



July 18, 2022

Via Electronic Submission: investmentmanagerexemption@hmrc.gov.uk

Investment Manager Exemption Team
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Re: Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes

Managed Funds Association¹ (“MFA”) appreciates the opportunity to provide a response to Her Majesty’s Revenue and Customs (“HMRC” or “HM Revenue & Customs”) on the above-captioned consultation² regarding its intention to expand the Investment Transactions List (“ITL”) used for the purposes of the Investment Management Exemption (“IME”) to include cryptoassets.³ We write in support of the measure to expand the ITL to include certain types of cryptoassets for purposes of the IME.⁴ We believe that the measure would advance HMRC’s stated policy goals related to tax certainty and national competitiveness. We address each in turn.

I. Tax Certainty

We agree that expanding the ITL to include certain types of cryptoassets for purposes of the IME would “provide certainty of tax treatment to U.K. investment managers and their non-U.K. resident investors who are seeking to include cryptoassets within their portfolios.” As correctly noted, U.K. investment managers are unable to provide discretionary investment management services to offshore fund vehicles which are undertaking investment strategies involving trading spot cryptoassets without bringing such investments within the charge, and subjecting their non-U.K. resident investors, to U.K. tax. Instead, U.K. investment managers generally have limited such strategies to exchange-traded futures and options contracts on cryptoassets or otherwise have foregone the strategies altogether. As such, we do not expect the measure to result in a negative impact for the exchequer.

¹ Managed Funds Association (“MFA”) represents the global hedge fund and alternative asset management industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA’s more than 150 member firms collectively manage nearly \$2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, Brussels, London, and Asia. www.managedfunds.org.

² “Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes,” HM Revenue & Customs, <https://www.gov.uk/government/consultations/expanding-the-investment-transactions-list-for-the-investment-management-exemption-and-other-fund-tax-regimes/expanding-the-investment-transactions-list-for-the-investment-management-exemption-and-other-fund-tax-regimes> (last updated May 23, 2022)

³ We generically refer to “cryptocurrency,” “crypto,” “cryptoassets,” and “digital assets” interchangeably.

⁴ We further endorse the submission of Sidley Austin LLP, which addresses certain questions for which the consultation solicits responses.

In a survey of investment managers not currently invested in cryptoassets, “[r]egulatory and tax uncertainty continues to be the greatest barrier to investing (cited by 83% of respondents).”⁵ Likewise, among “[t]he top five challenges cited by hedge fund managers who currently invest in digital assets as being very significant or significant...[I]ack of regulatory and tax regime clarity (90%)” far surpasses other concerns.⁶ We believe that uncertainty regarding the status of trading spot cryptoassets under the IME and other comparable safe harbors is a substantial factor contributing to the prevailing view that tax uncertainty is the most significant barrier to investing in cryptoassets. Expanding the ITL to include certain types of cryptoassets for purposes of the IME would reduce tax uncertainty and encourage further investment in cryptoassets. Indeed, “[a]round a third of respondents not currently investing say that if the main barriers were to be removed, they would actively accelerate their involvement/investment in digital assets.”⁷

II. National Competitiveness

We equally agree that expanding the ITL to include certain types of cryptoassets for purposes of the IME would “encourage new cryptoasset investment management businesses to base themselves in the U.K.” As discussed further in the survey, the distribution of crypto-native investment managers located in the U.K. decreased year-over-year,⁸ with other highly developed nations, namely, the United States, offshore jurisdictions, and emerging nations accounting for the largest proportion of jurisdictions in which crypto-native investment managers are located.⁹ The authors of the report indicated that “the expectation is that these results would remain constant, unless particular governments or authorities enact policies that are more attractive (or restrictive) to crypto hedge funds and their respective managers.”¹⁰ We believe that expanding the ITL to include certain types of cryptoassets for purposes of the IME would encourage existing U.K. investment managers to adopt investment strategies in relation to cryptoassets and newly-formed crypto-native investment managers to locate in the U.K. We expect this measure to directly result in the retention and creation of highly qualified and compensated jobs located in the U.K. rather than other jurisdictions in which similarly expanded safe harbors may be considered.¹¹

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⁵ PricewaterhouseCoopers Ltd., “4rd Annual Global Crypto Hedge Fund Report,” at 3, 41, 49 (June 2022), <https://www.pwc.com/gx/en/financial-services/pdf/4th-annual-global-crypto-hedge-fund-report-june-2022.pdf>.

⁶ *Id.* at 46.

⁷ *Id.* at 41.

⁸ We note that, “[t]his year, the methodology for evaluating where investment teams are physically located changed slightly, and [survey administrators] limited each crypto hedge fund to choose a single answer instead of providing every location a manager may have been based throughout the year...This practice will...allow results to actually represent locations with pools of crypto hedge fund talent.” *Id.* at 34.

⁹ *Compare id. with* PricewaterhouseCoopers Ltd., “3rd Annual Global Crypto Hedge Fund Report,” at 32 (May 2021), [https://www.pwc.com/gx/en/financial-services/pdf/3rd-annual-pwc-elwood-aima-crypto-hedge-fund-report-may-2021\).pdf](https://www.pwc.com/gx/en/financial-services/pdf/3rd-annual-pwc-elwood-aima-crypto-hedge-fund-report-may-2021).pdf).

¹⁰ *Id.*

¹¹ We have requested that the United States Department of the Treasury and Internal Revenue Service prioritize comparable guidance. *See* Managed Funds Assoc., “Re: Notice 2022-21, Public Recommendations Invited on Items to be Included on the 2022-2023 Priority Guidance Plan” (June 3, 2022), https://downloads.regulations.gov/IRS-2022-0007-0085/attachment_1.pdf.

Although the path to enactment is uncertain, we note that Members of Congress similarly have given thought to legislatively expanding comparable safe harbors. For example, on June 7, 2022, bi-partisan co-sponsors introduced the “Lummis-Gillibrand Responsible Financial Innovation Act,” which would expand the Section 864(b) trading safe harbors to include “digital assets,” defined as “a natively electronic asset that—(i) confers economic, proprietary, or access rights or powers; and (ii) is recorded using cryptographically secured distributed ledger technology or any similar analogue...” S.4356, 117th Cong. (2022).

We appreciate the opportunity to submit a consultation response to HMRC, and we would be pleased to meet with the Investment Manager Exemption Team to discuss our comments. We also welcome the opportunity to discuss our views on related issues including, among others, whether certain yield-generating activities in relation to cryptoassets (*e.g.*, staking, liquidity mining, yield farming) should be in scope of the IME. If the Investment Manager Exemption Team have questions or comments, please do not hesitate to contact Joseph Schwartz, Director and Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Jennifer W. Han

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