

Focus on Investment Funds

New accounting rules for UK limited partnerships

October 2011

New accounting and disclosure rules will result in many investment funds being subject to similar accounting requirements to those which currently apply to limited companies. This note outlines the rules and considers what steps UK limited partnerships might take to remain outside the ambit of the new rules.

Current Rules

Under the Partnership (Accounts) Regulations 2008, a limited partnership established under the law of any part of the United Kingdom must prepare and file accounts as if it were a company if each of its partners is: (i) a limited company; (ii) an unlimited company; or (iii) a Scottish partnership each of whose members is a limited company. Most private equity limited partnerships avoid these rules because at least one of their partners falls outside of these categories.

Amended Regulations

The Department for Business, Innovation and Skills has produced draft regulations due to come into force for accounting periods beginning on or after April 2012.

Under the new rules a UK limited partnership will be required to meet the accounting and disclosure standards which apply to a UK limited company if the partnership's *general partner* is either a limited company, an unlimited company or a Scottish partnership each of whose members is a limited company. This amendment will bring most private equity limited partnerships with a single corporate general partner within the rules. These funds may have to disclose potentially sensitive information which may include carried interest allocations and valuations of the fund investments.

Are there solutions for existing funds?

Although funds should talk to their auditors to discuss the accounting and disclosure implications for their particular partnerships, some limited partnerships may wish to explore the steps they can take to preserve their current position.

There are a number of ways this can be achieved. Funds may consider replacing their corporate general partner with a LLP (for many funds this will be achievable on a tax-neutral basis). An alternative is to insert a LLP as a second general partner, although the VAT implications of this approach would need to be considered on a case-by-case basis. A third option that funds may wish to consider is to replace the general partner with an unlimited company, itself owned by a second unlimited company; whilst arguably structurally inelegant, most funds will be able to achieve this reorganisation on a tax-neutral basis and the structure may offer advantages with regards to the new anti-avoidance 'disguised remuneration' tax rules.

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Some funds are choosing to move their general partner offshore, but this cannot be recommended. Despite the migration, the rules will still apply to the partnership if it was formed under UK law, even if the rules are technically unenforceable.

Establishing a New Fund

When setting up a new fund, the option of establishing the fund offshore should be considered. Because the Partnership Accounts rules only apply to partnerships established under UK law the accounts rules will not apply to a Jersey or Guernsey limited partnership, and the structure can be kept simple and familiar for investors.

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