



HM Treasury



HM Revenue  
& Customs

# VAT treatment of fund management services: Consultation

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December 2022



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# Chapter 1

## Introduction

**1.1** Budget 2020 announced a wide-ranging review of the UK's funds regime, covering tax and relevant areas of regulation. This was in response to stakeholder representations that suggested that there were opportunities to enhance the UK's attractiveness for funds and related entities.

**1.2** The government has already legislated for some reforms as part of the funds review. In January 2021, the government launched a 'call for input', which examined the case for a wider set of regulatory and direct tax proposals<sup>1</sup>.

**1.3** This technical consultation sets out proposed reform of the legislation that provides for the VAT treatment of fund management.

### Background to the VAT treatment of fund management

**1.4** The VAT treatment of fund management in the UK has been predominantly derived from the EU VAT Directive 2006/112/EC (Directive). Article 135(1)(g) of the Directive provides for a VAT exemption of the management of funds known as Special Investment Funds (SIFs). The definition of a SIF has been broadly left for EU Member States to determine within the bounds of EU law (as interpreted by the European Court of Justice (CJEU)). Any management of funds that do not qualify as SIFs is subject to VAT at the standard rate (20%).

**1.5** The current VAT fund management regime is provided for by UK legislation, retained EU law and caselaw (see Annex A). The VAT Act 1994 (VATA) implemented the Directive. Schedule 9, Group 5, Items 9 and 10 of this Act lists specific types of funds, the management of which is exempted from VAT. This list was originally intended to ensure equivalence of VAT treatment of fund management between the UK and the EU by specifying which funds qualify as a SIF in the UK.

**1.6** This list was updated and amended periodically, as subsequent case law determined that a wider range of funds should also be treated as SIFs. As case law developed, it became uncertain whether the list under Items 9 and 10 continued to satisfy the original policy intent of exempting all funds which might be considered SIFs. As the fund management industry continued to innovate and introduced new types of funds to the marketplace, this approach has struggled to keep pace with the evolution of the industry and proliferation of fund types.

**1.7** In 2017, the European Commission issued EU VAT Committee Guidelines seeking to clarify SIF policy across the EU, by setting out qualifying criteria. These guidelines refer to CJEU case law and served to support taxpayers who relied upon

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<sup>1</sup> [Review of the UK funds regime: a call for input - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/review-of-the-uk-funds-regime-a-call-for-input)

direct effect of EU law in identifying their eligibility to claim the VAT exemption of fund management on the services supplied.

**1.8** During the UK's membership of the EU, and subsequently (under the EU Withdrawal Act 2018), the UK fund management industry could choose to rely on the 'direct effect' of the EU VAT Directive or UK legislation. This allowed the application of the exemption on the management of those funds which met the SIF criteria set out under guidelines of the European Commission, without reference to UK law, as well as to the management of those funds listed under the UK law.

**1.9** There is no definition of a SIF in existing legislation. Therefore, both His Majesty's Revenue and Customs (HMRC) and the financial services sector have found it difficult to apply the SIF exemption found in the EU VAT Directive consistently and with certainty. The government seeks to remedy this in UK VAT law, by providing legal clarity and certainty.

**1.10** As part of its wider agenda, the government has stated its intention to remove retained EU law. Given that there is a significant level of uncertainty for businesses relying on retained EU law, fund management is an area of VAT policy that could benefit from legislative reform.

**1.11** These reforms are not intended to result in a significant policy change in VAT treatment for the fund management industry; the purpose of this exercise is to improve the legislative basis of the current VAT treatment of fund management.

**1.12** The government is aware that fund managers in the UK may rely on either the existing UK exemptions contained within Items 9 and 10 (of Group 5, Schedule 9 of VATA), or the SIF criteria based within the European Commission's guidelines derived from EU case law. This consultation sets out an approach to codify both existing UK exemptions and retained EU law into the UK statute. This approach should provide the financial services industry with a regime that they are already familiar with but provide a clearer, more certain legislative basis for decisions by fund managers and HMRC. By increasing certainty and clarity this should help to create a more attractive tax environment for fund management in the UK.

## Scope of this consultation

**1.13** This consultation seeks views on a proposed amendment to UK legislation that provides for the VAT exemption of certain fund management services. It sets out how we intend to achieve the twin aims of improving policy clarity and certainty for all stakeholders and removing the reliance on retained EU law.

**1.14** Other options for policy reform in relation to fund management services do not fall within the scope of this consultation.

**1.15** Following consideration of replies to this exercise, the government will publish a formal response, including next steps.

## Responding to this consultation

**1.16** The government welcomes contributions from any individual or organisation interested in the VAT treatment of fund management. This includes, but is not

limited to, UK fund managers, financial service providers and intermediaries, indirect tax advisors, sector representative bodies and investors in UK based funds.

**1.17** This consultation will run for eight weeks and will close on 3 February 2022. Responses should be submitted electronically to [HMTVATandExcisePolicy@hmtreasury.gov.uk](mailto:HMTVATandExcisePolicy@hmtreasury.gov.uk) before the closing date, using the provided response template published alongside this consultation on the GOV.UK website. The government is not able to consider responses that are submitted in any other way.

**1.18** This is a joint consultation between HM Treasury and HMRC. The lead official for HM Treasury is Rachel Stirrat, and the lead officials for HMRC are David Fitzgerald and Russell Langford-Smith. All can be contacted via the email address above.

**1.19** Annex B sets out the data protection notice for this consultation.

## Work to date

**1.20** Budget 2020 announced a wide-ranging review of government policy in respect of fund management services performed in the UK. The announcement encompassed related policies across indirect tax, direct tax and the wider regulatory regime.

**1.21** This consultation sets out proposed legislative reforms that take advantage of EU exit to provide clarity and certainty in VAT treatment of fund management in the UK by presenting an approach that replaces existing UK and retained EU law with a refined regime in UK law. In doing so, the government seeks to create a more attractive tax environment for fund management in the UK.

## Previous Engagement

**1.22** Following the Budget announcement, HMRC's Policy Lab Team conducted a broad research and consultation exercise with various stakeholders from the sector. The results of this have informed the content of the policy approach presented within this consultation.

**1.23** HMRC VAT policy officials also convened meetings with key stakeholders and their advisors to explore policy reform which might benefit the UK. This has also contributed to the formulation of the approach presented in this document.



# Chapter 2

## The proposal

### Codifying current practice into UK law

**2.1** This consultation sets out a proposal to codify current UK policy for the VAT treatment of fund management (based on UK law, retained EU law, general principles, guidance and a body of case law) into UK law. This legislation would establish the VAT liability of a supply of fund management without requiring reference to other sources of case law and guidance, providing certainty and clarity, simplifying the process considerably.

**2.2** Under this approach, the VAT treatment of fund management in the UK will not change significantly for those fund managers who either currently: (i) rely on UK legislation, or (ii) the direct effect of EU law. This is because the government intends to:

- a) retain the list of exempt fund types currently comprising Items 9 and 10 (of Group 5, Schedule 9 of VATA). This aims to support the UK fund management industry that currently utilise these provisions and do not meet the SIF criteria. However, it is not intended that this list of exempt fund types will be expanded in future. Items 9 and 10 are retained purely to ensure continuity of treatment for existing funds.
- b) make legislative changes to bring relevant case law and guidance into UK law. In doing so, the government will provide certainty in VAT treatment of fund management by establishing defined criteria to determine which funds are entitled to the SIF exemption, alongside the existing list of funds in VATA.

**2.3** Under this approach, the following criteria for a fund to be considered a SIF would be legislated for:

- a) the fund must be a collective investment;
- b) the fund must operate on the principle of risk-spreading;
- c) the return on the investment must depend on the performance of the investments, and the holders must bear the risk connected with the fund; and
- d) the fund must be subject to the same conditions of competition and appeal to the same circle of investors as a UCITS (Undertakings for Collective Investment in Transferable Securities), that is funds intended for retail investors.

**2.4** This is a departure from the criteria set out in the European Commission's EU VAT Committee guidelines, which also requires that funds qualifying as SIFs must be subject to 'State Supervision'. The government proposes to drop this criterion as part of the legislative reforms, in the interest of streamlining and simplifying the policy, as it is unnecessary given the content of criteria 'd'.

**2.5** The government invites comments as to whether these criteria will provide additional clarity and certainty for the VAT treatment of fund management and, if not, respondents should state why not and propose possible improvements to attain that aim.

**2.6** To ensure the correct interpretation of the above criteria, the government intends for the legislation to contain a clear definition of 'Collective Investment'. This definition would broadly mirror that provided within the Financial Services and Markets Act 2000, an area of regulatory law the government understands that the industry is familiar with.

**2.7** This approach would provide a consolidated single source of law regarding the VAT liability of a supply of fund management. It seeks to significantly reduce the administrative burden on all stakeholders by simplifying the decision-making process and reducing the time and resource currently required to identify the VAT liability of a supply of fund management. It also ensures that all relevant laws are within UK statute, removing reliance on EU legislation or guidance. This approach aims to reduce ambiguity and the scope for differing interpretations of law and case law by providing a stable legal basis on which businesses can operate. It should reduce the amount of litigation which takes place in this area, which is a significant burden for all stakeholders involved.

## Questions

1. Do you agree that the proposed approach to refine the UK law covering the VAT treatment of fund management, set out above, achieves its stated aims?
2. Do the proposed legislative reforms present any issues for your business?
3. Do you currently rely on Items 9 and 10 of Group 5, schedule 9 of VATA or exempt any transactions using that law?
4. Would the legal definition for 'Collective Investment' in FSMA 2000 meet the intended aim of providing much greater certainty over correct application of the associated qualifying criteria?
5. If the answer to 4 is no, how might the government improve the definition to attain that aim?
6. Are there any further VAT related modifications the government might introduce under these or future reforms to improve the fund management regime for taxpayers?



# Annex A

## Relevant (current) government legislation

### EU Law

The current UK VAT treatment of fund management is derived from the EU VAT Directive 2006/112/EC.

Retained Article 135(1)(g) provides an exemption for the management of special investment funds (SIFs) as defined by Member States:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006L0112-20200101&from=EN>

In 2017, the European Commission issued EU VAT Committee Guidelines seeking to clarify SIF policy by laying down certain qualifying criteria. However, these guidelines are not legally binding on Member States, in and of themselves.

In practice, both HMRC and the financial services sector have found it difficult to apply this exemption consistently and with certainty. This is because there is no clear definition of a SIF.

### UK Law

UK law regarding the VAT treatment of fund management is at Group 5, Schedule 9 of the VAT Act 1994.

Items 9 and 10 of Group 5 set out the current list of fund types of which the management is exempted:

- 9 *The management of–*
- (a) *an authorised open-ended investment company; or*
  - (aa) *an authorised contractual scheme; or*
  - (b) *an authorised unit trust scheme; or*
  - (c) *a Gibraltar collective investment scheme that is not an umbrella scheme;*
  - (d) *a sub-fund of any other Gibraltar collective investment scheme;*
  - or*
  - (e) *an individually recognised overseas scheme that is not an umbrella scheme;*
  - (f) *a sub-fund of any other individually recognised overseas scheme;*
  - or*
  - (g) *[omitted by SI 2013/1773, reg. 80 and Sch. 1, para. 40(a);]*
  - (h) *[omitted by SI 2013/1773, reg. 80 and Sch. 1, para. 40(a);]*
  - (i) *[omitted by SI 2019/1214, reg. 2(2);]*
  - (j) *[omitted by SI 2019/1214, reg. 2(2);]*
  - (ka) *qualifying pension fund.*

- 10 *The management of a closed-ended collective investment undertaking.*

# Annex B

## Data Protection Notice

- B.1** This notice sets out how HM Treasury and HMRC will use respondents' personal data for the purposes of this consultation and explains their rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

### The data – data subject categories

- B.2** This consultation is open to all interested persons and organisations. Therefore, personal information that we will collect could relate to members of the public, parliamentarians, and representatives of organisations and companies.

### The data we will collect – data categories

- B.3** Information will include the name, address, email address, job title and employer of the correspondent, as well as their opinions and answers to the questions posed by this consultation. Respondents may volunteer additional identifying information about themselves or third parties.

### Legal basis of processing

- B.4** The processing we will conduct is necessary for the performance of a task carried out in the public interest – namely, consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good and effective policies.

### Special data categories

- B.5** Although not being requested, it is possible that special category data may be processed if such data is volunteered by the respondent.

### Legal basis for processing special category data

- B.6** If special category data is volunteered by the respondent, the legal basis relied upon for processing will be explicit consent of the data subject and/or that the processing will be necessary for reasons for substantial public interest in the exercise of a function of the Crown, a Minister of the Crown or a government department – namely, consulting on departmental policies, or obtaining opinion data, to develop good effective policies.

### Purpose

- B.7** C.7 The personal information collected will be processed in order to obtain the opinions of stakeholders, members of the public and representatives of organisations and companies about departmental policies, or generally to obtain public opinion data on an issue of public interest.

## With whom we may share responses – and confidential information

- B.8** C.8 Information provided in response to this consultation may be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
- B.9** If a respondent wishes the information that they provide to be treated as confidential, please be aware that under the FOIA there is a statutory code of practice with which public authorities must comply. It deals with, amongst other things, obligations of confidence.
- B.10** In view of this it would be helpful if respondents could explain to HM Treasury and HMRC why they regard the information they have provided as confidential. If we receive a request for disclosure of the information, we will take full account of the reasons provided, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury or HMRC.
- B.11** Where someone provides special category personal data or personal data about third parties, we will endeavour to delete that data before any publication takes place.
- B.12** information about respondents is not published, it may be shared with officials within other public bodies involved in this call for evidence to assist us in developing the policies to which it relates. In particular, all information provided to the consultation will be automatically shared with both HM Treasury and HMRC.
- B.13** HM Treasury and HMRC reserve the right to publish their own response or a summary of responses received from the public, which may feature quotations or extracts from provided responses.

## How long we will retain data provided

- B.14** Personal information in responses to calls for evidence will generally be published and therefore retained indefinitely as an historic record under the Public Records Act 1958.
- B.15** 15 Personal information in responses that are not published will be retained for at least three calendar years after the consultation has concluded. Rights of respondents
- B.16** Respondents have the following rights in relation to this consultation:
- To request information about how their personal data are processed and to request a copy of that personal data;
  - To request that any inaccuracies in their personal data are rectified without delay;
  - To request that their personal data are erased if there is no longer a justification for them to be processed;

- In certain circumstances (for example where accuracy is contested), to request that the processing of their personal data is restricted;
- To object to the processing of their personal data where it is processed for direct marketing purposes; and,
- To data portability, which allows their data to be copied or transferred from one IT environment to another.

How to submit a data subject access request (DSAR)

- B.17** To request access to personal data that HM Treasury holds about you, please contact:

HM Treasury Data Protection Unit  
 G11 Orange  
 1 Horse Guards Road London  
 SW1A 2HQ  
[dsar@hmtreasury.gov.uk](mailto:dsar@hmtreasury.gov.uk)

#### Complaints

- B.18** If a respondent has any concerns about the use of their personal data, they should contact HM Treasury at [privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)
- B.19** If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at: Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF 0303 123 1113 [casework@ico.org.uk](mailto:casework@ico.org.uk)
- B.20** Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

#### Contact details

- B.21** The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury  
 1 Horse Guards Road  
 London  
 SW1A 2HQ  
 020 7270 5000  
[public.enquiries@hmtreasury.gov.uk](mailto:public.enquiries@hmtreasury.gov.uk)

- B.22** The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer  
 Corporate Governance and Risk Assurance Team

Area 2/15  
1 Horse Guards Road  
London  
SW1A 2HQ  
[privacy@hmtreasury.gov.uk](mailto:privacy@hmtreasury.gov.uk)

## HM Treasury contacts

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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