Extra Information for New Zealand Investors -

Summary of FIF rules in New Zealand

We outline below a brief summary of New Zealand's foreign investment fund (FIF) rules for New Zealand tax resident investors in the registered managed investment schemes (Trilogy Managed Fund(s)) offered in New Zealand by Trilogy Funds Management Limited.

Please note that there are different tax considerations for New Zealand investors who hold between 10% and 50% in a foreign entity. This summary only applies to investors with a unitholding of less than 10% of the total units in the relevant Trilogy Managed Fund.

Our comments are general in nature and are based on current New Zealand tax law as at 3 May 2017. Tax law changes frequently, and its application is fact specific. We recommend that investors seek tax advice specific to their circumstances.

Application

The FIF rules apply to offshore equity investments held by New Zealand residents. A FIF includes amongst other investments: a share in a foreign company; units in a foreign unit trust (for example, a Trilogy Managed Fund).

A New Zealand resident investor in a Trilogy Managed Fund will be subject to tax under the FIF regime, unless one of the exemptions outlined below applies. The FIF rules, broadly, require New Zealand investors to pay tax on income accumulated in the underlying investments rather than simply on dividends or other cash repatriations from the investment. The rules achieve this by "attributing" income from the underlying investment, by way of a calculation.

If the FIF rules do not apply, there will be no attribution, and the New Zealand investors will be taxed on profits actually repatriated from the investments (i.e. on dividends).

Exemptions

The FIF rules will not apply if one of the following exemptions applies:

1. ***De minimis exemption for natural persons and certain trusts*** – where the total cost of the person's investments in all FIFs is $50,000 or less.
2. ***Australian unit trust exemption*** – if the Acacia Trust turns over a sufficient proportion (25%) of its investments (only profit-making assets) or distributes 70% or more of 'total distributable gains' each year. The "total distributable gains" is calculated using the following formula: "closing equity + distributions – opening equity – contributions made by investors to the trust".

   To meet the exemption, the Acacia Trust would need to distribute 70% or more of the amount that is calculated under the above formula (or alternatively meet the 25% turnover test). Trilogy Funds Management Limited as the responsible entity of the Trilogy Managed Funds should also deduct New Zealand resident withholding tax (RWT) from distributions made to investors who are not subject to the FIF regime.

   In practice, the exemption may be difficult to satisfy given unrealised amounts (including fair value gains) would not be distributed but are included in the above formula for determining "total distributable gains". Further, the exemption is not applied very often as the tests are generally difficult to meet, and Trilogy Funds Management Limited as the responsible entity of a Trilogy Managed Funds would also need to obtain information from investors to confirm whether they are subject to the FIF regime in relation to the withholding tax requirement.

FIF income attribution methods

If the FIF rules apply to the New Zealand investor's interest in a Trilogy Managed Funds, FIF income is calculated (attributed) using one of the following methods:

1. ***Fair dividend rate (FDR) method*** – FIF income is calculated as 5% of the market value of that particular investor's interest in a Trilogy Managed Fund at the beginning of the income year. Where an interest is bought and sold in the same income year, any gains arising will be treated as income under the FDR method.

   Where market value is not available or reasonably obtainable, in limited circumstances, the FDR method allows the use of original cost as the basis for calculation (refer to comments below).
2. ***Comparative value (CV) method*** – The investor is taxed on the total return from the investment. This method taxes the unrealised increase in value of the units, realised gains from the investment and dividends. Under the CV method, the calculation may result in a loss for an income year which would not result in tax to pay.

   The CV method can only be used by **natural persons or certain family trusts**. If the CV method is used it must be applied to all of the investor's FIF interests in an income year. If a loss arises under the CV method, the loss is limited to zero. Investors can switch between using FDR and CV from year to year.
3. ***Cost method*** – The investor is taxed on 5% of the opening (cost) value each year again adjusted for any interests bought and sold within that income year (as per the FDR method).

The cost method can only be used if the FDR method is allowed but is not practical to use because the market value of the person's interest in a Trilogy Managed Fund cannot be determined (other than by an independent valuation).

General considerations

- The income calculated under one of the FIF methods is the only income that is subject to tax for a FIF (i.e. dividends are not taxed separately).
- The same FIF method must be used for all FIFs of the same class (unless a method is not available for a FIF).
- A foreign tax credit may be claimed if foreign tax has been withheld from distributions made from a FIF (there are limitations in relation to the maximum credit allowed).
- The New Zealand tax residents will be required to file an income tax return to return the FIF income and submit a FIF disclosure form to Inland Revenue.
- There are specific rules relation to currency conversion when calculating FIF income or loss

Acacia Ridge Industrial Trust – Summary of FIF rules in New Zealand