The Swiss manager with a Singapore fund

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A Swiss portfolio manager or manager of collective assets licensed under the Financial Institutions Act (FinIA; FINIG) who wishes to manage a Singapore fund has three routes. The first is to establish a Singapore subsidiary, obtain a CMS licence for fund management and have that subsidiary manage the section 13O or 13U fund, with the Swiss parent acting as sub-adviser or sub-manager under delegation. The Singapore entity must be the manager of record and must employ the investment professionals that the incentive requires. The second route is to appoint an existing Singapore licensed manager as manager of record with the Swiss firm as investment adviser, which is faster and cheaper but gives the Swiss firm no licence of its own and a dependence on the Singapore partner. The third route is to manage the fund from Switzerland without a Singapore manager. The fund then has no Singapore tax incentive and no Singapore substance. If it is a Singapore vehicle, it also has a section 10L exposure and a resident-manager problem under the VCC Act.

The delegation under the first route raises a transfer-pricing question that the Swiss and Singapore authorities answer in the same way. The management fee must be split between the Singapore manager and the Swiss sub-adviser on an arm's-length basis, with the Singapore manager retaining a return that reflects its functions, assets and risks. IRAS applies the OECD guidelines and requires contemporaneous transfer-pricing documentation where related-party transactions exceed S$ 1 million a year in aggregate for a company with turnover above S$ 10 million.[1] A fee split that leaves the Singapore manager with a thin cost-plus margin, to which the FSI-FM concession applies, is the usual outcome. The Swiss side taxes the sub-advisory fee as ordinary profit in the canton of the sub-adviser.

Cross-border perspective

A Zürich manager of collective assets with CHF 400 million under management wants to raise Asian capital for a tokenised private credit strategy. The efficient structure is a Singapore A/I LFMC subsidiary with three investment professionals in Singapore managing a section 13U VCC, with the Zürich parent as sub-adviser under a delegation agreement approved by FINMA as a change to the parent's organisation. The VCC's tokenised credit instruments are securities and therefore designated investments. The Singapore subsidiary applies for FSI-FM. The parent's Swiss licence is unaffected because the Singapore entity is a separate legal person, but FINMA must be notified of the group change and the parent's risk management must cover the delegation. The whole structure takes nine to twelve months to stand up and costs, in my experience, between S$ 600,000 and S$ 900,000 in the first year including the three salaries.

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Notes

1. Income Tax Act 1947, s. 34D (arm's length principle) and s. 34F (transfer pricing documentation); Income Tax (Transfer Pricing Documentation) Rules 2018; IRAS, e-Tax Guide *Transfer Pricing Guidelines*, current edition.

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