



NOTIFICATION OF UNCERTAIN TAX TREATMENTS ('UTT')

Tax Assurance and Risk Management:
developing a compliance framework
for managing UTT risk

2022

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UNCERTAIN TAX TREATMENTS (UTT)

BACKGROUND

The Finance Bill 2021-22 introduces a requirement for large businesses to notify HMRC where they adopt 'Uncertain Tax Treatments', subject to certain conditions, exclusions and exemptions.

HMRC's aim is to reduce the legal interpretation 'tax gap', accelerate the point at which conversations on UTTs occur and encourage real-time transparency with large businesses.

'Large' captures most companies and partnerships, wherever incorporated, where aggregate UK turnover or aggregate UK balance sheet gross assets exceed £200m and £2bn respectively.

The UTT notification requirement applies to corporation tax, partnership and VAT returns, and returns under PAYE regulations, required to be filed on or after 1 April 2022.

Significant penalties of £5,000, £25,000 or £50,000 can arise for each relevant return in scope in a financial year where there is non-compliance on a first, second or third failure basis, so strong compliance is a must.

HMRC expects strong UTT compliance; this will be considered in HMRC's risk assessment of large businesses. Therefore, assessing the potential impact of the UTT regime, and ensuring there is a framework for compliance, is a priority for large businesses.

WHAT IS 'UNCERTAIN'?

The rules consider there to be a UTT if one or both of two triggers are met:

- ▶ Provision has been recognised in the accounts of the company or partnership to reflect the probability that a different tax treatment will be applied to a transaction;
- ▶ A tax treatment applied relies wholly or in part on an interpretation or application of the law that is not in accordance with HMRC's known position.

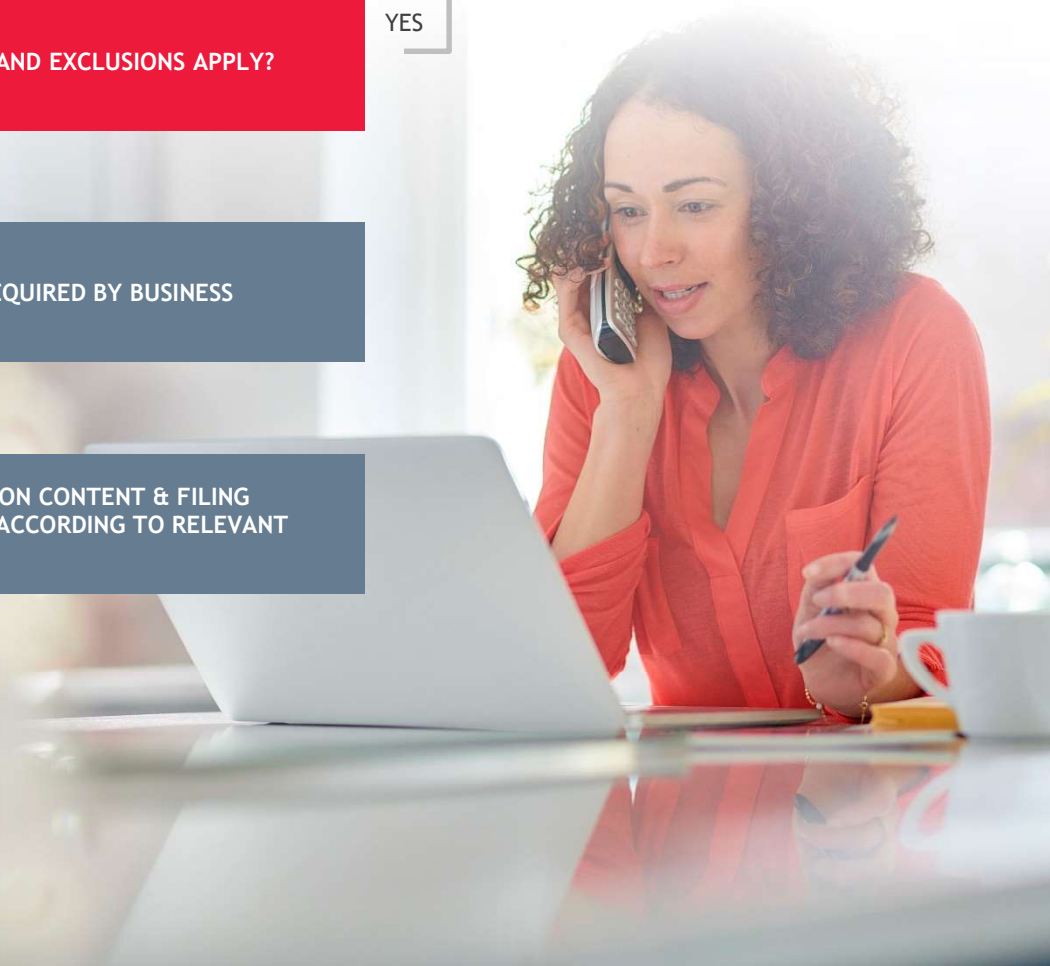
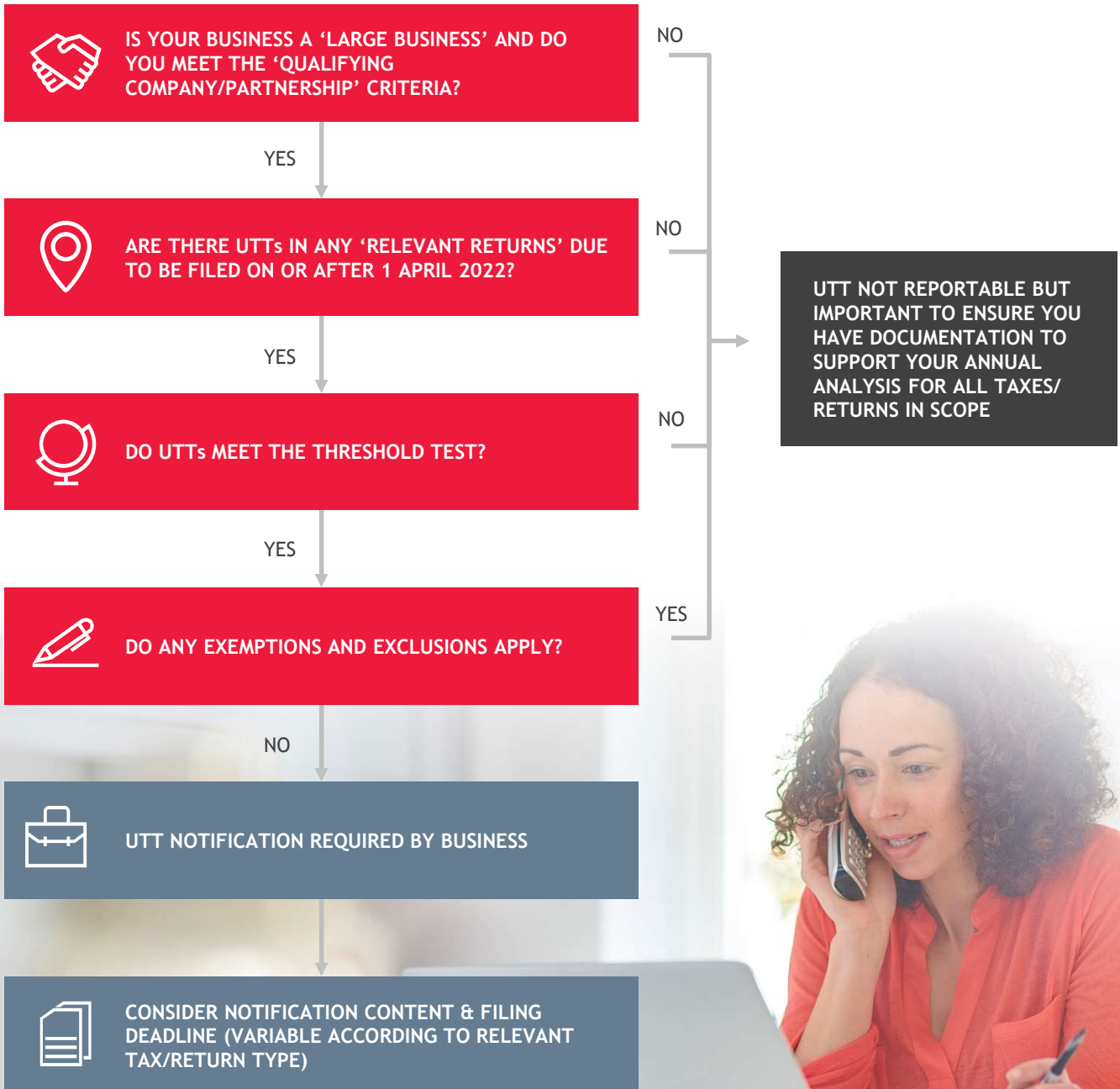
UTTs need only be notified if they meet a threshold test - the application of the threshold test requires detailed analysis but very broadly, the rules seek notification where a 'tax advantage' of more than £5 million arises as a result of the UTT.

There are however, a number of exemptions and exclusions from the need to notify, for example, relevant information has already been disclosed to HMRC but care is needed when ascertaining whether these may apply.

Overall the rules are complex - we are assisting clients to assess the impact of the regime on their business and implement effective risk management processes.



WHEN DOES THE UTT REGIME APPLY?



WHAT SHOULD LARGE BUSINESSES BE CONSIDERING NOW?

KEY ISSUES TO CONSIDER

Do you have a clearly established policy and guidance for UTT within your organisation?

What resources are required to ensure you are compliant by the end of the transition period and what technology can assist you?

What documentary evidence will you retain to support your decisions and evidence compliance with your UTT obligations?

Has your organisation:

- ▶ Established a process for identifying UTTs that may require notification?
- ▶ Established clear responsibilities, accountabilities and reporting lines?
- ▶ Trained key personnel to be able to identify transactions and arrangements that may be notifiable?
- ▶ Established a process for reviewing/concluding whether a UTT notification submission is required?
- ▶ Established a process for dialogue with HMRC if the business wishes to be exempt from notification or ensuring proof if other exemptions are to be relied upon?
- ▶ Established a filing process?
- ▶ Considered the financial (penalty) impact of non-compliance?

How will you:

- ▶ Identify and monitor transactions and arrangements which may require notification?
- ▶ Safeguard decisions not to notify - how will you obtain and document analysis?
- ▶ How will you ensure each of your taxes / relevant returns are compliant with varying notification deadlines?
- ▶ Take action to access exemption?
- ▶ Manage dialogue with HMRC?
- ▶ Build UTT into annual compliance processes?

Does your organisation understand:

- ▶ How the uncertainty 'triggers' could apply to transactions and arrangements in relevant returns?
- ▶ How to apply the threshold test for all taxes in scope?
- ▶ How exemptions and exclusions may apply to the business?
- ▶ How UTT compliance may impact your Business Risk Review Rating?
- ▶ How UTTs may interact with Senior Accounting Officer compliance?
- ▶ How UTT compliance may interact with your 'Responsible Tax' or ESG agenda?

A FRAMEWORK TO MANAGE UTT COMPLIANCE

What are the phases in developing a governance and risk framework to manage your obligations under the UTT rules?

You may be seeking support with forming a view as to whether or not a particular transaction carries a requirement to notify, or you may be looking to develop your governance to ensure strong compliance. Whatever the level of support you are looking for, our approach will be tailored to your business and specific needs.

These are the steps you need to take.



PHASE 1: RISK ASSESSMENT WORKSHOP & ACTION PLAN

Here we:

- ▶ Identify your key stakeholders in relation to UTT
- ▶ Educate stakeholders on the UTT rules
- ▶ Undertake an initial impact and risk assessment
- ▶ Consider what risk management processes may be required within your organisation to support UTT compliance (appropriate to the level of risk)
- ▶ Summarise the outcome of the workshop findings and provide an action plan for next steps.



PHASE 2: IMPLEMENTATION

This phase will implement the action plan produced at phase 1. This involves assistance with:

- ▶ Producing a UTT policy
- ▶ Assistance with implementing and documenting risk management procedures
- ▶ Capturing accountabilities and responsibilities through a RACI
- ▶ Providing training in the business via online UTT training or a classroom-based approach.



PHASE 3: MONITORING

This phase ensures a programme of monitoring compliance, including assisting with periodic assessment of controls and procedures.

However, the exact requirements at phases 2 and 3 will only be known once phase 1 is complete.



STANDALONE / SUPPLEMENTARY: TRANSACTION-SPECIFIC SUPPORT

Businesses may be seeking support with making decisions on how the UTT rules may apply to particular transactions and arrangements, and whether they may be notifiable. Transaction-specific support can stand alone or supplement the phased approach for developing your UTT governance.

We can provide tax specialist support to offer an opinion on the UTT notification requirement, and support with documentation to capture decisions and safeguard conclusions.

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