



Notification of Uncertain Tax Treatment

The journey to reducing uncertainty



Contents

Contents	2
Notification of Uncertain Tax Treatment	3
What do businesses need to do?	6
How can Deloitte help?	9
Deloitte team	10

Notification of Uncertain Tax Treatment



An introduction to the regime

At Spring Budget 2020, the government announced a new policy that aims to highlight and resolve legal interpretation differences earlier.

Schedule 18 of the Finance Act 2022 contains the Notification of Uncertain Tax Treatment provisions ('the regime') and requires large businesses to notify to HMRC, where they have taken an uncertain tax treatment ('UTT').

The aim of the regime is to reduce the legal interpretation element of the tax gap. The legal interpretation gap is attributable to the difference that would have been collected under HMRC's interpretation of the law and the tax that is collected. The cost of the legal interpretation gap was estimated at around £5.8BN in the tax gap report, published in September 2021

The regime also supports a wider effort from HMRC to use changes in behaviour from businesses as opposed to legislative change to raise additional tax revenue. HMRC are encouraging businesses to discuss areas of uncertainty with them before they submit their returns, negating the requirement to notify.

The contents of this flyer are based on the Finance Act 2022, Schedule 17, which received Royal Assent on 25 February 2022 and HMRC Guidance published on 28 February 2022.

As with other tax legislation and reporting regimes, there is never a 'final version' of HMRC guidance, and we expect this to change over time, to reflect the developments in the regime and HMRC's approach.



The notification requirements apply to large businesses in relation to corporation tax, income tax and VAT returns due to be filed on or after 1 April 2022



The scope of the regime

If a qualifying company or partnership takes a tax position that meets the notification criteria, and the tax treatment meets the threshold test then it must notify HMRC within the notification deadline. The regime applies in relation to relevant tax returns that are required to be filed on or after 1 April 2022. The taxes within scope of the requirement to notify are Corporation Tax, Income Tax (when returned in a Partnership or PAYE return), and VAT.

What is a qualifying company or partnership?

The notification requirement applies to large businesses, including companies and partnerships. A business is large, where it meets either of the following thresholds in the previous financial year:

- UK turnover above £200 million, and/or
- UK balance sheet total over £2 billion.

The threshold criteria for a large business, is based on the Senior Accounting Officer and Publication of Tax Strategies regimes. If a company was a member of a group at the end of the previous financial year, then UK turnover and Balance sheet amounts must be aggregated.

The notification criteria

A tax treatment is uncertain if one or both of the following criteria are met:

A provision for uncertain tax treatment has been made in the financial statements

A provision has been recognised in the accounts of the company or partnership, to reflect the possibility that a different tax treatment could be applied to the transaction.

A position different to HMRC's known interpretation or application

The tax treatment applied relies (wholly or in part) on an interpretation or application of the law that is not in accordance with the way in which it is known that HMRC would interpret or apply the law. The guidance provides a table setting out a non-exhaustive list of which sources of information should be considered to determine HMRC's view.

HMRC have stated their commitment to further consideration of a third trigger and could legislate for this in the future.

The threshold test

A large business will need to notify HMRC of a UTT where there is a tax advantage, or related tax advantages, of £5m or more in a relevant period (the 'threshold test'). The threshold test is applied separately in relation to each relevant tax. The amount of the advantage is determined by a comparison of the uncertain amount (i.e. the amount which meets one of the notification criteria above) with the 'expected amount', which is separately defined for each of the notification criteria.



Are there any exemptions?

Yes – a large business will not need to notify a UTT if it meets at least one of following two exemptions the regime provides for:

The general exemption

A reportable UTT will not need to be notified to HMRC if it is reasonable for the company or partnership to conclude that HMRC already have available to them all, or substantially all, of the information relating to that amount that would have otherwise been included in the uncertain tax treatment notification. Large businesses may engage with HMRC through their Customer Compliance Manager ('CCM'). Businesses without a CCM can initiate pre-notification conversations with the Mid-Sized Business Customer Support Team via this [link](#).

Transactions between group companies (Corporation Tax only)

For corporation tax, there is no requirement to notify in cases where the UTT relates to transactions between members of the same corporate 51% group and the net effect is that any overall tax advantage obtained by the group is less than the £5 million threshold.



What are the deadlines for notifying an uncertain tax treatment to HMRC?

The notification requirement applies separately in relation to each relevant tax. The deadlines for notifying are as follows:

- Where the relevant return is an annual return (e.g., Corporation Tax), on or before the date on which the return is required to be made; or
- Where the relevant return is not an annual return (e.g., VAT), on or before the date on which the last relevant return for the financial year in question is required to be made.

Where an uncertain amount is included in an amended return (but not an original return), it is to be treated as an uncertain amount included in a relevant return. Where this is the case, the notification deadline is 30 days after the date HMRC is notified of the amendment.

If a provision is recognised in the accounts of the company or member of the partnership in respect of an uncertain tax treatment after the relevant return has been filed, the deadline for notification is extended.



How can I notify HMRC of an uncertain tax treatment?

A qualifying company or partnership will need to provide the required details via a digital form, which will be accessible from within the businesses' government gateway account. Alternatively, a business may notify HMRC of a UTT via the method mentioned in the above section 'Are there any exemptions?'



Are there any penalties for non-compliance?

A penalty will be chargeable where there is a failure to comply with the legislation. This includes:

- not notifying within the time specified
- not submitting a notification when one is required
- submitting an incomplete notification

An escalating fixed penalty regime applies for each relevant tax with the penalty for a first failure being £5,000, rising to £25,000 for a second failure within a three year period and £50,000 for a third failure within a three year period. Where there are multiple failures in respect of a notification requirement for the same relevant tax, only one penalty is chargeable.

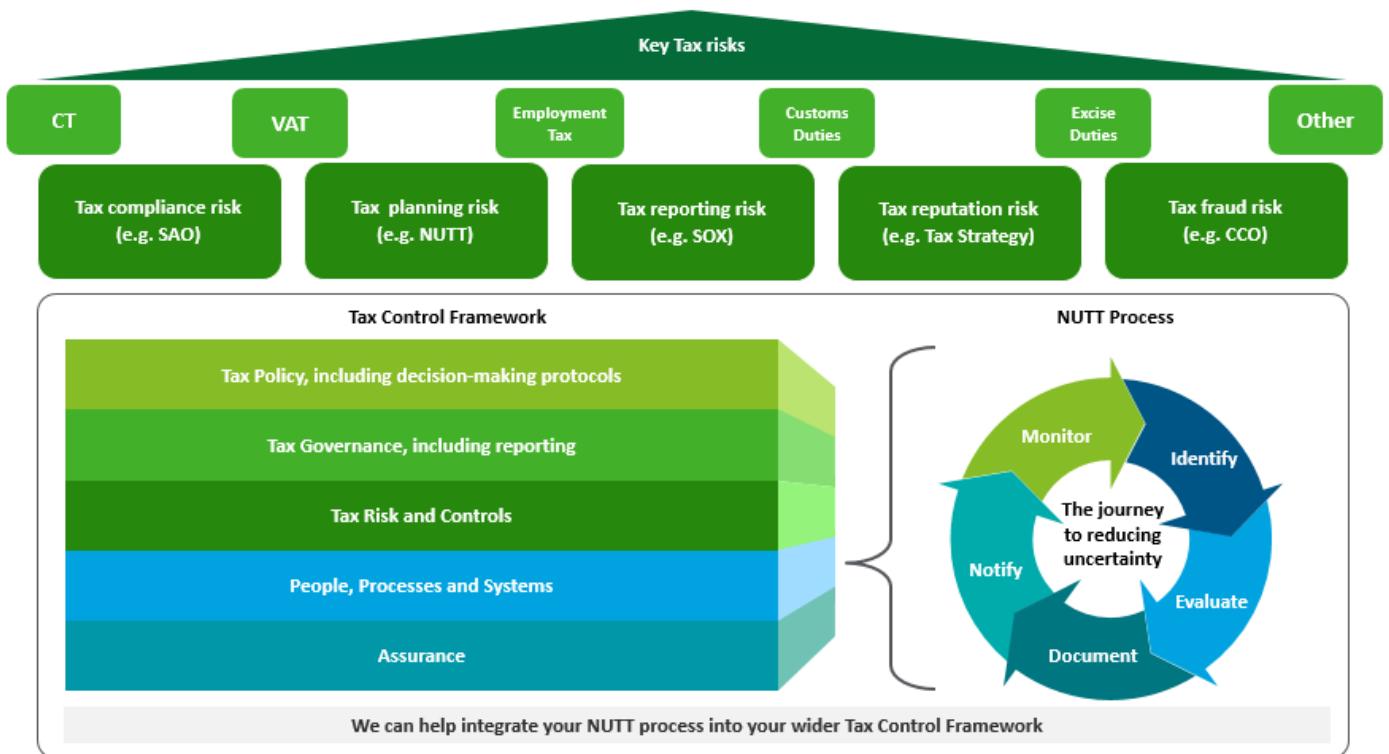
A penalty will not be charged where there is a reasonable excuse for the failure to comply with the legislation.

What do businesses need to do?

Businesses need to ensure their Tax Control Framework embeds tax decision making policies and processes to comply with their obligations under the regime.

1. Tax Control Framework

Businesses will need to embed their approach to compliance with the NUTT regime, within their Tax Control Framework. This includes identifying the appropriate roles and allocating those responsibilities to individuals or teams, a process to escalate any risks that may arise and an understanding of how to provide visibility of the regime’s impact on the business, to key stakeholders.



2. An effective tax compliance process

Businesses should leverage their existing tax compliance processes to define an end-to-end process that will allow the identification, evaluation, and notification of UTTs. This process will need to consider the different taxes within the scope of the regime, the ongoing monitoring of transactions and the possibility of different deadlines.

a) Identification

Businesses must have robust controls in place to identify all transactions that may be within the scope of the regime. This includes engaging relevant teams to get the appropriate data and information.

Social Media Tech PLC is a Qualifying Company and has reviewed all transactions that may fall within the scope of the UTT regime. They have decided to use the threshold test as identification criteria and have found a total of four transactions that will need to be evaluated.

b) Evaluation

All transactions that are notified as part of step a) need to be evaluated against the regime criteria.

Of the four transactions above, Social Media Tech PLC have identified three transactions (including VAT, PAYE and Corporation Tax) where the tax treatment relies on an application of the law that is different to that of HMRC's and therefore meets the notification criteria. The transactions do not meet the exemption criteria.

c) Notification

The transactions that meet both the notification and threshold criteria must be notified to HMRC. This can be done via the notification form that can be found via the Government Gateway account or a business may decide to notify HMRC of the notifiable transactions during its interactions with HMRC.

Social Media Tech PLC has a year end of 31 December 2022 and submits its VAT returns on a quarterly basis. It has decided to notify HMRC of the notifiable transactions via the online notification form.

Step 1: The relevant returns are due to be filed after 1 April 2022. Therefore, the notification requirements apply.

VAT UTT: As the VAT returns are not annual, any notifications must be made on or before the date on which the last relevant return for the financial year is required to be made.

Social Media Tech PLC's final VAT return that falls within FY22 is the period ending 31 December 2022 and this return is due to be filed by 7 February 2023. Therefore, Social Media Tech PLC must notify HMRC of the VAT UTT on or before 7 February 2023.

CT UTT: As the CT return is annual, any notifications must be made on or before the date on which the relevant return is required to be made.

The filing date for Social Media Tech PLC's CT return is 31 December 2023. It must therefore notify HMRC of the UTT on or before 31 December 2023.

ET UTT: As the UTT in this case relates to an element of a termination package paid to a number of senior employees, the relevant PAYE returns for NUTT purposes are Social Media Tech PLC's Full Payment Submissions ("FPS"). As Social Media Tech PLC pays its employees monthly, it is also required to file corresponding monthly FPS payroll returns. As the relevant return for NUTT purposes is not an annual return, any notifications must be made on or before the date on which the last relevant return for the financial year is required to be made.

Social Media Tech PLC pays its employees on 21st day of each month and files its FPS return on the same date. Social Media Tech PLC submits an FPS on 21 December 2022 and no further submissions are due prior to the end of FY22. Therefore, Social Media Tech PLC must notify HMRC of the ET UTT on or before 21 December 2022.

d) Document

Businesses should maintain a complete audit trail of key UTT decisions taken. This will help the business maintain consistency across common transactions, streamline the compliance process and provide support for its interactions with HMRC, including compliance enquiries and the BRR+ process.

Social Media Tech PLC has maintained an audit trail of its three notifications, and its reasons for not notifying the other potential notifiable transaction.

e) Monitor

Businesses should monitor their transactions, as the regime provides for amounts to be aggregated for the threshold test. This means that transactions that rely on substantially the same tax treatment and are entered into during different dates in the same relevant period may need to be evaluated together. The right controls and monitoring process will allow for businesses to take this into consideration.

Social Media Tech PLC entered into two separate transactions in June and October 2023. Both transactions rely on the same tax treatment. Under the regime, Social Media Tech PLC are required to aggregate the uncertain amounts for the purposes of the threshold test.

The aggregation means that the transactions have met the threshold test and must be evaluated against the notification criteria. The tax treatment applied to both transactions relies on an interpretation of the legislation that is different to HMRC's known view. The transactions are both reportable. If Social Media Tech PLC did not have a process in place to monitor its transactions, it would have failed to notify HMRC of the UTT and as a result may be subject to a penalty.

3. Business Risk Review+

For those businesses that undergo the BRR+ process, HMRC will use the BRR as an opportunity to review the systems & governance businesses have in place to be able to comply with the regime and it is likely that this will play a part in the overall risk rating of the business. Much like the SAO and CCO regimes, if a business does not have strong controls and processes in place, it can have a negative impact on its overall BRR+ risk rating.

The BRR process indicates the approach HMRC will take for its largest non-CCM businesses, and therefore all businesses within the scope of the regime (even if they believe they are a low-risk business in respect of the UTT) should evaluate their current Tax Control Framework to provide specific consideration of the application of the regime to the business, as this is something HMRC are likely to enquire about.

How can Deloitte help?

Deloitte engaged with HMRC to help develop the Notification of Uncertain Tax Treatment regime and are still engaging with HMRC to shape the future of UK Tax Governance. Through our involvement with HMRC, we understand the requirements of the regime and what you need to do to respond.

The regime requires a blend of specialisms including corporation tax, employment tax, VAT, tax accounting, tax governance, policy & risk management. A joined-up approach across taxes and divisions is required.

Deloitte have market leading professionals that can simplify this complex regime and help you comply with your reporting and governance obligations.

Deloitte have designed both an engaging and bespoke workshop that will be tailored to your business requirements and help you along the journey to reducing uncertainty. Our specialists will be available at the workshop and will cover the following:

Your Tax Control Framework requirements:

Using our experience, we can assist you in updating your tax policy and integrate the regime as part of your wider Tax Control Framework. This includes supporting you in the implementation of governance procedures for the specific application of the UTT regime, allocating responsibilities and documenting the tax process.

Designing an end-to-end process to comply with the regime:

Identifying and evaluating the controls you have in place to provide an end-to-end solution which will allow you to adapt tax decision making to monitor tax treatments on an ongoing basis. This includes helping you design, assess, and implement a framework to allow you to comply with the regime.

UTT Reviews:

At your request, we can evaluate specific tax positions that you have taken.

Training:

We can provide training to members of your business, on both awareness of the regime and suggested policies and processes to help you comply with the regime.

“Effectively designed and implemented controls, aligned with the wider framework, are better than a rush to ‘do something’”

Deloitte team

Contact us now to discuss how we can help you to develop a tailored plan for your businesses, where we can support you along the journey to reducing uncertainty and compliance with the regime. To learn more, please contact your usual Deloitte adviser or one of the key contacts below.



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