Adrian Morton,
HM Revenue and Customs,
1 Ruskin Square, Croydon
CR0 2LX

By email: uncertaintaxtreatmentconsultation@hmrc.gov.uk

1 June 2021

Dear Sirs,

Re: BVCA responses to HMRC's second consultation on Notification of uncertain tax treatment by large businesses

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Between 2015 and 2019, BVCA members invested over £43bn into nearly 3,230 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ 972,000 people in the UK and the majority of the businesses our members invest in are small and medium-sized businesses.

Thank you for the opportunity to respond to this further consultation on uncertain tax treatments for large businesses. We appreciated you making time to discuss our views on the initial consultation and are grateful that our feedback has been taken into account in this latest consultation document.

Given those discussions, our response to this second consultation is relatively brief as we await further detail on the key points discussed below and we will obviously be happy to discuss these further with you at the appropriate time.

Policy objectives

In our initial response in August 2020, our key concern was around the potential for the "large business" threshold which determines whether the rules should apply to be impacted by the aggregation of turnover and balance sheets of the various entities that make up a Fund namely the Fund partnerships, the Fund manager and the underlying portfolio companies. We are grateful to note that the latest consultation addresses these. We commented on each of these entities in turn in our previous response.

We are grateful to note that the latest consultation addresses these points at paras 2.19 and 2.32. Clearly we will need to understand the detailed proposals in due course but we have made some initial observations below.

Application to Fund manager

Para 2.19 makes clear that is **not** intended that the turnover and balance sheet attributes of the underlying portfolio companies are considered when looking at the thresholds for the asset manager itself. This is welcome but given the test will still be "modelled" on the Senior Accounting Officer ("**SAO**") and Publication of Tax Strategies ("**PoTS**") regimes it will be important to consider the drafting of the proposed exclusion and we are very happy to assist with that in due course.

Application to Fund partnerships

Similarly, we note from para 2.32 that it is intended to specifically exclude collective investment schemes from the notification requirement which again is welcome. We would be happy to discuss how best to effect this exclusion and would note that there are other examples in the Taxes Acts of where the s235 FSMA definition has been used to reference collective investment schemes and assume that something similar will be proposed here. Again, we would be happy to discuss further to ensure the exemption works as intended.

Application to portfolio entities

The one point the consultation doesn't explicitly cover is the fact that portfolio companies under common ownership of a Fund should also not be aggregated when considering the threshold tests. We assume that this is implied by the exclusion of collective investments schemes but the rules will need to be drafted to make this point clear. As we outlined before it is critically important that the portfolio companies are considered in isolation as they are independent businesses.

We note that our concerns around the additional burden (and costs) imposed on those businesses without an appointed CCM have been acknowledged in 2.28, however further clarity would be gratefully received on the "method for these discussions to occur for business without a CCM" as a number of our members do not have a CCM.

Defining an uncertain tax treatment

Our view is that the introduction of "triggers" to identify relevant treatments should improve the clarity around the types of arrangement that require a notification and is more objective for taxpayers.

We have not considered all the triggers in detail but note the introduction of trigger b) ("Treatment arrived at other than in accordance with known and established industry practice) will be relevant to Private Equity managers as there are certain key treatments that have been agreed with HMRC, namely:

- Memorandum of Understanding between the BVCA and Inland Revenue on the income tax treatment of Venture Capital and Private Equity Limited Partnerships and Carried Interest
- Memorandum of Understanding between the BVCA and Inland Revenue on the income tax treatment of managers' equity investments in venture capital and private equity backed companies
- Statement approved by the Inland Revenue and the Department of Trade and Industry on the use of limited partnerships as venture capital investment funds 26 May 1987

In addition to these agreed statements there are a number of areas of HMRC guidance that are

applicable to the industry. The importance of HMRC guidance to triggers a and b highlights the need for such guidance to be appropriately discussed with industry and relevant stakeholders before publication to ensure it fully reflects wider industry views and avoids the potential need for disclosures on the basis of HMRC's "known position".

We note that you have proposed an increase in the threshold for notification to £5m which is welcome.

Method of notification

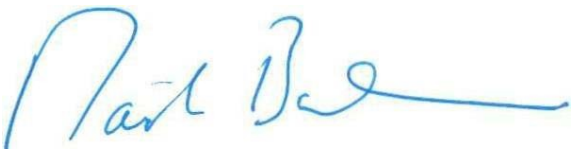
We agree with the proposal to notify HMRC as part of the existing relevant tax return filing process, rather than requiring a separate filing.

Penalties for failure to report

We welcome the restriction of penalties to the entity in question as opposed to individuals that are the person responsible to notify. In relation to the comments at 6.2 in relation to partnerships we understand that to mean that the £5,000 penalty is a liability of the partnership itself and there will be no personal penalties charged to individual partners.

Please let us know if you have any comments or questions and as discussed we would very much welcome the opportunity to discuss and review the draft provisions to ensure they continue to meet the objectives discussed above.

Yours faithfully,



Mark Baldwin
Chairman of the BVCA Taxation Committee