administration to the collective investment scheme (comprised of the limited partnership), and is licensed to do so. Therefore, in relation to the GP:

- as with the PM in Example 1, as the GP outsources the fund administration to the fund administrator on an arm’s length basis, and does not in substance actually carry out the fund administration activities, the income received by the GP from the limited partnership will remain subject to 0% rate;
- however, if the GP was to, in substance, carry out some of the fund administration activities, then, as set out above, the Director is willing to accept that the GP is connected to the limited partnership, with the result that the income received by the GP from the limited partnership will remain subject to 0% rate .

Example 3

A private equity fund owns, indirectly, 100% of the issued shares in a fund administrator that provides fund administration services to the private equity fund. As the private equity fund controls the fund administrator there is a corporate relationship between them and the income received by the fund administrator from the private equity fund will be subject to the 0% rate.

For the avoidance of doubt, if the fund administrator does not in substance actually carry out the fund administration activities for the private equity fund but instead outsources the fund administration to another service provider that is not connected to the private equity fund or to the fund administrator, then the income received by that service provider for outsourced administration services delivered under that outsourcing arrangement will be subject to the 10% rate.

Example 4

A fund administrator is contracted by a fund manager to provide fund administration services to a controlled investment. Two of the directors of the fund administrator are also directors of the fund manager. As the fund administrator and the fund manager are not connected, the income received by the fund administrator for the fund administration services will be subject to the 10% rate.

Any company requiring further clarification concerning income streams liable at the 10% rate should contact the Director.

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