HM Revenue & Customs
Chris Orchard
Room 3C/03
100 Parliament Street
London
SW1A 2BQ

22nd October 2014

Dear Sir,

**Global Standard on Automatic Exchange of Information to Improve Tax Compliance**

I am writing to you on behalf of the British Private Equity and Venture Capital Association (the "BVCA") in response to the consultation document (the "Consultation Document") and draft agreement (the "Agreement") of 31 July, 2014, regarding the Global Standard on Automatic Exchange of Information to Improve Tax Compliance. The Consultation concerns the implementation of the Common Reporting standard ("CRS") in the United Kingdom. The BVCA represents the interests of members of the private equity and venture capital industry in the UK and its membership consists of over 500 firms involved in this area. The opportunity to comment on the proposals contained in the Consultation Document is welcomed since BVCA members will be significantly impacted by the expansion of information sharing.

This response focusses on the questions asked in the Consultation Document which are relevant to BVCA members. Where applicable, abbreviations used in this letter correspond to those in the Consultation Document, the Agreement and related documents. Where applicable, this response also addresses matters raised in a meeting of 13th October 2014 between BVCA representatives and HMRC.

***Q1 Are there any definitions in the Agreement that give rise to uncertainty or raise practical issues which have not been covered by existing UK Guidance on automatic exchange of information agreements?***

The main practical issue faced within the private equity industry in terms of definitions relates to the definition of "resident" in the context of a limited partnership. Typically, private equity funds are formed as limited partnerships. The investors are limited partners with no involvement in the business of the partnership, while governance is vested in the general partner, which may engage a fund manager to carry out management functions. The country in which the partnership is organised, the residence of the general partner and the residence of the manager may all be different.

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Currently, HMRC Guidance on information exchange states that a partnership will be resident in the UK if its place of management and control is in the UK. Typically, in a limited partnership structure, management and control resides with the general partner so that limited partnerships with a UK general partner are usually regarded as UK resident. This can give rise to certain issues.

First, this definition may not be consistent across all jurisdictions. In compliance with the Intergovernmental Agreements (IGAs) entered into under FATCA, BVCA members have encountered difficulties with inconsistency in this area. For example, until the Cayman Islands clarified its guidance on the point, it regarded a partnership as resident in Cayman (and thus eligible to use its IGA) only if the partnership was organised under Cayman law. This left a Scottish limited partnership with a Cayman general partner ineligible to use either the UK or Cayman IGA since it was managed and controlled in Cayman and thus outside the UK IGA but organised in Cayman and thus outside the Cayman IGA. Other examples in this area are likely to arise as compliance with FATCA develops. Equally, there are likely to be instances in which a partnership is regarded as resident of more than one country under its IGA implementation. This could result in the need for double reporting, with the partnership providing the same information to more than one tax authority and the United States receiving the information in duplicate.

The BVCA membership would benefit from a common practice under CRS regarding where a limited partnership is resident. It would also help if such practice were based on a clear an unequivocal test such as the residence of the general partner of the place or organisation. Currently, a "management and control" test can be subjective and more than one jurisdiction could assert residence in such instances. It is to be hoped that the development of information exchange can accommodate this approach.

We are aware that HMRC is not empowered to legislate for other jurisdictions but we would urge them to adopt a clear test on the residence of a limited partnership and to actively engage with other countries in relation to establishing accepted practice in this area. It might also help to have an agreed procedure in areas of uncertainty so that entities are not left reporting to multiple jurisdictions or being unaware how to report when they do not fulfil any country's individual definition of residence.

Our understanding from our meeting of 13th October was that HMRC had already considered this issue and were considering a tie breaker procedure followed by, if necessary, an election by a partnership on where to file. HMRC had considered that where a partnership filed a tax return might be an appropriate tie breaker but accepted that many fund structures involve multiple tax filing. HMRC has asked the BVCA to prepare a flow chart to assist in identifying an appropriate tie breaker and election procedure for partnerships and the BVCA is in the process of this and will send something in due course.

***Q2 To enable us to produce estimates of the administrative burdens on UK business for publication in the TIIN, can you tell us what additional burdens and costs are anticipated in respect of the reporting and transmission of data assuming that reporting applies to all the jurisdictions that have committed to early adoption of the CRS?***

The level of burden for BVCA members will depend upon the date reports are due and the format and data requirements of submission. If the reporting date is the same as under FATCA, namely 31 May, and the format and method of transmission are likewise the same, the burden will be lower. However, even with such things aligned, there will be some entities which have introduced systems and procedures designed only to collect information on US investors and report under FATCA (or, where applicable, the CD and Gibraltar agreements). Such entities will need to revisit their procedures and systems resulting in inevitable costs. Our understanding from our meeting with HMRC is that there is support for close alignment of reporting procedures.

***Q3 Will the differences (from FATCA and CD/Gibraltar) in the information being requested lead to any increased burdens for your business? If so then what will the additional costs be, what will they relate to and how will they arise?***

The main differences between the requirements of FATCA and the CD/Gibraltar agreements and those proposed by CRS are the date of birth of individuals and the taxpayer identification number ("TIN") of individuals and entities.

The prospect of additional requests for information creates inconsistency between reports under FATCA and the CD/Gibraltar agreements and those under CRS. This creates a burden for businesses in that they cannot file a single report compliant with all information exchange agreements.

At the meeting of 13th October, HMRC advised that the TIN and date of birth requirements were to assist in identifying taxpayers, especially since many jurisdictions which did not use a TIN were reliant on dates of birth.

***Q4 Will Reporting Financial Institutions find it useful for HMRC to publish in guidance the format that TINs take for each of the jurisdictions with which exchange will take place under the CRS?***

If obtaining a TIN is regarded as necessary (see above response to Q3) then Financial Institutions should generally be allowed to rely on the information with which they are provided. We understand HMRC concurs with this so there is some concern with the BVCA that the provision of a list brings with it the implied expectation that Financial Institutions will be expected to check it against what they are given by a customer.

At the meeting of 13th October, HMRC advised that the intention of the list was not to create a burden for reporting institutions and that this was still an open issue. The BVCA would reiterate that its very existence might imply an obligation to consult it and wonder if it might it be possible, under electronic transmission of reports for the system to "default" to the format of the

jurisdiction entered so that there is no need to separately consult a list but there is an automatic alert to a number which does not conform to what is expected.

***Q7 To enable us to produce estimates of the administrative burden on UK business, for publication in the TIIN, can you tell us what additional burdens and costs the requirement to report data under the CRS is likely to introduce for any of the Financial Institutions identified above***

There are undoubtedly many Financial Institutions (including those within the private equity industry) that do not have CD/Gibraltar account holders, but that do have account holders in other early adopter jurisdictions. Such Financial Institutions are likely to be in the process of undertaking processes and build systems to ensure that they meet their reporting requirements. The potential burdens on these Financial Institutions are likely to be impacted by similar factors to those identified in the response to Q2 above. Again, the crucial issue is to try and ensure that there is harmony between the various reporting regimes.

***Q 8 Will the identification of jurisdictions that do not issue or do not require collection of the TIN give Reporting Financial Institutions sufficient certainty that the need to report has been removed? If not, how should this be addressed to provide the required certainty?***

It would be helpful to know which jurisdictions do not have these. In terms of electronic transmission of reports, might it be possible for the TIN entry to default to "n/a" on entry of a jurisdiction which does not issue TINs? This would be easier than consulting a list.

***Q10 Is the option to use High Value Account due diligence procedures for Lower Value Accounts something that business would like to have available?***

These options are very useful and are welcomed. The ability to apply a homogeneous process to all accounts is particularly useful and removes a debate applicable to the private equity industry as to when a new account is "opened" in the context of a partnership structure.

Our understanding from our meeting of 13th October is that these options have now been included in the proposed amendments to DAC and that they will, therefore, be implemented by HMRC. The question remains as to whether they should be options or laid down by law. The BVCA does not have strong views on this but welcomes simplicity where possible.

***Q12 Does a positive election to apply the de minimis meet the needs of business better than having an election to disapply the limit as envisaged in the CRS? If not, what are the factors that make disapplying the election the better option?***

Reviewing account balances presents an additional administrative burden for Financial Institutions, especially within fund structures where such balances are not always as obvious as in e.g. a bank account. Accordingly, an election to apply the limit as opposed to disapply it seems to be more appropriate. Financial Institutions are then making a positive choice to undertake a review of account balances.

***Q16 Would UK Financial Institutions find the inclusion of the provision in Section VII beneficial? (subparagraph C(9) – related entity definition)***

It would be useful to only be required to obtain information from an account holder once. Our main concern in this area was that funds would not be included in the "related entity" concept. However, we gather from our meeting of 13th October that funds under common management will be within the definition of "related entity."

***Q17 Are there other types of account that meet the conditions for being low risk as defined by the CRS that could be included as Excluded Accounts? If so, what are the characteristics of these accounts that enable them to satisfy the requisite criteria?***

In private equity fund structures, holding companies are frequently used. These may be regarded as Financial Institutions but, assuming they are wholly owned by the fund in question, any reporting will not add anything to information already reported by the fund, creating an unnecessary burden. Accordingly, the BVCA would welcome an exclusion for Financial Institutions which are wholly owned by another, compliant financial institution. Such Financial Institutions present no risk of avoidance since their only account holder is already compliant.

This was discussed at some length at the meeting of 13th October. It is clear that HMRC does not intend to create unnecessary burdens but it may be limited on what it is permissible to actually exclude from a definition. It might be possible to exclude an entity from filing a report, which may be of some assistance. It was agreed at the meeting that HMRC would illustrate this issue by way of a diagram and summary, which we will provide in due course.

***Q21 Are there any other options for reporting that would provide a better solution for business? If so, please explain how the burden on business would be reduced beyond the options above.***

Of the options suggested, option 4 (a single CRS report, with a method of identifying the information that would also be on EUSD report) is the best, since a single report is desirable. However, it remains unclear what the role of the EUSD will be when CRS is introduced. A Financial Institution complying with CRS will also be compliant with the EUSD and it seems an unnecessary burden on Financial Institutions to identify what information in a CRS report would also be on an EUSD report. Accordingly, our position is that the ideal would be a single report to taxing authorities with no requirement to identify information pertinent to the EUSD as well as CRS. The role of the Financial Institution should be to simply supply the information required, not identify how a taxing authority uses such information. At our meeting of 13th October, HMRC appeared to fully understand this and advised that progress was being made towards the EUSD becoming obsolete given the advent of CRS.

We hope the above is helpful to HMRC and we will provide the materials agreed in our meeting with them shortly. We appreciate HMRC taking the time to engage with us and being receptive to

our concerns and extend our thanks to Chris Orchard and Charlotte Hopwood, who met BVCA representatives.

Should this letter give rise to any questions please contact Jenny Wheater on 020 7786 2136.

Yours faithfully

Steven Whitaker
Chairman of the Tax Committee
BVCA