HMRC

By email: tafrcompliance@hmrc.gov.uk

9 May 2024

The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards

The BVCA is the industry body and public policy advocate for the private equity and venture capital (private capital) industry in the UK. With a membership of over 600 firms, we represent the vast majority of all UK-based private capital firms, as well as their professional advisers and investors. In 2022, £27.5bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. There are over 12,000 UK companies backed by private capital which currently employ over 2.2 million people in the UK. Over 55% of the businesses backed are outside of London and 90% of the businesses receiving investment are small and medium-sized enterprises (SMEs).

Thank you for the opportunity to respond to this call for evidence. We support the Government's ambition to simplify and modernise the tax administration framework, and have responded below to the consultation questions that are of most relevance to our members.

As a general comment, a key element in driving growth and productivity is the success of the UK in attracting inward investment. Potential investors in private capital funds are concerned about the ease of doing business, so anything that increases compliance burdens can affect their decisions. In implementing any reforms, we would urge the Government to have in mind the need to ensure that tax administration does not get in the way of doing business. This may involve striking a balance between change and ensuring that there are not too many new rules to comply with.

By way of background to our responses, most private capital funds are set up as partnerships. Partnerships are often poorly catered for in existing compliance frameworks, as they do not fit easily into a "corporate or individual" categorisation. Many of our comments below reflect this issue.

Question 1: What are the potential opportunities, benefits, and risks of moving to a single set of powers across all taxes?

In principle, it would make sense to align enquiry and assessment rules across all taxes, as this has the potential to simplify the tax compliance process and give taxpayers more clarity on their obligations. Any such change would need to be adequately resourced, with consideration given to whether the benefit of the change merits the cost, and to whether there is a need for transitional provisions.

Question 7: What are the merits and risks of HMRC introducing a consequential amendment power across periods and tax regimes?

We are concerned that this proposal could mean that an enquiry into one tax would effectively be an enquiry into all taxes. This would undermine taxpayers' certainty relating to their historic tax affairs, and links back to the factors investors consider when deciding whether to invest in the UK.

Question 9: What are the challenges relating to claims for relief and credits? How should reform to enquiry and assessment powers for reliefs and credits be approached?

We note the proposal here that HMRC might move to an "application, decision, appeal" approach in relation to claims for credits and reliefs. While we can see the potential merits of this change, the concern we would flag again relates to resourcing. If HMRC does not have sufficient personnel with appropriate levels of qualification, this proposed new approach is likely to result in delays. Anything that delays businesses receiving the financial support that they need, and to which they are entitled, has the potential to cause commercial damage. This issue can be particularly acute for early stage businesses, where cashflow is key.

We consider that there are lessons to be learned from our members' experiences with the current system for claiming R&D tax credits. Our members consistently report delays, often lasting many months, in HMRC processing R&D claims. In many cases the delay appears to be in large part due to HMRC lacking personnel with the appropriate technical knowledge to assess the merits of the claim. This can be of critical importance to start-up businesses in the period before they start to generate income, as R&D credits increase the length of time for which they can operate before their funding runs out.

As a result of these concerns, if any such change were introduced, we would be strongly in favour of a commitment by HMRC to review and make a decision within a fixed period of time.

Question 10: Are there specific issues relating to compliance activity that need to be considered as HMRC moves to greater use of digital communications?

Our members report that they still receive a lot of physical post from HMRC in relation to partnerships in which they are partners. This can give rise to problems where, for instance, partners are resident outside the UK. They would welcome moving to a system, similar to that which is currently available for individuals within self-assessment, whereby mail is delivered to an online account, accompanied by an email alerting the recipient that a new communication is available to be read.

It may be difficult to collect email addresses for a partnership which has a large number, potentially hundreds, of partners. In these situations it may be more practicable, in appropriate cases such as where a penalty applies for late filing of a partnership tax return, for notices to be sent to the nominated/general partner rather than to every partner individually.

Question 13: Are there particular penalty regimes you think should be simplified? We would welcome views on why and how such penalty regimes might be reformed.

We understand that partnership penalty notices are often sent out without naming the partnership concerned. For a business which invests in multiple partnerships this is highly unsatisfactory. We would submit that this would be a relatively simple, and commonsense, change that would not require an amendment to the law, but would be very helpful to taxpayers.

Private capital funds are often set up as limited partnerships. Investors become limited partners in these funds, but do not have day-to-day control over the running of the partnership business. This means that when penalty notices are sent to limited partners, the recipient has no means of resolving the issue that has generated the penalty. For example, a limited partner might receive a penalty for an inaccuracy in a tax return which they had no part in preparing. Our suggestion would be that it would be preferable for these notices to be sent only to the fund's general partner, perhaps with an obligation on the general partner to notify the limited partners.

Question 19: Are there specific behaviours and situations that you think penalties could help to address, and why?

We note that this part of the call for evidence suggests that penalties could be imposed for carelessness by agents. In our view, this is a change that would need careful consideration. Careless behaviour by agents is already properly the subject of supervision by professional bodies and potentially of negligence suits by clients, so agents are already incentivised to meet high professional standards.

Agents are only able to submit tax returns based on the information supplied to them by their clients, and have little control over whether this information is accurate. We would be concerned that a penalty of this nature would cut across the principle that the contents of a tax return are the responsibility of the taxpayer, and that drawing a line between carelessness by the agent and by the taxpayer would be difficult.

We also note the suggested introduction of a penalty for adopting an unreasonable tax position. We would be concerned about the uncertainty this would create about what is unreasonable in this context, and would suggest that this would require a process whereby there could be an independent review of whether a particular

tax treatment was reasonable. The existing review-and-appeal system for reasonable excuse claims is resource-heavy both for HMRC and the tribunal system, and takes a long time to resolve. We would observe that large businesses already incur penalties if they fail to notify HMRC of an "uncertain" tax treatment above a threshold amount, and so would question the need for this new measure.

Thank you again for the opportunity to contribute to this call for evidence. Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of these issues in more detail (please contact Rachel Gauke at rgauke@bvca.co.uk in the first instance).

Yours sincerely

Maria Carradice

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Chair, BVCA Taxation Committee