Disclosure of Uncertain Tax Treatments to HMRC

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

November 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 being made now are potentially within scope – and possibly recently completed transactions earlier too.

HMRC say this new regime will help them to reduce the £5.8bn '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.

The legal framework has now been set out in the Finance Bill 2022. We are expecting revised guidance from HMRC in the coming weeks which should explain HMRC's application of the legal framework and stipulate the information businesses will be expected to disclose to HMRC.

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

This new regime is centred around two criteria or 'triggers', either one of which creates the obligation to notify the uncertainty to HMRC (where > £5m is at stake in a 12 month period).

Trigger One

There is a **provision** in the **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)** is not in accordance with how it it **is known that HMRC interprets or applies the law**.

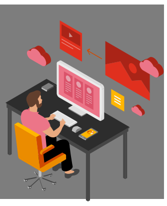
This includes (a) the **content of HMRC's published guidance**, and (b) through individual **'dealings'** between the business and HMRC.

Substantial Possibility? Excluded for now, but subject to further consultation

Prior to the Finance Bill, a third trigger, the **"substantial possibility"** trigger (where there is a substantial possibility that a tribunal or court would find the taxpayer's position to be incorrect), had been included in the draft legislation and guidance that was subject to consultation. Although the third trigger has been withdrawn, HMRC is to carry out further consultation with a view to including the third trigger at a later date.

How PwC can help

PwC can help you to (a) 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.



pwc

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

Step 1
Impact assessment

Assess:

- Provisioning and wider tax risk reporting processes to ensure effective governance.
- Recent and planned transactions that include a legal interpretation (technical and/or factual), treatment that will be included in return(s) due from 1 April 2022.
- Transactions or treatments included in previous return(s) with a continuing tax effect (technical and/or factual) for return(s) due from 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 your process facilitate an evidence file with 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 the appropriate personnel and embed the governance and technology to support the UTT decision making process for tax return(s) due from 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 from 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 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 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 and how that advice is used in your business?
- How might UTT inform or impact your HMRC risk rating, and your overall relationship with HMRC?

Contacts

Don Morley
Disputes Director
07715 211473
don.morley@pwc.com

Andy Olymbios
UK Tax Disputes Leader
07866744143
andy.olymbios@pwc.com

Natalie Martin
Disputes Director
07808105785
natalie.j.martin@pwc.com

Maura Parsons
Transfer Pricing Director
07483 400011
maura.parsons@pwc.com

Matt Joel
Forensic (Tech) Partner
07809 552273
matt.joel@pwc.com

Stephen Morse
Legal Disputes Partner
07590 351937
stephen.morse@pwc.com

Ray Farnan
Tax Governance Partner
07808 105769
raymond.m.farnan@pwc.com