

VAT treatment of fund management services: Consultation

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 In principle, the CIOT welcomes reform that translates policy into statute accurately and effectively, without unintended consequences, where such reform increases clarity and certainty for taxpayers and their advisers. We welcome that HMRC states that the existing legislative provisions in items 9 & 10 of Group 5, Schedule 9 to the VAT Act 1994 will remain embedded within any new legislation as this provides certainty for affected taxpayers.
- 1.3 The CIOT would like any terms in the proposed principles to be clearly defined.
- 1.4 We are concerned that the proposed principles contain a reference to 'Undertakings for Collective Investment in Transferable Securities' as this term is currently defined by reference to EU legislation and guidelines.
- 1.5 Items 9 and 10 of Group 5, Schedule 9 to the VAT Act 1994 both contain the wording 'The management of...'; we would like the new legislation for the proposed principles to also include this wording.
- 1.6 The CIOT would defer to industry specialists as to whether the proposed principles are sufficient to keep abreast of new innovative products within the sector.
- 1.7 The CIOT would like to see HMRC's VAT forum for this sector, the Finance Liaison Group, restarted so that stakeholders in the group have the opportunity to form part of future engagement.
- 1.8 The CIOT would be happy to meet with HMT/HMRC representatives for further discussion, if required.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

3 Introduction

- 3.1 This consultation considers the proposals to codify both the current UK VAT exemptions and retained EU VAT law into the UK statute. There is no intention to change the current VAT liability of fund management services, only to improve the clarity and certainty of determining if a financial product meets the definition of a special investment fund (SIF). The management services of SIFs are exempt from VAT, but financial products and services not meeting the definition are taxable supplies.
- 3.2 Although the principal aim of the reform is to improve the UK statute, it is also envisaged that the reform will provide clarity for product providers who create new financial products as the reform will define a SIF via a set of legislative principles rather than a named list of products. The intention of this being that without the need to refer to case law or guidance the legislation will be future-proofed, as it is able to be used for sector evolution in creating new products.
- 3.3 As stated in paragraphs 2.2 and 2.3 of the consultation document, the criteria for a fund to be considered a SIF would be legislated for as follows:
- retain the list of exempt fund types in Items 9 and 10 of Group 5, Schedule 9 to the VAT Act 1994
 - add the criteria for a product to be defined as a SIF:
 - *the fund must be a collective investment;*
 - *the fund must operate on the principle of risk-spreading;*
 - *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*
 - *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*
 - remove the ‘State Supervision’ condition mentioned in the EU VAT Committees guidelines on SIF management services

3.4 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

4 Question 1 - Do you agree that the proposed approach to refine the UK law covering the VAT treatment of fund management achieves its stated aims?

- 4.1 Having a legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences, is a key objective of the CIOT. In principle, we welcome reform to improve legislative clarity and certainty, which in this case would be completed by codifying both the current UK VAT exemptions and retained EU VAT law into the UK statute. We note that the intention is that any reform would not change the current VAT liability of fund management services; this certainty is also welcomed.
- 4.2 We support the retention of the list of exempt fund types in Items 9 and 10 of Group 5, Schedule 9 to the VAT Act 1994 in order to provide certainty on the VAT liability of the management services of pre-existing SIFs within the revised legislation. We note however, that the proposed approach does not appear to achieve its aim to maintain the scope of the existing exemption as the proposals do not explicitly address the UK VAT treatment of the management of non-UK funds. Under the current legislation, the UK VAT exemption for fund management only applies to non-UK funds if they are 'actively marketed' to UK retail investors. There is no definition in the proposed approach of what constitutes 'actively marketed' and it would appear that this does not apply under the new principles based SIF definition. We consider therefore that the approach proposed would lead to additional uncertainty in the application of VAT law.
- 4.3 There are terms used in the proposed SIF criteria that should have definitions provided or refer to where the definition can be found if it is contained within a different area of statute: 'collective investment'; 'operate on the principle of risk-spreading'; 'retail investors'.
- 4.4 In the proposed criteria to define a SIF (set out at para 3.3 of this submission), it makes comparisons to 'Undertakings for Collective Investment in Transferable Securities' (UCITS). UCITS are defined in EU directive [2009/65/EC](#), and in HMRC's VAT manual, [VATFIN5100](#), it also refers to the EU directive and a 'community definition', hence the proposed legislation still binds UK statute to a definition of a product that is contained within EU law and the VAT Committee guidelines; this seems at odds with the aims of this project.
- 4.5 The CIOT would defer to the financial services sector to indicate whether the removal of the 'State Supervision' condition assists in defining what a SIF is, though in principle we would agree with removing from UK statute terms that are defined in the EU VAT Committee's guidelines on SIF management services.

- 4.6 Items 9 and 10 both contain the wording 'The management of...'; the new legislation for the proposed principles should also have this wording. We note that whilst the proposals seek to codify principles for defining what will be classed as a SIF for UK VAT purposes, the proposals do not appear to provide any greater clarity as to the definition of 'management' – a term essential to the interpretation and application of the exemption that is just as much subject to case law principles and associated guidance as the definition of a SIF that these proposals intend to address.
- 4.7 The CIOT would defer to industry specialists as to whether the proposed principles are sufficient to keep abreast of new innovative products within the sector. It does appear however, that binding the UK VAT definition of a SIF to EU legislation (Directive 2009/65/EC) and to other, non-tax, UK legislation (eg to the definition of a Collective Investment in section 235, FSMA 2000) could create future uncertainty in in the UK VAT treatment should these other pieces of legislation are amended or become subject to their own case-law developments.

5 Question 2 - Do the proposed legislative reforms present any issues for your business?

- 5.1 Whilst the CIOT is not affected itself by the proposals, our members are Chartered Tax Advisers so must be able to interpret the VAT legislation and provide tax advice upon which a business can rely, whether that advice is provided as an agent or as an in-house tax professional.
- 5.2 The CIOT is a stakeholder on HMRC's specialist VAT forum, the Finance Liaison Group, but as this forum has been dormant for quite some time, we have not been involved in the stakeholder engagement for this consultation thus far.
- 5.3 In order to determine the VAT liability of a SIF, a tax professional requires clarity and certainty in the VAT legislation. As set out in section 4 of our response, the CIOT raises its concerns on around the certainty of the proposed legislative conditions to define a SIF; where such concerns increase uncertainty this impacts the ability of a tax adviser to provide tax advice upon which a business can rely.

6 Question 3 - Do you currently rely on Items 9 and 10 of Group 5, schedule 9 of VATA or exempt any transactions using that law?

- 6.1 This question is not applicable to the CIOT itself as we do not make these supplies. Our members working in the VAT and financial services sector will have to advise on the VAT liability of such transactions, whether that be in practice supplying professional services to investment businesses who rely on Items 9 and 10; or, as an in-house VAT specialist for an investment business making such supplies.

7 Question 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?

- 7.1 The legal definition of 'collective investment' in Financial Services and Markets Act 2000 would need to be considered by a person or relevant body with relevant specialism in the investment business sector. As noted in our response at 4.7, additional challenges could arise in the interpretation and application of the VAT exemption in the event that FSMA 2000 is amended in the future with regards to the definition of 'collective

investment’ or in the event that litigation results in a body of case-law that affects the interpretation of the FSMA 2000 definition of ‘collective investment’.

8 Question 5 - If the answer to 4 is no, how might the government improve the definition to attain that aim?

8.1 The CIOT would not normally comment on definitions that are not within the tax legislation as they are outside of our technical knowledge. Ideally, however, we would wish to see a UK VAT definition, self-contained within the UK VAT legislation, used to help shape the principles that should be used to identify a SIF for UK VAT purposes. We consider that such an approach would offer greater certainty.

9 Question 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?

9.1 The CIOT would like to see HMRC’s VAT forum for this sector, the Finance Liaison Group, restarted so that those stakeholders can field their experienced representatives from the sector to be able to engage with further VAT modifications or future reforms.

9.2 We consider that further engagement is necessary to refine the proposed approach which, as it stands, could narrow the scope of the existing VAT exemption whilst also creating greater uncertainty for businesses and their advisors – contrary to the aim of the proposals.

10 Acknowledgement of submission

10.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

10 February 2023