

---

## private investment funds lawflash

April 9, 2012

### UK Tax Notices Issued in Connection with Investments in Private Equity Funds

*Penalty notices are being issued for failure to file a UK tax return, even where there is no obligation to file such a return.*

A number of non-UK investors recently have received from the UK tax authority, HM Revenue & Customs (HMRC), a penalty for failure to submit on time a tax return for the year ending April 2011.

This seems to be arising as a result of a glitch in HMRC's automated systems and is not indicative of any change in law in the UK. Under current tax law, non-UK investors who are not financial traders or insurers and who invest in a typical UK private equity fund should *not* be taxable in the UK in respect of such investment. One reason for this is that private equity funds generally do not carry on any trade in the UK, but rather conduct investment activities only. As a non-UK taxpayer, an investor in such a private equity fund should not be required to file a UK tax return. (There may be minor exceptions for certain UK source income in respect of which non-UK investors may be taxable in the UK, although most funds are structured to avoid such income arising directly to a non-UK investor.)

#### Background

Although non-UK resident investors are not taxable in the UK, a private equity fund that is structured as an English or Scottish limited partnership is required to complete a "partnership tax return." This is quite similar to the partnership return that U.S. partnerships are required to file, and it provides HMRC and taxpayers with the information needed to assess investors that are assessable to UK tax (e.g., certain UK residents).

The partnership tax return requires that each investor be identified by a unique taxpayer reference number (UTR) for UK tax purposes. Historically, it seems that returns were often filed with dummy UTRs for nonresident investors, but HMRC's current electronic filing requirements do not permit this. Some funds seem to have been able to obtain a UTR for each of their nonresident partners to enable them to submit the return.

Unfortunately, it seems as if HMRC's automated system is automatically assuming that each taxpayer with a UTR has a tax filing obligation. Because of this false assumption, if the taxpayer has failed to file a return, the system has automatically sent out a late filing penalty without having made any inquiry into whether the partner actually has any tax liability. In many cases, this penalty appears to be inappropriately imposed, as the investor in fact has no tax liability and no tax filing obligation. Sometimes the penalty notice identifies the fund in connection with which the UTR was issued, but sometimes it does not. It is entirely possible that investors with investments in more than one UK private equity fund will have been issued (without their knowledge) a separate UTR for each fund, and so may receive more than one penalty notice.

#### Implications

Those taxpayers with no filing obligations that receive a penalty notice should appeal (formally or informally) on the basis that the investor in question is not liable for UK taxes and is not required to file a UK tax return. We would be happy to assist with this process, which is quite straightforward. We also suggest that—to the extent it is possible to identify the relevant private equity fund for which the penalty is being assessed—the general partner

# Morgan Lewis

of the relevant fund be informed about what has occurred.

It may also make sense for some investors to apply for a fresh UTR, or to liaise with HMRC if they have been issued more than one UTR, with a view to rationalising it so that only one UTR remains.

Going forward, it makes sense for private fund investors to apply for and obtain a UTR. Although the practice does not yet seem to be universal, new English LP funds are increasingly asking investors to obtain a UTR for UK tax purposes. There is no prescribed form, and we would be happy to assist and advise on any application for a UTR, which is also a simple process.

## Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

### New York

Louis H. Singer	212.309.6603	<a href="mailto:lsinger@morganlewis.com">lsinger@morganlewis.com</a>
Georgette A. Schaefer	212.309.6607	<a href="mailto:gschaefer@morganlewis.com">gschaefer@morganlewis.com</a>
Jedd H. Wider	212.309.6605	<a href="mailto:jwider@morganlewis.com">jwider@morganlewis.com</a>

### San Francisco

Gary A. Herrmann	415.442.1380	<a href="mailto:gherrmann@morganlewis.com">gherrmann@morganlewis.com</a>
------------------	--------------	--

### London

E.S. Kate Habershon	+44 (0)20 3201 5560	<a href="mailto:khershon@morganlewis.com">khershon@morganlewis.com</a>
---------------------	---------------------	--

## About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived start-ups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2012 Morgan, Lewis & Bockius LLP. All Rights Reserved.