

Disclosure of Uncertain Tax Treatments to HMRC

What's the impact? What does it mean for you?

August 2021

Large businesses must comply with a **new requirement** to disclose to HMRC '**uncertain tax treatments (UTT)**' in Corporation Tax, VAT and PAYE returns due to be filed on or after 1 April 2022.

This impacts businesses with **turnover exceeding £200m** and/or **£2bn balance sheet**, including those with an **HMRC Customer Compliance Manager**.

Transactions and decisions having a tax impact **being made now** are **potentially within scope** – and possibly **some made earlier** too.

HMRC say this new regime will help them to reduce the £4.9bn 'legal interpretation' tax gap. This is the tax HMRC say that is due, but is not collected, where taxpayers and HMRC interpret the law or its application differently. This may result in more tax return enquiries.

HMRC has now published detailed guidance, including on the nature and extent of the information businesses will be expected to disclose to HMRC, applying the £5m threshold in practice, and penalties.

This is a significant change, including for those businesses with a 'low risk' rating

This new regime is centred around three 'triggers', any one of which creates the obligation to disclose the treatment to HMRC, where more than £5m is at stake in a 12 month period.

Trigger One

There is a **provision** in the business' **annual accounts**, in accordance with generally accepted accounting practice, to reflect the **probability that a different tax treatment** will be applied to the transaction.

This **includes both general and specific provisions**.

Trigger Two

The **tax treatment applied (technical and/or factual)** relies on an interpretation or application of the law that **is known not to be how HMRC interpret or apply the law**.

This includes (a) the **content of HMRC's published guidance**, and (b) through individual '**dealings**' between the business and HMRC.

Trigger Three

If it is '**reasonable to conclude**' that there is '**a substantial possibility**' a **tribunal or court would decide** the tax treatment the business had applied was '**incorrect in one or more material respects**'.

This trigger applies whether or not the tax treatment is likely to be challenged.

How PwC can help

PwC can help you (a) to understand the impact of this new regime, (b) develop the right strategic response for your business, and (c) develop and implement new processes and controls.



Here are some **suggested approaches** for how a business might evaluate its position:

Step 1 Current state assessment

Assess:

- Recent transactions and planned transactions that include a legal interpretation for tax purposes (technical and/or factual), and which will be reflected in return(s) due on or after 1 April 2022.
- Transactions or treatments reflected in previous return(s) but which may have a continuing tax effect (technical and/or factual) for return(s) due on or after 1 April 2022.
- If required, reviews of current and/or past transactions and treatments can be carried out under legal advice privilege.

Step 2 Documentation support

Prepare:

- If any transactions or treatments satisfy the trigger(s) such that a notification may be required, prepare for engagement with HMRC.
- Does the document and evidence file contain all the material needed to support the planned tax treatment, or can that file be enhanced with additional supporting facts and evidence?
- Determine whether a notification is required to be made to HMRC. Appropriate evidence and analysis will be required to support any determination that a notification is not required, to protect against penalties.

Step 3 Process and policy review

Embed:

- Identify and embed the appropriate personnel, governance and technology to support the UTT decision making process for tax return(s) due on or after 1 April 2022.
- Examples include:
 - Updating the **UTT provisioning** (IFRIC 23/FIN48) policy to align with this new regime;
 - Updating the **Senior Accounting Officer** framework and supporting governance;
 - Utilising technology to support data extraction/quantification.

Some questions which may be relevant to helping you determine your strategy for complying with this new regime might include:

- Have you factored UTT into your decision-making, accounting provisioning and tax return processes?
- What return(s) covering what tax(es) are impacted? For what entity/ies in the group?
- Which arrangements, transactions and/or decisions made in your business have the potential to trigger the UTT regime? Have you considered the potential impact of past transactions which may impact tax return(s) due on or after 1 April 2022?
- How will you accurately and efficiently measure the amount of tax associated with any potential 'UTT'?
- To what extent are any of your inter-company arrangements and transfer pricing properly in scope?
- Are you clear on whether HMRC has given its view on the relevant technical and/or factual issues?
- Does your HMRC CCM have 'all, or substantially all' of the information otherwise required by the UTT regime, to protect against a non-compliance penalty?
- Have you extracted and maintained sufficient data and information to evidence your decision (and the relevant transaction or arrangement) in case of audit?
- How does this interact with other regimes, such as SAO, UK SoX, and Banking Code of Conduct?
- How might this impact what, how and when tax advice is taken? How that advice is used in your business?
- How might UTT inform or impact your HMRC risk rating, and your overall relationship with HMRC?

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RITM5824727