



HM Revenue  
& Customs

# Notification of uncertain tax treatment by large businesses

## Summary of responses

March 2021

# Contents

1. Executive Summary.....	3
2. Introduction .....	5
Background to the consultation.....	5
Summary of responses.....	6
3. Responses .....	7
4. Next steps .....	23
Next steps following the Consultation.....	23
Annexe A: List of stakeholders consulted .....	24

# 1. Executive Summary

- 1.1 At Spring Budget 2020, the government announced a new policy that will require large businesses to notify HMRC of uncertain tax treatments. A consultation, *Notification of uncertain tax treatment by large businesses*<sup>1</sup>, was launched in March 2020 to seek views on how the regime should operate.
- 1.2 The policy objective of this measure is to reduce the legal interpretation portion of the tax gap; and for businesses to provide HMRC with timely and accurate information concerning a tax treatment that is contentious, for example where the evidence suggests HMRC's legal interpretation is different.
- 1.3 The tax gap presents a significant risk to the Exchequer. The legal interpretation tax gap as stated in the 2020 edition of 'Measuring Tax gaps'<sup>2</sup> amounted to £4.9bn. The notification regime is intended to encourage large businesses to engage with HMRC from the outset on areas of uncertainty. This will support HMRC's current approach to managing relationships with large businesses which looks to provide certainty, clarity, proportionality and speed of resolution. The government hopes this will reduce cases where disputes or disagreements arise and lead to litigation, as this can be costly and time consuming for both parties involved. It is estimated that by tackling the legal interpretation tax gap, this measure will raise approximately £145 million over the period 2021-22 to 2025-2026.
- 1.4 The consultation sought views on the proposed notification regime, in particular, from large businesses and agents representing large businesses, to understand the potential impacts these changes will have on businesses.
- 1.5 Many respondents recognised the government's broad policy objective, but some felt that the government had failed to set out a clear rationale for the policy. There were also a range of concerns expressed. These included:
  - The definition of an uncertain tax treatment as stated in the consultation was not sufficiently clear; the definition must be made more objective to enable taxpayers to assess whether they need to notify.
  - The proposed scope of the notification regime was too broad and should be limited to Corporation Tax (CT) as with the comparable US and Australia models, at least for a preliminary period.

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<sup>1</sup> [www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses](https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses)

<sup>2</sup> [www.gov.uk/government/statistics/measuring-tax-gaps](https://www.gov.uk/government/statistics/measuring-tax-gaps)

- Many respondents suggested the proposed de minimis threshold of £1m in tax was too low and would lead to excessive numbers of notifications and thus significant administrative burden for both taxpayers and HMRC.
- Some respondents stated that existing HMRC compliance regimes could be extended rather than imposing a whole new regime. Respondents recommended basing the need to notify on HMRC's Business Risk Review (now BRR+) rating for the business.
- Respondents suggested that those entities that are signatories to the Banking Code of Practice should be excluded from the regime as they already have existing obligations to act in ways that are not contrary to the intentions of Parliament.
- Many respondents suggested that any penalty for failure to notify should fall on the entity and not an individual person.

HMRC is grateful to all those who have responded to the consultation. The government has considered these responses in the further development of the policy, and announced in November 2020 that further consultation and engagement would take place to develop this policy. A further consultation has been published alongside this summary of responses on 23 March 2021.

## 2. Introduction

### Background to the consultation

- 2.1 The proposal for the *Notification of uncertain tax treatment by large businesses* will require large businesses to notify HMRC where they have adopted an uncertain tax treatment.
- 2.2 The consultation asked a number of questions designed to explore views on the proposed notification regime, in particular, from large businesses and agents representing large businesses.
- 2.3 The legal interpretation tax gap as stated in the 2020 edition of 'Measuring Tax gaps'<sup>3</sup> amounted to £4.9bn. Although losses arise from all customer groups, a majority of the legal interpretation tax gap is attributable to the large business customer group.
- 2.4 HMRC's Large Business directorate works with around 2,000 of the UK's largest and most complex businesses to make sure they pay the correct amount of tax at the right time. A senior professional called a Customer Compliance Manager (CCM) is assigned to each of the UK's largest businesses. Their primary role is to make sure the business pays everything it owes. CCMs are experts in their field and build an in-depth knowledge of the business and the sectors it operates in. They are also supported by tax specialists for all regimes, and can call on data analysts, solicitors, audit specialists, trade sector experts and forensic accountants.
- 2.5 HMRC have been successful in managing large business tax risks, with the tax gap for those businesses reducing from £7.65bn in 2005-06 to £5.3bn in 2018-19. However, the legal interpretation element of the tax gap has proved difficult to tackle, and a challenge for HMRC is to identify differences in legal interpretation sooner, or at all in some cases.
- 2.6 Businesses and HMRC can spend significant time and money identifying and settling legal interpretation disputes. This can create uncertainty for businesses and HMRC over whether the right amount of tax is paid. The aim of this measure is to enable discussions about uncertain tax treatments sooner and reduce the time taken to identify and settle disputes. Our intention in developing this measure is to ensure that those businesses that are open and compliant should have minimal additional compliance costs; as they are already discussing any uncertainties with HMRC and will therefore not have to notify again under this regime.

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<sup>3</sup> [www.gov.uk/government/statistics/measuring-tax-gaps](http://www.gov.uk/government/statistics/measuring-tax-gaps)

## Summary of responses

- 2.7 This document sets out a summary of responses received in respect of the consultation, which was published on 19 March 2020 and closed on 27 August 2020. The original deadline was extended by three months as the government recognised that many sectors with an interest in this policy were affected by the consequences of COVID-19.
- 2.8 The government held 14 meetings and received 55 written responses from businesses, individuals, and representative agents and bodies. We are grateful to all those with whom we discussed the proposal and those that submitted responses, recognising the time and effort that went into them, particularly during the uncertain months of COVID-19. The responses and external discussions have helped HMRC to understand respondents' views and concerns, and the impacts and risks for large businesses.

We have summarised the views of respondents in this document and they will be used to inform the further development of the policy.

- 2.9 The following chapters present the responses received to the questions asked in the consultation, the government's response, and next steps. Annex A provides a list of respondents.

## 3. Responses

3.1 This chapter summarises the responses to the 19 questions asked in the consultation. The consultation set out the suggested framework for the requirement for large businesses to notify HMRC where they have adopted an uncertain tax treatment and sought views on:

- Who is liable to notify;
- The size of business that will be required to notify;
- The tax threshold requiring notification;
- The method of notification;
- The level of detail that needs to be notified; and
- The proposed implementation date.

### Scope of the measure

#### **Question 1: Do you think the suggested threshold criteria are suitable for the requirement to notify?**

The consultation stated in paragraph 2.8 that the threshold for what is a large business, and therefore within scope of the notification measure, will be modelled on the:

- Senior Accounting Officer (SAO) regime (Schedule 46 to Finance Act 2009<sup>4</sup>), and
- Publication of Tax Strategies (PoTS) regime (Schedule 19 to Finance Act 2016<sup>5</sup>).

Businesses will fall within these regimes if they satisfy either or both of:

- A turnover above £200 million.
- A balance sheet total over £2 billion.

3.2 There were 41 responses to this question.

3.3 Some of respondents agreed with the suggested threshold criteria.

3.4 However, a few respondents raised concerns about how the threshold will model the SAO and PoTS regime when determining when to notify HMRC of an uncertain tax treatment. Using the SAO and PoTS criteria will result in a number of mid-size businesses meeting the threshold. Concerns were raised that this would create inequality between businesses with a Customer Compliance Manager (CCM) and businesses without a CCM.

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<sup>4</sup> [Schedule 46 to Finance Act 2009](#)

<sup>5</sup> [Schedule 19 to Finance Act 2016](#)

### 3.5 Other concerns raised include:

- That the regime should be targeted at entities who demonstrate poor compliance behaviours rather than be applied to all large businesses; and
- That it was not clear how the notification requirement would operate in the context of partnerships and funds; the legislation would need to be clear which entities were in and out of scope of the notification regime.

## **Government response**

3.6 The government appreciates the concerns raised by respondents regarding the potential disparity in treatment for those businesses with a CCM and those without. Therefore, an equivalent means of discussing uncertain treatments will be established for those customers without a CCM so no party is at a disadvantage.

3.7 A number of respondents suggested that the regime should apply only to those large businesses demonstrating poor compliance. Where a business is currently open and transparent with HMRC, we would not expect this regime to result in a significant increase in administrative burden, because there will be no notification requirement where HMRC are already aware of the potential uncertain tax treatment. However, as a number of respondents raised concerns regarding this aspect, the government will be undertaking further research to confirm those assumptions and will also seek further input from stakeholders through consultation.

3.8 The next consultation document to be published will explore further details as to who would be considered in and out of scope of the regime. This will include, for example, the proposed treatment of collective investment schemes.

### **Question 2: Do you think there are any other areas that should be excluded from the notification regime?**

3.9 There were 45 responses to this question.

3.10 Most respondents suggested that there could be a number of additional exclusions from the regime.

3.11 The general consensus from most respondents was that the scope of the regime is too broad and covering all taxes would create an unacceptable compliance burden for businesses, as they would be obliged to notify uncertain tax positions for each of the taxes.

3.12 The most common suggestions for further exclusions were:

- Transfer pricing, as this would be burdensome for both large businesses and HMRC;

- Apply the Business Risk Review (BRR+) model to exclude large businesses within the 'low risk' category from the requirement to notify; this would align the notification measure with existing and familiar processes; and
- Banks that are signatories of the Banking Code of Practice. The Code requires banks not to undertake tax planning that aims to achieve a tax result which is contrary to the intentions of Parliament. Banks are also required to maintain a transparent relationship with HMRC.

3.13 Some respondents suggested disclosures already made in the white space on a tax return should be excluded.

### **Government response**

3.14 The consultation proposed that the following taxes would be within scope of the regime: Corporation Tax, Income Tax (including PAYE), VAT, Excise and Customs Duties, Insurance Premium Tax, Stamp Duty Land Tax, Stamp Duty Reserve Tax, Bank Levy and Petroleum Revenue Tax. HMRC has carefully considered all the points raised and is proposing initially to include only CT, VAT and Income Tax (including employment taxes) as the 'relevant taxes' under this regime. These are the taxes that make up the majority of the legal interpretation tax gap.

3.15 HMRC accepts that there is a balance to be struck in framing an obligation for transfer pricing cases which would not create more uncertainty for businesses, leading to unnecessary notifications. The government will be seeking input from stakeholders through the further consultation to find a viable solution to this issue.

3.16 As noted above, at 3.7, the government believes that for those businesses who are open and transparent with HMRC, this measure should not result in a significant administrative burden. However, due to the large number of respondents who have suggested that the BRR+ process could be used to limit the scope of the measure, further consideration is being given to this aspect and the government will seek input from stakeholders through the further consultation.

3.17 Regardless of whether the BRR+ process is incorporated into this measure, for those businesses who do not have a CCM an equivalent process will be established whereby those businesses can discuss with HMRC the Uncertain Tax Treatment legislation and any specific matters relating to their business.

3.18 Where banks have signed up to, and are following, the Banking Code of Practice we would expect them either (a) to have clarified areas of uncertainty with HMRC, and so not be required to notify under UTT as HMRC would already be aware of the issue, or (b) not to have entered into a transaction that is considered uncertain. The government is therefore of the view that it is not necessary to explicitly exclude such businesses.

## Defining an uncertain tax treatment

### Question 3: Do you think the definition and principles in IFRIC23 are appropriate to be used for the requirement to notify?

3.19 There were 47 responses to this question.

3.20 Some respondents agreed that the definition and principle is appropriate. Aligning IFRIC23 and using an existing definition of uncertain tax treatment would enable more certainty, reduce complexity for businesses and provide a clearer path to enforcement and challenge for HMRC.

3.21 A number of respondents disagreed with the definition and principle of IFRIC23, stating that the IFRIC23 wording on what constitutes 'challenge', and the definition of an uncertain tax treatment, are not clear.

3.22 Their main views were:

- IFRIC23 applies only to income taxes, so the notification regime should do the same. Also, IFRIC23 does not provide guidance on an uncertain tax treatment;
- It will be difficult for a taxpayer to objectively assess whether HMRC will likely challenge a treatment in a return.

3.23 Respondents suggested that further consideration should be given to the definition of an uncertain tax treatment. They recommended that guidance material should be provided to help taxpayers understand whether a transaction is likely to be challenged by HMRC to avoid confusion and misinterpretation.

### Government response

3.24 The government has listened to the concerns raised by respondents regarding the use of IFRIC23 to determine whether a tax treatment should be considered uncertain. Work is in progress to develop a series of objective tests, where if any of those tests are met, the large business will be required to notify. Whilst the principles of IFRIC23 still form part of the proposed tests, there is less reliance on, and reference to, it.

3.25 The reason IFRIC23 was referred to in the original consultation document is because if a large business considers the tax treatment uncertain under IFRIC23, then that would clearly indicate that it is uncertain and, as such, should be notified.

3.26 The government has listened to the concerns of respondents in respect of the subjectivity of the original proposed tests and so the aim of the new tests is to remove, as far as possible, those subjective elements.

3.27 The government intends to issue a further consultation in which stakeholders will be given the opportunity to comment on the revised approach.

**Question 4: Do you think there would be any problems with the person considering whether notification is required, being different to the SAO?**

3.28 There were 44 responses to this question.

3.29 Many respondents suggested that the requirement to notify should be the responsibility of the entity, rather than one individual.

3.30 Some respondents suggested the Head of Tax should be the person required to notify. Some suggested groups should have the option of deciding the person that should notify.

3.31 Those that agreed to the SAO notifying suggested that combining the notifying requirement with the SAO regime prevented the need for an additional compliance burden for businesses.

3.32 Some respondents stated that other notifications under EU Directive on administrative cooperation (DAC6) and Diverted Profits Tax (DPT) are made by the relevant companies and not by an individual as this regime proposes.

**Government response**

3.33 Having taken account of the responses received, the Government is now proposing to only consider charging a penalty on the large business to which the failure to notify relates. A penalty will not be charged on an individual, except in circumstances where the failure to notify relates to a partnership and the uncertainty is in respect of the partnership return required by section 12AA, Taxes Management Act 1970. That being the case it will not be necessary to identify the person responsible for notifying.

Threshold for reporting

**Question 5: Do you think the proposed de minimis threshold of £1m is reasonable for the notification of uncertain tax treatment?**

3.34 There were 46 responses to this question.

3.35 Most respondents disagreed with the de minimis threshold of £1m.

3.36 The main reason for concern is that the threshold is set too low to be material for many large businesses and therefore is an unreasonable additional compliance burden. Respondents thought it would result in excessive notifications that would be burdensome on both businesses and HMRC.

**Government response**

3.37 The government has listened to the responses received and is considering having a threshold of £5m.

**Question 6: Do you believe there are strong arguments for a materiality threshold?**

3.38 There were 43 responses to this question.

3.39 Most respondents were strongly in favour of a materiality threshold as it would be easier for taxpayers to identify notifiable amounts and enable businesses to effectively assess uncertain tax positions.

3.40 Others commented that the notification regime places an additional administrative burden on businesses which are already subject to existing and increasing disclosure requirements (for example DOTAS, DASVOIT, DAC6, SAO, DPT, CbCR and POTAS). They regarded a materiality threshold as essential.

3.41 However, several of the respondents disagreed with a materiality threshold.

3.42 The respondents that favoured a materiality threshold recommended HMRC should consider adopting a similar approach to the Australian regime, which applies to income tax positions and employs a flexible materiality threshold.

**Government response**

3.43 As noted above, at 3.37, the government is considering a threshold of £5m.

3.44 The government has carefully considered this approach and is concerned that materiality is not a concept that is commonly used in UK tax legislation. Furthermore, applying a materiality threshold would give rise to different numerical threshold outcomes for different businesses depending on their size which may not be regarded as fair.

3.45 The policy objective of this measure is to identify issues where businesses have adopted a different legal interpretation to HMRC's. The ultimate aim of the measure is to use this information to reduce the legal interpretation tax gap. By setting a materiality threshold in relation to turnover (or some other financial indicator) a significant portion of uncertain tax treatments would not be notified to HMRC even though the associated tax impact would be considered sufficient to warrant further investigation. However, as this suggestion was raised by a large number of respondents, the government will seek further input from stakeholders on this aspect through the further consultation.

**Question 7: Do you envisage problems determining the £1m threshold for indirect taxes, particularly VAT?**

3.46 There were 38 responses to this question.

3.47 Many respondents expressed concerns about VAT, highlighting that this particular tax is applied to many small individual transactions over a period of time and it

could be difficult to calculate and determine whether the transactions would meet the £1m threshold.

3.48 A common example provided was a food manufacturer or a supermarket, as it would be complex to determine what is in scope of the notification regime.

3.49 A number of respondents also expressed concerns about the VAT rate for new products potentially being regarded as 'uncertain', and the impracticality on businesses to report all new products that are launched.

### **Government response**

3.50 The government has considered the responses received on the calculation of the threshold, now proposed to be £5m, and the VAT treatment of new products and will seek further input from stakeholders through the second consultation.

### **Question 8: If so, can you suggest how these problems could be mitigated?**

3.51 There were 33 responses to this question.

3.52 The most common suggestions for additional factors included:

- Use a similar approach to the US model, that only applies to CT. This is different from the UK proposals as requirement to notify is in respect to several UK taxes;
- Amend the threshold for indirect taxes;
- Allow group returns on VAT;
- Amend the threshold to the highest level possible;
- Legislate a clear statutory test unrelated to income tax accounting standards; and
- Exclude VAT from the notification requirement due to the complexity with identifying VAT uncertainty.

### **Government response**

3.53 Since the initial consultation, the government has chosen to increase the proposed threshold to £5m.

3.54 The government considers that group notifications in respect of VAT, which would exclude tax-neutral intragroup transactions, may be viable and may also be appropriate for other taxes covered by the measure. However, further input from stakeholders will be sought through the second consultation.

3.55 Work is in progress to develop a series of objective tests, where if any of those tests are met, the large business will be required to notify. This will provide greater certainty for businesses regarding notification obligations.

3.56 VAT makes up a large portion of the legal interpretation tax gap and often involves significant areas of uncertainty. For that reason, the current proposal includes VAT as one of the covered taxes.

### **Determining an uncertain tax treatment**

#### **Question 9: Do you consider that it would be beneficial to supplement the main requirement with a specific list of indicators of uncertainty?**

3.57 There were 44 responses to this question.

3.58 Many respondents supported the idea and agreed that a list of indicators would be useful, as this would make it easier to assess whether notification is required and make the types of uncertainty covered under the regime clearer.

3.59 Other suggestions included:

- Guidance from HMRC about what 'good' looks like to manage compliance,
- Reporting triggers on areas where HMRC is likely to disagree, and
- HMRC to maintain a list of 'known issues' that are being worked on

3.60 Of the few respondents that disagreed, their views were that a list should not be a substitute and the definition of an uncertain tax treatment must be clearer and more objective.

#### **Government response**

3.61 The government has listened to the responses received and is developing a series of objective tests, where if any of those tests are met, the large business will be required to notify. This will provide a higher degree of certainty regarding notification obligations and will minimise subjectivity related to the legislation.

3.62 A number of respondents suggested that HMRC publish a list of known issues where there could potentially be uncertainty in HMRC's interpretation or application of the law. The government accepts that the onus will be on it to confirm its interpretation of the law to ensure notifications are only received in those situations where there is true uncertainty. To some extent, these issues are already highlighted in HMRC's existing guidance and publications.

3.63 In addition to ensuring the guidance related to this measure is updated regularly, the government is considering whether a specific list of common uncertain tax treatments, along with HMRC's view, could be published alongside the guidance.

**Question 10: Do you agree with the proposed examples, and do you have any others which you consider would be helpful?**

3.64 There were 37 responses to this question.

3.65 Some respondents agreed with the proposed examples.

3.66 Respondents suggested that HMRC publish a list of treatments that are not considered uncertain, or which are excluded from the regime.

**Government response**

3.67 The further consultation to be published in respect of this measure will include details of the triggers proposed by the government. In addition, a number of examples will be included to demonstrate how the legislation should apply and what would constitute an uncertain tax treatment.

**Method of notification**

**Question 11: Do you think the SAO certification process is appropriate for the notification requirement?**

3.68 There were 45 responses to this question.

3.69 Some respondents did not think the SAO certificate process was appropriate. The main area of concern was regarding the timing difference between when notification would be required under SAO and when a return is due.

3.70 Other views from respondents included:

- There is no benefit in aligning the SAO process and the notification requirement;
- The SAO is the appropriate person to notify but the notification regime should not adopt the SAO regime deadlines which are 6 months or 9 months after the end of the accounting period;
- There are many different reporting periods for different taxes (for example PAYE and VAT). Therefore, the consultation should not solely focus on Corporation Tax; and
- Align the notification requirement with the applicable tax return filing deadline to allow businesses to consider uncertain tax positions alongside completion of the return.

**Government response**

3.71 The government has listened to the various responses received on this point and is now proposing for the notification to be required at the same time as the relevant return is required. In respect of annual returns, such as Corporation Tax, that would be the date the return is due. For non-annual returns the government will outline its proposal through further consultation and seek stakeholder input to determine the easiest method for businesses to comply.

3.72 Rather than one notification covering all taxes, the government is proposing that a separate notification would be required for each tax regime. This would ensure notifications are received in a timely manner and in conjunction with the filing of relevant returns.

**Question 12: Would reporting VAT and PAYE issues occurring in the tax year, rather than in the accounting period for the company, cause any significant difficulties?**

3.73 There were 40 responses to this question.

3.74 A few of the respondents requested further clarity on this question.

3.75 Many respondents raised concerns on reporting VAT and PAYE, recommending that notification should be aligned with the filing of the tax return.

3.76 Respondents also suggested that the measure should:

- Integrate the notification regime with existing processes. For example, Making Tax Digital should create a flag system for reporting areas of uncertainty; and
- Exclude VAT and PAYE, as it should only apply to CT as with the Australian and US models for reporting an uncertain tax position.

**Government response**

3.77 Following the initial consultation, the proposed measure will apply only to Corporation Tax, VAT and Income Tax (including PAYE). VAT and employment taxes make up a large portion of the legal interpretation tax gap and they often involve significant areas of uncertainty. Therefore, the notification obligation will remain for those taxes.

3.78 The government's original proposal for the Uncertain Tax Treatment measure was to have one notification for all taxes covered by the regime. However, feedback received during the consultation process indicated that separate notification requirements should apply for each tax. Therefore, notification obligations will be aligned to filing obligations for each tax. As noted above at para 3.71, the government will be seeking input from stakeholders in respect of filing obligations for non-annual returns.

3.79 The government has considered the suggestion to integrate the Uncertain Tax Treatment regime with existing processes, such as Making Tax Digital, but has concluded that this would not be appropriate as the regime will only apply to a relatively small proportion of HMRC's customers. In addition, undertaking such integration may lead to confusion for a large number of smaller businesses regarding whether it is relevant for them to consider.

**Question 13: What alternative person could be responsible to make the notification for large partnerships?**

3.80 There were 28 responses to this question.

3.81 The most common views from respondents were:

- The Head of Finance or the Finance Director;
- The manager or other person designated by the partnership;
- A nominated partner or officer; and
- The person liable under section 12AA (2) and (3), Taxes Management Act 1970, where the officer of the Board requires such a person as is identified to make and deliver the return.

**Government response**

3.82 The government has considered the responses received and has concluded that the person responsible for notification in respect of large partnerships should be the person who is required under section 12AA(2) or (3) of the Taxes Management Act 1970 to make and deliver returns to HMRC on behalf of the partnership.

3.83 Where a failure to notify occurs under the proposed measure, the partnership may be liable to a penalty of £5,000. This will be charged on the partnership itself where a separate registration exists, such as for VAT & PAYE, or on the nominated partner where the uncertainty relates to an entry in the partnership return due under section 12AA, Taxes Management Act 1970.

**Question 14: Alternatively, what process (other than the SAO) could be used for a single, annual notification?**

3.84 There were 38 responses to this question.

3.85 The most common view from respondents on this question was that the notification should be given by means of supplementary pages on relevant tax returns, as a single annual process is inappropriate for a broad spectrum of taxes with different filing regimes and frequencies.

3.86 Most respondents suggested a notification requirement for each head of tax. This would align the requirement to notify closer to filing of the returns.

### **Government response**

3.87 Although more finely balanced in terms of responses, the government has decided to align the timing of notification to when the return is due, and not when Senior Accounting Officer certificate is required. As suggested by respondents, it is proposed that a notification will be required for each head of tax, where an uncertain tax treatment exists, rather than an annual return for all taxes covered by the measure.

### **Level of detail**

**Question 15: For each relevant tax, what information do you think could be reasonably provided as part of the notification requirement, in addition to a concise description and indication of amount?**

3.88 There were 38 responses to this question.

3.89 The most common views were:

- Brief description of the transaction;
- Nature of uncertainty;
- Periods affected by uncertainty;
- Quantum value;
- Date of transaction/ event giving rise to the uncertainty;
- List of connected entities;
- Details of external legal advisors; and
- Reference to the law, the case law, and/or HMRC's guidance which generates the uncertainty.

3.90 Several respondents said that providing this information would initiate discovery.

3.91 A few respondents suggested using a similar approach to the US model for reporting, which consist of a concise description of the tax position that is summarised in a few sentences.

### **Government response**

- 3.92 The government intends to publish, through guidance, a list of information to be provided with an uncertain tax treatment notification. Such information will allow HMRC to determine the issue and the extent of any potential loss of tax.
- 3.93 A number of respondents suggested that HMRC's ability to issue discovery assessments would be affected where a notification under the proposed Uncertain Tax Treatment measure has been made. The discovery provisions in section 29 of the Taxes Management Act 1970 list two conditions where if either condition is met HMRC can issue a discovery assessment. These are:
- Sub-section (4): The potential loss of tax was due to careless or deliberate behaviour by the taxpayer or their agent, or
  - Sub-section (5): At the time when an HMRC officer ceased to be entitled to open an enquiry into the return (or issued a closure notice in respect of an existing enquiry), the officer could not reasonably have been expected, on the basis of the information made available to them at that time, to be aware of the loss of tax.
- 3.94 Where there is no careless or deliberate behaviour in relation to an inaccuracy (i.e. sub-section (4) doesn't apply), the notification was delivered on time and the notification contained sufficient information to make HMRC aware of the actual loss of tax, then the government would accept that there would be limited circumstances where a discovery assessment under the second condition (sub-section (5)) would be appropriate.

**Question 16: Do you think there are any common disputes where, due to the complex nature of such disputes, specific documents or information should be provided alongside the notification?**

- 3.95 There were 33 responses to this question.
- 3.96 Many respondents did not provide further details of any common disputes that would require specific documents or information to be provided.
- 3.97 In contrast, some respondents indicated areas of common disputes where documents or information could be provided.
- 3.98 Other views were:
- It would be preferable if the documentation to be provided is agreed in separate dialogue with the CCM or other HMRC representative as the facts and circumstances of each dispute are likely to vary depending on the nature of the business;

- For VAT disputes it may be appropriate to provide copies of contracts, terms of business or invoices or similar where the dispute involves a trading arrangement.

### **Government response**

3.99 As noted above at 3.92, the government intends to publish, through guidance, a list of information to be provided with the notification.

3.100 It is not envisaged that further information or clarification would be requested as part of the notification process. Instead, it is anticipated that if HMRC did require more information they would take that forward with the business separately, either on a formal or informal basis.

### **Penalties for failure to report**

**Question 17: Do you think the principle and quantum of the existing SAO penalty regime is sufficient for the integrity of the notification requirement?**

3.101 There were 34 responses to this question.

3.102 Many respondents supported using the principles and quantum of the existing SAO penalty regime.

3.103 In comparison, some respondents disagreed with the proposal as the penalty should not apply to a SAO, or equivalent nominated person, but should only be charged on the entity.

3.104 Some respondents also expressed concerns that the penalty is too small for large businesses and should be increased to a higher penalty to help enforce compliance.

### **Government response**

3.105 The government has listened to the concerns raised by respondents in relation to this question and, as such, is proposing that any penalty charged in respect of this measure would be on the business itself, rather than any specific individual. The only exception to this rule is where the large business is a partnership and the failure to notify is in respect of the partnership return required under Section 12AA, Taxes Management Act 1970. In these circumstances, where a penalty is charged it will be on the nominated partner (also defined at S12AA).

3.106 The proposed quantum of the penalty will remain at £5,000. This level of penalty is considered sufficient to encourage compliance with the legislation.

**Question 18: Regarding the penalty in 6.3.2, who do you think should be liable to a penalty, the person liable to notify or the entity, and, if more than one (legal) person, in what circumstances, and to what quantum, would these persons be culpable/liable?**

3.107 There were 45 responses to this question.

3.108 Most respondents were in favour of the penalty being on the entity as it would be unfair to apply the penalty to a person.

### **Government response**

3.109 The government recognises that most respondents were strongly against the penalty applying to an individual for failing to notify. It was also a common view that the requirement to notify should fall on the entity, rather than an individual. The government has considered these responses and has concluded that any potential penalty will apply to the entity, rather than one individual, except in circumstances where the failure to notify relates to a partnership and the uncertainty is in respect of the partnership return required by section 12AA, Taxes Management Act 1970. That being the case, the other penalty referred to in the consultation document (for failing to notify HMRC of the identity of the responsible person) would naturally fall away.

### **Assessment of impact**

**Question 19: Do you have any comments on the assessment of equality, and other impacts?**

3.110 There were 23 responses to this question.

3.111 Concerns were raised that the maximum annual yield of £45m was relatively insignificant, and whether the yield justifies the additional administrative burdens that will be placed on all large businesses under the notification regime.

3.112 The majority of respondents accepted HMRC's policy objective, but felt that:

- The scope is too wide, thereby increasing the administrative burden on the compliant majority;
- The definition is too subjective, and will create uncertainty, again increasing the administrative burden; and
- The timing is wrong, when entities are focusing on recovering from the consequences of COVID and trying to remain competitive post-EU Exit.

### **Government response**

3.113 The government has considered the concerns raised by respondents in respect of the scope of this proposed legislation. As noted above, for those businesses that are open and transparent with HMRC it is expected that this measure would

not create a significant additional administrative burden, but the government is undertaking further research to test that assumption, both internally and through further consultation with external stakeholders.

- 3.114 If uncertain tax treatments have already been discussed with HMRC, during the BRR+ process for example, then notification would not be required as HMRC would already be aware of the issue.
- 3.115 The subjective nature of the proposed legislation was raised as a concern by many respondents. The government has therefore sought to develop a series of objective tests, where if any of those tests are met, the large business will be required to notify. It is expected that these tests will provide businesses with a higher level of certainty regarding the application of the legislation.
- 3.116 The government has listened to the concerns raised by respondents in respect of COVID-19 and EU Exit. This was a factor in the Government's decision to defer implementation of the measure for 12 months, to April 2022.

## 4. Next steps

### Next steps following the Consultation

4.1 Since the consultation closed on 27 August 2020, HMRC has been considering the evidence submitted in response to the consultation and exploring ideas to inform the further design of the policy, including through informal discussions with stakeholders who responded to the consultation.

4.2 To develop its evidence base, HMRC will undertake further work to understand some of the issues raised in the initial consultation, in part through a second consultation published on the same day as this Summary of Responses. The government will consider the evidence as part of its future policy development.

4.3 Draft legislation and a Tax Information and Impact Note (TIIN) will be published for further comment ahead of inclusion in Finance Bill 2021/22.

4.4 The primary legislation will be included in Finance Bill 21/22 to:

- define what is considered as a large business;
- objectively define what is an uncertain tax treatment;
- confirm any specific exclusions to the measure;
- introduce a threshold above which uncertain tax treatments must be notified to HMRC;
- specify the taxes that will apply to the regime as Corporation Tax, VAT and Income Tax (including PAYE);
- include a £5,000 penalty on the business for failing to notify an uncertain tax treatment, when they should have done so; and
- provide for appeal and reasonable excuse provisions to the penalty.

HMRC will develop and publish additional guidance for large businesses to support them in meeting their obligations under the new regime.

# Annexe A: List of stakeholders consulted

ACCA

AIMA

AK Employment Tax Service Ltd

APPG on Anti-corruption and Responsible Tax

Association of British Insurers

Aviva

Baker McKenzie

BDO

British Land

British Property Federation

British Telecom

BUFDG

BVCA

Candent

Caterpillar

CBI

Centrica

CIOT

ConvaTec Group PLC

Crowe UK

CW Energy LLP

Deloitte

Derwent London

Doosan Babcock Ltd

Ernst & Young

ExxonMobil

Ferguson PLC

G4S

Herbert Smith Freehills  
ICAEW  
ICAS  
Investment Association  
KPMG  
Legal and General  
London Society of Chartered Accountants' Taxation Committee  
Macfarlanes LLP  
Mazars  
Pinsent Masons  
PwC  
RSM UK  
Saffery Champness LLP  
Simmons & Simmons LLP  
Smith & Williamson  
Standard Chartered Bank  
Tax Director Network  
Tax Law Review Committee of the Institute for Fiscal Studies  
The 100 Group  
The City of London Law Society  
The City UK  
The Law Society  
UK Finance  
VAT in Industry Group  
Vattenfall UK Group  
Virgin Money UK  
White & Case LLP