

Tax information for **United Kingdom**

Applicable to **Authorised Contractual Scheme ('ACS')**

Last review **March 2021**

General		
1	Background	ACS is established under the Collective investments in Transferable Securities (Contractual Scheme) Regulations 2013 (SI 2013/1388) (<i>'the Regulations'</i>). The Regulations came into force on 6 th June 2014. The Finance Act 2016 introduced a seeding relief for Stamp Duty Land Tax (<i>'SDLT'</i>) for ACSs.
2	Legal form	<p>An ACS may be formed as:</p> <ul style="list-style-type: none"> • A co-ownership scheme ('COS') – no legal personality and is fiscally transparent. It is a contractual arrangement set out in a deed between the authorised fund manager (on behalf of the investors) and the depository (legal title holder) who are authorised by the Financial Conduct Authority (<i>'FCA'</i>). The liability of the unitholders is limited to the price paid for the units; or • A limited partnership scheme ('LPS') – legal structure similar to that of a standard limited partnership with slight variations to provide flexibility in relation to withdrawals of contributions by limited partners, general partner will not be liable for the debts of the LPS provided that there is no wrongdoing on its part and no requirement to publish changes in the LPS in the Official Gazette. The legal title of the LPS property is held by a depository. The partners' liability is limited to the amount of their contributions to the LPS. The general partner of the LPS will act as the authorised fund manager (may delegate management functions to another person).
Tax treatment		
3	Tax status	A COS is treated as tax transparent in respect of income arising from its activities whereas for capital gains tax purposes it is treated as opaque. An LPS is treated as tax transparent with respect to both income and capital gains.
4	Tax treatment at entity level	<p>Given that the COS is transparent in respect of income, it is not subject to UK tax on its income. Although it is opaque for capital gains purposes, it benefits from an exemption from UK tax on capital gains. Given that the LPS is treated as tax transparent in respect of income and capital gains, it is not subject to UK tax on its income or gains.</p> <p>An ACS is chargeable to SDLT on acquisitions of land in England and Northern Ireland (LBTT/LTT in respect Scottish/Welsh land) although relief may be available in respect of the initial 'seeding' of land to a COS where the relevant conditions are satisfied.</p>

5	Tax treatment of investors	<p>Income arising to an ACS (whether formed as a COS or an LPS) is treated as arising directly to the investors for tax purposes. This means</p> <ul style="list-style-type: none"> • No tax leakage for UK exempt investors • UK taxable investors will be subject to tax on their share of the income arising from the ACS depending on their tax profile, i.e. income tax or corporation tax payers • Non-resident investors will be taxable depending on the nature of the income and their profile. Prior to 6 April 2020, UK rental income received by non-UK resident investors was subject to UK income tax at 20%. This continues for individuals and trusts, but rental income received by non-UK resident corporate investors will be subject to corporation tax at 19% from 6 April 2020 (expected to increase to 25% from April 2023). <p>Any capital gain arising on a disposal of a chargeable asset by an LPS will be taxable on the investors based on their respective interests held in the LPS. The amount of any chargeable gain will be computed at the investor level and taxed according to the tax profile of each investor in the LPS.</p> <p>Given that a COS is opaque for capital gains purposes, disposals by the COS are not treated as disposals by the investors. Instead, it is the COS units held by the investor that are treated as chargeable assets for capital gains tax purposes. Therefore, the investors will realise a chargeable gain or loss only upon disposal and/or redemption of their units.</p> <p>UK resident investors are subject to UK tax on their worldwide chargeable gains (corporate tax for companies and capital gains tax for individuals and trusts).</p> <p>Non-resident investors have not historically been subject to UK tax on gains on the disposal of UK assets except in certain limited circumstances. However, from 6 April 2019, non-UK resident investors have been within the scope of UK tax on all post 6 April 2019 gains on direct and certain indirect disposals of UK property, subject to certain reliefs and exemptions.</p> <p>This means that non-UK resident investors in a LPS will be within the scope of UK tax in respect of the disposal of UK property or UK property rich shares by the LPS, and non-UK resident investors in a COS will be within the scope of UK tax in respect of the disposal of units in the COS where the COS is UK property rich. An entity will be UK property rich when, broadly, it derives 75% or more of its value from UK real estate. The rules are complex and certain reliefs and exemptions may apply.</p> <p>Although a COS is opaque for stamp tax purposes, there is an exemption from stamp duty and stamp duty reserve tax ('SDRT') on transfers to third parties of units in a COS provided that the transfer does not form part of arrangements of which the main purpose of one of the main purposes, is the avoidance of a charge to stamp duty or SDRT.</p>
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		The normal partnership SDLT rules will apply to transfer of interest in an LPS and so the acquisition of or increase in an interest in the LP will be subject to SDLT.
6	Treaty status	No access to double tax treaties; however, investors could access treaties individually depending on their country of tax residency and subject to them meeting the qualifying requirement of the relevant double tax treaty.
7	EU tax directive status	No
8	Withholding tax	<p>UK withholding tax at 20% may potentially apply to rents received by ACS (on behalf of non-UK resident investors) and in respect of interest paid by the ACS to non-UK resident lenders.</p> <p>In the case of UK source rental income, the tenants or agents will be required to withhold UK withholding tax unless the non-UK resident investors register under the non-resident landlords scheme ('NRLS') to receive rental income gross. By so registering, non-UK resident investors undertake to submit UK tax returns and pay UK tax in respect of their net rental income.</p> <p>In the case of UK source interest being paid via the ACS to a non-UK resident lender, 20% withholding tax should be deducted, unless advantage can be taken by the non-UK resident investors of a double tax treaty to reduce or eliminate the withholding tax</p>
Requirements		
9	Minimum level of investment	Minimum investment of £1m for direct investment into an ACS or the investor must be an institutional investor. Other investors (retail investors) could invest via a feeder.
10	Filing obligations	<p>No tax filing requirement for a COS; however, an LPS will need to file a partnership tax return for each tax year.</p> <p>In addition, the investors will have UK tax filing obligations in respect of income and gains.</p>
11	Investor requirements / obligation	See minimum level of investment above
12	Entity qualification requirements	Tax transparent so a US check-the-box could be filed
13	Activity limitations	Gearing, investment and marketing regulatory rules will need to be observed
14	Regulation	The fund manager and the depository must be independent persons and be authorised by the FCA. The ACS must also be approved by the FCA.

Pros & Cons		
15	Pros	LP is a well-known structure for investors
		Tax transparency
		No tax leakage at the ACS level
		Investor protection due to regulated nature of the ACS
		No stamp duty/SDRT/SDLT on the transfer of a COS units
		SDLT seeding relief available for ACS established as a COS
		Can be used for a small number of investors
16	Cons	Relatively new structure
		Regulated and can be expensive to administer

Other information

17	Additional information	Operators of COSs will need to provide information to investors and HMRC to enable the investors to meet their UK tax filing obligations. <ul style="list-style-type: none">•
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