Response to consultation

Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes

About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 270 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £9.4 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 44% of this is for overseas clients. The UK asset management industry is the largest in Europe and the second largest globally.

Our Response

The Investment Association ('IA') welcomes the HMRC consultation on "*Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes*" as part of the government's wider ambition to maintain the UK's position as one of the leading financial centres globally.

The Investment Manager Exemption ('IME') is an important part of the UK's attractive tax regime for the investment management industry. The IME is successfully augmented with the Investment Transaction List ('ITL'), an allow or 'whitelist' of transactions which are automatically considered as investment rather than determined as trading for UK tax purposes. The ITL is also equally helpful for other UK tax purposes, namely for UK and Offshore Reporting Funds, and offers clarity and tax certainty to funds and investment managers regarding their transactions and activities.

We strongly support enhancement of the ITL, keeping it relevant to an ever-changing investment ecosystem, for the benefit of the UK investment management industry. Expanding it to include new and emerging investments and asset classes, such as cryptoassets, is essential to allow the UK investment management industry to innovate and utilise new strategies without the risk of adverse tax consequences.

It is essential that a single ITL is maintained for the purpose of the IME and for UK funds. There is no policy rationale for separation of these lists and in fact, delineating the two could result in disparity of treatment between offshore funds managed by UK managers that rely on the IME and UK funds that rely on ITL to determine the tax status of their activities, despite having identical investment strategies. We therefore strongly recommend that a single ITL is maintained to ensure consistency of UK tax position for all funds irrespective of their location.

To be clear, amending the ITL should not be considered an endorsement by HMRC of cryptoassets. Funds should be free to explore and invest in cryptoassets provided a suitable regulatory environment can be built, ensuring appropriate investor protection.

While not transformational in itself, inclusion of cryptoassets to the ITL would help demonstrate the UK Government's positive approach to both emerging technologies, new asset classes and the investment industry more broadly. This support can couple with more active promotion, helping business begin to build up the necessary expertise and technological analysis and infrastructure in the UK to manage crypto investments.

We also foresee other tangential benefits to UK managers building up cryptoasset expertise as the industry continues to move to greater customisation of portfolios through tokenised or 'on-chain funds'[1]. The IA is committed to seeing the UK become a hub for innovate new investment products and any efforts directly or indirectly that support that work are to be welcomed.

Use of Cryptoassets by UK authorised funds

We are not currently aware of any UK authorised funds with exposure to cryptoassets given the FCA rules covering authorised funds' investment and borrowing powers coupled with the FCA's approach to defining various tokens.

Separately, the Authorised Contractual Schemes ('ACS') follow from primary legislation in FSMA 2000 and do not have a direct cross reference to the ITL. If the ITL is updated to include cryptoassets, for consistency across the authorised fund space, the changes should also be extended to ACSs. Though ACSs are not subject to any direct tax themselves as they are transparent for income purposes, their investors are often pension schemes which are sensitive to receiving trading income. Clear access to the updated ITL for ACSs would aid to general certainty and support consistent calculation of capital vs revenue allocation of activities for distributions made by ACSs and provide more certainty to their underlying investors.

Defining Cryptoassets

We support HMRC's intention to craft a dynamic and effective definition of cryptoassets and understand the delicate balancing act between broadening the IME to allow UK businesses to compete in prospective crypto-fund markets while keeping it consistent with wider UK tax policies.

As the consultation identifies, instead of creating new and bespoke terminology for UK tax purposes, the definition of cryptoassets under OECD's Crypto-Assets Reporting Framework ('CARF') is an obvious starting point. This definition, once finalised, would have the advantage of being an internationally recognised standard, endorsed by the G20. Similarly, HMRC could also look at using definitions used elsewhere which would have the advantage of being already used and well understood by financial institutions. One possible additional reference point could be the UK's AML definition of cryptoassets under 14A(3) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

HMRC should also consider offering tax certainty via overlapping definitions in which a transaction could be covered under multiple different categories, e.g. AML and CARF definitions. This would have the advantage of covering the broadest possible base of transactions. As an example, transactions in Central Bank Digital Currencies are covered under CRS reporting and not CARF and

[1] Please see IA's recent report https://www.theia.org/Investing-for-the-future

thus would not benefit from a link to the CARF, but could be covered under the AML regulations, while transactions in what might be considered 'traditional' cryptocurrencies such as exchange tokens (Bitcoin, Ethereum, etc) could fall under both the CARF and the AML regulations.

We note that the following should be considered while determining the appropriate definition:

- **Any definition should be dynamic and should be reviewed regularly.**

We are encouraged by HMRC's stated intention for the definition to be clear, user-friendly and 'future-proof' by being capable of encompassing new emerging crypto technologies. To achieve this, the ITL should be as dynamic as possible.

Any alignment to existing definitions should not be restrictive and the UK, where necessary, should be able and prepared to update the ITL to offer additional certainty around the tax status of crypto related transactions (and other new asset classes) as soon as practicable. To aid this, we request HMRC to set mandated reviews of the ITL at regular intervals to ensure it remains as relevant as possible.

- **Any restrictions to the definitions for links to UK property or other excluded assets should be clear and easily understood for international audiences.**

We urge that any limitations or restrictions to existing definitions (CARF, AML or others) are kept to a minimum. Investors need certainty, and any additional complexity to the exceptions could take away such certainty and create the perception of UK's tax regime not being tax efficient or being too expensive to operate in/comply with.