

Real Estate Tax Services Newsalert

EU Member States

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Proposed EU Directive on alternative investment fund managers (AIFM Directive)

On April 30, 2009, the EU has proposed a new Directive on Alternative Investment Fund Managers which has significant impact on the European RE Fund industry.

As it stands, the Directive will catch managers of hedge funds, private equity funds, commodity funds and other types of institutional funds but also real estate funds. It only addresses funds for professional investors. It could be extended to retail funds by the member states in the same or a modified form.

The Directive covers closed and open ended vehicles, partnerships as well as for example FCPs and SICAF/Vs. The drafting is so wide ranging that it potentially also extends to REITs, investment trusts and even listed companies where these are vehicles for collective investment.

The threshold for assets under management is very low for leveraged real estate funds (EUR 100 million). This threshold is not on a per Fund basis, but rather the aggregation of all funds under management by a manager and is therefore likely to have virtually universal application to professionally managed RE funds.

The Directive is far reaching in scope and may result in a level of regulation comparable to the supervised regulated fund manager regimes of Germany, Luxemburg or the French OPCI. The real estate fund sector is currently broadly divided into already regulated systems and low regulation partnership regimes. For the latter significant or even radical changes could be required and increased costs incurred.

The themes of the Directive include governance, regulator authorization for managers, disclosure, risk management, involvement of credit institutions as depositary, valuation guidance. The Commission reserves the right to impose caps on leverage that a manager can employ, which could be a very significant intrusion into the commercial activities of the RE Fund industry. In addition there does not appear to be a level playing field with EU registered banks, pension funds and insurance companies potentially enjoying a carve out from the Directive which could give them an advantage over e.g. private equity fund managers.

The Directive is likely to be viewed as too wide-ranging for the real estate sector particularly as no systemic risks are considered by the Commission to be present. In addition it will remove choice from investors as to whether a highly regulated fund manager or a less regulated one is most appropriate to meet their specific needs.

Further information

The details of the proposal and further related material can be accessed through the following link:

http://ec.europa.eu/internal_market/investment/alternative_investments_en.htm.

Consultation process

Are real estate fund managers already subject to perfectly adequate schemes of regulation in every country? Is a EU Directive really necessary? We are confident a broader discussion and consensus will be formed soon. PwC Real Estate teams have formed a cross border expert group to discuss the broader initiative as well as the details of the proposed rules.

Although the Directive will not be coming into force until 2011, the form it will take is likely to be decided during the course of this year and it is critical to both understand and prepare for the impact of the Directive, as well as to influence its shape and content while the opportunity remains to do so.

We would be pleased to hear and discuss these issues with you.

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