

HMRC

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Consultation on extending the notification of uncertain tax treatment (UTT) regime

Introduction

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. UK-based private capital specialists have raised £190bn of funds, known as dry powder, expected to be invested over the next three to five years.

We are grateful for the opportunity to respond to this consultation. We valued our engagement with HMRC during the consultations on the introduction of the UTT regime, and look forward to continuing that dialogue in relation to the proposed extension of the regime.

We support HMRC's aim, expressed in the consultation, of ensuring consistent and fair treatment for taxpayers. We also support measures designed to stop taxpayers taking advantage of uncertainties in legal interpretation in a way that would amount to an abuse of the law.

The consultation document emphasises the importance of transparency. We share this view and, in the wider business context, actively advocate for accountability and transparency in the private capital industry. UK Private Capital members, and the larger companies they back, comply with the established Walker Guidelines for Disclosure and Transparency in Private Equity¹. These Guidelines promote transparency through enhanced reporting and disclosure by large UK private equity-owned companies and demonstrate the industry's economic

¹ Private Equity Reporting Group: the Walker Guidelines, see: [PERG | About the Guidelines](#)

contribution, while aligning reporting standards more closely with those expected of FTSE 250 companies.

While we support these overarching aims, we are concerned that the proposals outlined in this consultation risk damaging the UK's competitiveness and attractiveness as a global business hub. In our view, the changes do not align with the Government's aims for economic growth and investment, particularly when considered alongside other recent tax changes affecting internationally mobile business professionals and entrepreneurs. The proposals introduce additional complexity, sending a signal to international investors and companies that the UK imposes unnecessary administrative burdens on business. In our view, the anticipated negative impacts of the proposed changes are not a proportionate response to the risks identified in the consultation document. It may be that HMRC has underlying policy concerns of which we are not aware, in which case we would welcome the opportunity to discuss these with you.

In particular, our concerns are focused on:

- The inclusion of individuals in the scope of the regime. We expect individuals will find it substantially more difficult than large businesses to comply with the notification requirements of the regime. In our view, the additional burdens this would impose are disproportionate when compared with the potential benefit to HMRC.
- The proposed new notification trigger ("Trigger 3"). This is highly subjective, and therefore very difficult to comply with. It would also be significantly more problematic for some taxpayers than others, depending on how well-informed they are about HMRC's position on a particular point of legal interpretation: this is contrary to the consultation's stated aim of ensuring consistent and fair treatment for taxpayers.
- The proposed revision of an existing exemption (to require taxpayers to have received confirmation from HMRC that the uncertainty has been brought to HMRC's attention). This will add an extra layer of administrative burden for taxpayers, without furthering the aims of the regime, and is at odds with HMRC's expressed aims² to reduce burdens on taxpayers.

We have set out our more detailed comments below, and would be happy to discuss these, and the underlying policy issues, with you further.

Inclusion of individuals within the scope of the regime

Competitiveness

A key concern for the investment management industry is the ability to attract and retain talent. Internationally mobile private capital managers have many options when deciding in which country to base themselves, and other countries are actively incentivising private capital managers to come to their jurisdictions. The perception of the UK as an attractive place to work and do business is of key importance – and we have concerns that bringing individuals

² See, for example: [HMRC's Transformation Roadmap - GOV.UK](#)

into the scope of this regime would create an onerous additional layer of tax compliance for individuals which is out of step with other jurisdictions³.

One particular area of concern for the private capital industry, particularly in light of the proposed extension of the regime to individuals, is how this extended regime will interact with HMRC's guidance (currently in draft form) on the new carried interest legislation. As has been made clear previously, we have concerns with HMRC's technical interpretation (as set out in its draft guidance) that carried interest will fall within the scope of the business profits article of a typical double tax treaty.

We understand HMRC's view remains that taxpayers are entitled to adopt a position that differs from HMRC's published guidance, and we consider that where a private capital manager files a tax return on a technical basis of which HMRC is already well aware, that should not trigger an additional tax reporting obligation under this regime.

Compliance burden

We are concerned that individuals will find it difficult, as a practical matter, to comply with this regime and that this could materially increase the administrative burden on individual taxpayers. Whilst we recognise that a £5 million tax advantage is a material threshold, we expect it will be challenging as a practical matter for individuals to quantify the potential tax advantage (see comments on this below).

It is welcome news, per HMRC's statement in this consultation, that its evaluation of the regime indicates that one-off set-up and ongoing costs of compliance are considered to be reasonable by the majority of businesses surveyed. However, large businesses that are within the scope of the regime will likely have tax compliance and reporting functions to manage the operational requirements of the regime on an ongoing basis (and also potentially access to an HMRC Customer Compliance Manager). We expect individuals will find the compliance element of the regime significantly more burdensome, and will suffer additional advisory costs as a result.

In particular, the turnover and balance sheet test in the existing legislation provides a clear guide to businesses as to whether they are in scope of the regime. No such clear-cut test would be available to individual taxpayers. Instead, individual taxpayers would need to assess the value of any potential tax advantage to determine whether they are in scope, requiring individuals to continually monitor and assess the value of potential tax advantages under the regime.

This would not even necessarily result in notifications to HMRC where individuals determine that they do not meet the relevant threshold (but the individuals would still have had a heavy

³ As a point of detail here, we note that HMRC has referred in prior consultations to the US and Australia as comparator regimes. However, we understand that the focus of those regimes is on large businesses rather than individuals and, in any event, we query if these regimes would be accurate comparators if the UK legislation were to be amended as proposed.

administrative task to determine that they are not in scope). This represents a material increase in the compliance burden of the regime (and indeed a heavier burden on individuals than on businesses, given the absence of an equivalent turnover/balance sheet test for individuals) – particularly as the calculation of the value of a tax advantage has challenges of its own.

Calculation of the "tax advantage"

The calculation of the value of a tax advantage under the existing legislation requires calculation of the "expected amount". How this works depends on the relevant notification trigger and the tax in question.

- With respect to the existing notification trigger that "*the tax treatment applied in arriving at the amount relies (wholly or in part) on an interpretation or application of the law that is not in accordance with the way in which it is known that HMRC would interpret or apply the law*", the taxpayer is required to separately assess the "expected amount", i.e. the tax treatment "*that is wholly in accordance with HMRC's known interpretation and application of the law*" in order to determine the potential tax advantage. Proper consideration of this could require the individual to take specific advice and, as noted above, given there is no threshold balance sheet/turnover test, individuals would be required to conduct these assessments in order to determine whether they are in scope of the regime at all. This potentially leaves individuals with ongoing uncertainty and the potential to fall in and out of the regime in different periods.
- We assume that the existing notification trigger that a "*provision has been recognised in the accounts of the company or partnership to reflect the probability that a different tax treatment will be applied to a transaction to which the amount relates*", would not apply to individuals.
- It is not at all clear to us how a taxpayer would be expected to calculate the potential tax advantage under the proposed new notification trigger. It is, in our view, not reasonable to require taxpayers to calculate an "expected amount" without any knowledge of HMRC's position on the matter (and it is not otherwise clear how taxpayers would be expected to calculate the expected tax liability). This concern is not limited to individual taxpayers (indeed we have broader concerns with the new notification trigger overall) – but again the compliance burden for individuals would be particularly onerous. Please also see some particular comments on this below in relation to Trigger 3.

Trigger 3

We have significant concerns with the proposed addition of the new notification trigger. We note that the consultation paper indicates that HMRC consider this trigger is less subjective

than a previously proposed (but not enacted) trigger. However, this new trigger is, in our view, highly subjective and it is not at all clear how taxpayers would properly assess and comply with this extension of the regime. Indeed, we are concerned that the addition of this new trigger could be counterproductive to the aims of the regime. As noted above, it is also unclear how a taxpayer would be required to calculate a tax advantage under the new proposed trigger.

We are conscious that HMRC have, through the two prior consultation processes, listened to concerns around overly subjective notification triggers and have looked to carefully calibrate the regime to achieve the aims of closing the legal interpretation gap. We are concerned that extending the regime to include this new trigger would create a confusing framework which is very difficult for taxpayers to comply with, and the resulting taxpayer notifications may not be sufficiently targeted or appropriate to be of practical assistance to HMRC.

The "more than one credible legal interpretation" element of the trigger seems to require taxpayers to consider and explore every possible legal interpretation in relation to a particular tax treatment in order to conclude that the tax treatment they are reporting is the **only** credible one (such that they do not meet this new trigger). The term "credible" is also unclear and would seemingly capture situations where a legal interpretation may be widely considered by legal advisers to be unreasonable and/or off-market but still may be "credible". Given the complexity of the UK tax code, it is not uncommon for there to be more than one credible legal interpretation of the application of the law.

In terms of the requirement that "HMRC's position is not known", we note that the existing legislation includes the concept of whether HMRC's position is "known" – and the legislation provides that this would include HMRC guidance in the public domain as well as dealings with HMRC in respect of the business. It seems much more difficult for taxpayers to assess that HMRC's position is **not** known. What this means – and where (and how far) taxpayers would need to look to assess this - is entirely unclear. It also strikes us that it could lead to situations of unfairness as different taxpayers would have access to differing amounts of information (e.g. based on which advisors they appoint who may have had different experiences of HMRC's position on a point).

One way that this could be addressed would be to take a position that HMRC's position is unknown unless there is publicly available guidance on the issue. However, even this seems impractical as whilst published guidance (e.g. in the technical manuals) can be very helpful to taxpayers, it can often be outdated or incomplete (and in relation to new legislation, it may not be published for some time). It seems under this trigger that a taxpayer may receive legal advice grounded in analysis of the relevant statutory provisions and case law which leads the taxpayer to take a well-reasoned and appropriate position in their tax return – but still be required to notify under this regime simply because there isn't specific publicly available guidance available on the particular point, leading to a system where HMRC receives an unmanageable amount of notifications.

HMRC may also decide to revise or remove guidance at its discretion (see for example the flux around HMRC guidance with respect to Condition C of the salaried members rules) – how

would it work in terms of timing and notification if HMRC outlined a particular view in its published guidance and then removed this guidance?

HMRC's current guidance on what constitutes HMRC's "known position" (in relation to the existing notification trigger) sets out examples of dealings with HMRC which could be taken into account here beyond what is contained in publicly available guidance (e.g. businesses may be able to take into account discussions with their Customer Compliance Manager on a particular matter). We are concerned that it will be more difficult for individual taxpayers to understand whether HMRC has a known position outside the route of publicly available guidance (whereas large businesses may be able to rely on informal guidance provided by their Customer Compliance Manager). This information mismatch could make it more difficult for individuals to identify where HMRC's position is "not known" under this proposed new trigger.

Overall we are concerned that the proposed new trigger appears unreasonable, and would be difficult to comply with. By creating a complex and burdensome new obligation, it would run counter to HMRC's aim to support taxpayers to get their tax affairs right.

The proposed change to the exemption

We have additional concerns with the proposed change to the existing exemption that can be relied on where it is reasonable for a taxpayer to conclude that HMRC already has available to it all, or substantially all, of the information relating to the amount that would otherwise be notifiable. The proposal to revise this exemption such that all in-scope taxpayers must hold confirmation from HMRC that HMRC is aware of the uncertainty will add a further layer of administrative burden on taxpayers (and it is not clear to us that this would further the aims of the regime, as we fear it could result in notifications of numerous points HMRC is already well aware of).

We have concerns around how this narrower exemption would work in the context of the proposed extended regime and, indeed, would expect that a broader exemption may be appropriate if the regime is extended to individuals, for example.

Our concerns about this change also apply to the existing regime. We consider this would create potentially duplicative reporting obligations for taxpayers (noting it isn't clear how this proposal would interact with the existing exemption for reports made under other regulatory requirements, such as under DOTAS) and potentially cut across longstanding and known positions that have been discussed between a taxpayer and HMRC, and which the taxpayer reasonably considers HMRC is already well aware of.

We are also concerned that it may be burdensome for HMRC to provide such confirmations in a timely manner, which could leave taxpayers waiting long periods for confirmations (meaning they are required to make formal notifications) even, again, where it is entirely clear to the taxpayer that HMRC already knows about a particular interpretation/position.

Thank you again for the opportunity to comment on this consultation. As we said above we would welcome the opportunity to discuss this with you, so that we can better understand HMRC's position, explain the burdens and impacts of these proposals, and explore alternative ways in which HMRC's concerns could be addressed.

Yours sincerely

The UK Private Capital Tax Committee