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OPPORTUNITIES TO EXTEND UNCERTAIN TAX TREATMENT

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation on *Opportunities to Extend Uncertain Tax Treatment* ('the Consultation') issued on 12 March 2026¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Whilst our response broadly follows the questions posed, we have focussed on issues of most relevance to our members. In section 27 of this response we have raised additional areas of concern which were not covered by the questions.
- 1.4 We recommend leaving IHT out of the proposed expansion of the Uncertain Tax Treatment (UTT) regime for reasons covered in response to Questions 18-20.
- 1.5 Subject to excluding IHT, we broadly support the expansion of the regime to a wider range of taxes and taxpayers.

However, this support is heavily dependent on the existence of the £5m threshold below which UTT notification is not required. Although not proposed in this Consultation, we would strongly oppose any material reduction in the reporting threshold, and we raise concerns at several points in this response about potential consequences.

Under current UTT rules, large businesses may be protected from notifying HMRC based on their turnover or balance sheet values. With no comparable criteria applicable to individuals and trusts, any significant reduction in the notification threshold would likely have a disproportionate and unreasonable impact on taxpayers brought into scope of an expanded UTT regime.

¹ <https://www.gov.uk/government/consultations/consultation-extend-notification-of-uncertain-tax-treatment-utt-regime/opportunities-to-extend-uncertain-tax-treatment>

- 1.6 In previous policy development², HMRC has stated that ‘the majority of the legal interpretation gap arises from disputes between HMRC and large businesses’, indicating that legal interpretation by individuals and trusts is a relatively minor or low-value concern.

We trust HMRC is satisfied that there is sufficient potential to close the legal interpretation tax gap among individuals and trusts by expanding UTT to justify the additional compliance burden and costs of doing so.

- 1.7 A third ‘trigger’ for UTT notifications being required is proposed where HMRC’s view of an uncertain position is not known. We are concerned how this might apply in practice and recommend initially expanding the regime to cover the additional taxes proposed (other than IHT), before reviewing the need for a third trigger.

The proposed third trigger would create a burden on taxpayers in determining how much research is required in establishing the absence of a position from HMRC on an uncertain matter, and in adequately documenting the work undertaken to conclude that no HMRC position has been published.

If the proposed third trigger were to be implemented, HMRC should offer and appropriately resource an (optional) clearance procedure to put beyond doubt whether HMRC’s view on any uncertainty has been published.

- 1.8 UTT should not become a means for HMRC to excuse itself from proactively identifying areas of uncertainty and clarifying them in either legislation or guidance.

Finally, UTT should 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.

2 Question 1: In what capacity are you responding to this survey?

- 2.1 We are responding to this Consultation as a representative body.

3 Question 2: Are the views offered in your responses:

- your own views
- your organisation’s views
- your members’ views

- 3.1 The views presented in this response represent those of the ATT as an organisation.

² <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation/outcome/notification-of-uncertain-tax-treatments-by-large-businesses-second-consultation-summary-of-responses>

4 Question 3: What is your industry sector (such as accounting, finance, software, retail, construction, other)?

- 4.1 The ATT is the leading professional body for those providing UK tax compliance services. Our members primarily work in accountancy, finance, tax compliance and tax advisory fields.

5 Question 4: To help us determine business size, please provide details on:

- number of employees in your business
- annual turnover?

- 5.1 This response is being submitted on behalf of our members, so context on who we represent may be more relevant than details of the ATT as an organisation.

The ATT has more than 10,000 members and Fellows, together with over 7,000 students. Our members may be found in private practice, commerce and industry, government and academia and use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively. Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members and students are required to follow the standards and principles of Professional Conduct in Relation to Taxation (PCRT)³.

Information regarding the ATT itself, including employee numbers and turnover is available in our 2025 Annual Report⁴.

6 Question 5: Please provide any further information about your organisation or business activities that you think might help us put your answers in context.

- 6.1 The ATT is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

7 Question 6: Do you agree that we should focus solely on the 'tax advantage' amount to identify legal interpretation uncertainties of interest?

- 7.1 We agree that the balance sheet and turnover tests applicable to large companies under current UTT provisions are not relevant to individuals other than sole traders who prepare formal accounts. Equally, the 'trigger' of making an accounts provision for potentially disputed tax will not be broadly applicable.

³ <https://www.att.org.uk/professional-standards/professional-conduct-relation-taxation>

⁴ [https://www.att.org.uk/sites/default/files/2026-05/ATT%20Annual%20Report%202025%20final%20\(GB%20&%20UHY%20signed\)%20for%20distribution.pdf](https://www.att.org.uk/sites/default/files/2026-05/ATT%20Annual%20Report%202025%20final%20(GB%20&%20UHY%20signed)%20for%20distribution.pdf)

- 7.2 Using HMRC's existing definition⁵ of Wealthy would add further complexity to the UTT rules by introducing new criteria for individuals, and would not be relevant to other entities potentially in scope of the proposal to expand UTT, such as trusts. We therefore agree that using this definition is not necessary.
- 7.3 We expect that the £5m UTT threshold would be sufficient to prevent UTT notification requirements applying to the majority of the c.850,000 individuals falling within HMRC's definition of 'wealthy', so do not consider any additional criteria are required.
- 7.4 The existing £5m threshold for UTT is a suitable 'filter' to bring only individuals with the largest scale legal uncertainties within scope of the requirement to notify HMRC.
- However, this relies on the £5m threshold remaining in place as a means to reserve UTT notifications for the largest-scale tax arrangements only. At its current level, the threshold should prevent UTT from imposing a disproportionate burden on individuals in large numbers.
- 7.5 Were that £5m threshold to be materially reduced, the impact on individuals could be significant and unreasonable, given they would not be protected by the 'other' tests applicable to businesses (balance sheet and turnover values).
- 7.6 Since the £5m threshold is provided in primary legislation, any move to reduce it would be subject to normal Parliamentary legislative process, with the opportunity for public scrutiny and comments. We would also urge HMRC and government to issue a public consultation in the event of any proposal to reduce the £5m threshold.
- 7.7 The £5m threshold is not subject to any periodic review mechanism. As with other fixed thresholds, its value will be eroded over time by inflation, effectively lowering the UTT reporting threshold in real terms and bringing more taxpayers into scope of UTT.
- 7.8 Expanding UTT to individuals and relevant personal taxes complicates the reporting cycle for UTT notifications. We comment further on these issues under Question 24.

8 Question 7: Do you agree with how we propose to determine the tax advantage for individuals?

- 8.1 The Consultation does not appear to propose a different definition of 'tax advantage' for individuals. Subject to tailoring for applicable taxpayers and taxes, similar definitions to those in Schedule 17, Part 1 of Finance Act 2022⁶ would seem suitable for individuals.
- 8.2 The following points do not directly relate to this question, but are relevant to expanding UTT to individuals.
- 8.3 Clarity and further consideration may be needed around implications of extending UTT to individuals to account for non-residence issues.

For example, if a legal interpretation resulted in an individual considering themselves to be non-UK resident, they may have no UK tax returns to file – for instance if all their income/gains were offshore. If HMRC's interpretation of the legal position was that they *were* UK resident, a tax advantage could arise which was sufficiently large to require reporting under an expanded UTT regime. If no tax return is filed, there is no alignment with the UTT reporting period. Would HMRC expect a UTT notification to be

⁵ <https://www.nao.org.uk/reports/collecting-the-right-tax-from-wealthy-individuals/?nab=0>

⁶ <https://www.legislation.gov.uk/ukpga/2022/3/schedule/17/enacted>

submitted for a tax year when, based on their legal interpretation, the individual considers themselves to be non-resident and does not file a tax return?

This situation is comparable to the observation under paragraph 4.2.3 of the Consultation in respect of SDLT returns not being submitted, which proposes that UTT notifications should be due 'when a return covering that transaction would otherwise be due'.

- 8.4 Paragraph 4.1.2 of the Consultation states that trusts holding shares would not be required to comply with UTT notification obligations in respect of legal uncertainties relating to companies in which those shares are held. This should be mirrored in any provisions relating to individual shareholders.

9 **Question 8: Do you agree with including all trusts within scope?**

- 9.1 Whilst some trusts do prepare accounts, there tends to be little consistency in this respect in terms of the level of income/assets from which trust accounts may be available. The choice to prepare accounts is often based on the nature of the trust and made at the trustees' discretion.
- 9.2 For reasons similar to those given under Question 6, for consistency and simplicity, we support all trusts being in scope of UTT, subject to the £5m threshold for submitting notification to HMRC.

10 **Question 9: Can you foresee any practical issues with including trusts within scope of UTT?**

- 10.1 The issue concerning residence status (paragraph 8.3 above) could apply equally to trusts.
- 10.2 The Consultation states that shareholding trusts would not be required to comply with UTT notification obligations in respect of legal uncertainties relating to the company, and that individual or trust partners in a partnership would not need to comply with UTT for partnership legal uncertainties.
- Similar provisions should be made for beneficiaries of trusts to excuse them from UTT requirements in respect of trust legal interpretations.
- 10.3 Paragraph 4.2 of the Consultation states that "With the government proposing to bring individuals within scope of UTT, it is also proposed to include Inheritance Tax (IHT) and Capital Gains Tax (CGT) within scope".
- UTT notifications in respect of IHT and CGT would potentially also apply to trusts. This would bring additional occasions of charge into scope of UTT, particularly for IHT in the form of exit charges and ten year charges. This further complicates the reporting cycle for UTT notifications. We comment further on these issues under Question 24.

11 **Question 10: Can you foresee any practical issues with including NICs within UTT?**

- 11.1 No comments.

12 Question 11: Do you agree with proposed due date to notify a NICs legal interpretation uncertainty, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

12.1 See Question 24 for comments on the UTT notification cycle.

13 Question 12: Do you agree with the due date for notification involving CIS deductions to be the last CIS return due in an accounting period, or do you prefer a single due date for all UTT notifications (refer to section 4.4)?

13.1 See Question 24 for comments on the UTT notification cycle.

14 Question 13: Can you foresee any practical issues with including CIS within UTT?

14.1 No comments.

15 Question 14: Do you agree with the due date for notification involving SDLT to be when a return covering that transaction would otherwise be due, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

15.1 Considering SDLT in isolation, we agree that aligning UTT notifications with the period for which a SDLT return would be due (whether filed or not) is reasonable. But see Question 24 for broader comments on the UTT notification cycle.

16 Question 15: Can you foresee any practical issues with including SDLT within scope of UTT?

16.1 No comments.

17 Question 16: Do you agree with the due date for notification involving CGT to be when a return covering that transaction would otherwise be due, or do you prefer a single due date for all UTT notifications (refer section 4.4)?

17.1 CGT returns can be due at two points: 31 January for capital disposals reported via a Self-Assessment tax return, or within 60 days of completion of contracts on the disposal of a UK residential property (or any UK property where disposed of by a non-UK resident).

The 60 day deadline can already be time-pressured. Whilst the £5m threshold for UTT notification would excuse most disposals from UTT obligations, the reporting required within 60 days for any disposals above that threshold would become more onerous.

If the £5m threshold were ever materially lowered, we would have serious concerns about taxpayers' ability to comply with UTT as well as reporting their property disposal to HMRC within 60 days.

17.2 The two possible deadlines for CGT complicate potential UTT obligations. If a residential property sale and another CGT event in the same year both involved legal uncertainty with combined CGT at stake in excess

of £5m, there could be two UTT reports required if a UTT return had to be submitted along with the return covering each CGT transaction.

A single due date for UTT notifications could avoid this potential repeat reporting, with both events in the same tax year covered by a single UTT notification.

17.3 See Question 24 for further comments on the UTT notification cycle.

18 Question 17: Can you foresee any practical issues with including CGT within scope of UTT?

18.1 The separation of planning stage and tax outcome considered under paragraph 4.2.5 of the Consultation in respect of IHT can, in some instances, also be relevant to CGT. CGT planning may be carried out a long time in advance of a disposal, especially when a disposal occurs in stages. A legal interpretation might therefore be established months or years before the related disposal(s) occurs.

UTT reporting based on disposal date could therefore leave a long period of uncertainty as to whether the legal interpretation adopted might be subject to challenge by HMRC. This delay in obtaining certainty exists already, but extending UTT to CGT may do little to resolve it, or to shorten the period in which uncertainty exists.

However, we consider this a preferable outcome rather than reporting at the point when the CGT planning takes place, since some planning may never come to fruition and the associated disposals might never occur, or might result in a different tax advantage if CGT rates/allowances etc have changed by the time of the disposal.

19 Question 18: Do you agree with the due date for notification involving IHT to be when the IHT return is due, or do you prefer a single due date for all UTT notifications?

19.1 We support the comments made in paragraph 4.2.5 of the Consultation regarding complexities with IHT in terms of potential long gaps of time between tax planning occurring and the related tax event occurring. Whilst this exists in other taxes, particularly CGT, its likelihood is probably highest with IHT given the legal interpretation may only become relevant on death.

19.2 See Question 24 for further comments on the UTT notification cycle.

20 Question 19: Do you foresee any practical issues with including Inheritance Tax within the scope of UTT, particularly regarding the timing difference between when a legal interpretation is made and when notification would be required? If so, how do you think these issues could be overcome?

20.1 Besides the timing difference considered under Question 18, a complication if UTT was expanded to cover IHT is that the person responsible for adopting a certain legal interpretation may differ to the person(s) responsible for notifying HMRC of it.

An individual who undertakes IHT planning during lifetime might pursue a planning opportunity which relies on a particular legal interpretation. The potential tax difference arising from that interpretation, however, would not crystallise until their death. On death, the individual's personal representative (PRs) would be responsible for administering the estate, including reporting and paying any IHT due to HMRC.

If UTT were extended to IHT, the PRs would also have to consider their obligations to notify under UTT. The lifetime IHT planning might have occurred decades earlier, without the PRs' knowledge or involvement. If comprehensive records of the legal interpretation adopted are not available at the time of death, the PRs may be unaware of the need to notify HMRC under extended UTT rules. This may create an unreasonable burden on PRs, and add to the time required to administer and finalise estates.

- 20.2 A similar risk may exist with trusts. IHT planning undertaken by one set of trustees may not crystallise for some time – for instance until the next ten year charge date. New trustees may have been appointed in the meantime, with the responsibility for UTT compliance falling on the new trustees rather than those who were responsible for adopting a particular legal interpretation as part of the tax planning arrangements. If adequate records were not kept by the first trustees, the incumbents may be unable to comply with their UTT obligations, or may even be unaware that a 'novel' legal interpretation was adopted. Whilst trustees should keep adequate records, force of circumstance can hinder this – for instance the death of a lead trustee, or the breakdown of relations either between trustees themselves, or between a trustee and other parties involved with the trust.

21 **Question 20: Are there specific scenarios where applying UTT would be inappropriate, duplicative or unnecessary? If so, how could an approach be designed to avoid unnecessary notifications while still capturing relevant legal uncertainties?**

- 21.1 Paragraph 4.2.5 of the Consultation acknowledges the potential for IHT planning to have no tax consequences, giving examples of Potentially Exempt Transfers (PETs) which the donor survives by seven years or more, and transfers into trust (presumably those covered by available Nil-Rate Band and/or exemptions).
- 21.2 UTT reporting for PETs seems unnecessary unless the PET fails – i.e. they should only be brought into scope of UTT if the donor dies within seven years.

Chargeable Lifetime Transfers (CLTs) in excess of the Nil-Rate Band carry a lifetime IHT charge. Given this is a definite tax event, CLTs should arguably be in scope of UTT. However, this creates a more complicated regime for IHT in that some transactions and legal interpretations would be in scope during lifetime (CLTs), whilst others would not (PETs). We consider this an acceptable and understandable outcome, since no IHT reporting is required for PETs currently whereas CLTs giving rise to a lifetime tax charge must be reported to HMRC.

- 21.3 On balance, however, given the likelihood of a long period between IHT planning involving a legal interpretation taking place and the potential tax difference crystallising, combined with the potential administrative and risk burden on PRs and trustees considered under Question 20, we suggest IHT should be left out of an expanded UTT regime.

The relatively small value of the IHT tax gap identified in the Consultation (3.9% of the theoretical IHT liability, or £0.3 billion⁷), indicates that the loss to the exchequer of leaving IHT out of an expanded UTT regime would not seriously impact its effectiveness.

⁷ <https://www.gov.uk/government/consultations/consultation-extend-notification-of-uncertain-tax-treatment-utt-regime/opportunities-to-extend-uncertain-tax-treatment#:~:text=The%20inheritance%20tax%20gap%20is%203.9%25%20of%20the%20theoretical%20inheritance%20tax%20liability%2C%20or%20%20C2%A30.3%20billion%20in%20absolute%20terms%2C%20in%202023%20to%202024>

22 Question 21: Do you agree that requiring taxpayers to tell us about legal interpretations where there is more than one credible interpretation and HMRC's view is not known, will capture the uncertain tax treatments that it is intended to identify?

22.1 Expanding the existing two 'triggers' to also cover situations where HMRC's view of a legal interpretation uncertainty is not known would be to the benefit of both HMRC and HM Treasury in facilitating compliance activity and bringing forward the possible collection of additional tax.

Ultimately, identifying examples of uncertain legal interpretation will also be to the benefit of taxpayers if such issues can be brought to the attention of HMRC sooner, so that guidance can be published setting out HMRC's interpretation, and so that legislative clarifications can be made where needed.

22.2 The proposed new trigger is less subjective than the previous suggestion⁸ of requiring UTT notification in the event of "a substantial possibility that a tribunal or court would find the treatment to be incorrect in one or more material respects."

22.3 However, the proposal may still place unreasonable burdens on taxpayers and create compliance difficulties. Concerns include:

- What level of research is required to be certain that "HMRC's view is not known"?
- Is it sufficient to search GOV.UK guidance?
- Are taxpayers expected to undertake more detailed research using HMRC's manuals and other guidance products (such as Guidelines for Compliance and Helpsheets)?
- Are taxpayers expected to obtain professional advice from relevant experts? If so, what would constitute adequate relevant expertise?
- Should taxpayers have applied for clearance from HMRC on a potential transaction or planning opportunity?

22.4 Furthermore, having carried out a reasonable level of research looking for a published position by HMRC, what evidence would taxpayers need to keep to demonstrate that no published HMRC position exists? This is equivalent to proving a negative.

22.5 Introducing a new trigger of HMRC's position on an issue not being known is much harder to meet as a point of certainty – trying to establish the absence of a position is inherently more ambiguous than expecting a taxpayer to be aware of departing from an HMRC legal interpretation which is in the public domain.

22.6 Separately, this third trigger could result in taxpayers inadvertently failing to meet expanded UTT requirements.

If legislation is unclear and no HMRC guidance or legal precedent can be found to set out HMRC's position, taxpayers may interpret the rules to fit their circumstances or objectives and not consider that another interpretation might even exist.

⁸ <https://www.gov.uk/government/consultations/consultation-extend-notification-of-uncertain-tax-treatment-utt-regime/opportunities-to-extend-uncertain-tax-treatment#:~:text=The%20third%20trigger%20was%20one%20that%20required%20notification%20where%20there%20is%20a%20substantial%20possibility%20that%20a%20tribunal%20or%20court%20would%20find%20the%20treatment%20to%20be%20in%20correct%20in%20one%20or%20more%20material%20respects.%C2%A0This%20was%20not%20pursued%20at%20that%20time%20because%20it%20was%20considered%20too%20subjective.>

Expanding UTT to the proposed third trigger could unfairly punish taxpayers in this position for failing to submit a UTT notification. The existing two triggers avoid this problem, as taxpayers have to actively depart from HMRC's position, or make an accounts provision in case HMRC challenge their interpretation.

- 22.7 An alternative risk is that taxpayers or agents err on the side of caution and submit unnecessary UTT notifications for fear of being penalised for failing to declare uncertainties. This would create unnecessary burdens on both the taxpayer/agent and on HMRC.
- 22.8 A bespoke UTT clearance application process may be required to create certainty as to whether UTT notification is required. This could operate as an optional facility for taxpayers to submit details of a possible legal interpretation to HMRC in advance of proceeding with the related tax planning, with HMRC then responding with either details of their published position on the legal matter or confirming that they have no published view on it.
- 22.9 We would also argue that HMRC should carry some responsibility to keep abreast of "new and novel processes" as and when they come to light via compliance activity and legal cases, and to publish its position on the resulting legal interpretations.

Once HMRC's position on a matter of legal interpretation has been published, the existing UTT triggers provide a much more certain position as to when notification is required – i.e. if a taxpayer's interpretation differs to that published position.

- 22.10 Finally, existing 'white space note' areas of tax returns already provide scope to draw relevant matters to HMRC's attention and to allow adequate disclosure of facts and circumstances. This might include highlighting areas of legal uncertainty, and where a taxpayer has adopted a particular approach or interpretation.

Experience with HMRC compliance checks and 'One-To-Many' activities suggests these 'free text' areas of tax returns are not automatically reviewed by HMRC, and in some cases do not appear to be checked at all before HMRC start compliance action.

Where taxpayers/agents are already drawing HMRC's attention to a possible legal uncertainty, but that disclosure is not being reviewed, it seems unreasonable to impose a separate reporting requirement.

23 Question 22: Are there additional triggers that would identify uncertain tax treatments that would not be identified by the proposed trigger, or the existing 2 triggers?

- 23.1 UTT triggers should only be considered which add to the regime's effectiveness without introducing excessive subjectivity. As previous policy development established, this is a difficult brief to fulfil.
- 23.2 The two current triggers appear to strike an appropriate balance, and UTT has seemingly proven to be effective so far. We would therefore recommend maintaining the two existing triggers, at least until sufficient time has passed to review their impact on an expanded UTT regime encompassing the proposed greater range of taxes and taxpayers.
- 23.3 The possibility that taxpayers believe only one legal interpretation exists, and therefore not considering UTT to be relevant and not submitting a UTT notification is a difficult situation to deal with fairly by UTT.

In particular, if HMRC later comes to a different view to the taxpayer of a legal position following compliance activity, would penalties for failure to notify initially under UTT be relevant? This risk exists already, but will be experienced by a larger population of taxpayers if UTT is expanded as proposed.

24 Question 23: In addition to transfer pricing calculations, are there any other uncertainties that should be excluded from the proposed trigger?

24.1 No comments.

25 Question 24: Do you think that having a single annual notification due date would make it easier for taxpayers to comply with the UTT obligation? If so, what date or timing would you consider most appropriate?

25.1 The Consultation proposes expanding UTT to a number of additional taxes. Many of these taxes have different filing cycles, frequencies and deadlines to the existing range of taxes covered by UTT. Expanding UTT as proposed therefore adds complexities to the existing reporting requirements⁹ for annual and non-annual returns.

25.2 The £5m threshold largely operates on a tax-by-tax basis (i.e. each tax covered by UTT is subject to its own £5m threshold). This is likely to prevent the vast majority of taxpayers potentially within scope of the proposed UTT expansion from ever having to file a UTT notification.

However, our concerns around the consequences of a possible future reduction in that threshold extend to the reporting cycle. If the threshold were to be lowered significantly with an expanded UTT regime, taxpayers with a legal uncertainty affecting more than one tax could find themselves having to file multiple UTT notifications in respect of different taxes at different times. This creates an administrative burden, and the risk of inadvertently failing to comply with UTT if one or more notifications are missed.

25.3 From HMRC's perspective, numerous UTT notifications across different taxes being filed at different times may be more difficult to review and act upon – for instance, an uncertainty notified under a NIC submission might also be relevant to Income Tax, but the Income Tax submission may not be due for filing until some time later. A single annual submission could simplify this.

25.4 A single, annual cross-tax UTT reporting process would avoid unnecessary duplication of work for both the taxpayer and for HMRC. Taxpayers would have to collate records relating to potential tax differences arising during the reporting period for all taxes covered by UTT and file a single return covering all their UTT obligations.

25.5 We acknowledge that UTT for large businesses is already established, and that changing to a single, annual reporting cycle may be confusing (albeit the Consultation notes UTT has only received around 30 notifications since it was introduced in April 2022, so very few large businesses have actually experienced the reporting process).

Consideration would need to be given as to whether the current reporting cycle should continue for large businesses if the proposal to expand the range of taxes covered by UTT goes ahead.

⁹ <https://www.gov.uk/hmrc-internal-manuals/uncertain-tax-treatments-by-large-businesses-manual/utt15200>

- 25.6 For individuals and trusts brought into an expanded UTT regime, the relevant taxes commonly have very different reporting cycles to the business taxes currently covered by UTT. A different reporting cycle may be suitable for individuals/trusts from the current process applicable to large businesses.

Whilst different reporting cycles potentially complicates UTT, the Consultation already proposes differing tests for who is in scope of UTT – the balance sheet and turnover tests not being considered relevant to individuals and trusts.

- 25.7 The deadline for any annual UTT notification would need to be considered. Given the breadth of taxes potentially in scope, aligning the reporting period for individuals and trusts with the tax year may be most logical.

- 25.8 If large businesses were also to be brought onto an annual reporting cycle, the tax year carries less relevance to them as a routine reporting period. Continuing the current reporting cycle for large businesses would avoid confusion over process changes, at the cost of potential duplication of reporting across different taxes if new taxes are added to the current regime.

On balance, given the relatively low number of large businesses who have actively experienced UTT so far, moving to an annual cycle should not be overly disruptive, would provide consistency for all taxpayers affected by UTT, and should minimise the risk of duplicating UTT notifications.

- 25.9 We suggest aligning the reporting cycle with the nature of the entity concerned, as follows.

An annual UTT notification process for large incorporated businesses, aligned with the filing date for the corporation tax return, with a single UTT notification process to cover all relevant taxes.

For individuals and trusts, an annual UTT notification aligned with the tax year would be logical – ie UTT notifications would be due by 31 January following the end of the tax year in which the tax advantage arose.

- 25.10 The current UTT notification process operates using a G-Form¹⁰. An option to submit the UTT notification via the Corporation Tax return, Self-Assessment return or Trust tax return (or Trust Registration Service update/declaration) may make it easier for taxpayers to report legal uncertainties, as well as serving as a reminder to do so.

However, since not all entities file these returns, an alternative UTT notification method would still be needed. For instance, a trust with no taxable income could have no requirement to file annual tax returns, but might need to file a '60 day' CGT return in respect of which a UTT notification may be relevant. The existing G-Form (suitably updated for the expanded regime) could therefore be retained as an alternative UTT submission method.

- 25.11 The exemption issues in Question 25 would need to be considered when determining the appropriate reporting cycle for an expanded UTT regime.

26 **Question 25: Can you foresee any problems with taxpayers obtaining confirmation from HMRC that the notification has been brought to its attention?**

- 26.1 Clarity will be needed as to when confirmation needs to have been received from HMRC in relation to the UTT filing deadline – for instance, if a taxpayer has applied to HMRC for confirmation that HMRC is

¹⁰ <https://www.gov.uk/guidance/check-if-you-need-to-notify-hmrc-about-an-uncertain-tax-treatment#how-to-notify-us>

aware of an uncertainty in good time and has not received a response by the normal UTT notification deadline, can they assume they are exempt? Or would they still need to notify?

- 26.2 To avoid this uncertainty, any tightening of the current exemption should impose deadlines on HMRC as to the time period in which they must respond to requests for confirmation that an uncertainty has been adequately disclosed to them.

For instance, a deadline of 30 days for HMRC to confirm whether or not sufficient disclosure has been made of a legal uncertainty would allow taxpayers to plan ahead and understand whether or not a UTT notification needs to be submitted.

Any deadlines for HMRC to respond to requests for confirmation that an uncertainty has been adequately disclosed would need to be sufficiently short to allow taxpayers to plan for and complete any UTT notification that is required.

- 26.3 If HMRC do not respond within the required time period to applications for confirmation that adequate disclosure has been made, the taxpayer should be considered to have a reasonable excuse for late filing of any UTT notification which is ultimately required.

27 Other observations

- 27.1 Penalties for failure to notify under the current UTT regime, contained in Part 3 of Finance Act 2022, begin at £5,000 for a first failure, rising to £50,000 for a third or subsequent failure in respect of the same relevant tax within a three year period.

These penalties are arguably proportionate to large businesses' tax issues, and to a UTT notification threshold of £5m. Our concerns around a possible future reduction in that threshold are also relevant to the penalties imposed. Penalties of between £5,000 and £50,000 are likely to be far more material in nature to individuals and trusts, particularly if tax advantages below the current £5m threshold were to be brought into scope of UTT.

If the UTT notification threshold is ever reduced, the relevant penalties should also be reviewed and reduced proportionally.

- 27.2 The Consultation notes that 'one-off set-up and ongoing costs of complying with the regime are considered small and reasonable by the majority of businesses, with no evidence of a material compliance burden associated with UTT.'

Individuals and trusts commonly have fewer resources both internally and by way of ability to pay for external advisers than the large businesses currently in scope of UTT. Whilst the £5m threshold reduces the risk of disproportionate impact on an expanded range of taxpayers, if that threshold were to be significantly reduced, the burden of UTT on some taxpayers could become unreasonable.

- 27.3 Expanding UTT would require adequate resourcing by HMRC. Demands on HMRC would include:
- the clearance procedure recommended in paragraph 22.8 above
 - responding to requests for confirmation of adequate disclosure (Question 25)
 - processing and acting upon UTT notifications submitted – including investigating legal interpretation discrepancies and initiating legislative and/or guidance updates as required.

Given that previous policy development¹¹ suggests that ‘the majority of the legal interpretation gap arises from disputes between HMRC and large businesses’, HMRC needs to be confident that the potential revenue available from expanding UTT justifies the additional resourcing cost of administering the regime and acting upon notifications received.

- 27.4 Any expansion of the UTT regime would require a campaign by HMRC to improve awareness of the regime and its wider application to new taxes and taxpayers.

28 Contact details

- 28.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact atttechnical@att.org.uk.

The Association of Taxation Technicians

¹¹ <https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses-second-consultation/outcome/notification-of-uncertain-tax-treatments-by-large-businesses-second-consultation-summary-of-responses#:~:text=The%20evidence%20shows%20that%20the%20majority%20of%20the%20legal%20interpretation%20gap%20arises%20from%20disputes%20between%20HMRC%20and%20large%20businesses.>