

Foreign limited partnerships - treatment under Finance Act 1996, Sch9

Members and their advisers have, for some time, been concerned about whether funds which include in their structure limited partnerships that are formed under foreign law satisfy the definition of a "Collective Investment Scheme within the meaning of s.235 FSMA 2000". Following Finance Act 2003, this distinction has become important in some cases when determining, for investee companies, the point in time when a tax deduction is available for interest that rolls-up unpaid and for the accruing discount on deep discount securities.

The BVCA has agreed the text of the following clarification with the Inland Revenue:

Text to be inserted into and read in conjunction with paragraph 5881 of the Inland Revenue Corporate Finance Manual:

This exclusion [in respect of Collective Investment Schemes] was introduced to prevent paragraphs 2(1B) and 18(1)(b) [of Finance Act 1996] applying to loans made by particular types of limited partnership, "venture capital limited partnerships", to the companies in which they also invest by way of share capital (and so are participators in them).

Such partnerships operating in the UK are mostly formed under English or Scottish law, as limited partnerships established under the Limited Partnerships Act 1907. However some partnerships are formed under foreign law and concerns have been raised that these funds may not be collective investment schemes as that term is defined by section 235 Financial Services and Markets Act 2000 because some foreign limited partnerships may be capable of being regarded as, or have some characteristics of, a body corporate. Paragraph 21 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) (made under powers in section 235(5) FSMA) may exclude them, as it denies collective investment scheme status to a "body corporate other than an open-ended investment company".

Where any such venture capital limited partnership formed under foreign law is regarded as "transparent" for UK tax purposes, it will continue to be treated as a "limited partnership which is a collective investment scheme for the purposes of section 235 FSMA" in FA 1996 (ss 87, 87A and Sch 9 paras 2, 18 and 20). Tax Bulletin 50, "Entity Classification", includes details of limited partnerships the Revenue regards as "transparent".