HMRC

By email: closecompanyconsultation@hmrc.gov.uk

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Consultation on reporting company payments to participators — modernising the reporting framework

UK Private Capital (formerly the British Private Equity and Venture Capital Association, or BVCA) represents 600 firms including the wider ecosystem of professional advisers and investors. Private capital consists of private equity and venture capital which makes long-term investments to grow British businesses and build a better economy. Private credit and venture debt also provide active and engaged debt finance to businesses.

The private capital industry backs 13,000 UK businesses, nine in ten of which are small or medium-sized enterprises. Businesses backed by the industry employ 2.5 million people across the UK and contribute 7% to GDP.

In 2024, £29.4bn was invested by private capital into UK businesses in sectors across the UK economy, ranging from consumer products to emerging technology. This increased investment has fuelled the growth of businesses across the UK, with six in ten (58%) of the businesses backed in 2024 located outside the capital. These investments are long term, with an average investment period of six years, in contrast to less than a year in public markets.

Thank you for the opportunity to respond to this consultation. Given the nature of the consultation and the specific questions asked by HMRC, our response is of an overarching nature.

In summary, it is our strong view that the private capital industry should not be within the scope of these changes. The proposed reporting obligations could apply to a very large number of companies owned by widely held private capital funds, with limited, if any, benefit to HMRC. Significantly, these companies do not fall within the category described in the consultation document as the target of the proposed measures.

We are concerned about the cumulative effect of these proposals when considered together with other Government initiatives, such as the intended expansion of the rules on notifying uncertain tax treatment[1], as well as recent changes to the tax rules affecting non-doms, carried interest, entrepreneurs' relief and CGT rates. Taken together, these measures risk damaging the UK's competitiveness and its attractiveness as a global business hub.

[1] Consultation: Extend Notification of Uncertain Tax Treatment (UTT) regime - GOV.UK

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The proposals set out in the consultation document would introduce additional complexity, sending a signal to international investors and companies that the UK imposes unnecessary administrative burdens on business. In our view, this runs counter to the Government's stated objectives of promoting economic growth and investment. It is also our view that these burdens would not be proportionate to the intended aims of the consultation.

Consultation aims and application to the private capital industry

The close company definition in section 439 CTA 2010, and the attribution rules in sections 448(1)(a) and 451(4)(c), bring a substantial number of companies owned by widely held private capital funds within the scope of the close company rules - and thus within the scope of these proposals.

Private capital funds are frequently structured as UK or non-UK limited partnerships that may establish one or more holding companies, or may invest directly into underlying companies. Where these companies are UK tax resident, the effect of the attribution provisions is that all the rights and powers of each partner in the fund partnership are attributed to each of the others. The practical result of these attribution rules is that any such company that is majority owned by a fund, even if it is in reality widely held, is nevertheless treated as a close company.

Consequently, a vast number of UK companies owned by widely held funds fall within the close company definition, so may come within the scope of any new reporting requirements introduced pursuant to this consultation.

The consultation document states that the aim of the proposals is to counter some of the "risks that contribute to the tax gap in the small company population", with a particular view to reducing "error and evasion in transactions between a company and its owners". The consultation document goes on to note that:

- these risks are particularly acute with close companies where there may not always be a clear practical delineation between the company itself and its participators, and
- the level of participator control usually present in a close company context may allow for structuring to minimise the tax charge at the participator level, in a way that is generally not possible for companies with a diverse participator base.

The consultation is therefore directed at a population of small, owner-managed businesses where the boundaries between the company and its participators may be unclear, record-keeping may be inadequate, and where there is a tangible risk of error or evasion in the reporting of transactions between the company and its owners.

This description does not apply to companies owned by private capital funds, for reasons we set out in more detail below. As a result, these companies are not the expressed target of the consultation, or of the rules themselves.

Why private capital should not be within the scope of the new rules

In our view, companies owned by private capital funds should fall outside the scope of these proposals, for the following reasons:

- there would be a potentially negative effect on UK competitiveness
- there would be a very high volume of reporting, with limited benefit to HMRC and significant cost for businesses
- these companies are not within the class of owner-managed or family-run businesses at which the consultation is aimed, and
- the concerns expressed in the consultation document, which the proposals are designed to address, do not arise in practice in the private capital industry

We expand on each of these points below.

Competitiveness

As we said above, if these new rules were to apply to the private capital industry, they would risk making the UK a less attractive location than other competitor jurisdictions.

The private capital industry is currently implementing wide-ranging additional reporting requirements under Pillar Two, and is already subject to extensive, burdensome and costly regulatory reporting requirements. It is our strong view that placing additional reporting and compliance burdens on the industry would reduce the UK's attractiveness for the investment of private capital, at a time when the Government is looking for ways to drive innovation and growth across the UK.

These new compliance burdens would also undermine the policy aim behind the Qualifying Asset Holding Company (QAHC) regime, namely to strengthen the UK's competitiveness as a jurisdiction for the location of investment funds. Any new reporting requirement would send a mixed message to prospective institutional investors.

High volume reporting of routine transactions

The consultation proposes that close companies should provide detailed information of any transaction between a close company and its participators. In the context of a UK company owned by a private capital fund, this extremely broad scope would, on the face of the consultation document, encompass any transfer of value between the close company and its participators, such as the payment by the company of any dividends and other distributions, any principal and interest on loans, and transaction and monitoring fees.

Were UK companies owned by widely held private capital funds to be within scope of any new reporting requirements, it would result in HMRC receiving a large volume of data relating to these routine commercial transactions within fund structures - none of which would further

HMRC's ability to identify or address the error and evasion that the consultation rightly seeks to tackle - whilst imposing significant additional administrative costs.

Not the intended aim of the proposals

Close companies owned by widely held fund partnerships are very unlikely to fall within the class of owner-managed or family-run businesses at which the consultation is aimed. The consultation document is clear in its intended aims, namely as a means to help tackle the "tax gap" in the small company population. The document also makes the point that HMRC perceives the risk to be greater for close companies where the distinction in practice between company and participator may not be clear and, crucially, where there may be a "merger of interests and finances", which may "both encourage error and facilitate evasion."

The participators in a fund-owned and controlled company (being the fund partnership itself, or its investors) are fundamentally different in character from the typical participators in a close company that the consultation seeks to address. They are not individuals extracting money from a company they control for personal expenditure; they generally have no day-to-day control over or access to the company's assets. The commercial terms surrounding any fund investment mean that the relationship between the company and its participators is wholly unlike that which gives rise to the risks identified in the consultation.

Effective controls already exist

Investment holding companies owned by private capital funds that sit within sophisticated, multi-layered fund structures are already subject to extensive investor oversight and also generally to regulatory supervision. There is no scope for a "merger of interests and finances" of the kind that concerns HMRC, because independent institutional investors in widely held funds simply would not tolerate this as a commercial matter.

In addition, these institutional investors typically use holding companies to make investments with a view to an eventual exit, such as a future sale to third-party purchasers, during which the entire structure would inevitably be subject to rigorous due diligence (including tax due diligence) by independent entities. These investors are therefore strongly commercially disincentivised from using close companies as vehicles for the evasion or manipulation which the consultation seeks to address. Through these fundamental commercial drivers, private capital fund structures are effectively "self-policed" by their investors, whose overriding priority is the realisation of value and the receipt of investment proceeds.

We also note that the private capital industry is generally well advised by reputable professional advisers, and is therefore already operating within what the consultation document refers to as a "structured framework" and with "good habits" in relation to the tracking of a close company's money. Through this sophisticated and professional environment, the institutional investors within the industry already have a very good understanding of their tax obligations, including any reporting obligations. An additional

reporting obligation for the industry is therefore unlikely to drive any positive behavioural change, is unnecessary, and would instead impose an additional cost and administrative burden that is disproportionate to the aims of the consultation.

Designing an appropriate exclusion

We consider that a targeted exclusion is appropriate to ensure that the private capital industry is not unduly impacted by a proposal of which it is not the primary target. We would propose, for your consideration, an exclusion based on existing legislative principles drawn from both the Qualifying Asset Holding Company (QAHC) regime and the UK REIT regime. Under this approach, for the purposes of any new close company reporting regime:

- section 528(5D) CTA 2010 could be imported from the REIT rules when determining whether a company is "close" on general principles within part 10 CTA 2010; and
- in any event, a company could be treated as non-close if it satisfies either:
    - the "ownership condition" in paragraph 3 schedule 2 FA 2022 (in the QAHC rules), or
    - the "non-close condition" in section 528(4C) CTA 2010 (in the REIT rules) – and we believe that the test in section 528(4C)(a)(ii) could sensibly be extended to include, for these purposes, Category A Investors under the QAHC rules, as well as institutional investors.

The result would be that the majority of widely or institutionally held companies within investment structures managed by or invested in by private capital firms would fall outside the scope of any new reporting regime.

Using existing legislative principles has the benefit of being familiar to both HMRC and the industry, which should ensure any exclusion is operated more accurately. We note, for example, that HMRC has incorporated the "qualifying fund" concept from the QAHC regime into the new SP 1/01 concerning the investment manager exemption – we assume this was because HMRC considers the "qualifying fund" definition to be an appropriate test of whether a fund is widely held, and is a test with which those interested in the application of the investment manager exemption may already be familiar.

An exclusion based on these principles should be appropriately precise in its focus, ensuring that only widely or institutionally held companies fall outside the scope of any new rules. For the reasons above, including these companies within the rules would not further the aims set out in the consultation, but instead would lead to an increased but unnecessary compliance and administrative burden, with potential negative implications for UK competitiveness.

For all the reasons set out above, we would urge you not to include the private capital industry within the scope of the proposed reporting requirements set out in the consultation. We would be grateful for the opportunity to discuss this with you further.

Yours sincerely

The UK Private Capital Tax Committee

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