

Notification of Uncertain Tax Treatment by Large Business



To: UncertainTaxTreatmentConsultation@HMRC.gov.uk

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Introduction and background

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £100bn to the economy in 2018 and supported more than 2 million jobs¹. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. Certainty of tax treatment is incredibly important for all businesses – but especially real estate investors, where taxes incurred on transactions can be significant, and the ongoing tax impact of an investment must be estimated correctly in order to appraise investment options appropriately. We therefore welcome efforts from HMRC to understand areas which cause uncertainty to business to allow the opportunity to improve on guidance and help tax payers get their tax right first time.
3. However, we are concerned that the broad scope of these proposals and the ambiguity of some key definitions will cause significant administrative burdens for those businesses that fall within scope. Our responses to the consultation questions are set out in the appendix – and we would highlight the following recommendations in particular:
 - A. **Delay implementation:** Given businesses are already under resource constraints and adapting to new ways of working, we would recommend delaying the introduction of the measures for at least a year. This will allow time for HMRC to address the challenges identified during this consultation process and ensure that businesses have a long lead time after the legislation is drafted to update any internal reporting processes needed to respond to these new rules.
 - B. **Tailor rules for different taxes:** Direct and indirect taxes operate very different – it would therefore be appropriate to have more tailored rules and reporting windows to reflect these differences.
 - C. **Reduce ambiguity in the rules:** The definition of 'Uncertain Tax Treatment' must be objective and unambiguous to allow business to operate these new rules effectively.
4. Please do not hesitate to get in touch if you have any follow up questions in respect of our comments – we look forward to engaging further as the proposals evolve.

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¹ <https://www.bpf.org.uk/sites/default/files/resources/16688%20BPF%20Economic%20Footprint%20Report%2014.08.19.pdf>

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Appendix 1: Response to consultation questions

5. We have provided input in response to a number of the consultation questions below. We have also set out some additional suggestions to minimise the administrative burden on business towards the end of the appendix.

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

6. These rules introduce a significant additional administrative burden across a huge range of taxes – given businesses are already under resource constraints and learning to work in new ways, we would recommend delaying the introduction of these measures to ensure that businesses have a long lead time to update any internal process where necessary. Furthermore, we would recommend introducing a limited number of taxes initially, and gradually increasing this as businesses and HMRC become accustomed to the new rules.

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

7. The definition of 'Uncertain Tax Treatment' that is currently proposed in the consultation is too subjective and will therefore be hard for taxpayers to apply fairly and consistently.
 1. *"An uncertain tax treatment is one where the business believes that HMRC may not agree with their interpretation of the legislation, case law, or guidance"*
8. The definition should be clear and objective in order to allow business to operate these new rules effectively. As such, it would be preferable if the definition required taxpayers to consider whether they could reasonably expect to be challenged by HMRC.

Materiality threshold

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

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

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

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

9. The government's proposal to report uncertain tax treatments which, individually or combined amount to £1m will place a significant burden on business – as even small transactions will need to be tracked in case they breach a given threshold collectively. At the very least, we would suggest a materiality threshold which is more targeted at each business. We would also recommend a different threshold for different taxes – it would be appropriate to have a higher threshold for VAT for example.
10. **Large one off transactions vs small but high volume transactions** – These rules would appear to lend themselves better to large one off transactions where a business is making new judgements outside the normal course of business (such as a complex property acquisition). The rules do not seem to lend themselves as well to small but high volume transactions (such as capital/revenue allocations for

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example) – and yet these regular transactions could cause the largest administrative burden for taxpayers. We would welcome some considerations of alternative approaches for HMRC to assess the areas of risk or uncertainty associated with small but high volume transactions. In particular, a process which would allow HMRC to better understand a businesses' internal processes and decision making would be more efficient and more informative for HMRC.

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?

11. All taxes operate slightly differently, especially direct and indirect taxes. It would therefore be appropriate to tailor the rules for each tax introduced – to reflect the differences in how they operate, and the reporting and payment timeframes associated with each.

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?

12. Given the areas that will come under scope of these new rules will, by their nature, involve a certain level of subjectivity, it will be difficult to quantify the tax at stake with any accuracy. Therefore businesses should not be required to quantify the tax at stake as standard – although HMRC could have the power to ask for further information.

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?

13. Where the definition for an 'uncertain tax treatment' remains ambiguous, imposing any penalty for failing to notify is deeply unfair. In particular, we do not agree that the Senior Accounting Officer should be penalised in these cases, and indeed, penalties for individuals should be limited to cases of deliberate evasion or misconduct – not simply for oversight or uncertainty in respect of the obligations. We therefore believe that any penalties should be levied on the entity involved and not a specific individual. Furthermore, we believe that the interaction with the SAO regime should be reconsidered – as the SAO will not always be the best placed individual in the organisation with oversight of the risks and processes in respect of all the taxes in scope.

Other options to reduce the burden on low risk tax payers

14. We would welcome further consideration of other overarching measures which could reduce the administrative burden for taxpayers with limited risk to HMRC. For example, the risk rating achieved by low/medium risk taxpayers will reflect the open and transparent dialog they have with HMRC in relation to their tax affairs – therefore, it seems unnecessary to apply these rules to this cohort of taxpayers, who are already demonstrating the behaviours this legislation is seeking to encourage.
15. Furthermore, it is important to give early consideration to the compliance process for groups (such as enabling a group compliance functionality), to ensure the compliance process is as efficient as possible. In addition, we would recommend that the filing of nil returns (to confirm that no disclosure is needed) should not be required in order to streamline the compliance process for business.