



Alternative Investment Management Association

FIN 48

Note for AIMA Members

You are probably aware of FIN 48, 'Accounting for Uncertainty in Income Taxes', which affects all funds reporting under US GAAP, including subsidiaries of US companies, UK companies with a US listing or US listed debt.

In previous years, the Financial Accounting Standards Board (FASB) has voted to defer the effective date of FIN 48, for all non-public entities. There has been no such deferral this year, so that funds reporting under US GAAP with a year ended 31 December 2009 will need to apply the standard to that accounting period.

FIN 48 requires the directors of funds to follow three steps in establishing the tax benefits to be recognised in the accounts:

- Identification - determining the tax positions being held;
- Recognition - it must be more likely than not that the tax position will be sustainable upon examination by a tax authority; there is a presumption that every tax position will be examined and that all documentation, knowledge and support related to that position will be available to the examining authority; and
- Measurement - measurement is applied only after satisfying the 'more likely than not' element.

An uncertain tax position includes the decision as to whether or not to file a tax return in another jurisdiction. Therefore, the directors of a fund must both consider the residence status of the fund and determine whether the fund has any taxable presence through the creation of a 'permanent establishment' in any of the locations it operates in.

There may also be tax liabilities on investment returns, whether imposed as withholding taxes or by assessment. The territories listed below have been identified as potentially imposing tax on capital gains. This list is not exhaustive and there are often complexities in the way local rules are applied, particularly having regard to the nature of prime brokerage arrangements. Fund managers investing in these territories should seek their own tax advice if they have concerns about the fund's tax exposures.

- Austria
- Australia
- Brazil
- China
- Colombia
- Czech Republic
- Dominican Republic
- Ecuador
- France
- Germany
- Iceland
- India
- Indonesia
- Italy
- Kazakhstan
- Mexico
- Netherlands

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- New Zealand
- Panama
- Peru
- Poland
- Portugal
- Romania
- Spain
- Thailand
- Ukraine
- Uruguay
- Venezuela

Tax risk management has become a key issue for all funds and managers to consider in the operation of their business. The International Accounting Standards Boards (IASB) has issued an exposure draft to update IAS12, which introduces a similar reporting requirement to FIN 48 (albeit with a potentially more onerous measurement test). There is, therefore, increasing pressure on funds and managers - regardless of whether they are reporting under US GAAP or IAS - to ensure their tax risk is being managed. In addition, taxing authorities around the globe are becoming more sophisticated at highlighting circumstances where tax is not being paid. Given pressure to increase taxes and raise revenues, it is likely that, where unpaid tax is identified, tax authorities will seek payment. An example is the recent case of *Edgewater Estates*, where the Australian tax authority froze the assets of the fund until the relevant taxes had been paid.

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