HMRC consultation: Opportunities to extend uncertain tax treatment

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CIOT and ATT have responded to a consultation on the proposed extension of the uncertain tax treatment regime.

The requirement to report uncertain tax treatment (UTT) to HMRC has existed since April 2022 for corporation tax, VAT and income tax (including PAYE) uncertainties encountered by large businesses, where a legal interpretation gives rise to a tax advantage of more than £5 million.

HMRC launched a consultation in March this year proposing the expansion of the UTT regime to individuals, trusts and a broader range of taxes. It is proposed that the reporting threshold of £5 million of tax difference would continue to apply across an extended UTT regime.

Additionally, the consultation proposes the introduction of a new trigger for UTT reporting, whereby a notification to HMRC would be required if HMRC's view on an area of legal uncertainty is not known and there is more than one credible interpretation. This would expand on the two existing triggers: where a taxpayer adopts an interpretation that differs from HMRC's known position or where an accounting provision is made in respect of the uncertainty.

HMRC considers that these measures would help to identify and resolve legal interpretation uncertainties at an earlier stage, leading to improved transparency and helping to reduce this element of the tax gap.

CIOT response

CIOT are supportive of actions to tackle the tax gap and reduce legal interpretation uncertainties. However, our response raises significant concerns about the proposed extension of the regime and does not support several core elements of the proposals.

A key concern is the proposed third trigger. The CIOT do not support this proposal on the basis that the test is inherently subjective, insufficiently defined and lacks practical certainty. In the CIOT’s view, it risks driving over-notification, increasing compliance costs for taxpayers and advisers, and creating new areas of dispute, without clear evidence that it would target the areas of concern. Over-notification is also likely to result in a drain on HMRC resources, with the effect of reducing service standards in other areas.

The CIOT considers that the consultation does not provide sufficiently robust evidence to justify extending the regime to individuals, trusts or additional taxes, nor does it clearly demonstrate that existing HMRC powers and regimes could not address the issues identified. The response also highlights a lack of clarity around how key aspects of an expanded regime would operate in practice, including the transition of a regime designed for large corporates to individual and trust taxpayers, the application of the £5 million threshold, and access to effective routes into HMRC for discussing and resolving uncertainty.

The CIOT specifically does not support expanding the regime to inheritance tax and construction industry scheme obligations. Any expansion of the UTT regime to additional taxpayers and taxes should be evidence-led, proportionate and supported

by clear, workable rules. A gradual transition, following closer evaluation of the impact, is likely to be more appropriate.

The CIOT also questioned the proposal to narrow the existing exemption by requiring taxpayers to obtain explicit confirmation from HMRC that an uncertainty has been brought to its attention. The CIOT warned that this could make the exemption unworkable in many cases and duplicative of the notification requirement, particularly for taxpayers without access to a Customer Compliance Manager.

The CIOT recommended that, rather than placing additional obligations on taxpayers to identify and disclose uncertainty, HMRC should make stronger commitments to reduce legal interpretation uncertainty at source through clearer legislation, timely guidance, better clearance processes and effective mechanisms for uncertainty resolution. The CIOT urged government and HMRC to take more time and conduct further consultation before deciding which proposals should be taken forward.

ATT response

The ATT’s response stresses the importance of retaining the £5 million UTT reporting threshold to prevent a disproportionate and unreasonable impact on individuals and trusts if they are brought within the scope of an expanded UTT regime.

The ATT also recommended that inheritance tax should be excluded from any expansion of the taxes covered by UTT, given the practical difficulties involved. These include the potentially long period between tax planning and the relevant tax event, often death; the fact that reporting obligations on death may fall on individuals who were not involved in the original planning; and the possibility that reporting may be unnecessary for some inheritance tax events, such as ‘successful’ potentially exempt transfers, where no tax charge arises.

In respect of the proposed new trigger' the ATT also expressed concerns about its practical implementation. As proposed, it risks creating an impractical burden on taxpayers. Instead, the ATT recommended relying on the existing triggers, at least until an extended UTT regime has become established and its effectiveness and impact on trusts and individuals can be properly assessed.

Finally, the ATT reminded HMRC of its responsibilities in areas of uncertainty and potentially differing legal interpretations. UTT should not become a means for HMRC to avoid proactively identifying such areas and providing clarity through legislation

or guidance.

UTT should also not require taxpayers to duplicate information already made available to HMRC, for instance via ‘white space note’ disclosures on tax returns. HMRC should make full use of information already reported by taxpayers before imposing additional compliance burdens on them.

The full CIOT response is available here: www.tax.org.uk/ref1651

The full ATT response is available here: www.att.org.uk/ref521

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