Snapshot: potential new UK CGT rates - implications for private equity fund structures

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The Office of Tax Simplification (the **OTS**) issued its Capital Gains Tax Review – first report Simplifying by Design in November 2020. The report includes a recommendation that capital gains tax (**CGT**) rates in the UK be more closely aligned with income tax rates.

Such a move, if it comes to pass, is significant given the difference between the current CGT and income tax rates. In the UK the highest rates of income tax are 40%-45% while the highest rate of capital gains tax (excepting the 28% rate on carried interest) is 20%. If the rates were brought up to even close to income tax rates this would mean an effective doubling of the CGT rate for higher rate taxpayers.

Private equity funds which hold assets through UK holding structures and which have exits planned in the near term may consider accelerating any such plans to ensure that the disposals of shares are taxed at current rates leading to a possible significant increase in M&A activity in this first quarter of 2021.

Non-UK resident investors in private equity funds which have special purpose holding subsidiaries located in jurisdictions which are not subject to capital gains tax such as Guernsey will be unaffected provided the intention is to dispose of the shares in the holding company on exit. However, the move will likely focus the minds of private equity managers and their advisors in examining the viability and tax efficiency of existing structures as well as the location of future funds and their subsidiary holding structures and will likely increase the attractiveness of Guernsey as a financial services location.

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