

UK Procedure on Unique Taxpayer Reference Numbers (UTRs) for Investment Partnerships Finalised

May 16, 2012

Background

In 2009, Her Majesty's Revenue & Customs ("HMRC") in the UK announced that, for partnerships filing UK tax returns, each partner was required to have a unique taxpayer reference number ("UTR").

This primarily affected partnerships established in the UK as HMRC usually require such partnerships to file such returns. However, partnerships formed in other jurisdictions may also have been affected as HMRC may also request that non-UK partnerships file a UK return.

Since, generally speaking, partnerships are tax-transparent in the UK, these UK tax returns are information returns only; the partnership would not be required to pay any tax and the tax position of non-UK taxpaying partners would be unaffected.

UTRs are routinely issued for persons who are UK resident taxpayers or are otherwise required to file UK tax returns. Accordingly, the 2009 announcement did not present an issue for partnerships trading in the UK, whose partners, whether resident in the UK or elsewhere, are required to file UK tax returns. However, in the case of investment partnerships, partners not resident in the UK and holding their partnership interest as an investment would not generally be required to pay UK taxes (except as regards UK tax deducted at source) or make any UK tax filings, and would therefore not expect to need a UTR.

HMRC recognised that the 2009 announcement presented logistical problems for general partners of, and non-UK resident investors in, investment partnerships which are required to file a UK tax return. After some discussions and temporary measures, the BVCA has now agreed a procedure with HMRC for general partners in English and Scottish investment partnerships or their authorised tax agents to be able to obtain the UTRs of their non-resident investors, in turn enabling them to file the UK partnership tax return as normal (whether electronically or in paper form, although general partners should note the earlier deadline for filing paper returns).

Summary of recently agreed procedure

For newly formed investment funds structured as English or Scottish partnerships, or new investors in any such existing funds, general partners will be able to obtain UTRs on behalf of non-UK resident investors.

To do so, the general partner should complete an HMRC approved spreadsheet which requires details of the non-UK resident investors and submit this together with confirmation that the general partner is authorised to receive the UTRs on the investors' behalf. HMRC will then supply such UTRs to the general partner, which it can then use to file a partnership tax return.

A similar process applies to enable general partners of existing English or Scottish investment partnerships to obtain UTRs for existing non-UK resident investors.

Impact on general partners

Affected general partners should ensure that fund documents permit them to obtain UTRs on behalf of their non-UK resident investors.

The guidance agreed between HMRC and the BVCA suggests that this is likely to be satisfied by tax compliance clauses typically included in limited partnership agreements or admission documents. However, some general partners may prefer to update their documents to specifically refer to an authority to obtain UTRs, for example if there is uncertainty over whether the existing tax compliance clauses are wide enough in scope.

General partners should note that the new process does not apply to UK resident investors who must be specifically asked to provide their UTR since it cannot be obtained by the general partner from HMRC.

The procedure described above is stated to apply to English and Scottish partnerships only. As a result, general partners who are required by HMRC to submit UK partnership tax returns for investment partnerships formed in other jurisdictions may need to clarify their own position with HMRC.

Impact on investors

Investors not resident in the UK who invest in a UK limited partnership should expect to be asked to specifically authorise a general partner to obtain a UTR on their behalf, or to have access to one already allocated. Moreover, given the limitation of the recent guidance to English and Scottish partnerships, investors in non-UK partnerships that are or may be required to file UK partnership tax returns may be required to obtain or agree to obtain a UTR themselves.

Non-UK resident investors should be aware that the issuance of a UTR is strictly an administrative process and does not, in itself, impose a requirement on the person for whom it is issued to file a UK tax return. Further, general partners should not, through their knowledge of an investor's UTR, be able to access other information about that investor, e.g., ascertaining other funds in which such person holds an interest.

The agreed procedure is designed to reduce the administrative burden for non-UK resident investors, and once allocated a UTR under this procedure, such persons will not automatically be notified of the UTR. Instead, it is understood that, if the investor invests in other English or Scottish partnership funds and provides the requisite authorisation to the general partners of those other funds, HMRC will, upon application by those general partners, provide the previously allocated number without further action required from the non-UK resident investor.

Once issued a UTR, a non-UK resident investor could ask a general partner to inform them of that UTR and the investor would then be able to provide the UTR to other funds directly, rather than requiring the general partners of those other funds to request access to the UTR through the agreed procedure described above.

Conclusion

This recently agreed process is an administrative clarification and is a welcome development for general partners of affected funds. Non-UK resident investors should note that the need for a UTR is solely to enable general partners to fulfill the partnership's information return filing responsibilities in the UK and being issued a UTR does not of itself impose obligations on the investor to pay UK tax or make UK tax filings.

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