UK opens consultations on transfer pricing, permanent establishment, and Diverted Profits Tax legislative reform

May 20, 2025

In brief

What happened?

Following its initial consultation in summer 2023 and an update in autumn 2024, the UK government published a consultation on draft legislation aimed at reforming the rules governing transfer pricing (TP), permanent establishment (PE), and Diverted Profits Tax (DPT). This is part of the Government's Corporate Tax Roadmap, which seeks to modernize and simplify the tax rules in alignment with international standards and stakeholder feedback.

In addition, a consultation has been initiated on two further transfer pricing related proposals, which were trailed as part of the Spring Statement last month. The first would amend the existing exemption from the TP rules for small and medium enterprises (SMEs), broadly bringing medium-sized enterprises into TP rules. The second is a new tax compliance requirement requiring all multinationals within the TP rules (not just those within Country-by-Country Reporting (CbCR)) to report information on cross-border related-party transactions to HMRC via a filing referred to as the International Controlled Transactions Schedule (ICTS) in the consultation.

Why is it relevant?

The reforms are intended to improve fairness, produce simpler and more easily understandable legislation, create greater alignment with international treaty partners, and promote inward investment into the UK by increasing certainty and access to treaty benefits.

Three areas of international tax law are covered by the two consultations:

- Transfer pricing
- Permanent establishment
- DPT

Further details on each area are provided below.

Action to consider

The TP/PE/DPT consultation on draft legislation will run until July 7, 2025, after which the government will analyze and publish a response to the views expressed by stakeholders. These views will feed into the drafting of the final legislation, which the government intends to include in Finance Bill 2025-26, so it is likely to be effective at some point during 2026.

The second consultation on the SME exemption and ICTS also will run until July 7, 2025, after which the government will analyze the responses and publish its response. This response will address the government's findings regarding potential benefits and costs arising from the potential new measures. If the government concludes that there is merit in introducing either or both these changes, then officials will work towards implementation at a future fiscal event.

Businesses are encouraged to review both consultation documents, along with the draft legislation, and provide responses to the consultations if they have any comments or concerns regarding the proposals. Alternatively, please reach out to the contacts listed below or your usual PwC UK transfer pricing contact if you would like to contribute to our consultation response.

In detail

Transfer pricing - consultation on draft legislation

The proposed reforms to the UK's TP rules aim to simplify the application of Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) and other related parts of the UK tax legislation and to align the rules with international standards. Details of the key changes are set out below.

UK:UK transfer pricing

An exemption for domestic transactions between UK companies is proposed where there is no risk of tax loss, with exclusions to prevent tax arbitrage and provisions for HMRC to issue TP notices to disapply the exemption. Similar to the current SME TP exemption, a company eligible for the exemption will not be required to undertake qualifying domestic transactions on arm's length terms or to hold documentation evidencing the arm's length basis for such transactions.

The exemption as drafted applies only to transactions between UK resident companies within the charge to Corporation Tax (CT), and therefore not to other legal forms covered by the TP legislation (e.g., UK PEs of a non-resident group company, individuals, partnerships, trusts, charities, public sector bodies such as universities).

The draft legislation further caveats the exemption for cases where one or both of the UK tax resident companies has an overseas branch with a branch exemption (but in relation to transactions involving the exempt branch only)

or claims patent box relief, where different currencies are used to calculate the taxable profits, certain situations where derivative contracts are involved, and where one or both companies is an excluded company (relevant for groups in the banking, insurance, shipping, real estate, and energy sectors, which are subject to particular tax regimes). Overseas companies treated as UK residents under the controlled foreign company (CFC) rules are likewise not eligible for the exemption.

Companies can elect to disapply the exemption for a chargeable accounting period either on an entity basis or a transaction-by-transaction basis; however, the election, once made, is irrevocable. For example, a company would need to make an election not to be exempt in order to make a compensating adjustment.

Similar to the current SME TP exemption, HMRC retains the right to direct that the exemption should not apply; however, such a notice can be effectively eliminated on appeal if the taxpayer can show that no loss of tax occurs.

Observations:

In many ways this exemption formalizes what has been HMRC practice in recent years (i.e., to take a risk-based approach to the selection of cases for inquiry). It will be important for groups to consider carefully whether any of their transactions between UK tax resident companies could be deemed subject to arbitrage, which could be a function of companies in the group having different tax status (e.g., the presence of a mutual trader in the group or being subject to different rates due to size).

In addition, while the removal of TP requirements for UK-UK transactions will remove one tax obligation, it is important to note that UK-UK transactions can be subject to a range of wider tax legislation and non-tax considerations. Therefore, as an overriding principle, companies should consider continuing to price transactions — even if exempt from UK-UK TP — on commercial terms even once this exemption comes into effect.

Intangible fixed assets (IFAs)

Under current law there are two valuation standards that can apply to cross-border, related-party transactions involving IFAs — market value and arm’s length price. The precise interaction between these standards can be complex and also depends on the actual consideration paid.

The proposed changes are intended to simplify the interaction between Part 4 TIOPA 2010 and Part 8 Corporation Tax Act 2009 (CTA 2009) by applying a single valuation standard — the arm's length price — for certain cross-border transactions involving intangibles.

Observations:

Under the current rules, where businesses are transacting in any way in IFAs (either the UK acquiring or disposing of them), care is needed when assessing the valuations. Going forward, if implemented, the proposed changes may remove the complexity and uncertainty the current rules can provide since the proposed changes would simplify certain IP transactions where they are aligned to the arm’s length principle. In addition, the proposed changes may help better align the UK approach with other tax authorities and facilitate reaching agreement with treaty partners via Mutual Agreement Procedures (MAP) or via an Advance Pricing Agreement (APA).

Financial transfer pricing - guarantees

The current legislation prohibits any account to be taken of guarantees when applying TP to related-party loans, so when the arm’s length quantum of borrowing (thin cap) and/or pricing is determined. This result has caused some challenges in specific circumstances; therefore, the draft legislation removes this general rule and replaces it with a

more specific need to exclude the impact of guarantees (but, specifically, include the impact of implicit support) when assessing the amount of debt that would have arisen at arm's length.

Observation: In terms of assessing an arm's length interest rate, it appears that under the draft legislation, both related-party guarantees and implicit support need to be considered.

In addition, under the draft legislation, other UK companies within a group may be able to claim tax deductions in relation to the amount of interest disallowed in the UK borrower, through making an election to be treated as if they had provided a guarantee and through making a compensating adjustment claim.

The draft legislation notes that the changes to the rules on guarantees, and related changes to the rules on claiming compensating adjustments, would only apply to new loans issued on or after the day the Act is passed in relation to this revised legislation, or to loans that undergo substantial modification. Existing loans would be assessed under the existing legislation subject to a, yet to be specified, longstop date.

Observations:

The proposed changes would align the UK legislation with the OECD guidelines and have the potential to reduce the assessed arm's length interest rate on a loan (both inbound loans to the UK and outbound loans from the UK) compared with an assessment under the current UK legislation, clearly reflecting the impact of implicit support. The proposed changes to the legislation also appear to have implications for assessing the arm's length quantum of debt, providing greater certainty on the impact of guarantees and implicit support.

The proposed election should provide greater certainty to businesses that seek to use compensating adjustment claims to minimize net interest disallowances across UK borrowing groups.

Finally, the implications of the effective date of the Act may need to be considered carefully with respect to certain loans, such as long-term loans that mature after the longstop date and borrowing/ deposit facilities (e.g., cash pooling) where over time their terms may be modified, or new drawdowns made.

Financial transfer pricing — acting together rules

The draft legislation more clearly defines the scope of the "acting together" provisions that apply in respect of financing transactions to widen the test of connectivity for TP purposes, with the intention of excluding truly arm's length debt from being within this definition.

Observations:

The existing "acting together" rules were designed to ensure that financing provided by private equity or similar funds was covered by the TP rules, although their breadth of application was subjective. The new legislation appears to provide a more objective assessment of "acting together" for these purposes.

Financial transfer pricing - interaction between Part 4 TIOPA 2010 and Parts 5 and 7 CTA 2009

The draft legislation seeks to clarify the interaction between the loan relationship rules and TP, ensuring that where the TP legislation has effect, this is respected by the loan relationships code. In addition, the operation of the "one-way street" is to be amended such that, broadly, where amounts subject to a TP adjustment are subsequently reversed, there is symmetry in treatment, subject to an overall backstop that aims to ensure the total profits brought into account are not less than those that would have been under the arm's length provision.

The draft legislation acknowledges that the interaction between TP and foreign exchange in respect of loan relationships and derivatives is a complex area. The amendments intend to simplify the current rules, bringing foreign exchange movements within the scope of Part 4 TIOPA 2010. The proposals also aim to ensure that exchange gains and losses in respect of qualifying financial instruments (broadly, financial instruments forming part of hedging arrangements) are not disturbed by TP adjustments.

Finally, the consultation also considers introducing a limited documentation requirement alongside the foreign exchange rule changes.

Observations:

The proposed amendments should be a positive change, protecting taxpayers in circumstances where a debit would be disallowed under TP but corresponds to a credit that arose in earlier periods and was brought into tax.

The introduction of a documentation requirement would introduce an additional compliance burden.

Participation condition

The draft legislation proposes amendments to ensure that transactions influenced by common management are caught by the participation condition, including an anti-avoidance provision and a power for HMRC to issue TP notices to bring businesses within the TP rules in specific scenarios.

Observations:

While the proposed changes would broaden the current UK participation definition, the new definition is expected to impact only a “handful of scenarios,” as noted by HMRC. However, it remains to be seen how far the remit of the proposed changes go, particularly with respect to HMRC’s power to issue a TP notice requiring a taxpayer to file on the basis that there is participation, which could theoretically have a broad remit. These changes therefore have the potential to bring more businesses into TP rules and could apply subjectively and at HMRC’s discretion. More guidance from HMRC on the intended application is welcomed.

Commissioners’ sanctions

The draft legislation proposes the removal of the requirement for HMRC's Commissioners to authorize transfer pricing determinations, relying instead on existing governance frameworks.

Observations:

The original Commissioners' sanctions legislation was introduced to make sure non-specialists within HMRC could not issue TP adjustments. Therefore, the changes could potentially lead to less expert scrutiny over TP assessments, particularly discovery assessments towards the end of companies' accounting periods. The current HMRC governance set-up could help mitigate this result; however, it is important that companies seek appropriate advice in the event of an HMRC inquiry.

OECD principles

The draft legislation clarifies that Part 4 TIOPA 2010 should be interpreted in accordance with OECD principles, ensuring consistency with international standards regardless of the status of the relevant tax treaty (if one is in force) between the UK and the counterparty jurisdiction.

Observations:

This adjustment is seen as a clarification and in practice should not have any impact. The OECD guidelines remain subject to interpretation upon which views can differ. For example, HMRC's guidance on the interpretation of risk control released last year sets out additional thoughts and views on how the guidelines should be interpreted.

Areas not pursued

In the original consultation HMRC proposed changes to the definition of provision and to consider whether clarity was needed with respect to how the imposition of the arm's length provision, as required by the TP legislation, should interact with wider tax rules — e.g., Part 3 (trading income) and Part 5 (non-trading loan relationships) of CTA 2009. No legislative changes are proposed in relation to these areas; however, more guidance on the interaction of TP with wider tax rules could be considered. Guidance in this area would be helpful given previous UK and international tax cases that have grappled with this point but where some uncertainty remains.

Transfer pricing - second TP consultation

The Government has also issued a second TP consultation proposing amendments to the current exemption from the UK TP rules for SMEs and the introduction of a requirement to report information on cross-border related-party transactions to HMRC via an ICTS. Further details are provided below.

SME exemption

Currently SMEs, defined as enterprises with less than 250 employees and either annual turnover of less than €50m and/or a balance sheet total of less than €43m, generally are exempt from the UK TP rules, so long as their intercompany transactions are only within the UK or with territories with which the UK has a double tax treaty containing an appropriate non-discrimination article. The government is proposing to remove the exemption from medium sized enterprises.

The exemption for small enterprises will be maintained, with some changes to the thresholds to apply these in GBP rather than EUR. The new threshold for a small enterprise will be one that has less than 50 employees and either a turnover of less than £10m and/or a balance sheet total of less than £10m. Specific rules consider how to assess the limits for groups and commonly held businesses. It is proposed that these rules, currently based on EU guidance, are aligned with the participation conditions in the UK legislation, helping to simplify matters. HMRC would still be able to direct that the exemption should be disapplied when an enterprise is claiming patent box relief.

Observations:

The removal of this exemption would directly impact medium-sized entities with a requirement to apply TP rules to their cross-border and certain UK-UK transactions. This requirement would add compliance burdens, including the need to consider the ICTS (see below) and the potential for HMRC inquiries. How HMRC applies a risk-based approach to these businesses would need to be observed in practice if these proposals come to fruition.

Note: As a reminder, while the UK has an SME exemption, groups with operations outside the UK may already need to comply with requirements in those jurisdictions to apply the arm's length standard on related-party cross-border transactions, and to prepare suitable supporting documentation. However, with many territories applying a one-way street principle, the need to consider the UK position may require changes to underlying policies and documentation where the UK has been previously under rewarded.

Similarly, groups with operations in countries with which the UK does not have a double tax treaty with the appropriate provisions will already need to comply with the existing UK TP rules. In addition, HMRC already has the power to direct that the exemption should be disapplied from any medium-sized enterprise where they believe significant tax is at stake due to non-arm's length pricing, although this authority is rarely used.

International Controlled Transaction Schedule (ICTS)

The government is considering the introduction of an ICTS to report cross-border related-party transactions. The ICTS would apply to UK entities within the scope of Part 4 TIOPA, UK PEs of non-resident entities, and UK entities with foreign PEs. In scope businesses would be required to complete the ICTS if the total aggregated value (no netting would be allowed) of relevant cross-border related-party transactions exceeds £1 million. A template ICTS has been issued and includes sections for disclosing related-party transactions and loan relationships, as well as a short list of questions relevant to assessing TP and PE risk.

Observations:

While different in name to the International Dealings Schedule (IDS) proposed in previous consultations, the ICTS would similarly act as a risk assessment tool to make HMRC's inquiry process more effective. The consultation seeks to contrast the ICTS with other TP records (notably the Local file), explaining that there is no requirement to file the Local File with HMRC and it is not suitable for automated risk assessment. It remains to be seen, however, if HMRC will make extensive use of their powers to request Local Files outside of a formal inquiry setting, which would in theory lessen the need for supplementary information such as the ICTS for larger businesses.

The consultation envisions quantitative thresholds for determining whether a taxpayer has a requirement to prepare the ICTS, and for which transactions should be disclosed. Consideration is given to a higher de minimis for the disclosure of a category of transaction (aggregated according to factors outlined in the consultation) for taxpayers covered by the requirement to keep specified TP documentation — Local File and Master File — in the Transfer Pricing Records Regulations 2023. Such differences, although intended to offset the burden of existing and upcoming reporting obligations (e.g., CbCR and Pillar Two) for larger businesses, would add complexity for groups below the €750m turnover threshold.

Overall, despite setting out to address a number of concerns raised during the prior consultation, the ICTS has the potential to increase the compliance burden for impacted taxpayers. For example, the specific format of quantitative information may not capture all the relevant nuances (e.g., if pass-through costs are included in a transaction), and as such, use of the "free-format" explanatory notes could be required in a number of situations. Further, under the current proposals, taxpayers must work through disclosure requirements that differ in some respects to the UK Local File requirements, which would add further complexity to the process of analyzing controlled transaction information. Taxpayers would need to consider how intercompany transactions are recorded in order to collect the data efficiently, whether through specific general ledger codes, or other identifying data points.

Much depends on the final design of the ICTS and which simplifications, if any, are included. One example given is to allow businesses to exclude data provided in the ICTS from the Local File, which could represent a reduction in the scope of the Local File. That the government is consulting on simplifications of this nature is encouraging and shows a recognition of the need to carefully balance the benefits to HMRC with the interests of taxpayers.

Permanent establishment - consultation on draft legislation

The reforms aim to align the UK's PE rules with the latest international consensus, simplifying and modernizing the legislation. Details of the key changes are set out below.

Definition of PE

The statutory definition of a PE in section 1141 CTA 2010 would be revised to more closely align it with the wording in the OECD Model Tax Convention (MTC) 2017 version.

The proposed changes include clarifications such that UK law should be interpreted consistently with Article 5 of the OECD MTC. The definition of a fixed place of business now limits building sites or construction projects to those lasting more than 12 months, matching the OECD standard. The rules for dependent agent PEs (DAPE) have been updated so that a dependent agent is someone who habitually concludes contracts or plays a principal role in their conclusion, closely following the OECD definition, though the UK retains flexibility regarding contracts not being in the name of the overseas enterprise to address situations under UK common law involving undisclosed agency arrangements. This definition remains subject to adjustment under the UK's double tax treaty network.

The independent agent exemption in section 1142 CTA 2010 has been clarified to better reflect the OECD's narrowed criteria as seen in Article 5(6), particularly regarding agents who are closely related to the company and act almost exclusively on its behalf. The definition of "closely related" within section 1143 also has been revised to more closely match the OECD's Article 5(8), with the UK retaining a specific 50% investment condition.

The proposed changes also provide that where a non-resident company is not regarded as being within the charge to CT as a result of either the independent agent exemption, the undertaking of preparatory or auxiliary activities, or participating in alternative finance arrangements, i.e. where it is regarded as not having a UK permanent establishment, it also would be excluded from the charge to income tax.

Attribution of profits

Amendments to Part 2, Chapter 4 CTA 2009, regarding the attribution of profits to PEs are intended to give certainty that relevant OECD documents can be relied upon to interpret the "separate enterprise principle," including the 2010 OECD Report on the Attribution of Profits to Permanent Establishments.

The attribution of profits to PEs now would be governed by rules that mirror Article 7(2) of the 2017 OECD MTC. The UK's definition of the separate enterprise principle has been updated so that profits attributed to a PE are those that would have been earned by a "separate and independent enterprise" engaged in similar activities under similar conditions, replacing the previous "distinct and separate enterprise" language. This change also requires that the functions, assets, and risks of both the PE and the rest of the non-UK resident company are considered, in line with the OECD's Authorized OECD Approach (AOA).

As a result, several sections within CTA 2009 that introduced specific UK nuances would be amended or removed, such as those governing arm's length transactions, allowable deductions, and restrictions on deductions for costs, intangible assets, and financing costs. Additionally, provisions specific to banks and financial institutions, including those related to the attribution of financial assets and profits, also would be repealed. However, the application of the separate entity principle for insurance companies remains, with relevant references updated for consistency.

Observations:

Overall, HMRC's proposed changes ensure that the UK's PE rules are more closely harmonized with OECD guidelines, while retaining certain domestic nuances and making only a few intentional deviations. This should provide more certainty to taxpayers going forward.

Existing treaties, of which the UK has about 150, would not be affected by these changes, so the previous PE thresholds remain in place; however, if these treaties are renegotiated in the future this may cease to be the case.

Similarly, where no treaty exists, the new definitions would apply and have the potential to impact entities located in non-treaty territories with a UK presence as soon as the legislation is enacted.

HMRC believes the previous rules were sufficiently broad that these changes should not result in a proliferation of new PEs, especially those with no or little taxes to report, but the new PE legislation could have the potential to introduce significant additional complexity and uncertainty for taxpayers in a number of sectors. Understanding HMRC's policy position in relation to future treaty negotiation will be key to fully predict the impact these changes will have.

Investment manager exemption (IME)

HMRC has reviewed and proposed updates to the IME, which is widely relied upon in certain subsectors of the asset management industry. In particular, the proposed changes would provide that:

- The IME will now be viewed as a safe harbor within the "agent of independent status" provisions, rather than a statutory alternative to the general exemption for independent agents;
- The "20% condition", which imposed a cliff-edge restriction on investment manager participation in their own funds and caused a number of practical difficulties, has been entirely removed, together with the related partial charging provision; and
- A new statutory definition of "investment transaction" - moving from a "whitelist" approach of defining investment transactions to instead defining a list of exclusions (principally UK land and physical commodities/assets). However, the definition also defines investment transactions as those undertaken by an Alternative Investment Fund (AIF) or a Collective Investment Scheme (CIS) — these are legal/regulatory definitions, and some investment vehicles may not fall into either category.

Finally, HMRC is proposing updates to Statement of Practice 1/01, Treatment of Investment Managers and Their Overseas Clients, to provide additional guidance in this area. Most of the updates reflect the above changes in primary legislation; however, the application of the "independent capacity" test has been narrowed where the non-resident company is not a "widely held" fund, and would now only apply where the provision of services by an investment manager to such a non-resident fund (and connected persons) is less than 50% of the investment manager's business (previously 70%).

Observations:

These proposals are broadly seen as a positive change for the asset management sector and should provide increased flexibility going forward. ***Note:*** The earlier comments regarding revisions to the UK domestic law independent agent exemption could impact certain situations where the investment manager is closely related to the fund and where the fund is located in a non-treaty location. In addition, the linking of investment transactions to the regulatory definitions of AIF and CIS could exclude some investment vehicles from the IME

Capital gains

Certain assets in the UK are taxed under the capital gains tax regime (as opposed to the IFA legislation noted above). Upcoming changes to TCGA 1992, Part 1, Chapter 2 include the simplification of the capital gains rules for PEs to better align with treaty equivalents, focusing on the connection of gains to the UK PE.

The changes to Section 2B now provide an amended threshold test for potentially chargeable gains being (1) gains that accrue to a non-resident company on the disposal of assets situated in the UK, (2) at a time when the non-

resident company has a UK PE, and (3) that the chargeable gains are attributable to the UK PE. Given the changes to the profit attribution legislation in CTA 2009 mentioned above, these rules mean non-resident chargeable gains are subject to UK CT if they are attributed to a UK PE under the AOA, and the assets themselves are situated in the UK.

The most significant amendment involves removing the "relevant connection" requirement from s2B, which previously provided additional tests to determine whether an asset was suitably connected to a UK PE to be subject to UK CT on chargeable gains. An analysis under this lens had the potential to produce a different outcome to an AOA analysis.

Observations:

The reasons behind this change could be to avoid scenarios where there may have been an inconsistency between an AOA attribution of assets and the previous relevant connection requirement.

The fact that the provisions of s2B(3)(a) retain the requirement for assets to be situated in the UK means that there is still the possibility of gains relating to assets attributed to a UK PE under the AOA, not fully meeting the UK requirements to be chargeable to UK corporation tax on chargeable gains, if they do not meet the UK definition of "being situated in".

Finally, within section 25 TCGA 1992, there are provisions that trigger a deemed disposal where an asset situated in the UK and allocable to a UK PE ceases to be situated in the UK. These provisions have not been changed under these proposals, so a risk remains for non-resident companies of being chargeable to UK CT on chargeable gains on assets that have not been physically disposed of.

Diverted Profits Tax - consultation on draft legislation

The proposed draft legislation includes the creation of a new charging provision for Unassessed Transfer Pricing Profits (UTPP) within the CT regime, but attracting a rate six percentage points higher than CT at any given time. The new legislation would sit in a new Part of the TIOPA 2010 and would replace the DPT which has, since 2015, been a tax separate from CT.

The proposed legislation would also see some changes to the "gateway" conditions, which previously determined whether a transaction was in the scope of DPT and would, under the proposal, determine whether it is in the scope of CT under the new UTPP rules.

Interaction with CT framework

Unlike DPT, there would be no requirement for businesses to notify that they are within the scope of UTPP. Instead, the requirement falls within the usual CT self-assessment regime.

The repeal of DPT and its integration within the CT regime would provide businesses with certainty in relation to access to the MAP under the UK's treaty network, whereas there have been significant disputes over whether DPT is a "covered tax" — i.e., eligible for treaty benefits (most notably MAP).

Changes to the effective tax mismatch outcome (ETMO) gateway condition

The ETMO tests whether the amount of tax paid on the relevant profits outside of the UK is less than 80% of the underlying corporation tax amount. Simplification of the ETMO test has been proposed to ensure it accounts for the

tax impact of two-way flow transactions, such as reinsurance transactions, and a longer period of representation where there are difficulties in identifying the amount of tax due and payable for the purposes of the ETMO test.

For transparent entities, the proposed UTPP would place the evidentiary burden on the taxpayer to prove that there is no ETMO.

A new Tax Design Condition (TDC) gateway condition

The Insufficient Economic Substance Condition (IESC) would be replaced by a new Tax Design Condition (TDC). This would test whether the arrangements have been put in place to reduce, eliminate, or delay any tax liability (including non-UK tax) of any person. Whether the new TDC is met requires an objective assessment of the structure of the provision or arrangements. The quantitative assessment of tax versus nontax benefit (a feature of the IESC) would be removed.

Assessment and Appeals process

Businesses would not be required to notify HMRC that they are in scope of UTPP (a change from the requirement to notify under the DPT legislation). As a result, there would also be a change to the period within which HMRC could issue a preliminary notice, extended to four years from the end of the accounting period across the board (previously HMRC had a shorter period within which to issue a preliminary notice where a notification had been made by the taxpayer).

Although the assessing and appeals framework for UTPP would remain broadly similar to DPT, some of the language is different. The term “Preliminary Notice” still features, which is HMRC’s initial position of the amount of profit diverted. No payment is required at that time. A representation period (limited to narrow possible points of representation) of 30 days follows a Preliminary Notice. HMRC may then issue a UTPP Assessment (equivalent to the Charging Notice under DPT). That Assessment brings the tax into charge. HMRC usually must issue that Assessment within 60 days of the Preliminary Notice, though there are different time limits where there is a court-ordered direction for HMRC to issue a CT closure notice in relation to the underlying profits and for transparent entities.

As with the existing DPT, once the Assessment is issued, the company would have a 15-month period to amend its tax return to reduce the taxable profits subject to the UTPP by adjusting these instead for CT purposes.

Unlike the DPT, the UTPP allows for the company to apply to postpone the payment of the UTPP until the assessment is finalized.

Observations:

The proposed new rules align with HMRC’s use of DPT since its introduction in 2015 — that is, to tax profits that have not been taxed in the UK because of (in HMRC’s view) incorrect transfer pricing.

The removal of the notification requirement and the extension of the HMRC assessing period could be significant in terms of the impact on tax certainty for businesses.

The rules of what is and is not possible following the issue of a Charging Notice by HMRC will remain a complex matter to navigate. There are many considerations to be taken into account when making decisions about whether to make a self-initiated amendment during the 15-month period for amendments.

Let’s talk

For a deeper discussion of how the UK’s transfer pricing, permanent establishment, and Diverted Profits Tax legislative reform might affect your business, please contact:

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