

Notification of Uncertain Tax Treatments to HMRC

Businesses should review their strategies for interacting with HMRC

March 2022

HMRC are using this regime to encourage cooperative compliance

Large businesses must comply with a new requirement to notify HMRC of 'uncertain tax treatments' (UTTs) 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**.

Taxpayers will have an option on how to notify HMRC of a UTT - either (1) by **early engagement** with HMRC through **clearances** or other interactions with HMRC or (2) through **formal notification**.

The aim of this regime is to enable HMRC to reduce the £5.8bn '**legal interpretation**' tax gap by helping HMRC to identify more legal interpretation issues at an earlier stage.

A key part of the regime is the **general exemption** from the requirement to notify where the issue has already been notified to HMRC through **early engagement with HMRC**.

Finance Act 2022 sets the legal framework. On 28 February 2022 HMRC published the final version of the **technical manual** ("Uncertain Tax Treatments by Large Businesses Manual") providing guidance on how the rules will apply.

Do I have a UTT?

Trigger One

There is a **provision** in the **accounts** to reflect that a **different tax treatment** may be applied to the transaction.

This includes both **general and specific provisions**, irrespective of where the provision is presented in the accounts.

Trigger Two

The **tax treatment applied relies (wholly or in part) on an interpretation or application of the law that is not in accordance with how it is known that HMRC interprets or applies the law**.

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

In each case the triggers apply where >£5m is at stake in a 12 month period. Note that a third trigger ("substantial possibility") is excluded for now, but may be subject to further consultation.

How PwC can help

1. **HMRC engagement strategy** - developing the right strategy for interacting with HMRC on UTTs and understanding how that should fit in with other interactions with HMRC.
2. **Overall approach to UTT** - review current provisioning process and enhance processes and controls to identify all potential UTTs (across the three taxes in scope), ensure robust and evidenced provision conclusions, and document key UTT decisions and HMRC interactions.
3. **Specific UTT issue support** - deciding whether a particular issue is a UTT, how and when to approach HMRC, supporting the making of an impactful early approach or formal UTT notification.
4. **Future Transactions** - providing tax advice (under legal privilege, if required) that will take into account the UTT regime.

Status of Substantial Possibility Trigger

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 an earlier consultation stage but has been withdrawn for now. HMRC is expected to evaluate how the regime works with two triggers and if required carry out further consultation on the third trigger at a later date.

Here are some **suggested approaches** for how a business might approach the regime:

Step 1 Impact assessment

Identify and assess:

- Current strategies for engaging with HMRC on areas of uncertainty.
- Provisioning and wider tax risk reporting processes used to identify issues to take to HMRC and ensure effective reporting and governance.
- Recent and planned transactions that will be included in return(s) due from 1 April 2022 where the treatment applied relies on legal interpretation (and/or such transactions or treatments included in previous return(s) with a continuing tax effect for those future returns).
- Whether any past interactions with HMRC record an HMRC known position for trigger 2.

Step 2 Decisions and actions

Decide and do:

- If any transactions or treatments satisfy (or might satisfy) the trigger(s) such that a notification may be required, decide whether to approach HMRC early on that issue or to make a formal notification later (if required).
- If it is clear that an issue is a UTT and an early engagement strategy is to be employed, decide whether it is necessary to seek HMRC agreement that the general exemption applies.
- Prepare for and undertake planned interactions with HMRC.
- Collate evidence files with (1) material needed to support the planned tax treatment, (2) work done to establish whether a UTT exists, (3) a record of any dealings with HMRC on uncertain issues and/or the application of the general exemption.

Step 3 Process and policy review

Embed:

- Identify the appropriate personnel and embed the governance and technology to support the UTT decision making process.
- 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 UTT might include:

- For businesses that already have a cooperative relationship with HMRC (e.g. a low risk rating or the Banking Code of Practice), will the UTT regime and a taxpayer’s decisions around UTTs affect the HMRC relationship?
- How long will it take to establish whether a UTT exists, and how might that feed into decisions to be made about when/how to communicate issues to HMRC?
- How will you accurately calculate the amount of tax associated with any potential UTT?
- Which arrangements, transactions and/or decisions made in your business have the potential to trigger the UTT regime? To what extent are any of your inter-company arrangements and transfer pricing potentially in scope?
- Should the UTT regime change the way that the business seeks tax advice in relation to transactions?

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