

Investment Manager Exemption

Financial services transfer pricing - Winter 2009

The Investment Manager Exemption ('IME') provides protection from UK tax for trading offshore funds which are managed by UK investment managers.

Recent changes to the Statement of Practice underpinning the IME, however, will make compliance with the qualifying criteria more onerous.

Failure to comply with the IME can be potentially disastrous, and in the current economic climate, HM Revenue & Customs ('HMRC') can be expected to look closely at compliance.

One of the key obligations the IME places on managers is to ensure that remuneration they receive for services provided is on an arm's length basis for tax purposes.

Background

The IME enables non-resident funds which are established outside the UK and who pursue an active investment strategy to appoint UK based investment managers without the risk of exposing offshore profits to UK taxation, provided certain tests are met. This exemption has enabled the UK to maintain its competitiveness and attractiveness in the investment management arena.

A manager wishing to take advantage of the IME will need to satisfy all of the qualifying criteria, ranging from an independence requirement to limits imposed on the level of investment in the fund by the manager.

The IME tests are complex and beyond the scope of this fact sheet. The purpose of this document is to focus on one of the key elements of the IME, transfer pricing, and how Grant Thornton can help.

Transfer pricing

The IME requires that transactions and remuneration (eg performance and management fees) between UK managers and their offshore funds/managers are conducted on a documented arm's length basis for tax purposes.

Under current legislation, remuneration must satisfy the 'customary rate test' in order for the IME to apply. Current legislation however, does not define what is meant by 'customary' but HMRC will not regard a UK investment manager as acting independently if they are not dealing with overseas entities at arm's length.

As a result of recent changes to the IME, HMRC has clarified that it will be guided in future by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations when determining whether a pricing structure is deemed to be arm's length, and will expect managers to have the appropriate documentation in place from 1 January 2010.

Why act now?

Investors are increasingly looking for certainty in relation to the IME. As such, they want to see their investment managers taking a proactive approach to their tax obligations. Investors and fund auditors will now commonly seek evidence that the manager has sought to comply with the IME.

The clarification around the definition of 'customary rate' and the benefits of having appropriate documentation will lead investors to expect investment managers to have sufficient documentation in place to safeguard their IME status, reducing the risk of unforeseen tax liabilities.

How we can help

The Grant Thornton Financial Services Tax team, together with dedicated transfer pricing colleagues, have extensive experience of advising UK managers on compliance with the IME. Our transfer pricing specialists help a wide range of clients in determining and documenting arm's length prices in accordance with OECD guidelines.

We have access to a suite of licensed databases that provide the information required to determine arm's length remuneration for Investment Managers. This suite of databases is the same as those used by HMRC to analyse the arm's length nature of pricing arrangements.

For investment managers with a relatively simple structure we offer a cost effective solution that provides the relevant documentation and transfer pricing analysis that is required by HMRC to satisfy the 'customary rate' condition.

For more complex businesses we can provide detailed and bespoke advice, offering a full transfer pricing report, suitable and specific to your profile. Our aim is to not only help you satisfy the demands of the 'customary rate' test, but also to identify potential tax efficiencies from a UK taxation perspective, relevant to your unique circumstances.



Contact us

To discuss transfer pricing or any aspect of the IME please contact.



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