Asset Management conference 2016

The changing face of Asset Management

27 September 2016

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International Tax

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International Tax issues

27 September 2016

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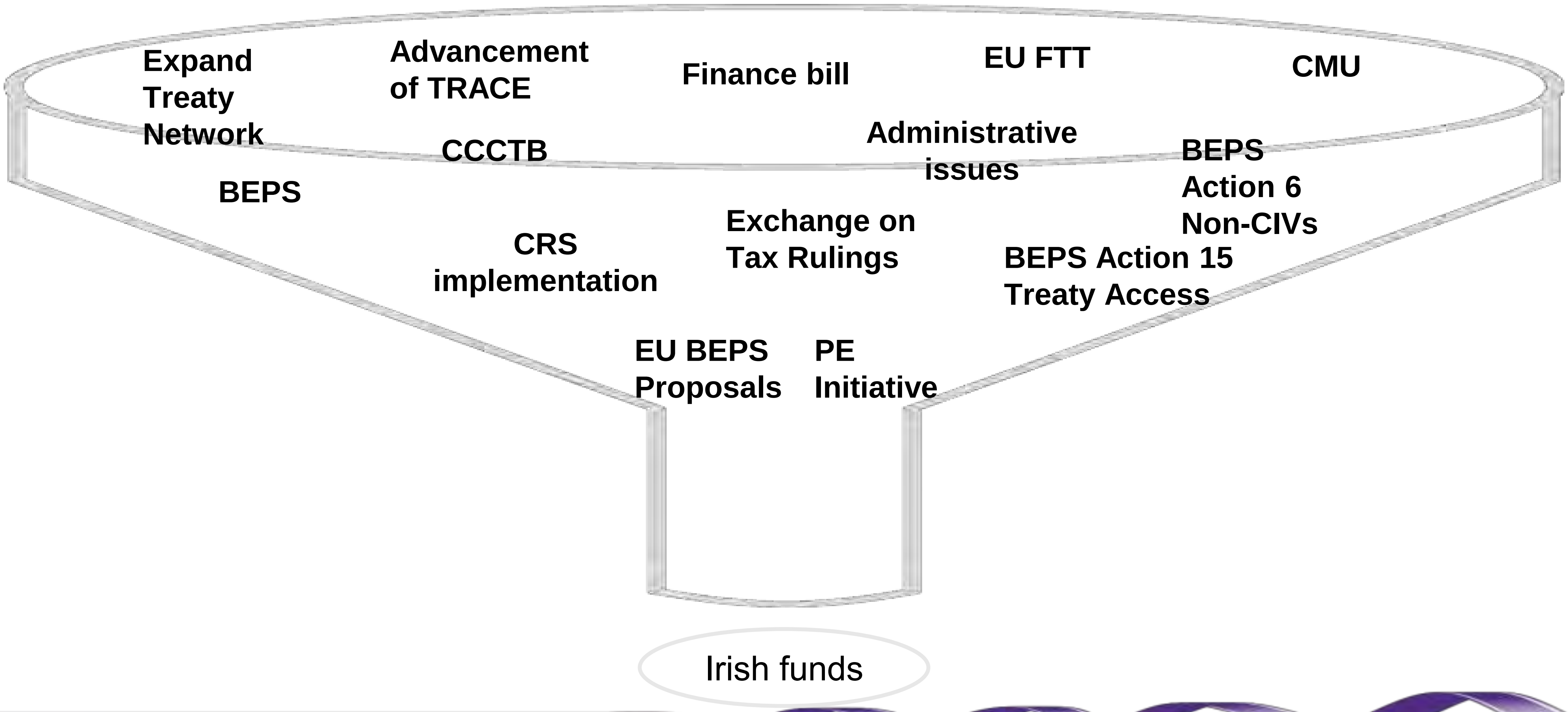
The overall objectives of tax reform

- greater alignment
- increasing the transparency
- redesign of transfer pricing principles
- redesign of preferential IP regimes
- addressing tax relief

Key events

- Brexit
- US presidential election
- EU State Aid
- transfer pricing guidelines
- OECD Multilateral instrument
- public country by country reporting
- EU anti avoidance package
- EU common consolidated tax base

Initiatives/issues for asset management



Common Reporting Standard (CRS)

New legislation

- new, single global standard on Automatic Exchange of Information (AEOI)
- participating jurisdictions required to exchange certain information held by financial institutions regarding their non-resident account holders
- Irish legislation – introduced in Finance Act 2014 by inserting Section 891F of the Taxes Consolidation Act 1997
- reports due by 30 June for previous year, beginning 30 June 2017 Regulations (Statutory Instrument 583 of 2015) came into effect on 31 December 2015

Base Erosion and Profit Shifting (BEPS)

- Action 2 - hybrid mismatch arrangements
- Action 4 - interest deductions
- Action 6 - treaty abuse – submissions on Non-CIV funds
- Action 7 - artificial avoidance of PE status
- Action13 - country by country reporting

UK tax update

27 September 2016

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Reporting funds

- no changes in legislation in the last year
- each share class needs to be registered separately and remember: each new share class needs to be registered before the end of its first accounting period, or within three months of launch if later

Reporting funds – other practical issues

- investments in other offshore funds/partnerships
- treatment of reportable income from reporting funds
- treatment of non-reporting funds:
  - either movement in market value in the year treated as income or
  - treat as a deemed reporting fund if sufficient information is available
- treatment of investments in limited partnerships and transparent funds
- effective yield adjustments

Master/feeder arrangements

- where a feeder fund holds > 95% of a master fund, the master fund is treated as a subsidiary and the feeder fund's share of income and expenses are brought into the calculation of the feeder fund's reportable income
- if the holding drops below 95% the feeder fund has a holding in a reporting or non-reporting offshore fund
- if non reporting, can treat as reporting
- but, need to bring in excess income for the reporting period for which the distribution date falls in the accounting period

Example

Y/E 31/12/15

Feeder

98%

Master

98% of Master Fund's income/expense brought into Feeder Fund's calculations

y/e 31/12/16

Feeder

94%

Master

Excess income arising on 30/6/16, in respect of year ended 31/12/15 brought into calculations.

- double counting?

Change to taxation of savers
Dividend income

	Pre 6 April 2016 Effective rate	Post 6 April 2016 Effective rate
Basic rate tax payer	0%	7.5%
Higher rate tax payer	25%	32.5%
Additional rate tax payer	30.5%	38.1%

But in each case the first £5,000 of dividend income is tax free.

Taxation of interest

- tax free allowance from 6 April 2016:
  - basic rate taxpayers £1,000
  - higher rate taxpayers £500
  - additional rate taxpayers -
- bank interest paid gross from 6 April 2016
- interest distributions from UK bond funds can be paid gross from April 2017

Taxation of capital gains

- Capital Gains Tax (CGT) rate reduced to 20%/10% from 6 April 2016
- rates remain at 28%/18% for property and carried interest
- gains from property funds taxed at 20%/10%

Brexit – the four stages of Brexit

- 23 June 2016 to activation of Article 50
- the Brexit (2 year?) negotiation period
- transition period?
- new arrangements

Brexit - Lots of uncertainty

- UK likely to leave EU sometime early 2019 onwards
- timings/nature of negotiations uncertain
- UK will become a third country (unless it joins the EEA or negotiates some form of preferable access to the European single market)

FCA guidance

- 'EU regulation will remain applicable until any changes are made, which will be a matter for Government and Parliament. Firms must continue to abide by their obligations under UK law, including those derived from EU law and continue with implementation plans for legislation that is still to come into effect. The longer term impacts of the decision to leave the EU on the overall regulatory framework for the UK will depend, in part, on the relationship that the UK seeks with EU in the future'

Brexit - Impact for funds and management entities

AIFs

- UK manager should be able to manage EU AIF as a third country AIFM
- pass porting where "equivalence of regulation" can be proved

UCITS

- depends on whether pass porting arrangements maintained
- if not, a UCITS with a UK Manco may need to appoint a Manco in the EU (but could retain UK investment manager)
- UK investment manager may not have benefit of EU passport for distribution so may need local distributors
- may need mirror structures – EU funds for EU market and UK funds for UK market
- potential impact for investment mandates

Brexit - tax implications

Relocation of management entities:

- transfer pricing
- personal and corporation tax implications for relocating staff
- exit taxes
- impact of VAT relief eg. on management charges

Restructuring and relocation of funds:

- impact for investors
  - impact for investing in funds of different domicile
  - ensure no tax event for investors
- treaty access and withholding tax

Brexit - tax implications

- use of SPVs

Other issues:

- FTT and common consolidated tax base
- VAT – EU tax but implemented into UK law, therefore changes could be made
- EU Merger Directive, EU Parent-Subsidiary Directive, EU Interest and Royalty Directive

Brexit - What now?

- carry out impact analysis
  - what passports are currently used
  - what pan European distribution/fund management is undertaken
- keep track of developments and influence through lobbying
- be positive - look at Brexit as an opportunity to modernise structures and operations
- consider operational issues such as HR and outsourced activities, and of course tax
- pre Budget report set for 23 November

Other tax developments

- Base Erosion and Profit Shifting (BEPS)
- FATCA
- common reporting standards

BEPS – General overview

- OECD produced a 15 point action plan on BEPS in July 2013
- main areas of relevance to investment management industry are treaty abuse, interest deductions, permanent establishments, hybrids and country by country reporting
- in September 2014, OECD published reports on first seven deliverables
- final recommendations published October 2015

BEPS – Impact for investment managers/funds

- treaty abuse – where main purpose is to obtain treaty benefits
- interest deductions – challenges to the use of leverage in fund structures, for example private equity, real estate, infrastructure funds
- PE status – potential impact where activities being carried out overseas
- transfer pricing

Common Reporting Standards

- HMRC guidance dated 14 September 2015
- 50+ jurisdictions have agreed to early adoption
- information to be captured for accounts in existence at 31 December 2015, new accounts from 1 January 2016 and first reporting in 2017
- definition of financial accounts different from FATCA – regularly traded shares not excluded

US tax update

27 September 2016

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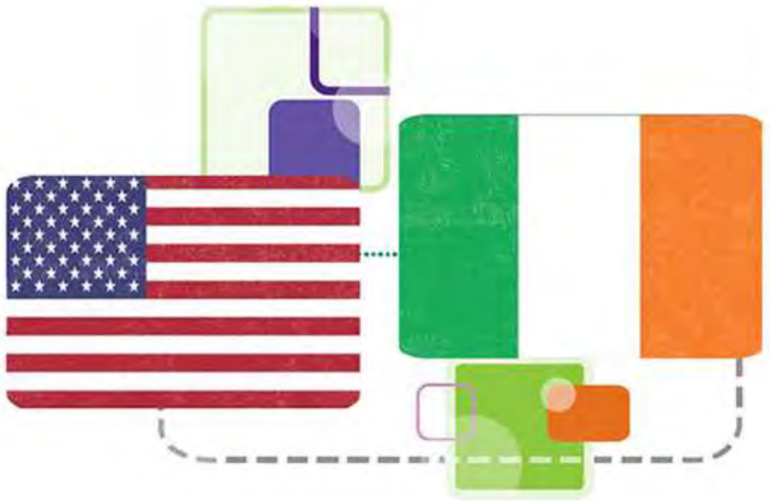
Learning objective

US tax reporting rules of non-US investment funds



Effectively Connected Income (ECI) and Fixed, Determinable, Annual, Periodical income (FDAP)

What is ECI?

ECI is Effectively Connected Income:

- when a foreign person engages in a trade or business in the United States, all income from sources within the US connected with that trade or business is considered to be effectively connected income.

What is FDAP?

FDAP is Fixed, Determinable, Annual, Periodical income

Examples of FDAP income:

a) interest (other than portfolio interest)
b) dividends (look through to see components if from another fund)
c) rents
d) royalties

#GTfinserv

General filing deadlines

US tax reporting season

For US partnerships with a year-end of 31 December 2016:

- returns are required to be filed by **15 March 2017 (New for 2016 returns filed in 2017, was 15 April)**
- provide each partner with a copy of Schedule K-1, partner's share of income, deductions, credits, etc.
- partnerships are able to request a six month extension
(on Form 7004) of time to file the return and provide Schedule K-1. The Form 1065 is then due **15 September 2017 (Extension is now six months)**

US tax reporting season

- special rules apply for non-US entities, please consult with your Grant Thornton LLP adviser
- the filing dates were accelerated in 2016 to facilitate receipt of K1's by individual taxpayers prior to their filing deadline of 15 April

When is a non-US partnership required to file a Form 1065?

When to file Form 1065

When is a non-US partnership required to file a Form 1065?

1. if the partnership has income effectively connected with the conduct of a US trade or business

What is ECI?

1. all income from sources within the US connected with the conduct of the partnership, regardless of the connection between the income
2. interest, dividends, rents and royalties are treated as effectively connected income if the income is derived from assets used in or held for conduct of a US trade or business.

When to file Form 1065

When is a non-US partnership required to file a Form 1065?

c) withholding is not required on US sourced ECI but subject to taxes at prevailing US rates

d) to obtain withholding exemption for ECI the foreign entity must submit Form W-8ECI to each withholding agent

When to file Form 1065

When is a non-US partnership required to file a Form 1065?

2. the partnership has U.S-source income of $20,000 or more during its tax year

– what is considered US-source income? - when paid by US payers:

a. interest
b. dividends
c. rents
d. royalties

When to file Form 1065

When is a non-US partnership required to file a Form 1065?

3. exception

Capital gains from the sale of US publicly-traded securities is not necessarily considered US-source income unless the capital gain meets one of three exceptions:

a. capital gains must not be generated by the sale of US real property or the stock of US real holding corporations
b. any capital gain from the sale of an active trade or business
c. rare scenario: non-resident aliens present in the US for more than 183 days.

When does a non-US partnership generally have a US tax filing requirement?

When to file Form 1065

When does a non-US partnership generally have a US tax filing requirement?

1. the partnership does not have income effectively connected with the conduct of a US trade or business, but has other US-source income.

- examples:
  a. interest
  b. dividends

When to file Form 1065

When does a non-US partnership generally have a US tax filing requirement?

2. the partnership has FDAP (Fixed, Determinable, Annual, Periodical income)

- examples of FDAP income:
  a. interest (other than portfolio interest)
  b. dividends (look through to see components if from another fund)
  c. rents
  d. royalties

Modification to reporting

When to file Form 1065
Modification to reporting

1. all US-source income allocable to the non-US partners is taxed at the applicable withholding tax rates
   - reported on Forms 1042 and 1042-S by either the non-US partnership or the applicable withholding agent (i.e. a prime broker)
   - typically taxed on gross basis at a flat 30% or the lower treaty rate is applicable

When to file Form 1065

Modification to reporting

2. for many investment funds managed outside the US with a combination non-US and US investors, it is often assumed by fund management that the prime broker is the withholding agent on all US-source income. This needs to be verified as the partnership itself is considered the withholding agent under US tax law

When to file Form 1065
Modification to reporting

3. if the modification applies, a US partnership return should be filed by the non-US partnership, but only the Schedule K-1 for the US investor(s) needs to be issued.
4. modification = 1065 with only US Resident partner K1's attached. Maintains the privacy of foreign investors.

Form 8865

Form 8865
Filing requirement

What is it?

- return of U.S. persons with respect to certain foreign partnerships.

Application:

- regardless of whether or not a non-US partnership files Form 1065, the US partners will likely be required to file Form 8865 to report their interest in the non-US partnership:
  - most of this form is duplicative, but it is required nevertheless.

Form 8865
Filing requirement

- other rules may apply if the non-US partnership is a controlled foreign partnership
  - this generally means the non-US partnership is more than 50 percent owned or controlled by US persons.

Form 8865
Filing requirement

- many non-US investment funds managed outside the US, including non-US master funds, do not file a Form 1065
  - instead, they provide each of their US investors and feeder funds with a pro forma Schedule K-1 and all information necessary to prepare and file a Form 8865. This is a management decision based on multiple factors. When in doubt file a 1065.

Form 8865
Filing requirement

- we suggest that managers of any non-US investment funds, including non-US master funds, consider on an annual basis the fund's investor profile and sources of income to determine whether or not to file a Form 1065 with the Internal Revenue Service (IRS)
- non-US funds should be prepared to provide each US investors with a Schedule K-1 and all information needed to prepare and file a Form 8865.

When not to file

Exception for foreign partnerships with US partners:

- a return is not required if:
  a. the partnership had no ECI during its tax year
  b. less than 1% of any partnership item of income, gain, loss, deduction, or credit was allocable in the aggregate to direct U.S. partners at any time during its tax year
  c. the partnership is not a withholding foreign partnership as defined in regulations section 1.1441-5(c)(2)(i).

When not to file

Exception for foreign partnerships with no U.S. partners:

- a return is not required if:
  a. the partnership had no ECI during its tax year
  b. the partnership had no U.S. partners at any time during its tax year
  c. all required Forms 1042 and 1042-S were filed by the partnership or another withholding agent as required
  by regulations sections 1.1461-1(b) and (c)

When not to file

d. the tax liability of each partner for amounts reportable under regulations sections 1.1461-1(b) and (c) has been fully satisfied by the withholding of tax at the source

e. the partnership is not a withholding foreign partnership as defined in regulations section 1.441-5(c)2(i).

Benefits of the ICAV structure

Benefits of the ICAV structure

"Check the box" eligible entity:

- treated as a true flow-through partnership for US tax purposes (fiscally transparent):
  a. can flow through losses unlike a PFIC/QEF(corporation)
  b. all items of income, gain, loss and deduction are separately stated on a form K1 rather than ordinary and long term gains only on a QEF statement
  c. no pooled earnings and profits concept
  d. competitive with Cayman entities
  e. file Form 8832 to elect partnership treatment
  f. US owners file Form 8865 with their annual tax returns.

Sample form K-1

RECEIVED
4 APR 2014

Schedule K-1 (Form 1065) **2013**

Department of the Treasury
Internal Revenue Service

For calendar year 2013, or tax year beginning ________, 2013 ending ________, 20____

Partner's Share of Income, Deductions, Credits, etc. ▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

C IRS Center where partnership filed return
OGDEN

D [X] Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
FOREIGNUS

F Partner's name, address, city, state, and ZIP code

651113

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0099

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	427	15	Credits	
2	Net rental real estate income (loss)	434			
3	Other net rental income (loss)		16 A	Foreign transactions	VARIOUS
4	Guaranteed payments		B		86,271
5	Interest income	11,281	C		33,476
6a	Ordinary dividends	5,559	D		17,079
6b	Qualified dividends	2,610	E		22
7	Royalties	309	F		118
8	Net short-term capital gain (loss)	557	*		STMT
9a	Net long-term capital gain (loss)	35,452	17 A	Alternative minimum tax (AMT) items	1
9b	Collectibles (28%) gain (loss)		B		(2)

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