



INSIGHTS

Uncertainty Remains on Uncertain Tax Treatment

HMRC's proposed expansion of the Uncertain Tax Treatment regime represents a potentially significant shift in tax compliance expectations for large businesses, high-net-worth individuals and trustees.

HMRC has recently closed a consultation on options to expand the Uncertain Tax Treatment (“UTT”) by Large Businesses regime. The rules in their current format only impact a small number of large businesses and partnerships, but the proposals are to expand the rules significantly increasing the taxpayers within the scope to include both trusts and individuals, and widening the taxes caught.

HMRC’s extension of the UTT regime sits within a broader shift towards earlier, more transparent engagement on tax risk, moving away from retrospective enquiries and towards real-time oversight.



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WRITTEN BY
Dan Smitten
+44 (0)2079 522 921
dsmitten@tridenttax.com

Background

The current rules were brought in under Schedule 17 of Finance Act 2022 after extensive consultation from HMRC. The rules were intended to promote fairness and transparency, and to help address the portion of the tax gap that is believed to arise from legal interpretation uncertainties, which stood at £5.4bn in 2024 tax year, 12% of the total Tax Gap.



TRIDENT TAX



Briefly, legal interpretation uncertainties arise where HMRC and the taxpayer's interpretation of the law and how it should be applied differ, in scenarios where there is no avoidance, resulting in a different tax outcome.

In HMRC's publications on the UTT regime, they confirm that as of 1 January 2026 there have been more than 30 notifications, involving potential tax at risk estimated to be £1bn. HMRC do accept that some of these risks would have been identified during the compliance process, and crucially, that in some of these cases HMRC may agree with the business' interpretation.

As, in HMRC's view, the UTT is meeting its objectives of increasing tax position transparency and reducing the tax gap, the government is seeking to build on the existing structure, and bring in other taxes and taxpayers not currently within the scope.

The headline additions being the introduction of individuals and trusts, and the inclusion of CGT and IHT.

The current rules

Currently, the rules only apply to Large Businesses, which is those that have either:

- ▶ a UK turnover above £200m; and/or
- ▶ a UK balance sheet total over £2billion

The scope is slightly wider when considering groups. Where the company is part of a group, the £200m turnover and £2bn balance sheet total applies to the whole group (The definition given for a group is the 51% test).

The taxes that are included within the current rules are Corporation Tax, VAT and Income Tax (including most notably PAYE).

Large businesses that meet the criteria are required to notify HMRC of legal uncertainties where the tax advantage exceeds £5 million and satisfies either of the following criteria:

- ▶ the business is taking a position that is contrary to HMRC's known position, as published in guidance or established in direct dealings with HMRC; or
- ▶ the business has made a provision in their accounts to reflect that their interpretation may not be successful if challenged.

Businesses are exempt from notifying HMRC where they hold a reasonable belief that HMRC are already aware of the uncertainty.

Proposed expansion of the regime

HMRC's consultation **involved** the expansion of the UTT to require HMRC to be notified of more uncertainties including:



- ▶ bringing other taxpayers within the scope, including individuals and trusts where the tax advantage of the legal interpretation exceeds £5 million;
- ▶ including additional taxes within scope, such as Stamp Duty Land Tax, National Insurance Contributions (NICs), CIS payments, Capital Gains Tax (CGT) and Inheritance Tax (IHT); and
- ▶ introducing an additional trigger, to broaden the range of legal uncertainties that are notifiable.

The inclusion of Individuals and Trusts, along with CGT and IHT should be of particular note to High-Net-Worth Individuals, and indeed they are directly referenced in HMRC's publication on the consultation.



According to HMRC, the tax gap for wealthy individuals was estimated at £2.1 billion in the 2023/24 tax year, with over half of that gap believed to be attributable to legal interpretation of the law.

The requirement to notify for individuals will cover cases where the tax advantage exceeds £5 million, but there is no equivalent balance sheet or turnover requirement for individuals, it applies to all individual taxpayers.

The suggestion is that the very large legal interpretations made by individuals are identified solely by the tax advantage, in comparison to companies, where it is far more common that they would reach this advantage, so the rules remain restricted to large businesses.

Trusts are to be treated the same as individuals, as many trusts are not in business in their own right, and therefore do not have a business turnover, or prepare a balance sheet to help determine who would be in scope.

The suggestion is therefore that all trusts would be within scope, regardless of the type of trust, where there is a difference between the trust's interpretation and the alternative interpretation which creates a tax advantage of more than £5 million.

The introduction of Inheritance Tax and Capital Gains into the UTT should be of particular note to Trustees.

The additional notification trigger

Whilst the additional taxes brought within the scope are clear, the more subtle change and should maybe require greater attention is the additional trigger.

Currently, the requirement to notify is only where the requirement to interpretation differs from HMRC's known position, the consultation describes this as narrow and



seeks to extend this to any position taken where HMRC's position is unknown, and more than one credible legal interpretation exists.

This would appear to be a very broad definition. HMRC have provided no clear statutory definition as to what would meet the new trigger.

However, when receiving an opinion from tax advisors, or indeed counsel, it is very unlikely that a guarantee would be provided asserting that no credible alternative interpretation could exist.

What level of certainty would be required to be able to ensure that no credible alternative legal interpretation exists, unless HMRC take care with the exact criteria provided the scope will be significantly wider than the rules in their current format.

This is particularly relevant when you consider how broad HMRC's definition of legal interpretation uncertainties is, including:

- ▶ differences in interpretation of the law;
- ▶ differences in interpretation of facts affecting whether and how the law is applied; and
- ▶ differences in approaches to valuation, apportionment, calculation or allocation – affecting largely the quantum of tax outcomes

When the rules were first introduced, a third criteria, similar to the one detailed above was considered but ultimately decided to be too subjective. The consultation **closed on 4 June**, and it will be interesting to see whether HMRC proceeds with the above element of the expansion.

Penalties for non-compliance

Commentary on HMRC's guidance notes that penalties may apply for non notification, late or incomplete disclosures, but are supported by significant discretion and a reasonable excuse defence, taking into account the complexity of HMRC guidance, and without the intention to punish businesses where they may have taken a reasonable approach.

The existing penalty regime itself is:

- ▶ £5,000 for the first failure;
- ▶ £25,000 for the second failure, where there has been a previous failure in any of the preceding three financial years; and
- ▶ £50,000 for the third and each subsequent failure, where a second penalty or further failure penalty has been assessed in the preceding three financial years.

However, the bigger concern away from the financial penalty, is that HMRC expect businesses to actively identify risk, and therefore in scenarios where HMRC feel that these expectations have not been met, and are considering the penalties above, we would anticipate greater HMRC scrutiny of the wider business.



Conclusion

The proposed expansion of the UTT regime marks a clear shift in both scope and expectation. What was previously a regime that applied to a relatively small group of large businesses, could now potentially apply to a much wider population, and range of taxes.

While the stated objective remains improving transparency and reducing the legal interpretation tax gap, the practical effect is to place a greater onus on taxpayers to identify and articulate areas of uncertainty at an early stage. In particular, the proposed introduction of a wider and more subjective notification trigger has the potential to significantly increase both the volume of disclosures and the difficulty in determining when notification is required.

For high-net-worth individuals and trustees, this represents a notable change in compliance expectations, particularly given the absence of equivalent turnover and asset-based criteria. More broadly, it reinforces HMRC's direction of travel towards earlier intervention and a more data-led approach to risk assessment.

The expansion of UTT should be viewed in the context of increased HMRC scrutiny and a growing expectation that taxpayers actively identify and engage with areas of uncertainty, rather than waiting for them to be explored through enquiry.

It will be interesting to see the outcome of the consultation following its closure on **4 June**.

Want to know more?



Dan Smitten
+44 (0)2079 522 921
+44 (0)7471 416 704
dsmitten@tridenttax.com



Alan Kennedy
+44 (0)2079 522 921
+44 (0)7900 678 541
akennedy@tridenttax.com

Recognising Possibilities

Registered Office: 25 Bedford Square, London WC1B 3HH
Trident Tax Limited is Registered in England No.6945474. VAT Number 977613869

+44 (0)207 952 2921
info@tridenttax.com
www.tridenttax.com