Pascal Saint-Amans
Director, Centre for Tax Policy and Administration
Organisation for Economic Cooperation and Development
2 Rue André Pascal
75016 Paris
France

16 October 2019

Dear Pascal,

RE: Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy

We are writing to you in respect of the OECD's programme of work related to the digitisation of the economy. The trade associations who are signatories to this letter represent the interests of private equity and venture capital firms across the world and as you are likely aware, our member firms operate on a cross-border basis and their structures are often considered complex. As such, matters which could have significant impact on the international tax framework within which such firms are operating, are of direct importance to the industry.

We understand the rationale behind the programme of work and that it is aimed at multinational corporations, however, we would like to avoid a situation where investment funds are unintentionally caught by rules which are not designed with common fund structures in mind. To that avail we have commenced an initial impact assessment of the proposals outlined in the Paris accord and we would very much appreciate the opportunity to meet with you to discuss our initial feedback.

Some of the key areas that we feel the OECD should be aware of early in the designs phase are set out below:

- One of the core principles of investing through a fund is that it should produce a neutral tax result. Fund managers cannot operate a fund that puts investors in a worse position than if they had invested into an asset directly.

- The proposals set out in Pillar 2 of the OECD digitalisation programme, in particular the proposed income inclusion rule and under taxed payments rule, should be clearly defined so that they are applied consistently by OECD jurisdictions.

- Rules that are crafted solely with the impact of large corporate structures in mind often do not take into account the characteristics of common fund structures. This includes consideration of the following:
  - What constitutes an entity and a group in the context of investment funds. In common fund structures:
    - (i) investors are not involved in the day-to-day management of a fund or its portfolio (as this protects their limited liability status);
    - (ii) in operating the fund, it is key that the various portfolio companies are viewed as separate investments. This includes clear ring fencing of liabilities to ensure cross contamination risks are managed and an inability for profits/losses from one portfolio investment to be offset/pooled with that of another. These features create unique considerations when looking to define the 'group' in question.
  - Similar considerations exist when considering the definition of a related party.

- The treatment of investors and entities which are tax exempt. It is not uncommon for fund structures to include entities which are treated as tax transparent or are subject to an exemption from taxation on certain income classes. How these features are considered in the context of minimum taxation, etc. will be key.
- Legitimate design features of tax systems such as participation exemptions. Fund structures often have very legitimate exemptions from taxation for investment returns earned by the fund holding structures. This should be carefully considered in the design of any minimum effective taxation rule.

- Any changes to double tax treaties, especially those which may limit treaty access, will likely have a significant impact on the funds industry. Limiting treaty access applicable to investment returns on the basis of no inclusion/under taxation would ultimately likely give rise to double taxation. Features of tax systems that exist to mitigate this ought to be respected.

Whilst the private equity and venture capital industry does not appear to the intended target of these new rules, we hope that the specific characteristics of our industry can be considered as the design features of the new rules are developed. We would like to offer our support in this respect and if helpful we would be more than happy to provide further background on typical fund structures that are used for investment and the drivers for these structures (for example to help meet investor requirements that often vary across different jurisdictions).

During the OECD's BEPS project we were active contributors, in particular in respect of Action Point 6 on treaty benefits. We have subsequently discussed the implementation of the Multilateral Instrument and the Principal Purpose Test in relation to tax treaties with OECD representatives including Sophie Chatel and Jeffrey van Hove. This dialogue was both insightful and constructive and we would relish the opportunity to ensure a similar open and early dialogue is established in respect of the digitalisation programme. We are also in the process of reviewing the consultation for a "Unified Approach" under Pillar One.

Representatives from our industry would be happy to discuss this in further detail at your offices at a time that is convenient for you.

Yours sincerely,

AMERICAN INVESTMENT COUNCIL Growth Through Long-Term Investment
AUSTRALIAN INVESTMENT COUNCIL The voice of private capital
AIFI Associazione Italiana del Private Equity, Venture Capital e Private Debt
Ascri ASOCIACIÓN ESPAÑOLA DE CAPITAL, CRECIMIENTO E INVERSIÓN
AVCO AUSTRIAN PRIVATE EQUITY AND VENTURE CAPITAL ORGANISATION
BVA
BVCA British Private Equity & Venture Capital Association
БV<Λ BULGARIAN PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION
CVCA CANADIAN VENTURE CAPITAL & PRIVATE EQUITY ASSOCIATION
CVCA CROATIAN PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION
CVCA Czech Private Equity & Venture Capital Association
BVK
dvca
ESTVCA
France Invest
HELLENIC VENTURE CAPITAL ASSOCIATION

- American Investment Council (AIC)
- Australian Investment Council (AIC)
- Italian Private Equity and Venture Capital Association (AIFI)
- Spanish Venture Capital and Private Equity Association (ASCRI)
- Austrian Private Equity and Venture Capital Association (AVCO)
- Belgian Venture Capital and Private Equity Association (BVA)
- British Private Equity and Venture Capital Association (BVCA)
- Bulgarian Private Equity and Venture Capital Association (BVCA)
- Canadian Venture Capital and Private Equity Association (CVCA)
- Croatian Private Equity and Venture Capital Association (CVCA)
- Czech Private Equity and Venture Capital Association (CVCA)
- German Private Equity and Venture Capital Association (BVK)
- Danish Venture Capital and Private Equity Association (DVCA)
- Estonian Private Equity and Venture Capital Association (EstVCA)
- France Invest
- Hellenic Venture Capital Association (HVCA)
- Hungarian Venture Capital and Private Equity Association (HVCA)
- Invest Europe
- Irish Venture Capital Association (IVCA)
- Luxembourg Private Equity and Venture Capital Association (LPEA)
- Latvian Private Equity and Venture Capital Association (LVCA)
- Norwegian Venture Capital and Private Equity Association (NVCA)
- US National Venture Capital Association (NVCA)
- Dutch Private Equity and Venture Capital Association (NVP)
- Finnish Venture Capital Association (FVCA)
- Portuguese Private Equity and Venture Capital Association (APCRI)
- Polish Private Equity and Venture Capital Association (PSIK)
- Swiss Private Equity and Corporate Finance Association (SECA)
- South Eastern Europe's Private Equity Association (SEEPEA)
- Slovak Venture Capital and Private Equity Association (SLOVCA)
- Swedish Private Equity and Venture Capital Association (SVCA)