



NOTIFICATION OF UNCERTAIN TAX TREATMENT BY LARGE BUSINESSES - SECOND CONSULTATION

Issued 1 June 2021

ICAEW welcomes the opportunity to comment on the Notification of uncertain tax treatment by large businesses - second consultation published by HMRC on 23 March 2021, a copy of which is available from this [link](#).

[Mandatory statement for responses to the European Commission: ICAEW is listed in the EU Transparency Register (ID number: 7719382720-34).]

- We welcome HMRC's work in seeking to make the concept of an uncertain tax treatment more objective but we believe that more development and clarification is required beyond the creation of the triggers referred to in the consultation document.
- Given the nature of the subject matter, we remain unconvinced that sufficient objectivity can be achieved to make this proposal a workable solution.
- We note the relatively modest amount of additional tax that this measure is expected by HMRC to bring in and consider that greater and more constructive discussions and dialogue between HMRC and big business would produce a greater yield.
- We also believe that, rather than taxpayers notifying HMRC of uncertainty, the government could do more to reduce uncertainty in the first place by drafting clearer legislation. HMRC could also update its guidance in a more timely fashion where changes in its views occur and make it easier to determine when these changes took place and what they were.

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

This response of 1 June 2021 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 156,000 chartered accountant members in over 149 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2021

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: taxfac@icaew.com

KEY POINTS

1. We could support the introduction of this measure if it brings about more certainty and a reduction in the overall administration burden for the large businesses it is intended to apply to, but we remain unconvinced that these outcomes will be achieved.
2. It remains unclear what the true target of the proposed regime is, given the plethora of other risk-based regimes such as senior accounting officer, business risk reviews and tax strategy publication. It may be more prudent to allow these measures to bed in longer before introducing a new regime so that it is easier to determine what, if anything, is still required.
3. The Assessment of Impacts in the consultation document states that this measure will raise relatively little additional revenue (£145m over 5 years). We do not consider that this modest amount is sufficiently justification for the additional costs for businesses and HMRC that would arise from this measure, albeit that enquiry and litigation costs may be reduced for both parties.
4. We anticipate that compliant businesses will be overly prudent in their approach to the new regime and HMRC may receive a significant number of notifications which it would then need to devote time and resource to reviewing to identify the issues it wants to enquire into. This may have a negative impact on the amount of tax yield HMRC obtains per £ of investigation cost.
5. We note from HMRC's call for evidence on the Tax Administration Framework that HMRC considers that existing tax return enquiry processes are not especially effective at encouraging early resolution of tax disputes and so anything that can be done to accelerate resolution or prevent disputes arising in the first place is potentially a step in the right direction. However, we believe that this could be achieved more cheaply and effectively through active discussion with the business' CCM or an extension of the business risk review such that only higher risk businesses are subject to these requirements.
6. We also believe that the introduction of this regime could actually delay HMRC becoming aware of uncertain tax treatments in some cases. For example, rather than discussing the issues with their CCM, some businesses may instead make use of this regime and wait for HMRC to challenge them on the tax stance they are taking in the areas concerned.
7. In other cases, some less compliant businesses make take the view that a particular treatment is not uncertain and decide not to notify it. Depending on the amount of tax at stake, it might take the risk of a penalty for failure to notify.
8. We believe that other measures can also be taken to make HMRC's position clearer in respect of legislative matters and prevent differences in opinion from arising. These include drafting clearer legislation, signposting HMRC's position more clearly in its manuals (including when this position has changed) and redacting them less often.
9. We are grateful for the work that HMRC has done in making the situations in which the rules would apply more objective. However, we believe that only a few of the triggers ((a), (f) and (g)) are sufficiently objective and that each of these would benefit from further restrictions beyond those set out in HMRC's consultation document.
10. Further details on our views on each trigger are set out in our responses to the consultation questions below. In overview, we believe that the triggers should only apply where the business adopts a treatment that:
 - is more favourable to it than HMRC's known position;
 - is more favourable than professional advice provided to it that is not professionally privileged; or
 - differs from the commercial results of the business concerned.
11. There are three points of principle we would like to stress in relation to the proposed triggers:

- a. We believe that only uncertainties arising in respect of interpretation of tax law should need to be notified. Potential differences of opinion over valuations and pricing, for example, should be excluded.
- b. We believe that notification should only be required where HMRC's position is unequivocal and the taxpayer takes a position that is more favourable to itself than this. There should be no additional administration burden placed on businesses as a result of HMRC not being sufficiently clear about its position on a particular point of law.
- c. We believe that there should be an exemption for tax neutral intra-group transactions where, for example, an item of taxable income is matched with an equal and opposite allowable expense. However, we would hope that such an exemption should flow through in the application of the de minimis threshold such that there is £nil difference in tax outcome under HMRC's and the taxpayer's view (even if their interpretation of individual legs of the transaction differ).

ANSWERS TO SPECIFIC QUESTIONS

Question 1: Do you support the government taking action to close the legal interpretation portion of the tax gap?

12. ICAEW supports closure of the tax gap in general. However, we are unsure how the £4.9bn legal interpretation gap as set out in HMRC's 2019/20 annual reports and accounts has been calculated and whether it is appropriate to refer to the whole of the difference between Revenue and taxpayer interpretations of tax law as a 'tax gap'. Of all the tax cases heard each year, some are decided in favour of HMRC and some in favour of the taxpayer and so the 'gap' should presumably reflect this.
13. Paragraph 2.1 of the consultation document states that the majority of the £4.9bn gap arises from disputes between HMRC & large business. The first year's estimated yield from this new measure is only £45m – less than 1% of this tax gap. Fig 5 of the National Audit Office's tax gap report (page 21 of [the pdf](#)) shows that the legal interpretation gap reduced by £0.6 billion from 2015/16 – 2018/19. In other words, it is reducing annually to a far greater extent than this measure is expected to achieve.
14. We believe that the more compelling case for introduction of this proposal would be greater certainty for taxpayers. Notification of uncertain tax issues might help to bring forward the resolution of enquiries, although that may not be the case if HMRC does not do anything with the information it would receive through this regime until the time when it would normally raise an enquiry. We also believe that this could be achieved more efficiently and cost-effectively through active discussion with the business' CCM or an extension of the business risk review such that only higher risk businesses are subject to these requirements.

Question 2: If you do not agree with the government's proposed course of action, what alternatives do you suggest to address the problem?

15. Greater certainty can also be achieved through the introduction of clearer legislation that does not need to be supplemented by guidance, thereby removing or reducing the possibility of different parties taking different interpretations of the law.
16. We accept, however, that there will always be a degree of interpretation involved in applying some areas of tax law and, in those cases, updating, rewriting and improving HMRC guidance on a timely basis would go a long way towards reducing any remaining uncertainty.
17. In some cases, HMRC has promised guidance in relation to newly introduced legislation or legislative changes but this has not been forthcoming as quickly as promised or sometimes

not at all. For example, when changes were introduced in relation to termination payments on 6 April 2018 in respect of foreign service relief, guidance on this change was promised to HMRC's Expat Forum in relation to the treatment of split years. Only last week HMRC confirmed that it is returning to its original position regarding split years, hence leaving the forum and wider tax industry with uncertainty during the entire intervening period.

18. We feel that HMRC could be more open and transparent about its interpretation and stance on technical matters in some instances. For example, whilst it would not be possible to publish taxpayer details, HMRC could enhance its manuals by including the outcomes of cases that were resolved by the alternative dispute resolution mechanism.
19. One simple change that would make HMRC's changing position clearer would be for its manuals to note clearly when there have been changes and what those changes are. It would then be easier to determine HMRC's position on a particular matter as at a certain date. Currently the manuals do show when changes take place but the way this is done is not at all easy to follow. Furthermore, working out what has changed is very difficult if you do not have a recent version of what was there.
20. Further, we note that certain pages within HMRC's manuals are redacted under the Freedom of Information Act. Where such pages indicate HMRC's position on an uncertain tax point, it would be useful for the redacted information to be provided so that businesses can more readily ascertain HMRC's position in these situations.
21. If the overall aim is for HMRC to reduce the size of the tax gap, putting greater resource into investigations and use of its existing powers should prove to be more cost-effective.

Question 3: Is there an objective alternative to using BRR+ ratings that could exempt low risk businesses?

22. We acknowledge that the BRR+ process is determined by HMRC with no right of appeal. There is therefore a concern that some businesses will feel unfairly treated if they are placed inside or outside this new regime at HMRC's discretion. However, we believe that this could easily be rectified by introducing a right of appeal to the First Tier Tribunal for inclusion in the uncertain tax treatment (UTT) regime, similar to a promoter's right to make representations to the Tribunal about the reasonableness of any condition imposed in a conduct notice under the Promoters of Tax Avoidance Scheme (POTAS) rules.
23. Overall, we continue to believe that a risk-based approach of some kind would help to focus the regime on those businesses that are deliberately attempting to adopt an unsustainable stance on a point of law which clearly flies in the face of HMRC's stated position. We believe that this approach would provide the greatest tax yield to additional cost ratio and ensure that costs to businesses are focussed mainly on those who contribute most to the tax gap.
24. As noted in our response to question 1, HMRC anticipates that this measure will raise an additional £145m over five years. With a proposed £5m de minimis threshold, this means that it can only be expecting a maximum of 29 cases to actually result in additional tax yield over that period. This means considerably insignificant compared to the thousands of businesses that would fall within the scope of this regime if they were not exempted in some way.

Question 4: Should there be other specific exemptions from the notification requirement?

25. We believe that this measure should be targeted purely at situations where there is a difference of opinion over the interpretation of the wording of tax law. Potential differences of opinion on valuations and transfer pricing, for example, should not be included. It cannot be possible for a business to know what HMRC's position is on a valuation unless the two parties had previously agreed this in an earlier identical transaction, which would be extremely unlikely. Therefore, inclusion of these transactions would require every transaction

and valuation to be notified. We also suggest that matters involving status decisions should not need to be notified e.g. every decision a business makes on an individual's employment status where it has not been able to clarify the position using the 'Check Employment Status for Tax' tool.

26. We welcome the confirmation at paragraph 2.26 of the consultation document that businesses will not need to bring to HMRC's attention any uncertainties that it is already aware of and how the business plans to treat them for tax purposes. Further clarity will be needed as to what is meant by HMRC being 'aware' of an uncertainty and suggest that this is defined as widely as possible. For example, we believe that, once an uncertain tax treatment has been notified under this regime, it should not need to be notified again if, for example, the treatment applies over multiple accounting periods, unless the interpretation taken by the taxpayer changes over time.
27. Similarly, disclosure of an uncertainty during discussions between the business and its CCM should also qualify. It needs to be clear (ideally in the legislation) exactly what content needs to be disclosed during such discussions or correspondence (including clearance applications) in order that a supplementary UTT disclosure is not also needed. CCMs should be prepared to follow up a telephone call, meeting, exchange of emails or other correspondence with a summary of the points and confirmation that this is sufficient for the purposes of the notification requirement such that no further information needs to be submitted re: the UTT notification.

Question 5: Do you think that the triggers are sufficiently objective?

28. We believe that the level of objectivity of the various triggers varies considerably. We take each trigger in turn below and make specific comments in relation to each one.

(a) Results from an interpretation that is different from HMRC's known position

29. We agree that where the business takes a tax position that is contrary to the position it knows HMRC takes this could be a suitably objective trigger for notification but would require careful definition and clarification to ensure that businesses understood when the trigger applies.
30. We also see a distinction between uncertainties which arise from a difference in legal interpretation of the law (eg whether a particular transaction is capital or revenue) and uncertainties where there is no disagreement around the interpretation of what the law means but how to apply to particular transactions (eg transfer pricing, valuations). We believe that trigger (a) should only apply to the former type of uncertainty. HMRC's position cannot be known in respect of the latter type because it would be dependent on the facts and circumstances of the individual transaction.
31. It is not always easy to determine what HMRC's known position is even on matters relating to interpretation of tax law. This changes over time and sometimes HMRC's guidance is not updated straightaway, leading to a discrepancy between HMRC's published stance and its actual position on the matter. In other cases, whilst the guidance is updated, it is not possible to tell when it was updated and therefore makes it very difficult to apply the guidance retrospectively. It seems wholly unreasonable for businesses to be expected to keep track of all the changes in HMRC's guidance and hence uncertainty would be reduced greatly if HMRC took steps to make it easier to track these changes.
32. A recent Upper Tier Tribunal decision in the case of **Mark Shaw** illustrates some of these difficulties. In this case, HMRC argued a position that was contrary to its stated guidance. This case illustrates that it is sometimes difficult for businesses to know what HMRC's view is and when they can rely on HMRC guidance. When would a UTT notification be required in a

similar case? When the taxpayer adopts the position under HMRC guidance or HMRC's position in the Tribunal case?

33. In other cases, the tax profession has considered that HMRC's position on a matter is contrary to the law in that area, for example its position on the payrolling of benefits-in-kind. Would a business be required to notify HMRC of cases where it takes a position that it believes is correct under law but which is less generous than that adopted by HMRC?
34. If this trigger is introduced we recommend that it only applies where HMRC's position is clear and unequivocal at the time of submitting the relevant tax return and that the business adopts a position in the return that differs from this. Otherwise, it will be very difficult for the business to determine whether or not a notification is required.
35. The difficulty with this approach is that a business can never know with absolute certainty what HMRC's position is on a matter because even if a position is stated categorically in its manuals, for example, an individual Inspector may still take an alternative position. The case of **HMRC v Tooth [2021] UKSC 17** at the Supreme Court has demonstrated that an Inspector may make a discovery assessment into a return even when it has been reviewed by another Inspector and not enquired into. Perhaps, then, an alternative test might be applied along the lines of the general anti-abuse rule such that a tax position is considered to be uncertain where it is reasonable to suppose that the law, or HMRC's published interpretation of it, when applied to the circumstances of the taxpayer (which the taxpayer knows but HMRC does not) is uncertain.
36. We note that applications for non-statutory business clearances are often rejected on the grounds that there is no uncertainty over the tax treatment concerned. If a business receives a rejection on these grounds, can it therefore be certain that it does not need to disclose the matter under this new regime?
37. In addition, how widely would HMRC's position need to be disseminated in order for it to be "known"? Would a position stated during a stakeholder engagement meeting, for example, constitute being known if it is only expressed to small taxpayer/adviser population? What about the stance taken by HMRC in a First Tier Tribunal case? The case decision is not binding in law but the stance taken by HMRC will be in the public domain.
38. Given all the uncertainties mentioned above, we suggest that the burden of proof in determining what HMRC's view is on a matter should rest with HMRC and not the taxpayer.

(b) Was arrived at other than in accordance with known and established industry practice

39. The problem with this trigger is that industry practices change over time and it is not always possible to know what to compare the business' position to. If the business changes its position in line with changing industry practice, it might fall foul of trigger (c) instead.
40. It would also be necessary to define at what level "industry" would need to be considered. Investment banks, for example, might have a different practice to the banking sector or the financial services industry as a whole. If this trigger were introduced, we recommend that adherence to any form of industry practice should be sufficient for it not to apply.

(c) Is treated in a different way from the way in which an equivalent transaction was treated in a previous return and the difference is not the result of a change in legislation, case law or a change in approach to accord with HMRC's known position

41. The problem with this trigger is that it can sometimes be difficult to determine what an "equivalent transaction" is. HMRC's example at para 3.17 of changing the way in which two separate supplies are treated for VAT purposes is simple and clearly demonstrates equivalent transactions but determining whether two similar but not identical transactions are equivalent can be more difficult.

42. If this trigger is introduced we recommend that it is limited to comparing identical transactions, such as a change in the VAT treatment of a supply which itself has not changed.

(d) *Is in some way novel such that it cannot reasonably be regarded as certain*

43. We have an objection to the introduction of this trigger on the basis that it is not entirely clear what a 'novel' transaction is and hence this is not an objective test. As stated above, we also believe that triggers should only be included where HMRC's position is known whereas here its position cannot be known.

44. This trigger would result in a notification every time a business does something new that has not been seen in the marketplace before because by definition HMRC's position cannot be certain. This would place a considerable burden on businesses. It is also worth pointing out that often businesses will introduce new products and transactions without the tax team knowing about this until after the event. Therefore, the person on whom the responsibility will probably lie to make the notification will quite often not even know that notification is required because he or she won't know about the transaction.

45. We also believe that the taxpayer would seek a statutory or non-statutory business clearance as to the correct treatment in many unique cases and hence HMRC would become aware of the transaction and the taxpayer's intended treatment in any event.

(e) *In respect of which a provision has been recognised in the accounts of the company or partnership, in accordance with Generally Accepted Accounting Practice (GAAP), to reflect the probability that a different tax treatment will be applied to the transaction*

46. Under IFRIC23, if an entity concludes that it is not probable that a taxation authority will accept an uncertain tax treatment, the entity should reflect the effect of that uncertainty in determining its accounting tax position. At face value, this therefore appears to be a reasonable trigger for notification of the uncertainty to HMRC.

47. However, a provision is required under IFRIC23 under situations other than where there is a difference in the legal interpretation of tax law. For example, a provision is also required where it is probable that a transfer pricing position will be enquired into by the taxation authorities. As stated above, we believe that uncertainties should only need to be reported where there is a known difference between the interpretation made by the business and HMRC on a point of tax law. Therefore, we do not agree that the existence of an accounting provision should be used as a blanket trigger for the notification of the uncertainty.

48. Furthermore, consideration of the probability of acceptance of a tax treatment comes down to judgment and can often be subjective in nature. The only sure-fire indication of a provision being required is where the business takes a position that is contrary to the known position of the relevant tax authority and where that authority is HMRC, the business will already fall within trigger a). As such, there seems to be little point in also including trigger e) within the regime.

49. FRS 102 (UK GAAP) does not specifically address the measurement of uncertain tax positions beyond the general requirement to measure current tax at the amount expected to be paid or received. Instead, it requires an entity's management to use its judgement in developing and applying an appropriate accounting treatment. As such, the decision to provide for an uncertain tax position under UK GAAP is even more subjective than it is under IFRS.

50. There are also some cases where a company prepares two or more sets of accounts adopting different GAAPs (for example, sets adopting UK and US GAAP to meet the filing requirements it has in those respective countries). If a provision is made under one GAAP

but not the other, it is not clear whether this trigger would apply. Further clarity would be required to deal with these kinds of situations if this trigger were to be introduced.

(f) Results in either:

- ***A deduction for tax purposes greater than the amount incurred by the business, or***
- ***Income received for which an equivalent amount is not reflected for tax purposes, unless HMRC is known to accept this treatment***

51. This appears to be an objective trigger as it involves a comparison of the tax and commercial position. It should also only apply where the business is knowingly entering into tax avoidance, or it is not sure whether the treatment being adopted is tax avoidance. However, it does appear to be bolted onto the provisions somewhat as it doesn't relate directly to uncertain tax treatments.

52. In line with para 2.26 of the consultation document, we believe that if the relevant arrangement has already been reported under the Disclosure of Tax Avoidance Scheme (DOTAS) rules by the business or a promoter, then a further notification should not be required under the UTT regime.

53. Despite this trigger not being directly related to uncertain tax treatments, there is likely to be considerable overlap between the cases falling under triggers (a) and (f), such that (f) is largely superfluous. In addition, it doesn't really apply to VAT cases.

(g) Has been the subject of professional advice, that is not protected by legal professional privilege:

- ***which is contradictory, in terms of tax treatment, to other professional advice they have received, or***
- ***which they have not followed for the purpose of determining the correct tax treatment of a given transaction***

54. On the face of it, this also appears to be a reasonable trigger, but:

- in respect of the first bullet point, it should only apply where the business adopts the treatment that is most favourable to them out of the contradictory pieces of advice they have received; and
- in respect of the second bullet point, it should only apply where the business adopts a tax treatment that is more favourable than that provided for under professional advice.

55. Care would need to be taken in agreeing the definition of "the subject of professional advice". We believe that this should only include advice addressed to the business which deals with the specific facts of the transaction entered into. For the avoidance of doubt, acting on generic information provided by a professional firm online for general viewing, for example, should be excluded. In addition, where a professional firm provides an opinion on a transaction and the facts of that transaction change, the opinion should be excluded unless the changing facts and circumstances do not have an impact on the tax position.

56. We also consider that there is a risk that this trigger could cause businesses to unnecessarily seek legal opinions in order to protect the advice they receive by legal privilege, whereas in many situations an FCA/ACA is qualified to provide the advice.

Question 6: Can you suggest ways to make them more objective and certain?

57. Overall, we believe that the triggers would be made more objective and certain by only including triggers (a), (f) and (g). Hence, they would only apply where the business adopts a treatment that:

- i) is more favourable to it than HMRC's known position;

- ii) is more favourable than advice (not protected by legal privilege) provided to it by a professional adviser; or
- iii) differs from the commercial impact on the business.

Question 7: Do you think any of the triggers will not capture the uncertain treatments they are intended to identify?

58. See our responses above.

Question 8: Are there additional triggers that would identify uncertain tax treatments that would not be identified by these triggers?

59. No comments.

Question 9: Which of these triggers do you consider should apply in respect of transfer pricing uncertainties (refer paragraph 2.31), and why?

60. As explained above, we believe that the regime should only require notification of differences of interpretation of tax law, rather than differences in opinion on pricing or valuations. As such, we do not believe that any of the triggers should apply to the pricing of connected party transactions.

Question 10: Do you agree with the threshold of £5m for both direct and indirect taxes?

- 61. We agree with including a de minimis threshold in the rules, although we can see some potential difficulties in applying it in practice.
- 62. For example, if a demerger was taking place, would it be necessary to consider the corporation tax, income tax and VAT treatments of all of the transactions associated with the demerger together or would you split them out and deal with them separately when comparing them to the £5m threshold? Our assumption is that you would only need to consider those aspects of the transaction where the business is applying a different treatment to HMRC etc and as such it would make sense to consider each aspect separately. This would mean, for example, that the tax treatment of individual professional fees could be ignored if they were less than £26m (at a 19% corporation tax rate).
- 63. We believe that if step 2 is included within the threshold, only triggers where HMRC's position is known (or at least expected) could be included within these rules. As such, we believe that this provides further support to our assertion that matters should not need to be notified where HMRC's position is unknown.
- 64. We believe that the £5m threshold should remove immaterial amounts from being disclosed in some cases, though less so for larger businesses. Multiple repeated transactions are less likely to be protected and indeed it might be difficult to ascertain whether the £5m threshold has been breached in such cases, particularly in relation to VAT. For example, if a company launches a new product, it might not know the volume of its future sales of that product and therefore cannot know the value of the VAT it is likely to incur over time (or save by adopting a particular VAT treatment). In addition, if a transaction has some elements of input and output VAT, does the £5m relate to the net or gross amount?
- 65. We also believe that the £5m tax impact should be considered on a consolidated basis and that impacts which are contrary to each other should be netted off. For example, if there was an intra-group transaction where one company claims a £100m deduction and the other company recognises £100m taxable income, the net tax at stake here should be treated as £nil. If, however, the receiving company treated the income as non-taxable, then we agree that the tax at stake should be treated as £100m x the corporation tax rate.

Question 11: Considering the concerns outlined about a materiality threshold, do you have

further points to support one?

66. We do not support a materiality threshold as its application would require subjective opinion on what counts as material and would dilute the objectivity that HMRC is seeking to achieve through the amendments it has made to its proposals.

Question 12: Do you agree with the proposed rules to calculate the threshold?

67. We agree that consideration needs to be given to the difference in tax outcomes between the business' position and HMRC's expected position, but as stated above we consider that this is not possible if HMRC's expected position cannot be ascertained.

Question 13: If you do not agree with the proposed rules to calculate the threshold, can you suggest an alternative calculation?

68. No comments.

Question 14: Do you think requiring notification for each tax within scope will be easier to comply with than a single notification?

69. In line with our response to question 15, we agree with the proposal that is set out in section 4 of the consultation document that notification would be an annual process but a separate notification would be required for each of the relevant taxes.

Question 15: Do you agree with the notification being required when the return is due?

70. Yes, we agree with this as it would make it less likely that such notifications would be missed by the businesses concerned (as tax staff could build the notification requirement into their return submission process).

Question 16: Do you agree, for non-annual returns, with the notification being required when the last return for a financial year is due to be filed?

71. We agree that a notification should not be required for each non-annual return that is filed and so we support this proposal on the basis that it would reduce the administration burden on businesses.

Question 17: Do you agree that tax neutral inter-entity transactions should be excluded?

72. Yes, if both the business and HMRC treat the transaction as tax neutral (even if the two parties treat individual legs of the transaction differently) this means that there cannot be a loss of tax at stake and therefore we agree that these transactions should be excluded.

Question 18: Do you agree that the information required in a notification should be covered in guidance?

73. No, we believe that this should be set out in statute. Guidance should not be used as a substitute for legislation.

Question 19: Do you agree failure to notify regarding a partnership return should be charged on the nominated partner?

74. Yes we agree with this on the basis that the penalty should only be charged once and not on each partner.

Question 20: If the penalty is not on the nominated partner, on whom should the penalty be charged?

75. See above

Question 21: Do you have any comments on the assessment of equality, and other impacts?

76. No comments

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).