



Fact Sheet

9 FEBRUARY 2022

Large Businesses - notification of uncertain tax treatments

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The requirement to notify HMRC of uncertain tax treatment applies to relevant companies, LLPs and partnerships (referred to as "entities" throughout) in respect of returns due to be filed on or after 1 April 2022.

Notification of uncertain tax treatments is only required in respect of corporation tax, partnership, PAYE or VAT returns.

The new rules have not yet been legislated but are expected to be part of Finance Act 2022. The outline of the rules provided below is based on the draft legislation and HMRC's most recently published guidance which is currently in draft form but expected to be finalised by the end of the month.

Who is affected?

- Large UK resident companies, partnerships or LLPs.
- Large non-UK resident companies which have activities within the scope of UK corporation tax on income, for example branches, permanent establishments or UK property income.
- Non-UK resident partnerships with permanent establishments in the UK



A large business is one with:

- Turnover of more than £200 million; and/or
- Gross assets of more than £2 billion

in the previous financial year:

For a non-UK resident entity, only turnover and gross assets attributable to its activity that is subject to UK corporation tax, are included. Where a company is a member of a group, its UK turnover and UK gross asset figures must be aggregated with other companies in the same 51% group and within the charge to UK corporation tax at the end of the preceding financial year, in order to determine whether these limits are breached.

What needs to be reported?

Notification is required from large entities where a relevant return, or amended return, delivered to HMRC includes an amount (including nil if, on the company's analysis, it has calculated a tax liability of nil) that is an uncertain amount for the purposes of a relevant tax.

There are two triggers that would cause a tax treatment to be classed as uncertain:

1. Where a provision has been recognised in the entity's accounts to reflect the probability that a different tax treatment will be applied to a transaction; or
2. Where the business has applied a tax treatment that is contrary to HMRC's known interpretation or application of the law. HMRC's position is taken to be known if it is apparent from guidance, statements or other publicly available HMRC material, or as a result of the entity's dealings with HMRC.

HMRC's guidance states that the following indicate/do not indicate HMRC's known position:

CONTAINS HMRC'S KNOWN POSITION

HMRC Guidance, including HMRC's Manuals and Customer Guidance published on Gov.uk

Statements of Practice

Public Notices

Explanatory and technical notes relating to legislation

Guidelines for Compliance

Revenue & Customs Briefs

Correspondence between the taxpayer and HMRC about transactions covering statutory and non-statutory clearances and other interactions with HMRC on specific transactions

NOT TO BE CONSIDERED

Advice provided via On-line HMRC forums

Submissions HMRC makes in litigation

HMRC are consulting on adding a third trigger at some point in the future.

An uncertain amount is only notifiable if it, and any related amounts, give rise to a tax advantage of more than £5m, ie. a difference of more than £5m between the company's tax liability calculations and HMRC's. The £5m threshold applies to each separate uncertainty. However, two or more uncertain amounts are related and have to be aggregated if they are included in the same return, or a return for the same tax in the same financial year or accounting period, and the tax treatment applied to each is substantially the same.

Group companies are not required to notify uncertain tax treatments in respect of corporation tax if the amount relates to a transaction between group companies and the net effect for the group as a whole is that the tax advantage is £5m or less. Group relief is ignored when calculating the value of the tax advantage.



A “tax advantage” in relation to corporation tax or income tax includes:

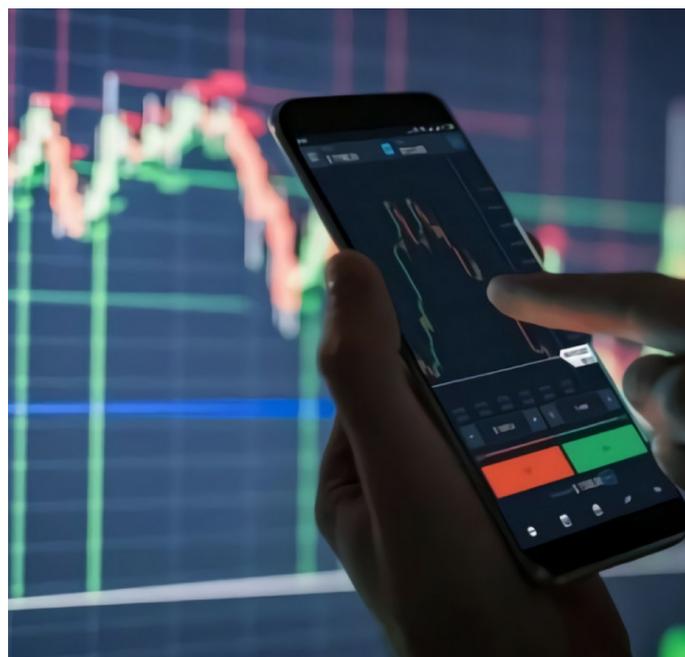
- a) A relief or increased relief from tax;
- b) Repayment or increased repayment of tax;
- c) Avoidance or reduction of a charge to tax or an assessment to tax;
- d) Avoidance of a possible assessment to tax;
- e) Deferral of a payment of tax or advancement of a repayment of tax;
- f) Avoidance of an obligation to deduct or account for tax.

A “tax advantage” is obtained in relation to VAT if:

- a) In a prescribed accounting period, the amount by which the output tax accounted for by the entity is less, or is accounted for later, than would otherwise be the case;
- b) The entity obtains a VAT credit when it would otherwise not do so, or obtains a larger credit or obtains a credit earlier than would otherwise be the case;
- c) Where the entity recovers input tax as a recipient of a supply before the supplier accounts for the output tax, the period between the time when the input tax is recovered and the time when the output tax is accounted for is greater than would otherwise be the case;
- d) In a prescribed accounting period, the amount of the entity’s non-deductible tax is less than it would otherwise be;
- e) The entity avoids an obligation to account for VAT.

The tax advantage calculation in relation to output tax should not to be offset by any input tax credit, either within a VAT registration or between VAT registrations, even where there is a direct and immediate link, or the transactions are within the same corporate group.

This also applies to any uncertain input tax treatment; it should not be offset by any output tax.



General exemption

There is a general exemption from the requirement to notify if disclosure is already required under another regime, or it is reasonable for the company or partnership to conclude that HMRC is already aware of the uncertain tax treatment and has all, or substantially all, the information that would be provided in the notification i.e. if the business is already discussing uncertain tax treatments with their Customer Compliance Manager on an ongoing basis. HMRC has advised that they will provide companies with assurance that they have obtained exemption where appropriate information and sufficient detail has already been provided regarding a tax treatment.

Notification and penalties

Notification is most likely to be required under trigger 2 above, for which the deadline for notification is:

- In respect of an annual return, such as a corporation tax or income tax return, the tax return filing deadline.
- Where the relevant return is not an annual return, i.e. VAT and PAYE returns, the filing date of the last relevant return for the financial year.

If notification is required for another reason different deadlines may apply and we would be happy to discuss these with you, if required.

How to notify:

The Uncertain Tax Treatment notification forms will be available online from April 2022 via a digital form which will be accessible from within the business's Government Gateway account. An authorised agent may also notify via the digital form on behalf of the entity. Details required to be reported on the form will include the following:

- Company/partnership name and tax reference/VAT registration number/Employer PAYE reference
- Details of the uncertainty including:
 - Tax regime the notification relates to
 - Annual return period or financial year it relates to
 - Number of uncertainties being notified in this notification
 - Return periods affected by the uncertainty
 - Notification trigger(s) under which disclosure is being made
 - Description of the transaction/ tax issue type
 - Explanation of uncertainty
 - Reference to any relevant statute, case law and HMRC guidance to which the uncertainty relates
 - Indication of the amount of tax advantage relating to the uncertainty. Where multiple triggers exist and the potential tax advantages differ, the largest amount should be disclosed.

Penalties can arise for late notification, not submitting a notification where one is required, or for an incomplete notification as follows:

- First failure: £5,000;
- Second failure: £25,000;
- Further failures: £50,000 (for each further failure)

Failures are measured in an applicable three year period, which is the three financial years of the company or partnership immediately preceding the financial year for which the relevant return was delivered to HMRC.

If you would like to discuss the implications of these new rules further, or steps that can be taken to fall within the general exemption, please contact us.



For further information, please contact Cheryl Thomas at cherylthomas@bgm.co.uk or your usual BGM partner.

Disclaimer: This information provides an overview of the issues considered and is for general information only. It is not intended to provide advice and should not be relied upon in any specific transaction.