Keeping Up With Alternative Investment Funds

Tax Day 2021 - summary of consultation documents

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Executive Summary

Today marks the first ever '**Tax Day**', heralded as a chance for consultations on future tax policy to get more focus and stakeholder scrutiny outside the normal Budget Day process.

One might be forgiven for thinking that given this build-up, it was a bit of a damp squib, more notable for what was not included than what was included. Nothing on reform of capital gains tax or inheritance tax, nothing on equalising the treatment of the employed and self employed, and nothing on pensions tax relief (three areas where there were clear recommendations from the cross-party Treasury Committee last month). And still no sign of the long promised consultations on the VAT treatment of fund management fees and the review of VAT for financial services, both eagerly awaited by the industry.

Whilst many of the measures announced in the "Command Paper" published by the Treasury were administrative in nature, linked to the broader objective of increased digitisation of UK tax filings, better tax administration and reduction of the tax gap, there were still a few consultations which will be of interest to the Alternative Investment Funds industry.

We have highlighted the key issues affecting the AIF industry below:

- Transfer pricing documentation;
- Notification of uncertain tax treatment by large businesses;
- Consultation on the reform of taxation of securitisation companies;
- Raising standards in the tax advice market;
- Helping taxpayers get offshore tax right;
- VAT grouping and partial exemption; and
- The tax administration framework.

The first two of these measures perhaps seem most likely to be implemented sooner rather than later, potentially in the 2022 Finance Bill, as both borrow heavily from regimes already implemented in other jurisdictions.

And although, as noted above, there was nothing on the "big three" issues which had been expected to feature, there was no announcement that there would not be changes in those areas either. So it seems likely that the can has just been kicked down the road a little way, and these issues will undoubtedly reappear in the not too distant future.

Please do not hesitate to get in touch with me, or any of my colleagues, to discuss any of the consultation documents.

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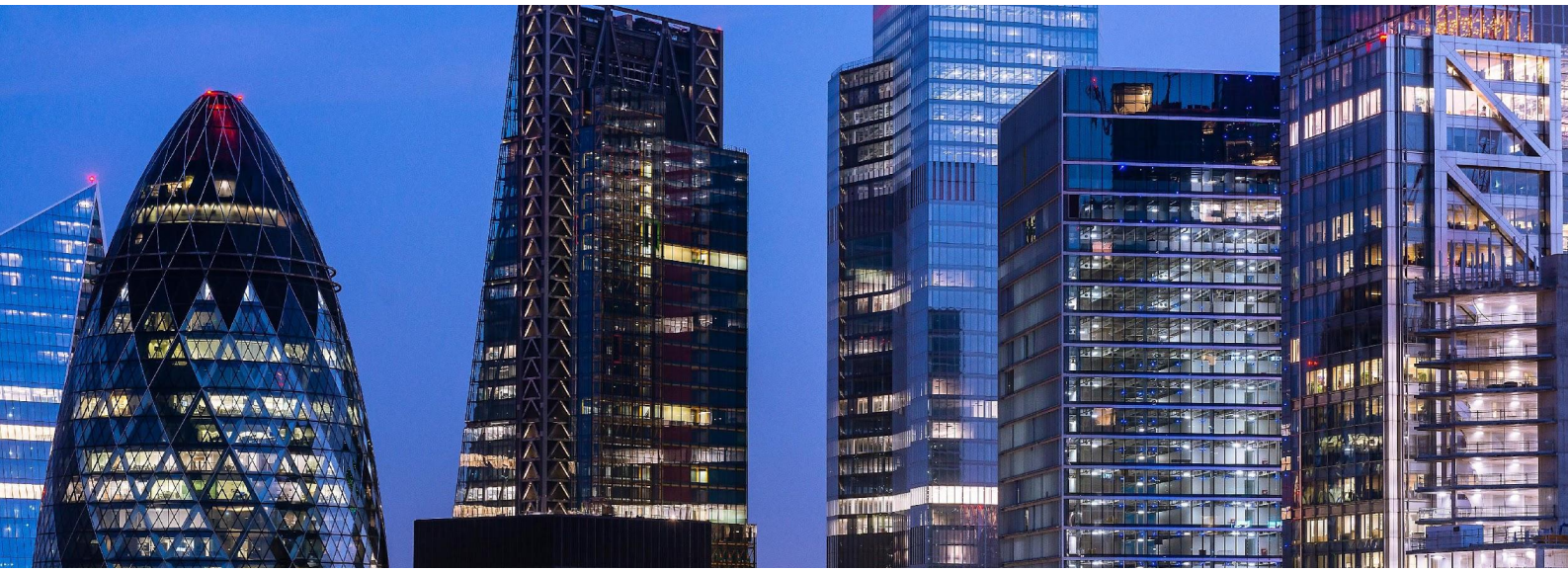

UK consultation documents impacting the Alternative Investment Funds industry

Transfer pricing documentation

HMRC released a public consultation document on the potential changes to UK transfer pricing (TP) documentation requirements today. The objectives of the proposed changes would be to:

- provide greater certainty for UK businesses around the TP documentation requirements;
- provide HMRC with better quality data to enable more efficient and targeted compliance interventions; and
- align the UK's practice more closely with the TP documentation requirements of other jurisdictions and with the BEPS Action 13 Report.

Two main changes are being considered:

- The introduction of **mandatory master file and local file requirements** (in line with the BEPS Action 13 Report) for UK multinational enterprises within the scope of country by country reporting reporting requirements (i.e. where consolidated group revenues are over EUR 750m), with potential additional requirements such as an 'evidence log' also being considered. Under current proposals, the master file and UK local file would need to be provided to HMRC within 30 days after a request; and
- The introduction of **additional disclosures about cross border transactions with associated enterprises** to be included in an International Dealings Schedule as part of the annual tax return. This would be a requirement for all businesses within the scope of UK TP rules, with potential materiality limits being considered to exclude certain transactions.

Notification of uncertain tax treatment by large businesses

This is a second-stage consultation, **aiming to address some of the concerns as to the breadth and subjectivity of the initial proposals** in last year's consultation. Whilst some respondents to the original consultation commented that the government had failed to set out a clear rationale for the policy, the measure is still slated for implementation in April 2022.

It aims to close the tax gap created where HMRC and a taxpayer take a different view of what the law means, a gap estimated to be £4.9bn during the 2018/2019 tax year. This measure is not intended to promote any assumption that HMRC's interpretation is correct, nor that HMRC is a final arbiter of tax law. The measure **aims to ensure that HMRC is aware of all cases where a large business has adopted a treatment that is contrary to HMRC's known position** and to accelerate the point at which discussions occur on uncertain treatment.

For this second consultation, which closes 1 June 2021, HMRC is seeking views on the:

- definition of uncertain tax treatment;
- threshold for notification;
- exclusions from the requirement to notify; and
- proposed penalty for non-compliance.

UK consultation documents impacting the Alternative Investment Funds industry

Consultation on the reform of taxation of securitisation companies

This consultation is driven by the desire to ensure that the UK's tax code keeps pace with the evolving nature of capital markets, and contributes to maintaining the UK's position as a leading financial services centre.

The use of securitisation regimes in credit fund structures is fairly common but predominantly non-UK securitisation regimes are used. Reasons for this include the difficulty of meeting all the relevant conditions under the UK regime and the requirement that only certain "financial assets" can be held by a securitisation company. It is therefore **welcomed that the consultation focuses, in particular, on relaxing certain of the conditions to be a securitisation company**.

The government is seeking views on a number of issues, including whether:

- there should be a **relaxation of the threshold requirement that more than 50%** of the securities issued by a note-issuing company be **issued to "independent persons"** so as to enable originators to retain a greater interest;
- there should be a **reduction of the note issuance threshold of £10m** as it restricts access to the regime, for instance, for charities; and
- the threshold should take into account the ability to **recycle the note-issuing company for multiple issuances** without each separate issuance needing to meet the threshold.
- **other types of assets could be securitised**, including, in particular, whether to include the ability for a securitisation company to hold shares, although it is suggested that this may only be in limited circumstances, e.g. to include shares resulting from a restructuring or bailout of an existing securitisation. Extending the regime to enable land to be held in a securitisation company is expressly excluded from scope.

Lastly, the consultation focuses on the **application of the stamp duty (and therefore SDRT) loan capital exemption to securitisation arrangements** (as well as to insurance-linked securitisation securities). The UK loan capital exemption does not apply to notes which have equity features such as carrying a return linked to profits or a right to an excessive rate of return or repayment. Therefore, certain notes issued may be subject to stamp duty, although it is noted that other workarounds can sometimes be implemented.

The document also recognises that practical problems can also arise from potential liabilities to stamp duty or SDRT where pools of loan assets are transferred as part of a securitisation arrangement. The government is keen to understand the areas of concern and uncertainty around the applicability of the loan capital exemption and to learn to what extent these features are factors to securitisation arrangements being implemented outside the UK.

It seems very possible that this consultation may lead to changes being made to the securitisation regime to make it more attractive. If this does happen and if the proposed UK asset holding company regime is also introduced, there should be much greater flexibility for credit funds to structure their arrangements in the UK.

Raising standards in the tax advice market

A consultation was was also published on requiring **those who provide "tax advice" to have professional indemnity insurance**. While this is aimed at a minority of tax advisers who do not have have professional indemnity insurance, it is likely to cover tax advice provided by a business.

This means that it could apply where, for example, a manager explains the tax treatment of their funds to a potential investor or does 'in-house' investor reporting. The closing date for comments is 15 June 2021.

UK consultation documents impacting the Alternative Investment Funds industry

Helping taxpayers get offshore tax right

HMRC receive significant amounts of data relating to offshore income and gains under various information sharing arrangements (such as CRS and FATCA). This consultation focuses on **how this data could be used to support taxpayers with their offshore tax obligations** (by offshore tax, HMRC mean UK tax on non-UK income and gains). The focus here is not on deliberate non-compliance by taxpayers but on ensuring that processes and systems are put in place that facilitate compliance.

The consultation explains, for example, that the data received if typically for a calendar year, rather than on a UK tax year to 5 April, and so it is difficult reconcile to self-assessment tax returns. One of the changes consulted on is to require more detail to be included on the foreign pages of an individual's tax return to make it easier for HMRC to reconcile the return to its information. **If implemented, these changes will put more focus on the reporting that a fund does**, both in terms of accuracy of the information supplied to investors and to ensure it meets any new tax return reporting requirements.

VAT grouping and VAT partial exemption

There were a number of announcements made in the publication which touch on indirect tax measures, and a full discussion of these will be included on our webex taking place on Friday 26th March. The key points to note for businesses in the AIF sector are as follows:

- HMRC has decided **not to progress the points raised** in the 2020 call for evidence **in relation to VAT grouping**. This may come as welcome news to many in the sector, as some of the points included in the 2020 call for evidence had the potential to create additional VAT cost, and also uncertainty;
- Responses to the 2019 call for evidence in relation to partial exemption have been summarised by HMRC. **Positive steps are indicated** at the end of the responses, **in relation to the streamlining and simplification of the PESM process**, and further engagement is promised in this regard;
- The developments in relation to uncertain tax treatments, discussed above, will also have relevance in relation to aspects of indirect tax, and any areas of indirect tax uncertainty should be built into any responses in relation to that.

Whilst these measures are of interest, it should also be noted that **further developments and announcements are anticipated through 2021**, both in relation to the VAT and fund management consultation, and also in relation to the VAT and financial services review, both of which will be highly relevant for AIF businesses.

Consultation on Tax Administration

Timely payment

As part of the government's 10-year strategy to build a trusted, modern tax administration system, this call for evidence is the start of a conversation about the benefits and challenges of the current tax payment timings, and for **moving to more frequent, in-year tax calculation and payment**.

It focuses on Income Tax Self Assessment and Corporation Tax for companies outside the quarterly instalment regime. This call for evidence will be of interest to everyone paying Income Tax and National Insurance contributions outside existing regular payment regimes (such as Pay as You Earn) and those in Corporation Tax Self Assessment who are not within the quarterly instalment payment regime.

The tax administration framework: supporting a 21st century tax system

Building a trusted, modern tax administration system, the Government are seeking views on how the legislation underpinning HMRC's administration of the tax system could be updated. This review promises to **take a fresh look at the fundamentals of tax administration**.

The tax administration framework provides the foundations for this strategy. It plays a critical role in how people experience the tax system and how much trust they place in it. A reformed framework is key to harnessing opportunities that will drive up productivity and innovation as the UK's tax system becomes increasingly digital – allowing HMRC and customers to benefit from advances in the use of technology and data.

Contacts

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