

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

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A PUBLICATION FROM THE BDO UK/US TAX DESK



SUBJECT

THE UNITED KINGDOM GOVERNMENT RELEASES DRAFT LEGISLATION THAT, WHEN ENACTED, WILL REQUIRE CERTAIN LARGE BUSINESSES TO PUBLISH THEIR TAX STRATEGY ANNUALLY

SUMMARY

On December 9, 2015, the United Kingdom tax authority, Her Majesty's Revenue & Customs ("HMRC"), issued draft legislation that sets out the requirements for certain large companies to publish a UK tax strategy document annually. The document must be freely available on the internet before the end of the year to which it relates and must remain accessible for a year after publication, unless the tax strategy for the following year is published within that period. While the UK tax authorities expect that only the largest 2000 businesses in the UK will be within the scope of the new rules, the current draft of the legislation is likely to impact many more UK subsidiaries of United States groups.

BACKGROUND

The United Kingdom Government is committed to creating the most competitive tax system in the G20 and has taken measures, such as lowering the rate of corporation tax dramatically, to achieve this. However, the Government also wants to ensure that the tax system is not open to abuse and that everyone pays their "fair share" of tax. In order to encourage transparency and compliance, legislation is being introduced that will require certain large companies to make their tax strategy for the UK public.

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DETAILS

The draft legislation published on December 9, 2015, sets out the requirements for the publication of UK tax strategy.

Entities to which the rules apply

Businesses within the scope of the new legislation are:

- ▶ UK headed groups where either: (1) the aggregate group turnover is more than GBP200m or the aggregate group balance sheet total is more than GBP2bn, i.e. the size requirements for inclusion in the “Senior Accounting Officer (“SAO”) regime; or (2) the group is of the size where country-by-country reporting would apply, i.e. those groups with consolidated group revenue of GBP586m or more (“Qualifying MNE Group”);
- ▶ UK sub-groups of foreign headed groups where the group is either a Qualifying MNE Group or meets the SAO size requirements;
- ▶ UK companies where there is no UK group/UK sub-group, and either the company itself meets the SAO size requirements, or any foreign headed group to which the UK company belongs is a Qualifying MNE Group; and
- ▶ UK partnerships that meet the SAO size requirements.

The key point for United States multinationals to note is that, as currently drafted, the legislation means that relatively small UK subsidiaries or UK Sub-groups could be brought into the remit of the rules by virtue of the size of the worldwide group rather than with respect to the size of the UK entity or UK sub-group itself.

Key requirements

Businesses subject to the new legislation will be required to publish their tax strategy as it relates to all UK taxes (including, but not limited to, corporation tax, income tax, diverted profits tax, value added tax (“VAT”), stamp duty, customs duty) annually.

There are four key elements related to the UK group/sub-group or UK company strategy that are required to be published:

1. Approach to risk management and governance arrangements in relation to UK tax;
2. Attitude towards tax planning, so far as it affects UK tax;
3. Level of risk that the group/sub-group or company is prepared to accept in relation to UK tax; and
4. Approach towards dealings with HMRC.

It should be noted that details of the effective tax rate, which at the consultation state had been put forward to be included in the tax strategy publication, are not required under the legislative requirements.

The strategy may be published as a separate document or a self-contained part of a wider document, but must be made available on the internet free of charge. It must be published before the end of the year to which it relates, and must remain accessible for a year after publication unless the tax strategy for the following year is released within that period.

Penalties

The head UK entity (or UK company where there is no UK group or sub-group) will be subject to penalties where the requirements of the legislation are not met.

For the financial year in question, the penalty is GBP7,500 for failing to publish a document that meets the statutory requirements on time, or for failing to keep the document accessible for the required year following initial publication. A further GBP7,500 will apply if the required strategy document is not then published within six months after the end of the year to which it relates, and to each subsequent month that the tax strategy document remains unpublished.

Effective Date

The new rules will apply to financial years commencing after the UK's 2016 Finance Bill is passed. The expectation is, therefore, that for groups with December 31 year ends, the first tax strategy document must be published before December 31, 2017, for that year.

BDO INSIGHTS

United States multinational groups with either stand-alone UK subsidiaries or UK sub-groups will need to consider whether they have to comply with the legislation and publish their UK tax strategy annually. Although the legislation is squarely aimed at compliance for larger businesses, the way that the legislation is currently drafted means that small UK subsidiaries or UK sub-groups of large United States multinational groups that meet the qualifying requirements will fall within the new legislation.

BDO has contacted the UK tax authorities to confirm whether the legislation was intended to have such broad scope; it is clear from the Policy Document that HMRC anticipate that only the UK's 2,000 largest businesses would be within the scope of the new rules. HMRC have said that they still consulting on the details of the legislation internally, and have, subsequent to BDO's communication, refocused on this particular aspect. While they are not able to clarify the position right now, we anticipate further guidance on this point in due course.

For further information or a discussion about the impact of the proposed new rules on your particular circumstances please contact Ingrid Gardner or your usual BDO tax advisor.

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