HMRC
100 Parliament Street
Westminster
London SW1A 2BQ
By email: uncertaintaxtreatmentconsultation@hmrc.gov.uk

14 September 2021

Dear Sirs,

BVCA comment on notification of uncertain tax treatments draft legislation

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 ("PE/VC") 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 the draft legislation on uncertain tax treatments for large businesses and for your previous engagement on the topics that are of interest to private equity funds.

We provide our response to the draft legislation below covering the key points we have discussed previously, namely our concern that the "large business" threshold which determines whether the rules should apply could 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 welcome the proposals in the draft legislation which acknowledge and takes steps to mitigate those concerns. We would be happy to discuss our comments further with you at the appropriate time.

Application to Fund Partnerships

We note that paragraph 4(1)(b) excludes a collective investment scheme (as defined by s235 FSMA 2000) from the definition of partnership and therefore from the notification requirement. This is welcome and should exclude the large majority of UK fund partnerships from the requirement. We note that in the draft asset holding company legislation a "qualifying fund" is defined as a fund which is a collective investment scheme or an AIF (that is not a collective investment scheme). AIF refers to an alternative investment fund within the Alternative Investment Fund Managers Regulations 2013. We wonder whether it would be appropriate to exclude partnerships which are AIFs from these rules so that both regimes are consistent. As AIF

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is a more international definition, it may be more appropriate as a carve-out when looking at non-UK partnership equivalents.

It is possible for an ordinary (ie not limited) partnership, LLP or a foreign equivalent to be a collective investment scheme or AIF and we wonder whether the carve out should go after (d) and apply to all entities in (a)-(d).

Sometimes a limited partnership could be part of a larger collective investment scheme (eg where there are parallel partnerships that together make up a collective investment scheme) and it is a moot point whether the partnership is a collective investment scheme in its own right.

Putting all of that together, we would suggest deleting the text after "1907" in paragraph 4(1)(b) and instead adding after (d), so that it applies to al entities in (a)-(d), "other than one which is or forms part of a collective investment scheme or an AIF (that is not a collective investment scheme)".

Application to Portfolio Entities

Common ownership by a fund

One point the consultation didn't explicitly cover was the fact that portfolio companies under common ownership of a Fund should also not be aggregated when considering the threshold tests.

We note that "group" is defined in the draft legislation at para 3 (1) and (2) in the context of ownership by a company using the definition of 51% subsidiary per s1154 CTA 2010. We understand that this should exclude a partnership from creating a group relationship and therefore should prevent the portfolio companies owned by a fund partnership being aggregated together as there should no common company owning more than 50% of the ordinary share capital in a widely held fund.

As such the threshold limits should apply to each portfolio company individually where portfolio companies are held by a fund partnership (provided the fund does not have a corporate investor with a 51% or greater interest and which thus comes to beneficially own more than 50% of the ordinary share capital of a portfolio company, where a group relationship would exist between a portfolio comp[any and the corporate investor – see for example CTM80152).

It would be helpful if this understanding of the impact control by a fund partnership has on the group test could be made explicit in the accompanying guidance as that would simplify the analysis for the underlying portfolio companies.

Common ownership by a "Master Holdco"

Where the group definition may be problematic is where different portfolio groups are owned by a common holding company established by a fund, sometimes referred to as a "Master Holdco". These structures are commonly used by investment funds in order to pool investment holding operations in a single corporate entity.

Where such a structure is used, we are concerned with two things:

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1. That the group test, as currently drafted, could lead to the amalgamation of the turnover and balance sheet totals of otherwise unrelated groups (as a result of common ownership by a Master Holdco); and
2. Where the Master Holdco is a UK entity (which we may see more of when the UK Asset Holding Company provisions are finalised) it will not benefit from the same CIS exclusion as its fund parent (despite the Master Holdco effectively, being part of the fund structure).

With respect to the above we recommend that it is considered whether (a) provisions could be introduced into the legislation to define a Master Holdco (perhaps borrowing from the definition of a Qualifying Asset Holding Company), with such an entity benefiting from a similar exemption to CIS fund partnerships, and (b) provisions could be introduced to effectively ignore or 'look through' such an entity in a structure in assessing whether subsidiaries of that entity are under common control. In effect a "Master Holdco" would be treated like a partnership.

We think that this is a very important point. The government is seeking to encourage the use of UK asset holding companies, whereas creating additional compliance burdens is likely to discourage people from doing this. Our suggestion (of equating a company within the UK QAHC regime with a fund partnership) would remove this issue whilst still leaving relevant underlying portfolio companies within the regime.

Application to Fund Managers

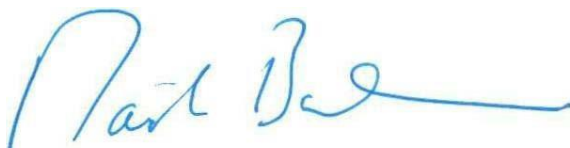
We note the drafting at paragraph 3 (3) and (4) that seeks to address our concerns around a subsidiary managed by an asset manager being grouped with the asset manager when considering the threshold limits.

Typically, in a private equity fund partnership context the manager (M) and its subsidiaries (e.g. the fund general partner) would not hold a 51% direct or indirect interest in the ordinary share capital of S (a fund portfolio company) and as such M should not typically meet the basic 51% subsidiary test set out at para 3 (2).

As such we wonder, if we have understood the basic rule correctly, whether you need paragraph 3 (3) and (4). In turn, that makes us wonder whether we have missed something in either our understanding of the general rule or this carve-out? Is it aimed at something else?

We hope that these thoughts are clear and helpful. Please let us know if there is anything here you would like to discuss.

Yours faithfully,



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