



The Profit Diversion Compliance Facility - HMRC's approach to mitigating profit diversion in the UK

The Profit Diversion Compliance Facility ('PDCF') opened in January 2019 to encourage businesses, not already under enquiry, to review their transfer pricing positions and produce a disclosure report and proposal to address any high-risk positions taken

The changing background to the PDCF:

HMRC is now focusing more resource on transactions and structures they see as diverting profits from the UK to low-taxed jurisdictions.

HMRC has adopted an evidence-based approach to its investigations relying heavily on 'the facts on the ground'. This puts increasing emphasis on contemporaneous material - such as emails, professional advice received, sales and intra-group contracts.

Why businesses should consider registering for the PDCF

- It enables a business to get their tax affairs up to date efficiently and without the need for an HMRC investigation.
- The business is able to manage the process - what evidence to gather, who is interviewed and when etc.
- Where HMRC accepts a proposal this will give a business certainty for the past and a low-risk outcome for profit diversion in the future.
- It's an accelerated process as HMRC will respond to reports within 3 months
- Unprompted disclosure gives favourable penalty position.

Our experience of the PDCF after 18 months

- Registration and pre-submission meetings are well received by businesses.
- In majority of cases, the tax risks identified by business at registration and the work plan are fully accepted by HMRC.
- HMRC has accepted the majority of final reports submitted with little or no amendments.
- Where there has been a difference in views, our clients have been given the opportunity to revisit the issue and gather further evidence in order to reach a satisfactory outcome.
- Outcome on cases concluded so far is in line with HMRC's expectations - and some 'nil adjustment' cases have been accepted
- HMRC's success is measured by the % of acceptable reports, not the amount of additional tax.

Voluntary registration: A clean bill of health and low risk status going forward

HMRC has advised us that the PDCF will also be open to businesses who wish to register on a voluntary basis if they have not yet received a 'nudge' letter and provided that they are not already under enquiry

Receipt of "nudge" letter

Speak to your tax advisor for initial advice and perform a high level risk assessment to identify any potential profit diversion issues

Registration within 90 days

Go / no go decision on whether or not to register. Registration is quick and straightforward and no disclosure has to be made at this stage.

Post-registration meeting with HMRC

This will take place within a month of registration. Potential areas of risk will be discussed and a work plan will be agreed

The report due 6 months after registration

Will set out the facts around the areas of risk agreed at the post-registration meeting and will include a proposal to settle any additional tax liability

Submission of the report

HMRC will respond within 3 months of submission to accept or reject the report. We expect the majority of reports to be accepted

What are 'nudge' letters?

HMRC has compiled a list of potential profit diversion cases by identifying those businesses that may not have filed a DPT notification, analysing CbCR data and general risk profiling using internal and external data sources.

Businesses are then chosen to receive a 'nudge' letter, suggesting that they may want to consider entering the PDCF.

To date over 2/3rds of all businesses receiving a 'nudge letter have registered for the PDCF.

When are 'nudge' letters being sent?

HMRC have confirmed that more 'nudge' letters will be issued throughout 2020 and this is likely to continue into 2021.

Are any particular industries being targeted?

No. Businesses that have received letters to date have been in a wide range of business sectors (including financial services), have ranged from mid to large-sized with their top company located both in and outside the UK.

What happens if you receive a 'nudge' letter and decide not to register?

Our experience is that where businesses do not register for the PDCF after receiving a letter, an investigation will be opened by HMRC. This can be a lengthy, invasive and costly process, often lasting more than 2 years. A number of more serious cases are going to HMRC's Fraud Investigative Service and might end in criminal proceedings.

Let's talk

We can help you consider your profit diversion risks and provide advice in the event you receive a nudge letter.

For more information please contact your usual PwC contact or:



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