Notifying HMRC of an uncertain tax treatment

May 2021

Overview

From May 2022, large businesses (corporates and partnerships) will be required to send a specific notification to HMRC if their tax returns contain an **Uncertain Tax Treatment ('UTT')**.

A UTT will exist where there is more than one way to interpret or apply tax legislation in relation to a transaction or to goods, and the treatment adopted is either contrary to HMRC's known position, or HMRC's position is not known.

This will apply to the **legal interpretation** of Corporation Tax, Income Tax (including PAYE) and Value Added Tax legislation, for returns that are due to be filed with HMRC **after April 2022** and the tax amount involved is more than £5m. A £5,000 penalty will be charged for failing to notify HMRC of an UTT.

These notifications will effectively provide HMRC with an early warning system, that is expected to see HMRC enquire into more returns in a more targeted way.

This new obligation is the subject of a current HMRC consultation, in which Seven triggers (shown below) for identifying whether a UTT exists have been proposed. Draft legislation is expected in Summer 2021.

Attention is drawn, in particular, to the notification requirement applying to returns due to be filed with HMRC after April 2022.

For Corporation Tax, this means that for any accounting period that started after 2 May 2020 and ends on or after 1 May 2021, the filing date for the return is after April 2022.Therefore, any transactions that have either already taken place or are planned in the next few months will need to be considered in light of the proposed Seven triggers.

For taxes with no annual filing requirement (such as VAT or PAYE) the first impacted return will be the last return (filed after April 2022) which covers the period for the financial year ending 5 April 2022.

What will businesses need to do?

A three-stage approach should be adopted to identify whether an obligation to notify may exist and if so, to ensure a notification is made at the correct time.

Step One	Step Two	Step Three
Revisit recent transactions and consider planned transactions to identify whether any of the **seven** suggested triggers could apply, where the proposed tax treatment is based on a **legal interpretation that is uncertain**.	If one or more triggers are satisfied and a notification shall be required, prepare for an HMRC enquiry by examining whether the existing documents are sufficient to support the planned tax treatment or whether the **evidence file of documents can be enhanced with additional supporting facts and evidence**.	Include the new obligation to notify into existing compliance processes. For example, update the **Senior Accounting Officer** framework to make this obligation an additional area to be considered alongside the CT, IT (including PAYE) and VAT tax return preparation and signed off by an **appropriately experienced** senior member of the compliance team.

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How PwC can help

We can help businesses to understand whether this new obligation applies to the treatment of transactions. We can work with you to:

- Consider whether any transactions might be caught by the triggers;
- Review existing positions or build into planned technical analyses to examine whether any legal interpretation will require notification;
- Advise on the appropriate level of documentation required to support the planned tax treatment and to ensure enquiry preparedness in the event that HMRC opens enquiries; and
- Build into existing compliance procedures an additional process to identify whether an obligation to notify arises for returns filed after April 2022.

The seven proposed triggers

01

Results from an interpretation that is different from HMRC's known position.

02

Was arrived at other than in accordance with known and established industry practice.

03

Is treated in a different way from the way in which an equivalent transaction was treated in a previous return and the difference is not the result of a change in legislation, case law or a change in approach to accord with HMRC's known position.

04

Is in some way novel such that it cannot reasonably be regarded as certain.

05

In respect of which a provision has been recognised in the accounts of the company or partnership, in accordance with Generally Accepted Accounting Practice (GAAP), to reflect the probability that a different tax treatment will be applied to the transaction.

06

Results in either:

- A deduction for tax purposes greater than the amount incurred by the business, or
- Income received for which an equivalent amount is not reflected for tax purposes, unless HMRC is known to accept this treatment.

07

Has been the subject of professional advice, that is not protected by legal professional privilege:

- which is contradictory, in terms of tax treatment, to other professional advice they have received, or
- which they have not followed for the purpose of determining the correct tax treatment of a given transaction.

For the purpose of triggers A, C and F, **HMRC's 'known' position** or interpretation would include something from:

- guidance, statements, court decisions or other material (whether of HMRC or a Minister of the Crown) that is in the public domain, or
- dealings, in writing, with HMRC by or in respect of the company or partnership in question

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