

## Analysis

# The curious case of Uncertain Tax Treatments

## Speed read

On 17 July 2025, HMRC published new materials around the impact of the notification of Uncertain Tax Treatments (UTT) regime alongside the latest large business compliance technical note. These materials raise important questions about how taxpayers are engaging with the UTT regime in practice. According to HMRC's research, the regime is 'meeting its objectives'. However, this is not reflected in the latest data on the tax gap and there are still very few notifications being made to HMRC. One possibility is that taxpayers may be consulting HMRC on uncertain positions through other channels such as their Customer Compliance Manager (CCM), in which case they may not be following HMRC's recommendations to ensure compliance with the UTT regime. Another possibility is that taxpayers are simply avoiding engaging with the regime altogether.



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## The UTT regime

Under the UTT regime (in force for all returns filed on or after 1 April 2022), the tax treatment of certain amounts in respect of corporation tax, VAT and PAYE may be classified as 'uncertain' if it meets one or both of the following criteria in FA 2022 Sch 17 para 10(2) and (3):

- a provision is made in the accounts to reflect the probability that a different tax treatment will be applied to a transaction to which the amount relates; and
- the tax treatment applied relies wholly or in part on an interpretation or application of the law which is not in accordance with the way in which it is known that HMRC would apply or interpret the law.

Under FA 2022 Sch 17 para 11, businesses must notify HMRC if it is reasonable to conclude that by bringing the uncertain amount (along with any related uncertain amounts) into account, the tax advantage obtained would exceed £5m. Only those businesses meeting the financial criteria set out in FA 2022 Sch 17 para 2 are within scope. (For an overview of the regime, see '10 questions on Uncertain Tax Treatment' (Steven Porter & Abigail McGrigor), *Tax Journal*, 2 August 2024.)

## What does the latest data tell us?

On 17 July 2025, alongside their technical note for large

business compliance for 2024/25, HMRC published a policy evaluation report ('the Report'), which incorporates information from UTT notifications submitted between April 2022 and March 2025, the Large Business Survey 2022 commissioned by HMRC covering 548 large businesses (the 'Large Business Survey'), and a social research study commissioned by HMRC and undertaken by the National Centre for Social Research (the 'NatCen Research').

The table below sets out the UTT notifications made between 1 April 2024 to 31 March 2025:

Regime	Total pre-notifications	Total notifications	Value of reported tax advantage (£)	Criteria notified: known position	Criteria notified: provision
Corporation Tax	0	7	237,591,800	Fewer than 5	Fewer than 5
VAT	0	0	0	0	0
Income Tax – PAYE	Fewer than 5	Fewer than 5	*	Fewer than 5	Fewer than 5
Total Value	Fewer than 5	*	*	*	*

\* HMRC state figures which could be attributed to identifiable 'persons' have been suppressed.

This shows a steep decline even from the already paltry number of notifications recorded in previous years. According to the technical notes for large business compliance in 2022/23 and 2023/24 (combined), only fifteen pre-notifications were recorded in respect of corporation tax (over both years) and fewer than five in each year for VAT.

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It is perhaps unsurprising for the initial number of notifications to be relatively low as taxpayers become accustomed to the rules. However, it has now been over three years since the UTT regime was introduced, and the latest figures seem to indicate that engagement by large taxpayers is in decline. The Report claims that the UTT regime is 'meeting its objectives of changing businesses' behaviour', in part based on the fact that the total number of UTT notifications 'summed to more than £900 million at the end of March 2025, with a median value of £15 million'. Indeed, at first glance, it may seem that the increase in value of the reported tax advantage to £238m for 2024/25 (up from £192m the previous year) in respect of corporation tax indicates that the UTT regime is meeting its proposed objective of reducing the legal interpretation tax gap. The lack of pre-notifications could be interpreted as evidence that the regime is serving as an effective deterrent in preventing large taxpayers from adopting uncertain positions.

However, the figures set out in HMRC's technical note for 2024/25 warrant further scrutiny. Of particular interest is the fact that there are no pre-notifications or formal notifications made in respect of VAT. Far from suggesting that the regime is having its intended effect, the same technical note for 2024/2025 also reveals that the tax under consideration for 'VAT legal interpretation and boundary pushing' currently stands at approximately £8.8bn. The Report points out that the UTT regime 'was not expected

to eradicate the legal interpretation portion of the tax gap, and therefore the legal interpretation tax gap methodology should not be used in isolation to provide evidence of the legislation's success'. However, given the significance of the figure for VAT legal interpretation, it does seem incredibly surprising that not a single pre-notification or formal notification was reported in respect of VAT in 2024/25. In fact, the published data tells us that there has never been a formal notification made in respect of VAT during the lifetime of the UTT regime.

#### What is behind the lack of notifications?

The size of the sums referenced in HMRC's technical note as being tax under consideration in respect of large business suggests that the £5m tax advantage threshold is not an obvious factor behind the lack of notifications.

It may be the case that businesses considering a notification feel that they have already met the general exemption set out in FA 2022 Sch 17 para 18, which states that they will not be required to notify HMRC if it is reasonable to conclude that HMRC already have available to them all, or substantially all, of the information relating to that amount that would have been otherwise included in the notification. Raising matters through other channels, such as clearances or discussions with CCMs would be an obvious initial step to try and resolve any uncertainty from the outset and may be less cost/time intensive than making a formal notification.

#### Another plausible factor behind the lack of engagement with the UTT regime may be that certain large businesses are conscious of the impact a notification could have on their reputation or even on their BRR+ rating

Indeed, one of the key themes emerging from the NatCen Research was the importance of strong relationships between large business customers and their CCMs. The NatCen Research records that businesses commented on the good relationships they had with their contact at HMRC and how they felt able to raise necessary issues such as any uncertainty about tax positions with them. One respondent in particular noted that their relationship with their CCM was 'very good' and as a result if they felt the need to discuss a potentially uncertain tax treatment, their CCM would be the first point of contact.

The Report, making reference to the Large Business Survey, indicates that 36% of businesses surveyed strongly agreed that the UTT regime had made them more likely to actively engage with HMRC to obtain certainty on uncertain tax treatments. The NatCen Research returned similar results. However, the early provision of information to HMRC in this context is unlikely to be the sole factor behind the striking lack of notifications shown by the latest figures.

Another plausible factor behind the lack of engagement with the UTT regime may be that certain large businesses are conscious of the impact a notification could have on their reputation or even on their BRR+ rating. In these circumstances, businesses may be looking closely at the relevant provisions triggering a notification with their legal advisers and deciding that a formal notification may not be required. Indeed, in the Large Business Survey, the most

significant factor amongst those businesses which did not agree that the UTT regime had made them more likely to actively engage with HMRC to get certainty rated HMRC's written manuals, guidance and guidelines 'poor' in terms of providing certainty (42%). This scrutiny of the provisions and supporting guidance by large taxpayers may indicate that some may be taking a view, allied with external advice, about whether notifying is necessary under the regime. For obvious reasons, that possibility is not readily admitted to in the NatCen Research. However, the NatCen Research does suggest that the UTT policy 'might make businesses prepare any Uncertain Tax Treatment positions and defence more extensively thereby reducing the uncertainty'. One respondent noted:

'I think we're more aware of the fact that there is this rule there and there is the potential for challenge. So, we would rather go and make sure that we get something right rather than just argue it. We make sure we've got the back up for it and everything.'

The Report seems to interpret these types of responses as evidence of businesses actively adopting less uncertain positions. However, it might also suggest that businesses are taking a risk-based approach to the regime.

#### Practical tips for approaching the UTT regime

In light of the latest data (and based on the authors' recent experience of advising large taxpayers in respect of their obligations under the regime), there are certain key points that relevant taxpayers may wish to bear in mind.

- The trigger provisions set out in FA 2022 Sch 17 para 10(2) and (3) are drafted very broadly, and there is no specific case law. Legal advice should therefore invariably be sought where the taxpayer and tax advantage financial thresholds are met. For example, HMRC's guidance (in their HMRC's *Uncertain Tax Treatments by Large Businesses Manual* at UTT13200) states that where HMRC's position is unclear there will be no 'known' position and that HMRC's position is clear where it either provides a clear answer to the question or a clear set of guiding principles that can be applied to a set of facts. However, in practice, whether 'a clear set of guiding principles' exists may be difficult to determine and will depend on the exact circumstances under discussion. In such circumstances, taxpayers should seek legal advice rather than relying on guidance and not notifying.
- Aside from any potential penalties for failure to properly notify, there is a risk of damaging otherwise good relationships with HMRC if it later becomes apparent (for example, as part of a later BRR+ process) that a taxpayer failed to at least make a 'pre-notification', particularly if the advice relied upon was nuanced (which, given the nature of the regime, may be inevitable to some extent). If a taxpayer has sought legal advice regarding whether notification is required, legal professional privilege should be available to prevent that advice needing to be shared with HMRC.
- Where a CCM is approached with relevant information in order to benefit from the exemption from the requirement to formally notify, HMRC's guidance (at UTT16200) recommends that the taxpayer makes it clear that this is the case, and that the discussion is formally documented. The lack of recorded 'pre-notifications' in the latest data suggests that very few taxpayers are following that recommendation.
- Taxpayers should involve individuals from across the different parts of their business in discussions about the

UTT regime. Although discussions might be led by a Head of Tax, individuals who could identify relevant tax risks arising from other areas should be involved. Regular training should be provided outlining the regime and its implications to help with the monitoring of relevant tax risks.

### As HMRC zone in on upstream compliance, it is essential that large businesses consider the interaction between the UTT regime and their other legal requirements

- As HMRC zone in on upstream compliance, it is essential that large businesses consider the interaction between the UTT regime and their other legal requirements. For example, if a notification is not made in respect of an uncertain tax position, it may impact a taxpayer's ability to certify that their Senior Accounting Officer (SAO) has complied with the SAO main duty of taking reasonable steps to ensure that the company established and maintained appropriate tax accounting arrangements under FA 2009 Sch 46.
- One point of particular concern for taxpayers may be HMRC's approach to binding decisions of the Upper

Tribunal and higher courts. At UTT13200, HMRC refer to a position where the Upper Tribunal has dismissed HMRC's appeal against a decision of the FTT on whether a supply was zero rated under VATA 1994 Sch 8 and correspondingly a business making the same supplies has self-assessed for VAT based on the Upper Tribunal decision being the current understanding of law. However, HMRC may not agree with this position and may be seeking to appeal it. Even if HMRC agree with it, they may not have amended their guidance to reflect this. UTT13200 states that if the taxpayer's position is not in line with HMRC's known position, then, if other conditions are met, notification would still be required under the regime. In such circumstances, careful consideration is essential for managing the taxpayer's position.

Given the higher rates of engagement in respect of other legislative requirements for large businesses (such as SAO) it can be easy to overlook the UTT regime as the 'poor relation' of this group of measures. However, as more taxpayers are having to deal with increasingly novel risks, it is essential that the UTT regime is at the forefront of their minds. ■

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- ▶ 10 questions on Uncertain Tax Treatment (S Porter & A McGregor, 2.8.24)
- ▶ Uncertain tax treatment: highlights from HMRC's final guidance (K Alexander & N Evans, 17.3.22)