

# FIN 48

Accounting for Uncertainty in Income Taxes:  
Impact on Alternative Investment Funds -  
2009 Update

# FIN 48 - Accounting for Uncertainty in Income Taxes: Impact on Alternative Investment Funds - 2009 Update

*This publication is a general outline. It should not be relied upon for purposes of structuring transactions or making investments. Every taxpayer has a unique set of facts and circumstances and there is no substitute for a complete analysis of the relevant tax laws in each applicable jurisdiction and all other relevant considerations that are applicable to the taxpayer's particular situation.*

*In order to comply with U.S. Treasury Regulations governing tax practice (known as "Circular 230"), you are hereby advised that any tax advice provided herein was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (i) avoiding U.S.*

*federal, state or local tax penalties, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed therein.*

## I. FIN 48 Background

FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes (FIN 48<sup>1</sup>), was issued in July 2006. FIN 48 is an interpretation of FASB Statement No. 109, Accounting for Income Taxes, and is intended to reduce the diversity of practice in financial accounting for income taxes. As a result of a series of deferrals, FIN 48 is effective for private investment funds for years beginning after December 15, 2008. For funds with December 31 year ends, FIN 48 must be

adopted for the year ending December 31, 2009, with any impact reflected in the first net asset value (NAV) calculation of the year.

FIN 48 applies to uncertain tax positions taken with respect to income-based taxes. For funds, this includes positions taken with respect to federal income and excise, state, local and foreign taxes. It also includes positions taken on returns in all open tax years.

FIN 48 needs to be addressed in all U.S. GAAP financial statements for domestic and offshore funds as well as management companies. FIN 48 specifically states that it applies to pass-through entities, such as limited partnerships, even though they are not typically subject to entity-level income tax<sup>2</sup>.

<sup>1</sup> As a result of the FASB Accounting Standards Codification project, this subject is now classified under Income Taxes (Topic 740). For purposes of this whitepaper we will use the pre-codification citation ("FIN 48").

<sup>2</sup> In September 2009, the FASB issued Accounting Standards Update No. 2009-06 (ASU 2009-06) which provides guidance for pass-through entities under FIN 48. The most important aspect of the ASU, as it relates to the alternative investment fund industry, is the concept of attributing most withholding taxes to the owners of a pass-through entity as opposed to the pass-through entity itself, thereby removing them from the scope of FIN 48. An example would be where a domestic fund organized as a partnership has to withhold U. S. taxes on its foreign partners' share of certain U.S. dividends. The proper accounting treatment is to record the withholding as a transaction with owners (i.e., a distribution to pay taxes as opposed to tax expense). The result of this treatment is that any uncertainty surrounding whether the fund is liable for the withholding tax would be resolved under Statement of Financial Accounting Standards No. 5 (FAS 5), not FIN 48. Therefore, the more onerous "more likely than not" standard would not apply and a reduction in net asset value (NAV) is less likely under a FAS 5 analysis.

FIN 48 involves a two-step process:

Step 1 – Determine whether a tax position has met the “more-likely-than-not” (MLTN) recognition threshold. For this purpose, MLTN means a greater than 50% chance that a taxpayer will sustain a tax benefit from a tax position.

Step 2 – Measuring a tax position that meets the MLTN recognition threshold. This means the largest amount of benefit that is MLTN to be realized upon settlement. For most FIN 48 issues that will arise for alternative investment funds, we expect that the benefit recognized will either be 100%, if the MLTN standard has been met, or 0%, if the MLTN standard has not been met. The measurement prong is not likely to be of great significance because it was designed to address FIN 48 issues in which there is a range of possible outcomes based on settlement with the relevant tax authorities (e.g., transfer pricing issues).

In assessing the MLTN recognition threshold, a fund must assume the position will be examined by the relevant taxing authority with all relevant knowledge. The technical merits of a position must be assessed with respect to applicable statutes, regulations, rulings, case law, etc. A fund’s settlement history with a taxing authority will be considered during future examinations. However, most funds have not been the subject of significant audit activity, so, in practice, this is unlikely to come into play.

The FIN 48 process for funds involves consulting with auditors, tax advisors, and counsel in order to identify material uncertain tax positions. Once identified, these positions need to be documented. From there, they must be evaluated, measured, and possibly disclosed on the fund’s financial statements. If the MLTN standard is not met, a tax liability must be recorded, reducing the fund’s NAV.

## II. Common Areas of Concern To Alternative Investment Funds

### A. Use of Swaps To Avoid U.S. Withholding Tax on Dividends

By way of background, dividends paid by a U.S. corporation to a foreign shareholder are generally subject to a 30% U.S. withholding tax (or lower treaty rate if applicable). For example, if an offshore fund domiciled in the Cayman Islands receives a dividend from a U.S. corporation, the prime broker will withhold the 30% tax.

The withholding is required because dividends are sourced by reference to the payer. Thus, dividends are considered U.S. source when paid by U.S. corporations.

In contrast, income from a swap is generally sourced by reference to the residence of the recipient. Thus, dividend

equivalent payments under a total return swap are generally considered foreign source when received by a foreign entity (e.g., an offshore fund domiciled in the Cayman Islands). See Treas. Reg. §1.863-7.

Offshore funds that own U.S. dividend-paying stocks, therefore, have a tax incentive to invest in U.S. dividend-paying equities synthetically, via a total return swap, rather than directly. Note that there may be significant non-tax related reasons for doing so as well (e.g., to obtain additional leverage).

Offshore funds that have never owned the underlying stock are less likely to face a challenge by the IRS. On the other hand, the Obama administration and Congress have expressed concerns about transactions where the offshore fund sells the stock to the counterparty shortly before the dividend date, enters a total return swap over the dividend date, then repurchases the stock shortly thereafter. In those situations, the IRS could assert that the swap should be ignored or that the transaction is essentially a repurchase agreement, which would cause the dividend-equivalent payments to be subject to U.S. withholding.

If the IRS were successful, the prime brokers and investment banks that were counterparties on the transactions would likely be primarily liable as withholding agents. However, the IRS may assert that both parties are liable. Alternatively,

depending on the terms of the swap agreement, the counterparty could seek reimbursement from the offshore fund.

## B. Publicly Traded Partnership Status

Investment partnerships are typically not subject to entity-level federal income taxes. However, if an investment partnership is classified as a publicly traded partnership (PTP) under § 7704(a) of the Internal Revenue Code, it could be taxed as a corporation for federal income tax purposes, at rates as high as 35%. There are several safe harbors and exceptions in the regulations (§1.7704-1) that can allow investment partnerships to avoid this result.

A partnership is a PTP if the partnership interests are traded on an established securities market (ESM) or if the partnership interests are readily tradable on a secondary market (SM) or substantial equivalent thereof. An investment partnership that violates either of these trading limitations can still avoid PTP treatment if 90% or more of the partnership's gross income consists of "qualifying income" for the current taxable year and each preceding taxable year.

### Established Securities Markets

An ESM includes:

- A national securities exchange registered under the Securities Exchange Act of 1934;
- A national securities exchange exempt from registration due to the limited volume of transactions;
- A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies similar regulatory requirements to the above;
- A regional or local exchange;
- An interdealer quotation system.

The ESM rule is not a significant issue for most investment partnerships since it requires involvement of the partnership. Involvement occurs if the partnership (i) participates in the establishment of the market or inclusion of its interest thereon or (ii) recognizes any transfers made on the market by either redeeming the transferor partner or admitting the transferee partner.

### Secondary Markets

In practice, the SM rule creates more significant issues for investment partnerships. An SM exists when its members are readily able to buy, sell or exchange their partnership interest in a manner that is comparable, economically, to trading on an established securities market. For this purpose, a sale includes a redemption, and this is where most of the PTP issues tend to arise for investment partnerships.

A provision that allows the general partner to refuse consent to the transfer of an interest in the partnership is not alone sufficient to prevent a partnership from being considered publicly traded.

Multiple safe harbors exist under the SM rule, and the more relevant ones are summarized here.

### Secondary Market - Private Placement Safe Harbor

Interests in an investment partnership will not be considered readily tradable on an SM if all interests in the partnership were issued in a transaction that was not registered under the Securities Act of 1933 and the partnership does not have more than 100 partners (e.g., a 3(c)(1) fund).

A fund must "look through" a flow-through investor entity and count each of the underlying beneficial owners against the 100 investor count limitation if substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow through entity's interest in the partnership *and* the principle purpose of the use of the tiered arrangement is to permit the partnership to satisfy the 100 partner limitation. Note that the look-through rule would not apply to a typical offshore feeder corporation.

## Secondary Market -

### 2% De Minimis Safe Harbor

Under this exception, transfers are disregarded for purposes of determining whether an SM exists if the sum of the percentage interests in partnership capital or profits represented by partnership transfers during the taxable year does not exceed 2% of the total interest in partnership capital or profits. For purposes of this exception certain transfers and redemptions are not counted, for example:

- Transfers between family members;
- Transfers at death;
- Transfers involving the issuance of interests by the partnership;
- Transfers pursuant to a right under a redemption or repurchase agreement that is exercisable only upon the death, disability or mental incompetence of the partner;
- Transfers by one or more partners of interests representing in the aggregate 50% or more of the total interests in partnership capital and profits in one transaction or a series of related transactions;
- Transfers with a carryover basis;
- Redemptions meeting detailed requirements such as 60-day notice period; and
- Transfers through qualified matching services<sup>3</sup>.

### Qualifying Income Exception

Even if the partnership violates the ESM or SM rules, § 7704(c) allows the partnership to avoid corporate treatment if at least 90% of its gross income consists of qualifying income. Qualifying income includes the following passive-type income:

- Interest (not including interest derived from loan origination);
- Dividends;
- Real property rents;
- Gain from the sale or other disposition of real property;
- Gains from the sale or other disposition of stock or securities or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies;
- Income and gains from commodities or futures, forwards and options with respect to commodities, where a principal activity of the partnership is the buying and selling of such items;
- Payments with respect to securities loans;
- Income from swaps (if the underlying notional asset would, itself, give rise to qualifying income); and
- Income and gains from certain mineral and natural resource mining and production.

Investment partnerships that are registered under the Investment Company Act of 1940 generally cannot utilize the qualifying income exception.

### Conclusion

Investment partnerships need to monitor compliance with the PTP rules with their counsel and tax advisors. While most investment partnerships should satisfy the 90% qualifying income test, as investment opportunities become more esoteric and stray from traditional stocks and securities, satisfying that test could become more difficult. Generally, activities such as loan origination are outside the scope of the exception.

## C. Loan Origination Activities

### Background

Offshore funds that engage in lending activities that constitute an active financing business are subject to U.S. federal and state income tax, as well as the federal branch profits tax, which can result in an effective tax rate of nearly 60%<sup>4</sup>. On the other hand, offshore funds that merely acquire an interest in an existing outstanding loan generally escape taxation altogether on the income from such loans if the fund did not participate in the loan origination process.

<sup>3</sup> As a result of recent liquidity issues that caused many funds to suspend redemptions, an active secondary market has developed. In addition to existing secondary market makers, some fund managers have hired investment banks to run auctions for investors seeking to sell their interests. These auctions are generally structured to comply with the regulations governing qualified matching services.

<sup>4</sup> This assumes the offshore fund is formed as a corporation in a non-treaty jurisdiction such as the Cayman Islands.

## “Season and Sell”

So-called “season and sell” transactions involve the purchase of loans originated by the domestic affiliate fund of an offshore fund, where the domestic and offshore funds are managed by the same investment manager. These loans would not qualify for the securities trading safe harbor of § 864(b) if the offshore fund is considered to be engaged in an active financing business. See Treas. Reg. §1.864-4 and *InverWorld, Inc. vs. Commissioner*, 71 T.C.M.3231 (1996). However, since loans and notes are “securities” for purposes of the securities trading safe harbor, the acquisition of such loans by the offshore fund may not give rise to effectively connected income if the activities of the domestic fund are not attributed to the offshore fund. Moreover, in that case, the interest received on such loans will generally be exempt from U.S. withholding tax.

If the domestic fund is viewed as an agent of the offshore fund, the latter will be treated as engaged in an active financing business and will be subject to federal income, state income and branch profits tax on the income derived from the loans originated<sup>5</sup>. Since offshore funds normally do not file U.S. tax returns (e.g., Form 1120F), the statute of limitations period never begins and all tax years are open for assessment.

The standards to be followed to avoid the domestic fund being treated as an agent

of the offshore fund are unclear. The New York City Bar report on loan origination (May 2007) expressly did not recommend safe-harbor standards for purchase of affiliate loans.

In some cases, the offshore fund’s purchases of loans originated by the domestic fund are structured so that they are acquired through an independent officer (the “Loan Acquisition Officer”) of the offshore fund with true decision making authority. Any funds employing this or similar techniques should obtain a tax opinion from counsel that is updated annually. The representations that may form a part of such opinion and which would need to be reviewed by the fund’s auditors include the following (not all inclusive):

- The Loan Acquisition Officer is competent to evaluate the acquisition of loans and is competent and experienced in credit analysis;
- The Loan Acquisition Officer receives an appropriate level of compensation consistent with a part-time senior loan officer of an equivalent financial institution;
- No officer, member or affiliate of the investment manager is a director or employee of the offshore fund;
- The investment authority of the offshore fund with respect to the purchase of loans from the domestic

fund is solely exercised by the Loan Acquisition Officer;

- The loans are sold at fair market value from the domestic fund to the offshore fund;
- There is a delay between the origination of the loan by the domestic fund and its purchase by the offshore fund. The delay could be a function of the term of the loan and should be sufficient to establish that the domestic fund bore some market risk with respect to the loans which it originated prior to the sale of such loans;
- In certain circumstances, the offshore fund will not have a Loan Acquisition Officer but will purchase loans from the domestic fund after a significant time delay (e.g., 90 days to six months) at a fair market value price determined by an independent appraisal. The theory is that since the price of the loans may reflect significant market movements, such a transaction demonstrates that the purchase by the domestic fund was not as an agent on behalf of the offshore fund;
- The domestic fund demonstrates that it had the economic capacity to retain the loans it originated rather than sell them to the offshore fund;
- The offshore fund maintains a level of its assets in assets other than loans which it has acquired from the domestic fund; and

<sup>5</sup> A recent memorandum issued by the IRS Chief Counsel’s Office (AM2009-010) attributed the activities and office of an origination company to an offshore entity under an agency analysis. As a result, the interest income related to loan origination activities was considered effectively connected with an active financing business in the U.S.

- The offshore fund rejects certain loans that the domestic fund presents to it for purchase. If the offshore fund routinely purchases all loans which it is offered by the domestic fund, the IRS may assert that the domestic fund is an agent who has the authority to bind the offshore fund to execute the loans which, in form, are purchased by the offshore fund. Such an agency relationship would cause the offshore fund to be treated as if it were engaged in a U.S. trade or business.

It has been suggested that an offshore fund could enter into total return swap transactions with respect to loans originated by banks as part of the banks' ordinary course of business. However, the implementation of such transactions may raise a number of issues. Specifically, the offshore fund will often wish to participate in the negotiation of the bank loans which raises a number of issues as to whether the bank will be treated as the agent of the offshore fund. Accordingly, these transactions may not achieve the intended objective of avoiding U.S. trade or business status for the loans which are subject to the total return swap to offshore fund.

## D. Other Common Areas of Concern

### U.S. Withholding Tax Exposure

Investments in U.S. securities by foreign investors raise several potential FIN 48 issues, for example:

- Portfolio Interest Exemption – May not be available if fund owns 10% equity interest in the issuer, treating the convertible debt as if it were converted into equity.
- Dividend withholding – Treatment of pre-merger dividends is unclear; See also discussion above regarding use of swaps.

### Permanent Establishment Risk

#### Related To Foreign Offices/Activities

Activities of a manager or their agent (e.g., a subadvisor) outside the U.S. may cause the offshore fund to be subject to foreign income tax and filing requirements related to its trading activities overseas. It is, therefore, critically important to understand what, if any, activities the manager and/or their agent(s) are performing outside the U.S. in order to assess possible foreign tax exposure.

### Publicly Traded Partnership

#### Investments

Publicly Traded Partnership (PTP) and Master Limited Partnership (MLP) investments tend to generate effectively connected income (ECI) and state-sourced income and could cause FIN 48 issues for offshore funds as well as domestic funds.

Total return swaps on these types of entities, or similar arrangements (e.g., swaps on private partnerships or hedge funds), should be reviewed by counsel in light of the constructive ownership rules.

### Other Investments Which May Require Additional Analysis

- Real Estate – Could cause an offshore fund to be subject to U.S. taxation under the Foreign Investment in Real Property Tax (FIRPTA) rules or foreign taxation under similar foreign rules related to real estate holding companies.
- Natural Resources (ECI/FIRPTA)
- Real Estate Investment Trusts (REITs)

### New York State and City Taxes

The self-trading exemption from the NYC Unincorporated Business Tax is unavailable if less than 90% of a partnership's income is from specified property. Loan origination income is not "good" income for the 90% test and could also cause the partnership to have New York State withholding obligations with respect to non-resident partners.

If an offshore fund formed as a corporation engages in loan origination, it could be subject to New York State and City corporate tax, including the capital base tax.

Other state and local jurisdiction also impose entity level income and withholding taxes such as California, Connecticut, New Jersey and Texas. These states often have very specific, technical requirements that need to be met in order for a fund to qualify for exemption. •

## APPENDIX

## Appendix I Frequently Asked Questions\*

### **What are some of the U.S. and foreign tax considerations where FIN 48 could affect offshore alternative investment funds?**

Since many offshore funds do not file tax returns (e.g., Form 1120F or state returns), the statute of limitations has not begun. Therefore, all tax positions for all years may be subject to examination and interest and penalties on underpayment of tax may need to be accrued. Funds should consider their individual facts and circumstances and determine whether filing “protective” tax returns in order to start the running of the statute and preserve the ability to deduct expenses is appropriate. Exposures may arise where entities organized in tax-advantaged jurisdictions take certain tax positions regarding availability of a treaty, thereby minimizing taxes (i.e., cross-border treaty structures).

A fund’s operations may be taxed in a jurisdiction by virtue of having an office or agent in that locale (i.e., a subadvisor) commonly known as “permanent establishment” risk.

Foreign tax on foreign trading activities such as dividends, interest and capital gains should be assessed and measured both on a paid and accrued basis.

Countries that impose capital gains tax on nonresidents that trade in listed securities include Australia, Brazil, China, Czech Republic, Germany, India, Italy, Poland, Portugal and Spain. Please refer to Appendix 2 - Summary of Worldwide Taxation.

### **What are some of the state and local income tax considerations where FIN 48 could affect alternative investment funds?**

Funds may have a “nexus” to particular states or cities that could subject them to entity-level income tax. One example is the New York City unincorporated business tax on non-trading protected investments.

Many domestic vehicles may not file in a particular state until a minimum threshold of income is reached. In addition, some states require filing if a fund has resident partners. This may create filing penalties. While such penalties are not necessarily a FIN 48 exposure, they are penalties resulting from non-tax filings that should be considered and assessed independently.

### **What are some of the portfolio activity considerations where FIN 48 could affect alternative investment funds?**

- Activities that may not be covered under the trading “safe-harbor,” including, but not limited to, loan origination and real estate activities;
- Certain swap transactions;
- Fees (e.g., consent) and other

ordinary income which may be subject to 30% gross income tax;

- Tax on foreign trading activities such as dividends, interest and capital gains;
- Investments in flow-through entities, such as publicly traded partnerships;
- Offshore funds also should ensure that interest payments received on U.S. debt or loans satisfy the exception to 30% withholding tax otherwise known as “portfolio interest.”

### **Why are these certain portfolio activities significantly affected by FIN 48?**

Offshore funds may be significantly affected by FIN 48 because they usually do not file U.S. tax returns. They will not be protected by the statute of limitations. All tax positions from all years are open to IRS review and could be subject to interest and penalties from underpayment of taxes owed. These liabilities will have to be assessed and accrued. Foreign trading activities should be assessed and have their tax liabilities measured and accrued.

Also, the offshore fund may be liable for taxes in jurisdictions in which they have an office or agent. FIN 48 will require that a fund’s management reaffirm or otherwise determine that no income-based taxes need to be accrued under U.S. GAAP in financial statements and reflected in the computation of periodic NAVs.

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**What is an example of a specific compliance measure that should be implemented for alternative investment funds in light of FIN 48?**

Both pass-through and non-pass through funds should ensure that properly executed withholding forms (Forms W-8, W-9) are on file with counterparties. Please note that a W-8 that was provided to a pass-through fund from a foreign partner, or was prepared by an offshore fund, without providing a U.S. Taxpayer Identification Number is in general only valid for three years. They should also ensure that check-the-box elections (Form 8832) are properly executed and filed.

Please note that overall tax compliance should be monitored carefully for all funds, even if the particular compliance issue is not within the scope of FIN 48. Some examples: tax shelter reporting (Form 8886), reporting transfers to and ownership of foreign entities (Forms 5471, 926, 8621, and 8865), and withholding on foreign partners (Form 1042, 8804 as well as various state withholding forms).

**For a domestic fund of funds, which generally does not have an entity-level tax liability, are there reporting obligations to investors with respect to any tax positions under FIN 48?**

Yes, certain positions may relate to questions about whether a domestic fund itself is, or is not, a publicly traded

partnership (which would result in the fund being taxed as a corporation). See detailed discussion above.

FIN 48 accruals related to underlying fund tax issues will likely be reflected in the reported NAV of the underlying fund. However, if an underlying fund has not adopted FIN 48 (e.g., if they report under IFRS), a fund of funds may need to adopt alternative procedures related to uncertain tax positions at the underlying fund level.

**Should so-called blocker entities be evaluated as part of the alternative investment fund structure?**

“Blockers” that are used to hold certain investments should be assessed under FAS 109/FIN 48. While such blockers will be subject to tax on a current basis, such holdings also should take into account deferred taxes on a fair market value basis. This could result in the reporting of an income tax liability at the fund level if the blocker is consolidated from a GAAP perspective.

**Are there any other business concerns regarding FIN 48’s affect on alternative investment funds?**

A common concern is that FIN 48 may require funds to accrue liabilities that ultimately may not be paid (if, for example, the statute of limitations runs its course). As a result, there will be an impact to NAV both when the liability is recognized and

when it is derecognized. In an open-ended fund, the owners and/or their ownership percentages likely will change, and this may have benefits or detriments for certain investors, depending upon their entry and exit.

Unlike operating companies, which present financial information on a quarterly basis, open-end funds must calculate and report their NAV on a monthly basis.

**With respect to alternative investment funds, what is one of the best approaches to evaluating measurement as part of the process required by FIN 48?**

On a practical level, the approach for evaluating measurement will be difficult in light of the lack of settlement history to use as precedent for many tax positions. Funds need to assess all material open positions for all open years in all tax jurisdictions as of the adoption date and determine the appropriate amount of tax benefits or liabilities that are recognizable under FIN 48. Any difference between the amounts previously recognized and the benefit or liability determined under FIN 48, including changes in accrued interest and penalties, has to be recorded through a direct charge to retained earnings on the date of adoption.

For funds of all types, adoption is

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considered to be required as of the first computation of NAV in the year of adoption. The requirement to assess all material uncertain positions against the recognition threshold and subsequent measurement of the qualifying tax impact will increase the focus on the reasonableness of conclusions and the reliability of applied processes.

### **What are some of the issues that fund management needs to address in adopting and applying the provisions of FIN 48?**

Questions that fund management needs to address include:

- How is management ensuring that all material positions are identified and assessed?
- How is management ensuring appropriate monitoring of such positions in subsequent periods?
- How is management identifying and processing relevant new information that could change a judgment about the sustainability of a position or the measurement of a tax benefit?

Another matter of concern for many companies is the level of effort and documentation that will be required as part of the recognition and measurement process under FIN 48. Due to the large number of possible exposures and the number of relevant taxing authorities, it is very difficult to develop applicable guidance. Fund management will need to

provide its auditors with an assessment of all material uncertain tax positions.

A final significant area of concern is the amount of effort required to assess and evaluate existing exposures in open years for transition purposes. Funds' tax specialists will likely be required to re-review all open tax returns and underlying workpapers to identify, catalog and evaluate their uncertainties—in effect, to build a tracking record from scratch in a matter of months. Therefore, the analysis of open tax years is required to begin almost immediately for fund families of any size or complexity.

### **What can fund managers do now to be prepared for the application of the provisions of FIN 48 to the alternative investment funds they manage?**

In view of the increased demands posed by FIN 48, many firms may find it beneficial to conduct a top level reassessment of the sufficiency of the tax accounting and reporting resources policies and practices, systems, processes and controls. The assessment should incorporate tax considerations in respect to both the entity and any reporting for the entity's partners (Form K-1). Successful adoption of FIN 48 will depend on both an implementation plan and a sustainability plan.

A FIN 48 implementation plan should include the following components:

- Overall approach: decide how to approach the identification of positions to be evaluated and measured (i.e., bottom-up approach—line by line—vs. top-down approach—major uncertain positions). Generally speaking a top-down approach, designed to identify major uncertain tax positions, makes more sense for alternative investment funds.
- Incorporate a project management methodology and define the boundaries of the review (period to be covered and documents to be inspected).
- Resources assigned: determine the roles and responsibilities of internal parties; third parties and any special advisers and counsel.
- Task and timelines: compile an inventory of uncertain tax positions for the evaluation against the threshold criteria and the required timelines.
- Evaluations: outline the expected steps to be followed and considerations to be made in reviewing uncertain tax positions, obtaining required approval of determinations made, documenting positions taken.
- Documentation: determine the form and extent of the documentation that will be necessary for management to establish that a FIN 48 evaluation was sufficient.

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- Communications protocols:  
determine the manner in which senior management and fund directors, if any, are to be regularly apprised of work completed, filings made, and discussions conducted with the independent auditors.
  - Disclosures: inventory current tax related disclosures and evaluate their sufficiency for legal and financial reporting purposes.

A FIN 48 sustainability plan should address the means to support the evaluation and reporting requirements in this area on an ongoing and real-time basis, including periodically assessing:

- Whether new information (change in law, new regulations or guidance from a taxing authority) has become available that changes a prior determination for FIN 48 purposes;
- The implications of any new tax uncertainties.

If they have not done so already, fund management should immediately reach out to their auditors, tax advisors and legal counsel regarding FIN 48 and the impact it will have on their fund.

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## Appendix II

Summary Of Worldwide Taxation Of Income and Gains Derived From Listed Securities (Last Updated On November 17, 2009)

### LEGAL DISCLAIMER:

*This chart is a general summary of the foreign tax rates that currently apply with respect to income and gains derived from marketable securities. This chart was not designed to cover the complexities of each taxpayer's particular circumstances, nor was it designed to address all of the particular nuances and exceptions that may apply under the laws of each country. In addition, please note that some of the information in this chart is still under review by foreign tax advisors for accuracy and foreign tax laws are always subject to change. Accordingly, some of the information contained in this chart may be inaccurate or out of date. While this chart may provide a useful starting point for assessing foreign tax consequences, it should not be relied upon without checking with a qualified local tax advisor to determine the most current tax treatment that applies to a taxpayer's particular situation.*

### Assumptions and Additional Notes:

- 1) Except where otherwise noted, this chart does not reflect the foreign tax rates that may apply on income or gains derived from a privately-held (non-public) foreign company.
- 2) The chart assumes that the investing entity provides all required documentation to the portfolio company and/or the local tax authorities to certify its tax residency status.
- 3) Reduced dividend withholding rates for "substantial shareholdings" (typically ownership of 10% or more of portfolio company's share capital) are assumed not to apply.
- 4) Capital gains tax exemptions referred to in this chart may not apply if a majority of the portfolio company's assets consist of real estate.
- 5) For purposes of performing an analysis of FIN 48 exposure, it may be necessary to determine the foreign tax rates that applied in prior years. This chart reflects only current rates.
- 6) This chart does not account for the possibility that all or a portion of any cash distribution may be considered a nontaxable return of capital under local laws.
- 7) Certain countries have exceptions to otherwise applicable capital gains tax exemptions for shareholders owning a significant percentage of the portfolio company's share capital.
- 8) This chart does not address other applicable transaction taxes applied to the gross value of the transfer that are not considered income taxes for FIN 48 purposes.
- 9) It is assumed that the investing entity does not carry on a trade or business through a permanent establishment in the country where the portfolio company is organized.
- 10) For withholding tax purposes, some countries may not apply "look-through" treatment to a Cayman Islands "master" fund that is treated as a partnership for U.S. tax purposes.
- 11) Local laws in some countries that impose capital gains tax on nonresidents may not address the treatment of short positions.
- 12) Swaps and other derivative transactions may need to be examined on a case-by-case basis in each jurisdiction, considering local anti-abuse provisions and/or case law.

## ARGENTINA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	No	N/A	Capital gains derived by nonresidents from the sale of shares, bonds, and other securities are exempt from Argentine income tax.
Dividends	0% or 35%		N/A	Dividends paid to nonresidents are generally exempt from Argentine withholding tax. However, withholding at the Argentine domestic tax rate (35%) applies on the portion of dividends distributed in excess of the payor's accumulated taxable income.
Interest	Exempt / 35% / or 15%		N/A	Nonresidents are exempt from Argentine withholding tax on interest from government bonds and corporate bonds issued through a public placement. Interest arising from privately placed debt instruments is generally subject to 35% withholding tax, although this rate may be reduced to 15.05% in certain circumstances (e.g., if the borrower is a financial institution).

## AUSTRALIA

Capital Gains	30%	Yes	Exempt	In a 2004 ruling, the ATO took the position that a nonresident company that regularly buys and sells shares and options listed on the Australian stock exchange through an Australian resident stockbroker was subject to tax in Australia on its profits at the domestic tax rate of 30%.
Dividends	Exempt or 30%		Exempt or 15%	Dividends paid by an Australian corporation to a nonresident out of earnings that were previously subject to Australian corporate tax ("franked" dividends) are exempt from Australian dividend withholding tax, whereas dividends paid to a nonresident out of earnings that were not previously subject to Australian tax (i.e., "unfranked" dividends) are subject to Australian dividend withholding tax at 30% or, if applicable, a lower treaty rate.
Interest	10%		No Relief	

## AUSTRIA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident A Cayman Islands Limited Company	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt or 25%	Yes	Exempt	Capital gains derived by nonresidents from the sale of debt instruments are exempt from tax. Capital gains from the sale of shares are generally exempt from tax. However, if the nonresident owned at least 1% of the share capital of the issuer at any time during the previous 5 years, capital gains are taxed at a 25% rate.
Dividends	25%		15%	
Interest	0%		0%	Interest on most bonds is exempt from tax if the holder provides documentation certifying nonresident status. A 25% withholding tax may apply to interest on bank deposits and certain other debt obligations.

## BELGIUM

Capital Gains	None	Yes	N/A	Capital gains derived by a nonresident from the sale of equity and debt securities issued by a Belgian company are generally not subject to tax in Belgium.
Dividends	25%		15%	
Interest	15% or Exempt		15% or Exempt	The 15% non-treaty rate generally applies to bonds issued on or after March 1, 1990. Prior to such time, the rate was 25%. Interest on deposits with resident banks and interest on registered debt securities are exempt from withholding tax.

## BRAZIL

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	15%	No	N/A	The 15% rate applies to gain from the sale of equities derived by a shareholder organized in a country that is considered a “blacklisted” country, which includes such tax haven countries as the Cayman Islands. For fixed income securities, the tax rate on capital gains ranges from 15% to 22.5% depending on the holding period. To the extent capital gains tax is due, it is required to be withheld at the source by the broker on a monthly basis. Funds with significant trading in Brazilian securities should consider the capital gain/(loss) netting rules in Brazil, which generally allow capital losses to be carried forward indefinitely to offset subsequent capital gains, but do not permit capital losses to be carried back to offset prior capital gains and recoup previous tax paid.
Dividends	0%		N/A	
Interest	15%		N/A	

## BULGARIA

Capital Gains	Exempt	Yes	N/A	Capital gains from transactions with shares in public companies and traded rights in such shares realized on a regulated Bulgarian stock market are not subject to withholding tax.
Dividends	5%		No	Prior to January 1, 2008, the withholding rate on dividends was 7%.
Interest	15%		No	Interest income is defined to include capital gains from fixed income instruments.

## CANADA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt or 25%	Yes	Exempt	Nonresidents are subject to taxation in Canada on taxable capital gains (25% rate) arising from the disposition of “taxable Canadian property.” Taxable Canadian property includes, inter alia, shares of the capital stock of a public corporation if, at any time during the 5-year period immediately preceding the disposition, not less than 25% of the issued shares of any class of the corporation’s capital stock was owned by the nonresident shareholder. Even if treaty relief is available, a burdensome withholding / reclaim process may apply. Accordingly, consideration should be given to establishing a treaty-based (e.g., Luxembourg) holding company for Canadian private equity investments.
Dividends	25%		15%	
Interest	Exempt or 25%		Exempt (unrelated party) 2009 - 4% (related party) 2010 and after - 0% (related party)	Nonresidents are subject to a 25% withholding tax on interest unless the interest is either (i) “fully exempt interest” (e.g., government debt), or (ii) the interest is paid to a party with which the taxpayer is dealing at arm’s length (unrelated party).

## CHILE

Capital Gains	None	No	N/A	Gains from the sale of publicly traded Chilean stock acquired after April 19, 2001, are exempt. Otherwise, there is a 35% tax rate on capital gains.
Dividends	35%		N/A	
Interest	35% or 4%		N/A	A reduced 4% withholding tax is available with respect to interest derived from loans granted by foreign banks and financial institutions unrelated to the borrower.

## CHINA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	10% or Exempt (Uncertain)	Yes	No	When a foreign enterprise sells securities issued by a Chinese company, and the holding of the securities is not attributable to a PE situated in China of the foreign enterprise, a 10% withholding tax technically applies to such gains effective January 1, 2008. To date, the tax authorities have not enforced the withholding tax on gains derived by nonresident institutional investors (including QFIs). It is not presently clear whether enforcement of such withholding tax would apply on a retroactive or prospective basis. The tax situation in China is fluid and should be monitored for subsequent developments.
Dividends	A shrs - 10% or Exempt B shrs - 10% or Exempt H shrs - 10% or Exempt	Yes	10%	The withholding tax rate on dividends with non-treaty countries is 20%, but a temporary reduction to 10% in 2000 is still in effect. Dividends paid out of pre-2008 earnings are exempt from withholding tax.
Interest	10%	Yes	10%	The statutory is 20% but a temporary reduction to 10% is still in effect. Interest on government debt is exempt.

Country Where Portfolio Company Is Organized

## COLUMBIA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	No	N/A	
Dividends	33%		N/A	In general, dividends distributed on or after January 1, 2007, are not subject to withholding tax if they were paid out of profits that were subject to corporate tax.
Interest	33%		N/A	Interest payments paid to a tax haven resident are subject to withholding tax at the regular 33% corporate tax rate, unless the loan is registered with the Colombian Central Bank, in which case the interest is exempt from withholding tax.

Country Where Portfolio Company Is Organized

## CROATIA

Capital Gains	None	No	N/A	
Dividends	15%		N/A	
Interest	Exempt		N/A	

Country Where Portfolio Company Is Organized

## CZECH REPUBLIC

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	20%	Yes	Exempt	
Dividends	15%		15%	
Interest	15%		Exempt	

Country Where Portfolio Company Is Organized

## DENMARK

Capital Gains	None	Yes	N/A	
Dividends	28%		15%	
Interest	Exempt		0%	

Country Where Portfolio Company Is Organized

## DUBAI

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	No	N/A	
Dividends	None		N/A	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## EGYPT

Capital Gains	Exempt	Yes	N/A	
Dividends	Exempt		N/A	Dividend income received from Egyptian companies is exempt from any withholding tax.
Interest	20% or Exempt		15%	An exemption from withholding tax may apply for certain types of interest, including interest on government bonds, interest on bonds issued by Egyptian joint stock companies that are registered with the Egyptian Stock Exchange (ESE), and bonds issued by certain banks owned by the public sector that are used to finance public projects in Egypt. Interest on debt securities with a term of less than 3 years is subject to withholding tax at the 20% rate.

Country Where Portfolio Company Is Organized

## ESTONIA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	None		15%	Prior to January 1, 2009, a 21% withholding tax applied to dividends paid to nonresident entities.
Interest	Exempt or 21%		10%	The 21% withholding tax rate applies only to the portion of interest paid that exceeds the market interest rate. Otherwise, interest payments are exempt from withholding tax.

Country Where Portfolio Company Is Organized

## FINLAND

Capital Gains	Exempt	Yes	N/A	
Dividends	28%		15%	
Interest	Exempt		N/A	

Country Where Portfolio Company Is Organized

## FRANCE

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt or 33%	Yes	N/A	Nonresidents are generally subject to a 33% tax on capital gains derived from (i) dispositions of real estate holding companies, and (ii) dispositions of shares of French companies in which the nonresident shareholder has an ownership interest of at least 25%.
Dividends	25%		15%	
Interest	18%		0%	

Country Where Portfolio Company Is Organized

## GERMANY

Capital Gains	None or Approximately 1%	Yes	Exempt	If a non-treaty resident fund directly or indirectly owns at least 1% of the share capital (“material shareholding”) within the 5-year period preceding the sale. In such cases, effectively, 5% of the capital gain is subject to German corporate income tax resulting in an effective tax rate of approximately 1%. The tax is paid by filing a German tax return. The investors of funds organized as partnerships would be required to file German tax returns.
Dividends	26.375%		15.825%	Rates shown include a 5.5% solidarity surcharge.
Interest	0% or 25%		Exempt	Interest on convertible bonds, participating loans, and certain loans secured by German real estate is subject to 25% withholding tax. Otherwise, interest is generally exempt from German withholding tax.

Country Where Portfolio Company Is Organized

## GREECE

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	There is no capital gains tax on the sale of listed shares or publicly-traded debt.
Dividends	10%		N/A	Prior to January 1, 2009, no withholding tax was imposed on dividends.
Interest	Exempt		Exempt	

Country Where Portfolio Company Is Organized

## HONG KONG

Capital Gains	Exempt	No	N/A	
Dividends	None		N/A	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## HUNGARY

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	None		N/A	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## ICELAND

Capital Gains	15%	Yes	Exempt	Effective January 1, 2008, a capital gains tax exemption applies if the foreign shareholder's profits are taxed similarly to those of Icelandic companies and at a rate not below the rate generally applicable in OECD countries or in European Economic Area member states (the EU member states plus Iceland, Lichtenstein, and Norway). The lowest rate in these countries is currently 10%.
Dividends	10%		No further reduction	Prior to January 1, 2008, the withholding rate on dividends was 15%.
Interest	0% or 15%		Exempt	Tax exemption must be applied for and granted by local tax director; 15% rate applies effective September 1, 2009.

## INDIA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	15.45% or 15.836% or Exempt	Yes	No Relief	The 15.836% rate is the effective tax rate (15% plus 2.5% surcharge plus 3% education tax) to companies with total income in excess of 10 million Rupees applicable to gains on securities held for one year or less (short term) provided that the Securities Transaction Tax (STT) has been paid for companies with total income in excess of 10 million Rupees. The 15.45% rate applies to short-term gains derived by companies with total income not in excess of 10 million Rupees. Capital gains on securities held longer than one year (long term) are exempt provided that the STT has been paid. The Indian Government may take the position that nonresidents trading in India via "P Notes" are liable for Indian capital gains tax on the income from such notes. Derivative transactions should also be analyzed from an Indian tax perspective in light of the Vodafone case.
Dividends	None		N/A	Dividends withholding tax was abolished on April 1, 2003. Companies paying dividends will be liable to pay a dividend distribution tax of effectively 16.995%, but the dividend received by investors will be tax-free.
Interest	20.6% or 21.115%		15%	The 20.6% rate applies to companies with total income up to 10 million Rupees. The 21.115% rate applies to companies with total income in excess of 10 million Rupees.

Country Where Portfolio Company Is Organized

## IRELAND

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	20%		Exempt	
Interest	20%		Exempt	Interest paid on Government securities and quoted Eurobonds is exempt.

Country Where Portfolio Company Is Organized

## INDONESIA

Capital Gains	0.1%	Yes	Exempt	A 0.1% income tax is imposed on the proceeds from disposal of publicly listed shares.
Dividends	20%		15%	
Interest	20%		0% or 10%	The 0% rate applies to interest on government bonds.

## ISRAEL

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	Capital gains on the sale of exchange-traded securities are exempt from capital gains tax in Israel.
Dividends	20%		N/A	The treaty provides for a 15% withholding rate on dividends from Israeli companies that have achieved “approved enterprise” status in Israel.
Interest	25%		17.5%	Interest from government bonds is generally exempt from withholding tax.

## ITALY

Capital Gains	Exempt to 13.67%	Yes	Exempt	A nonresident that owned a “substantial participation” in an Italian listed company (i.e., shares representing more than 2% of the Italian company’s voting rights or 5% of its capital) is subject to Italian corporate tax on a portion of its gains, resulting in an effective tax rate of 13.67% for gains derived after January 1, 2009, 11% for gains derived during 2008, and 13.2% for gains derived during 2007. Capital gains from nonsubstantial participations in Italian listed companies are exempt from taxation.
Dividends	27%		15%	
Interest	27% or 12.5%		15%	The 12.5% rate applies to interest on treasury bonds and corporate bonds with a term of at least 18 months.

Country Where Portfolio Company Is Organized

## JAPAN

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	20% or 7%		10%	The 7% rate applies to dividends paid by listed companies to nonresidents, which was originally scheduled to expire March 31, 2009, has been extended until December 31, 2011.
Interest	15% or Exempt		10%	Exemption applies to registered government bonds and certain Eurobonds.

Country Where Portfolio Company Is Organized

## JORDAN

Capital Gains	None	No	N/A	
Dividends	None		N/A	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## LUXEMBOURG

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt or 21%	Yes	N/A	Gains from a sale of shares in a listed company is exempt unless nonresident owned a "major shareholding" (at least 10% of share capital) in the Luxembourg listed company.
Dividends	15%		15%	
Interest	Exempt		Exempt	

Country Where Portfolio Company Is Organized

## MALAYSIA

Capital Gains	None	No	N/A	
Dividends	None		N/A	
Interest	15%		N/A	

## MEXICO

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	Exempt unless nonresident fund located in a tax haven owns more than 10% of the capital of a listed company and trades 10% or more through the stock exchange, in which case the fund will be subject to a capital gains tax equal to the greater of 5% of the gross proceeds or 20% of the gain.
Dividends	None		N/A	Under Mexican domestic law, dividends are not subject to withholding tax.
Interest	Exempt or 4.9% or 40%		15%	A 4.9% withholding rate applies if the interest is from bonds or securities that are regularly and substantially traded on a recognized securities market. Interest on government bonds is generally exempt. The withholding tax on interest from non-publicly traded fixed income instruments paid to a tax haven investor may be 40% if the fund and the borrower are considered to be related. Funds that own both equity and debt in the same Mexican issuer should consult with a local tax advisor.

## MOROCCO

Capital Gains	None	Yes	N/A	
Dividends	10%		No further reduction	
Interest	10%		No further reduction	Interest on government bonds is exempt from withholding.

Country Where Portfolio Company Is Organized

## NETHERLANDS

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	15%		15%	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## NEW ZEALAND

Capital Gains	None	Yes	N/A	
Dividends	30%		15%	
Interest	15%		10%	

Country Where Portfolio Company Is Organized

## NORWAY

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	25		15%	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## OMAN

Capital Gains	None	No	N/A	
Dividends	None		N/A	
Interest	None		N/A	

Country Where Portfolio Company Is Organized

## PAKISTAN

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	Capital gains on the sale of listed securities are exempt from tax under a provision that is schedule to expire June 20, 2010.
Dividends	10%		No Further Reduction	
Interest	30% or 10%		No Further Reduction	10% rate on government securities and corporate bonds effective as of March 10, 2008.

Country Where Portfolio Company Is Organized

## PERU

Capital Gains	Exempt or 30% or 5%	No	N/A	Under current law, Peru provides an exemption from capital gains tax (CGT) for capital gains derived by nonresidents from trading Peruvian securities via the Peruvian stock exchange. This legislation is set to expire December 31, 2009. Afterwards, foreign investors will pay a 5% CGT over the gains generated from trading Peruvian securities “within Peru,” whereas a CGT of 30% is imposed if the trading occurs “outside of Peru.” Additional guidance is needed for determining when a transfer is deemed to occur within or outside of Peru.
Dividends	4.10%		N/A	
Interest	Exempt		N/A	

Country Where Portfolio Company Is Organized

## PHILIPPINES

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	There is a stock transactions tax of 0.5% on the gross proceeds from sale.
Dividends	30%	Yes	25%	The 35% rate is reduced to 15% if the recipient's country of residence does not impose income tax.
Interest	30%		15%	There are a number of preferential rates under local law for various types of interest. Please consult a local tax advisor.

Country Where Portfolio Company Is Organized

## POLAND

Capital Gains	19%	Yes	Exempt	Capital gains tax is paid by self-assessment rather than through a withholding mechanism.
Dividends	19%		15%	
Interest	20%		0%	

Country Where Portfolio Company Is Organized

## PORTUGAL

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	25%	Yes	Exempt	
Dividends	20%		15%	
Interest	20%		10%	Interest paid on public and private debt is exempt from withholding if the recipient is not organized in a tax haven.

Country Where Portfolio Company Is Organized

## ROMANIA

Capital Gains	16% or Exempt	Yes	Exempt	Capital gains derived by nonresidents from the sale of listed stocks are generally exempt for 2009 only.
Dividends	16%		10%	
Interest	16% or 0%		10%	The general withholding rate is 16%. However, interest on government bonds and debt instruments that are traded on a regulated exchange are generally exempt.

Country Where Portfolio Company Is Organized

## RUSSIA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	No capital gains tax provided that transaction is settled outside of Russia.
Dividends	15%		10%	
Interest	20%		0%	Interest on government bonds is subject to 15% withholding. Special rates apply to municipal bonds depending on when they were issued.

Country Where Portfolio Company Is Organized

## SERBIA

Capital Gains	15%	No	N/A	Prior to January 1, 2008, capital gains were subject to a 20% rate. Tax is withheld at the source.
Dividends	15%		N/A	Prior to January 1, 2008, the withholding rate was 20%.
Interest	15%		N/A	Prior to January 1, 2008, the withholding rate was 20%.

Country Where Portfolio Company Is Organized

## SINGAPORE

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	No	N/A	
Dividends	None		N/A	Prior to January 1, 2008, there was a 20% withholding rate on dividends.
Interest	15% or Exempt		N/A	Certain exemptions for nonresidents without a permanent establishment in Singapore apply, including an exemption from withholding tax on interest derived from government and corporate debt issued between February 28, 1998, and December 31, 2008.

Country Where Portfolio Company Is Organized

## SLOVAK REPUBLIC

Capital Gains	None	Yes	N/A	
Dividends	None		N/A	
Interest	15%		0%	

Country Where Portfolio Company Is Organized

## SLOVENIA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	None	Yes	N/A	
Dividends	15%		15%	
Interest	15%		5%	Interest on government debt is exempt from tax for foreign institutional investors.

Country Where Portfolio Company Is Organized

## SOUTH AFRICA

Capital Gains	None	Yes	N/A	
Dividends	Exempt		N/A	
Interest	Exempt		N/A	

Country Where Portfolio Company Is Organized

## SOUTH KOREA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt or 22%	Yes	Exempt	Capital gains tax does not apply unless the shareholder owns at least 25% of the shares of the Korean company. Otherwise, the applicable capital gains tax is the lesser of (i) 11% of the sales proceeds, or (ii) 22% of the net gain.
Dividends	22%		16.5%	The rates shown include the 10% residency tax.
Interest	22%		13.2%	The rates shown include the 10% residency tax.

Country Where Portfolio Company Is Organized

## SPAIN

Capital Gains	18%	Yes	Exempt	The capital gains tax is paid with the filing of a tax return, which is normally required to be filed within 30 days following the transfer giving rise to the capital gains tax. Prior to January 1, 2007, the Spanish capital gains tax rate was 35%.
Dividends	18%		15%	
Interest	18% or Exempt		10%	Interest on government-issued bonds and notes is exempt provided evidence of tax residency is provided prior to payment.

Country Where Portfolio Company Is Organized

## SRI LANKA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	
Dividends	10%		N/A	
Interest	10%		10%	

Country Where Portfolio Company Is Organized

## SWEDEN

Capital Gains	Exempt	Yes	N/A	
Dividends	30%		15%	
Interest	Exempt		N/A	

Country Where Portfolio Company Is Organized

## SWITZERLAND

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	
Dividends	35%		15%	The difference between the withholding rate of 35% and the lower treaty rate of 15% can be recovered via reclaim procedures.
Interest	35%		0%	The difference between the withholding rate of 35% and the lower treaty rate of 0% can be recovered via reclaim procedures.

Country Where Portfolio Company Is Organized

## TAIWAN

Capital Gains	Exempt	No	N/A	
Dividends	25%		N/A	A reduced withholding rate of 20% on dividends applies for approved investment projects.
Interest	20%		N/A	

## THAILAND

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	15%	Yes	N/A	Capital gains tax is withheld at the source by the purchaser or broker. Gains from the sale of government bonds is exempt from tax.
Dividends	10%		10%	
Interest	15%		15%	Interest income on government bonds is exempt from tax.

## TURKEY

Capital Gains	Exempt	Yes	Exempt	Between January 1, 2006 and July 7, 2006, Turkey imposed a 15% capital gains tax on Turkish securities, which was required to be withheld at the source by the local custodian. Equities held on January 1, 2006, and bonds issued before January 1, 2006, were exempt from this tax under a grandfathering provision. Foreign investors must submit a certificate of tax residency in order to be eligible for the current exemption from capital gains tax.
Dividends	15%		N/A	
Interest	Exempt		N/A	Withholding tax of 10% will apply if the foreign investor fails to submit a certificate of tax residency.

Country Where Portfolio Company Is Organized

## UNITED KINGDOM

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt	Yes	N/A	
Dividends	N/A		N/A	
Interest	20%		0%	Interest from government bonds is generally exempt from withholding tax.

Country Where Portfolio Company Is Organized

## UNITED STATES

Capital Gains	Exempt	N/A	N/A	
Dividends	30%		N/A	
Interest	Exempt or 30%		N/A	Nonresidents are exempt from U.S. tax on “portfolio interest.” Portfolio interest includes noncontingent interest and original issue discount (OID) on obligations which are either (i) in “registered form” (i.e., registered as to principal and interest with the issuer or its agent) and the withholding agent receives an appropriate statement that the beneficial owner is not a U.S. person (e.g., Form W-8 BEN), or (ii) bearer obligations that are foreign-targeted, the interest on which is payable outside the U.S., and that bear a legend on the face of the instrument stating that U.S. persons who hold such instruments will be subject to U.S. income tax laws.

# VENEZUELA

Type of Income Subject To Tax	Tax Rate Applicable To Non-Treaty Resident Fund (Assumed To Be A Cayman Islands Limited Company)	Country Has Concluded A Bilateral Income Tax Treaty With The U.S.? (Y/N)	Reduced Tax Rate Applicable To Eligible U.S. Tax Resident Investor	Notes
Capital Gains	Exempt (except OTC transactions)	Yes	Exempt	Capital gains tax applies to OTC transactions at rates ranging from 15% to 34%.
Dividends	34%		15%	The withholding tax rate is increased to 50% for hydrocarbon companies and 60% for mining companies.
Interest	34%		10%	

## About the Authors

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## About Rothstein Kass

Rothstein Kass provides audit, tax, accounting and consulting services to hedge funds, fund of funds, private equity funds, broker-dealers and registered investment advisers. The firm is recognized nationally as a top service provider to the industry through its Financial Services Group. The Financial Services Group consults on a wide range of organizational, tax, operational and regulatory issues. The firm also advises on fund structure both inside and outside the U.S., on compliance and financial reporting, as well as on tax issues from a federal, state, local and international perspective. Rothstein Kass has offices in New York, New Jersey, California, Colorado, Texas and the Cayman Islands.

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